

This **AGREEMENT** ("Agreement") is entered into as of July 7, 2015, by and among Consolidated Edison Company of New York, Inc. ("**Con Edison**"), a New York corporation with offices located at 4 Irving Place, New York, New York 10003 and the New York State Department of Environmental Conservation ("**NYSDEC**"), an agency of the State of New York with offices located at 625 Broadway, Albany, New York 12207 (the foregoing collectively referred to herein as, the "**Parties**").

WITNESSETH

WHEREAS, Con Edison owns certain real property with a street address of 218 Kent Avenue, Brooklyn, New York (Section 8, Block 2362, Lot 3) (the "**Con Edison Property**");

WHEREAS, a piece of real property adjacent to the Con Edison Property with a street address of 230 Kent Avenue, Brooklyn, New York a/k/a 33 North First Street, Brooklyn, New York (Section 8, Block 2362, Lot 1) is owned by Kent River Corporation (the "**Kent River Property**"), which was operated by Fyn Paint & Lacquer Co., Inc., a New York corporation with offices located at 229 Kent Avenue, Brooklyn, New York 11211 ("**Fyn Paint**"), as a manufacturing facility that formulated paint, paint thinners and lacquers;

WHEREAS, Fyn Paint entered into a Voluntary Cleanup Agreement ("**Fyn Paint VCA**") with NYSDEC for the Kent River Property that was executed by NYSDEC and made effective on April 1, 2001;

WHEREAS, following completion of a site investigation pursuant to the VCA, NYSDEC approved, by letter dated October 15, 2013, the installation of a remedial system that included an air sparging and multi-phase extraction system to remediate groundwater, soil and soil vapor, more fully described in the Report entitled OU-1 Remedial Design, dated May 2013 and prepared by LBG Engineering Services, PC, which NYSDEC deemed the approved remedy for the Kent River Property and Con Edison Property (the "**Dual Phase Extraction System**");

WHEREAS, installation of the Dual Phase Extraction System was completed in 2014;

WHEREAS, NYSDEC terminated the Fyn Paint VCA, effective as of November 9, 2014 due to Fyn Paint's failure to fulfill its obligations under the Fyn Paint VCA;

WHEREAS, the contract vendee for the Kent River property, Kent Riverview, LLC, a New York limited liability company with its principal place of business located at 164 South Eighth Street, Brooklyn, New York 11211 ("**Riverview**"), submitted a New York State Brownfield Cleanup Program ("**BCP**") application with regard to the Kent River Property ("**BCP Application**") to NYSDEC on December 1, 2014 (and amended such application on December 12, 2014);

WHEREAS, Riverview entered into a Brownfield Cleanup Agreement ("**BCA**") with NYSDEC, effective on March 5, 2015, as a Volunteer;

WHEREAS, as a Volunteer in the BCP, Riverview is not obligated to remediate off-site impacts;

WHEREAS, Riverview has submitted a draft Remedial Action Work Plan designed to complete the remediation of the Kent River Property through the excavation of source material and which would require the relocation by Riverview of some of the components of the Dual Phase Extraction System off the Kent River Property;

WHEREAS, NYSDEC has determined that the contamination at or emanating from the Kent River Property caused by Fyn Paint's operations pose a significant threat.

WHEREAS, upon relocation of the Dual Phase Extraction System components from the Kent River Property, NYSDEC seeks, absent a responsible party, to operate the system in order to address off-site impacts of contamination caused by Fyn Paint operations (including, but not limited to the contamination of groundwater with xylene, toluene and acetone) ("**Fyn Paint Contamination**") that is migrating from the Kent River Property to off-site properties, including the adjacent Con Edison Property;

WHEREAS, the operation of the Dual Phase Extraction System by NYSDEC will require Con Edison to grant access to NYSDEC for the Con Edison Property for that purpose;

NOW, THEREFORE, in consideration of the foregoing grant of access and the respective representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the Parties agree as follows:

1. **Continuous Operation.** NYSDEC agrees that, upon Riverview's relocation of the components of Dual Phase Extraction System onto the Con Edison Property, it will continue to operate such system for the benefit of the Con Edison Property until such time as NYSDEC determines that the remedial goals for the Con Edison Property with respect to the Fyn Paint Contamination have been achieved.
2. **Cost Recovery.** NYSDEC agrees that it will not seek pursuant to New York State or federal law to recover the costs incurred by NYSDEC and the State of New York, its agencies, departments, authorities or other entities to operate the Dual Phase Extraction System or other costs to address the Fyn Paint Contamination from Con Edison, and further agrees that it shall release, and covenant not to sue Con Edison and its successors, agents, assigns, and former, present or future shareholders, directors, trustees, officers and employees, along with their respective former, present or future transferees and assigns or commence any action whatsoever relating to any liability for Fyn Paint Contamination, including but not limited to Fyn Paint Contamination present at the Con Edison Property or the Kent River Property who are not otherwise responsible under law for the remediation of the Fyn Paint Contamination independent of any obligation that party may have respecting same resulting solely from the Memorandum and Order issued on March 28, 2008 by

District Judge Trager in *Consolidated Edison Co. of New York, Inc. v. Fyn Paint & Lacquer Co., Inc.* (Slip Copy, 2008 WL 85207).

3. **Future Work at the Con Edison Property.** Nothing herein shall be interpreted to prevent Con Edison or a future owner or contract vendee of the Con Edison Property from seeking a change to the operation of the Dual Phase Extraction System as it relates to the Con Edison Property, including but not limited to the removal of that system, in order to accommodate source removal in conjunction with the redevelopment of the Con Edison Property.
4. **Access to Con Edison Property.** Con Edison hereby grants NYSDEC, its agents, employees, contractors and representatives access to the Con Edison Property for the purpose of operating the Dual Phase Extraction System as set forth in the approved May 2013 OU-1 Remedial Design referenced above.
5. **Termination of Operation.** At such time as NYSDEC determines that the remedial goals for the Con Edison Property with respect to the Fyn Paint Contamination have been achieved, NYSDEC shall remove the Dual Phase Extraction System and repair the surface of the parking area on the Con Edison Property. Should, however, Con Edison or a future owner or contract vendee of the Con Edison Property seek to change or remove the Dual Phase Extraction System under paragraph 3 above, such change or removal of the Dual Phase Extraction System shall be at the expense of the person seeking such change or removal.
6. **NYSDEC's Contractor.** ^{RS}NYSDEC's contractor has comprehensive general liability insurance for activities conducted on the Con Edison Property.
7. **Survival.** This Agreement shall remain in full force and effect regardless of any termination of or default under the BCA or the issuance or revocation of a Certificate of Completion under the BCA. The provisions of Paragraph 2 shall survive the termination or expiration of this Agreement.
8. **Notice.** The following parties shall be designated to receive any notice pursuant to this Agreement:

To Con Edison:

Carolyn W. Jaffe, Esq.
Assistant General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1850-S
New York, NY 10003
(212) 460-2178
jaffec@coned.com

To NYSDEC:

Rosalie K. Rusinko, Esq.
Senior Attorney
New York State Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, NY 10603
(914) 428-2505, Extension 315
rosalie.rusinko@dec.ny.gov

9. **Miscellaneous Provisions**

(a) Except as may be expressly provided herein, nothing in this Agreement is intended or shall be construed to give any person, other than the Parties hereto, their respective successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect to this Agreement. This Agreement and any conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Parties, their respective heirs, successors, agents, assigns and former, present or future shareholders, directors, officers and employees, along with their respective former, present or future transferees and assigns and for the benefit of no other person.

(b) This Agreement is entered into and shall be governed, construed and interpreted in accordance with the laws of the State of New York, regardless of New York's conflict of laws rules.

(c) The section titles, captions and headings contained herein are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit or extend the scope of this Agreement or effect any of its provisions.

(d) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of executed counterparts may be accomplished by facsimile or e-mail.

(e) This Agreement constitutes the entire agreement and understanding of the Parties as to its subject matter and supersedes all prior written or oral agreements or understandings.

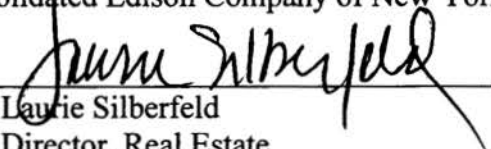
(f) Any change, modification, deletion or addition to this Agreement must be in writing and executed with the same formality as this Agreement.

(g) If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties, intending to be legally bound by the terms and conditions of this Agreement, have caused this Agreement to be executed on their behalf by their duly authorized representatives as of the date first written above.

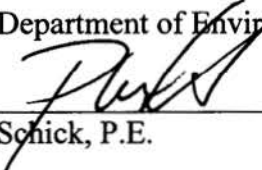
Consolidated Edison Company of New York, Inc.

By: _____


Laurie Silberfeld
Director, Real Estate

New York State Department of Environmental Conservation

By: _____

 AUG 06 2015
Robert W. Schick, P.E.
Director
Division of Environmental Remediation