

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

**THIS INDENTURE** made this 1<sup>ST</sup> day of June, 2015, between Owner(s) Olean Gateway, LLC, having an office at 2558 Hamburg Turnpike, Suite 310, City of Buffalo, County of Erie, 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 1420 Buffalo Street and 1404-1406R Buffalo Street in the City of Olean, County of Cattaraugus and State of New York, known and designated on the tax map of the County Clerk of Cattaraugus as tax map parcel numbers: Section 94.048 Block 1 Lots 1.1 and 1.2, respectively, being the same as that property conveyed to Grantor by deed dated December 6, 2013 and recorded in the Cattaraugus County Clerk's Office in Instrument No. 208402-004. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 24.103 +/- acres, and is hereinafter more fully described in the Land Title Survey dated April 1, 2015 prepared by C.T. Male Associates, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; 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

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C905033-08-12, 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:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and 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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Cattaraugus County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

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

(6) 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;

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

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

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

(10) 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 or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), 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, at such time as NYSDEC may require, 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:

(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.

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: C905033  
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.

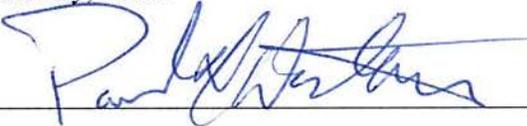
8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated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

Olean Gateway, LLC:

By: 

Print Name: Paul H. Werthman

Title: Co-Manager Date: 4/29/10



**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

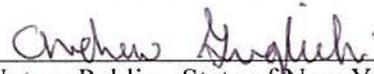
By:

  
\_\_\_\_\_  
Robert W. Schick, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF ALBANY    )

On the 1st day of June, in the year 2015, before me, the undersigned, personally appeared Robert W. Schick, 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/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public - State of New York

**ANDREW O. GUGLIELMI**  
**Notary Public, State of New York**  
**No. 02GU6177593**  
**Qualified in Albany County**  
**Commission Expires November 13, 2015**

**SCHEDULE "A" PROPERTY DESCRIPTION**

Legal Description  
Olean Redevelopment Parcel 3  
BCP Site No. C905033

Tax Parcels:

94.048-1-1.1 - 1420 Buffalo Street, Olean, New York

and

94.048-1-1.2 - 1404-1406R Buffalo Street, Olean, New York

ALL THOSE TRACTS OR PARCELS OF LAND, situate in the City of Olean, County of Cattaraugus, and State of New York being more particularly bounded and described as follows:

**BEGINNING** at the point of intersection with the division line between the lands now of formerly of Olean Gateway LLC designated as Parcel 5 in Instrument Number 208402-004 on the north and the lands now or formerly of Dresser Rand Company as described in Book 869 of Deeds at Page 644 on the south, said point being located 1,638.18 easterly of the southwest corner of Lot 4, Section 5, Town 2, Range 4 of the Holland Land Company Survey;

Thence South 89 deg. 51 min. 35 sec. West, along said division line as described in a property line agreement in Book 691 of Deeds at Page 256, 667.42 feet to its intersection with the division line between the said lands of Dresser Rand Company on the south and other lands now or formerly of Olean Gateway LLC designated as Parcel 4 in Instrument Number 208402-004 on the north;

Thence South 89 deg. 51 min. 35 sec. West, continuing along said property line agreement, 584.17 feet to an angle point therein;

Thence South 00 deg. 12 min. 26 sec. East, continuing along said property line agreement, 1.47 feet to a point on the south line of Lot 4, Section 5, Town 2, Range 4 of the Holland Land Company Survey and its intersection with the division line between said Olean Gateway LLC designated as Parcel 4 in Instrument Number 208402-004 on the north and the lands now or formerly of Niagara Mohawk Power Corporation as described in Book 575 of Deeds at Page 35 on the south;

Thence South 89 deg. 47 min. 34 sec. West, along said division line, 331.73 feet to its intersection with the division line between said Parcel 4 in Instrument Number 208402-004 on the northeast and the said lands of Niagara Mohawk Power Corporation on the southwest;

Thence continuing along the last described division line the following two (2) courses and distances:

1) North 43 deg. 23 min. 38 sec. West 231.80 feet to a point; and

2) North 57deg. 49 min. 20 sec. East 20.01 feet its intersection with the division line between the said lands of Niagara Mohawk Power Corporation on the southwest and the said lands of Olean Gateway LLC designated as Parcel 5 in Instrument Number 208402-004 on the northeast;

Thence North 32 deg. 11 min. 48 sec. West, along said division line, 66.00 feet to its intersection with the division line between the said lands of Olean Gateway LLC designated as Parcel 5 in Instrument Number 208402-004 generally on the south and west and the lands now or formerly of

Southern Tier Rail Authority generally on the north and east;

Thence along the last described division line the following seven (7) courses and distances:

- 1 North 57 deg. 07 min. 36 sec. East 949.55 feet to a point; thence
- 2) North 56 deg. 38 min. 40 sec. East 104.31 feet to a point; thence
- 3) South 32 deg. 56 min. 26 sec. East 11.00 feet to a point; thence
- 4) North 57 deg. 03 min. 34 sec. East 37.99 feet to a point; thence
- 5) along the arc of a curve to the right having a radius of 673.35 feet length of 606.77 feet and chord of South 74 deg. 41 min. 04 sec. East 586.45 feet to a point; thence
- 6) South 32 deg. 18 min. 55 sec. East 290.05 feet to a point; and
- 7) South 15 deg. 53 min. 06 sec. East 429.78 to the point and place of beginning containing 23.488 acres of land more or less.

**ALSO** ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Olean, County of Cattaraugus, and State of New York being more particularly bounded and described as follows:

Commencing at the point of intersection with the division line between the lands now of formerly of Olean Gateway LLC designated as Parcel 5 in Instrument Number 208402-004 on the north and the lands now or formerly of Dresser Rand Company as described in Book 869 of Deeds at Page 644 on the south, said point being located 1,638.18 easterly of the southwest corner of Lot 4, Section 5, Town 2, Range 4 of the Holland Land Company Survey;

Thence South 89 deg. 51 min. 35 sec. West, along said division line as described in a property line agreement in Book 691 of Deeds at Page 256, 667.42 feet to its intersection with the division line between the said lands of Dresser Rand Company on the south and other lands now or formerly of Olean Gateway LLC designated as Parcel 4 in Instrument Number 208402-004 on the north;

Thence South 89 deg. 51 min. 35 sec. West, continuing along said property line agreement, 584.17 feet to an angle point therein;

Thence South 00 deg. 12 min. 26 sec. East, continuing along said property line agreement, 1.47 feet to a point on the south line of Lot 4, Section 5, Town 2, Range 4 of the Holland Land Company Survey and its intersection with the division line between said Olean Gateway LLC designated as Parcel 4 in Instrument Number 208402-004 on the north and the lands now or formerly of Niagara Mohawk Power Corporation as described in Book 575 of Deeds at Page 35 on the south;

Thence South 89 deg. 47 min. 34 sec. West, along said division line, 331.73 feet to its intersection with the division line between said Parcel 4 in Instrument Number 208402-004 on the northeast and the said lands of Niagara Mohawk Power Corporation on the southwest;

Thence South 47 deg. 17 min. 43 sec. West, through the said lands of Niagara Mohawk Power Corporation, 79.82 feet to the **POINT OF BEGINNING** of the hereinafter described parcel of land, said point being the intersection with the division line between the lands now or formerly of Olean Gateway LLC designated as Parcel 4 in Instrument Number 208402-004 on the north and west and the lands now or formerly of Dresser Rand Company as described in Book 869 of Deeds at Page 644 on the south and east;

Thence along said division line as described in a property line agreement in Book 691 of Deeds at Page 256 the following five (5) courses and distances:

1) North 89 deg. 55 min. 40 sec. West 60.15 feet to a point; thence  
2) South 54 deg. 22 min. 57 sec. West 15.70 feet to a point; thence  
3) South 33 deg. 36 min. 57 sec. West 24.16 feet to a point; thence  
4) South 14 deg. 19 min. 57 sec. West 24.17 feet to a point; and  
5) South 00 deg. 19 min. 57 sec. West 113.50 feet to its intersection with the division line between said Parcel 4 in Instrument Number 208402-004 on the west and other lands now or formerly of Olean Gateway LLC designated as Parcel 3 in Instrument Number 208402-004 on the east;

Thence South 00 deg. 19 min. 57 sec. West, along said division line, 61.48 feet to its intersection with the division line between said Parcel 4 in Instrument Number 208402-004 on the northwest and said Parcel 3 in Instrument Number 208402-004 on the southeast;

Thence South 57 deg. 11 min. 49 sec. West, along said division line, 159.14 feet to its intersection with the division line between said Parcel 4 in Instrument Number 208402-004 on the east and other lands now or formerly of Olean Gateway LLC designated as Parcel 1 in Instrument Number 208402-004 on the west;

Thence North 18 deg. 08 min. 48 sec. East, along said division line, 432.71 feet to its intersection with the division line between said Parcel 4 in Instrument Number 208402-004 on the southwest and the said lands of Niagara Mohawk Power Corporation as described in Book 575 of Deeds at Page 35 on the northeast;

Thence South 43 deg. 27 min. 17 sec. East, along said division line, 134.17 feet to the point and place of beginning containing 0.615 acres of land more or less.

Intending to describe all of the lands comprising City of Olean Tax Map Parcel 94.048-1-1.1 conveyed to Olean Gateway LLC from Exxon Mobil Corporation designated as Parcel 5 by deed dated December 6, 2013 and recorded December 9, 2013 in the Cattaraugus County Clerk's Office in Instrument Number 208402-004,

AND

all of the lands comprising City of Olean Tax Map Parcel 94.048-1-1.2 conveyed to Olean Gateway LLC from Exxon Mobil Corporation designated as Parcel 4 by deed dated December 6, 2013 and recorded December 9, 2013 in the Cattaraugus County Clerk's Office in Instrument Number 208402-004.