

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

THIS INDENTURE made this 25th day of April, 2016 between Owner(s) City of Johnstown, having an office at 33-41 East Main Street, P.O. Box 160, Johnstown, New York 12095, County of Fulton, 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 South Side of Crescendoe Road (having a mailing address of 126-222 North Perry Street) in the City of Johnstown, County of Fulton and State of New York, known and designated on the tax map of the County Clerk of Fulton as tax map parcel numbers: Section 162.20 Block 11 Lot 6.11, being the same as that property conveyed to Grantor by deed dated September 29, 1998 and recorded in the Fulton County Clerk's Office in Liber and Page 815/122. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 5.255 +/- acres, and is hereinafter more fully described in the Land Title Survey dated June 25, 2015 prepared by James S. Thew, LLS of Thew 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 State Assistance Contract Number: C303712 as amended July 27, 2015, 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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Fulton 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 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, 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

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.

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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 25th day of APRIL, in the year 2016, 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

PATRICK EUGENE FOSTER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN KINGS COUNTY
NO. 02FO6278032
COMMISSION EXPIRES 03/18/2017

SCHEDULE "A" PROPERTY DESCRIPTION

All that tract or parcel of land situate in the City of Johnstown, County of Fulton, State of New York, and being more precisely described as follows:

Beginning at a 5/8-inch rebar with a 1 1/4-inch diameter red plastic cap marked "THEW ASSOCIATES - UTICA NY" (herein after referred to as a 5/8-inch rebar) set on the southerly bounds of Crescendoe Street (40-foot width), said rebar being at the northwesterly corner of a parcel of land conveyed by the City of Johnstown to the Crossroads Incubator Corp. by deed dated December 31, 1999 and recorded in the Fulton County Clerk's Office on May 26, 2000 in Liber 860 of Deeds at Page 22, said rebar having New York State plane coordinates (NAD83/2011 – East Zone) of 1,522,499.33 feet North and 527,137.76 feet East;

thence along the westerly line of Crossroads Incubator Corp., the following two courses and distances:

1. South 09 degrees 30 minutes 39 seconds East, parallel to and 100 feet distant westerly measured at right angles from the westerly building face of Crossroads Incubator Corp., a distance of 206.66 to a set 5/8-inch rebar;
2. South 52 degrees 00 minutes 37 seconds East a distance of 83.72 feet to a MAG Nail set on the northerly line of a parcel of land conveyed by The People's Bank of Johnstown, N.Y. to The Johnstown Cemetery Association by deed dated August 24, 1942, and recorded in the Fulton County Clerk's Office on March 31, 1943 in Liber 244 of Deeds at Page 512, said MAG Nail being on the reputed top of bank of Cayadutta Creek;

thence along the northerly line of The Johnstown Cemetery Association and along the reputed top of bank of Cayadutta Creek, the following 14 courses and distances:

1. South 50 degrees 06 minutes 33 seconds West a distance of 37.62 feet to a point;
2. South 39 degrees 06 minutes 43 seconds West a distance of 82.46 feet to a point;
3. South 34 degrees 21 minutes 21 seconds West a distance of 41.61 feet to a point;
4. South 38 degrees 57 minutes 59 seconds West a distance of 61.60 feet to a point;
5. South 50 degrees 43 minutes 03 seconds West a distance of 40.94 feet to a point;
6. South 27 degrees 06 minutes 00 seconds West a distance of 66.99 feet to a point;
7. South 51 degrees 41 minutes 01 seconds West a distance of 46.51 feet to a point;
8. South 61 degrees 18 minutes 59 seconds West a distance of 97.44 feet to a point;
9. South 71 degrees 18 minutes 10 seconds West a distance of 119.89 feet to a point;
10. South 59 degrees 43 minutes 59 seconds West a distance of 60.96 feet to a point;
11. South 58 degrees 54 minutes 15 seconds West a distance of 90.91 feet to a point;
12. South 56 degrees 56 minutes 56 seconds West a distance of 41.06 feet to a point;
13. South 49 degrees 19 minutes 24 seconds West a distance of 25.14 feet to a point;
14. South 43 degrees 14 minutes 29 seconds west a distance of 40.65 feet to a point;

thence South 88 degrees 41 minutes 18 seconds West a distance of 42.38 feet to a 5/8-inch rebar

set on the easterly bounds of North Perry Street (66-foot width), said course passing over a 1/2-inch iron pipe (extends 0.8 feet above grade) found at a distance of 2.99 feet;

thence North 00 degrees 59 minutes 55 seconds West, along the easterly bounds of North Perry Street, a distance of 100.00 feet to a point at the southwesterly corner of a parcel of land conveyed by June A. Pasquarella to Vincent D. Johansen, Sr. by deed dated September 24, 1984 and recorded in the Fulton County Clerk's Office on October 1, 1984 in Liber 582 of Deeds at Page 1005, said point being North 68 degrees 12 minutes 59 seconds East a distance of 0.77 feet from a found 5/8-inch rebar (0.1 feet below grade);

thence North 68 degrees 12 minutes 59 seconds East, in part along the southerly line of Vincent D. Johansen, Sr. and in part along the southerly line of a parcel of land conveyed by Michael C. Gifford to the City of Johnstown by deed dated September 29, 1998 and recorded in the Fulton County Clerk's Office on October 6, 1998 in Liber 815 of Deeds at Page 122, a distance of 206.34 feet to a set 5/8-inch rebar;

thence North 15 degrees 53 minutes 32 seconds West, along the easterly line of the City of Johnstown, a distance of 108.24 feet to a 5/8-inch rebar set of the southerly bounds of East Fulton Street (40-foot width);

thence along the southerly, easterly, and northerly bounds of East Fulton Street, the following four courses and distances:

1. North 74 degrees 06 minutes 28 seconds East a distance of 91.22 feet to a set 5/8-inch rebar;
2. North 15 degrees 53 minutes 32 seconds West a distance of 40.00 feet to a set 5/8-inch rebar;
3. South 74 degrees 06 minutes 28 seconds West a distance of 142.21 feet to a set 5/8-inch rebar;
4. North 87 degrees 57 minutes 15 seconds West a distance of 18.31 feet to a 3/4-inch rebar (0.5 feet below grade) found on the easterly line of a parcel of land conveyed by Gillmore Oil Company, Inc. to J.H. Buhrmaster Co., Inc. by deed dated December 28, 1992 and recorded in the Fulton County Clerk's Office on December 29, 1992 in Liber 714 of Deeds at Page 193;

thence North 04 degrees 39 minutes 12 seconds East, along the easterly line of J.H. Buhrmaster Co., Inc., a distance of 102.50 to a set 5/8-inch rebar;

thence North 68 degrees 07 minutes 34 seconds East, in part along the easterly line of J.H. Buhrmaster Co., Inc., in part along the southerly line of a parcel of land conveyed by Dewey E. Frasier and June A. Frasier to Sandra M. Scott and Charles N. Lamphear by deed dated November 27, 1989 and recorded in the Fulton County Clerk's Office on February 19, 1992 in Liber 699 of Deeds at Page 103, and in part along the southerly line of a parcel of land conveyed by Joan Coon to James S. Lamphear by deed dated February 9, 2005 and recorded in the Fulton County Clerk's Office on February 9, 2005 in Liber 995 of Deeds at Page 333, a distance of 222.85 feet to a 5/8-inch rebar set at the southerly corner of a parcel of land conveyed by Anthony J. and Anna M. Valovic to Anthony J. III and Barbara H. Valovic by deed dated November 14, 1986 and recorded in the Fulton County Clerk's Office on November 20, 1986 in Liber 596 of Deeds at Page 7;

thence North 03 degrees 36 minutes 14 seconds East, along the easterly line of Anthony J. III and Barbara H. Valovic, a distance of 120.82 feet to a 5/8-inch rebar set at the southeasterly bounds of East Canal Street (20-foot width);

thence along the easterly and northerly bounds of East Canal Street, the following two courses and

distances:

1. North 21 degrees 45 minutes 06 seconds West a distance of 20.00 feet to a set MAG Nail;
2. South 68 degrees 14 minutes 54 seconds West a distance of 67.91 feet to a MAG Nail set on the easterly line of a parcel of land conveyed by Gillmore Oil Company, Inc. to Jeffrey F. Lehner by deed dated December 21, 1992 and recorded in the Fulton County Clerk's Office on December 21, 1992 in Liber 714 of Deeds at Page 88;

thence along the easterly line of Jeffrey F. Lehner, the following two courses and distances:

1. North 80 degrees 48 minutes 26 seconds West a distance of 24.00 feet to a found 3/4-inch rebar (flush with grade);
2. North 59 degrees 01 minutes 22 seconds East a distance of 69.86 feet to a MAG Nail set at the southeasterly corner of a parcel of land conveyed by Nicholas C. Miller to Jan Keichline and Gail Miller by deed dated December 7, 2007 and recorded in the Fulton County Clerk's Office on December 12, 2007 in Liber 1092 of Deeds at Page 226;

thence North 62 degrees 57 minutes 31 seconds East along the easterly line of Jan Keichline and Gail Miller, a distance of 122.99 feet to 3/8-inch rebar (Extends 1.0 feet above grade) found at the southeasterly corner of a parcel of land conveyed by Kenneth and Lena Taddune to Robert F. and Joan D. Frenyea by deed dated May 15, 1971 and recorded in the Fulton County Clerk's Office on May 24, 1971 in Liber 512 of Deeds at Page 862;

thence North 14 degrees 44 minutes 17 seconds East, along the easterly line of Robert F. and Joan D. Frenyea a distance of 123.67 feet to a point on the southerly bounds of Crescendoe Street, said point being South 14 degrees 44 minutes 17 seconds West a distance of 1.27 feet from a found 1-inch iron pipe (flush with grade);

thence South 75 degrees 21 minutes 18 seconds East a distance of 189.72 feet to the **Point of Beginning**.

To contain 228,894 square feet or 5.255 acres of land, more or less.

The above-described parcel of land is intended to be the same premises conveyed by Michael C. Gifford, as City Chamberlain for the City of Johnstown to the City of Johnstown by deed dated September 29, 1998 and recorded in the Fulton County Clerk's Office on October 6, 1998 in Liber 815 of Deeds at Page 122.

The above-mentioned coordinates, bearings, and distances are referenced to the North American Datum of 1983 – 2007 adjustment (NAD83/2007), projected on the New York State Plane Coordinate System (East Zone).

A map of the above-described parcel of land, dated June 25, 2015, was prepared by Thew Associates PE-LS, PLLC, and is distinguished as Drawing No. UK475-12-13.