

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

**THIS INDENTURE** made this 26<sup>th</sup> day of November, 2012, between Owner(s) CG Properties LLC, having its address at P.O. Box 427, Riverside, County of Fairfield, State of Connecticut (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 property 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 1808 Vestal Parkway in the Town of Vestal, County of Broome and State of New York, known and designated on the tax map of the County Clerk of Broome County as tax map parcel numbers: Section 158.13 Block 3 Lot 2.1, being the same as that property conveyed to Grantor by deed dated March 1, 2005 and recorded in the Broome County Clerk's Office in Deeds Liber 02101 and Page 0346, comprising approximately 2.639 +/- acres, and herein after more fully described in the Land Title Survey dated July 16, 2012 prepared by Keystone Associates Architects, Engineers and Surveyors, LLC, which will be attached to the Site Management Plan. The property description (the "Controlled Property") is set forth in and attached hereto as Scheduled 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, 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”) for NYSDEC Site Number 704029 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:

Commercial and Industrial Uses, including current uses.

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP.

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for any of the following listed uses, and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

(1) Residential or Restricted Residential purposes, as defined in 6 NYCRR 375-1.8(g)(2)(i) and (ii), unless additional remediation and amendment of the Environmental Easement occurs, as approved by the NYSDEC.

(2) Any activity that will potentially disturb remaining contaminated material that is not conducted in accordance with the SMP.

(3) The use of groundwater underlying the Controlled Property for any use unless treated to render it safe for the intended use as determined by the New York State Department of Health (NYSDOH).

(4) Construction of any new building on the Controlled Property without first evaluating the potential for vapor intrusion for any building to be developed on the Controlled Property and the development and implementation of a plan to monitor or mitigate, as appropriate, any identified potential vapor intrusion impacts.

(5) Any use which prohibits NYSDEC's access to the Controlled Property at any time in order to inspect, evaluate, maintain, repair, upgrade or replace any and all controls.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successor and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) 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;

(2) The owner of the property shall allow continued access to the Controlled Property by Grantee, its agents, employees, or other representatives of the State;

(3) Nothing has occurred within the past year that would constitute a violation or failure to comply with the Site Management Plan.

(4) This certification was prepared under the direction of and reviewed by the undersigned.

(5) The information presented in this Certification is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement:

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

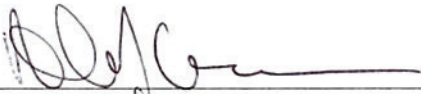
County, NYSDEC Site Number, and the County tax map number on the Liber and Page or computerized system identification number.



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:

CG Properties LLC

By:   
Print Name: Allen J. Green  
Title: Member Date: November 26, 2012

**Grantor's Acknowledgment**

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

On the 26th day of November, in the year 2012, before me, the undersigned, personally appeared Allen J. Green, 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 DEBORAH JEAN CERIA MEYERS  
Notary Public, State of New York  
No. 31-4831744  
Qualified in New York County  
Commission Expires September 30, 2013

**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, ~~Acting~~ Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, the undersigned, personally appeared Robert 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



## SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Vestal, County of Broome, State of New York, being all of the property now or formerly of CG Properties, LLC described in Liber 2101 P. 346 as recorded in the Broome County Clerk's Office on March 01, 2005 (TM# 158.13-3-2.1), bounded and described as follows:

BEGINNING at a point on the southerly highway boundary of Vestal Parkway East, NYS Route 434 at its intersection with the division line between the property now or formerly of CC&K, LLC per L. 2351 P. 568 (TM# 158.13-3-5) on the east and the property now or formerly of CG Properties, LLC per L. 2101 P. 346 (TM# 158.13-3-2.1) on the west, said point being N88°49'10"W, a distance of 83.30 feet from the intersection of the westerly highway boundary of Ridgehaven Drive and the southerly highway boundary of Vestal Parkway East;

RUNNING THENCE along said division lines the following two (2) courses and distances;

1) S01°10'50"W, a distance of 60.34 feet to a point;  
2) S09°17'30"W, a distance of 133.90 feet to a point at its intersection with the division line between the property now or formerly of CG Properties, LLC per L. 2101 P. 351 (TM# 158.13-3-8.1) on the south and said CG Properties, LLC (TM# 158.13-3-2.1) on the north; thence along the division lines between said CG Properties, LLC (TM# 158.13-3-8.1) and said CG Properties, LLC (TM# 158.13-3-2.1) the following eighteen (18) courses and distances:

1) N80°42'30"W, a distance of 19.59 feet to a point on a concrete retaining wall;  
2) S16°34'06"W, a distance of 31.46 feet to a point on a concrete retaining wall;  
3) S29°06'31"W, a distance of 23.17 feet to a point on a concrete retaining wall;  
4) S58°46'10"W, a distance of 22.81 feet to a point on a concrete retaining wall;  
5) S65°40'08"W, a distance of 25.91 feet to a point on a concrete retaining wall;  
6) S67°36'09"W, a distance of 32.80 feet to a point on a concrete retaining wall;  
7) S74°01'07"W, a distance of 20.73 feet to a point on a concrete retaining wall;  
8) S88°06'55"W, a distance of 22.49 feet to a point on a concrete retaining wall;  
9) N88°49'59"W, a distance of 87.30 feet to a point on a concrete retaining wall;  
10) N88°16'22"W, a distance of 85.86 feet to a point on a concrete retaining wall;  
11) N88°21'27"W, a distance of 25.03 feet to a point on a concrete retaining wall;  
12) N77°42'22"W, a distance of 30.20 feet to a point on a concrete retaining wall;  
13) N65°18'59"W, a distance of 41.22 feet to a point on a concrete retaining wall;  
14) N55°58'33"W, a distance of 48.95 feet to a point on a concrete retaining wall;  
15) N40°00'04"W, a distance of 28.76 feet to a point on a concrete retaining wall;  
16) N16°34'57"W, a distance of 18.14 feet to a point on a concrete retaining wall;  
17) N07°31'53"E, a distance of 34.10 feet to a point on a concrete retaining wall;  
18) thence N83°41'00"W, a distance of 18.18 feet to a point at its intersection with the division line between the property now or formerly of DSK Realty LLC per L. 2276 P. 11 (TM# 158.13-3-25) on the west and said CG Properties, LLC (TM# 158.13-3-2.1) on the east; thence N06°19'00"E along the last mentioned division line and along the division line between another property now or formerly owned by DSK Realty LLC per L. 2276 P. 11 (TM# 158.13-3-1) on the west and said CG Properties, LLC (TM# 158.13-3-2.1) on the east, a distance of 161.17 feet to a point at its intersection with said southerly highway boundary of Vestal Parkway East;

thence S88°49'10"E along said southerly boundary, a distance of 299.63 feet to a point at its intersection with the division line between the property now or formerly of No Problem LLC per L. 2084 P. 94 (TM# 158.13-3-3) on the east and said CG Properties, LLC (TM# 158.13-3-2.1) on the west; thence along the division lines between said No Problem LLC and said CG Properties, LLC (TM# 158.13-3-2.1) the following four (4) courses and distances;

- 1) S06°15'50"W, a distance of 100.39 feet to a point;
- 2) S88°49'10"E, a distance of 173.37 feet to a point;
- 3) N25°43'06"E, a distance of 25.28 feet to a point;
- 4) N01°10'50"E, a distance of 77.00 feet to a point at its intersection with said southerly highway boundary of Vestal Parkway East; thence S88°49'10"E along said southerly highway boundary, a distance of 28.98 feet to the POINT OF BEGINNING.

Containing 114,964 square feet or 2.639 acres, more or less.

Subject to the following easements:

1. Right of way and easement 20' in width for sanitary sewer pipe line(s) granted to the Town of Vestal per L.1047 P.306 as recorded in the Broome County Clerk's Office on December 28, 1961.
2. A permanent easement granted to Barnett H. Green, Ethel Hellman and Allen J. Green per L.1313 P.139 as recorded in the Broome County Clerk's Office on December 19, 1980.
3. Easement granted to Tier Oil Corp. per L.1313 P.106 as recorded in the Broome County Clerk's Office on December 19, 1980.
4. Perpetual easement to be appropriated by the State of New York for State highway No. 1613 as shown on "S.H. 1613, Broome Co. Easement Map No. 7" Dated April 13, 1939.
5. Portion of perpetual easement to be appropriated by the State of New York for State Highway No. 1613 as shown on "S.H. 1613, Broome Co. Easement Map No. 6R-1-C" Dated June 26, 1957.

Subject to any and all other easements of record and/or as found in the field.

Bearings are referenced to Magnetic North in February 2002.

The above described parcel is shown on the map entitled "Boundary Survey for C.G. Properties, LLC, 1808 Vestal Parkway East, Town of Vestal, Broome County, New York State" prepared by Keystone Associates Architects, Engineers and Surveyors, LLC as project number 2112.15012, sheet B-1 dated July 12, 2012.