

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

THIS INDENTURE made this 21st day of August, 2013, between Owner(s) County of Suffolk, having an office at 100 Veteran's Memorial Highway, Hauppauge, County of Suffolk, 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 1401 Montauk Highway, East Patchogue in the Town of Brookhaven, County of Suffolk and State of New York, known and designated on the tax map of the County Clerk of Suffolk as tax map parcel numbers: District 0200 Section 975.80 Block 04.00 Lot 020.000, being the same as that property conveyed to Grantor by deed dated September 27, 1999 and recorded in the Suffolk County Clerk's Office in Liber 11995 at Page 605. The property subject to this Environmental Easement is a portion of a larger parcel (the "Controlled Property"), comprising approximately 0.284 +/- acres, and is hereinafter more fully described in the Land Title Survey dated December 10, 2007 with the most recent revision being May 01, 2013, prepared by Daniel P. Jedlicka, P.L.S. of L.K. McLean Associates, P.C., 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 State Assistance Contract Number: C304320, 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:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),
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) 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 purposes as defined in 6NYCRR 375-1.8(g)(2)(i), 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:

[6/11]

(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.

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: **County of Suffolk**

By:  _____

Print Name: Dennis M. Cohen

Title: Chief Deputy County Executive Date: 8/6/13

Grantor's Acknowledgment

STATE OF NEW YORK)
COUNTY OF Suffolk) ss:

On the 6 day of August, in the year 2013, before me, the undersigned, personally appeared Dennis M. Cohen, 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.


Notary Public - State of New York

MARY E. BARBONE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BA6127940
Qualified In Suffolk County
My Commission Expires May 31, 2017

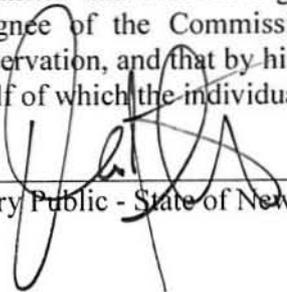
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.

By: 
Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 21st day of August, in the year 2013 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

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2014

SCHEDULE "A" PROPERTY DESCRIPTION

Description of Environment Easement to the People of the State of New York
From County of Suffolk, reputed owner

Deed: Liber 11995 Page 605
Part of Tax Map No: 0200-975.80-04.00-020.000

Amended July 15, 2013

DESCRIPTION OF ENVIRONMENTAL EASEMENT AREA

ALL that certain plot, piece or parcel of land known as Lots 35 and 36 inclusive and part of Lots 34 and 37 of Block 785 on "Map No. 10, Map of Property of The New York and Brooklyn Suburban Investment Company of New York", filed August 5, 1890 in the Suffolk County Clerk's Office as File Map No. 102, situate, lying and being at Bellport, Town of Brookhaven, County of Suffolk, State of New York and shown on a survey prepared by L.K. McLean Associates, P.C. dated December 10, 2007. Said parcel being more particularly bounded and described as follows:

BEGINNING at a point formed by the intersection of the westerly boundary line of Lenox Avenue and the northerly boundary line of Montauk Highway (Robinson Blvd.);

THENCE from said point of beginning, South 87 degrees 18 minutes 20 seconds West, along said northerly boundary line of Montauk Highway (Robinson Blvd.), a distance of 101.07 feet to a point of intersection with the division line between the subject parcel on the east and land now or formerly of Montauk Highway Realty Corp. on the west;

THENCE North 05 degrees 38 minutes 00 seconds East, along said division line, a distance of 131.15 feet to a point;

THENCE South 84 degrees 22 minutes 00 seconds East, through said subject property, a distance of 100.00 feet to a point on the first mentioned westerly boundary line of Lenox Avenue;

THENCE South 05 degrees 38 minutes 00 seconds West, along said westerly boundary line of Lenox Avenue, a distance of 116.51 feet to the point or place of BEGINNING.

COUNTY OF SUFFOLK
DEPARTMENT OF ENVIRONMENT AND ENERGY
DIVISION OF REAL PROPERTY ACQUISITION AND MANAGEMENT

Description of property to be acquired by Suffolk County
Under the Suffolk County Environmental Restoration Program
From County of Suffolk, required owner

Deed: Liber 11889 Page 003
Tax Map No: 0200-075-00-04 (01-02-00)

All that certain parcel, piece or portion of land known as Lots 35 to 37 inclusive and part of Lot 34 of Block 785 on Map No. 10, Map of Property of The New York and Brooklyn Suburban Investment Company of New York, filed August 5, 1890 in the Suffolk County Clerk's Office as File Map No. 102, which says and being of Bellport, Town of Brookhaven, County of Suffolk, State of New York and shown on a survey prepared by L.K. McLean Associates, P.C. dated December 10, 2007, said parcel being more particularly described and identified as follows:

Beginning at a point formed by the intersection of the westerly boundary line of Lenox Avenue and the westerly boundary line of Montauk Highway (Robinson Blvd.);

Thence from said point of beginning South 87°19'20" West, along said westerly boundary line of Montauk Highway (Robinson Blvd.); a distance of 101.07 feet to a point of intersection with the abutment line between the subject parcel on the east and land now or formerly of Montauk Highway (Robinson Blvd.) on the west;

Thence North 02°28'21" East, along said abutment line, a distance of 134.60 feet to a point of intersection with the abutment line between the subject parcel on the east and land now or formerly of Victor Balabanov on the north;

Thence South 04°22'00" East, along said abutment line, a distance of 100.00 feet to a point on the first mentioned westerly boundary line of Lenox Avenue;

Thence South 02°38'00" West, along said westerly boundary line of Lenox Avenue, a distance of 118.76' (ACEJ) 119.80 feet (Close) to the point of place of beginning.

Description of Environmental Easement to the People of the State of New York
From County of Suffolk, required owner

Deed: Liber 11889 Page 003
Part of Tax Map No: 0200-075-00-04 (01-02-00)

All that certain parcel, piece or portion of land known as Lots 35 and 36 inclusive and part of Lots 34 and 37 of Block 785 on Map No. 10, Map of Property of The New York and Brooklyn Suburban Investment Company of New York, filed August 5, 1890 in the Suffolk County Clerk's Office as File Map No. 102, which says and being of Bellport, Town of Brookhaven, County of Suffolk, State of New York and shown on a survey prepared by L.K. McLean Associates, P.C. dated December 10, 2007, said parcel being more particularly described and identified as follows:

Beginning at a point formed by the intersection of the westerly boundary line of Lenox Avenue and the westerly boundary line of Montauk Highway (Robinson Blvd.);

Thence from said point of beginning South 87°19'20" West, along said westerly boundary line of Montauk Highway (Robinson Blvd.); a distance of 101.07 feet to a point of intersection with the abutment line between the subject parcel on the east and land now or formerly of Montauk Highway (Robinson Blvd.) on the west;

Thence North 02°28'21" East, along said abutment line, a distance of 131.15 feet to a point on the first mentioned westerly boundary line of Lenox Avenue;

Thence South 04°22'00" East, through said subject property, a distance of 100.00 feet to a point on the first mentioned westerly boundary line of Lenox Avenue;

Thence South 02°38'00" West, along said westerly boundary line of Lenox Avenue, a distance of 116.81 feet to the point of place of beginning.

- CERTIFIED TO:
- COUNTY OF SUFFOLK
 - FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK
 - THE PEOPLE OF THE STATE OF NEW YORK ACTING THROUGH THE COMMISSIONERS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

I hereby certify that this map was made from an actual survey conducted by me on 11/20/2007 and updated on 12/11/2007.

Samuel P. Jodkowski, P.E.
SUFFOLK COUNTY REAL PROPERTY TAX MAP
DISTRICT 0200
SECTION 075.00
BLOCK 04.00
LOT 020.00



SUFFOLK COUNTY REAL PROPERTY TAX MAP
DISTRICT 0200
SECTION 075.00
BLOCK 04.00
LOT 020.00

WELL DESIG PER S.C.D.H.S.
ACQD BY: GLB DATE: 05/01/2012
RCV. ENG. NOTES/MW LOG'S
ACQD BY: GLB DATE: 03/05/2012
SMP REQUIREMENTS
ACQD BY: GLB DATE: 10/29/2011
EASEMENT
ACQD BY: GLB DATE: 10/29/2010
CERTIFICATIONS
REVISED BY: FLS DATE: 11/16/2010
UPDATED BY: KG/BW DATE: 12/11/2010
MADE BY: AGS DATE: 11/29/2010
CHECKED BY: FPF DATE: 12/15/2010
TRACED BY: FLS DATE: 12/15/2010
COMPARED BY: BNF DATE: 12/15/2010



MAP OF PROPERTY
OF
COUNTY OF SUFFOLK
FORMER BELLPORT GAS STATION
ERP SITE NO. E 152194
AS SHOWN ON
MAP NO. 10, MAP OF PROPERTY OF
THE NEW YORK AND BROOKLYN SUBURBAN
INVESTMENT COMPANY OF NEW YORK
FILED: AUGUST 5, 1890 AS FILE MAP NO. 102
LOTS 35 THRU 37 INCLUSIVE AND PART OF LOT 34
IN BLOCK 785
LOCATED AT
BELLPORT
TOWN OF BROOKHAVEN
SUFFOLK COUNTY, NEW YORK
DECEMBER 10, 2007
GRAPHIC SCALE
1" = 50' (1:500)
1" = 25' (1:250)
AREA OF PARCEL = 12,708± SQ.FT. OR 0.291± ACRE
AREA OF ENVIRONMENTAL EASEMENT = 12,353± SQ.FT. OR 0.284± ACRE



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 New York Environmental Conservation Law.

THE ENGINEERING AND INSTITUTIONAL CONTROLS for the Easement are set forth in more detail in the Site Management Plan ("SMP"). A copy of the SMP must be obtained by any party with an interest in the property. The SMP may be obtained from the New York State Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233 or at derweb@gw.dec.state.ny.us.

ENGINEERING/INSTITUTIONAL CONTROLS

⊙ — Monitoring Well

		DIMENSIONS TO MONITORING WELLS FROM SET PROPERTY CORNERS				
		MW-9	MW-10	MW-11	MW-12	MW-13
A	5.0'	106.8'	0.6'	64.5'	50.7'	
B	115.2'	17.2'	100.4'	55.7'	50.8'	
C						

- Cover System—The cover system is comprised of 5 feet of clean soils. Disturbance of soil below 15' below grade is restricted without notification of the NYSDEC. Procedures for the inspection and maintenance of this cover system are referred to in the Excavation Work Plan in Appendix B of the SMP.
- Monitoring Wells—On-site monitoring wells shown on this survey shall be monitored, maintained and replaced as required in the SMP.
- Groundwater Use Prohibition—the use of groundwater from beneath the property as a source of potable or process water, without necessary water quality treatment as determined by the NYSDEC, NYSDOH or SCDHS, is prohibited.
- Vegetable gardens and farming on the property are restricted as set forth in 6 NYCRR Section 375-1.8(g)(2).
- Land Use — The use and development of the site is limited to "restricted residential," "commercial" and "industrial uses" (as defined by 6 NYCRR Section 375-1.8(g)(2)(ii),(iii) and (iv)) only.

ENVIRONMENTAL EASEMENT AREA ACCESS
THE DEC OR THEIR AGENT MAY ACCESS THE ENVIRONMENTAL EASEMENT AREA AS SHOWN HEREON THROUGH ANY EXISTING STREET ACCESS OR BUILDING INGRESS/EGRESS ACCESS POINT.

This Survey has been prepared with the benefit of Aerial Photograph No. 110C-47786(1)-18(2)(1) as prepared by Aerialphoto, Inc. File Insurance Company. Dated November 3, 2011. The date of publication of said parcel shown herein is 01. Senior Easement 1, 2017. 43E

- NOTES
- PARCEL ADDRESS: 141 MONTAUK HIGHWAY, EAST FALCHURCH, NY 11712
 - MEASUREMENTS ARE IN ACCORDANCE WITH U.S. STANDARDS
 - MEASUREMENTS SHOWN AND REFERENCED TO SUBJECT PARCEL DEED FILED IN THE SUFFOLK COUNTY CLERK'S OFFICE IN LIBER 1088, PAGE 010
 - UNLAWFULNESS: INFORMATION ON ADDITION TO A SURVEY MAP BEARING A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION 208, SUBSECTION 2 OF THE NEW YORK STATE EDUCATION LAW
 - ONLY OBTAIN FROM THE ORIGINAL OF THIS SURVEY MARKED WITH AN ORIGINAL OF THE LAND SURVEYOR'S "EMBRASSERED" OR "IMAGED" SEAL SHALL BE CONSIDERED TO BE VALID FOR THIS PROJECT
 - CERTIFICATIONS INDICATED HEREON VERIFY THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE EXISTING CODE OF PRACTICE FOR LAND SURVEYORS ADOPTED BY THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND SURVEYORS. SAID CERTIFICATIONS SHALL RUN ONLY TO THE PERSON FOR WHOM THE SURVEY IS PREPARED AND IN HIS BEHALF TO THE TITLE COMPANY, ENVIRONMENTAL AGENCY AND LENDING INSTITUTION LISTED HEREON AND TO THE ASSIGNEES OF THE LENDING INSTITUTION. CERTIFICATIONS ARE NOT TRANSMISSIBLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS
 - RESULTS OF THIS SURVEY ARE NOT CERTIFIED
 - THE SURVEY CLOSURE IS MATHEMATICAL

L. K. McLEAN ASSOCIATES, P.C.
CONSULTING ENGINEERS
437 50. COUNTRY ROAD
BROOKHAVEN, N.Y. 11703