

**FORMER PERX PROPERTY CLEANUP**

**ENVIRONMENTAL EASEMENT**

DUTCHESS COUNTY  
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THIS INDENTURE made this 12<sup>th</sup> day of October, 2006, between **Kearney Realty & Development** residing at (or having an office at ) 1292 East Main Street, Shrub Oak, New York 10588, (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; and

**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 ("brownfield 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 maintenance, monitoring or operation requirements and of ensuring the potential 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 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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

**WHEREAS**, Grantor is the owner of real property located in the Village of Red Hook, Dutchess County, New York known and designated as the Perx Property in the Environmental Restoration Program which include the tax map number 11964, Section 6272, Block 9, Lot 205603 being the same as that Property conveyed to Grantor by deed on September 7, 2006, and recorded in the Land Records of the Dutchess County Clerk's Office on September 15, 2006 in computerized system tracking/ identification number 02-2006-7567 made by David Cohen, Mayor of the Village of Red Hook, comprised of approximately 6.67 acres, and the Environmental Easement affecting this tax parcel is more fully described in Schedule A attached hereto and made a part hereof ( the "Controlled Property"); and;

**WHEREAS**, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

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**NOW THEREFORE**, in consideration of the covenants and mutual promises contained herein and the terms and conditions of State Assistance Contract Number C302576, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. **Purposes.** The Parties 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 maintenance, monitoring or operation requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Institutional and Engineering Controls.** The following controls 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. The Controlled Property may be used for passive recreational use (bike or walkway paths, green spaces or other public uses with limited potential soil contact). This will not preclude use/application of sewage treatment plant and essential equipment, etc. As long as the following long-term institutional controls are employed:

**(i) the property owner will provide an institutional control certification on a periodic basis as determined by the Department, prepared and submitted by a professional engineer or such other expert acceptable to the NYSDEC, until the NYSDEC notifies the property owner in writing that this certification is no longer needed. This submittal will contain certification that the institutional controls are still in place, that the NYSDEC is allowed access to the site, and that nothing has occurred that will impair the ability of the control to protect public health or the environment, or constitute a violation or failure to comply with the "Site Management Plan" attached as Schedule B.**

**(ii) any intrusive activities (e.g. any activity that will cause a disturbance of the soil below 2 inches of the surface) which are to be conducted within the description of this easement from Schedule A, must adhere with the "Site Management Plan" from Schedule B, or as revised and approved by the Department.**

B. The Controlled Property may not be used for a higher level of use than a passive recreational use. However, such use does not prohibit operation and maintenance of the sewage treatment plant and essential equipment. The above-stated institutional controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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.**

C. 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.

D. Grantor covenants and agrees that it shall annually submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 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 the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, 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 intentionally violates this environmental easement, the Grantee may revoke the Satisfactory Completion of project provided under ECL Article 56, Title 5 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. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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 its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation 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 and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

11. Costs and Liabilities. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage.

12. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority.

13. Successors. The term "Grantor", wherever used herein, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

14. Compliance with Law. This Environmental easement shall not remove the necessity of Grantor to obtain any permit and/or approval from any governmental agency having jurisdiction over any activity conducted or to be conducted on the Controlled Property.

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

Grantor's Name

By: Kenneth Kary

Title: Pres. L.C.T.

Date: 10/12/86

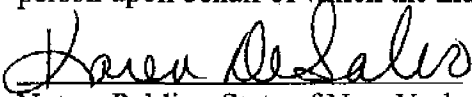
**THIS ENVIRONMENTAL EASEMENT IS HEREBY  
ACCEPTED BY THE PEOPLE OF THE STATE OF  
NEW YORK, Acting By and Through the Department of  
Environmental Conservation**

By: Alexander B. Grannis  
Alexander B. Grannis, Commissioner

### Grantor's Acknowledgment

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

On the 12<sup>th</sup> day of October, in the year 2006, before me, the undersigned, personally appeared Kenneth Kearney, 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.

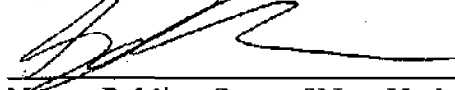
  
Notary Public - State of New York

KAREN DeSALVO  
Notary Public, State of New York  
County of Westchester  
Reg. No. 01DE6101043  
Commission Expires Nov. 3, 2007

### Grantee's Acknowledgment

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF     )

On the 25 day of Oct, in the year 2007 before me, the undersigned, personally appeared Aleand Grant, 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 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

SCOTT OWENS  
Notary Public, State of New York  
No. 020106108092  
Qualified in Albany County  
Commission Expires April 12, 2008

**Schedule A**

LEGAL DESCRIPTION OF  
**RED OAKS SENIOR COMMUNITY - ENVIRONMENTAL EASEMENT**  
V/O OF RED HOOK  
MA# 204016.05  
4/21/2006 Rev. 9/28/2006

ALL that certain parcel of land situate in the Village of Red Hook, County of Dutchess and State of New York and is more particularly described as follows:

BEGINNING at a point, said point being the southerlymost corner of Lot 10 as shown on a map entitled "Red Hook Commons - Final Subdivision Plat" and filed in the Dutchess County Clerk's Office as Map No. 11964, thence along the southwesterly line of Lot 10 the following two (2) courses:

1. North 67° 22' 00" West 342.83 feet and
2. North 66° 30' 30" West 144.35 feet

to a point, said point being the westerlymost corner of Lot 10; thence northeasterly along the northwesterly line of Lot 10 North 35° 50' 00" East 943.08 feet to a point, said point an interior corner of Lot 10 and the easterlymost corner of said lands of Fein; thence easterly, southerly, and westerly through Lot 10 the following six (6) courses:

1. South 54° 10' 00" East 104.99 feet along the westerly line of a 50 foot wide right-of-way as per Deed Liber 1397, Page 471,
2. South 35° 50' 00" West 203.34 feet,
3. South 04° 10' 00" East 65.00 feet,
4. South 10° 50' 00" West 118.00 feet,
5. South 33° 50' 00" West 100.00 feet,
6. South 50° 10' 00" East 409.39 feet

to the point or place of BEGINNING and containing 6.674 acres of land, more or less.

Schedule B

**SITE MANAGEMENT PLAN**

for the

**PERX PROPERTY**

located at

**7395 South Broadway  
Village of Red Hook  
Dutchess County, New York**

**ERP Site Number: B00177  
DEC Environmental Restoration Project Contract RFB-DCB-16-05**

**ESI File: DR99140.45**

**July 2006**

**Prepared by:**

**ECOSYSTEMS STRATEGIES, INC.  
24 Davis Avenue  
Poughkeepsie, New York 12603  
(845) 452-1658**

**And**

**DEWKETT ENGINEERING, P.C.  
187 East Market Street, Suite 101  
Rhinebeck, New York 12572  
(845) 876-5250**



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A Site Location Map

B Final Conditions Map

## **SECTION 1 – Overview of Site Management Plan**

### **1.1 Site Description**

This Site Management Plan (SMP) details environmental response actions appropriate to address known environmental conditions at the Perx Property (Site). The Site is located at 7395 South Broadway, Village of Red Hook, Dutchess County, New York (Site Location Map, Attachment A) and is owned by Dutchess County (County). Ecosystems Strategies, Inc. (ESI) and Dewkett Engineering, P.C. act as a joint venture representing the County in technical matters concerning this remediation project. The property is currently vacant. Remediation activities described below are complete. The property is slated for future development as affordable senior housing.

### **1.2 Nature and Extent of Contamination**

Issues of environmental concern at the Site were documented in the Final Summary Report of Site Investigation and Interim Remedial Activities prepared by ESI, dated April 2004. Based on these investigations, the New York State Department of Environmental Conservation (NYSDEC) prepared an Environmental Restoration Record of Decision, Perx Property Site, Village of Red Hook, Dutchess County, New York, Site Number B-001773 (ROD), dated February 2005. The ROD chose one of four remedies proposed to remediate the environmental concerns and to prepare the Site for future development. Remedial goals outlined in the ROD included asbestos abatement, demolition of all on-Site buildings, removal of hazardous waste and storage tanks, and remediation of soil contaminated with metals, petroleum or pesticides. The ROD also required that a SMP and environmental easement be developed for the Site.

A Workplan for implementing the ROD was detailed in a Remedial Design Report (RDR) prepared by ESI, dated September 2005. The County and NYSDEC entered into a State Assistance Contract (SAC Number C302756) to fund part of the costs of remediation at the Site.

A Final Engineering Report (FER) was prepared by ESI and DE and dated July 2006.

Remediation at this Site is conducted in accordance with NYSDEC Restoration Project RFB-DCB-16-05, SAC C302756, NYSDEC Environmental Restoration Program (ERP) Site No. B-00177-3, and the February 2005 ROD.

"Guidance level", as used in this SMP, refers to the concentration of a particular contaminant above which remedial actions may be appropriate. Guidance levels are used to assess the integrity of on-Site soils and groundwater relative to conditions that may present a threat to public health, given the existing and probable future uses of the Site.

With the exception of some metals (see below) this SMP uses guidance levels for soil contaminants as presented in the NYSDEC's Technical and Administrative Guidance Memorandum #4046 (TAGM 4046), dated January 24, 1994, as modified by subsequent memoranda. Guidance levels for groundwater are presented in the NYSDEC's Division of Water Technical and Operational Guidance Series 1.1.1, Ambient Water Quality Standards and Guidance Levels and Groundwater Effluent Limitations, October 22, 1993 (Revised June 1998).

Guidance levels for arsenic (11.1 parts per million, ppm), lead (400 ppm) and chromium (16.4 ppm) are Site specific and were defined in the ROD.

### 1.2.1 Environmental Response Actions

The following activities were conducted as part of the implementation of the NYSDEC approved RDR. The Final Conditions Map (Attachment B) summarizes the locations of completed remediation activities.

- Where asbestos containing materials (ACMs) were documented or suspected in Site buildings they were removed from the Site in a manner consistent with applicable NYS Department of Labor and NYSDEC regulations. Transite piping discovered outside of the building was removed in the same manner.
- All on-Site structures have been demolished and all resulting demolition debris has been disposed of in accordance with applicable NYSDEC regulations.
- All regulated hazardous wastes present in on-Site structures have been properly characterized, containerized and disposed of by a licensed contractor. Waste manifests document proper disposal of these wastes at a licensed repository.
- All tanks, including petroleum, wastewater, and water tanks have been removed from the Site. Post-excavation sampling documented the absence of any contamination in underlying soils.
- Petroleum-contaminated soil near a former 700-gallon fuel-oil underground storage tank (the subject of NYSDEC Spill #0210253) has been excavated, stockpiled and removed from the Site by properly licensed contractors. Waste manifests document that 60 cubic yards of petroleum-contaminated soil has been disposed of off-Site at a licensed facility. Post-excavation samples confirm the absence of any remaining petroleum-contaminated soil.
- Metals-contaminated soils (arsenic and lead) on the Site have been removed from three areas: Area A (in the south-central portion of the Site), Area B (in the north-central portion of the Site), and Area C (in the northwest corner of the Site). The total volume of soil removed from the Site is approximately 3,500 cubic yards (final manifests are pending). Post-excavation samples document the absence of elevated arsenic and lead in remaining soils.
- Water samples from five on Site monitoring wells documented the absence of volatile organic compounds (VOCs) and pesticides in groundwater. Concentrations of metals in these samples were below guidance levels.
- Chlordane contaminated soils located in the courtyard of the main building have been properly disposed of off-Site. Post-excavation sampling documented the absence of any contamination in underlying soils.
- Arsenic contaminated soils located at four off-Site properties were removed and properly disposed of off-Site.
- Wetlands and the wetland buffer were not subjected to remedial actions. However, sampling in these areas previously documented concentrations of arsenic above guidance levels.

### 1.2.2 Environmental Conditions Present After Site Remediation

No remaining environmental contamination is present on the Site other than that in the wetlands. Based on the findings of the FER, no remediation management or monitoring activities are warranted.

### 1.3 Objective

The objective of this SMP is to provide a detailed description of the procedures required to properly manage soil that may be disturbed during site development within the boundaries outlined by the environmental easement.

## **SECTION 2 – Soil Management Plan**

This section provides a contingency plan for future soil disturbance activities, including building renovation or expansion, subgrade utility line repair or relocation, and new construction, that may occur within the environmental easement.

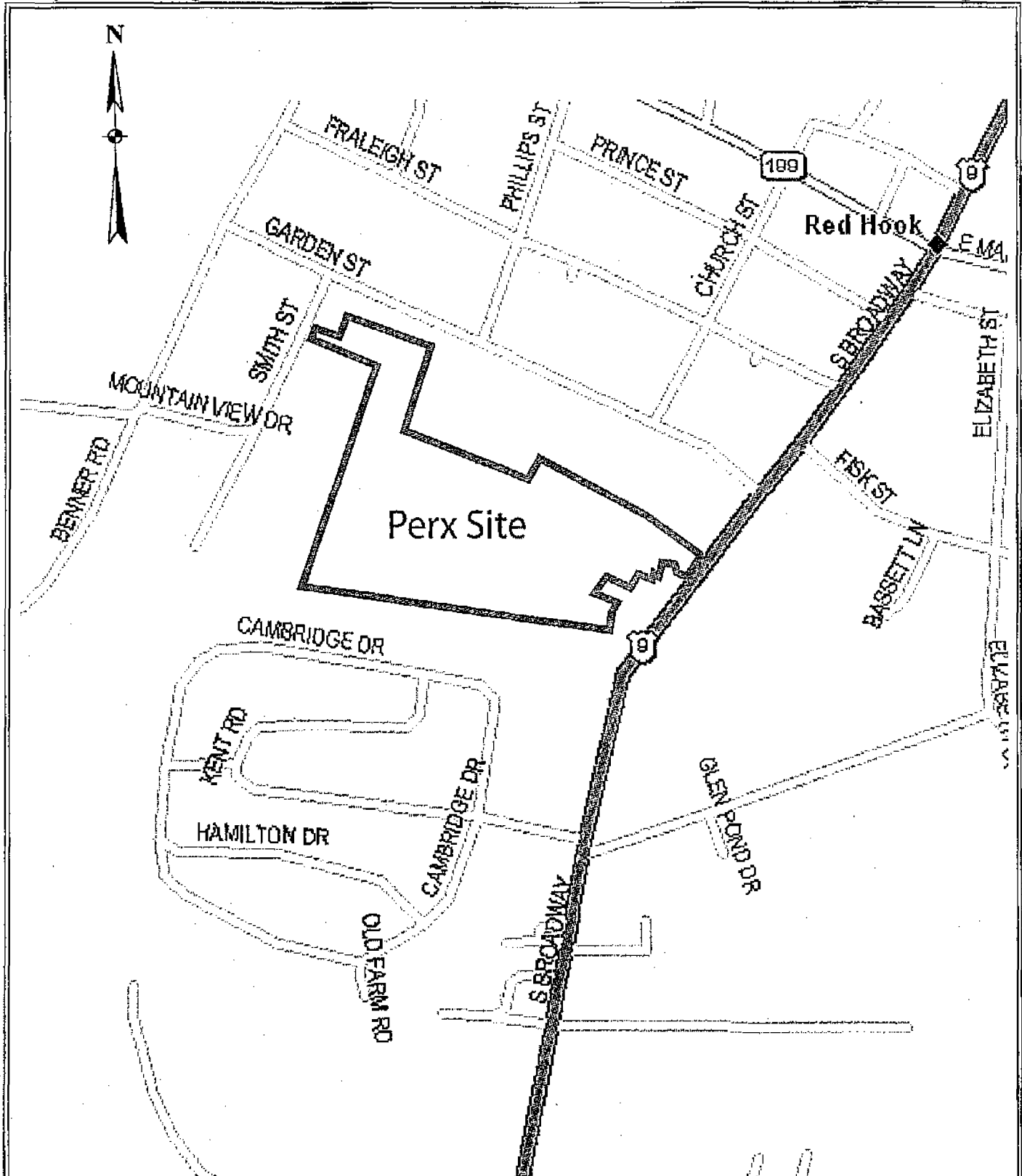
All on-Site soils within the environmental easement are assumed to be contaminated with arsenic and, as a result, any disturbed soils must be handled as regulated material. Excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives. All exported soils will be considered a regulated waste (excavated soils that remain on-site as fill are not considered regulated waste). This SMP addresses the management of any soils generated by potential future soil disturbances or soils imported onto the property, and addresses these contingencies.

Qualified personnel must be on-Site to monitor any activities that might disturb soils within the environmental easement. All excavated soils will be considered regulated waste, subject to management under NYSDEC regulation (6NYCRR, Part 360 or 370), unless analytical testing shows otherwise. The following will occur in the case that soil is exported off-site:

- 1 Qualified personnel will be on-Site to monitor any activities that might disturb soils.
- 2 Excavated soil will be sampled by collecting one composite sample and a duplicate sample per 2,000 cubic yards of stockpiled soil. A minimum of one sample will be collected for volumes less than 2,000 cubic yards.
- 3 The composite sample will be analyzed by a New York State Department of Health-certified laboratory for arsenic. Stockpiled soil cannot be transported off-Site until the analytical results are received.

Imported soil must meet all applicable NYSDEC guidelines as "clean fill". Soil imported for use at the Site will be analyzed for total weight VOCs, Resource Conservation Recovery Act metals, pesticides and polychlorinated biphenyls. Only soils with documented contaminant concentrations below respective TAGM 4046 levels will be acceptable as "clean fill", unless the NYSDEC is petitioned and approves such alternative soils.

**ATTACHMENT A**  
**Site Location Map**



All feature locations are approximate. This map is intended as a schematic to be used in conjunction with the associated report, and it should not be relied upon as a survey for planning or other activities.

### Site Location Map

Perx Property  
7395 South Broadway  
Village of Red Hook  
Dutchess County, New York

Est File: DR99140.45

July 2006

Attachment A

14/15

**ATTACHMENT B**  
**Final Conditions Map**





