

**Agreement Among
The New York State Department of Environmental Conservation and
The County of Dutchess
Regarding the Former Schatz Plant Site**

This Agreement is entered on this 27th day of July, 2021, by and among the County of Dutchess ("County"), with offices at 22 Market Street, 6th Floor, Poughkeepsie, New York 12601, and the New York State Department of Environmental Conservation ("NYSDEC"), with offices at 625 Broadway, Albany, New York 12233 (jointly, the "Parties").

WHEREAS, the County intends to take title to properties known as 60 Fairview Avenue and 68-70 Fairview Avenue in the Town of Poughkeepsie, County of Dutchess, New York, as described more fully in Liber 1781 of Deeds at page 307 (parcel 134689-6162-09-227572-0000) and Liber 1825 of Deeds at page 534 (parcel 134689-6162-09-189635-0000) (hereinafter the "Properties") through *in rem* tax foreclosure proceedings, for the sole purpose of facilitating the cleanup and redevelopment of the Properties. A figure showing the Properties is enclosed as Exhibit A; and

WHEREAS, in light of the environmental and physical conditions of the Properties, the County, subsequent to taking title to the Properties through *in rem* tax foreclosure, intends to sell the Properties for a *de minimis* amount in order to facilitate the remediation and redevelopment of the Properties and their return to productive use; and

WHEREAS, subsequent to taking title to the Properties through and after the resolution of an action to quiet title brought in order to establish clear title to the Properties, the County presently intends to sell the Properties for a *de minimis* amount to the RUPCO-Kearney Schatz Site Joint Venture ("Joint Venture"), which is a joint venture between RUPCO, Inc., a New York not-for-profit corporation, and the Kearny Realty & Development Group, a New York business corporation.

WHEREAS, the County has asserted liens against the Properties for unpaid County, Town, and School District real property taxes, which as of January 26, 2021, were in the amount of \$12,650,440; and

WHEREAS, the Properties are part of the Schatz Plant Site, which is listed as site number 314074 on New York's Registry of Inactive Waste Disposal Sites. The site is classified as a Class 2 site pursuant to Environmental Conservation Law ("ECL") § 27-1305 [2] [b] [2], which means the site poses a significant threat to public health or the environment. The Schatz Plant Site was an industrial facility operated by The Schatz Company from 1910 until approximately 1981. Portions of the Schatz Plant Site contained 55-gallon drums, electrical capacitors, quenching pits, and waste disposal areas. In 1991-1992, a Remedial Investigation/Feasibility Study was completed and found contaminants such as PCBs, BTEX compounds, PAHs, and metals. NYSDEC issued a Record of Decision for the Schatz Plant Site in March 1993. A figure showing the location of the Schatz Plant Site is enclosed as Exhibit B; and

WHEREAS, NYSDEC expended State funds to investigate and remove hazardous wastes from the Schatz Plant Site. In 2003, a United States District Court ordered recovery by the State from Lot Six Realty Corp. in the amount of \$1,811,680.53 for costs and interest, and found Lot Six Realty Corporation liable to the State for other costs or damages that the State has incurred or will incur in connection with the Schatz Plant Site. NYSDEC has expended additional monies since 2003 on the investigation and remediation of the Schatz Plant Site. The State of New York holds a lien against properties owned by Lot Six Realty Corp. in Dutchess County, which includes the Properties ("Judgment Lien"). To date, the funds due to the State pursuant to the 2003 judgment total approximately \$4.3 million. Lot Six Realty Corp. was dissolved by proclamation or annulment of authority on March 24, 1993; and

WHEREAS, NYSDEC agrees to remove the Judgment Lien on the Properties in consideration of the County granting NYSDEC an Environmental Easement in accordance with ECL Article 71, Title 36 and 6 NYCRR 375-1.8 [h] [2]; and the County agreeing to require any party, including the Joint Venture, purchasing the Properties or any portion thereof, by means of conditions set forth in a purchase and sale agreement, to enter a remedial program approved by NYSDEC; and

WHEREAS, the Parties have a shared interest in ensuring that any environmental issues associated with the Properties do not interfere with the return of the Properties to productive use, and that such issues are timely and appropriately addressed in order to protect public health and the environment; and

WHEREAS, it is in the interest of all Parties to help return the Properties covered by this Agreement to productive use; and

NOW, THEREFORE, it is agreed among NYSDEC and the County that:

ARTICLE I PARTIES

1.1 For purposes of this Agreement, the County shall mean the County of Dutchess and its departments, agencies, agents, servants, officials, and employees.

1.2 For purposes of this Agreement, NYSDEC shall mean the New York State Department of Environmental Conservation.

ARTICLE II COOPERATION

2.1 The Parties shall, on a regular basis, keep each other informed of and consult on matters of common interest, which in their opinion are likely to lead to mutual collaboration.

2.2 The Parties agree to cooperate and share information in furtherance of identifying the nature and extent of contamination on the Properties, determining the

extent of the remediation that is likely to be required, and the most efficient manner of and pursuing remediation, if and to the extent it is needed on one or more Properties.

2.3 If the County wishes to conduct any site investigations or other environmental studies related to soil and/or groundwater contamination on the Properties, the County must first obtain work plan approval from NYSDEC. Moreover, any reports generated from such site investigations or environmental studies on the Properties must also be approved by NYSDEC before they are finalized by the County.

2.4 NYSDEC will share, upon request, information in its possession provided such information can appropriately be released pursuant to the Freedom of Information Law ("FOIL"). Unless legally required, no formal FOIL request shall be necessary in order for such information to be provided.

2.5 The County, after it takes title to the Properties through *in rem* tax foreclosure and until such title is transferred to another party, including the Joint Venture, will consent to, upon reasonable notice under the circumstances presented, grant entry upon the Properties, or areas in the vicinity of the Properties under the control of the County, by any duly designated officer or employee of NYSDEC, and by any agent, consultant, contractor, or other person so authorized by the Commissioner of NYSDEC, all of whom shall abide by any health and safety rules in effect for the Properties, for (1) inspecting, sampling, and copying records related to the contamination at the Properties; (2) implementing this Agreement; (3) testing and any other activities necessary to comply with this Agreement; and (4) implementing any construction or environmental treatment procedures necessary to effectuate interim remedial measures and/or remedies in accordance with applicable state and federal laws.

ARTICLE III ENVIRONMENTAL EASEMENT

3.1 The County shall grant NYSDEC an Environmental Easement in accordance with ECL Article 71, Title 36 and 6 NYCRR 375-1.8 [h] [2], which shall, *inter alia*, (1) prohibit any change of use, as that term is defined at 6 NYCRR Part 375, of the Properties without written approval of NYSDEC; and (2) grant NYSDEC access to the Properties.

3.2 After the County acquires title to the Properties, NYSDEC will prepare, on the County's behalf, an Environmental Easement package that meets NYSDEC requirements, including those set forth in guidance document DER-33 – Institutional Controls: A Guide to Drafting and Recording Institutional Controls. Among the documents to be included in the package are: (1) an Environmental Easement for the Properties for acceptance by the Commissioner of NYSDEC or his designee; (2) an Environmental Easement Checklist and Certification; (3) a survey; and (4) Notice of Environmental Easement and other notices. NYSDEC will make best efforts to complete preparation of the Environmental Easement package within 60 days of the County's acquisition of title to the Properties, and by no later than the date upon which the County intends to sell the Properties to any other party, including the Joint Venture. The County will cooperate with NYSDEC during its preparation of the Environmental Easement package and shall sign

the Environmental Easement after it is prepared by the Department. The Environmental Easement shall only be recorded with the Dutchess County Clerk in accordance with Section 3.3 of this Agreement.

3.3 Before the County transfers title to the Properties to another party, including the Joint Venture, the County shall cause such instrument to be recorded with the Dutchess County Clerk. The County shall provide NYSDEC with a copy of such instrument certified by the Dutchess County Clerk to be a true and faithful copy within 30 days of such recording, or such longer period of time as may be required to obtain a certified copy provided the County advises NYSDEC of the status of its efforts to obtain a certified copy within such 30 day period. The certified Environmental Easement shall be incorporated into and made an enforceable part of this Agreement.

3.4 The Parties mutually acknowledge and agree that the County intends to take title to the Properties through *in rem* tax foreclosure to resell the Properties, with as much expediency as possible, to a third party, including the Joint Venture, in order that said third party, including the Joint Venture, shall facilitate the remediation and redevelopment of the Properties and return the Properties to productive use. If, however, the County is unable to convey clear and marketable title to the Properties to any other third party, including the Joint Venture, NYSDEC agrees that it shall consent to enter into a stipulation, or to otherwise do that which is necessary to assist in vacating the *in rem* tax foreclosure judgment and deed. Further, NYSDEC shall relieve the County of its obligation under Paragraphs 3.2 and 3.3 to record the Environmental Easement.

3.5 The County or any subsequent owner, including the Joint Venture, of the Properties may petition NYSDEC to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can be certified that alternative restrictions are needed or that the Properties are protective of human health or the environment without reliance upon the restrictions set forth in such Environmental Easement. Such certification shall be made by a Professional Engineer or other expert approved by the NYSDEC. NYSDEC will not unreasonably withhold its consent.

ARTICLE IV SITE RECLASSIFICATION

4.1 Following NYSDEC's acceptance of the Environmental Easement, the County or any subsequent owner, including the Joint Venture, may petition NYSDEC, in accordance with the provisions of 6 NYCRR 375-2.7 [f], to change the boundaries of the Schatz Plant Site and/or to make a portion of the Schatz Plant Site a separate and distinct site with an alternative classification, based on the threats, if any, posed by the contamination at such site. NYSDEC shall decide such petition in accordance with New York State law, regulation, and policies.

4.2 In the event the Properties remain a Class 2 site, NYSDEC may address the Properties in accordance with the requirements for such sites set forth in ECL Article 27, Title 13 and 6 NYCRR Part 375.

ARTICLE V
COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

5.1 Following the County's recording of the Environmental Easement with the Dutchess County Clerk, NYSDEC covenants not to sue or seek payment or require remedial action from the County as a responsible party as that term is defined in New York State law (ECL § 27-1301 *et seq.*) and federal law (42 U.S.C. § 9607 [a]) so long as the County continues to meet the requirements for the municipal exemption at ECL § 27-1323 [2].

5.2 The County, solely during its ownership of the Properties, shall exercise "appropriate care" with respect to existing contamination at the Properties by taking reasonable steps to: (i) stop any continuing release; (ii) prevent any threatened future release; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released contamination when the County has actual or constructive knowledge or notice of such release or threatened future risk or such exposure risk; provided, however, that when such circumstances exist, the County shall notify the NYSDEC and the NYSDEC shall take all appropriate and necessary action, including investigatory or remedial action, to protect public health and the environment.

5.3 For the purposes of this Agreement, "appropriate care" shall not include a requirement to remediate previously released contamination at the Properties. Additionally, such acts constituting "appropriate care" shall not in and of itself constitute management of the Properties. Nor shall marketing of the Properties, the issuance of Requests for Proposal, the decision to sell, the negotiation and execution of a development agreement and related documents with terms acceptable to the seller, or, any acts by the County to bring about the cleanup of the Properties, if desired, constitute management with respect to any liability protection afforded to the County herein, or under any statute.

5.4 In any event, the County retains all relevant statutory defenses available under any applicable state or federal environmental law including, but not limited to, those provided within the ECL or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601-9675). Other than the County, this Agreement shall not inure to the benefit of any third party, including successors in title or assigns of tax liens and/or any party to whom the Properties are transferred by the County.

5.5 Nothing in this Agreement shall be construed to enlarge the liability, responsibilities, or duties of the County pursuant to New York State law (ECL § 27-1301 *et seq.*), federal law (42 U.S.C. § 9601, *et seq.*), or any other New York State or federal environmental laws. Nothing in this Agreement shall be construed to diminish the rights of the County pursuant to any applicable New York State or federal law.

5.6 The County shall comply with the notification requirement of ECL § 27-1323 [2] [f].

ARTICLE VI SITE SECURITY

6.1 After the County's acquisition of the Properties, the County shall take reasonable steps to prevent or limit human exposure to solid waste and hazardous waste at the Properties and to prevent the unauthorized disposal of solid waste, hazardous waste, and/or petroleum at the Properties by, without limitation, (1) controlling access to all points of entry to the Properties, and (2) erecting fences, gates, natural barriers, or other physical barriers. The County shall exercise its best efforts to cause all squatters or trespassers located at the Properties to vacate the Properties immediately; except, however, legitimate legal business entities currently located at the Properties shall be given a reasonable time period to vacate the Properties without such constituting a violation of this Agreement. This provision shall not be construed as requiring the County to install perimeter fencing along the complete boundary of the Properties.

ARTICLE VII RELEASE OF LIEN AND FUTURE USE

7.1 If the County sells the Properties or otherwise transfers ownership of the Properties in order to facilitate the remediation and redevelopment of the Properties and return the Properties to productive use, NYSDEC shall, with the Office of the New York State Attorney General, remove and release the Judgment Lien held by the State of New York against the Properties. The removal and release of the Judgment Lien shall become effective at the time of closing of such sale. An unsigned copy of the form of such release of lien to be filed is enclosed as Exhibit C.

7.2 The County agrees to require, as a condition of sale, that any party purchasing the Properties, or any portion thereof, must, unless otherwise agreed by NYSDEC, enter a remedial program approved by NYSDEC in order to undertake any necessary investigation and remediation of the Properties.

ARTICLE VIII REIMBURSEMENT OF COSTS

8.1 If the County sells the Properties or otherwise transfers ownership of the Properties, or a portion thereof, and receives sale proceeds – defined as the total amount of consideration to be received by the County from the sale of the Properties, less reasonable costs at closing – greater than a *de minimis* amount, the sale proceeds shall be disbursed in a manner that reimburses the County and NYSDEC on a pro rata basis, taking into consideration any outstanding tax liens owed to the County, and NYSDEC and United States Environmental Protection Agency administrative, investigative, or remediation costs related to the Properties.

ARTICLE VIX INDEMNIFICATION

9.1 The County shall indemnify and hold NYSDEC, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and

costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by the County and/or any of the County's directors, officers, employees, servants, agents, successors, and assigns except for liability arising from vehicular accidents occurring during travel to or from the Properties or willful, wanton, or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by NYSDEC, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. NYSDEC shall provide the County with written notice no less than 30 days prior to commencing a lawsuit seeking indemnification pursuant to this Section.

ARTICLE X TERM, TERMINATION, AND AMENDMENT

10.1 This Agreement comprises the complete understanding of the Parties in respect of the subject matter in this Agreement.

10.2 This Agreement is effective upon execution by NYSDEC and shall be binding upon and inure to the benefit of the Parties. This Agreement may be terminated or amended only in writing by all Parties to the Agreement.

10.3 This Agreement shall apply only to the Properties identified in this Agreement.

10.4 The covenant described in Article V of this Agreement pertains to the County only. It is not transferrable, shall not and does not run with the land, and shall not benefit any other party outside of this Agreement.

ARTICLE XI NOTICES AND ADDRESSES

11.1 Any notice or request required or permitted to be given or made under this Agreement shall be in writing and shall be deemed sufficient if sent by regular first-class mail and certified mail, or personally delivered during business hours, to:

For NYSDEC: Daniel R. Lanners, P.E.
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233

And

Regional Attorney
NYSDEC
21 South Puff Corners Road
New Paltz, New York 12561


For the County: Caroline Blackburn
County Attorney
Dutchess County Department of Law
22 Market St.
Poughkeepsie, NY 12601

11.2 NYSDEC and the County reserve the right to designate additional or different addressees for communication upon written notice to the other.

11.3 The Parties shall notify each other within ninety (90) days after any change in the addresses in Section 11.1.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: 
Name: Michael J. Ryan
Title: Director, Division of Environmental Remediation
Date: 7/27/21

COUNTY OF DUTCHESS

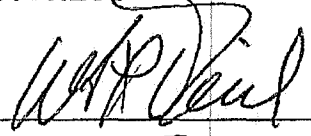
By: 
Name: ~~Marcus J. Molinaro~~ William F.X. O'Neil
Title: ~~Dutchess County Executive~~ Deputy County Executive
Date: 7/7/21

EXHIBIT A:

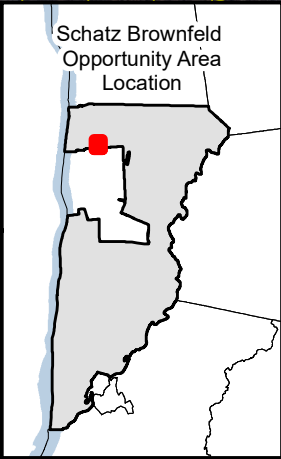
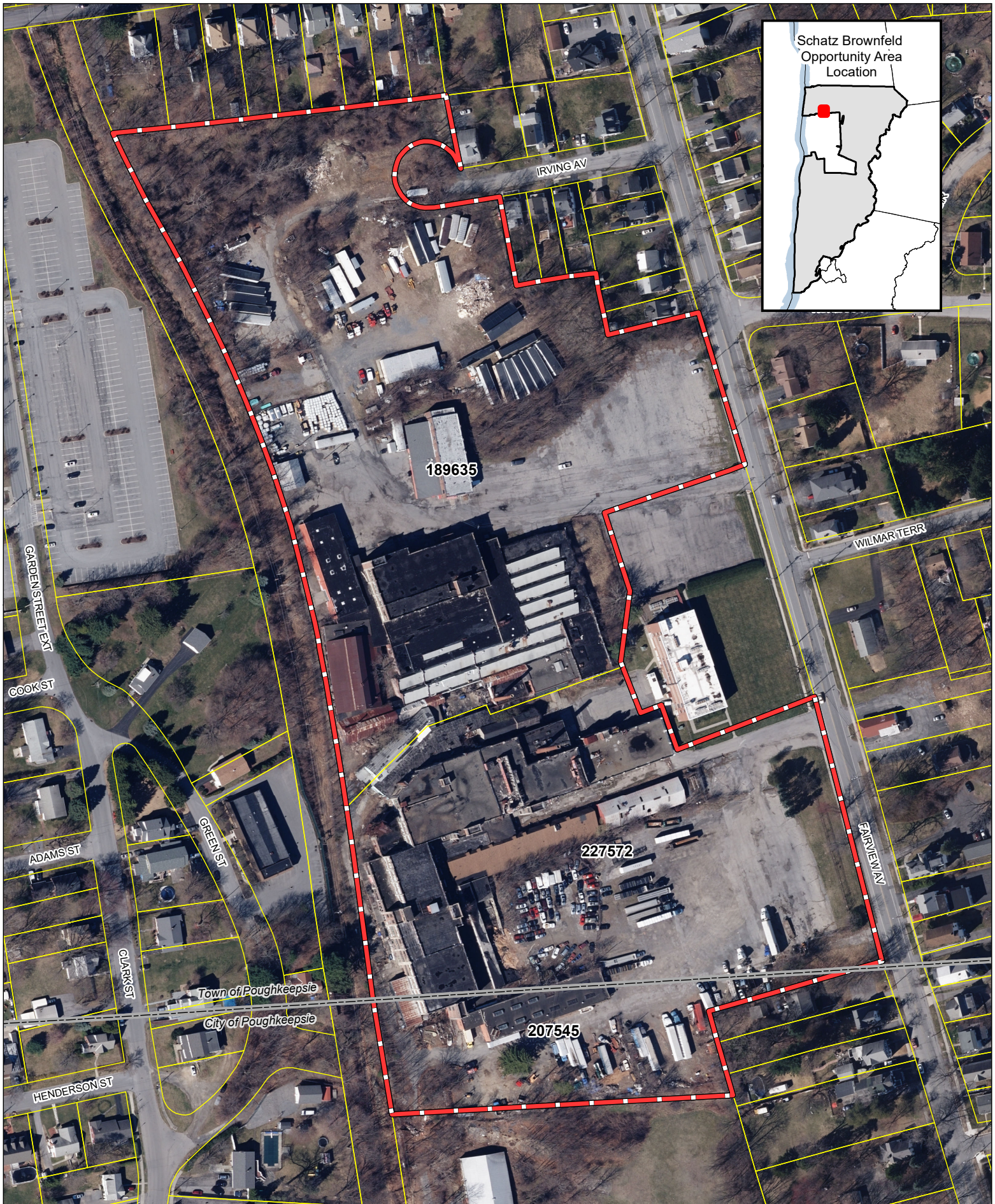
DESCRIPTION OF PROPERTIES IN THE TOWN OF POUGHKEEPSIE, KNOWN COLLECTIVELY AS "SCHATZ"

Parcel 1:

City or Town:	Town of Poughkeepsie
Owner (s):	HUDSON VALLEY MNGMT ASSOC INC.
Tax Map Number:	134689-6162-09-227572-0000

Parcel 2:

City or Town:	Town of Poughkeepsie
Owner (s):	LOT SIX REALTY CORP.
Tax Map Number:	134689-6162-09-189635-0000



Marcus J. Molinaro
County Executive

Schatz Brownfield Opportunity Area

Map Prepared by Dutchess County Department of Planning and Development

Issued: 6/13/2019

Feet 0 100 200



EXHIBIT B

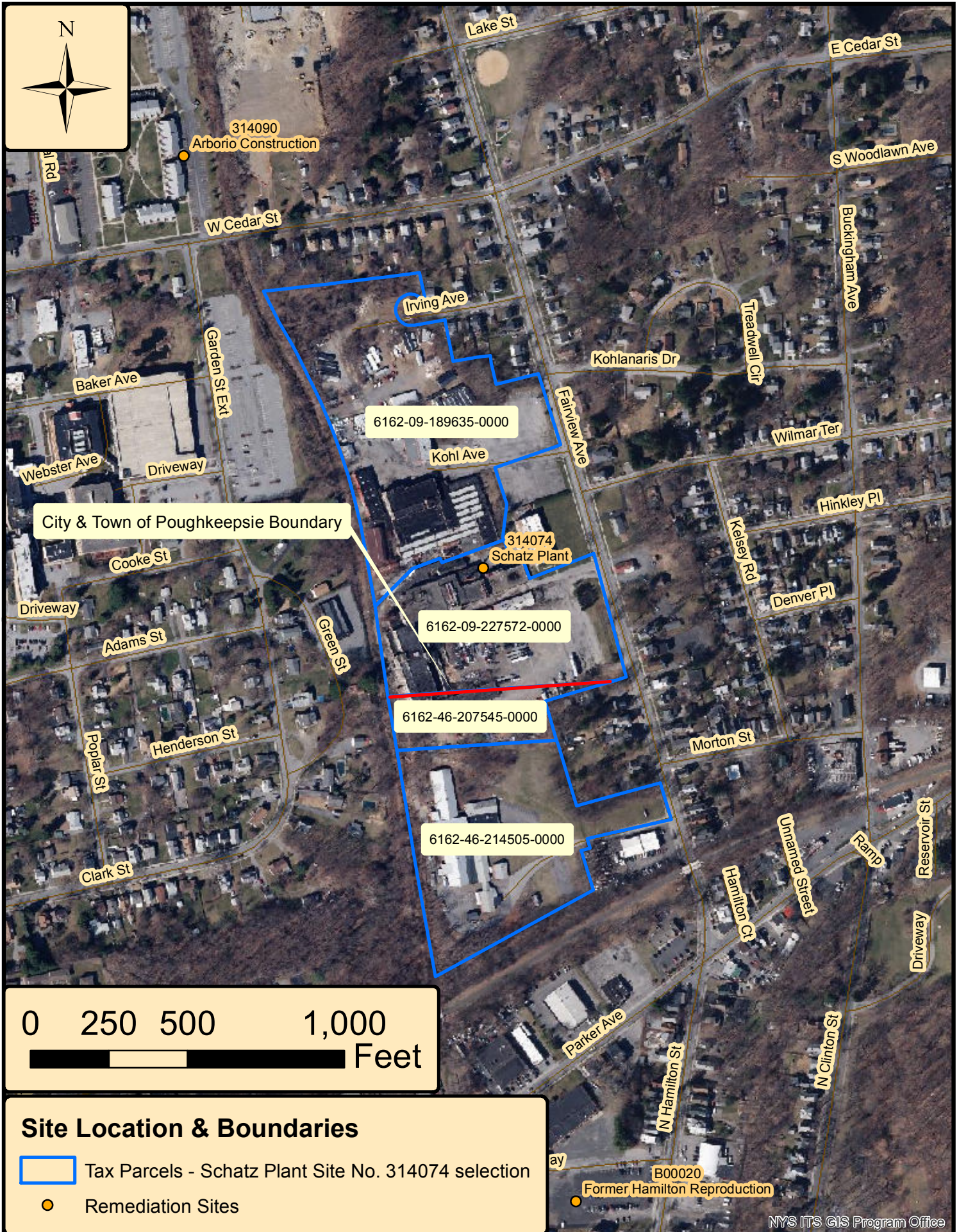


EXHIBIT C

RELEASE OF LIEN

State of New York does hereby release, for good and valuable consideration, a lien on the real property formerly of LOT SIX REALTY CORP. located in the Town of Poughkeepsie, Dutchess County, New York, commonly known as 68-70 Fairview Avenue, Poughkeepsie, New York 12601, and which is described in the attached Schedule "A," which said lien is in effect by reason of a judgment filed, entered and docketed by Dutchess County Supreme Court, Judgment No. 2013/7493C, for the sum of \$3,528,192.41 with interest from March 18, 2014, in favor of the State of New York and against LOT SIX REALTY CORP. which was subsequently transcribed to and docketed by the office of the Dutchess County Clerk. This release affects only the real property described in Schedule "A" and is not a satisfaction of the within described judgment or a general release of the judgment lien against any other property to which this lien may attach.

Attorney General of the State of New York

By: _____

Assistant Attorney General

STATE OF NEW YORK)
)
COUNTY OF ALBANY)

ss:

On the _____, day of _____, before me personally appeared _____, to me known and known to me to be the person described in and who executed the foregoing instrument and who acknowledged to me that he executed the same as an Assistant Attorney General of the State of New York on behalf of the State of New York as authorized by the law of the State of New York and for the purpose therein stated.

Notary Public

"Printed on Recycled Paper"