

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
IN THE MATTER OF
MANISCHEVITZ FAMILY LLC :

Petitioner, :

For Judgment Pursuant to Article 78 of the
CPLR, and for Declaratory Judgment Pursuant
to Section 3001 of the CPLR :

Index No. 2231/2016

-against- :

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and
NATIONAL GRID, as designated agent for
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, :

**STIPULATION AND ORDER OF
VOLUNTARY
DISCONTINUANCE WITH
PREJUDICE PURSUANT TO
CPLR § 3217 (b)**

Respondents. :

-----X

WHEREAS, the above-captioned action “(Action)” was commenced by a Verified Petition filed on February 26, 2016;

WHEREAS, Manishevitz Family LLC (“Manishevitz”), the New York State Department of Environmental Conservation (“DEC”) and The Brooklyn Union Gas Company d/b/a National Grid NY (“National Grid”) have agreed the Action would be voluntarily discontinued with prejudice; and

WHEREAS, Manishevitz and Team Slope LLC have entered into an agreement with National Grid (Access Agreement) which provides National Grid with access to the site of a former manufactured gas plant known as the Metropolitan Works MGP that had been located at 124–136 2nd Avenue, Brooklyn, Kings County, New York, 11215, bounded by the former 11th Street right-of-way and the 11th Street basin to the north, 2nd Avenue to the east, 13th Street to the south, and the Gowanus Canal to the west, (the “Manishevitz Leasehold and the Team Slope Property”) to implement the DEC-approved Supplemental Remedial Investigation Work Plan and undertake related activities;

WHEREAS, in view of the Access Agreement, DEC hereby withdraws and rescinds the two Access Letters it issued with respect to the subject property, one dated February 10, 2016 and the other February 23, 2016, without prejudice to its statutory authority to obtain access to the subject property including authority to issue access letters; and

WHEREAS, no party hereto is an infant, incompetent person for whom a committee has been appointed or conservatee and no person not a party herein has an interest in the subject matter of this Action;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned attorneys of record for Manishevitz, DEC, and National Grid, acting with authority from their respective clients, the above-captioned Action is discontinued with prejudice pursuant to CPLR § 3217(b), with each party to bear its own costs.

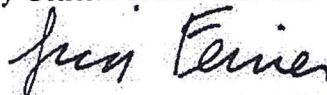
IT IS FURTHER STIPULATED AND AGREED, this Stipulation may be signed in multiple counterparts, a facsimile or electronic signature shall be deemed an original and this Stipulation shall be submitted to the Court as a proposed order and if and upon the issuance of this stipulation as an Order of the Court, it may be filed with the County Clerk without further notice.

Dated: New York, New York
March 2, 2017

PHILLIPS NIZER LLP

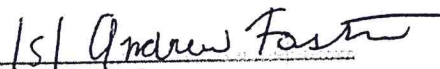
By: _____
Jon Schuyler Brooks
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666 Fifth Avenue
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ERIC T. SCHNEIDERMAN
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By: 

Lisa Feiner
Assistant Attorney General
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DRINKER BIDDLE & REATH LLP

By: 

Andrew Foster
Attorney for National Grid
One Logan Square, Ste. 2000
Philadelphia, PA 19103-6996
(215) 988-2700

ACCESS AGREEMENT

This Access Agreement (“Access Agreement”) is made as of this ___ day of March 2017 (the “Effective Date”), by and between Manishevitz Family LLC, a New York limited liability company with an office at 1368 38th Street, Brooklyn, New York 11218 (“Manishevitz” or the “Tenant”), Team Slope LLC, a New York limited liability company with an office at 1368 38th Street, Brooklyn, New York 11218 (“Team Slope” or the “Owner”), and The Brooklyn Union Gas Company d/b/a National Grid NY (“National Grid”), a New York corporation with an office at One MetroTech Center, Brooklyn, New York, 11201 (each, a “Party,” and together, the “Parties”).

The Parties agree to the following terms and conditions:

RECITALS

WHEREAS:

A. Predecessors-in-interest of and, after 1895, The Brooklyn Union Gas Company itself, owned or operated the former Metropolitan Works MGP Site from approximately the late 1880s until approximately 1938 (the “former Metropolitan Works MGP Site”); and,

B. The former Metropolitan Works MGP Site was located at 124–136 2nd Avenue, Brooklyn, Kings County, New York, 11215 and was bounded by the former 11th Street right-of-way and the 11th Street basin to the north, 2nd Avenue to the east, 13th Street to the south, and the Gowanus Canal to the west; and,

C. The former Metropolitan Works MGP Site was designated as Site No. 224046 by the New York State Department of Environmental Conservation (“NYSDEC”); and,

D. In February 2007, as modified in August 2007, the NYSDEC and National Grid (acting under its prior d/b/a name KeySpan Energy Delivery New York), pursuant to Article 27, Title 13 of the Environmental Conservation Law, entered into an Order on Consent and Administrative Settlement, Index #A2-0552-0606, which agreement required National Grid to investigate and, if necessary, remediate, a number of former manufactured gas plants located in New York State (the “Multisite Consent Order”); and,

E. One such site was the former Metropolitan Works MGP Site, which “is listed on the Registry of Inactive Hazardous Waste Sites in New York (“Registry”) as a Class 2 site,” as stated on page 2, paragraph 4.A. of the Multisite Consent Order; and,

F. The Multisite Consent Order requires National Grid to conduct a remedial investigation (“RI”) of the former Metropolitan Works MGP Site, the first phase of which was described in an RI Work Plan (“RIWP”) prepared for National Grid by AECOM, Inc., dated May 2009, which was submitted to and approved by the NYSDEC; and,

G. By letter dated June 10, 2010, National Grid provided to the NYSDEC the results of air and sub-slab vapor samples collected in and under a former Pathmark Supermarket located

at 12th Street and Hamilton Avenue, Brooklyn NY, on Block 1007, Lot 172, a portion of the property formerly referred to as the Hamilton Plaza Shopping Center, which results did not detect any MGP-related constituents in indoor air above background concentrations; and,

H. An RIWP Addendum Number 2 for the former Metropolitan Works MGP Site was prepared for National Grid by AECOM Inc., dated February 2011, which was submitted to and approved by the NYSDEC; and,

I. The scope of work conducted under the approved RIWP Addendum No. 2 included the installation of a pair of deep monitoring wells in the former Pathmark Supermarket parking lot located at 137 12th Street and the collection of soil and groundwater samples; and,

J. A Draft Feasibility Study Report for the former Metropolitan Works MGP Site was prepared for National Grid by AECOM, Inc., dated June 2015, which was submitted to the NYSDEC for approval; and,

K. On or about December 3, 2015, Manishevitz entered into an Assignment and Assumption of Lease with A&P Real Property, LLC, thus becoming the Tenant to the Lease dated as of September 1, 1981 between Hamilton Plaza Associates ("HPA") as Landlord, and Supermarkets General Corporation, as the predecessor-in-interest Tenant ("Lease"); and,

L. Pursuant to assignment of the Lease, Manishevitz obtained a possessory interest in certain Demised Premises (as that capitalized term is defined in the Lease), located on Block 1007, Lot 172, constituting a portion of the real property formerly referred to as the Hamilton Plaza Shopping Center (the "Manishevitz Leasehold");

M. Immediately following Manishevitz acquiring the leasehold rights, the former Pathmark Supermarket closed, prompting the NYSDEC to request that National Grid prepare a supplemental RI Work Plan and conduct additional subsurface investigation at that location; and,

N. A Supplemental RI Work Plan for the former Metropolitan Works MGP Site was prepared for National Grid by AECOM Inc., dated December 4, 2015, and was submitted to and approved with modifications by the NYSDEC on December 9, 2015 (the "Supplemental RIWP"), a copy of which is attached to this Access Agreement as Attachment A and incorporated herein by reference; and,

O. The Supplemental RIWP includes: (i) installation of approximately fifteen soil borings; (ii) collection of soil samples (iii) a geophysical utility survey; (iv) a topographical and Environmental Easement Survey; (v) investigation-derived-waste storage until such waste can be profiled and transported from the former Metropolitan Works MGP Site; and (vi) related activities described therein (the "Approved Activities"), all to be undertaken at National Grid's sole cost and expense; and,

P. On January 4, 2016, National Grid provided Manishevitz at its request a copy of the approved Supplemental RIWP; and,

Q. On January 5, 2016, HPA as then-owner of the Hamilton Plaza Shopping Center entered into a First Amendment to Access Agreement, pursuant to which HPA granted National Grid and its contractors the right to access and enter upon its property, including the location of the former Pathmark Supermarket, to conduct the Supplemental RIWP; and,

R. On January 5, 2016, Manishevitz refused to permit National Grid and its contractors access to the Manishevitz Leasehold (the former Pathmark Supermarket) to perform a walk-through as part of conducting the Supplemental RIWP; and,

S. Upon learning of the situation from National Grid, the NYSDEC issued two letters to Manishevitz, the first dated February 10, 2016 and the second dated February 23, 2016, asserting the NYSDEC's authority under the Environmental Conservation Law to grant National Grid and its contractors access to the Manishevitz Leasehold to conduct the Supplemental RIWP (the "NYSDEC Access Letters"); and,

T. Manishevitz opposed the NYSDEC Access Letters and on February 26, 2016 filed a Verified Petition and a Preliminary Injunction Motion at *Manishevitz Family LLC, Petitioner v. New York State Department of Environmental Conservation and National Grid, as designated agent for New York State Department of Environmental Conservation, Respondents*, Index No. 002231/2016 (Sup. Ct. Kings Co.) (the "Manishevitz Lawsuit"); and,

U. On February 26, 2016, the Court entered a temporary restraining order which enjoined access to and entry upon the Manishevitz Leasehold (referred to in the Court's order as "the Site"), as follows:

- a) Respondents, and any of their employees, agents, consultants, contractors and subcontractors are enjoined and restrained from accessing and entering the Site; and
- b) Respondent NYSDEC is enjoined and restrained from issuing any further notices or orders concerning accessing to the Site, or otherwise closing, restricting the use of, or in any way interfering with Petitioner/Tenant's use of the Site.

V. thereby preventing National Grid and its contractors from conducting the Supplemental RIWP and preventing the NYSDEC from overseeing that work or otherwise proceeding; and, On or about October 6, 2016, Team Slope purchased the former Hamilton Plaza Shopping Center via a Deed from HPA, thereby becoming the fee owner of certain improved real property designated as Block 1007, Lot 172 and Block 1025, Lots 1, 16, 18, 20, 100 and 200 and Block 1031, Lot 11 on the Tax Map of Kings County (the "Team Slope Property"); and,

W. Manishevitz, National Grid, the NYSDEC and non-party Team Slope are contemporaneously herewith entering into a Settlement Agreement (the "Settlement Agreement"), as part of which this Access Agreement is being made and the Manishevitz Lawsuit is being resolved and dismissed with prejudice;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, together with those contained in the contemporaneously entered into Settlement Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby mutually acknowledge, Manishevitz, as Tenant, and Team Slope, as Owner, hereby grant to National Grid the right and privilege to enter upon and access the Manishevitz Leasehold and the Team Slope Property for the purpose of conducting the Approved Activities, subject to the terms and conditions described herein.

A. GRANT OF LICENSES

Subject to the terms and conditions of this Access Agreement, Manishevitz, as Tenant, and Team Slope, as Owner, hereby grant to National Grid, its agents, employees, invitees, and/or contractors or subcontractors, and appropriate regulatory oversight personnel, including representatives from the NYSDEC, throughout the Term a temporary license to enter upon and access the Manishevitz Leasehold and the Team Slope Property for the limited purpose of performing the following Approved Activities:

- Implementation of all aspects of the Supplemental RIWP, dated December 4, 2015, as approved with modifications by NYSDEC on December 9, 2015, a true and correct copy of which is attached to this Access Agreement as Attachment A and incorporated herein by reference;
- Site walk(s) to allow potential contractors an opportunity to identify potential obstructions or access concerns, and to evaluate equipment requirements prior to performing the Supplemental RIWP work;
- Temporary storage on the Manishevitz Leasehold of investigation-derived waste (“IDW”) to last no more than thirty (30) days;
- Pre- and post-construction surveys of the building to document the Original Condition, as defined herein, and the condition following the implementation of the Supplemental RIWP;
- Use of Tenant-supplied lighting;
- Inspection, maintenance and repair, including re-installation, of existing groundwater monitoring wells, as needed;
- Addition of equipment, including but not limited to transducers, to the existing monitoring wells and occasional maintenance of same;
- Surveying of boreholes;
- Inspection and surveying of the Gowanus Canal bulkhead;

- Ingress and egress associated with all such activities;
- Any asbestos survey and abatement work necessary for the safe completion of the Approved Activities; and
- Other such investigative activities as may be mutually agreed upon by the Parties.

This Access Agreement shall not and does not grant to National Grid any right, title and/or interest in the Manishevitz Leasehold or the Team Slope Property. This Access Agreement does not create any relationship between National Grid and either Manishevitz, as Tenant, or Team Slope, as Owner, except that of licensors and licensee. The licenses granted herein shall be revocable by Manishevitz and Team Slope only following thirty (30) days' prior written notice provided by them to National Grid evidencing material breach of this Access Agreement by National Grid.

B. TERM OF ACCESS

The term of this Access Agreement shall commence on March 13, 2017 at 7:00 am EST and expire on April 27, 2017 at 8:00 pm EST, or upon completion of the Approved Activities, whichever occurs first.

C. COVENANTS, REPRESENTATIONS and WARRANTIES

National Grid covenants, represents and warrants, as the case may be, jointly to Manishevitz and Team Slope, that National Grid:

- i. Will perform or arrange for the performance of the Approved Activities in accordance with the NYSDEC-approved Supplemental RIWP in a safe and workmanlike manner pursuant to the generally accepted standards, practices and procedures for the performance of similar activities in the industry; and,
- ii. Has obtained or shall obtain, prior to entry on the Manishevitz Leasehold or the Team Slope Property of any employee, agent, consultant, contractor or subcontractor of National Grid, all permits, licenses, certificates, including but not limited to certificates of insurance required pursuant to Section F herein, or approvals required to comply with all laws in the performance of the Approved Activities and shall otherwise comply with all statutes, ordinances, rules, regulations, orders and requirements applicable to the Approved Activities. National Grid shall be permitted to perform the Approved Activities on weekends, as well as weekdays, provided all necessary permits and variances have been obtained; and,
- iii. Will furnish to Manishevitz and Team Slope, within at least five (5) business days prior to entry on the Manishevitz Leasehold or the Team Slope Property of any employee, agent, contractor or subcontractor of National Grid, an estimated

work schedule for the Approved Activities; and,

- iv. Will, at National Grid's sole cost and expense, be responsible for the proper handling, transport, treatment, storage and/or disposal of any waste or other materials generated in during the Approved Activities, and will be identified as the Generator of such waste and/or materials; and,
- v. Shall provide to Manishevitz and/or Team Slope a copy of any and all environmental investigation data and/or reports pertaining to their respective property(ies) at the same time and by the same manner National Grid submits such data and/or reports to NYSDEC or any other governmental agency; and,
- vi. Will not permit any liens to be filed upon and/or against the Manishevitz Leasehold or the Team Slope Property with respect to the Approved Activities or other work performed by National Grid and/or any of its employees, agents, consultants, contractors or subcontractors during the Term of this Access Agreement and any extension thereof. In the event that any such liens are filed, National Grid, at its own cost and expense, shall have such liens satisfied or bonded and discharged within thirty (30) days of National Grid's receipt of written notice (including all lien filings) from Manishevitz and/or Team Slope of their filing; and,
- vii. Upon completion of the Approved Activities, National Grid, at its sole cost and expense, will cause any tools, equipment, or structures placed on the Manishevitz Leasehold and the Team Slope Property to be removed and will restore the Manishevitz Leasehold and the Team Slope Property to their Original Condition, and leave them in as clean, orderly condition as reasonably required by Manishevitz and/or Team Slope. Original Condition shall be defined as the condition of the Manishevitz Leasehold and the Team Slope Property at the time of any entry and commencement of Approved Activities under this Access Agreement.

D. ACCESS FEE

In consideration for this grant of access, including the use of lighting and the parking lot, National Grid shall pay jointly to Manishevitz and Team Slope, within thirty (30) days of the expiration of the Term, as a total one-time fee associated with this Access Agreement, \$500 per day for each day during the Term National Grid entered and occupied the interior of the Manishevitz Leasehold, up to the number of days in the Term. This access fee shall have no precedential value with respect to access requests beyond the scope of this Access Agreement.

E. HOLD HARMLESS

National Grid shall indemnify and hold harmless Manishevitz and Team Slope from any claims, liabilities, losses, costs (including without limitation reasonable attorneys' fees),

expenses, and damages (collectively, "Claims") incurred by Manishevitz and Team Slope to the extent caused by the performance (or non-performance) of the Approved Activities or the use of the Manishevitz Leasehold and the Team Slope Property pursuant to this Access Agreement by National Grid, and its respective employees, agents, consultants, contractors and subcontractors in connection with this Access Agreement, except to the extent that such Claims arise out of the intentional misconduct or negligence of Manishevitz or Team Slope, including any of their respective managers, members, employees, subtenants, agents, consultants, contractors or subcontractors. Manishevitz and Team Slope shall have the right to demand that National Grid undertake to defend any and all such Claims to the extent such Claims are asserted against the party demanding indemnification during the Term of this Access Agreement.

F. INSURANCE

National Grid shall require that each of its consultants and contractors obtain and maintain during the Term of this Access Agreement, including any extension thereof, insurance in the following types and amounts: Professional Liability and Contractor's Pollution Legal Liability, \$1,000,000 per claim; Comprehensive General Expense Liability including Pollution Liability, \$1,000,000 per occurrence for damage to the Site; Compensation and Statutorily Required Amounts, Employer's Liability, \$500,000 per person; and, Automobile Liability: \$1,000,000 per occurrence for bodily injury; \$1,000,000 per occurrence for damage to the Site. All insurance policies shall be written by an insurer rated not lower than "AA" or better by AM Best & Company. All insurance policies shall be non-cancelable, except upon thirty (30) days advance written notice to Manishevitz and Team Slope. Prior to cancellation of any insurance policy, National Grid shall arrange for issuance of an equivalent replacement policy.

Manishevitz and Team Slope shall be named as additional insureds on the Commercial General, Contractor's Pollution Legal Liability, and Automobile Liability insurance policies maintained by National Grid's contractors. Prior to access to the Manishevitz Leasehold and the Team Slope Property by National Grid, certificates of insurance will be furnished to Manishevitz and Team Slope evidencing that they are named as additional insureds to such insurance policies prior to commencement of the Approved Activities. The above listed insurance requirements shall not limit the liability, obligations and/or exposure of National Grid or National Grid's contractors and consultants under any circumstances.

G. GOVERNING LAW

This Access Agreement shall be governed by the laws of the State of New York without regard to conflict of law principles.

H. ENTIRE AGREEMENT

This Access Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Access Agreement, and no amendments, additions, or modifications hereto shall be valid unless in writing and signed by all the Parties hereto. This Access Agreement supersedes all prior agreements regarding access between the

Parties.

I. BINDING EFFECT

This Access Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

J. SEVERABILITY

If any provision of the Access Agreement shall be declared to be unenforceable, the remaining provisions hereof shall remain in full force and effect.

K. COUNTERPARTS

This Access Agreement may be executed in several counterparts, each of which shall be an original and which shall constitute the same instrument. Signatures may be delivered by facsimile or electronically through the exchange of .pdf documents and such signature shall be treated as the original thereof.

L. MODIFICATIONS

This Access Agreement shall not be modified except by written instrument executed by National Grid, Manishevitz and Team Slope and/or their respective successors and assigns.

M. CONFIDENTIALITY

Each Party hereby acknowledges and agrees that this Access Agreement and the terms and conditions herein shall be kept confidential by each Party and their respective representatives, subsidiaries, affiliates, agents, employees, suppliers, contractors, lenders, outside counsel and other professionals and shall not, unless required by law, without the prior written consent by an authorized representative of the other Parties in each instance, be disclosed by any such Party and/or by such Party's managers, members, representatives, subsidiaries, affiliates, agents, employees, suppliers, contractors, lenders, outside counsel and other professionals in any manner whatsoever in whole or in part. Notwithstanding the above obligations, National Grid is permitted to disclose the Approved Activities and this Access Agreement to appropriate regulatory agencies, including but not limited to the New York State Public Service Commission and the NYSDEC, and National Grid's insurers and their legal counsel as deemed necessary by National Grid.

N. COMMUNICATIONS

All written communications required by this Access Agreement shall be transmitted by United States Postal Service, by private courier service, by e-mail, by facsimile or by hand delivery.

Communications from National Grid to Manishevitz and/or Team Slope shall be sent to:

Mr. Joel Wertzberger
Manager, Manishevitz Family LLC
Manager, Team Slope LLC
1368 38th Street
Brooklyn, NY 11218
E-mail: joyland@gmail.com

With a copy to:

Jon Schuyler Brooks, Esq.
Phillips Nizer LLP
666 Fifth Avenue
New York, NY 10103
(212) 841-0780
E-mail: jbrooks@phillipsnizer.com

Communications from Manishevitz or Team Slope to National Grid shall be sent to:

Francis Murphy, Esq.
Senior Counsel
National Grid
175 East Old Country Road
Hicksville, NY 11801
Telephone: 516-545-3745
E-mail: francis.murphy@nationalgrid.com

With a copy to:

Brian Bermingham, P.E.
Project Manager
National Grid
287 Maspeth Avenue
Brooklyn, NY 11211
Telephone: 718-608-5102
E-mail: Brian.Bermingham@nationalgrid.com

O. ARTICLE HEADINGS

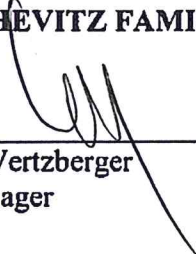
The article headings and other titles used in this Access Agreement are for convenience only and shall not affect the construction of any terms of this Access Agreement.

P. AUTHORITY

Each Party to this Access Agreement hereby represents and warrants to each other Party that it has the authority, power and capacity to execute and is free to enter into this Access Agreement, there is nothing that encumbers or restricts its rights herein, it has had the opportunity to have legal counsel of its choosing review this Access Agreement prior to execution, and the individual signing below has the requisite authority, power and capacity to bind such party.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have caused this Access Agreement to be executed by their duly authorized representatives as of the Effective Date first written above.

MANISCHEVITZ FAMILY LLC



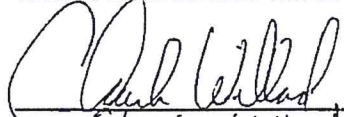
By: Joel Wertzberger
Title: Manager

TEAM SLOPE LLC



By: Joel Wertzberger
Title: Manager

**THE BROOKLYN UNION GAS COMPANY
d/b/a NATIONAL GRID NY**



By: Charles Willard
Title: Authorized Representative

SETTLEMENT AGREEMENT WITH MUTUAL SPECIAL RELEASES

This Settlement Agreement with Mutual Special Releases (the “Settlement Agreement”) is made effective this ___ day of March 2017 by and among Manischevitz Family LLC, a New York limited liability company with an office at 1368 38th Street, Brooklyn, New York 11218 (“Manischevitz”), Team Slope LLC, a New York limited liability company with an office at 1368 38th Street, Brooklyn, New York 11218 (“Team Slope”), and The Brooklyn Union Gas Company d/b/a National Grid NY, a New York corporation with an office at One MetroTech Center, Brooklyn, New York, 11201 (“National Grid”), all three of which collectively are referred to herein as the “Parties” and each of which is a “Party”.

RECITALS

WHEREAS, in February 2007, as modified in August 2007, the NYSDEC and National Grid (acting under its prior d/b/a name KeySpan Energy Delivery New York), pursuant to Article 27, Title 13 of the Environmental Conservation Law, entered into an Order on Consent and Administrative Settlement, Index #A2-0552-0606, which agreement required National Grid to undertake activities, including investigation, at a number of former manufactured gas plants located in New York State (“Multisite Consent Order”); and,

WHEREAS, one such site was a former manufactured gas plant known as the Metropolitan Works MGP Site formerly located at 124–136 2nd Avenue, Brooklyn, Kings County, New York, 11215, bounded by the former 11th Street right-of-way and the 11th Street basin to the north, 2nd Avenue to the east, 13th Street to the south, and the Gowanus Canal to the west, which site DEC listed as a Class 2 site on the Registry of Inactive Hazardous Wastes in New York (“former Metropolitan Works MGP Site”);

WHEREAS, the Multisite Consent Order requires National Grid to perform a remedial investigation (“RI”) of the former Metropolitan Works MGP Site, which phased investigation began in 2009 and remains ongoing;

WHEREAS, on or about December 3, 2015, Manishevitz entered into an Assignment and Assumption of Lease with A&P Real Property, LLC, thus becoming the Tenant to the Lease dated as of September 1, 1981 between HPA, as Landlord, and Supermarkets General Corporation, as the predecessor-in-interest Tenant (“Lease”); and,

WHEREAS, pursuant to assignment of the Lease, Manishevitz obtained a possessory interest in certain Demised Premises (as that capitalized term is defined in the Lease), located on Block 1007, Lot 172, constituting a portion of the real property formerly referred to as the Hamilton Plaza Shopping Center (the "Manishevitz Leasehold");

WHEREAS, in December 2015, on the assumption the Manishevitz Leasehold became vacant in the aftermath of the bankruptcy of The Great Atlantic & Pacific Tea Company, the NYSDEC directed National Grid to conduct an additional phase of RI activities involving sampling beneath a portion of the Manishevitz Leasehold, work which is described in detail in a December 4, 2015 Supplemental Remedial Investigation Work Plan, which the NYSDEC approved with modifications on December 9, 2015 (the “Supplemental RIWP”);

WHEREAS, a dispute thereafter arose between and among Manishevitz and National Grid concerning compensation to be paid by National Grid to Manishevitz for access to the Manishevitz Leasehold for purposes of National Grid conducting the Supplemental RIWP (the “Access Dispute”); and,

WHEREAS, in connection with the Access Dispute the NYSDEC issued two letters to Manishevitz, the first dated February 10, 2016 and the second dated February 23, 2016,

asserting the NYSDEC's authority under the Environmental Conservation Law to grant National Grid and its contractors access to the Manishevitz Leasehold to conduct the Supplemental RIWP (the "NYSDEC Access Letters"); and,

WHEREAS, Manishevitz opposed the NYSDEC Access Letters and on February 26, 2016 filed a Verified Petition and a Preliminary Injunction Motion at *Manishevitz Family LLC, Petitioner v. New York State Department of Environmental Conservation and National Grid, as designated agent for New York State Department of Environmental Conservation, Respondents*, Index No. 002231/2016 (Sup. Ct. Kings Co.) (the "Manishevitz Lawsuit"); and,

WHEREAS, on or about October 6, 2016, Team Slope purchased the former Hamilton Plaza Shopping Center via a Deed from Hamilton Plaza Associates ("HPA"), thereby becoming the fee owner of certain improved real property designated as Block 1007, Lot 172 and Block 1025, Lots 1, 16, 18, 20, 100 and 200 and Block 1031, Lot 11 on the Tax Map of Kings County, some or all of which is located on the former Metropolitan Works MGP Site; (the "Team Slope Property"); and,

WHEREAS, pursuant to an Access Agreement which Manishevitz, Team Slope and National Grid are contemporaneously herewith entering into, a copy of which is attached here as Exhibit 1 and incorporated herein by reference, Manishevitz and Team Slope have agreed to grant access to National Grid to the Manishevitz Leasehold and the Team Slope Property for the purpose of conducting the Supplemental RIWP, subject to the terms and conditions of such Access Agreement; and,

WHEREAS, the NYSDEC has agreed to retract and rescind the NYSDEC Access Letters; and,

WHEREAS, Manishevitz has agreed to a voluntary discontinuance with prejudice of the Manishevitz Lawsuit pursuant to CPLR § 3217(b) as set forth in the Stipulation of Discontinuance attached hereto as Exhibit 2 and incorporated herein by reference; and,

WHEREAS, the Parties have agreed to fully settle and resolve in all other respects the Access Dispute as set forth herein;

NOW THEREFORE, in consideration of the promises and mutual agreements contained herein, together with those contained in the contemporaneously entered into Access Agreement and Stipulation of Discontinuance, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby mutually acknowledge, the Parties agree as follows:

1. Simultaneous with the execution of this Settlement Agreement, Manishevitz, Team Slope and National Grid shall execute the Access Agreement attached hereto as Exhibit 1 granting National Grid access to the Manishevitz Leasehold and the Team Slope Property for the purposes and on the terms and conditions therein provided.

2. Simultaneous with the execution of this Settlement Agreement, Manishevitz, the NYSDEC and National Grid shall execute the Stipulation of Discontinuance attached hereto as Exhibit 2.

3. Within three (3) business days following full execution of this Settlement Agreement, the Access Agreement and the Stipulation of Discontinuance, Manishevitz shall cause the Stipulation of Discontinuance to be filed with the Clerk of Court without further notice, followed by Respondent NYSDEC filing the same Stipulation of Dismissal with the County Clerk without further notice.

4. Each Party shall bear its own attorneys' fees, costs and expenses, including, but not limited to, all such fees, costs and expenses incurred in connection with the Access Dispute, the NYSDEC Access Letters and the Manishevitz Lawsuit.

5. Effective upon the Stipulation of Dismissal being filed with the Clerk of Court and the County Clerk, each Party hereto, on behalf of itself and each of its agents, representatives, affiliates, and successors and assigns, releases and discharges and expressly covenants not to sue each other, including each other's shareholders, members, managers, directors, officers, trustees, employees, agents, attorneys, representatives, agents, heirs, executors, affiliates, and successors and assigns (collectively for each, the "Released Parties"), from, against and with respect to any and all claims, demands, contracts, accounts, debts, liens, suits, proceedings, litigation, liabilities, obligations, actions, causes of action, rights, damages, costs, expenses and Losses of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, contractual or non-contractual, accrued, contingent or otherwise ("Claims"), which each Party ever had or now has against each other and/or each other's Released Parties arising out of or related to the Access Dispute, the NYSDEC Access Letters and the Manishevitz Lawsuit. This is a Special Release and the Parties specifically agree that all other Claims (and any and all defenses thereto), which any Party hereto may have or claim to have against any other Party hereto, and which are not expressly included within the scope of this Special Release are, to the extent they may be valid, unaffected and preserved.

6. Manishevitz and Team Slope each hereby expressly and separately warrant and represent to National Grid that none of the Claims released by it in this Settlement Agreement has been previously sold, assigned, conveyed, or otherwise transferred by it to any other entity or person.

7. Each Party hereby acknowledges and agrees that this Settlement Agreement and the terms and conditions herein shall be kept confidential by each Party and their respective representatives, subsidiaries, affiliates, agents, managers, members, employees, suppliers, contractors, lenders, outside counsel and other professionals and shall not, unless required by law, without the prior written consent by an authorized representative of the other Parties in each instance, be disclosed by any such Party and/or by such Party's managers, members, representatives, subsidiaries, affiliates, agents, employees, suppliers, contractors, lenders, outside counsel and other professionals in any manner whatsoever in whole or in part.

8. If any term, covenant or condition of this Settlement Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Settlement Agreement and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

9. This Settlement Agreement shall be governed by the laws of the State of New York without regard to conflict of law principles.

10. This Settlement Agreement shall be effective when signed by all Parties. This Settlement Agreement shall inure to the benefit of and shall be binding on each Party's successors and assigns.

11. This Settlement Agreement may be executed in multiple counterparts, each of which shall be an original and which shall constitute the same instrument, and facsimile or electronic signatures shall be deemed originals.

12. This Settlement Agreement constitutes the entire agreement among the Parties as to the subjects stated, and may be modified only in a writing signed by the Parties.

13. Each Party hereto represents and warrants to each other Party that it is authorized to enter into this Settlement Agreement, and represents further the respective signatories are authorized to bind the Party for which s/he signs to all terms set forth in this Settlement Agreement.

14. The recitals set forth above are incorporated herein by reference as if set forth in full.

* * * *

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives as of the Effective Date first written above.

MANISCHEVITZ FAMILY LLC



By: Joel Wertzberger
Title: Manager

TEAM SLOPE LLC



By: Joel Wertzberger
Title: Manager

N.Y.S. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:
Title:

THE BROOKLYN UNION GAS COMPANY d/b/a NATIONAL GRID NY

By:
Title: