

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

THIS INDENTURE made this 9th day of June, 2016, between Owner(s) Barouh Eaton Allen Corp., having an office at 67 Kent Avenue, Brooklyn, County of Kings, 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 118-130 Swalm Street in the Town of North Hempstead, County of Nassau and State of New York, known and designated on the tax map of the County Clerk of Nassau as tax map parcel numbers: Section 11, Block 164, Lot 19-29, 58-65, being the same as that property conveyed to Grantor by deed dated November 1, 1979 and recorded in the Nassau County Clerk's Office in Liber 10092 and Page 71. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.1065 +/- acres, and is hereinafter more fully described in the Land Title Survey dated March 3, 2016 prepared by Charles J. Gravano, P.L.S. of Green By Design Land Surveyors, PLLC, 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 Grantor agrees to grant this Environmental Easement subject to the terms of the settlement of the lawsuit in the Third Supplemental Consent Decree as defined

below, and NYSDEC accepts this Environmental Easement in furtherance of the settlement and 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

The foregoing recitals are substantive and incorporated in this easement as material provisions.

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of the Third Supplemental Consent Decree entered in *State of New York v. Next Millennium, et al.*, U.S. District Court, Eastern District of New York, No. 06-CV-01133 (SJF)(ARL) (the “Third Supplemental Consent Decree”), 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 (unless extinguished by law or as provided in the Third Supplemental Consent Decree and herein) 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.** Grantor acknowledges that the controls and requirements described below and 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:

**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 set forth in this subparagraph (2) and as specified in the Site Management Plan (SMP) as follows:

(a) The buildings existing on the Site as of the date of execution of this Environmental Easement may not be put to commercial or industrial use and regularly occupied unless an active sub-slab depressurization system or other mechanism acceptable to the Department is first installed in the buildings or the Department determines based on testing conducted by the Grantor, or its successor or transferee, that no such system or mechanism is required; and

(b) In the event that, after the execution of the Environmental Easement, the Grantor elects to demolish the buildings on the Site as of the date of execution of this Environmental Easement, the DEC will not unreasonably withhold or delay the permitting of the demolition to the extent the Department has any such authority; and

(c) In the event that the buildings existing on the Site as of the date of execution of this Environmental Easement are demolished, an active sub-slab depressurization system (or other exposure barrier or mechanism acceptable to the NYSDEC) will be installed in any new buildings developed or constructed on the Controlled Property and operated and maintained for so long as the mitigation of soil vapor intrusion from a building's sub-slab is necessary, unless the Department determines based on testing conducted by the Grantor, or its successor or transferee, that no such system or mechanism is required.

(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 Nassau 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) If necessary, 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 Unrestricted, Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), 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, except as limited by the Third Supplemental Consent Decree. 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, 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, if any, 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 this Environmental Easement, 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 upon reasonable notice to the Grantor or its successors or assigns, 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 full right, title and interest to give, sell, lease, 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 (unless

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. 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. The Grantor or any successor or transferee may petition the NYSDEC to modify or extinguish the Environmental Easement at such time as it can certify that the Controlled Property is protective of human health and the environment without reliance upon the restrictions set forth in this instrument. Such certification shall be made by a Professional Engineer or other expert approved by the NYSDEC, which approval shall not unreasonably be withheld. The NYSDEC shall act promptly on any such petition and shall not unreasonably withhold its consent.

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

BAROUH EATON ALLEN CORP.

By: Robert Barouh

Print Name: Robert Barouh

Title: President Date: 4-8-16

Grantor's Acknowledgment

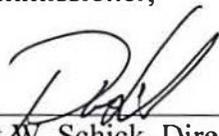
STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 8th day of April, in the year 2016, before me, the undersigned, personally appeared Robert Barouh, 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

WILLIAM B. IFE
Notary Public, State of New York
No. 021F6165108
Qualified in Nassau County
My Commission Expires May 7, 2019

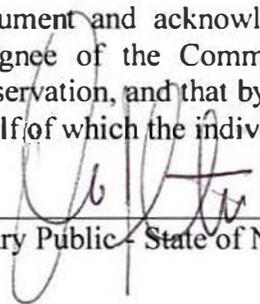
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

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

Grantee's Acknowledgment

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

On the 9th day of June, 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

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2018

SCHEDULE "A" PROPERTY DESCRIPTION

All that certain plot, piece or parcel of land, with improvements erected thereon situate, lying and being at New Cassel, Town of North Hempstead, County of Nassau and State of New York, known and designated as lots numbers 19 to 29 both inclusive and 58 to 65 both inclusive in Block No. 51 on a certain map entitled "2nd Map of the City of New Cassel, Queens County, Long Island, New York" and filed in the Office of the Clerk of the County of Queens on April 22, 1892, File No. 256 and filed in the Nassau County Clerk's Office as Old Map No. 3 New Map No. 14, more particularly bounded and described as follows:

BEGINNING at a point on the easterly side of Swalm Street distant 300 feet northerly when measured along the easterly side of Swalm Street from the corner formed by the intersection of the easterly side of Swalm Street and the northerly side of Main Street;

RUNNING THENCE northerly and along the easterly side of Swalm Street 272.98 feet to the southerly side of the land of the Long Island Railroad;

RUNNING THENCE easterly and along lands of the Long Island Railroad 203.20 feet to the westerly side of Rushmore Street;

RUNNING THENCE southerly and along the westerly side of Rushmore Street 208.90 feet;

RUNNING THENCE westerly and at right angles to the westerly side of Rushmore Street 100.00 feet;

RUNNING THENCE southerly and at right angles to the last mentioned course 100.00 feet;

RUNNING THENCE westerly and at right angles to the last mentioned course 100.00 feet to the easterly side of Swalm Street at the point or place of BEGINNING.

This parcel has an area of 48,186.92 s.f. or 1.106 ac.