

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

THIS INDENTURE made this 16th day of JUNE, 2016, between LIC Development Owner, L.P., having an office at c/o Tishman Speyer, 45 Rockefeller Center, New York, New York 10111, County of New York, 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 28-02 Jackson Avenue, 28-30 Jackson Avenue and 30-02 Queens Boulevard in the City of New York, County of Queens 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 263, Lot 9, and Block 264, Lots 1 and 17 (the "Property") as more fully described in Schedule A hereto, pursuant to (i) that certain Bargain and Sale Deed from Outlet City, Inc. to Grantor dated June 13, 2014 and recorded in the City Register of the City of New York (the "Register") in City Register File Number ("CRFN") 2014000218359, (ii) that certain Deed from TST LIC Development, L.L.C. to Grantor dated June 13, 2014 and recorded in the Register as CRFN 2014000218158, and (iii) that certain Quitclaim Indenture from The City of New York to Grantor dated November 18, 2014 and recorded in the Register as CRFN 2014000406406. The portion of the Property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.883 +/- acres, and is hereinafter more fully described in the Land Title Survey dated June 6, 2015 prepared by Saeid Jalilvand, LLS of Montrose Surveying Co., LLP, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as 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 Brownfield Cleanup Agreement Index Number: C241151-05-14, 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:

**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 NYSDOH or 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 Residential purposes as defined in 6NYCRR 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

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.

Remainder of Page Intentionally Left Blank

SCHEDULE "A" PROPERTY DESCRIPTION

Tax Block 264 Tax Lot 1

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

BEGINNING at the corner formed by the intersection of the easterly side of Orchard Street (60 feet wide) with the southerly side of Jackson Avenue (100 feet wide);

RUNNING THENCE easterly, along the southerly side of Jackson Avenue, 99.92 feet to a point;

RUNNING THENCE southerly, at right angles to the southerly side of Jackson Avenue, 125.00 feet to a point;

RUNNING THENCE easterly, at right angles to the last mentioned course, 49.97 feet to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 37.50 feet to a point;

RUNNING THENCE westerly, at right angles to the last mentioned course, 53.97 feet to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 28.75 feet to a point;

RUNNING THENCE westerly, at right angles to the last mentioned course, 64.25 feet to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 24.58 feet to a point;

RUNNING THENCE westerly, at right angles to the easterly side of Orchard Street, 31.67 feet to the easterly side of Orchard Street;

RUNNING THENCE northerly, along the easterly side of Orchard Street, 215.83 feet to the corner, the point or place of BEGINNING.

Tax Block 264 Tax Lot 17

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

BEGINNING at a point on the easterly side of Orchard Street (60 feet wide) distant 215.83 feet southerly from the corner formed by the intersection of the easterly side of Orchard Street with the southerly side of Jackson Avenue (100 feet wide);

RUNNING THENCE easterly, at right angles to the easterly side of Orchard Street, 31.67 feet to a point;

RUNNING THENCE northerly, at right angles to the last mentioned course, 24.58 feet to a point;

RUNNING THENCE easterly, at right angles to the last mentioned course, 64.25 feet to a point;

RUNNING THENCE northerly, at right angles to the last mentioned course, 28.75 feet to a point;

RUNNING THENCE easterly, at right angles to the last mentioned course, 53.97 feet to a point;

RUNNING THENCE northerly, at right angles to the southerly side of Jackson Avenue, 162.50 feet to the southerly side of Jackson Avenue;

RUNNING THENCE easterly, along the southerly side of Jackson Avenue, 185.92 feet to a point;

RUNNING THENCE southerly, at right angles to the southerly side of Jackson Avenue, 41.58 feet to a point;

RUNNING THENCE westerly, at right angles to the last mentioned course, 23.50 feet to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 32.08 feet to a point;

RUNNING THENCE westerly, at right angles to the last mentioned course, 2.50 feet to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 188.16 feet to the northwesterly side of the Long Island Rail Road;

RUNNING THENCE southwesterly, along the northwesterly side of the Long Island Rail Road, along a line forming an angle of 107 degrees 55 minutes 03 seconds on the northwest with the last mentioned course, 63.06 feet to an angle point;

RUNNING THENCE southwesterly, continuing along the northwesterly side of the Long Island Rail Road, along a line forming an angle of 179 degrees 50 minutes 46 seconds on the northwest with the northwesterly side of the Long Island Rail Road, 262.32 feet to the easterly side of Orchard Street;

RUNNING THENCE northerly, along the easterly side of Orchard Street, 145.42 feet to the point or place of BEGINNING.

Tax Block 263 Tax Lot 9

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

BEGINNING at the corner formed by the intersection of the southerly side of Jackson Avenue (100 feet wide) with the southwesterly side of Queens Boulevard (100 feet wide);

RUNNING THENCE southeasterly, along the southwesterly side of Queens Boulevard, 221.67 feet to the northwesterly side of the Long Island Railroad;

RUNNING THENCE southwesterly, along the northwesterly side of the Long Island Railroad, along a line forming an angle of 94 degrees 56 minutes 45 seconds on the southwest with the northwesterly side of Queens Boulevard, 149.79 feet to a point;

RUNNING THENCE northerly, along a line forming an angle of 72 degrees 15 minutes 10 seconds on the northeast with the northwesterly side of the Long Island Railroad, 188.16 feet to a point;

RUNNING THENCE easterly, at right angles to the last mentioned course, 2.50 feet to a point;

RUNNING THENCE northerly, at right angles to the last mentioned course, 32.08 feet to a point;

RUNNING THENCE easterly, at right angles to the last mentioned course, 23.50 feet to a point;

RUNNING THENCE northerly, at right angles to the southerly side of Jackson Avenue, 41.58 feet to the southerly side of Jackson Avenue;

RUNNING THENCE easterly, at right angles to the last mentioned course, 67.55 feet to the corner, the point or place of BEGINNING.

SCHEDULE "B" CONTROLLED PROPERTY DESCRIPTION

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

BEGINNING at a point on the easterly side of Orchard Street (60 feet wide) distant 226.50 feet southerly from the corner formed by the intersection of the easterly side of Orchard Street with the southerly side of Jackson Avenue (100 feet wide);

RUNNING THENCE easterly, parallel with the southerly side of Jackson Avenue, 95.89 feet to a point;

RUNNING THENCE northerly, parallel with the easterly side of Orchard Street, 76.30 feet to a point;

RUNNING THENCE easterly, parallel with the southerly side of Jackson Avenue, 54.00 feet to a point;

RUNNING THENCE northerly, parallel with the easterly side of Orchard Street, 150.20 feet to the southerly side of Jackson Avenue;

RUNNING THENCE easterly, along the southerly side of Jackson Avenue, 99.92 feet to a point;

RUNNING THENCE southerly, at right angles to the southerly side of Jackson Avenue, 233.94 feet to a point;

RUNNING THENCE northeasterly, along a line forming an angle of 72 degrees 07 minutes 37 seconds on the northeast, with the last mentioned course, 63.04 feet to a point;

RUNNING THENCE northerly, at right angles to the southerly side of Jackson Avenue, 214.59 feet to the southerly side of Jackson Avenue;

RUNNING THENCE easterly, along the southerly side of Jackson Avenue, 93.55 feet to the corner formed by the intersection of the southerly side of Jackson Avenue, with the southwesterly side of Queens Boulevard (100 feet wide);

RUNNING THENCE southeasterly, along the southwesterly side of Queens Boulevard, 221.67 feet to the northwesterly side of the Long Island Railroad;

RUNNING THENCE southwesterly, the following three courses and distances along the northwesterly side of the Long Island Railroad;

1. THENCE southwesterly, along a line forming an angle of 94 degrees 56 minutes 44 seconds on the southwest with the southwesterly side of Queens Boulevard, 149.79 feet to an angle point;

2. THENCE southwesterly, along a line forming an angle of 180 degrees 10 minutes 14 seconds on the northwest with the last mentioned course, 63.06 feet to an angle point;

3. THENCE southwesterly, along a line forming an angle of 179 degrees 50 minutes 46 seconds on the northwest with the last mentioned course, 262.32 feet to the easterly side of Orchard Street;

RUNNING THENCE northerly, along the easterly side of Orchard Street, 134.75 feet to the point or place of BEGINNING.