

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

THIS INDENTURE made this 12 day of ~~October~~<sup>November</sup>, 2009, between Owner(s) Norampac Industries, Inc., having offices at 4001 Packard Road, Niagara Falls, 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 of ensuring the potential 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 3241 Walden Avenue, in the Town of Cheektowaga, Erie County, State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel number: Section 104.09 Block 5 Lot 1, commonly known as the Former NL Industries Site, being the same as that property conveyed to Grantor by deed on December 29, 1997, and recorded on January 14, 1998 in Book 10926 at page 3284, comprising of approximately 7.48 ± acres (The "Property") and the Controlled Property being a portion of the Property comprising of approximately 4.65 ± acres and hereinafter more fully described in the ALTA/ACSM Land Title Survey of 3241 Walden Avenue, dated October 22, 2008 (revised July 17, 2009) prepared by Nussbaumer & Clarke, Inc. Engineers and Surveyors, and corresponding Schedule "A" property description, attached hereto and made a part hereof (the "Controlled Property"); and

**WHEREAS**, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this 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 covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number B9-0554-98-12, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL 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 potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls 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. The Controlled Property may be used for industrial use as described within 6 NYCRR Part 375- 1.8 (g) (2) (iv), as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to:

Engineering Controls (ECs)

The existing and newly installed EC systems in place at the site consist of the following:

Cover System:

- **Asphalt only:** the pavement in the trucking yard within the eastern section of the site d is covered by 4.5 inches of sub-base material and 6-inches of asphalt (4.5 binder coat and 1.5 inches top coat) is to be maintained. The eastern parking lot paved with asphalt for employee parking. In addition, the area identified as the "rail siding area" was paved with 6-inches of asphalt consisting of 4 inches binder coat and 2 inches top coat is to be maintained.
- **Building and Apron Concrete:** The floor of the existing building and exterior concrete pads/aprons are to be maintained with a minimum of 6 inches of concrete.
- **GCL and Soil:** All non-paved areas (side slopes of the containment cell) of the containment cell are covered by approximately 12- inches of clean soil underlain by a GCL covering with a 6-inch sand layer between the GCL and impacted fill. All exposed environmentally clean soil/fill has been hydro seeded as an erosion control methodology. This cover system is to be maintained and monitored.
- **GCL and Asphalt:** All paved areas of the central section containment cell are covered by 6 inches of asphalt (4 inches binder coat and 2 inches top coat) underlain by 12-inches of clean fill, followed by a GCL covering with a 6-inch sand layer between the GCL and the impacted fill. A figure depicting the locations of each cover system type is included in the site Management Plan (SMP). The SMP outlines the procedures required to be implemented in the event a cover system is breached, penetrated or temporarily removed and any underlying remaining contamination is disturbed. Procedures for the inspection and maintenance of these cover systems are provided within the SMP.

Additional engineering controls:

- The groundwater beneath the central and eastern sections of the property may not be used for potable or non-potable purposes
- The eastern and central portions of the site contain remaining impacted fill material enclosed by several types of cover systems. Any future intrusive work that will penetrate the cover systems, or encounter or disturb the remaining impacted fill, including any

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modifications or repairs to the cover systems will be performed in compliance with the SMP.

- buried gas cylinders have been encountered during previous excavation activities at the site. In the event that additional cylinders are encountered during any subsurface activities, excavation will cease and the Owner's P.E. and NYSDEC will immediately be notified. All cylinders encountered will be evaluated by the Owner's P.E. and the Owner will submit a removal plan to NYSDEC for review and approval. Appropriately trained personnel will excavate and remove all cylinders within the designated work area while following all applicable federal, state, and local regulations. Removed cylinders will be properly characterized and removed from the site.

#### Institutional Controls (ICs)

- Compliance with the Environmental Easement and the SMP by the Grantor and the Grantor's successors and assigns;
- ECs must be operated and maintained as specified in the SMP;
- All ECs on the Site must be inspected at a frequency and in a manner defined in the SMP;
- Data and information pertinent to management of the Site must be reported at the frequency and in a manner defined in the SMP;
- The central and eastern portions of the property may only be used for industrial/commercial purposes provided that the long-term ECs/ICs included in the SMP are employed;
- The central and eastern portions of the property may not be used for a higher level of use, such as unrestricted or restricted residential use without additional remediation and amendment of the Environmental Easement, as approved by the NYSDEC;
- All future activities on the property that will disturb remaining impacted material must be conducted in accordance with the SMP;
- Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in this SMP. Institutional Controls may not be discontinued without an amendment to or extinguishment of the Environmental Easement;
- The site owner or remedial party will submit to NYSDEC a written statement that certifies, under penalty of perjury, that: (1) controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls were approved by the NYSDEC; and, (2) nothing has occurred that impairs the ability of the controls to protect public health and environment or that constitute a violation or failure to comply with the SMP. NYSDEC retains the right to access such Controlled Property at any time in order to evaluate the continued maintenance of any and all controls. This certification shall be submitted annually, or an alternate period of time that NYSDEC may allow and will be made by an expert that the NYSDEC finds acceptable;

B. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan ("SMP") that the Department has approved for the Controlled Property and all Department-approved amendments to that SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated October 19, 2009. 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 on the Controlled Property, 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. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. 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:

Regional Remediation Engineer  
NYSDEC - Region 9  
Division of Environmental Remediation  
270 Michigan Ave.  
Buffalo, NY 14203-2999  
Phone: (716) 851-7220 fax: (716) 851-7226

or Site Control Section  
Division of Environmental Remediation  
NYS DEC  
625 Broadway  
Albany, New York 12233

C. The Controlled Property may not be used for a higher level of use such as unrestricted residential, restricted residential or commercial use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

D. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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 of Title 36 to  
Article 71 of the Environmental Conservation Law.**

E. 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.

F. 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 that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 Controlled 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 the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, 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 intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 56, Title 5 or ECL Article 27 Title 14 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. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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 its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State 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 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: C 915200  
Department of Environmental Enforcement  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation 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 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's Name: Norampac Industries Inc.

By: [Signature]  
Sal Sciarrino, Director

Title: Director Date: 10/23/2009

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

NOV 12 2009

By: [Signature]  
Alexander B. Grannis, Commissioner  
Dale A. Desnoyers, Director  
Division of Remediation

Grantor's Acknowledgment

STATE OF NEW YORK )  
  ) ss:  
COUNTY OF                                    )

On the 23<sup>rd</sup> day of October, in the year 2009, before me, the undersigned, personally appeared SAL L. SCIARRINO, 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/shc/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.

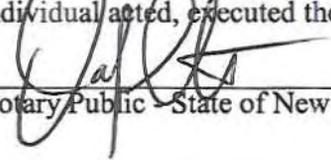
[Signature] 4964451  
Notary Public, State of New York  
THERESA HUSTON #1934451  
Notary Public, State of New York  
Qualified in Niagara County  
My Commission Expires April 2, 2010

**Grantee's Acknowledgment**

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF                    )

On the 18<sup>th</sup> day of November, in the year 2009 before me, the undersigned, personally appeared DALE A. DESMAYERS, 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 Division Director of DER 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.

*as delegated by the*

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

**David J. Chiusano**  
Notary Public, State of New York  
No. 01CH5032146  
Qualified in Schenectady County  
Commission Expires August 22, 2010

**SCHEDULE "A" PROPERTY DESCRIPTION****SCHEDULE 'A' - DEED DESCRIPTION**

TICOR TITLE INSURANCE COMPANY, ORDER NO.: 5008-25273  
EFFECTIVE DATE: DECEMBER 30, 2008

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN THE TOWN OF CHEEKTOWAGA, VILLAGE OF DEPEW, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF LOT 68, TOWNSHIP 11, RANGE 7 OF THE HOLLAND LAND COMPANY'S SURVEY, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A STONE MONUMENT IN THE SOUTHERLY LINE OF THE ELLICOTT ROAD, NOW KNOWN AS WALDEN AVENUE AT A DISTANCE OF 584.42 FEET WESTERLY FROM THE POINT OF THE "TRANSIT LINE" OR THE CENTERLINE OF TRANSIT ROAD; RUNNING THENCE WESTERLY ALONG THE SAID SOUTHERLY LINE OF WALDEN AVENUE 1513.6 FEET TO THE NORTHWESTERLY CORNER OF LANDS CONVEYED TO CHARLES A. FINNEGAN BY GEORGE W. WICKERSHAM AND EDWARD J. HANCY, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF MARY A.P. DRAPER, DECEASED, DATED MAY 5, 1922 AND RECORDED IN ERIE COUNTY CLERK'S OFFICE IN LIBER 1634 OF DEEDS AT PAGE 96; THENCE SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF WALDEN AVENUE A DISTANCE OF 173.16 FEET TO THE NORTHERLY LINE OF LANDS CONVEYED TO THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY BY DEED RECORDED IN ERIE COUNTY CLERK'S OFFICE IN LIBER 301 OF DEEDS AT PAGE 202; THENCE EASTERLY AND ALONG THE NORTH LINE OF LANDS SO CONVEYED TO AFORESAID RAILROAD BY AFORESAID DEED 1511.13 FEET; THENCE NORTHERLY IN A STRAIGHT LINE AT RIGHT ANGLES WITH THE PRECEDING COURSE 259.18 FEET TO THE POINT OF BEGINNING.

**EASEMENT AREA DESCRIPTION**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN THE TOWN OF CHEEKTOWAGA, VILLAGE OF DEPEW, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF LOT 68, TOWNSHIP 11, RANGE 7 OF THE HOLLAND LAND COMPANY'S SURVEY, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A STONE MONUMENT IN THE SOUTHERLY LINE OF THE ELLICOTT ROAD, NOW KNOWN AS WALDEN AVENUE AT A DISTANCE OF 584.42 FEET WESTERLY FROM THE POINT OF THE "TRANSIT LINE" OR THE CENTERLINE OF TRANSIT ROAD;

RUNNING THENCE WESTERLY ALONG THE SAID SOUTHERLY LINE OF WALDEN AVENUE 1104.67 FEET;

THENCE SOUTHERLY FORMING AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 209.36 FEET TO THE NORTHERLY LINE OF LANDS CONVEYED TO THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY BY DEED RECORDED IN ERIE COUNTY CLERK'S OFFICE IN LIBER 301 OF DEEDS AT PAGE 202;

THENCE EASTERLY AT AN INTERIOR ANGLE OF 93°14'32" AND ALONG THE NORTH LINE OF LANDS SO CONVEYED TO AFORESAID RAILROAD BY AFORESAID DEED 860.15 FEET;

THENCE NORTHERLY IN A STRAIGHT LINE AT RIGHT ANGLES WITH THE PRECEDING COURSE 258.42 FEET TO THE POINT OF BEGINNING, CONTAINING 4.65 ACRES OF LAND MORE OR LESS.

SURVEYOR'S DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN THE TOWN OF CHEEKTOWAGA, VILLAGE OF DEPEW, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF LOT 68, TOWNSHIP 11, RANGE 7 OF THE HOLLAND LAND COMPANY'S SURVEY, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A STONE MONUMENT IN THE SOUTHERLY LINE OF THE ELLICOTT ROAD, NOW KNOWN AS WALDEN AVENUE AT A DISTANCE OF 584.42 FEET WESTERLY FROM THE POINT OF THE "TRANSIT LINE" OR THE CENTERLINE OF TRANSIT ROAD;

RUNNING THENCE WESTERLY ALONG THE SAID SOUTHERLY LINE OF WALDEN AVENUE 1513.60 FEET TO THE NORTHWESTERLY CORNER OF LANDS CONVEYED TO CHARLES A. FINNEGAN BY GEORGE W. WICKERSHAM AND EDWARD J. HANCY, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF MARY A.P. DRAPER, DECEASED, DATED MAY 5, 1922 AND RECORDED IN ERIE COUNTY CLERK'S OFFICE IN LIBER 1634 OF DEEDS AT PAGE 96;

THENCE SOUTHERLY FORMING AN INTERIOR ANGLE OF  $93^{\circ}14'32''$  A DISTANCE OF 172.81 FEET TO THE NORTHERLY LINE OF LANDS CONVEYED TO THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY BY DEED RECORDED IN ERIE COUNTY CLERK'S OFFICE IN LIBER 301 OF DEEDS AT PAGE 202;

THENCE EASTERLY AT RIGHT ANGLES AND ALONG THE NORTH LINE OF LANDS SO CONVEYED TO AFORESAID RAILROAD BY AFORESAID DEED 1511.18 FEET;

THENCE NORTHERLY IN A STRAIGHT LINE AT RIGHT ANGLES WITH THE PRECEDING COURSE 258.42 FEET TO THE POINT OF BEGINNING, CONTAINING 7.48 ACRES OF LAND MORE OR LESS.

NOTE: THIS DESCRIPTION IS INTENDED TO DESCRIBE THE SAME PROPERTY AS CONVEYED IN LIBER 10926 PAGE 3284. ANGLES AND DISTANCES IN THIS DESCRIPTION DIFFER FROM THE SCHEDULE 'A' DESCRIPTION SHOWN HEREON BASED UPON BOUNDARY EVIDENCE AND CALCULATIONS IN ORDER TO CREATE A MATHEMATICAL CLOSURE



