

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT ("Agreement") is made as of this 22-day of April, 2024 by, between and among the City of Rome, having an address at having an address at 198 North Washington Street, Rome, NY 13440 (the "Easement-Holder"), the Oneida County Industrial Development Agency, having an address of 584 Phoenix Drive, Rome, New York 13441 (the "Fee Owner"), the Rome Community Brownfield Restoration Corporation having an address of 584 Phoenix Drive, Rome, New York 13441 (the "Beneficial Owner") (the Fee Owner and the Beneficial Owner being, collectively, the "Owner") and the New York State Department of Environmental Conservation, having an address at 625 Broadway, Albany, NY 12233 (the "Department", and together with Easement-Holder and Owner the "parties").

RECITALS:

WHEREAS, Owner is the owner of that certain real property known as Henry Street, Rome, NY, and designated on the tax map of Oneida County as Section 242.000, Block 1, Lots 7.1 & 54.1 (the "Property" as more particularly described in Appendix "A", attached hereto and made a part hereof); and

WHEREAS, Easement-Holder is the holder of those certain sewer/storm water easements recorded against the Property (the "Sewer Easements" as more particularly described in Appendix "B", attached hereto and made a part hereof); and

WHEREAS, Owner and the Department are parties to that certain Environmental Easement, dated April 22, 2024 and recorded against the Property concurrently herewith in the Oneida County Clerk's Office (the "Environmental Easement"); and

WHEREAS, the parties now desire to enter into this Agreement,

NOW, THEREFORE in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, in hand paid, receipt and sufficiency of which are hereby expressly acknowledged, the parties hereby agree as follows:

1. Easement-Holder covenants, stipulates and agrees that the Sewer Easements, and any supplements, amendments, modifications or replacements thereof or thereto, shall at all times continue to be subordinated and made secondary and inferior in each and every respect to the Environmental Easement and to all of the terms, conditions and provisions thereof so that, at all times, the Environmental Easement shall be and remain superior to the Sewer Easements for all purposes, subject to the provisions set forth herein and this subordination is to have the same force and effect as if the Environmental Easement had been executed, acknowledged, delivered and recorded prior to the Sewer Easements, any amendments or modifications thereof, and any notice thereof.
2. Without limiting the generality of Paragraph 1 above, Easement-Holder hereby subordinates its Sewer Easements to Section 3 of the Environmental Easement and Easement-Holder agrees that if Easement-Holder exercises any of its rights under the

Sewer Easements, Section 3 of the Environmental Easement shall not be terminated or impaired by reason thereof and that the Department shall be permitted to (a) enter and inspect the Property pursuant to Section 3 of the Environmental Easement, in a reasonable manner and at reasonable times, to assure the Property's continued compliance with the institutional and engineering controls provided in Section 2(A) of the Environmental Easement and (b) perform, or cause to be performed by Owner or any successor to Owner, all covenants and obligations undertaken by Owner thereunder.

3. Easement Holder acknowledges that it has received and reviewed a copy of the Department-approved Site Management Plan (SMP) for the Property referred to in the Environmental Easement and is fully-familiar with its terms and provisions.
4. Except in cases of emergency, Easement-Holder shall notify Owner at least ten (10) days before it (or any of its contractors) undertakes any work within any of the Sewer Easements which involves digging or otherwise disturbing the ground, and shall describe the work to be undertaken in such detail as may be reasonably necessary to enable Owner to determine whether the Department should be given notice thereof. In cases of emergency, Easement-Holder shall give the aforesaid notice to Owner as soon as is reasonably practicable under the circumstances.
5. Beneficial Owner, Department and Easement-Holder acknowledge that Fee Owner is entering into this Agreement solely in its capacity as Fee Owner of the Property. Beneficial Owner agrees that the Fee Owner, its directors, members, officers, agents (except the Beneficial Owner) and employees shall not be liable for and Beneficial Owner agrees to defend, indemnify, release and hold the Fee Owner, its directors, members, officers, agents (except the Beneficial Owner) and employees harmless from and against any and all liability arising from or expense incurred by the Fee Owner's granting the Easement, including without limiting the generality of the foregoing, all claims arising from the breach by the Beneficial Owner of any of its covenants contained herein and all causes of action and attorneys' fees and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Fee Owner are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Fee Owner, or any of its directors, members, agents (except the Beneficial Owner) or employees.
6. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

[signature pages follow]

THIS SUBORDINATION AGREEMENT IS HEREBY ENTERED INTO 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 Guglielmi
Andrew O. Guglielmi, Director
Division of Environmental Remediation

ACKNOWLEDGMENT

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

On the 22nd day of April, in the year 2024 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.

Cheryl A. Salem
Notary Public - State of New York

Cheryl A. Salem
Notary Public State of New York
Registration No. 01SA0002177
Qualified in Albany County
My Commission Expires March 3, 2027