

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

THIS INDENTURE made this 16th day of June, 2020, between Owner(s) Orange and Rockland Utilities, Inc., having an office at 1 Blue Hill Plaza, Pearl River, New York 10965, County of Rockland, 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 71 Brook Avenue in the Village of Suffern, County of Rockland and State of New York, known and designated on the tax map of the County Clerk of Rockland as tax map parcel number: Section 54.34 Block 1 Lot 2, being the same as that property conveyed to Grantor by the following two deeds:

A deed dated July 1, 1954 and recorded in the Rockland County Clerk's Office in Liber and Page 585/199.

A deed dated December 31, 1952 and recorded in the Rockland County Clerk's Office in Liber and Page 553/75.

The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 4.007 +/- acres, and is hereinafter more fully described in the Land Title Survey dated October 31, 2018 and last revised on February 6, 2020 prepared by Joseph D. Greenaway P.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 Order on Consent Index Number: D3-0001-98-03 and D3-0001-99-01, 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 Rockland 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 identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or 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: 344045
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

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.

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

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SCHEDULE "A" PROPERTY DESCRIPTION

Environmental Easement
To Be Acquired By
New York Statement Department of Environmental
Conservation
From Orange & Rockland Utilities, Inc.
Parcel No. 1(a) and 1(b)
Contains: 3.653 and 0.354 acres

All that tract or parcel of land situate in the Village of Suffern, Town of Ramapo, County of Rockland, State of New York, and being more precisely described as follows:

Beginning at a 5/8-inch rebar with a 1 1/4-inch diameter red plastic cap marked "Thew Associates – Canton NY" (hereinafter referred to as a 5/8-inch rebar) set on the southerly line of a parcel of land conveyed by the County of Rockland to Michael Stewart by deed dated June 5, 1997 and recorded in the Rockland County Clerk's Office on June 5, 1997 as Instrument No. 1997-21480, said rebar having New York State plane coordinates (NAD83/2011 – East Zone) of 832,118.69 feet North and 586,459.26 feet East;

thence North 66 degrees 23 minutes 55 seconds East, along the southerly line of Michael Stewart, a distance of 124.45 feet to a 5/8-inch rebar set on the westerly line of a parcel of land conveyed by the Consolidated Rail Corporation to the State of New Jersey by deed dated March 31, 1979 and recorded in the Rockland County Clerk's Office on May 5, 1983 in Liber 6741 of Deeds at Page 682;

thence along the westerly line of the State of New Jersey, the following three courses and distances:

1. South 39 degrees 49 minutes 05 seconds East a distance of 132.33 feet to a set 5/8-inch rebar;
2. along a curve deflecting to the right, non-tangent to the previous course, having a central angle of 34 degrees 52 minutes 33 seconds and a radius of 714.49 feet, an arc distance of 434.91 feet to a set 5/8-inch rebar (chord: South 04 degrees 31 minutes 15 seconds East, 428.23 feet);
3. continuing along a curve deflecting to the right, having a central angle of 21 degrees 54 minutes 06 seconds and a radius of 714.49 feet, an arc distance of 273.12 feet to a 5/8-inch rebar set at an angle point on the easterly line of a parcel of land conveyed by Erie Land and Improvement Company to the Village of Suffern by deed dated July 26, 1957 and recorded in the Rockland County Clerk's Office on August 19, 1957 in Liber 654 of Deeds at Page 240 (chord: South 23 degrees 52 minutes 05 seconds West, 271.46 feet);

thence along the easterly line of the Village of Suffern, the following four courses and distances:

1. South 63 degrees 19 minutes 55 seconds West a distance of 68.86 feet to a set 5/8-inch rebar;

2. North 79 degrees 10 minutes 05 seconds West a distance of 50.00 feet to a set 5/8-inch rebar;
3. North 01 degrees 05 minutes 05 seconds West a distance of 138.40 feet to a set 5/8-inch rebar;
4. North 00 degrees 53 minutes 05 seconds West a distance of 610.16 feet to the **Point of Beginning**.

To contain 3.653 acres of land, more or less, as surveyed by Jeremy L. Sweeney, Licensed Land Surveyor No. 050863.

Also all that tract or parcel of land situate in the Village of Suffern, Town of Ramapo, County of Rockland, State of New York, and being more precisely described as follows:

Beginning at a 5/8-inch rebar with a 1 1/4-inch diameter red plastic cap marked "Thew Associates – Canton NY" (hereinafter referred to as a 5/8-inch rebar) set on the northerly line of a parcel of land conveyed by Stern & Stern, LLC to the Village of Suffern by deed dated July 30, 2010 and recorded in the Rockland County Clerk's Office on October 12, 2010 as Instrument No. 2010-37130, said rebar having New York State plane coordinates (NAD83/2011 – East Zone) of 831,630.61 feet North and 587,057.56 feet East;

thence South 63 degrees 19 minutes 55 seconds West, along the northerly line of the Village of Suffern, a distance of 357.83 feet to a 5/8-inch rebar set on the easterly line of a parcel of land conveyed by the Consolidated Rail Corporation to the State of New Jersey by deed dated March 31, 1979 and recorded in the Rockland County Clerk's Office on May 5, 1983 in Liber 6741 of Deeds at Page 682;

thence along a curve deflecting to the left, non-tangent to the previous course, having a central angle of 15 degrees 04 minutes 07 seconds and a radius of 814.49 feet, an arc distance of 214.21 feet to a 5/8-inch rebar (0.5 feet below grade) found on the westerly line of a parcel of land conveyed by Econo Truck Body and Equipment, Inc. to Orange and Rockland Utilities, Inc. by deed dated December 12, 2008 and recorded in the Rockland County Clerk's Office on December 19, 2008 as Instrument No. 2008-54413 (chord: North 17 degrees 12 minutes 01 seconds East, 213.59 feet);

thence along the westerly and southerly lines of Orange and Rockland Utilities, Inc., the following three courses and distances:

1. South 26 degrees 38 minutes 46 seconds East a distance of 129.90 feet to a point;
2. North 63 degrees 21 minutes 14 seconds East a distance of 210.00 feet to a point;
3. South 26 degrees 20 minutes 39 seconds East a distance of 24.00 feet to the **Point of Beginning**, said course passing over a 5/8-inch rebar set at 12.00 feet.

To contain 0.354 acres of land, more or less, as surveyed by Jeremy L. Sweeney, Licensed Land Surveyor No. 050863.

The above described parcels of land are intended to be the same premises conveyed by Erie Land and Improvement Company to Rockland Light and Power Company by deed dated July 1, 1954 and recorded in the Rockland County Clerk's Office on August 9, 1954 in Liber 585 of Deeds at Page 199, and deed dated December 31, 1952 and recorded in the Rockland County Clerk's Office on December 31, 1952 in Liber 553 of Deeds at page 75.

The above mentioned coordinates, bearings, and distances are referenced to the North American Datum of 1983, 2011 adjustment (NAD83/2011), and projected on the New York State Plane Coordinate System (East Zone).

Historical Deed: Liber 585 Page 199 (Part of 54.34-01-02 Parcel 1(a))

Beginning at a monument marking the northwesterly corner of property of the Rockland Light and Power Company, and running thence (1) N 1°27' W along the straight line extension of the westerly property line of said Rockland Light and Power Company a distance of 610.16 feet more or less to an iron pipe reputedly marking a point in the northerly line of lands owned by the Village of Suffern; thence (2) N 65°50' E along the northerly line of the said lands owned by the Village of Suffern a distance of 124.45 feet to an iron pipe reputedly marking the northeasterly corner of the said lands owned by the Village of Suffern; thence (3) S 40°23' E along the easterly line of the said lands owned by the Village of Suffern, passing through a monument, a total distance of 132.33 feet to an iron pipe; thence (4) on a curve to the right (radius of 714.49 feet, an arc distance of 436.06 feet more or less, chord bearing S 4°55' E, chord distance of 429.29 feet more or less) to an iron pipe, in the northerly line of property of the Rockland Light and Power Company; thence (5) S 58°56' W along said northerly line a distance of 257.37 feet more or less to the point or place of beginning.

Historical Deed: Liber 553 Page 75 (Parcel 1(b) and part of 54.34-01-02 Parcel 1(a))

Commencing at a point in the northerly line of lands of the Village of Suffern in the westerly line of a 16 foot right of way running from the premises herein described to Ramapo Avenue, and running thence (1) along the northerly line of premises of the Village of Suffern south 74°30' west 341.94 feet to an iron pipe standing near the easterly bank of the Ramapo River; thence (2) north 68° west 50 feet to a point in the Ramapo River; thence (3) north 10°5' east 138.40 feet to a concrete monument in the southerly line of other premises of the Village of Suffern; thence (4) along the southerly line of premises of the Village of Suffern north 70°40' east 72.25 feet to an iron pipe standing in the center line of an easement; thence (5) continuing along the southerly line of premises of the Village of Suffern north 70°40' east 298.75 feet to an iron pipe standing in the northwesterly corner of premises conveyed by the Grantor herein to Meyer Entin and Bessie Entin, his wife, copartners doing business under the firm name and style of Tfenclark Realty Company, by deed dated May 21st, 1946, and recorded in the Rockland County Clerk's Office on May 22, 1946 in Liber 447 of Deeds, at page 119; thence (6) along the westerly line of said Entin's premises south 15°30' east 156 feet more or less to an iron pipe standing in the southwesterly corner of said premises conveyed to Entin; thence (7) along the southerly line of said Entin's premises north 74°30' east 210 feet to an iron pipe standing in the westerly line of premises now or formerly of the Catherine Henrietta Suffern Endowment Fund; thence (8) along the westerly line of said Endowment Fund's premises south 14°35' east 24 feet to an iron pipe

standing in the northerly line of premises of the Erie Railroad Company; thence (9) along the northerly line of premises of the Erie Railroad Company and premises of the Village of Suffern south $74^{\circ}30'$ west 258.06 feet to the point or place of beginning.

