

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

THIS INDENTURE made this 13th day of November, 2012, between Owner Yonkers Community Development Agency, having an office at 87 Nepperhan Avenue, Yonkers, New York 10701, County of Westchester, 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 16 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 2, being the same as that property conveyed to Grantor by deed dated February 5, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7543/766.

WHEREAS, Grantor, is the owner of real property located at the address of 18 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 3, being the same as that property conveyed to Grantor by deed dated August 24, 1978 and recorded in the Westchester County Clerk's Office in Liber and Page 7496/112.

WHEREAS, Grantor, is the owner of real property located at the address of 20 Palisade

Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 4, being the same as that property conveyed to Grantor by deed dated August 23, 1978 and recorded in the Westchester County Clerk's Office in Liber and Page 7524/84.

WHEREAS, Grantor, is the owner of real property located at the address of 24 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 6, being the same as that property conveyed to Grantor by deed dated September 15, 1978 and recorded in the Westchester County Clerk's Office in Liber and Page 7501/353.

WHEREAS, Grantor, is the owner of real property located at the address of 26 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 7, being the same as that property conveyed to Grantor by deed dated September 19, 1978 and recorded in the Westchester County Clerk's Office in Liber and Page 7502/157.

WHEREAS, Grantor, is the owner of real property located at the address of 28 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 8, being the same as that property conveyed to Grantor by deed dated March 30, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7546/465.

WHEREAS, Grantor, is the owner of real property located at the address of 32 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 10, being the same as that property conveyed to Grantor by deed dated February 14, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7538/715.

WHEREAS, Grantor, is the owner of real property located at the address of 36 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 12, being the same as that property conveyed to Grantor by deed dated September 12, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7584/634.

WHEREAS, Grantor, is the owner of real property located at the address of 40 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 14, being the same as that property conveyed to Grantor by deed dated January 4, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7530/81.

WHEREAS, Grantor, is the owner of real property located at the address of 46 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 16, being the same as that property conveyed to Grantor by deed dated February 14, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7538/721.

WHEREAS, Grantor, is the owner of real property located at the address of 48 Palisade Avenue in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 485 Lot 18, being the same as that property conveyed to Grantor by deed dated February 14, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7538/723.

WHEREAS, Grantor, is the owner of real property located at the address of 23 John Street in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 486 Lot 15, being the same as that property conveyed to Grantor by deed dated February 14, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7538/713.

WHEREAS, Grantor, is the owner of real property located at the address of 25 John Street in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 1 Block 486 Lot 16, being the same as that property conveyed to Grantor by deed dated February 14, 1979 and recorded in the Westchester County Clerk's Office in Liber and Page 7538/719.

WHEREAS, the property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.184 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 2, 2017 prepared by Steven J. Willard, P.L.S. of Contractors' Line & Grade South, LLC, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; 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: A3-0572-1006 as amended August 21, 2017, 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 Westchester County Department of Health 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 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

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SCHEDULE "A" PROPERTY DESCRIPTION

**YONKERS COMMUNITY DEVELOPMENT AGENCY
ENVIRONMENTAL EASEMENT
LEGAL DESCRIPTION**

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the City of Yonkers, County of Westchester and State of New York, for the purposes of a BCP Site, being more particularly bounded and described as follows:

COMMENCING ALONG A TIE from the intersection of the southerly line of Palisade Avenue (formerly known as Factory Street) as established by "Map of Survey of Property No. 8 Palisade Avenue and SE Cor. of New Main Street and thru to James Street - Yonkers, NY" prepared by Chas. J. Dearing, dated October 27, 1937, last updated August 29, 1938 on file at the Office of the Title Guarantee and Trust Company as Title Nos. 6-001012, 6-002540, 6-002693 and 6-002941, with the northeasterly line of New Main Street (formerly known as Mechanic Street) as established by "Survey of Property situated in the City of Yonkers" prepared by Chas. J. Dearing, dated November 12, 1948 on file at the Office of the Title Guarantee and Trust Company as Title No. 6-024537 and "Map of Survey of Property Nos. 117 to 125 and No. 131 New Main Street - Yonkers, NY" prepared by John E. Warneck, dated December 4, 1948 on file at the Office of the Title Guarantee and Trust Company as Title No. 6-024537, as measured along the aforementioned southerly line of Palisade Avenue from said intersection to the southwesterly line of James Street as established by aforementioned Dearing Map (Title No. 6-001012, etc.) North 57°57'50" East, a distance of 230.04 feet, crossing James Street North 57°16'09" East, a distance of 58.18 feet to the northeasterly line of James Street to the **POINT OR PLACE OF BEGINNING:**

FROM SAID POINT OF BEGINNING;

CONTINUING along the aforementioned southerly line of Palisade Avenue as established by Liber 7543 Page 766, Liber 7496 Page 112, Liber 7524 Page 84, Liber 7501 Page 353, Liber 7502 Page 157, Liber 7546 Page 465, Liber 7538 Page 715, Liber 7584 Page 634, Liber 7530 Page 81, Liber 7538 Page 721, and "Map of the S. Shethar Property" prepared by George Rayner dated April 12, 1899 and filed December 22, 1904 as Westchester County Clerk Map No. 1446, North 70°56'38" East, a distance of 445.81 feet to the intersection of the aforementioned southerly line of Palisade Avenue and the extension of the southerly line of Elm Street, as established by the aforementioned Rayner Map (Map No. 1446);

THENCE along the aforementioned extension of the southerly line of Elm Street, South 77°18'48" East, a distance of 5.45 feet to the westerly line of School Street and continuing along same, the following two (2) courses and distances;

- 1) South 19°03'22" East, a distance of 71.71 feet and
- 2) South 01°02'32" East, a distance of 143.45 feet to the northerly line of John Street;

THENCE along the aforementioned northerly line of John Street, South 70°56'38" West, a distance of 59.15 feet;

THENCE North 19°03'22" West, a distance of 111.00 feet;

THENCE South 70°56'38" West, a distance of 297.08 feet;

THENCE North 82°22'18" West, a distance of 28.73 feet;

THENCE North 19°03'19" West, a distance of 46.48 feet;

THENCE South 54°14'52" West, a distance of 11.99 feet to the aforementioned northeasterly line of James Street;

CONTINUING along same, North 35°45'08" West, a distance of 46.00 feet to the **POINT OR PLACE OF BEGINNING**.

CONTAINING an area of 51,587 square feet or 1.184 acres of land more or less.