

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL §27-1301 *et seq.*

In the Matter a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE
SETTLEMENT**
Index No. CO 4-20250320-17

DEC Site Name: 34 Freemans Bridge Road/ Lyons Ventures
DEC Site No.: 447028/ 447016

Site Address: 34 Freemans Bridge Road
Glenville, Schenectady County, NY
p/o Tax Map: 30.19-1-26.11
36 Freemans Bridge Road
Glenville, Schenectady County, NY
p/o Tax Map: 30.19-1-27.1

Hereinafter referred to as "Site"

by: FBR Lodging LLC
RESPONDENT

Hereinafter referred to as "Respondent"

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of the Environmental Conservation Law ("ECL") and the New York State Finance Law ("SFL"), and such laws provide the Department with authority to enter into this Order on Consent and Administrative Settlement (the "Settlement Agreement" or "Order").
2. A. The Department is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the ECL and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

3. The 34 Freemans Bridge Road portion of the Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as Site Number 447028 with a Classification of "4" pursuant to ECL 27-1305 and an address of 34 Freemans Bridge Road, Glenville, Schenectady County, NY (p/o Tax Map: 30.19-1-26.11) as depicted in the attached survey map in **Exhibit A**. The Department previously assigned Registry listing No. 447016 to the Site in 1984 after owner Lyon Ventures accepted and stored numerous drums containing various chemicals at the Site.

4. The 36 Freemans Bridge Road lot (Tax Map: 30.19-1-27.1), as depicted in the attached survey map in **Exhibit A**, adjoins the Site. The Department addressed contamination on the 36 Freemans Bridge Road lot that migrated from the 34 Freemans Bridge Road/ Lyons Ventures Registry Site (hereinafter referred to as the "Registry Site"), but the Department did not list the 36 Freemans Bridge Road lot on the Registry. Collectively, the 5.97-acre portion of the Registry Site and the 1.84-acre 36 Freemans Bridge Road lot make up the 7.81-acre development Site subject to this Consent Order. See the Site Boundary Survey map in **Exhibit A**.

5. The Department listed the Site on the Registry with a Classification of "2" in 1996 after determining that the Site presented a significant threat to public health or the environment. The Department prepared a Record of Decision ("ROD") in March 2004 that presented the Department's selected remedy for the Registry Site, and the Department implemented the ROD remedy between 2006-2007. The physical elements of the remedy included excavation, on-site low temperature thermal treatment, and on-site stabilization of approximately 75,000 tons of contaminated soils, waste, and debris, collection and treatment of contaminated non-aqueous phase liquids (NAPLs), treatment of 9,000 gallons of contaminated groundwater, and site restoration using treated and stabilized soils as backfill. Additionally, the remedy required institutional controls, including the recording of an environmental notice, which restricts the future use of the Site to commercial and industrial uses, prohibits the future use of groundwater without treatment, prohibits disturbance of the cover material without Department approval, and requires monitoring of the remaining groundwater contamination area to confirm effectiveness of the source area remedy. The Department reclassified the Registry Site from a Class "2" to a Class "4" on April 9, 2015 when the Department determined the Registry Site was properly closed but continued site management, including groundwater monitoring and maintenance of a cover system, is required.

6. Pursuant to the legal authorities cited herein, the Department has incurred costs, and anticipates the need to incur additional costs, paid from the hazardous waste remedial fund, for the implementation of a Remedial Program at the Site. These expenditures are authorized by and in conformance with relevant and applicable State and federal law.

7. A. Respondent, having an office at 646 Plank Rd, Suite 208, Clifton Park, NY 12065, represents that it is a prospective purchaser under contract to acquire title to a 5.97-acre portion of the approximately 12-acre Registry Site as described on the survey in **Exhibit A**. Respondent further represents that it is not affiliated in any way with P & J Glenville Corporation, the current owner of the Registry Site ("Registry Site Owner"), or any other entities that are potentially responsible for the disposal of hazardous wastes at the Registry Site. Respondent further represents that it is a prospective purchaser under contract to acquire title to the 1.84-acre 36 Freemans Bridge Road lot as described on the survey in **Exhibit A**. Respondent further represents that it is not affiliated in any way with Jeannine M. Kamp, Trustee of the John F. Hornfeck Testamentary Trust, the current owner of the 36 Freemans Bridge Road lot ("36 Freemans Bridge Site Owner"). Collectively, the Registry Site Owner and 36 Freemans Bridge Site Owner are hereinafter referred to as the "Site Owners".

B. Respondent represents that it is a *Bona Fide Prospective Purchaser* ("BFPP") as that term is defined in Section 101(40) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(40) and that it has and will continue to comply with the requirements of CERCLA §§ 101(40) and 107(r)(1) during its ownership of the Site. Therefore, Respondent qualifies for the protection from liability under CERCLA set forth in CERCLA § 107(r)(1), 42 U.S.C. § 9607(r)(1), with respect to the contamination existing at the Site on the effective date of this Order.

C. Respondent anticipates that shortly after the effective date of this Order, a Closing will take place with the Site Owners on or about March 31, 2025 so that title to the 5.97-acre portion of the Registry Site and the 1.84-acre 36 Freemans Bridge Road lot can be respectively conveyed to Respondent by the Site Owners.

8. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; but that the former release or threatened release of hazardous waste at or from the Site no longer constitutes a significant threat to the public health or environment; and (iii) an acknowledgement that while the portion of the Registry Site being acquired no longer poses a significant threat to public health or the environment, the Registry Site is still subject to a recorded Environmental Notice that restricts the use to a commercial or industrial use and requires compliance with Site Management Plan ("SMP") obligations.

9. Respondent and the Department agree that the primary goals of this Order are (i) for Respondent to satisfy the terms and conditions set forth herein to obtain BFPP liability protection under CERCLA, (ii) for the Department to obtain access to the Site in order to implement Site Management as required for the remedy set forth in the ROD, including placement of a new Environmental Easement on the Site, and (iii) for the Department to release the Respondent and furnish a covenant not to sue with respect to any past response costs incurred and that continue to be incurred by the State

related to the Site upon the execution of this Order and Respondent's satisfaction of the terms and conditions set forth herein.

10. The Parties recognize that implementation of this Order will expedite the transition of some of the SMP obligations on the portion of the Site being acquired as described in **Exhibit A** and may avoid prolonged and costly litigation between the Parties. The Parties also recognize that this Order is mutually acceptable, fair, reasonable and in the public interest.

11. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Real Property

The portion of the Registry Site assigned New York State Superfund Numbers 447028/ 447016 subject to this Order as more fully described on the survey map in **Exhibit A**, which consists of an approximately 5.97-acre portion of Tax Map #: 30.19-1-26.11, and the adjacent 1.84-acre 36 Freemans Bridge Road Tax Map #: 30.19-1-27.1, which collectively constitute the 7.81-acre Site, are described as follows:

Subject Property Description (A Map of the Site and Legal Description is attached as Exhibit "A")

Schenectady County Tax Map/Parcel No.: 30.19-1-26.11; 5.97 Acres
Schenectady County Tax Map/Parcel No.: 30.19-1-27.1; 1.84 Acres

II. Site Access/Notice to Successors in Interest

A. Respondent agrees to provide to the Department, any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the remedial program at the Site, and any agent, consultant, contractor, or other person so authorized by the Commissioner, an irrevocable right of access at all reasonable times to the Site with seventy-two (72) hour written notification and subject to authorization of tenants and to any other property Respondent controls to which access is required for the implementation of response actions at and near the Site under applicable federal and state law, including but not limited to all activities authorized under ECL §§ 27-1309(3) – (4) and ECL § 27-1313(8). Notwithstanding any provision of this Settlement Agreement, the Department retains all of its authorities and rights, including enforcement authorities thereto, under CERCLA, Article 27, Title 13 of the ECL or pursuant to any other provision of state or federal statutory or common law.

B. Within sixty (60) days after the effective date of this Settlement Agreement, Respondent shall cause to be filed with the Schenectady County Clerk a Department-approved Notice of Settlement Agreement, which Notice shall be substantially similar to the Notice of Settlement Agreement attached as **Exhibit "B"**, to provide all parties who may acquire any interest in the Site with notice of this Settlement Agreement. Within thirty (30) days of such filing (or a longer period of time as may be required to obtain a certified copy provided Respondent advises the Department of the status of its efforts to obtain such certified copy within thirty (30) days), Respondent shall provide the Department with a copy of such instrument certified by the Schenectady County Clerk to be a true and faithful copy.

C. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site or becomes aware of such conveyance, Respondent shall, not fewer than forty-five (45) days before the date of conveyance or within forty-five (45) days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Settlement Agreement.

D. Respondent shall require that assignees, successors in interest, lessees and sublessees of the Site shall provide the same access and cooperation with the Department subject to the terms in the Environmental Easement, which shall run with the land. Respondent shall not be responsible for any such parties' failure to comply. The Respondent shall ensure that a copy of this Settlement Agreement and the Environmental Easement is provided to any current lessee or sublessee on the Site as of the effective date of this Settlement Agreement and shall ensure that any subsequent leases, assignments or transfers of the Site or an interest in the Site are consistent with this Paragraph, and Paragraph XI (Parties Bound/Transfer of Covenant) of this Settlement Agreement.

E. Respondent shall comply with any land use restrictions and institutional controls on the Site in connection with the remedial program for the Site. Neither Respondent nor its successors and/or assigns shall interfere with the continued operation of the engineering controls and the Department-approved Site Management Plan ("SMP"), including any and all Department-approved amendments to the SMP. Further, if Respondent or its successors and assigns propose to change the use of the Site, as defined in ECL § 27-1317 and 6 NYCRR § 375-2.2(a), Respondent must comply with the notice requirements of 6 NYCRR § 375-1.11(d).

F. Upon sale or other conveyance of the Site or any part thereof, Respondent shall require that any grantee, transferee or other holder of an interest in the Site or any part thereof shall provide access and cooperation to the Department, its authorized officers, employees, representatives, and all other persons implementing the remedial program for the Site under the Department's oversight. Respondent shall require that each grantee, transferee or other holder of an interest in the Site or any part thereof shall comply with any land use restrictions and institutional controls on the Site in connection with the remedial program for the Site.

III. Environmental Easement

A. Within one hundred eighty (180) days of entry of this Order, Respondent shall submit to the Department for approval an Environmental Easement for the Site to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and a Termination of the Environmental Notice with respect to the portion of the Registry Site being acquired.

B. The Environmental Easement executed by Respondent shall comply with the requirements of 6 NYCRR § 375-1.8(h)(2) and DEC Program Policy DER-33: Institutional Controls: A Guide to Drafting and Recording Institutional Controls, Issued December 3, 2010 ("DER-33"). A model Environmental Easement is attached to this Settlement Agreement as **Exhibit "C"**.

C. The Environmental Easement executed by Respondent will:

- require the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls for the portion of the Site being acquired in accordance with Part 375-1.8(h)(3);
- allow the use and development of the controlled property portion of the Site being acquired for commercial or industrial use as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restrict the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH; and
- require compliance with the Department approved Site Management Plan for the Site being acquired.

D. Upon acceptance of the Environmental Easement by the Department, Respondent shall file and record the Environmental Easement in accordance with ECL § 71-3605(8). Respondent shall not convey title to any other party until the easement is recorded.

E. Within ten (10) days of recording the Environmental Easement with the Schenectady County Clerk, Respondent shall submit proof of recording to the Department.

IV. Site Management Plan/Soil Management Plan

Within one hundred twenty (120) days of the entry of this Order, Respondent shall submit to the Department for approval exclusively for the Registry Site being acquired, a document describing the Soil Management Plan that complies with the Department-approved July 2008 Final Site Management Plan (SMP) for the Registry Site being acquired as depicted in **Exhibit "A."** The Soil Management Plan will describe, the proposed development project's temporary impacts to the engineering controls and how

the Registry Site will be restored with a new cover system, how certain groundwater monitoring wells will be decommissioned and others will be replaced as specified herein and including the following:

a. An Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls on the Site being acquired, and which details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed in Paragraphs III above.

Engineering Controls: Any future on-site buildings will be required to perform a soil vapor evaluation to determine if a sub-slab depressurization system, or a similar engineered system, to mitigate the potential for migration of vapors into the indoor air is required: A Site Management Plan Addendum will be prepared to document the engineering controls required if/when any on-site buildings are constructed.

This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations on the Site being acquired and redeveloped even though the plan is to reuse the majority of any disturbed soils for regrading on the Site;
- descriptions of the provisions of the Environmental Easement including any land use and groundwater use restrictions;
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls and Department notification;
- decommissioning and reinstallation of the wells described in Section IV.c below;
- the steps necessary for the periodic reviews and certification of the institutional and/or applicable engineering controls; and

b. If an engineered mitigation system is installed, an Operation and Maintenance (O&M) Plan to ensure continued operation, maintenance, optimization, monitoring, inspection, and reporting of any mechanical or physical components of the remedy will be required. This plan would include, but is not limited to:

- procedures for operating and maintaining the mitigation system;
- compliance monitoring of treatment systems to ensure proper O&M as well as providing the data for any necessary permit or permit equivalent reporting;
- maintaining Site access controls and Department notification; and
- providing the Department access to the site and O&M records.

c. It is clearly understood that Respondent shall replace the following groundwater wells that will be impacted by the planned commercial project, which NYSDEC has determined shall include: MW-11, MW-11D, MW-15, MW-15D, MW-20, and MW-20D. Since some of these wells are currently located in planned development areas where they can be negatively impacted, the wells will be relocated as shown on the attached

well plan in **Exhibit "D"**, which also shows the following wells that the Department has determine will be decommissioned: MW-21, MW-21D, MW-30, MW-32, MW-33. It is further clearly understood that the Department shall continue to sample the remaining wells MW-11, MW-11D, MW-15, MW-15D, MW-20, and MW-20D since there are additional monitoring wells located off-site (both within the remaining portions of the Registry Site, and within other neighboring properties) because it would be difficult to coordinate sampling activities with the various parties/owners involved and determine who would be responsible for sampling the monitoring wells located outside of the defined Registry Site.

V. Due Care/Cooperation

A. Respondent shall exercise due care and shall comply with all applicable local, state and federal laws and regulations with respect to the existing groundwater contamination at the Site. Respondent agrees to cooperate fully with the Department in the implementation of any remaining response actions at the Site, including the remaining groundwater monitoring work until such time as the groundwater standards are met or until asymptotic levels are met such that groundwater monitoring can cease and further agrees not to interfere with such response actions. The Department agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Respondent's operations by entry and implementation of any remaining response actions deemed necessary. In the event Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous waste, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or the environment, Respondent shall immediately take appropriate action to prevent, abate or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements, or any other law, immediately notify the Department of such release or threatened release.

B. Respondent shall take and maintain all steps necessary to continue its status as a "*Bona Fide Prospective Purchaser*" as that term is defined in § 101(40) of CERCLA, 42 U.S.C. § 9601(40), for the Site by continuing to comply with all of the requirements for a *Bona Fide Prospective Purchaser* as set forth in applicable federal and state law, including but not limited to § 101(40) of CERCLA, including without limitation the exercise of "appropriate care" by taking "reasonable steps" as set forth in § 101(40)(D) of CERCLA, 42 U.S.C. § 9601(40)(D), and the implementation and compliance with any land use restrictions and institutional controls as set forth in § 101(40)(F) of CERCLA, 42 U.S.C. § 9601(40)(F) and ECL § 27-1318 for so long as Respondent retains any ownership interest in the Site.

VI. Certification

By entering into this Settlement Agreement, Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to the Department all information known to Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any

existing contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site. Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous waste or pollutants or contaminants at the Site. If the Department determines that the information provided by Respondent is not materially accurate and complete, this Settlement Agreement, within the sole discretion of the State of New York, shall be null and void, and the Department reserves all of its rights.

VII. Release and Covenant Not to Sue

Subject to the Reservation of Rights in Paragraph VIII of this Settlement Agreement, based upon the Respondent's continued cooperation with the Department, including but not limited to developing and implement an SMP exclusively for the Site being acquired described in Exhibit "A", and the Department's acceptance of an Environmental Easement, the Department hereby releases and covenants not to sue, and shall forbear from bringing any action, proceeding or suit pursuant to New York's Environmental Conservation Law or State Finance Law involving or relating to the release or threatened release of contamination existing on, at, or emanating from the Site as of the effective date of this Settlement Agreement (the "Existing Contamination"), and from referring the New York Attorney General any claim for recovery of any past or future costs incurred by the Department against Respondent and Respondent's members, managers, officers, directors, shareholders, lessees and sublessees, grantees, successors and assigns, successors-in-title and its respective secured creditors for the further investigation and remediation of the Site based upon the Existing Contamination. The Existing Contamination covered by this Release and Covenant Not to Sue expressly includes the chemicals known as Per- and Poly-Fluoroalkyl Substances (PFAS), 1,4-dioxane, or other emerging contaminants. The Department, however, hereby reserves its rights concerning, and such Release and Covenant Not to Sue shall not extend to, any further investigation or remedial action the Department deems necessary:

- Due to environmental conditions or information related to the Site unrelated to Existing Contamination (whether on-Site or off-Site) at the time of this Release and Covenant Not to Sue was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- Due to Respondent's failure to comply with this Settlement Agreement; or
- Due to fraud committed by Respondent in entering into or implementing this Settlement Agreement.

Additionally, the Department hereby reserves its rights concerning, and such Release and Covenant Not to Sue shall not extend to Respondent or any of Respondent's lessees, sublessees, successors or assigns or successors-in-title who cause or allow a release or threat of release at the Site of any hazardous waste or petroleum, other than the Existing Contamination; nor to any of Respondent's lessees, sublessees, successors or assigns who are otherwise responsible under state or federal

law for the remediation of the Existing Contamination independent of any obligation that party may have respecting the same resulting solely from the Settlement Agreement's execution. Notwithstanding the above, with respect to any claim or cause of action asserted by the Department, the party seeking the benefit of this Release and Covenant Not to Sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to the Existing Contamination.

Notwithstanding any other provision in this Release and Covenant Not to Sue:

- If with respect to this Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party other than the Respondent, nothing in this Settlement Agreement shall be construed or deemed to preclude the State of New York from recovering such claim;
- Except as provided in this Settlement Agreement, nothing contained in this Settlement Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights with respect to any party, including Respondent;
- Nothing contained in this Settlement Agreement shall prejudice any rights of the Department to take investigatory or remedial action it deems necessary if Respondent fails to comply with the Settlement Agreement or if contamination other than Existing Contamination is released at the Site; and
- Nothing contained in this Settlement Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal rights or claims, actions, suits, causes of action or demands whatsoever that (i) Respondent may have against any party other than the Department, and (ii) the Department may have against any party other than Respondent, its directors, officers, employees, agents and servants, and those successors and assigns of Respondent that were not responsible under applicable law for the development and implementation of a remedial program at the Site prior to the effective date of this Settlement Agreement, and their respective secured creditors, unless the secured creditor qualifies for the lender liability exemption in Environmental Conservation Law § 27-1323.

VIII. Reservation of Rights

A. The Release and Covenant Not to Sue set forth in Paragraph VII does not pertain to any matters other than those expressly specified in Paragraph VII. The Department reserves and this Settlement Agreement is without prejudice to all rights against Respondent with respect to all other matters, including but not limited to claims based on a failure by Respondent to meet requirements of this Settlement Agreement,

including but not limited to Paragraph II (Access/Notice to Successors in Interest), Paragraph III (Environmental Easement), Paragraph IV (SMP) and Paragraph V (Due Care/Cooperation).

B. Except as provided in the Release and Covenant Not to Sue in Paragraph VII after its issuance and except as otherwise provided in this Settlement Agreement, nothing contained in this Settlement Agreement shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights or authorities, including but not limited to the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Respondent.

C. Except as otherwise provided in this Settlement Agreement, Respondent expressly reserves all rights and defenses under applicable law to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions or determinations of the Department, including any assertion of remedial liability by the Department against Respondent, and further reserves all rights including the rights to notice, to be heard, to appeal and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Settlement Agreement. The existence of this Settlement Agreement or Respondent's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing or violation of law by Respondent, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

D. Except as provided in this Settlement Agreement, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers, for past or future response and/or cleanup costs or other such costs or damages arising from contamination at the Site as provided under applicable law.

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York and their employees and representatives harmless for all third-party claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Settlement Agreement by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York and/or their employees and representatives during the course of any activities conducted pursuant to this Settlement Agreement. The Department shall provide Respondent with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

X. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Brianna Scharf, Project Manager
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233
Tel: 518-402-5987
Email: brianna.scharf@dec.ny.gov

With copies to:

Mark Sergott, NYS DOH
Empire State Plaza, Corning Tower
Room 1787
Albany, NY 12237
Tel. 518-402-1398
Email: mark.sergott@health.ny.gov

Michael Murphy, NYSDEC Project Attorney
625 Broadway, 14th Floor
Albany New York 12233-1500
Tel: 518-402-8564
Email: Michael.murphy1@dec.ny.gov
(correspondence only)

2. Communication from the Department to Respondent shall be sent to:

Bhavik Jariwala
Asset Management & Development
FBR Lodging LLC
c/o Oakfield Hospitality | Matrix Hotels
646 Plank Road, Suite 208
Clifton Park, NY 12065
bjariwala@matrixhotels.com
617-308-0213

Linda R. Shaw, Esq.
Knauf Shaw LLP
2600 Innovation Square
100 S. Clinton Avenue

Rochester, NY 14604
lshaw@nyenvlaw.com
585-546-8430

Charles B. Dumas, Esq.
Member of the Firm
Lemery Greisler LLC
677 Broadway, 8th Floor
Albany, New York 12207
CDumas@lemerygreisler.com
518-930-4143

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this Paragraph X.

XI. Parties Bound/Transfer of Covenant Not to Sue

A. This Settlement Agreement shall apply to and be binding upon the Department and shall apply to and be binding on the Respondent, its officers, directors, employees and agents. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

B. In the event of an assignment or transfer of the Site or an assignment or transfer of an interest in the Site, the assignor or transferor shall continue to be bound by all of the terms and conditions, and subject to all the benefits, of this Settlement Agreement except as the Department and the assignor or transferor agree otherwise and modify this Settlement Agreement, in writing, accordingly. Moreover, prior to or simultaneously with any assignment or transfer of the Site, the assignee or transferee must consent in writing to be bound by the terms of this Settlement Agreement, including but not limited to the certification requirement in Paragraph VI of this Settlement Agreement in order for the Release and Covenant Not to Sue in Paragraph VII to be available to that party. The Release and Covenant Not to Sue in Paragraph VII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department.

XII. Disclaimer

This Order in no way constitutes a finding by the Department as to the risks to human health and the environment which may be posed by the Existing Contamination at the Site nor constitutes any representation by the Department that the Site is fit for any particular purpose.

XIII. Termination

A. Should the Release and Covenant Not to Sue set forth in Paragraph VI herein become null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Settlement Agreement or in the event of Respondent's failure to materially comply with any provision of this Settlement Agreement, then neither this Settlement Agreement nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA.

B. If any Party to this Settlement Agreement believes that any or all of the obligations under Paragraph II (Site Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of this Settlement Agreement, that Party may request in writing that the other Party agree to terminate the provisions establishing such obligations; provided that the provisions in question shall continue in full force unless and until the Party requesting such termination receives written confirmation from the other Party to terminate such provisions.

XIV. Miscellaneous

A. Respondent and Respondent's officers, directors, agents, servants, employees, successors and assigns shall be bound by this Settlement Agreement. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Settlement Agreement. Respondent's officers, directors, employees, servants and agents shall be obliged to comply with the relevant provisions of this Settlement Agreement in the performance of their designated duties on behalf of Respondent.

B. All references to "days" in this Settlement Agreement are to calendar days unless otherwise specified.

C. The paragraph headings set forth in this Settlement Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Settlement Agreement.

D. 1. No term, condition, understanding or agreement purporting to modify or vary any term of this Settlement Agreement shall be binding unless made in writing and subscribed by the Party to be bound. No informal advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Settlement Agreement.

2. If Respondent seeks to change any provision of this Settlement Agreement, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Department's contacts provided in Paragraph X.

E. To the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law § 15-106, 6 NYCRR § 375-1.5(b)(5)(i) and other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2), for "matters addressed" pursuant to and in accordance with this Settlement Agreement. "Matters addressed" in this Order shall mean all response actions, as this term is defined at 42 U.S.C. § 9601(25), taken by Respondent to implement this Settlement Agreement for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Settlement Agreement, which past costs have been waived. To the extent authorized under 42 U.S.C. § 9613(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the response action and/or for some or all of the costs of such action, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under 42 U.S.C. § 9613(f)(2).

F. Respondent agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify the Department in writing no later than sixty (60) days prior to the initiation of such suit or claim.

G. Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify the Department in writing within ten (10) days of service of the complaint on them.

H. All activities undertaken by Respondent pursuant to this Settlement Agreement shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents.

I. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statute have the meaning assigned to them under said statute or regulations. Whenever terms defined in this Settlement Agreement are used in this Settlement Agreement, the definitions in this Settlement Agreement shall apply. In the event of a conflict, the definition set forth in this Settlement Agreement shall control.

J. Respondent's obligations under this Settlement Agreement represent payment for or reimbursement of response costs and shall not be deemed to constitute any type of fine or penalty.

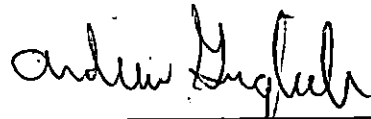
K. This order may be executed for the convenience of the Parties hereto, individually or in combination, in one or more counterparts, each of which for all

purposes shall be deemed to have the status of an executed original, and all of which shall together constitute one and the same.

L. The effective date of this Settlement Agreement is the date of the closing for the completion of the sale of the portion of the Site being acquired between Respondent and the Owner. This Settlement Agreement shall be null and void if closing does not occur.

DATED: 3/26/25

AMANDA LEFTON, ACTING COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

Andrew O. Guglielmi, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Consent Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Consent Order.

FBR Lodging LLC
Bhavik Jariwala, Member

By: [Signature]
Title: Member
Date: 3-6-2025

STATE OF NEW YORK)
COUNTY OF Saratoga) ss:

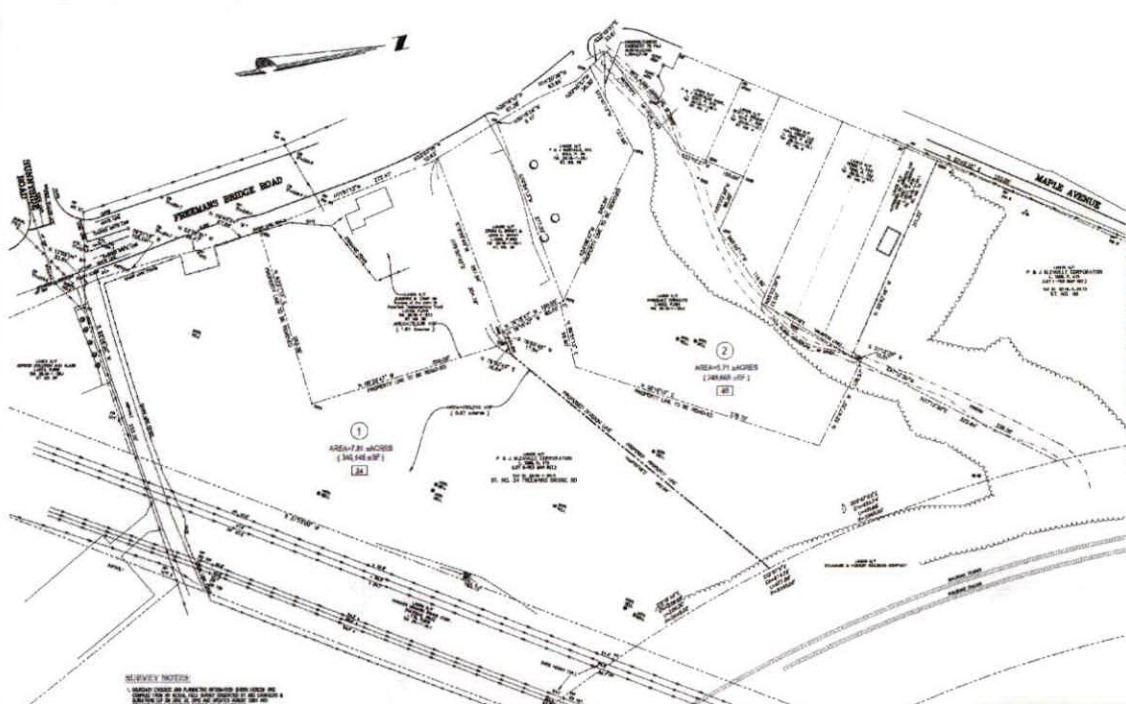
On the 6 day of March in the year 2025, before me, the undersigned, personally appeared Bhavik Jariwala (full name) personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public, State of New York

Stacey L. Delgado
Notary Public, State of New York
Qualified in Saratoga County
No. 01DE6323735
Commission Expires April 27, 2027

EXHIBIT "A"

SITE BOUNDARY SURVEY MAP



SURVEY NOTES:

1. THESE NOTES ARE TO BE READ IN CONJUNCTION WITH THE PLAN AND THE SURVEY DATA. THE SURVEY DATA IS THE SOURCE OF TRUTH IN THE EVENT OF A DISCREPANCY BETWEEN THE NOTES AND THE PLAN.
2. THE SURVEY WAS CONDUCTED ON 12/15/2021.
3. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND ENGINEERS LISTED ON THIS PLAN.
4. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE STATE OF VERMONT.
5. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS AND ETHICS OF THE SURVEYING AND ENGINEERING PROFESSIONS.
6. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE STATE OF VERMONT.
7. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS AND ETHICS OF THE SURVEYING AND ENGINEERING PROFESSIONS.

MAP REFERENCES:

- 1. VERMONT DEED BOOK 1234:567-789
- 2. VERMONT DEED BOOK 987:654-321
- 3. VERMONT DEED BOOK 321:987-654
- 4. VERMONT DEED BOOK 654:321-987

Call 811
Dig Safely Every Time

LOT LINE ADJUSTMENT PLAN BETWEEN LANDS NOW OR FORMERLY JEANNEE M. CAMP, PAULENILLE, INC., PASCOALE POPOLDO & PAULENILLE CORPORATION ST. NO'S 34, 36 & 48 FREEMANS BRIDGE RD. TOWN OF FRANKLIN, COUNTY OF WINDHAM, VERMONT	
SURVEYED BY ABD SURVEYORS 100 W. CHURCH ST. FRANKLIN, VT 05470 802-775-1234	DATED DECEMBER 15, 2021
ENGINEERS 100 W. CHURCH ST. FRANKLIN, VT 05470 802-775-1234	
SHEET NO. 1 OF 1	

SURVEY AND LEGAL DESCRIPTION

ALL THAT TRACT, PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Glenville, County of Schenectady and State of New York, being along the easterly side of Freemans Bridge Road, also being Lot 1, as shown and laid out on a map titled "*Lot Line Adjustment Plan between lands now or formerly Jeannine M. Camp, P&J Glenville, Inc., Pasquale Popolizio & P&J Glenville Corporation, St. No.'s 34, 36 & 48 Freemans Bridge Road*", Town of Glenville, County of Schenectady, State of New York, dated December 16, 2024, as prepared by ABD Engineers & Surveyors and to be filed in the Schenectady County Clerk's Office and being more particularly bounded and described as follows:

BEGINNING at a point in the easterly road boundary of Freemans Bridge Road at its intersection with the division line between lands now or formerly Erwin C. Grant & Joan H. Grant as described in Liber 1058 of deeds at page 520 on the north and lands now or formerly Jeannine M. Camp as described in Liber 2128 of deeds at page 540 on the south; thence from said point of beginning along said division line and along the division line with others North 79°50'45" East, 304.78 feet to a point; thence along the proposed division line between Lot No. 1 on the south and Lot No. 2 on the north (both lots as shown on the above referenced map) North 49°50'45" East, 492.98 feet to a point of non-tangent in the division line between the aforementioned Lot No. 1 on the west and lands now or formerly Delaware & Hudson Railroad Company on the east; thence along an arc of a curve to the left having a radius of 2,045.00 feet, an arc length of 226.20 feet, chord bearing South 19°16'49" East, 226.08 feet to a point of non-tangent in the division line between the aforementioned Lot No. 1 on the west and lands now or formerly Niagara Mohawk Power Corporation as described in Liber 778 of deeds at page 556 on the east; thence along said division line South 31°03'00" West, 795.72 feet to a point in the division line between the aforementioned Lot No. 1 on the north and lands now or formerly Gerber Collision and Glass as described in Liber 1823 of deeds at page 260 on the south; thence along said division line South 82°26'30" West, 253.70 feet to a point in the aforementioned easterly road boundary of Freemans Bridge Road; thence along said easterly road boundary of Freemans Bridge Road the following six (6) courses and distances:

- 1) North 12°56'04" West, 33.69 feet to a point; thence
- 2) North 06°51'18" West, 105.04 feet to a point; thence
- 3) North 02°26'51" West, 85.47 feet to a point; thence
- 4) North 09°40'24" West, 57.86 feet to a point; thence
- 5) North 11°01'12" West, 272.47 feet to a point; thence
- 6) North 22°03'56" West, 10.63 feet to the point and place of beginning and

containing 7.81 acres of land more or less.

Subject to any enforceable easements, rights, restrictions and/or covenants of record.

EXHIBIT "B"

NOTICE OF SETTLEMENT AGREEMENT

FBR Lodging LLC ("Respondent") is subject to a Settlement Agreement (Index No. _____) (the "Settlement Agreement") issued by the Commissioner of the New York State Department of Environmental Conservation (the "Department" under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL") for a 5.97-acre portion of the Site known as the 34 Freemans Bridge Road State Registry Inactive Hazardous Waste Superfund Site Nos. 447028/447016 located at an address of 34 Freemans Bridge Road, Town of Glenville, Schenectady County, New York (p/o Schenectady County Tax Map No. 30.19-1-26.11) (the "Registry Site") and the adjacent 1.84 acre 36 Freemans Bridge Road, Town of Glenville, Schenectady County, New York (p/o Schenectady County Tax Map No. 30.19-1-27.1) (the "36 Freemans Bridge Road lot"). Collectively, the Registry Site and 36 Freemans Bridge Road lot as described on the survey map in **Exhibit "A"** constitute the "Site" subject to the Settlement Agreement.

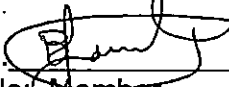
The Department designated the Registry Site as a portion of an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and listed the Registry Site on the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site ##447028 and 447016. The Department modified the classification of the Registry Site from a Class "2" to a Class "4" site pursuant to ECL Section 27-1305(4)(b), and after remediating the 36 Freemans Bridge Road lot, which revised classification indicates that the Department determined that the Registry Site no longer presents a significant threat to the public health or environment. The Site subject to this Settlement Agreement is more particularly described on the survey map in **Exhibit "A"** and in the legal description attached hereto as Schedule "A."

The Site has been remediated by the NYSDEC and post remediation long term groundwater monitoring has been and will continue to be implemented by the Department. The purpose of the Settlement Agreement is to facilitate the continued implementation of long term groundwater monitoring of the Site until groundwater cleanup standards or asymptotic levels are achieved for the remaining contaminants of concern. The effective date of the Settlement Agreement was _____ . A copy of the Settlement Agreement, as well as any and all Department-approved Work Plans and Reports under this Settlement Agreement may be reviewed at the Department's Central Office located at 625 Broadway, Albany, New York.

This Notice of Settlement Agreement is being filed with the Schenectady County recording officer in accordance with Paragraph III of the Settlement Agreement to give all parties who may acquire any interest in the portion of the Site subject to the Settlement Agreement notice of the Settlement Agreement.

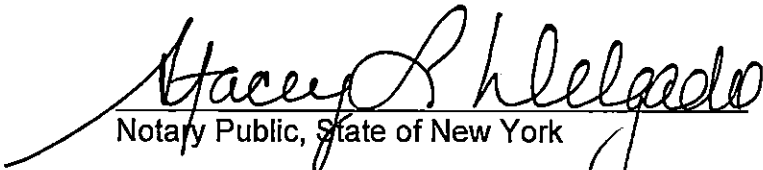
WHEREFORE, the undersigned has signed this Notice of Settlement Agreement in compliance with the terms of the Settlement Agreement.

FBR Lodging LLC
Bhavik Jariwala, Member

By: 
Title: Member
Date: 3-6-2025

STATE OF NEW YORK)
COUNTY OF Saratoga) ss:

On the 6 day of March in the year 2025, before me, the undersigned, personally appeared Bhavik Jariwala (*full name*) 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/she executed the same in his/her capacity, 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

Stacey L. Delgado
Notary Public, State of New York
Qualified in Saratoga County
No. 01DE6323735
Commission Expires April 27, 2027

EXHIBIT "C"

MODEL ENVIRONMENTAL EASEMENT

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

THIS INDENTURE made this _____ day of _____, 20__, between Owner(s) Enter property owner(s) name, having an office at Enter property owner's address, County of Dutchess, 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 Enter street address of property in the Choose municipality type of Enter property municipality, County of Enter property county and State of New York, known and designated on the tax map of the County Clerk of Enter clerk county as tax map parcel numbers: Section Enter Tax ID Section #. Block Enter Tax ID Block # Lot Enter Tax ID Lot #, being the same as that property conveyed to Grantor by deed dated Enter Deed Date and recorded in the Enter county name or leave blank for NY City deeds County Clerk's Office in Liber and Page Enter Instrument # or Liber and Page #s. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately Enter Acreage +/- acres, and is hereinafter more fully described in the Land Title Survey dated Enter original survey date and, if applicable, "and revised on" and revised survey date prepared by Enter revised surveyor's name or original surveyor's name if not revised, 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 Choose an Oversight Document TypeNumber: Enter SAC# or BCA/Consent Order Index # and "as amended by Amendment(s) #(s)" as applicable, 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:

Choose the allowable land use if current land use is selected, enter current use.

(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 Automatic 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 Choose the correct list of inapplicable uses., 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: Enter DEC Site #
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.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Enter Grantor's Name:

By: _____

Print Name: _____

Title: _____ Date: _____

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, Director
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 Andrew O. Guglielmi, 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.

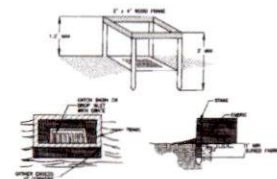
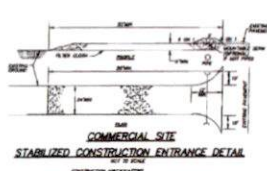
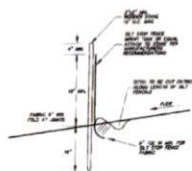
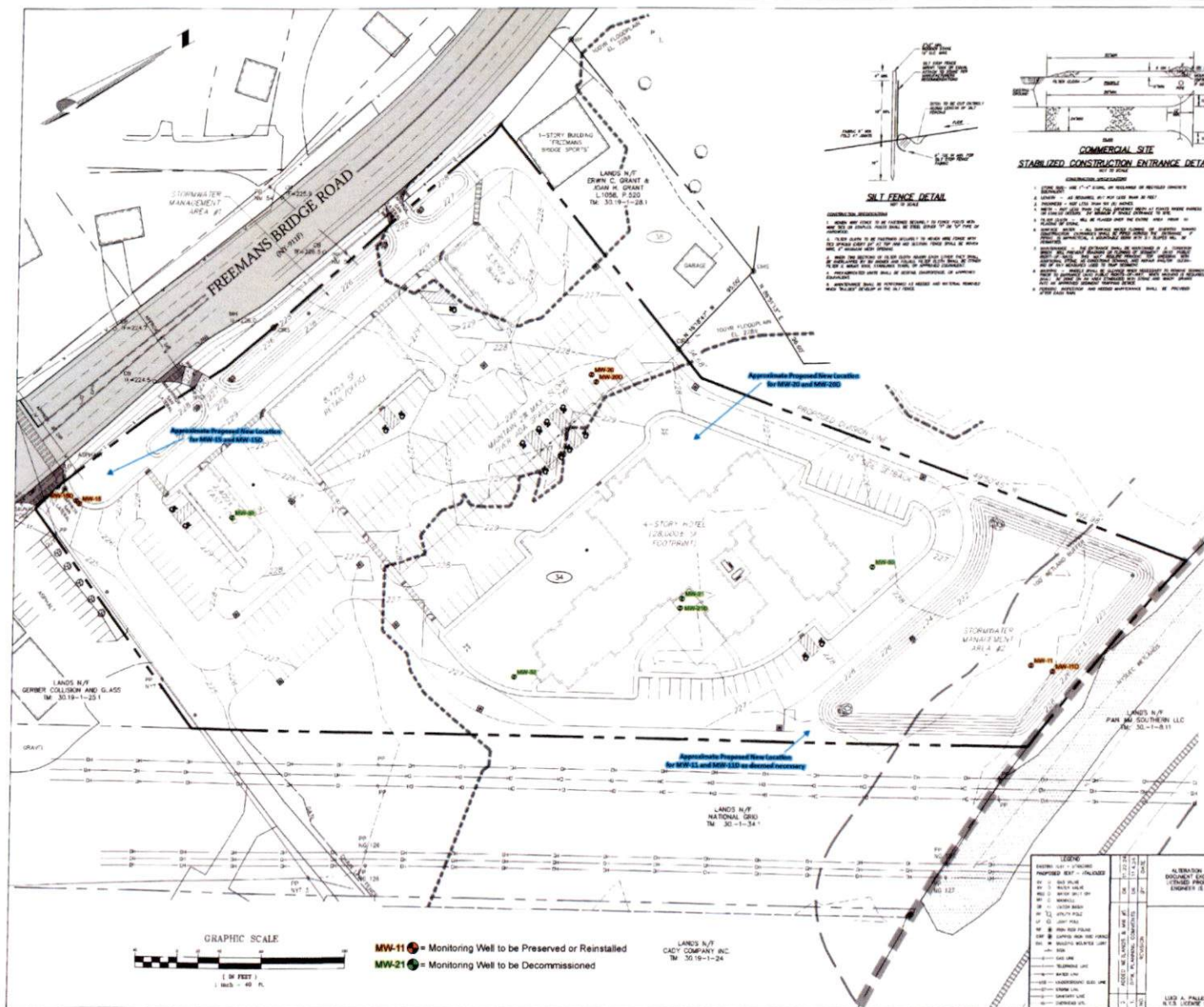
Notary Public - State of New York

SCHEDULE "A" PROPERTY DESCRIPTION

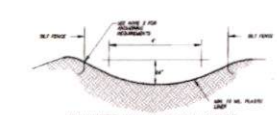
Enter Property Description

EXHIBIT "D"

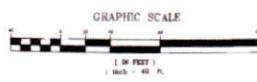
WELL DECOMMISSIONING AND NEW WELL RELOCATION MAP



1. FILTER FABRIC SHALL BE 1/2" x 2" x 1/2" (MIN.)
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9. FILTER FABRIC SHALL BE INSTALLED OVER THE ENTIRE SURFACE OF THE DRAINAGE AREA
10. FILTER FABRIC SHALL BE INSTALLED OVER THE ENTIRE SURFACE OF THE DRAINAGE AREA



1. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
2. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
3. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
4. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
5. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
6. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
7. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
8. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
9. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE
10. CONCRETE SHALL BE PLACED TO A MINIMUM DEPTH OF 4" OVER THE SUBGRADE



MW-11 = Monitoring Well to be Preserved or Reinstalled
MW-21 = Monitoring Well to be Decommissioned

LANDS N/T
CITY COMPANY INC.
TM: 30-15-1-24

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	09/23/2024	ALP
2	REVISED SET - CHANGES	09/23/2024	ALP
3	REVISED SET - CHANGES	09/23/2024	ALP
4	REVISED SET - CHANGES	09/23/2024	ALP
5	REVISED SET - CHANGES	09/23/2024	ALP
6	REVISED SET - CHANGES	09/23/2024	ALP
7	REVISED SET - CHANGES	09/23/2024	ALP
8	REVISED SET - CHANGES	09/23/2024	ALP
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49	REVISED SET - CHANGES	09/23/2024	ALP
50	REVISED SET - CHANGES	09/23/2024	ALP

**EROSION & SEDIMENT CONTROLS
MIXED USE DEVELOPMENT**
34 FREEMANS BRIDGE ROAD

TOWN OF ORANGLI COUNTY OF SHERMANTON
STATE OF NEW YORK

ADD ENGINEERS
SURVEYORS
1000 30th Street, Suite 100
Orangetown, NY 10917
www.addeng.com

DATE: SEPTEMBER 23, 2024
SCALE: 1" = 40'
SHEET: 12 OF 17