### NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER

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Additional MRT:

Recording Fee:

Affidavit Fee:

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#### will control for indexing purposes in the event 2023101800233001008E0D3*A* RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 11** Document ID: 2023101800233001 Document Date: 10-12-2023 Preparation Date: 10-19-2023 Document Type: EASEMENT Document Page Count: 10 PRESENTER: **RETURN TO:** SIVE PAGET & RIESEL, P.C. SIVE PAGET & RIESEL, P.C. 560 LEXINGTON AVENUE, 15TH FLOOR 560 LEXINGTON AVENUE, 15TH FLOOR NEW YORK, NY 10022 NEW YORK, NY 10022 212-421-2150 212-421-2150 NDUNCAN@SPRLAW.COM NDUNCAN@SPRLAW.COM PROPERTY DATA Borough Block Lot Ūnit Address 424 BROOKLYN 1 Entire Lot 267 BOND STREET Property Type: NON-RESIDENTIAL VACANT LAND Easement Borough Block Lot Unit Address BROOKLYN 431 12 498 SACKETT STREET Entire Lot **Property Type:** COMMERCIAL REAL ESTATE Easement **CROSS REFERENCE DATA** or \_\_\_\_ Year\_\_ Reel\_\_\_ Page *or* File Number CRFN DocumentID **PARTIES GRANTOR/SELLER: GRANTEE/BUYER:** PEOPLE OF NEW YORK BY DEPT. ENVIRONMENTAL BAYSIDE GOWANUS OWNER, L.L.C 398 NE 5TH STREET, 13TH FLOOR CONSERVA MIAMI, FL 33132 625 BROADWAY ALBANY, NY 12233 FEES AND TAXES Mortgage: Filing Fee: Mortgage Amount: 0.00 100.00 NYC Real Property Transfer Tax: Taxable Mortgage Amount: 0.00 Exemption: 0.00 TAXES: County (Basic): 0.00 NYS Real Estate Transfer Tax: City (Additional): \$ 0.00 0.00 Spec (Additional): \$ 0.00 RECORDED OR FILED IN THE OFFICE TASF: \$ 0.00 OF THE CITY REGISTER OF THE MTA: \$ 0.00 CITY OF NEW YORK NYCTA: \$ 0.00

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City Register Official Signature

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

THIS INDENTURE made this 12th day of colors, 2023 between Owner, Bayside Gowanus Owner, L.L.C., having an office at 398 NE 5th Street, 13th Floor, Miami, FL 33132 (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 267 Bond Street and 510 Sackett Street, in the City of New York, County of Kings and State of New York, known and designated on the tax map of the New York City Department of Finance as tax map parcel numbers: Block 424 Lot 1 and Block 431 Lot 12, being the same as that property conveyed to Grantor by deed dated May 19, 2023, and recorded in the City Register of the City of New York as CRFN # 2023000133960. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 2.265 +/- acres, and is hereinafter more fully described in the Land Title Survey dated April 28, 2023 prepared by Jonathan S. Schmidt (License No. 050821), Control Point Associates, Inc. PC, 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 Brownfield Cleanup Agreement Index Number: C224080-03-15, 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. <u>Purposes</u>. 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. <u>Institutional and Engineering Controls</u>. 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:

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 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 New York City Department of Health and Mental Hygiene 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 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 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. <u>Right to Enter and Inspect</u>. 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. <u>Reserved Grantor's Rights</u>. 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. <u>Notice</u>. 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: C224080

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. <u>Amendment</u>. 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. <u>Extinguishment.</u> 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. <u>Joint Obligation</u>. 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. <u>Consistency with the SMP</u>. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

Remainder of Page Intentionally Left Blank

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

Bayside Gowanus Owner, L.L.C.:

100

Print Name: Dan Kaplan

Title: Authorized Signatory Date: 10/2/23

#### Grantor's Acknowledgment

STATE OF NEW YORK )
Florida ) ss:
COUNTY OF Miami - Dade )

On the 2 day of October, in the year 2023, before me, the undersigned, personally appeared Dan Kaplan, 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.

Klariusa Matos Lumbur Notary Public - State of New York Florida

> Notary Public State of Florida Klarissa Matos My Commission HH 369246 Expires 3/5/2027

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	)

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,

#### SCHEDULE "A" PROPERTY DESCRIPTION

#### <u>Legal Description</u> Gowanus Canal Northside – C224080

#### BOROUGH OF KINGS, BLOCK: 424, LOT: 1 (FORMER LOTS 1 & 20)

#### DEC Parcel A:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of DeGraw Street with the easterly side of Bond Street;

RUNNING THENCE southerly along the easterly side of Bond Street, 200 feet to the northerly side of Sackett Street:

THENCE easterly along said northerly side, 300 feet to the westerly side of the Gowanus Canal;

THENCE northerly along said westerly side 200 feet to the southerly side of DeGraw Street;

THENCE westerly along said southerly side, 300 feet to the southerly side of Bond street and the point of BEGINNING.

Said bounds containing 60,000 square feet or 1.377 acres within.

#### BOROUGH OF KINGS, BLOCK: 421, LOT: 12 (FORMER LOTS 12 & 17)

### DEC Parcel B:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Sackett Street, distant 62.83 feet (62 feet 10 inches) easterly from the intersection of the easterly side of Bond Street and the southerly side of Sackett Street;

RUNNING THENCE easterly along said southerly side 237.17 feet (237 feet 2 inches) to the westerly side of the Gowanus Canal;

THENCE southerly along said westerly side 200 feet to the northerly side of Union Street;

THENCE westerly along said northerly side 149 feet to the land now or formerly of Blue Building Gowanus LLC;

THENCE the following three (3) courses and distances along said lands:

- (1) Northerly parallel to Bond Street 99.17 feet (99 feet 2 inches);
- (2) Westerly along a line forming an angle opening to the east of 269 degrees 20 minutes 02 second (89 degrees 20 minutes 02 seconds (Deed)) with the previous line 76 feet;

(3) Southerly along a line forming an angle opening to the east of 89 degrees 25 minutes 04 seconds with the previous line 0.33 feet (0 feet 4 inches) to lands now or formerly of Lauren B. Cramer;

THENCE westerly along said lands and parallel with Sackett Street 12.83' (12 feet 10 inches) to lands now or formerly of 287-293 Realty LLC;

THENCE northerly along said lands 100.01 feet (100 feet 0-1/8 inches) to the southerly side of Sackett Street and the point of BEGINNING.

Said bounds containing 38,669 square feet or 0.888 acres within.

<u>Total Area of DEC Parcel A & B (Deed & Environmental Easement Area)</u>: 98,669 square feet or 2.265 acres.

# SIVE | PAGET | RIESEL

KEVIN A. ROGERS

DIRECT DIAL: 646.378.7275 KROGERS@SPRLAW.COM

October 24, 2023

#### VIA FEDEX AND FTS

Environmental Easement Attorney Bureau of Remediation Office of General Counsel, 14<sup>th</sup> Floor New York State Dept. of Environmental Conservation 625 Broadway Albany, NY 12233-1500

Re: Brownfield Cleanup Program,
Gowanus Canal Northside, Site No. C224080
Proofs of Recording and Mailing of Municipal Notice of
Environmental Easement

Dear Sir or Madam,

Enclosed please find the following documents that are being submitted to the Department as proofs that the environmental easement for the above-referenced BCP Site has been recorded in the New York City Register and that the Municipal Notice of Environmental Easement has been mailed to the affected local government:

- 1) Environmental Easement for 267 Bond Street, Brooklyn, Block 424, Lot 1, and 510 Sackett Street, Brooklyn, Block 431, Lot 12, dated October 12, 2023, and recorded in the Office of the City Register of the City of New York ("City Register") on October 20, 2023, as City Register File Number ("CRFN") 2023000271554;
- 2) Copy of the Municipal Notice of Environmental Easement that was sent via United States Postal Service ("USPS") certified mail, return receipt requested, to New York City Mayor Eric Adams on October 24, 2023;
- 3) Scanned copy of the USPS certified mailing slip for the Municipal Notice of Environmental Easement sent to Mayor Adams.

Electronic (PDF) copies of the enclosed documents have also been uploaded to the Department's File Transfer Service ("FTS") portal and were directed to Ms. Cheryl Salem of the Office of General Counsel ("OGC"). Additional electronic copies were directly submitted to the Project Attorney, Ms. Jennifer Andaloro, Esq., via email.

Environmental Easement Attorney October 24, 2023 Page 2 of 2

Please do not hesitate to contact me if there are any questions or concerns. Thank you for your time and attention to this matter.

Best regards,

Kevin A. Rogers

## SIVE | PAGET | RIESEL

KEVIN A. ROGERS DIRECT DIAL: 646.378.7275 KROGERS@SPRLAW.COM

October 24, 2023

#### VIA CERTIFIED MAIL

Mayor Eric Adams City Hall New York, NY 10007

Re: Notice of Environmental Easement:

267 Bond Street & 510 Sackett Street, Brooklyn,

Block 424, Lot 1 & Block 431, Lot 12

DEC Site No. C224080

Dear Mayor Eric Adams,

Attached please find a copy of an Environmental Easement granted to the New York State Department of Environmental Conservation ("Department") on October 12, 2023 by Bayside Gowanus Owner, L.L.C. ("Grantor") for property located at 267 Bond Street, Brooklyn, Block 424, Lot 1, and 510 Sackett Street, Brooklyn, Block 431, Lot 12, which are collectively known as DEC Site No. C224080 and by the DEC Site name, Gowanus Canal Northside.

This Environmental Easement restricts future use of the above referenced property to restricted-residential, commercial and industrial uses. Any on-site activity must be done in accordance with the Environmental Easement and Site Management Plan, which is incorporated into the Environmental Easement. Department approval is also required prior to any groundwater use. Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

- 1. Whenever the Department is granted an Environmental Easement, it shall provide each affected local government with a copy of such Easement and shall also provide a copy of any documents modifying or terminating such Environmental Easement.
- 2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an Environmental Easement and that may relate to or impact such Easement, the affected local government shall notify the Department and refer such application to the Department. The Department shall evaluate whether the application is consistent with the Environmental Easement, and shall notify the affected local government of its determination in a timely fashion, considering the

Mayor Eric Adams October 24, 2023 Page 2 of 2

time frame for the local government's review of the application. The affected local government shall not approve the application until it receives formal approval from the Department.

An electronic version of every Environmental Easement that has been accepted by the Department is available to the public at: <a href="http://www.dec.ny.gov/chemical/36045.html">http://www.dec.ny.gov/chemical/36045.html</a>. Please forward this notice to your Building and/or Planning Departments, as applicable, to ensure your compliance with the provisions of the New York State Environmental Conservation Law. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Best regards

Kevin A. Rogers

Enclosure

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SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
Complete items 1, 2, and 3.	A. Signature
<ul> <li>Print your name and address on the reverse so that we can return the card to you.</li> </ul>	X
<ul> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	B. Received by (Printed Name) C. Date of Deliver
1. Article Addressed to:	D. is delivery address different from item 1? \(\text{\Box}\) Yes If YES, enter delivery address below: \(\text{\Box}\) No
ERIC ADAMS	
CITY HALL	
NEW YORK, NY, 10007	
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2. Article Number (Transfer from service label)	livery
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PS Form 3811, July 2020 PSN 7530-02-000-9053	Domestic Return Receipt

Domestic Return Receipt