

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

**THIS INDENTURE** made this 12<sup>th</sup> day of September, 2016, between Owner(s) HP East 138th Street Housing Development Fund Company, Inc., (the "Grantor Fee Owner") having an office at c/o Housing Partnership Development Corporation, 242 West 36th Street, 3rd Floor, New York, New York 10018, County of New York, State of New York, and East 138th Street LLC, (the "Grantor Beneficial Owner"), having an office at c/o Urban Builders Collaborative, LLC, 334-336 East 110th Street, New York, New York 10029, County of New York, State of New York (collectively, 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 255 East 138th Street in the City of New York, County of Bronx and State of New York, known and designated on the tax map of the New York City Department of Finance as tax map parcel numbers: Block 2333 Lot 1, being the same as that property conveyed to Grantor by deed dated June 26, 2015 and recorded in the City Register of the City of New York at CRFN # 2015000253015. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.35874 +/- acres, and is hereinafter more fully described in the Land Title Survey dated June 9, 2015 and last revised June 15, 2016 prepared by Saeid Jalilvand, NYSLLS of Montrose Surveying Co., LLP, which will be attached to the Site Management Plan. The Controlled Property

descriptions are set forth in and attached hereto as Schedule A (Track 2 Area) and Schedule B (Track 4 Area); and

**WHEREAS**, Grantor Beneficial Owner, is the owner of the beneficial interest in the Controlled Property being the same as a portion of that beneficial interest conveyed to Grantor Beneficial Owner by means of a Declaration of Interest and Nominee Agreement dated June 26, 2015 and recorded in the City Register of the City of New York at CRFN # 2015000253016; 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 Brownfield Cleanup Agreement Index Number: C203057-05-11 as amended September 4, 2015, 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:

**Residential as described in 6 NYCRR Part 375-1.8(g)(2)(i), Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii), 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) except that portion of the Controlled Property described in Schedule B as the "Track 4 Parcel", which may be used for Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii), 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 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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the New York City Department of Health and Mental Hygiene 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) 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 raising livestock or producing animal products for human consumption, except that portion of the controlled property identified in Schedule B herein (the Track 4 parcel), which shall not be used for Residential purposes as defined in 6 NYCRR 375-1.8(g)(2)(i), 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



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

HP East 138th Street Housing Development Fund Company, Inc.:

By: [Signature]

Print Name: Daniel M. Cohen

Title: Vice President Date: 8/18/2016

**Grantor Fee Owner's Acknowledgment**

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

On the 18 day of August, in the year 2016, before me, the undersigned, personally appeared Daniel M. Cohen, 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.

Nadja K. Alvarado  
Notary Public - State of New York

Nadja K Alvarado  
Notary Public, State of New York  
No.01AL6139746  
Qualified in New York County  
Commission Expires Jan.17,2018

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

East 138th Street LLC.  
By: [Signature]  
Print Name: Nicholas Lettore  
Title: Managing Member Date: 8/15/16

**Grantor Beneficial Owner's Acknowledgment**

STATE OF NEW YORK )  
 ) ss: EDYTA SANTIAGO  
COUNTY OF KING ) Notary Public, State of New York  
 ) No. 01SA6330571  
 ) Qualified in Kings County  
 ) Commission Expires 09/14/20\_\_

On the 15<sup>th</sup> day of August, in the year 2016, before me, the undersigned, personally appeared Nicholas Lettore, 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.

Edyta Santiago  
Notary Public - State of New York





**SCHEDULE "A" PROPERTY DESCRIPTION TRACK 2 PARCEL**

**METES AND BOUNDS DESCRIPTION**

**Track 2 Cleanup Standards Achieved Area**

ALL that certain plot, piece, or parcel of land situate, lying and being in the Borough and County of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of East 138<sup>th</sup> Street (100 feet wide), distant 52.81 feet (52.87 feet U.S.) easterly from the corner formed by the intersection of the northerly side of East 138<sup>th</sup> Street with the easterly side of Rider Avenue (60 feet wide);

RUNNING THENCE northerly, parallel with the easterly side of Rider Avenue, 92.08 feet to a point;

RUNNING THENCE easterly, at right angles to the last mentioned course, 147.92 feet (148.08 feet U.S.) to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 19.91 feet to a point;

RUNNING THENCE easterly, at right angles to the westerly side of 3<sup>rd</sup> Avenue (Irregular width) 34.92 feet (34.96 feet U.S.) to the westerly side of 3<sup>rd</sup> Avenue;

RUNNING THENCE southerly along the westerly side of 3<sup>rd</sup> Avenue, 10.05 feet to a point;

RUNNING THENCE westerly, at right angles to the last mentioned course, 71.13 feet (71.21 feet U.S.) to a point of curvature;

RUNNING THENCE southwesterly and southerly, along a curve bearing to the left, having a radius of 5.60 feet, an arc length of 8.80 feet to a point of tangency;

RUNNING THENCE southerly, at right angles to the northerly side of East 138<sup>th</sup> Street, 56.62 feet to the northerly side of East 138<sup>th</sup> Street;

RUNNING THENCE westerly, along the northerly side of East 138<sup>th</sup> Street, 106.11 feet (106.23 feet U.S.) to the point or place of BEGINNING

The area of above described track is 11,394 sq. ft. or 0.26157 acre.

**SCHEDULE "B" PROPERTY DESCRIPTION TRACK 4 PARCEL**

**METES AND BOUNDS DESCRIPTION**

**Track 4 Cleanup Standards Achieved Area**

ALL that certain plot, piece, or parcel of land situate, lying in the Borough and County of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of 3<sup>rd</sup> Avenue (Irregular width) distant 76.04 feet northerly from the corner formed by the intersection of the westerly side of 3<sup>rd</sup> Avenue with the northerly side of East 138<sup>th</sup> Street (100 feet wide);

RUNNING THENCE northerly, along the westerly side of 3<sup>rd</sup> Avenue, 3.87 feet to a point;

RUNNING THENCE westerly, along a line forming an angle of 94 degrees 34 minutes 20 seconds on the southwest with the westerly side of 3<sup>rd</sup> Avenue, 32.15 feet (32.19 feet U.S.) to a point;

RUNNING THENCE northerly, along a line forming an angle of 89 degrees 46 minutes 15 seconds on the northeast with the last mentioned course, 21.47 feet to the centerline of the block;

RUNNING THENCE westerly, along the centerline of the block, along a line forming an angle of 85 degrees 11 minutes 55 seconds on the southwest with the last mentioned course, 180.40 feet (180.59 feet U.S.) to a point;

RUNNING THENCE southerly, parallel with the easterly side of Rider Avenue (60 feet wide) 100 feet to the northerly side of East 138<sup>th</sup> Street:

RUNNING THENCE easterly, along the northerly side of East 138<sup>th</sup> Street, 27.81 feet (27.84 feet U.S.) to a point;

RUNNING THENCE northerly, parallel with the easterly side of Rider Avenue 92.08 feet to a point;

RUNNING THENCE easterly, at right angles to the last mentioned course, 147.92 feet (148.08 feet U.S.) to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 19.91 feet to a point;

RUNNING THENCE easterly, at right angles to the westerly side of 3<sup>rd</sup> Avenue, 34.92 feet (34.96 feet U.S.) to the westerly side of 3<sup>rd</sup> Avenue, the point or place of BEGINNING.

The area of above described track is 4,221 sq. ft. or 0.09690 acre.