

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

THIS INDENTURE made this 18th day of JANUARY, 2017, between Owner(s) Oliviarae, LLC, having an office at 5 Park Place, Addison, New York 14801, County of Steuben, 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 343 West Pulteney Street in the City of Corning, County of Steuben and State of New York, known and designated on the tax map of the County Clerk of Steuben as tax map parcel number: Section 299.19 Block 03 Lot 011.000, being the same as that property conveyed to Grantor by deed dated May 10, 2007 and recorded in the Steuben County Clerk's Office in Liber and Page 2095/42. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.571 +/- acres, and is hereinafter more fully described in the Land Title Survey dated April 18, 2015 and last revised September 21, 2015 prepared by Thomas G. Merrill, P.L.S., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is

extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, 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 at the Controlled Property 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:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),
Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial
as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls at the Controlled Property must be operated and maintained as specified in the Site Management Plan (SMP);

(i) Grantor and subsequent owners of the Controlled Property shall ensure that the Environmental Easement remains in place and effect.

(3) All Engineering Controls at the Controlled Property must be inspected at a frequency and in a manner defined in the SMP;

(i) Grantor and subsequent owners of the Controlled Property shall inspect all on-site Engineering Controls at a frequency and in a manner defined in the SMP.

(4) The use of groundwater underlying the Controlled Property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Steuben 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;

- (i) Grantor shall adhere to the institutional controls at the Controlled Property required by the Environmental Easement, including the prohibition of the use of groundwater underlying the Controlled Property without treatment rendering it safe for intended use and the prohibition of vegetable gardens and farming.
- (5) Groundwater and other environmental or public health monitoring may be performed by Grantee 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 Controlled Property that will disturb remaining contaminated material must be conducted in accordance with the SMP;
 - (i) Grantor and subsequent owners of the Controlled Property shall submit a written statement certifying that the controls at the Controlled Property are unchanged from the previous certification;
 - (ii) Grantor and subsequent owners of the Controlled Property shall notify the Department of changes of use and/or ownership of the Controlled Property; and
 - (iii) Grantor and subsequent owners of the Controlled Property shall report emergencies to the Department and other appropriate authorities.
- (8) Monitoring to assess the performance and effectiveness of the remedy at the Controlled Property must be performed as defined in the SMP;
 - (i) Grantor and subsequent owners of the Controlled Property shall prepare periodic review reports evaluating institutional and engineering controls imposed on the Controlled Property as defined in the SMP.
- (9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy on the Controlled Property shall be performed as defined in the SMP;
 - (i) Grantor and subsequent owners of the Controlled Property shall operate, maintain, monitor, inspect, and prepare reports evaluating mechanical or physical components of the remedy on the Controlled Property.
- (10) Access to the Controlled Property must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the owner of the Controlled Property to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i), 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 regarding the Controlled Property contained in the SMP, which may include 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, and the consent of Grantor or its successors and assigns. 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 Controlled Property 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 the Controlled Property:

(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 the Controlled 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 that are imposed on the Controlled property by the SMP, 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 Controlled Property, all rights as fee owner of the Controlled 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 Controlled 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, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: 851022
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.

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

Oliviarae, LLC:

By: Donald Stiker

Print Name: DONALD STIKER

Title: SOLE MEMBER Date: 12-14-16

Grantor's Acknowledgment

STATE OF NEW YORK)
COUNTY OF Steuben) ss:

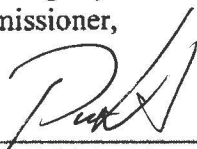
On the 14th day of December in the year 2016 before me, the undersigned, personally appeared Donald Stiker personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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.

Robin K. Knapp
Notary Public - State of New York

ROBIN K. KNAPP
Notary Public, State of New York
No. 01KN5031567
Qualified in Steuben County
My Commission Expires Aug. 8, 2018

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,

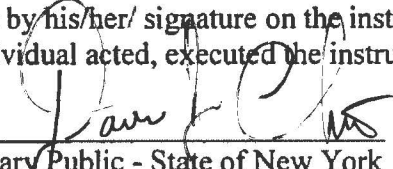
By:


Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 18th day of January, in the year 2017, 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. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2018

SCHEDULE "A" PROPERTY DESCRIPTION

ALL that tract or parcel of land situate in the City of Corning, County of Steuben and State of New York, known as Lots 1, 2, and 3 of Block 4 in what is known as the Fuller Plot in said City, according to a map filed in the Steuben County Clerk's Office on April 16, 1914, and being more particularly bounded and described as follows: Beginning at a point marked by a P.K. Nail located at the intersection of the Easterly street line of Townsend Avenue (50 feet wide) and the Northerly street line of Pulteney Street (49.5 feet wide); Thence

1.) North 06 Degrees 43 Minutes 40 Seconds East along the Easterly street line of said Townsend Avenue a distance of 164.27 feet to a point marked by a five-eighths inch (5/8") diameter steel rod with a survey cap (henceforth referred to as a survey marker), said point also being located at the South-Westerly corner of lands now of formerly of Grace Fellowship (Liber 1902 of Deeds, page 82); Thence

2.) South 83 Degrees 16 Minutes 20 Seconds East along the Southerly line of said Grace Fellowship a distance of 69.39 feet to a point marked by a rebar, continuing on the same course for an additional 70.61 feet for a total distance of 140.00 feet to point marked by a survey marker located on the Westerly side of Cutler Avenue (50 feet wide), said point being the South-Easterly corner of said Grace Fellowship; Thence

3.) South 06 Degrees 43 Minutes 40 Seconds West along the Westerly side of said Cutler Avenue a distance of 191.10 feet to a point marked by a P.K. nail located at the intersection of the Westerly Street line of said Cutler Avenue and the Northerly street line of the aforementioned Pulteney Street; Thence

4.) North 72 Degrees 25 Minutes 20 Seconds West along said Northerly street line of said Pulteney Street a distance of 142.55 feet to the Point or Place of Beginning.

Containing 0.571 ± Acres (24,876 ± square feet) of land.