

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

THIS INDENTURE made this 18th day of JANUARY, 2017, between Owner(s) New York City Department of Environmental Protection, having an office at 59-17 Junction Blvd, Flushing NY 11371, County of Queens, 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 remaining 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 1121 Viele Avenue and 1240 Viele Avenue in the City of New York, County of Bronx and State of New York, known and designated on the tax map of the County Clerk of Bronx as tax map parcel numbers: Block 2777 Lots 901, 100, 105 and 600 and Block 2779 Lot 1, being the same as that property conveyed to Grantor by deed dated November 1, 1922 and recorded in the Bronx County Clerk's Office in Liber and Page 422/356. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 13.22 +/- acres, and is hereinafter more fully described in the Land Title Survey dated April 9, 2016 and last revised November 7, 2016 prepared by Matthew Ziolkowski, P.L.S. of Munoz Engineering P.C., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A and Schedule B; 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 and the terms and conditions of State Assistance Contract Number: C302809, 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") 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), including passive recreational uses, which are public uses with limited potential for soil contact on that portion of the Controlled Property described in Schedule A (Block 2777 Lot 901) as the "Commercial With Passive Recreational Use Easement", and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv) on that portion of the Controlled Property described in Schedule B (Block 2777 Lots 100, 105, and 600 and Block 2779 Lot 1) as the "Industrial Use Easement".

(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 Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), except that portion of the controlled property identified in Schedule B herein (the Industrial Use Easement parcel consisting of Block 2777 Lots 100, 105, and 600 and Block 2779 Lot 1), which shall not be used for Residential, Restricted Residential or Commercial purposes as defined in 6NYCRR 375-1.8(g)(i), (ii) and (iii), 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. 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, 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, 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 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 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, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: B00032
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. 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.

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.

New York City Department of Environmental Protection:

By: [Signature]

Print Name: Vincent Sapienza

Title: Acting Commissioner Date: 1/13/17

Grantor's Acknowledgment

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

APPROVED AS TO FORM
[Signature]
ACTING CORPORATION COUNSEL
JAN 09 2017

On the 13 day of January, in the year 2017, before me, the undersigned, personally appeared Vincent Sapienza, 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

RUBEN BELL PASCARELLI
Commissioner of Deeds
City of New York No. 4-2889
Notation Expires 1.1.18

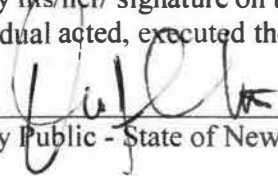
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

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

Grantee's Acknowledgment

APPROVED AS TO FORM
STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 18th day of January, in the year 2017, 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
Expires August 22, 2018

SCHEDULE "A" PROPERTY DESCRIPTION

COMMERCIAL WITH PASSIVE RECREATIONAL USE EASEMENT

Block 2777 Lot 901

BEGINNING at the intersection of the southerly line of Viele Avenue (100' wide) with the easterly line of Tiffany Street (100' wide);

Thence easterly along the southerly line of Viele Avenue 472.61 feet to a point;
Thence southerly at right angles to Viele Avenue 600.97 feet to a point;
Thence southwesterly on a line forming an interior angle of 112 degrees 22 minutes 40 seconds with the last mentioned course, 158.74 feet to a point on the U.S. Bulkhead Line and shoreline;
Thence along said shoreline the following courses:

Northwesterly at right angles with the last mentioned course, 124.97 feet to a point;
Thence northwesterly on a line forming an interior angle of 176 degrees 59 minutes 10 seconds with the last mentioned course, 68.41 feet to a point;
Thence northwesterly on a line forming an interior angle of 187 degrees 40 minutes 46 seconds with the last mentioned course, 29.07 feet to a point of curve;
Thence northeasterly along a curve to the right having a radius of 11.67 feet, a central angle of 53 degrees 02 minutes 02 seconds, an arc length of 10.80 feet, an interior chord angle with the last mentioned course of 153 degrees 28 minutes 59 seconds, 10.42 feet to a point;
Thence northeasterly on a line forming an interior angle of 157 degrees 50 minutes 03 seconds with the last mentioned chord, 21.72 feet to a curve;
Thence northwesterly along a curve to the left having a radius of 16.40 feet, a central angle of 85 degrees 55 minutes 29 seconds, an arc length of 24.60 feet, an interior chord angle with the last mentioned course of 242 degrees 04 minutes 33 seconds, 22.36 feet to a point;
Thence southwesterly on a line forming an interior angle of 229 degrees 26 minutes 48 seconds with the last mentioned course, 50.47 feet to a point;
Thence southwesterly on a line forming an interior angle of 196 degrees 50 minutes 51 seconds with the last mentioned course, 132.04 feet to a curve;
Thence northwesterly along a curve to the right having a radius of 74.05 feet, a central angle of 67 degrees 04 minutes 21 seconds, an arc length of 86.69 feet, an interior chord angle with the last mentioned course of 146 degrees 27 minutes 50 seconds, 81.82 feet to a point;
Thence northwesterly on a line forming an interior angle of 143 degrees 58 minutes 44 seconds with the last mentioned course, 60.41 feet to a point;
Thence northwesterly on a line forming an interior angle of 193 degrees 04 minutes 44 seconds with the last mentioned course, 38.47 feet to a point;
Thence northwesterly on a line forming an interior angle of 161 degrees 40 minutes 50 seconds with the last mentioned course, 67.95 feet to a point;
Thence northwesterly on a line forming an interior angle of 171 degrees 17 minutes 52 seconds with the last mentioned course, 17.80 feet to a point of curve;
Thence northwesterly along a curve to the left having a radius of 10.93 feet, a central angle of 81 degrees 28 minutes 31 seconds, an arc length of 15.55 feet, an interior chord angle with the last mentioned course of 205 degrees 13 minutes 30 seconds, 14.27 feet to a point of reverse curve;
Thence northwesterly along a curve to the right having a radius of 11.57 feet, a central angle of 78 degrees 50 minutes 48 seconds, an arc length of 15.93 feet, an interior chord angle with the last mentioned course of 188 degrees 51 minutes 10 seconds, 14.70 feet to a point;

Thence northwesterly on a line forming an interior angle of 130 degrees 48 minutes 04 seconds with the last mentioned course, 60.75 feet to a point;

Thence northwesterly on a line forming an interior angle of 166 degrees 00 minutes 30 seconds with the last mentioned course, 28.68 feet to a point on the southerly extension of the easterly line of Tiffany Street;

Thence northeasterly along the southerly extension of the easterly line of Tiffany Street and the easterly line of Tiffany Street forming an interior angle of 142 degrees 58 minutes 55 seconds with the last mentioned course, 230.97 feet, forming an interior angle of 132 degrees 54 minutes 00 seconds with the first course, to the Point of BEGINNING.

Subject to a 35-foot sewer easement and a 25-foot NYC Shaft No. 8A Easement.

Containing 283,928 Square Feet or 6.52 Acres.

SCHEDULE "B" PROPERTY DESCRIPTION

INDUSTRIAL USE EASEMENT

Block 2777 Lots 100, 105, and 600 and Block 2779 Lot 1

BEGINNING at a point on the southerly line of Viele Avenue (100' wide), said point being 472.61 feet easterly from the intersection of the southerly line of Viele Avenue with the easterly line of Tiffany Street (100' wide);

Thence easterly along said southerly line of Viele Avenue 260.00 feet to the former westerly line of Manida Street;

Thence southerly at right angles to Viele Avenue, 700.00 feet to a point on the southerly line of Ryawa Avenue (100' wide);

Thence westerly along the westerly prolongation of said Ryawa Avenue, at right angles with the last mentioned course, 120.15 feet to a point;

Thence southerly at right angles with the last mentioned course, 415.00 feet to a point;

Thence easterly at right angles with the last mentioned course, 120.15 feet to a point;

Thence southerly at right angles with the last mentioned course, 9.40 feet to a point;

Thence southwesterly on a line forming an interior angle of 160 degrees 41 minutes 05 seconds with the last mentioned course, 150.33 feet to a point;

Thence southwesterly on a line forming an interior angle of 131 degrees 41 minutes 35 seconds with the last mentioned course, 78.66 feet to the shoreline;

Thence along said shoreline the following courses:

Northwesterly on a line forming an interior angle of 73 degrees 13 minutes 31 seconds with the last mentioned course, 85.48 feet to a point;

Thence northwesterly on a line forming an interior angle of 193 degrees 09 minutes 59 seconds with the last mentioned course, 61.14 feet to a point;

Thence northwesterly on a line forming an interior angle of 193 degrees 24 minutes 15 seconds with the last mentioned course, 162.28 feet to a point;

Thence northwesterly on a line forming an interior angle of 184 degrees 16 minutes 25 seconds with the last mentioned course, 47.90 feet to a point;

Thence northwesterly on a line forming an interior angle of 185 degrees 35 minutes 23 seconds with the last mentioned course, 171.69 feet to a point;

Thence northwesterly on a line forming an interior angle of 169 degrees 32 minutes 03. seconds with the last mentioned coarse, 38.77 feet to a point;

Thence northwesterly on a line forming an interior angle of 152 degrees 08 minutes 06 seconds with the last mentioned coarse, 36.35 feet to a point;

Thence northwesterly on a line forming an interior angle of 163 degrees 52 minutes 42 seconds with the last mentioned coarse, 18.90 feet to a point;

Thence northeasterly on a line forming an interior angle of 111 degrees 55 minutes 41 seconds with the last mentioned coarse, 24.18 feet to a point;

Thence northwesterly on a line forming an interior angle of 244 degrees 39 minutes 54 seconds with the last mentioned coarse, 14.23 feet to a point;

Thence northeasterly on a line forming an interior angle of 95 degrees 12 minutes 02 seconds with the last mentioned coarse, 17.43 feet to a point;

Thence northwesterly at right angles with the last mentioned course, 70.00 feet to a point;

Thence northeasterly at right angles with the last mentioned course, 158.74 feet to a point:
Thence northwesterly on a line forming an interior angle of 247 degrees 37 minutes 20 seconds
with the last mentioned course, 600.97 feet and at right angles to the first course, to the Point of
BEGINNING.

Subject to a 35-foot sewer easement, a 25-foot NYC Shaft No. 8A Easement, and a 30-foot NYC
Tunnel No. 2 Easement.

Containing 291,373 Square Feet or 6.7 Acres