

ENVIRONMENTAL EASEMENT

THIS INDENTURE made this 17th day of August, 2006, between City of Poughkeepsie Industrial Development Agency (Grantor Fee Owner), a public benefit corporation of the State of New York, having an office at 62 Civic Center Plaza, City Hall, P.O. Box 300, Poughkeepsie, New York, and Poughkeepsie Waterfront Development, LLC (Grantor Leasehold Owner), a New York limited liability company, having an office at c/o Anthony's Pier 9, 2975 Route 9W, New Windsor, New York 12553 (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 (brownfield 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 of ensuring the potential 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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor Fee Owner, is the owner of real property located at Rinaldi Boulevard and Hurlihe Street in the City of Poughkeepsie, Dutchess County, New York known and designated on the tax map of Dutchess County as tax map number 131300-601-26-744884, being the same as the property conveyed to Grantor Fee Owner by deed on March 29, 2004, and recorded in the Land Records of the Dutchess County Clerk's Office as Document # 02-2004-4060, comprised of approximately 5.47 acres, and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the Controlled Property); and;

WHEREAS, Grantor Leasehold Owner, is the owner of the leasehold interest in the Controlled

Property being the same as that leasehold interest acquired by Memorandum of Lease Agreement dated 3/29/04 and recorded 3/30/04 in the Dutchess County Clerk's Office as Document Number 02-2004-4063; and;

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this 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 covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index No.: W3-1008-04-06, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL 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 potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls 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. The Controlled Property may be used for commercial use as long as the following long-term engineering controls are employed:

a) the use of the groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for intended purpose;

b) any soil disturbance on the Controlled Property must be in a manner specified in the NYSDEC-approved Site Management Plan;

c) any soil contain within the primary soil consolidation zone and the secondary soil consolidation zone (collectively the "Soil Consolidation Zone") comprised of approximately 0.45 acres lying within the Controlled Property, and hereinafter more fully described in Schedule B attached hereto and made part hereof, must remain covered as specified in the NYSDEC-approved Site Management Plan by the barrier system consisting of a demarcation fabric (*e.g.* geotextile) and covered with one foot of soil or the concrete slab of the commercial building, as designed and constructed as part of the

approved remedial action under the Brownfield Cleanup Agreement.

B. The Controlled Property may not be used for a higher level of use such as restricted residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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 of Title 36 to Article 71 of the Environmental Conservation Law.

D. 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.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 Controlled 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 the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, 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 intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or the Satisfactory Completion of Project provided under ECL Article 56, Title 5 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. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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 its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/identification number and address correspondence to:

Division of Environmental Enforcement
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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.

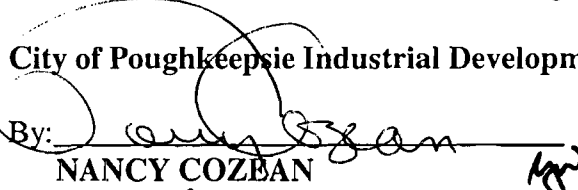
8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed 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 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.

City of Poughkeepsie Industrial Development Agency

By: 
NANCY COZBEAN
Title: MAYOR

Date: August 17, 2006

Poughkeepsie Waterfront Development, LLC

By: 
JOSEPH A. BONURA, JR

Title: Operating Manager

Date: August 17, 2006

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

By: Denise M. Sheehan
Denise M. Sheehan, Commissioner

Grantor Fee Owner's Acknowledgment

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

On the 17th day of August, in the year 2006, before me, the undersigned, personally appeared Nancy Cozean, 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.


Stephen J. Wing
Notary Public - State of New York
STEPHEN J. WING
Notary Public, State of New York
Qualified in Dutchess County
Reg. No. 02WI4504343
February 28, 2010

Grantor Leasehold Owner's Acknowledgment

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

On the 17th day of August, in the year 2006, before me, the undersigned, personally appeared Joseph A. Bonura, Jr., 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.

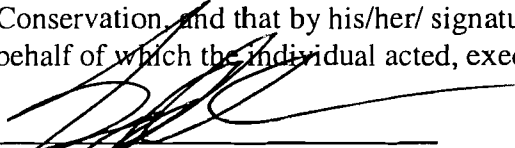

Notary Public - State of New York

JOSEPH P. RONES
Notary Public, State of New York
Qualified in Orange County
Commission Expires June 30, ~~19~~2010

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 25 day of August, in the year 2008, before me, the undersigned, personally appeared Denise M. Sheehan, 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 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

SCOTT OWENS
Notary Public, State of New York
No. 02OW6108092
Qualified in Albany County
Commission Expires April 12, 2008

**COMMONWEALTH
Land Title Insurance Company**

Title No: 061225

Schedule A Description

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

BEGINNING at a point marked by a concrete monument previously set at the southwesterly corner of the herein described parcel, being a point on the northerly bounds of lands of the City of Poughkeepsie, described in Liber 1255 of Deeds at page 647 and a point at the southeasterly corner of lands to be retained by the City of Poughkeepsie; thence from said point of beginning through lands of the City of Poughkeepsie, N 18°41'38" W 211.07 feet to a point and N 15°54'26" W 409.88 feet to a concrete monument at the northwesterly corner of the herein described parcel, being a point on the southerly bounds of lands of Hudson Terrace Owners Corp., as described in Liber 1643 of Deeds at page 882; thence along the division line between the herein described parcel and lands of Hudson Terrace Owners Corp., and along the southerly side of Hurlihe Street, S 78°40'16" E 558.84 feet and southeasterly on a curve to the right of radius 40.00 feet, an arc length of 63.27 feet, having a chord bearing S 33°21'27" E 56.88 feet to a point at the westerly side of Rinaldi Boulevard; thence along the westerly side of Rinaldi Boulevard, southwesterly on a curve to the right of radius 2072.00 feet, an arc length of 200.45 feet, having a chord bearing S 14°43'40" W 200.37 feet and S 17°30'08" W 484.10 feet to a point; thence leaving Rinaldi Boulevard and running along lands now or formerly of the City of Poughkeepsie, previously described, N 04°38'16" W 294.68 feet, S 46°44'54" W 57.80 feet, S 59°23'34" W 50.07 feet, S 75°44'14" W 10.14 feet, S 85°24'44" W 27.79 feet, S 87°51'44" W 19.07 feet, N 89°50'16" W 23.07 feet, S 63°15'54" W 4.81 feet and S 75°51'54" W 10.04 feet to the point or place of beginning.

CHAZEN ENGINEERING & LAND SURVEYING CO., P.C.

Capital District Office
Phone: (518) 235-8050

Orange County Office
Phone: (845) 567-1133

21 Fox Street, Poughkeepsie, New York 12601
Phone: (845) 454-3980 Fax: (845) 454-4026
Email: poughkeepsie@chazencompanies.com
Web: www.chazencompanies.com

North Country Office
Phone: (518) 812-0513

SURVEY DESCRIPTION SOIL CONSOLIDATION ZONE POUGHKEEPSIE WATERFRONT DEVELOPMENT, LLC BY THE CITY OF POUGHKEEPSIE

ALL that plot, piece or parcel of land situate and being in the City of Poughkeepsie, County of Dutchess and State of New York, lying below the hereinafter cited elevations, said elevations being referenced to the National Geodetic Vertical Datum of 1929 (NGVD '29), and being bounded and described as follows:

BEGINNING at a point being the northeast corner of the herein described easement said point being located South 47° 23' 04" West 408.15 feet from westerly terminus of the arc connecting the south line of Hurlihe Street with west line of Rinaldi Boulevard, said point being at elevation 34', thence through the lands now or formerly of the City of Poughkeepsie and continuing at elevation 34', South 77° 30' 00" West 88.09 feet, South 12° 30' 00" East 8.00 feet, South 77° 30' 00" West 22.01 feet, South 12° 30' 00" East 129.00 feet to a point, thence North 77° 30' 00" East 10.84 feet, to a point being at elevation 22', thence South 12° 30' 00" East 47.40 feet to a point being at elevation 15.8', thence continuing at elevation 15.8', North 79° 23' 56" East 77.43 feet, thence North 12° 30' 00" West 49.96 feet, to a point being at elevation 34', thence continuing at elevation 34', North 77° 30' 00" East 21.86 feet, North 12° 30' 00" West 39.58 feet, North 77° 30' 00" East 15.00 feet, North 12° 30' 00" West 25.00 feet, South 77° 30' 00" West 15.00 feet, North 12° 30' 00" West 37.67 feet, North 77° 30' 00" East 15.00 feet, North 12° 30' 00" West 26.75 feet, South 77° 30' 00" West 15.00 feet and North 12° 30' 00" West 8.00 feet to the point or place of beginning.

CONTAINING 0.45 ACRES OF LAND

August 07, 2006

SCHEDULE "B"