

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

THIS INDENTURE made this 22nd day of July, 2016 between Owner(s) County of Westchester Industrial Development Agency, having an office at 148 Martine Avenue, White Plains, New York 10601, 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 45 Stew Leonard Drive, 65 Austin Avenue and parts of the paper streets known as Stew Leonard Drive (f/k/a Corporate Drive) and Austin 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 3 Block 3244 Lot 4, Section 3 Block 3244 Lot 7, and Section 3 Block 8001 Lot 40 (p/o), being a portion of the property conveyed to Grantor by:

- (1) Deed dated May 3, 1989, made by The County of Westchester and recorded in the Office of the Westchester County Clerk on May 16, 1989, in Liber 9528, Page 268;
- (2) Deeds dated April 28, 1988, from the City of Yonkers Industrial Development Agency and recorded on March 28, 1988 in Liber 9483, Pages 208, 211, 215, 218 and 221;

- (3) Deed dated June 28, 1989, from 1154 Saw Mill River Road Realty Co., Inc. and recorded in the Office of the Westchester County Clerk on June 30, 1989, in Liber 9571, Page 12; and,
- (4) Deed dated August 15, 1995, from the City of Yonkers and recorded in the Office of the Westchester County Clerk on August 16, 1995, in Liber 11215, Page 79.

WHEREAS, the property subject to this Environmental Easement (the "Controlled Property") comprises approximately 9.929 +/- acres, and is hereinafter more fully described in the Land Title Survey dated May 29, 2014 and last revised November 17, 2015 prepared by Thomas M. Schmidt, N.Y.S.L.L.S., 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: C360116-04-11 as amended September 17, 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:

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 or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), 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.

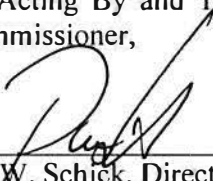
B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

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

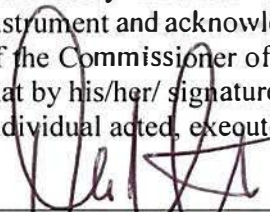
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

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

Grantee's Acknowledgment

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

On the 22nd day of July, in the year 2016 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
Commission Expires August 22, 2018

SCHEDULE "A" PROPERTY 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 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE EASTERLY LINE OF PROPOSED STEW LEONARD DRIVE (CORPORATE DRIVE) AT THE SOUTHERLY END OF A CURVE HAVING A RADIUS OF 40.00 FEET AND CONNECTING THE SAID EASTERLY LINE OF STEW LEONARD DRIVE (CORPORATE DRIVE) WITH THE SOUTHERLY LINE OF THE PROPOSED RELOCATED AUSTIN AVENUE AS SHOWN ON A MAP TITLED "CITY OF YONKERS DEPARTMENT OF ENGINEERING LAYING OUT AND OPENING OF CORPORATE DRIVE" PREPARED BY ARISTOTLE BOURNAZOS P.C. AND FILED ON OCTOBER 3, 1989 IN THE WESTCHESTER COUNTY CLERK'S OFFICE AS MAP NO. 23901;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 40.00 FEET, A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS AND AN ARC LENGTH OF 62.83 FEET TO THE SAID EASTERLY LINE OF STEW LEONARD DRIVE (CORPORATE DRIVE);

THENCE RUNNING ALONG THE SAID EASTERLY LINE OF STEW LEONARD DRIVE (CORPORATE DRIVE) THE FOLLOWING THREE COURSES AND DISTANCES:

- 1) SOUTH 13 DEGREES 40 MINUTES 49 SECONDS WEST, 89.22 FEET;
- 2) SOUTHERLY ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 730.00 FEET, A CENTRAL ANGLE OF 11 DEGREES 00 MINUTES 49 SECONDS, AN ARC LENGTH OF 140.32 FEET;
- 3) SOUTH 02 DEGREES 40 MINUTES 00 SECONDS WEST, 617.49 FEET TO A POINT;

THENCE THROUGH SAID STEW LEONARD DRIVE (CORPORATE DRIVE) AND IN PART ALONG THE SOUTHERLY LINE OF TAX LOT 4 IN BLOCK 3244, NORTH 87 DEGREES 20 MINUTES 00 SECONDS WEST, 373.01 FEET TO THE EASTERLY LINE OF LOT 44 AS SHOWN ON A MAP TITLED "PROPOSED SUBDIVISION" PREPARED BY ARTHUR L. BROWN AND FILED ON MAY 3, 1965 IN THE WESTCHESTER COUNTY CLERK'S OFFICE AS MAP NO. 14310;

THENCE ALONG SAID EASTERLY LINE OF LOT 44 AND IN PART ALONG THE EASTERLY LINE OF LOT 46, NORTH 17 DEGREES 10 MINUTES 53 SECONDS EAST, 64.28 FEET;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 46, NORTH 72 DEGREES 49 MINUTES 07 SECONDS WEST, 146.21 FEET TO THE EASTERLY LINE OF PRIOR PLACE;

THENCE ALONG THE SAID EASTERLY LINE OF PRIOR PLACE, NORTH 15 DEGREES 54 MINUTES 53 SECONDS EAST, 801.86 FEET TO A POINT AND NORTHERLY ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 100.00 FEET, A CENTRAL ANGLE OF 63 DEGREES 07 MINUTES 01 SECONDS AND AN ARC LENGTH OF 110.16

FEET TO A CURVE HAVING A RADIUS OF 10.00 FEET AND CONNECTING THE SAID EASTERLY LINE OF PRIOR PLACE WITH A SOUTHERLY LINE OF AUSTIN AVENUE AS SHOWN ON A MAP TITLED "CITY OF YONKERS DEPARTMENT OF ENGINEERING LAYING OUT AND OPENING OF CORPORATE DRIVE" PREPARED BY ARISTOTLE BOURNAZOS P.C. AND FILED ON OCTOBER 3, 1989 IN THE WESTCHESTER COUNTY CLERK'S OFFICE AS MAP NO. 23901;

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 10.00 FEET, A CENTRAL ANGLE OF 141 DEGREES 10 MINUTES 36 SECONDS AND AN ARC LENGTH OF 24.64 FEET TO A POINT ALONG THE SOUTHERLY LINE OF AUSTIN AVENUE;

THENCE RUNNING ALONG THE SAID SOUTHERLY LINE OF AUSTIN AVENUE THE FOLLOWING NINETEEN COURSES AND DISTANCES:

- 1) SOUTH 86 DEGREES 00 MINUTES 57 SECONDS EAST, 53.95 FEET;
- 2) NORTH 89 DEGREES 12 MINUTES 23 SECONDS EAST, 52.19 FEET;
- 3) NORTH 73 DEGREES 17 MINUTES 33 SECONDS EAST, 157.00 FEET;
- 4) SOUTH 75 DEGREES 20 MINUTES 57 SECONDS EAST, 66.15 FEET;
- 5) SOUTH 49 DEGREES 02 MINUTES 57 SECONDS EAST, 36.33 FEET;
- 6) SOUTH 46 DEGREES 00 MINUTES 17 SECONDS EAST, 63.91 FEET;
- 7) SOUTH 48 DEGREES 12 MINUTES 57 SECONDS EAST, 18.49 FEET;
- 8) SOUTH 45 DEGREES 39 MINUTES 27 SECONDS EAST, 51.75 FEET;
- 9) SOUTH 54 DEGREES 44 MINUTES 07 SECONDS EAST, 15.33 FEET;
- 10) SOUTH 65 DEGREES 59 MINUTES 17 SECONDS EAST, 16.13 FEET;
- 11) EASTERLY ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 400.00 FEET, A CENTRAL ANGLE OF 00 DEGREES 09 MINUTES 48 SECONDS, AN ARC LENGTH OF 1.14 FEET AND BEING SUBTENDED BY A CHORD BEARING SOUTH 86 DEGREES 21 MINUTES 24 SECONDS EAST, 1.14 FEET;
- 12) EASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 243.39 FEET, A CENTRAL ANGLE OF 10 DEGREES 06 MINUTES 57 SECONDS AND AN ARC LENGTH OF 42.97 FEET;
- 13) SOUTH 76 DEGREES 19 MINUTES 11 SECONDS EAST, 151.10 FEET;
- 14) EASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 314.65 FEET, A CENTRAL ANGLE OF 07 DEGREES 35 MINUTES 54 SECONDS AND AN ARC LENGTH OF 41.73 FEET;
- 15) SOUTH 49 DEGREES 57 MINUTES 47 SECONDS EAST, 0.67 FEET;

- 16) SOUTH 40 DEGREES 59 MINUTES 07 SECONDS EAST, 27.27 FEET;
- 17) SOUTH 37 DEGREES 57 MINUTES 47 SECONDS EAST, 50.20 FEET;
- 18) SOUTH 40 DEGREES 37 MINUTES 17 SECONDS EAST, 100.91 FEET;
- 19) SOUTH 35 DEGREES 06 MINUTES 57 SECONDS EAST, 27.35 FEET TO A POINT;
THENCE SOUTH 40 DEGREES 10 MINUTES 50 SECONDS WEST, 13.19 FEET TO THE SOUTHERLY LINE OF THE PROPOSED RELOCATED AUSTIN AVENUE AS SHOWN ON THE AFORESAID MAP NO. 23901;

THENCE ALONG SAID SOUTHERLY LINE OF THE PROPOSED RELOCATED AUSTIN AVENUE THE FOLLOWING FIVE COURSES AND DISTANCES:

- 1) NORTH 31 DEGREES 08 MINUTES 20 SECONDS WEST, 12.66 FEET;
- 2) NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 270.00 FEET, A CENTRAL ANGLE OF 45 DEGREES 10 MINUTES 51 SECONDS AND AN ARC LENGTH OF 212.91 FEET;
- 3) NORTH 76 DEGREES 19 MINUTES 11 SECONDS WEST, 245.10 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PROPERTY CONTAINS 9.92900 ACRES MORE OR LESS.