

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

**THIS INDENTURE** made this \_\_\_\_\_ day of \_\_\_\_\_, 2023\_, between Owner(s) 460 Kingsland Avenue Real Estate LLC and Reveal Kingsland LLC., having an office at 460 Kingsland Ave., Brooklyn, NY 11222 and 46-27 54th Rd., Maspeth, NY 11378, County of Kings, and County of Queens, 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 460 Kingsland Ave., Brooklyn, NY 11222 in the City of New York, County of Kings and State of New York, known and designated on the tax map of the County Clerk of Kings as tax map parcel numbers: Block 2612 Lot 20, being the same as that property conveyed to Grantor by deed dated 11/22/2013 and recorded in the in Liber and Page 2013000516286 and 2005000623719. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 3.5483 +/-acres, and is hereinafter more fully described in the Land Title Survey dated July 8,2016 prepared by Robert J Fehringer, 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 ("Overall Property"); 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 Order on Consent Index Number: A2-0841-14-10, dated March 1, 2016, 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), and certain sections of the Controlled Property are consistent with use as a Low Occupancy Area as defined in 40 CFR § 761.3.**

(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 Kings County Department of Health to render it safe for use as drinking water or for commercial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) 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;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(9) 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 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

**Within an area of the Controlled Property, there are specific sections which are restricted to use as a Low Occupancy Area due to prior use for PCB remediation waste disposal. As defined in 40 CFR §761.3, a Low Occupancy Area is "any area where PCB remediation waste has been disposed of on-site and where occupancy for any individual not wearing dermal and respiratory protection for a calendar year is less than 840 hours (an average of 16.8 hours per week) for non-porous surfaces and less than 335 hours (an average of 6.7 hours per week) for bulk PCB remediation waste." The Low Occupancy Areas are indicated on the attached Site Plan, as are the applicable cleanup levels left at the Controlled Property. The Institutional and Engineering Controls applicable to the Controlled Property are applicable in the Low Occupancy Areas, in addition to the requirements provided for in this Subsection C.**

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 annually, or at such time as NYSDEC may require, submit to NYSDEC a written statement certifying under penalty of perjury, in such form and manner as the Department may require, that:

- (1) 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;
- (2) the owner will continue to allow the Department access to such real property to evaluate such controls;
- (3) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
- (4) 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 identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:      Site Number: 224135  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-1500

With a copy to:      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. Any amendment to this Environmental Easement may only be executed 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.

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.



**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:

\_\_\_\_\_  
Andrew O. Guglielmi  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, 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

**SCHEDULE "A" PROPERTY DESCRIPTION**

Metes and Bounds

Overall Property

Block: 2612 Lot: 20

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

BEGINNING at a point formed by the intersection of the easterly side of Kingsland Avenue with the southerly side of Greenpoint Avenue;

RUNNING THENCE southerly along the easterly side of Kingsland Avenue and forming an interior angle of 108 degrees 21 minutes 50 seconds with the southerly side of Greenpoint Avenue, 144.94 feet;

THENCE southeasterly forming an interior angle of 103 degrees 31 minutes 40 seconds with the last course, 267.15 feet;

THENCE southeasterly forming an interior angle of 237 degrees 49 minutes 00 seconds with the last course, 56.19 feet;

THENCE northeasterly forming an interior angle of 93 degrees 24 minutes 16 seconds with the last course, 350.06 feet to the United States Pierhead and Bulkhead line of Newtown Creek;

THENCE northwesterly along said line and forming an interior angle of 95 degrees 19 minutes 01 seconds with the last course, 292.22 feet to the southerly side of Greenpoint Avenue;

THENCE southwesterly along the southerly side of Greenpoint Avenue and forming an interior angle of 81 degrees 34 minutes 13 seconds with the last course, 29.26 feet;

THENCE northwesterly at right angles to the last course, 9.94 feet;

THENCE southwesterly along the southerly side of Greenpoint Avenue and forming an interior angle of 90 degrees 00 minutes 24 seconds with the last course, 75.02 feet;

THENCE southeasterly forming an interior angle of 90 degrees 20 minutes 43 seconds with the last course, 6.00 feet;

THENCE southwesterly along the southerly side of Greenpoint Avenue and along a curve to the right with a radius of 1191.00 feet, a length of 26.91 feet and a chord forming an exterior angle of 89 degrees 21 minutes 10 seconds with the last course;

THENCE northwesterly along a line forming an exterior angle with the chord of the last course of 89 degrees 21 minutes 10 seconds, 6.00 feet;

THENCE southwesterly along the southerly side of Greenpoint Avenue and along a curve to the right with the radius of 1185.00 feet, a length of 250.82 feet and a chord forming an interior angle of 96 degrees 03 minutes 50 seconds with the last course;

THENCE southwesterly along the southerly side of Greenpoint Avenue and along a line forming an exterior angle with the chord of the last course of 173 degrees 56 minutes 10 seconds, 87.24 feet;

THENCE southwesterly along the southerly side of Greenpoint Avenue and along a line forming an interior angle of 166 degrees 13 minutes 33 seconds with the last course, 109.95 feet to the point or place of BEGINNING.

CONTAINING within said bounds 154,564 square feet or 3.5483 acres.

Metes and Bounds

Environmental Easement – Engineered Cap

Block: 2612 Lot: 20

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

COMMENCING at a point formed by the intersection of the easterly side of Kingsland Avenue with the southerly side of Greenpoint Avenue;

RUNNING THENCE southerly along the easterly side of Kingsland Avenue and forming an angle to the east of 108 degrees 21 minutes 50 seconds with the southerly side of Greenpoint Avenue, 144.94 feet;

THENCE southeasterly forming an angle to the north of 103 degrees 31 minutes 40 seconds with the last course, 267.15 feet;

THENCE southeasterly forming an angle to the east of 237 degrees 49 minutes 00 seconds with the last course, 56.19 feet;

THENCE northeasterly forming an angle to the north of 93 degrees 24 minutes 16 seconds with the last course, 276.44 feet to the true point or place of BEGINNING;

RUNNING THENCE northwesterly forming an angle to the west of 94 degrees 40 minutes 16 seconds with the last course, 297.81 feet to a point on the southerly side of Greenpoint Avenue;

THENCE northeasterly along the southerly side of Greenpoint Avenue and forming an interior angle of 97 degrees 46 minutes 38 seconds with the last course, 46.75 feet;

THENCE southeasterly forming an interior angle of 90 degrees 0 minutes 24 seconds with the last course, 10.00 feet;

THENCE northeasterly along the southerly side of Greenpoint Avenue and at right angles with the last course, 24.40 feet to a bulkhead on Newtown Creek;

THENCE southeasterly along said bulkhead and forming an interior angle with the last course of 82 degrees 24 minutes 30 seconds, 30.21 feet;

THENCE southeasterly along said bulkhead and forming an interior angle with the last course of 179 degrees 45 minutes 43 seconds, 61.14 feet;

THENCE southeasterly along said bulkhead and forming an interior angle with the last course of 178 degrees 34 minutes 49 seconds, 49.47 feet;

THENCE southeasterly along said bulkhead and forming an interior angle with the last course of 180 degrees 58 minutes 09 seconds, 49.92 feet;

THENCE southeasterly along said bulkhead and forming an interior angle with the last course of 179 degrees 57 minutes 12 seconds, 49.83 feet;

THENCE southeasterly along said bulkhead and forming an interior angle with the last course of 182 degrees 23 minutes 11 seconds, 43.45 feet;

THENCE southeasterly and forming an interior angle with the last course of 168 degrees 19 minutes 30 seconds, 7.97 feet;

THENCE southwesterly along a line forming interior angle with the last course of 104 degrees 30 minutes 10 seconds, 70.00 feet to the point or place of BEGINNING.

CONTAINING within said bounds 21,028.43 square feet or 0.4827 acres.