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**DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL  
EASEMENT**

This Declaration of Covenants, Restrictions and Environmental Easement is made this 5<sup>th</sup> day of MAY, 2017 by and between The City of Newburgh, a municipal corporation, located at 83 Broadway, Newburgh, New York 12550 ("Grantor"), and the People of the State of New York (the "Grantee"), acting through their Commissioner of the New York State Department of Environmental Conservation with its Central Office, located at 625 Broadway, Albany, New York 12233 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee of real property located at 1 Washington Street, in the City of Newburgh, County of Orange, State of New York, more particularly described on Exhibit A attached hereto and made a part hereof together with any buildings and improvements thereon and appurtenances thereto (the "Property"); and

WHEREAS, the Property is part of the Consolidated Iron and Metal Co. Superfund Site ("Site"), the location of a former scrap metal processing facility which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on June 14, 2001; and

WHEREAS, in a Record of Decision dated October 4, 2006 ("ROD"), the Regional Administrator of EPA Region 2 selected, and the New York State Department of Environmental Conservation ("NYSDEC") concurred with, a remedial action for the Site which provided, in part, for the following actions:

1. excavation of contaminated soils exceeding the residential cleanup standard for lead of 400 parts per million to a depth of six feet below ground surface across the 8.33 ± acre Site and off-Site disposal;
2. excavation to the water table and off-Site disposal of soils which exceed the State cleanup criteria for volatile organic compounds and polychlorinated biphenyls;
3. placement of a readily-visible demarcation material at the interface between the excavations and the soil used as backfill (approximately six feet below the ground surface);
4. institutional controls in the form of an environmental easement and/or restrictive covenant that will, at a minimum, require:

- (a) restricting any excavation below the soil cover's demarcation layer of six feet unless the excavation activities are in compliance with an EPA-approved Site Management Plan ("SMP");
- (b) restricting new construction at the Site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed in accordance with an EPA-approved SMP, and
- (c) restricting the use of groundwater as a source of potable or process water unless groundwater quality standards are met.

WHEREAS, Grantor entered into a Consent Decree, Docket No. 08-CV-07378-SCR ("Consent Decree") with the United States on behalf of EPA, which was entered in the United States District Court for the Southern District of New York on January 31, 2009; and

WHEREAS, the construction activities associated with the remedial action have been completed at the Site and a Preliminary Close-Out Report was issued on September 9, 2010; and

WHEREAS, pursuant to the Consent Decree, Grantor agreed to implement institutional controls in the form of an Environmental Easement pursuant to Article 71, Title 36 of the NYS Environmental Conservation Law, and a Declaration of Covenants and Restrictions, including but not limited to providing a right of access over the Property for purposes of a) implementing, facilitating or monitoring the remedial action; and b) imposing on the Property, restrictions that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, for ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby give, grant, covenant and declare in favor of the Grantee that the Property shall be subject to restrictions on use and rights of access as set forth in this Declaration of Covenants, Restrictions and Environmental Easement, and does give, grant and convey to the Grantee the perpetual right to enforce said restrictions and covenants, which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination and to impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.

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3. Restrictions: The following restrictions apply to the use of the Property, run with the land and are binding on the Grantor and its successors in title and assigns:
- (a) excavation below the soil cover's demarcation layer of six feet is prohibited unless the excavation activities are in compliance with the EPA-approved SMP for the Site, a copy of which can be reviewed at the Newburgh Free Library, 124 Grand Street, Newburgh, New York 12550;
  - (b) new construction is prohibited unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed in compliance with the EPA-approved SMP for the Site;
  - (c) use of groundwater as a source of potable or process water is prohibited until groundwater quality standards are met; and
  - (d) no portion shall be used for single family housing, vegetable gardening (except community gardens with notice to EPA and NYSDEC approval), raising livestock or producing animal products for human consumption.
4. Modification or termination of restrictions and covenants: The restrictions specified in the preceding paragraph of this instrument may only be modified or terminated, in whole or in part, in writing, by the Grantee, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA and NYSDEC for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form. Any request by Grantor for a modification or termination of this instrument shall be made, not less than 30-days in advance of any modification or termination, in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument.
5. Right of access: Grantor hereby conveys to Grantee and to EPA a right of access to the Property at all reasonable times for the following purposes, which shall run with the land and be binding on Grantor, their successors and /or assigns, and on any tenants or any other parties having an interest and/or rights to the Property:
- a) Performing and/or monitoring response actions at the Site;
  - b) Verifying any data or information submitted to the United States;
  - c) Conducting investigations relating to contamination at or near the Site;
  - d) Assessing the need for, planning, or implementing additional response actions at or near the Site;
  - e) Obtaining samples;
  - f) Assessing Grantor's compliance with the Consent Decree;

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- g) Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree; and
- h) Inspecting and copying records or other documents maintained or generated by Grantor or its agents relating to activities at the Site.
6. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.
7. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
8. State authority: Nothing herein shall constitute a waiver of any rights the State may have pursuant to the Environmental Conservation Law, regulations and/or relevant provisions of statutory or common law.
9. No public access and use: No right of access or use by the general public to any portion of the Property is conveyed, granted or contemplated by this instrument, nor shall this instrument convey any rights of enforcement to any third parties, other than the United States, through EPA.
10. Public notice: Grantor, on behalf of itself, its successors and assigns, agrees to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE ORANGE COUNTY CLERK'S OFFICE ON \_\_\_\_\_, 20\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND ENFORCEABLE BY, THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY BENEFICIARY.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

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11. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.
  12. Damages: Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.
  13. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
  14. Covenants: Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, and that the Property is free and clear of encumbrances.
  15. Notices: Any notice, demand, request, consent, approval or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:  
Attn: City Manager  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550

To Grantee:  
Office of General Counsel  
NYS Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1500

With a copy to:

Corporation Counsel  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550

NYS Department of Environmental Conservation  
Division of Environmental Remediation  
Site Control  
625 Broadway  
Albany, New York 12233

A copy of each such communication shall also be sent to EPA in the same manner as to Grantor or Grantee, and addressed to the following two addressees:

U.S. Environmental Protection Agency  
Emergency & Remedial Response Division

Western New York Remediation Branch  
Attention: Consolidated Iron and Metal Co. Superfund Site Remedial Project Manager  
290 Broadway, 20<sup>th</sup> Floor,  
New York, New York 10007-1866

U.S. Environmental Protection Agency  
Office of Regional Counsel  
Attention: Consolidated Iron and Metal Co. Superfund Site Attorney  
290 Broadway, 17<sup>th</sup> Floor,  
New York, New York 10007-1866

16. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall, with respect to the Environmental Easement, be governed by the laws of the State of New York and with respect to all other matters, shall be governed by the laws of the United States, or, if there are no applicable federal laws, by the law of the state where the Property is located.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) Entire agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein; provided that nothing in this instrument shall be deemed to alter or modify the Consent Decree entered into between Grantor and the United States on January 3, 2009 relating to the Consolidated Iron Superfund Site.
- e) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

- f) 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.
- g) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean the People of the State of New York acting through the Commissioner of NYSDEC or through any successor department or agency of the State of New York.
- h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- j) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

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

Executed this 26 day of April, 2012

GRANTOR:

City of Newburgh

By: Richard S. Herbert

Title: City Manager

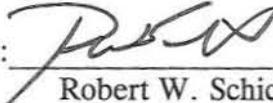


County: Orange

Site No: 3-36-055

Order No:

**THIS DECLARATION OF COVENANTS, RESTRICTIONS AND 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**

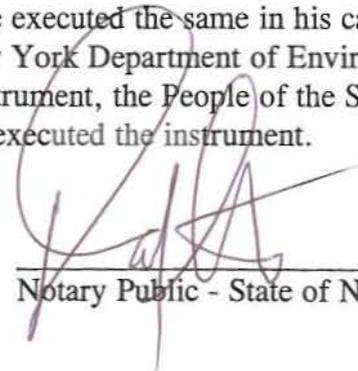
By:   
Robert W. Schick, Acting Director  
Division of Environmental Remediation

Date: May 8, 2012

**Grantee's Acknowledgment**

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF                    )

On the 8<sup>th</sup> day of May, in the year 2012, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the People of the State of New York, 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, 2011**

**EXHIBIT A**  
**To**  
**Declaration of Covenants, Restrictions and Environmental Easement**  
**Description of Property**  
**Consolidated Iron and Metal Co. Superfund Site**



*Chazen Engineering, Land Surveying & Landscape Architecture Co., P.C.*  
*Chazen Environmental Services, Inc.*  
 21 Fox Street, Poughkeepsia, New York 12601  
 Phone: (845) 454-3980 Fax: (845) 454-4026  
[www.chazenco.com](http://www.chazenco.com)

Capital District Office: (518) 273-6055  
 Orange County Office: (845) 567-1133  
 North County Office: (518) 812-0513

**SURVEY DESCRIPTION**

ALL that plot, piece or parcel of land situate and being in the City of Newburgh, County of Orange and State of New York bounded and described as follows:

BEGINNING at the northwesterly corner of the herein described parcel, said point being on the southerly bounds of Washington Street and said point being on the easterly bounds of the lands now or formerly of New York Central Lines LLC as described in Liber 5154 of deeds at page 183; thence along the division line between the herein described parcel and said southerly bounds of Washington Street, S 85°13'06" E 405.43 feet to a point on the westerly shoreline of the Hudson River, said point being the northeasterly corner of the herein described parcel; thence southerly along the westerly shoreline of the Hudson River as it winds and turns approximately 1023 feet, (having a tie course of S 13°01'35" W 820.77 feet), to the southeasterly corner of the herein described parcel, said point being on the northerly bounds of South William Street; thence along the division line between the herein described parcel and northerly bounds of South William Street, N 84°24'02" W 340.29 feet to the southwestly corner of the herein described parcel, said point being on the easterly bounds of the aforesaid lands now or formerly of New York Central Lines LLC; thence along the division line between the herein described parcel and said lands of New York Central Lines LLC, N 07°25'24" E 722.73 feet and N 17°26'54" E 87.60 feet to the point or place of beginning.

CONTAINING 8.33 ACRE OF LAND MORE OR LESS

March 25, 2008

