DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT

This Declaration of Covenants, Restrictions and Environmental Easement is made this \textit{20th} day of \textbf{February}, 201A by and between The Town of Conklin, a municipal corporation, having an address at 1271 Conklin Road, Conklin, New York 13748, ("Grantor"), and the People of the State of New York (the "Grantee"), acting through their Commissioner of the New York State Department of Environmental Conservation with its Central Office, located at 625 Broadway, Albany, New York 12233 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of a 12.063 acre ± parcel [a/k/a the "Upper Landfill"] and a 15.625 acre ± parcel [a/k/a the "Lower Landfill"] of land located in Town of Conklin, County of Broome, State of New York, more particularly described on Exhibit A and Exhibit B attached hereto and made a part hereof together with any buildings and improvements thereon and appurtenances thereto (the parcels of land described on Exhibit A and Exhibit B shall be referred to collectively as the "Property"); and

WHEREAS, the Property is part of the Conklin Dumps Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register in June 1986; and

WHEREAS, in a Record of Decision dated March 29, 1991, ("ROD"), The Regional Administrator of EPA selected, and the New York State Department of Environmental Conservation ("NYSDEC") concurred with, response actions for the Site ("CERCLA response actions"), which provided in pertinent part, for the following actions:

(i) Capping of the upper landfill and lower landfill
(ii) Leachate collection and treatment
(iii) Groundwater monitoring
(iv) Fencing and long-term monitoring
(v) Restricting activities at the Site that could affect the integrity of the cap

WHEREAS, in an Explanation of Significant Difference ("ESD") issued in September 1992, The EPA modified the remedy selected in the ROD, providing in pertinent part, for the following actions: the excavation of the lower landfill, consolidation of the excavated lower landfill contents onto the upper landfill, capping of the upper landfill, construction of a leachate collection system, and treatment of the leachate. The ESD did not modify the requirement in the ROD for the imposition of a property deed restriction, if necessary, to prevent the installation of drinking water wells that do not meet the quality standards at the Site, and restrict activities that could affect the integrity of the cap;
WHEREAS, a current copy of the NYSDEC and EPA approved SMP must be obtained by any party with an interest in the property, from the New York State Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233 or at derweb@gw.dec.state.ny.us;

WHEREAS, the excavation of waste from the lower landfill, capping of the consolidated wastes in the upper landfill, installation of a leachate recovery system, and construction of a final cap for the upper landfill have been completed; and

WHEREAS, the parties hereto have agreed that Grantor shall grant to the Grantee a permanent Declaration of Covenants, Restrictions and Environmental Easement pursuant to Article 71, Title 36 of the NYS Environmental Conservation Law, covenant with respect to restrictions on the use of the Property, and provide a right of access to the Property in favor of Grantee and EPA, all of which shall run with the land, for purposes of preventing the installation of drinking water wells that do not meet quality standards, at the Site and to impose on the Property use restrictions that will run with the land for the purpose of restricting activities which could affect the integrity of the cap and protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby give, grant, covenant and declare in favor of the Grantee that the Property shall be subject to this Declaration of Covenants, Restrictions and Environmental Easement, and Grantor does further give, grant and convey to the Grantee the perpetual right to enforce said restrictions, covenants, right of access and Environmental Easement, all of which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Site.

2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination and to impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.

3. Restrictions on Use: The following restrictions apply to the use of the Property, run with the land and are binding on the Grantor and its successors in title and assigns:

   a) Restrictions to the use of the Upper Landfill are provided below:

      i) Activities that could affect the integrity of the landfill cover, including without limitation, excavation, digging, and construction activities, are prohibited on any portion of the Upper Landfill, unless Grantee and EPA have given their prior written consent to any such intrusive activity.
ii) Groundwater wells for drinking water shall not be installed or used on any portion of the Upper Landfill.

iii) The Upper Landfill shall not be used for “Residential Use” and “Restricted-Residential Use” as defined by New York State Department of Environmental Conservation (NYSDEC) Regulations – 6 NYCRR Part 375 – 1.8(g)(2)(i) and (ii). Allowable uses include “Commercial Use” and “Industrial Use” as defined in NYSDEC Regulations – 6 NYCRR Part 375 – 1.8(g)(2)(iii) and (iv).

iv) Grantor, for itself and its successors and assigns, covenants and agrees to keep in good repair and maintain the following engineering controls on the Upper Landfill:

v) Leachate Collection System;

vi) Landfill Cover and Gas Venting;

vii) Fencing bordering the Upper Landfill; and

viii) Monitoring Well Network.

ix) Periodic Certification

b) Restrictions to the use of the Lower Landfill are provided below:

i) Groundwater wells for drinking water shall not be installed or used on any portion of the Lower Landfill.

ii) The Lower Landfill shall not be used for “Residential Use” and “Restricted-Residential Use” as defined by New York State Department of Environmental Conservation (NYSDEC) Regulations – 6 NYCRR Part 375 – 1.8(g)(2)(i) and (ii). Allowable uses include “Commercial Use” and “Industrial Use” as defined in NYSDEC Regulations – 6 NYCRR Part 375 – 1.8(g)(2)(iii) and (iv).

c) Grantor, for itself and its successors and assigns, covenants and agrees that it shall, upon request by Grantee or EPA, certify to Grantee and to EPA that it is in compliance with the current Site Management Plan for the Site (a copy of which is available from Grantee at the address provided in Section 15, below, and electronically at the Grantee’s website, currently http://www.dec.ny.gov/chemical/36045.html); that the Institutional Controls for the Site are in place and have not been violated since the date of the previous certification; that it is in compliance with its covenant to keep in good repair and maintain the Engineering Controls. (i) unless otherwise approved in writing by NYSDEC and EPA, or their successor agencies, there shall be no future development or use of the Property that could compromise, interfere with or adversely affect the implementation, integrity, or effectiveness of the remedial measures performed at the Site or cause contaminants to migrate; (ii) there shall be no installation of drinking water wells on the Property nor use of the groundwater from the unconfined aquifer underlying the Site as a source of potable or process water unless such groundwater meets or is
treated to meet quality standards established under federal and state laws and regulations for the intended use.

4. **Modification or termination of restrictions and covenants:** The restrictions specified in the preceding paragraph of this instrument may only be modified or terminated, in whole or in part, in writing, by the Grantee, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA and NYSDEC for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form. Any request by Grantor for a modification or termination of this instrument shall be made in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument.

5. **Right of access:** Grantors hereby convey to Grantee and to EPA a right of access to the Property at all reasonable times for the following purposes shall run with the land and be binding on Grantor, their successors and/or assigns, and on any tenants or any other parties having an interest and/or rights to the Property:

a) Modifying the Implemented response actions in the ROD and ESD, including but not limited to, O & M to be provided by the State of New York;

b) Verifying any data or information relating to the Site;

c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;

d) Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and

e) Implementing additional or new response actions under CERCLA.

6. **Reserved rights of Grantor:** Grantor hereby reserves unto itself, its successors and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.

7. **Federal authority:** Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

8. **State authority:** Nothing herein shall constitute a waiver of any rights the State may have pursuant to the Environmental Conservation Law, regulations and/or relevant provisions of statutory or common law.

9. **No public access and use:** No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

10. **Public notice:** Grantor, on behalf of itself, its successors and assigns, agrees to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:
NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT, DATED _______, 20__, RECORDED IN THE ______ COUNTY CLERK’S OFFICE ON _______, 20__, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. **Enforcement:** The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee’s rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.

12. **Damages:** Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.

13. **Waiver of certain defenses:** Grantor hereby waives any defense of laches, estoppel, or prescription.

14. **Covenants:** Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein and that the Property is free and clear of encumbrances.

15. **Notices:** Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

The Town of Conklin
Town Hall
1271 Conklin Road
Conklin, New York 13748

To Grantee:

Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-5500

NYS Department of Environmental Conservation
Division of Environmental Remediation Site Control
625 Broadway
Albany, New York 12233
A copy of each such communication shall also be sent to EPA in the same manner as to Grantor or Grantee, and addressed to the following two addressees:

U.S. Environmental Protection Agency
Emergency & Remedial Response Division, Western New York Remediation Branch
Attention: Conklin Dumps Superfund Site Remedial Project Manager
290 Broadway, 20th Floor
New York, New York 10007-1866

U.S. Environmental Protection Agency
Office of Regional Counsel
Attention: Conklin Dumps Superfund Site Attorney
290 Broadway, 17th Floor,
New York, New York 10007-1866

16. **General provisions:**

a) **Controlling law:** The interpretation and performance of this instrument shall, with respect to the Environmental Easement, be governed by the laws of the State of New York, and with respect to other matters, shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of New York.

b) **Liberal construction:** Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) **Severability:** If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) **No forfeiture:** Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

e) **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.

f) **Successors:** The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in
place thereof, shall mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.

g) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

h) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

i) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

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

Executed this 22nd day of January, 2013.

GRANTOR: TOWN OF CONKLIN

By: ____________________________

James E. Finch

Title: Supervisor

Grantor’s Acknowledgment

STATE OF NEW YORK )
COUNTY OF BROOME ) ss:

On the 22nd day of January, in the year 2013, before me, the above-signed, personally appeared JAMES E. FINCH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Town Supervisor of the Town of Conklin, and that by his signature on the instrument, the Grantor, upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

SHERRIE L. JACOBS
NOTARY PUBLIC, STATE OF NEW YORK
NO 01JA6083551
QUALIFIED IN BROOME COUNTY
MY COMMISSION EXPIRES 12/9/20
THIS ENVIRONMENTAL EASEMENT AND DECLARATION OF
RESTRICTIVE COVENANTS 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

Date:  FEB 20 2013

Grantee’s Acknowledgment

STATE OF NEW YORK )
COUNTY OF ) ss:

On the 20th day of February, in the year 2013, before me, the above-
signed, personally appeared Robert W. Schick, personally known to me or proved to me on the
basis of satisfactory evidence to be the individual whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his capacity as designee of the
Commissioner of the State of New York Department of Environmental Conservation, and that by
his signature on the instrument, the People of the State of New York, 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
EXHIBIT A
To
Declaration of Covenants, Restrictions and Environmental Easement

Survey and Description of
Conklin Dumps Superfund Site
[UPPER LANDFILL]
(12.063 ± Acres)

Declaration of Covenants, Restrictions, and Environmental Easement - Upper Landfill Area
Description:

Being all that tract or parcel of land, situate in the Town of Conklin, County of Broome, and the State of New York, and described as follows:

Beginning at a point on the westerly boundary of Broome Corporate Parkway, County Route 197, at its intersection with the division line between the property of the Town of Conklin on the south and the property of the Broome County Industrial Development Agency on the north;

Thence South 84°44'11" West along said division line between the property of the Town of Conklin on the south and the properties of Broome County Industrial Development Agency and Maple Lane Holdings, LLC on the north a distance of 850.00 feet to a rebar with cap found;

Thence southerly and easterly along the division line between the property of the Town of Conklin on the east and north and the property of Maple Lane Holdings, LLC on the west and south;

1) South 05°15'49" East a distance of 400.00 feet to a rebar with cap found;

2) South 53°26'37" East a distance of 509.90 feet to a rebar with cap found;

3) North 84°44'11" East a distance of 386.70 feet to a 5/8" rebar found on the said westerly boundary of Broome Corporate Parkway;

Thence northerly along said road boundary on a curve to the right a distance of 745.63 feet having a radius of 4252.00 feet and subtended by a chord having a length of 744.67 feet with a bearing of North 01°09'33" East to the POINT OF BEGINNING.

The above described parcel contains 12.063± acres or 525465± square feet.

EXHIBIT B
To
Declaration of Covenants, Restrictions and Environmental Easement
Survey of Conklin Dumps Superfund Site
[LOWER LANDFILL]
(15.6248 ± Acres)
Declaration of Covenants, Restrictions, and Environmental Easement - Lower Landfill Area

Description:

Being all that tract or parcel of Land, situate in the Town of Conklin, County of Broome, and the State of New York, and described as follows:

Beginning at a point in the southeasterly corner of the premises herein described being on the division line between the property of the Town of Conklin on the north, the property of Broome County Industrial Development Agency on the south and the property of Delaware & Hudson Railroad on the east;

thence westerly, northerly and easterly along said division line between the property of the Town of Conklin and the property of the Broome County Industrial Development Agency the following three (3) courses and distances:

1) South 84°37'08" West a distance of 830.00 feet to a point;

2) North 00°32'40" East a distance of 957.66 feet to a point;

3) North 84°44'11" East a distance of 600.00 feet to a point on the division line between the property of the Town of Conklin on the west and the property of the Delaware & Hudson Railroad on the east;

thence South 13°13'47" East a distance of 960.31 feet along said division line to the POINT OF BEGINNING.

The above described parcel contains 15.6248 acres or 680618 square feet of land


SCHEDULE "A" RIGHT OF WAY AND ACCESS DESCRIPTION:

Beginning at a point on the westerly highway boundary of Conklin Road, NYS Route 7 at its intersection with the division line between the property of James Slavitsky and Karie Slavitsky on the north and the property of the Town of Conklin on the south;

thence South 84°51'56" West a distance of 766.66 feet along said division line to a point on the division line between the property of James Slavitsky and Karie Slavitsky on the east and the property of Delaware & Hudson Railroad on the west;

thence North 13°13'47" West a distance of 50.50 feet along said division line to a point;

thence North 84°51'56" East a distance of 777.04 feet through the property of James Slavitsky and Karie Slavitsky to a point on the said westerly highway boundary of Conklin Road, NYS Route 7;
NOTES:
1) SURVEY WAS MADE IN COMPLIANCE WITH NEW YORK STATE LABOR LAW #253 (1967) AND HAS BEEN FILED IN THE OFFICE OF THE CLERK OF THE TOWN OF CONKLIN, BROOME COUNTY, NEW YORK.
2) NO PROPERTY OWNERS TO BE NOTICED.
3) SURVEY MADE BASED ON AN ALTA/ACSM LAND TITLE SURVEY.
4) REFERENCES:
   1) REFERENCE TO THE CURRENT OWNER OF THE LAND.
   2) REFERENCE TO THE PREVIOUS OWNER OF THE LAND.
   3) REFERENCE TO THE ORIGINAL OWNER OF THE LAND.
   4) REFERENCE TO THE RESTRICTIONS OR EASEMENTS.

REVISION TABLE

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ALTA/ACSM LAND TITLE SURVEY
SURVEY OF COVENANTS, RESTRICTIONS, AND ENVIROMENTAL EASEMENT AREA
ON LANDS OWNED BY THE TOWN OF CONKLIN
TAX MAP NO. 194.04-1-2 & 194.04-1-18
TOWN OF CONKLIN, BROOME COUNTY, NY

SHUMAKER ENGINEERING & LAND SURVEYING P.C.
1308 E. MAIN STREET, BROCKPORT, NY 14420
PHONE 585-796-6800