

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

THIS INDENTURE made this 5 day of August, 2010, between
Owner(s) The City of Utica and Utica Urban Renewal Agency having an office at 1 Kennedy
Plaza, Utica, New York 13502 (collectively 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 2104 Dwyer
Avenue, in the City of Utica, County of Oneida, State of New York, known and designated on
the tax map of the County Clerk of Oneida as tax map parcel numbers: Section 319.15 Block 2
Lot 27 & 28, being the same as that property conveyed to Grantor by City Tax Deed Deed on
November 19, 1999 and recorded in the Oneida County Clerk's Office in Book of Deeds 2897 at
page 580; by Quit Claim Deed dated ----, 2000, and recorded in the Oneida County Clerk's
Office in Book of Deeds 2947 at page 18 and Full Covenant Deed dated November 3, 2001 and
recorded in the Oneida County Clerk's Office in Book of Deeds 3028 at page 127, comprised of
approximately 4.228 acres, and hereinafter more fully described in the ALTA/ACSM Land Title
Survey dated September 16, 2009 survey and May 13, 2010 description, prepared by Bryant
Associates, P.C. PLS License No. 049212 and corresponding Schedule "A" property description,
both documents are 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 State Assistance Contract Number C 302652
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 commercial or industrial use identified future uses in accordance with 6 NYCRR Part 375 - 1.8 (g) (2) (iii) & (iv), as long as the following long-term engineering controls are employed :

- (i) use of groundwater underlying the Site is prohibited without treatment rendering it safe for drinking water or industrial purposes, unless user first obtains permission from the Department, or if at such time the Department no longer exists, any New York State Department, Bureau, or other entity replacing the Department.
- (ii) a soil vapor investigation must be conducted, and/or soil vapor mitigation systems be installed for any buildings constructed at the site.
- (iii) Surface erosion and run-off controls must be maintained at the site at all times, including during construction activities.
- (iv) vegetative cover established on this property must be properly maintained.
- (v) runoff into storm sewers during soil excavation and construction activities must be prevented by means of hay bales or comparable barriers to prevent inflow of contaminated water and/or sediment.

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

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated June, 2008 ("SMP"). 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:
Region 6
NYS DEC
207 Genessee Street
Utica, NY 13501

or

Site Control Section
Division of Environmental Remediation
NYS DEC
625 Broadway
Albany, NY 12233

C. The Controlled Property may not be used for a higher level of use such as unrestricted or restricted residential 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 27, Title 14, or Article 56, Title 5 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: E 633052
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: City of Utica

By: [Signature]

Title: MAYOR

Date: 2 Aug 2010

Grantor's Name: Utica Urban Renewal Agency

By: [Signature]

Title: _____ Date: _____

Grantor's Acknowledgment

STATE OF NEW YORK)
COUNTY OF Oneida) ss:

On the 20 day of Aug, in the year 2010, before me, the undersigned, personally appeared DAVID R. [Signature], 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.

[Signature]
Notary Public - State of New York

JOHN P. ORILIO
Notary Public in the State of New York
Reg. #01OR4647270
Qualified in Oneida County
My Commission Expires January 31, 2014

Grantor's Acknowledgment

STATE OF NEW YORK)
COUNTY OF _____) ss:

On the _____ day of _____, in the year 20 __, before me, the undersigned, personally appeared _____, 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

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,

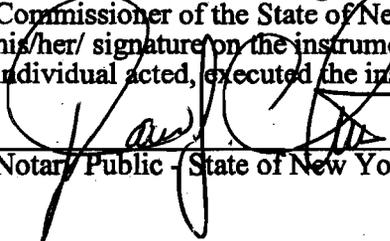
By: 
Dale A. Desnoyers, Director
Department of Environmental Remediation

Date: 8/5/10

Grantee's Acknowledgment

STATE OF NEW YORK)
COUNTY OF Albany) ss:

On the 5th day of August, in the year 2010 before me, the undersigned, personally appeared Dale A. Desnoyers, 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 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 OVERALL PROPERTY**

AUG 03 2010

**OVERALL PROPERTY FOR LANDS OF THE
CITY OF UTICA AND/OR URBAN RENEWAL
AGENCY REPUTED OWNERS**

ALL THAT CERTAIN TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF UTICA, COUNTY OF ONEIDA, STATE OF NEW YORK, BEING BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON ROD WITH CAP FOUND AT THE INTERSECTION OF THE EASTERLY STREET LINE OF CULVER AVENUE AND THE SOUTHERLY STREET LINE OF DWYER AVENUE:

THENCE S 29° 49' 45" W – 348.52' ALONG THE EASTERLY STREET LINE OF CULVER AVENUE TO A FOUND ROD WITH CAP MARKING THE DIVISION LINE BETWEEN VINTAGE PROPERTIES, LLC, REPUTED OWNER, AS RECORDED IN ONEIDA COUNTY CLERK'S OFFICE IN LIBER 2008 AT PAGE 13810, ON THE SOUTH AND THE CITY OF UTICA, REPUTED OWNER, AS RECORDED IN THE ONEIDA COUNTY CLERK'S OFFICE IN LIBER 2947 AT PAGE 018, ON THE NORTH;

THENCE S 60° 10' 11" E – 475.56' ALONG SAID DIVISION LINE BETWEEN SAID VINTAGE PROPERTIES, LLC, REPUTED OWNER ON THE SOUTH AND THE LANDS OF SAID CITY OF UTICA, REPUTED OWNER & URBAN RENEWAL AGENCY, REPUTED OWNER, AS RECORDED IN ONEIDA COUNTY CLERK'S OFFICE AS RECORDED IN LIBER 3028 AT PAGE 127 ON THE NORTH, TO A POINT, SAID POINT BEING THE SOUTHEAST CORNER OF LANDS OF SAID UTICA URBAN RENEWAL AGENCY;

THENCE, N 29° 51' 38" E – 418.69' ALONG THE DIVISION LINE OF SAID UTICA URBAN RENEWAL AGENCY, REPUTED OWNER, ONE THE WEST AND BALCKBURN PROPERTIES, LLC, REPUTED OWNER, AS RECORDED IN ONEIDA COUNTY CLERK'S OFFICE IN LIBER 2005 AT PAGE 27507, TO A POINT IN THE SOUTHERLY STREET BOUNDARY OF DWYER AVENUE;

THENCE ALONG THE SOUTHERLY STREET BOUNDARY THE FOLLOWING THREE (3) COURSES:

1. N 72° 08' 10" W – 153.12' TO A FOUND IRON ROD WITH CAP;
2. THENCE N 46° 17' 40" W – 68.83' TO A FOUND IRON ROD WITH CAP;
3. THENCE N 72° 08' 10" W – 264.93' TO A POINT BEGINNING CONTAINING 184,145 ± SQUARE FEET OR 4.227± ACRES OF LAND MORE OR LESS.

SUBJECT TO ANY EASEMENTS AND RESTRICTIONS ON RECORD.

DESCRIPTION OF ENVIRONMENTAL EASEMENT PARCEL 1**PROPERTY FOR LANDS OF THE
CITY OF UTICA REPUTED OWNER**

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF UTICA, COUNTY OF ONEIDA, STATE OF NEW YORK, BEING BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON ROD WITH CAP FOUND AT THE INTERSECTION OF THE EASTERLY STREET LINE OF CULVER AVENUE AND THE SOUTHERLY STREET LINE OF DWYER AVENUE;

THENCE S 29° 49' 45" W – 348.52' ALONG THE EASTERLY STREET LINE OF CULVER AVENUE TO AN IRON ROD WITH CAP MARKING THE DIVISION LINE BETWEEN THE VINTAGE PROPERTIES, LLC, REPUTED OWNER, AS RECORDED IN ONEIDA COUNTY CLERK'S OFFICE IN LIBER 2008 AT PAGE 13810, ON THE SOUTH AND THE CITY OF UTICA, REPUTED OWNER, AS RECORDED IN THE ONEIDA COUNTY CLERK'S OFFICE IN LIBER 2947 AT PAGE 018, ON THE NORTH;

THENCE S 60° 10' 11" E – 310.26' ALONG SAID DIVISION LINE TO A FOUND IRON PIPE MARKING THE DIVISION LINE OF SAID CITY OF UTICA, REPUTED OWNER ON THE WEST AND THE UTICA URBAN RENEWAL AGENCY, REPUTED OWNER, AS RECORDED IN THE ONEIDA COUNTY CLERK'S OFFICE IN LIBER 3028 AT PAGE 127, ON THE EAST;

THENCE N 29° 49' 45" E – 390.83' ALONG SAID DIVISION LINE TO A FOUND IRON ROD WITH CAP IN THE SOUTHERLY STREET LINE OF DWYER AVE;

THENCE ALONG SAID SOUTHERLY STREET LINE THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1. N 46° 17' 40"W – 52.62' TO A FOUND IRON ROD WITH CAP;
2. THENCE N 72° 08' 10"W – 264.93' TO THE POINT OF BEGINNING CONTAINING 117,734± SQUARE FEET OR 2.703± ACRES OF LAND MORE OR LESS.

SUBJECT TO ANY EASEMENTS AND RESTRICTIONS OF RECORD.

DESCRIPTION OF ENVIRONMENTAL EASEMENT PARCEL 2**PROPERTY FOR LANDS OF UTICA
URBAN RENEWAL AGENCY
REPUTED OWNER**

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF UTICA, COUNTY OF ONEIDA, STATE OF NEW YORK, BEING BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD WITH CAP FOUND AT THE INTERSECTION OF THE EASTERLY STREET LINE OF CULVER AVENUE AND THE SOUTHWESTERLY STREET LINE OF DWYER AVENUE;

THENCE S 29° 49' 45" W - 348.52' ALONG THE EASTERLY STREET LINE OF CULVER AVENUE TO AN IRON ROD WITH CAP MARKING THE DIVISION LINE BETWEEN OF THE VINTAGE PROPERTIES, LLC, REPUTED OWNER, AS RECORDED IN THE ONEIDA COUNTY CLERK'S OFFICE IN LIBER 2008 PAGE 13810, ON THE SOUTH AND THE CITY OF UTICA, REPUTED OWNER, AS RECORDED IN THE ONEIDA COUNTY CLERK'S OFFICE IN LIBER 2947 AT PAGE 018, ON THE NORTH;

THENCE S 60° 10' 11" E - 310.26' ALONG SAID DIVISION LINE TO A FOUND IRON PIPE, BEING THE SOUTHWEST CORNER OF THE LANDS OF UTICA URBAN RENEWAL AGENCY, REPUTED OWNER, AS RECORDED IN THE ONEIDA COUNTY CLERK'S OFFICE IN LIBER 3028 AT PAGE 127, AND BEING THE POINT OF BEGINNING;

THENCE S 60° 10' 11" E - 165.30' ALONG THE DIVISION LINE BETWEEN SAID URBAN RENEWAL AGENCY, REPUTED OWNER, ON THE NORTH AND SAID VINTAGE PROPERTIES, LLC, REPUTED OWNER, ON THE SOUTH, TO A POINT BEING ON THE DIVISION LINE OF SAID UTICA URBAN RENEWAL AGENCY, REPUTED OWNER, ON THE WEST AND BLACKBURN PROPERTIES, LLC, REPUTED OWNER, ON THE EAST AS RECORDED IN THE ONEIDA COUNTY CLERK'S OFFICE IN LIBER 2005 AT PAGE 27507;

THENCE N 29° 51' 38" E - 418.69' ALONG SAID DIVISION LINE OF UTICA URBAN RENEWAL AGENCY, REPUTED OWNER, AND BLACKBURN PROPERTIES, LLC REPUTED OWNER, TO A POINT IN THE SOUTHERLY STREET BOUNDARY OF DWYER AVENUE;

THENCE ALONG THE SOUTHERLY STREET BOUNDARY TO FOLLOWING TWO (2) COURSES:

1. N 72° 08' 10" W - 153.12' TO A FOUND IRON ROD WITH CAP;
2. THENCE N 46° 17' 40" W - 16.21' TO A FOUND IRON ROD WITH CAP;

THENCE S 29° 49' 45" W – 390.83' ALONG THE DIVISION LINE BETWEEN THE SAID LANDS OF CITY OF UTICA ON THE WEST AND SAID LANDS OF UTICA URBAN RENEWAL AGENCY ON THE EAST, TO THE POINT OF BEGINNING; AND CONTAINING 66,411± SQUARE FEET OR 1.525± ACRES OF LAND MORE OR LESS.

SUBJECT TO ANY EASEMENTS AND RESTRICTIONS OF RECORD.

SURVEY

