

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

THIS INDENTURE made this 30th day of September, 2013 between Owner Berry Plastics Corporation, having an office at 200 East Main Street, Village of Macedon, County of Wayne, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233.

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 112 Main Street in the Village of Macedon, County of Wayne and State of New York, known and designated on the tax map of the County Clerk of Wayne as tax map parcel number: Section 62111 Block 08 Lot 948968, being the same as that property conveyed by Tyco Plastics LP to Covalence Specialty Materials Corp. by deed dated February 16, 2006 and recorded in the Wayne County Clerk's Office in Instrument Number: R9069942 on March 28, 2006. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 8.95 +/- acres, and is hereinafter more fully described on Schedule A, and on a Survey made by URS Corporation New York, NYS licensed land surveyor, dated November 6, 2012, which documents are hereby attached to, incorporated in, and made a part of this instrument; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

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NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: B8-0669-04-06, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential, Restricted Residential or Commercial purposes as defined in 6NYCRR 375-1.8(g)(i), (ii) and (iii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

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- (1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).
 - (2) the institutional controls and/or engineering controls employed at such site:
 - (i) are in-place;
 - (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
 - (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
 - (3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;
 - (4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
 - (5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;
 - (6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and
 - (7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement.

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

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C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: C859025
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor: **Berry Plastics Corporation**

By: _____

Print Name: Jason K. Greene

Title: Executive Vice President & General Counsel Date: 9/16/13

Grantor's Acknowledgment

STATE OF INDIANA)
) ss:
COUNTY OF Vanderburgh)

On the 16th day of Sept., in the year 2013, before me, the undersigned, personally appeared Jason K. Greene, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Amy R. Morphew
Notary Public - State of INDIANA

Robert W. Schick, Director
Division of Environmental Remediation

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SCHEDULE "A" PROPERTY DESCRIPTION

Physical Address: 112 Main Street, Village of Macedon, County of Wayne, New York
Tax Map Number: 62111-08-948968

ENVIRONMENTAL EASEMENT AREA DESCRIPTION

Reference Instrument #R9069942, Wayne County Clerk's Office

ALL THAT TRACT OR PARCEL OF LAND, SITUATE in the Village of Macedon, Town of Macedon, County of Wayne, State of New York, and being part of Great Lot Twenty-nine (29), Township No. Twelve (12), Range No. Three (3) and being more particularly bounded and described as follows:

BEGINNING at a point in the northerly right-of-way line of Main Street, New York State Route 31, State Highway No. 8037 (width varies), said point being the Point of Beginning as delineated on Conveyance Map No. 1 as conveyed from Doyle to Wayne County and filed in the Wayne County Clerk's Office in Liber 329 of Deeds at Page 75, said point being marked in the field by a found monument 0.2 foot east;

Thence along the northerly right-of-way line of said Route 31 the following six (6) courses and distances: (1) North 19° 24' 58" West, a distance of twenty eight and seventy-six hundredths feet (28.76') to a point marked by a found monument 0.1 foot east, said point being the Terminal Point of Course Number One (1) as delineated on said Conveyance Map No. 1; Thence (2) South 76° 49' 02" West, a distance of one hundred fifty nine and eighteen hundredths feet (159.18') to a point, said point being the Terminal Point of Course Number Two (2) as delineated on said Conveyance Map No. 1; Thence (3) South 86° 41' 02" West, a distance of fifty seven and forty-one hundredths feet (57.41') to a point marked by a found monument; Thence (4) South 87° 19' 32" West, a distance of one hundred sixty eight and ninety-two hundredths feet (168.92') to a point marked by a found monument 0.1 foot west; Thence (5) South 88° 00' 22" West, a distance of one hundred ninety two and seventy-one hundredths feet (192.71') to a point; Thence (6) South 77° 10' 48" West, a distance of forty seven and seventy-two hundredths feet (47.72') to a point marked by a found monument at the intersection of the northerly right-of-way line of Route 31 with the easterly right-of-way line of Route 350, said point being the Point of Beginning as delineated on Parcel Conveyance Map No. 1-C, Parcel 25 as conveyed by the New York State Department of Public Works to Mobil Oil Corporation and filed in the Wayne County Clerk's Office in Liber 584 of Deeds at Page 395;

Thence along the easterly right-of-way line of said Route 350 the following seven (7) courses and distances: (1) North 63° 38' 09" West, a distance of sixty one and thirty-five hundredths feet (61.35') to a point marked by a found monument, said point being the Terminal Point of Course Number One (1) as delineated on said Conveyance Map No. 1-C, Parcel 25; Thence (2) North 24° 19' 06" West, a distance of two hundred fifty three and seventy-five hundredths feet (253.75') to a point, said point being the Terminal Point of Course Number Two (2) as delineated on said Conveyance Map No. 1-C, Parcel 25, said point also being the Point of Beginning as delineated on Appropriation Map No. 6-R1, Parcel No. 8 as acquired in fee by the New York State Department of Public Works and filed in the Wayne County Clerk's Office and the offices of the New York State Department of Public Works, District Office No. 3, Syracuse, New York; Thence (3) North 33° 36' 28" West, a distance of seventy eight and twenty-three hundredths feet (78.23') to a point marked by a found granite monument, said point being the Terminal Point of Course Number Three (3) of said Appropriation Map No. 6-R1, Parcel No. 8, said point also being the Point of

Beginning as delineated on Appropriation Map No. 7, Parcel No. 10 as acquired in fee by the New York State Department of Public Works and filed in the Wayne County Clerk's Office and the offices of the New York State Department of Public Works, District Office No. 3, Syracuse, New York; Thence (4) North $39^{\circ} 44' 57''$ West, a distance of fifty eight and twenty-two hundredths feet (58.22') to a point marked by a found monument 0.2 foot south, said point being the Terminal Point of Course Number Two (2) as delineated on said Appropriation Map No. 7, Parcel No. 10, said point also being the Terminal Point of Course Number Five (5) as delineated on Appropriation Map No. 4, Parcel No. 6 as acquired in fee by the New York State Department of Public Works and filed in the Wayne County Clerk's Office and the offices of the New York State Department of Public Works, District Office No. 3, Syracuse, New York; Thence (5) North $40^{\circ} 10' 19''$ West, a distance of one hundred fifty three and forty-seven hundredths feet (153.47') to a point marked by a found monument 0.2 foot south, said point being the Terminal Point of Course Number Four (4) as delineated on said Appropriation Map No. 4, Parcel No. 6, said point also being the Point of Beginning as delineated on Appropriation Map No. 16, Parcel No. 22 as acquired in fee by the New York State Department of Public Works and filed in the Wayne County Clerk's Office and the offices of the New York State Department of Public Works, District Office No. 3, Syracuse, New York; Thence (6) North $29^{\circ} 54' 43''$ West, a distance of nineteen and sixty-five hundredths feet (19.65') to a point marked by a found monument 0.8 foot south, said point being the Terminal Point of Course Number Three (3) as delineated on said Appropriation Map No. 16, Parcel No. 22, said point also being the Point of Beginning as delineated on Appropriation Map No. 9, Parcel No. 12 as acquired in fee by the New York State Department of Public Works and filed in the Wayne County Clerk's Office in Liber 527 of Deeds at Page 93; Thence (7) North $23^{\circ} 28' 55''$ West, a distance of fifty one and thirty-six hundredths feet (51.36') to a point, said point being the Terminal Point of Course Number Two (2) as delineated on said Appropriation Map No. 9, Parcel No. 12, said point also being in the southerly line of lands now or formerly of the New York State Barge Canal;

Thence along the said southerly line of lands now or formerly of the New York State Barge Canal the following eight (8) courses and distances: (1) North $83^{\circ} 26' 32''$ East, a distance of fifty and twenty hundredths feet (50.20') to a point; Thence (2) North $84^{\circ} 35' 42''$ East, a distance of one hundred thirty two and zero hundredths feet (132.00') to a point marked by a found monument 0.1 foot east; Thence (3) North $71^{\circ} 42' 40''$ East, a distance of sixty eight and seventy hundredths feet (68.70') to a point marked by a found monument 0.1 foot south; Thence (4) North $78^{\circ} 36' 54''$ East, a distance of sixty four and eighty hundredths feet (64.80') to a point; Thence (5) North $84^{\circ} 35' 32''$ East, a distance of two hundred sixty four and zero hundredths feet (264.00') to a point; Thence (6) North $85^{\circ} 19' 02''$ East, a distance of three hundred two and fifty-one hundredths feet (302.51') to a point; Thence (7) South $04^{\circ} 40' 58''$ East, a distance of forty one and ninety-one hundredths feet (41.91') to a point; Thence (8) North $84^{\circ} 29' 02''$ East, a distance of two hundred six and forty-six hundredths feet (206.46') to a point, said point being at the division line between the lands of Berry Plastics Corporation (reputed owners) on the west and the lands of Pliant Corporation (reputed owners) on the east;

Thence along the last mentioned division line, the following twenty three (23) courses and distances: (1) South $13^{\circ} 24' 58''$ East, a distance of thirteen and thirty-nine hundredths feet (13.39') to a point; Thence (2) South $76^{\circ} 35' 02''$ West, along the edge of the upper concrete pad for Silos 7, 8 and 9 and the edge of pad of Silos 31 and 32, a distance of thirty six and zero hundredths feet (36.00') to a point; Thence (3) South $13^{\circ} 24' 58''$ East, continuing along the edge of concrete pad and between Silos 9 and 4, a distance of sixteen and zero hundredths feet (16.00') to a point; Thence (4) North $76^{\circ} 35' 02''$ East, along the southerly edge of said concrete pad for Silos 7, 8 and 9, a distance of twenty eight and seventy hundredths feet (28.70') to a point; Thence (5) South $13^{\circ} 51' 58''$ East, through the wall of an existing building, a distance of nineteen and fifty-one

hundredths feet (19.51') to a point in the center of an 8 inch block wall; Thence (6) South 76° 08' 02" West, along the centerline of the said 8 inch block wall, a distance of five and twenty-one hundredths feet (5.21') to a point on the easterly face of aluminum framing; Thence (7) North 13° 51' 58" West, along said easterly face of aluminum framing, a distance of six and twenty-five hundredths feet (6.25') to the northeasterly corner thereof; Thence (8) South 76° 08' 02" West, along the northerly face of said aluminum framing, a distance of nineteen and forty hundredths feet (19.40') to the northwesterly corner thereof; Thence (9) South 13° 51' 58" East, along the westerly face of said aluminum framing, a distance of six and twenty-five hundredths feet (6.25') to a point in the center of the previously mentioned 8 inch block wall; Thence (10) South 76° 08' 02" West, along the centerline of said wall, a distance of four hundred eight and ninety-two hundredths feet (408.92') to a point; Thence (11) South 13° 51' 58" East, along the centerline of an 8 inch block wall, a distance of sixty four and eighty hundredths feet (64.80') to a point; Thence (12) South 76° 08' 02" West, along the centerline of an 8 inch block wall, a distance of twenty two and seventy hundredths feet (22.70') to a point; Thence (13) South 13° 51' 58" East, along the centerline of a 12 inch block wall, a distance of twenty nine and forty-six hundredths feet (29.46') to a point in the center of an 8 inch block wall; Thence (14) South 75° 59' 32" West, along the centerline of said 8 inch block wall, a distance of thirteen and thirty-four hundredths feet (13.34') to a point on the westerly face of an existing wall; Thence (15) South 14° 00' 28" East, along said westerly face of wall, a distance of one hundred eleven and ten hundredths feet (111.10') to a point in the center of an 8 inch block wall; Thence (16) South 75° 59' 32" West, along the centerline of said 8 inch block wall, a distance of twenty four and thirty-eight hundredths feet (24.38') to a point; Thence (17) South 14° 00' 28" East, along the centerline of an 8 inch block wall, a distance of seventy five and eighty-three hundredths feet (75.83') to a point; Thence (18) North 75° 59' 32" East, along the centerline of an 8 inch block wall, a distance of seven and fifty hundredths feet (7.50') to a point; Thence (19) South 14° 00' 28" East, along the centerline of an 8 inch block wall, and continuing beyond the exterior of the existing building, a total distance of sixty six and seventy hundredths feet (66.70') to a point on line, more or less, of an existing 6 foot chain link fence with barbed wire; Thence (20) North 68° 12' 50" East, a distance of two hundred fifty six and forty-five hundredths feet (256.45') to a point; Thence (21) North 14° 03' 34" West, a distance of thirteen and twenty-four hundredths feet (13.24') to a point; Thence (22) North 77° 05' 29" East, a distance of fifty eight and ninety-eight hundredths feet (58.98') to a point; Thence (23) South 08° 01' 54" East, along the centerline of a driving lane between parking rows, a distance of two hundred ten and eighty-three hundredths feet (210.83') to a point in the first mentioned northerly right-of-way line of Route 31;

Thence South 86° 47' 42" West, along said right-of-way line, a distance of twenty two and thirty-four hundredths feet (22.34') to the point or place of beginning, containing 8.95 acres of land, more or less.

BEING AND HEREBY intending to describe the premises conveyed to Covalence Specialty Materials Corp. (now Berry Plastics Corporation) in deed dated February 16, 2006 and recorded March 28, 2006 in the County of Wayne under instrument no. R9069942.

Bearings are referenced to the New York State Plane Coordinate System (Central Zone).

SURVEY



