

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

**THIS INDENTURE** made this 2<sup>nd</sup> day of March, 2012, between Owner(s) Bitnara, LLC, having an office at 36 Utica Avenue, Latham, County of Albany, 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 48 Lincoln Avenue in the City of Saratoga Springs, County of Saratoga and State of New York, known and designated on the tax map of the County Clerk of Saratoga as tax map parcel numbers: Section 165.83 Block 2 Lot 34.1, being the same as that property conveyed to Grantor by deed dated December 1, 2011 and recorded in the Saratoga County Clerk's Office in Instrument No 2011041050. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately .17 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 23, 2006 prepared by S.Y. Kim Land Surveyor, P.C., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**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 the Order on Consent Index Number: A5-0455-0110, 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:

**residential, as described in 6 NYCRR Part 375-1.8(g)(2)(i)**

(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) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

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

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

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



(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for raising livestock or producing animal products for human consumption, 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 annually, or such time as NYSDEC may allow, 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: 546052  
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  
[6/11]

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.

Bitnara, LLC:

By: 

Print Name: Nanjoo Kim

Title: owner

Date: Mar. 13, 2012

**Grantor's Acknowledgment**

STATE OF NEW YORK )  
COUNTY OF Saratoga ) ss:

On the 13<sup>th</sup> day of March, in the year 2012, before me, the undersigned, personally appeared Nan J Kim, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

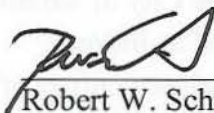
  
Notary Public - State of New York

JO-ANN M. O'REILLY  
NOTARY PUBLIC, State of New York  
Qualified in Saratoga County  
My Commission Expires August 5, 2013  
Reg # 010F4984823



**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:



Robert W. Schick, Acting Director

Division of Environmental Remediation

**Grantee's Acknowledgment**

STATE OF NEW YORK )

) ss:

COUNTY OF ALBANY )

On the 21<sup>st</sup> day of March, in the year 2012, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public - State of New York

David J. Chiusano  
Notary Public, State of New York  
No. 010H5032146  
Qualified in Schenectady County  
Commission Expires August 22, 2014

**SCHEDULE "A" PROPERTY DESCRIPTION**

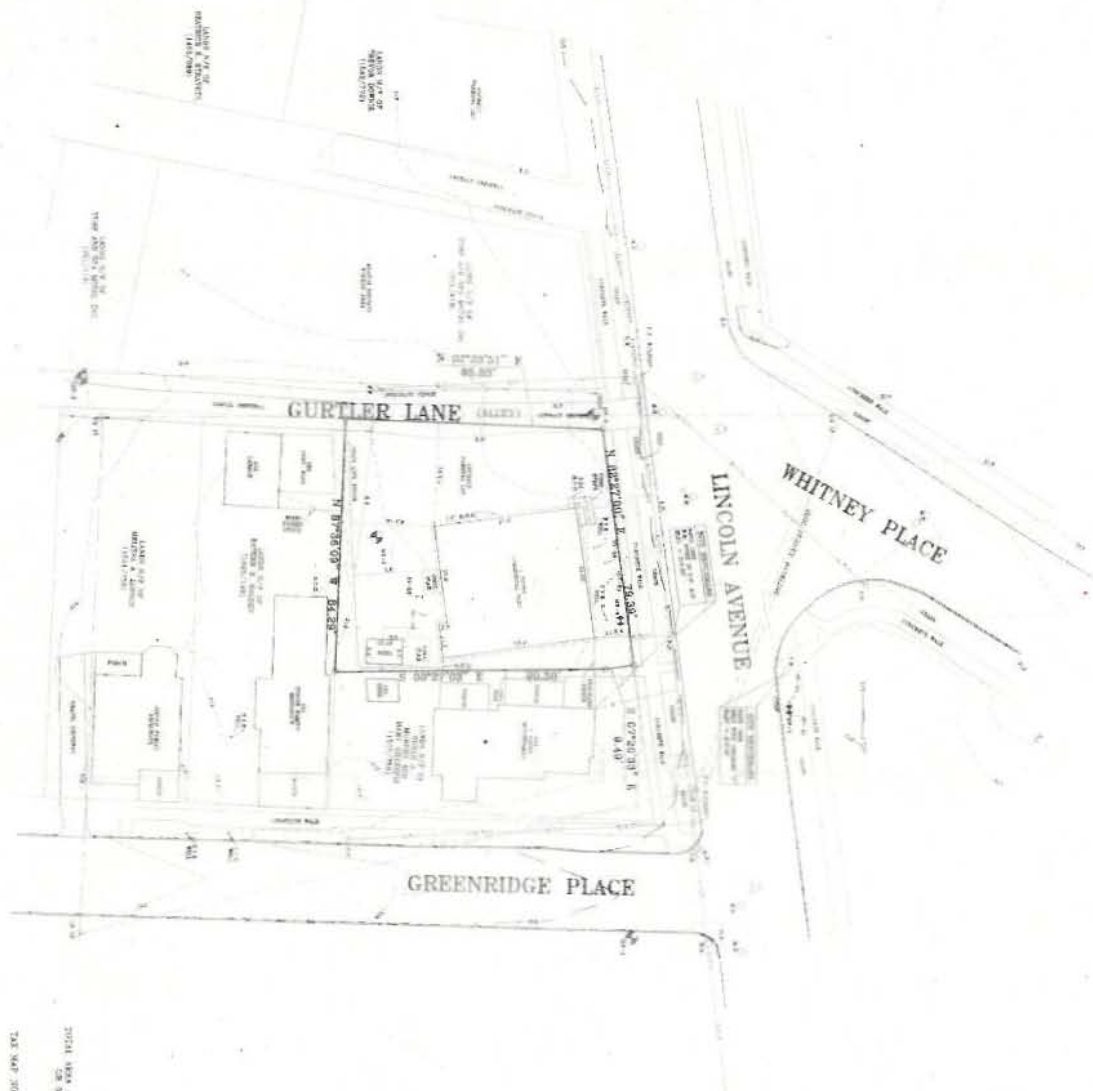
**All That Certain Piece, Parcel and Lot of Land** with the improvements thereon, situate, lying and being in the City of Saratoga Springs, County of Saratoga and State of New York, being more fully described as follows:

**Commencing** at the southeast corner of Lincoln Avenue and the alley next west of Greenridge Place, and from said corner along the southerly bounds of Lincoln Avenue South 83 deg. 05 min. 56 sec. East, 79.42 feet to a point in the northwestern corner of lands now or formerly of Murphy and Gillespie (Bk. 1537 p. 756); thence along the westerly bounds of Murphy/Gillespie South 06 deg. 43 min. 12 sec. West, 8.71 feet to a point; thence continuing along said westerly bounds South 13 deg. 36 min. 42 sec. West, 90.30 feet to a point in the northerly bounds of lands now or formerly of Halden (Bk. 1525 p. 148); thence along the said northerly bounds North 73 deg. 32 min. 24 sec. West, 84.29 feet to the easterly bounds of the above-mentioned alley; thence along said alley North 16 deg. 27 min. 36 sec. East, 85.83 feet to the point and place of beginning; containing 7,582 square feet, more or less.

**Being** the same premises as conveyed by James Smalley and Sharon Smalley to Marek D. Giurk and Lucyna Giurk by Deed dated February 21, 2002, and recorded in the Saratoga County Clerk's Office in Book 1605 of Deeds at Page 796 on March 4, 2002.

David J. Chiswick  
Notary Public, State of New York  
No. 0108032145  
Qualified in Saratoga County  
Commission Expires August 22, 2014





TRUE NORTH AT THE 74°30'



MIDNIGHT OF WEST LONGITUDE



TABLE 1		TABLE 2	
Year	Age	Year	Age
1970	10	1970	10
1971	11	1971	11
1972	12	1972	12
1973	13	1973	13
1974	14	1974	14
1975	15	1975	15
1976	16	1976	16
1977	17	1977	17
1978	18	1978	18
1979	19	1979	19
1980	20	1980	20
1981	21	1981	21
1982	22	1982	22
1983	23	1983	23
1984	24	1984	24
1985	25	1985	25
1986	26	1986	26
1987	27	1987	27
1988	28	1988	28
1989	29	1989	29
1990	30	1990	30
1991	31	1991	31
1992	32	1992	32
1993	33	1993	33
1994	34	1994	34
1995	35	1995	35
1996	36	1996	36
1997	37	1997	37
1998	38	1998	38
1999	39	1999	39
2000	40	2000	40
2001	41	2001	41
2002	42	2002	42
2003	43	2003	43
2004	44	2004	44
2005	45	2005	45
2006	46	2006	46
2007	47	2007	47
2008	48	2008	48
2009	49	2009	49
2010	50	2010	50
2011	51	2011	51
2012	52	2012	52
2013	53	2013	53
2014	54	2014	54
2015	55	2015	55
2016	56	2016	56
2017	57	2017	57
2018	58	2018	58
2019	59	2019	59
2020	60	2020	60
2021	61	2021	61
2022	62	2022	62
2023	63	2023	63
2024	64	2024	64
2025	65	2025	65
2026	66	2026	66
2027	67	2027	67
2028	68	2028	68
2029	69	2029	69
2030	70	2030	70
2031	71	2031	71
2032	72	2032	72
2033	73	2033	73
2034	74	2034	74
2035	75	2035	75
2036	76	2036	76
2037	77	2037	77
2038	78	2038	78
2039	79	2039	79
2040	80	2040	80
2041	81	2041	81
2042	82	2042	82
2043	83	2043	83
2044	84	2044	84
2045	85	2045	85
2046	86	2046	86
2047	87	2047	87
2048	88	2048	88
2049	89	2049	89
2050	90	2050	90
2051	91	2051	91
2052	92	2052	92
2053	93	2053	93
2054	94	2054	94
2055	95	2055	95
2056	96	2056	96
2057	97	2057	97
2058	98	2058	98
2059	99	2059	99
2060	100	2060	100

TOTAL AREA = 7,800 sq ft  
CR 0.72 AC  
TAX MAP NO. 105-07-2-061

THIS VIOLATES THE RULES PRELIMINARY TO THE CONDUCT OF AN ABSTRACT OF TITLE AND IS SUBJECT TO ANY MATTERING OR FACT AS ABSTRACT OF TITLE MAY REVEAL.

UNAUTHORIZED ADDITION OR ALTERATION TO THIS MAP IS A VIOLATION OF ARTICLE 185, SECTION 706A, SUB-PARAGRAPH 2 OF NEW YORK STATE ELECTION LAW.

SURVEY MAP OF  
 LANDS OF  
 HYDREUM SEASHORE CLEANERS WITH 3-16-042  
 (48 DECORAL AROUND)  
 CITY OF LOS ANGELES  
 ALBERTSON ESTATE, S.V.  
 SQUARE, 1" = 500'  
 100' 00" 43-12-04 48 DECORAL 418 000'  
 S.Y.K. LAND AND SURVEYING P.C.  
 10000 2ND ST. LOS ANGELES, CALIF. 90044  
 10000 2ND ST. LOS ANGELES, CALIF. 90044