

AMENDMENT TO ENVIRONMENTAL EASEMENT

This Amendment to Environmental Easement is made as of this 12th day of June 2018, by and between the People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation ("NYSDEC" or the "Department") with its headquarters located at 625 Broadway, Albany, New York 12233, and Lackawanna FDS 715551, LLC (the "Grantor") with its offices located at 106 Foster Avenue, Charlotte, North Carolina 28203.

RECITALS

1. Grantor, Lackawanna FDS 715551, LLC, is the owner of the real property located at the address of 113-135 Ridge Road in the City of Lackawanna, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 141.43 Block 1 Lots 6.1, being the same as that property conveyed to Grantor by the City of Lackawanna by deed dated October 25, 2017 and recorded in the Erie County Clerk's Office in Liber 11321, Page 3478.
2. The property referenced above comprises approximately 0.770 +/- acres, and is hereinafter more fully described in Exhibit A.
3. The previous owner of the property referenced above conveyed in perpetuity to the Department a certain Environmental Easement ("Easement Agreement") dated as of April 27, 2017 and recorded in the Erie County Clerk's Office in Liber 11319, Page 9728. Capitalized terms used herein without definition have the meanings ascribed to them in the Environmental Easement Agreement.
4. Pursuant to Section 1, 2, 3, 4, and 5 of the Easement Agreement, the City of Lackawanna, its successors and assigns, granted the Department rights and interests that run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of the Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of maintenance, monitoring or operation requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the stated purpose.
5. The Easement Agreement dated April 27, 2017 erroneously stated in the 4th Whereas clause that the Controlled Property comprised of approximately 5.5 ± acres.
6. This Amendment to Environmental Easement is filed solely in order to correct a mutual mistake between the Department and previous owner relating to the size of the Controlled Property as stated in the 4th Whereas clause to that Environmental Easement dated April 27, 2017 and recorded in the Erie County Clerk's Office in Liber 11319, Page 9728.
7. Pursuant to Section 8 of the Easement Agreement, the Department and Grantor agree to amend the Easement Agreement in the manner prescribed by Article 9 of the Real Property Law.

AMENDMENT OF ENVIRONMENTAL EASEMENT

- A. The above recitals are hereby incorporated into this Amendment of Environmental Easement.
- B. The Department and Grantor hereby agree that the 4th Whereas clause is hereby amended to read as follows:

WHEREAS, Grantor, is the owner of real property located at the address of 113-135 Ridge Road in the City of Lackawanna, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 141.43 Block 1 Lots 6.1, previously known as Section 141.43 Block 1 Lots 6, 7, 8, 9, 10 and 11, being the same as that property conveyed to Grantor by deeds dated May 12, 1977, August 19, 1978, May 7, 1980 and January 19, 1990 and recorded in the Erie County Clerk's Office in Liber and Page 8506/403, 8676/527, 8887/381 and 10130/495, respectively. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.770 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 7, 2005 and last revised July 31, 2006 prepared by Wendel Duchscherer Architects & Engineers, P.C., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

- C. All other terms of the April 27, 2017 Environmental Easement shall remain in effect.
- D. This Amendment of Environmental Easement inures to and binds the parties hereto and their respective successors and assigns.
- E. This Amendment of Environmental Easement shall be governed by and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Grantor has caused this Amendment to Environmental Easement to be signed in its name.

Lackawanna FDS 715551, LLC:

By: DBU Durbin Management, LLC, its Manager

By: [Signature]

Print Name: GUEN D. CHERRY.

Title: Manager Date: 05-22-2018

Grantor's Acknowledgment

STATE OF NORTH CAROLINA)
) ss:
COUNTY OF Mecklenburg)

On the 22nd day of May, in the year 2018, before me, the undersigned, personally appeared Glen D. Cherry, 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.

D. Ry [Signature]
Notary Public - State of North Carolina

D RYLAND POND
NOTARY PUBLIC
MECKLENBURG COUNTY, NC
My Commission Expires 9-7-2020

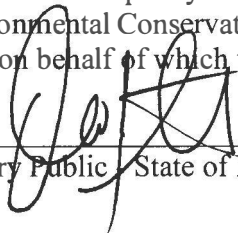
THIS AMENDMENT OF THE ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: 
Michael J. Ryan, Director
Division of Environmental Remediation

Department's Acknowledgment

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

On the 12th day of June, in the year 2018, before me, the undersigned, personally appeared Michael J. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his 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

Schedule A

All that tract or parcel of land, situate in the City of Lackawanna, County of Erie and State of New York being part of Lot No. 35, Township 10, Range 8 of the Buffalo Creek Reservation and being Sublot 6, under Map Cover 680, filed in the Erie County Clerk's Office and being the same land acquired by Erie County as Serial No. 223 in the County's In Rem Tax Foreclosure action No. 133; and also

All that tract or parcel of land, situate in the City of Lackawanna, County of Erie, State of New York, and being part of Farm Lot 35, Township 10, Range 8, and being Sublot 7 and the East 10' of Sublot 6, under Map Cover 680, filed in the Erie County Clerk's Office, Fox Tract Subdivision, (117-119) Ridge Road., South side, 50' x 140'; and being the same land acquired by Erie County as Serial No. 475 in the County's In Rem Tax Foreclosure action No. 135; and

All that tract or parcel of land, situate in the City of Lackawanna, County of Erie and State of New York, being part of Great Lot Number thirty-five (35), Buffalo Creek Reservation, and Number Twenty-four (24) and Twenty-eight (28) of the Gore Tract, Township ten (10), Range Eight (8) more particularly described as follows:

Beginning at a point on the southerly line of Ridge Road one hundred and twenty (120) feet westerly from the westerly line of Wasson Street; thence running southerly at right angles one hundred and forty (140) feet; thence running westerly at right angles forty (40) feet; thence running northerly at right angles one hundred and forty (140) feet; thence running easterly at right angles forty (40) feet to the point of beginning.

Being Subdivision Lot Number Eight (8) Block "G" as shown on map filed under Cover number 680 in the Erie County Clerk's Office.

Together with and subject to the benefits and burdens of a driveway agreement dated April 22, 1920, recorded in the Erie County Clerk's Office June 23 1920, in Liber 1485 of Deeds, at Page 628; and

All that tract or parcel of land, situate in the City of Lackawanna, County of Erie and State of New York being part of Lot No. 35, Township 10, Range 8 of the Buffalo Creek Reservation and according to map filed under Cover No. 680 is known as Subdivision Lot No. Nine (9) in Block "C" being 40 feet front and rear by 140 feet in depth; and

All that tract or parcel of land, situate in the City of Lackawanna, County of Erie and State of New York, and being part of Lot No. 35, of the Buffalo Creek Reservation, Township 10, Range 8 and being Subdivision Lot No. 10 and Subdivision Lot No. 11, Block C of the Fox Tract Subdivision; intending to be the same lands acquired by Erie County as Serial No. 994 and 995 in the County's In Rem Tax Foreclosure action No. 137.