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SEP 1 6 2016

OFFICE OF GENERAL COUNSEL

September 13, 2016

Notice to Municipality

Hon. George Green, Supervisor Hon. Deborah Green, Town Clerk Town of New Windsor 555 Union Avenue New Windsor, New York 12553

Re: Environmental Easement
Littman Industries, Inc. and BDL, LLC with NYSDEC
Town of New Windsor - Site #C336087
Our File No. 10444-001

Dear Sir or Madam:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("Department")

Recorded on September 12, 2016 by Littman Industries, Inc. for property at 1126 River Road, Town of New Windsor Tax Map No. Section 9, Block 1, Lot 96.1, DEC Site No: C336087.

This Environmental Easement restricts future use of the above-referenced property to restricted commercial and industrial uses. Any on-site activity must be done in accordance with the Environmental Easement and the Site Management Plan which is incorporated into the Environmental Easement. Department approval is also required prior to any groundwater use.)

Gerald N. Jacobowitz David B. Gubits **Howard Protter** Donald G. Nichol Larry Wolinsky J. Benjamin Gailey Mark A. Krohn* John C. Cappello George W. Lithco Michele L. Babcock Gary M. Schuster Marcia A. Jacobowitz Sanford R. Altman William E. Duquette Kara J. Cavallo Andrea L. Dumais Alanna C. Iacono Jennifer S. Echevarria Kelly A. Pressler Robert M. Lefland Christopher J. Cardinale Allison G. Cappella Peter R. Eriksen** John H. Thomas, Jr.**

SILVER & LESSER, P.C. Barry Silver Sol Lesser

Carmee G. Murphy**

*LLM IN TAXATION
**OF COUNSEL

158 Orange Avenue P.O. Box 367 Walden, NY 12586 tel. (845) 778-2121 fax (845) 778-5173

548 Broadway Monticello, NY 12701 tel. (845) 791-1765 fax (845) 794-9781

3250 US 9W New Windsor, NY 12553 tel. (845) 778-2121 fax (845) 778-5173

JACOBOWITZ.COM

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

An electronic version of every environmental easement that has been accepted by the Department is available to the public at: http://www.dec.ny.gov/chemical/36045.html. Please forward this notice to your building and/or planning departments, as applicable, to ensure your compliance with these provisions of New York State Environmental Conservation Law. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

John C. Cappello

Jacobowitz & Gubits, LLP

cc: Bradford Burns, Esq. NYS DEC (with enclosures)
George Heitzman (with enclosures)
Mrs. Elfriede Littman, Littman Industries, Inc.

Mr. David Littman, BDL, LLC Mr. Jeff Marx, C.T. Male Associates



ORANGE COUNTY - STATE OF NEW YORK

ANN G. RABBITT, COUNTY CLERK 255 MAIN STREET GOSHEN, NEW YORK 10924

COUNTY CLERK'S RECORDING PAGE ***THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH***		
	Recording:	
	Recording Fee Cultural Ed Records Management - Coun Records Management - Stat TP584	75.00 14.25 1.00 4.75 5.00
BOOK/PAGE: 14106 / 1657 INSTRUMENT #: 20160059895	Sub Total:	100.00
Receipt#: 2193343	Transfer Tax Transfer Tax - State	0.00
Clerk: LM Rec Date: 09/12/2016 11:38:44 AM Doc Grp: D	Sub Total:	0.00
Descrip: RT WY Num Pgs: 11 Rec'd Frm: JACOBOWITZ AND GUBITS,	Total: LLP **** NOTICE: THIS IS NOT A B	100.00 BILL ****
Party1: LITTMAN INDUSTRIES INC Party2: PEOPLE OF STATE OF NY Town: NEW WINDSOR (TN) 9-1-96.1	***** Transfer Tax ***** Transfer Tax #: 1353 Transfer Tax Consideration: 0.00 Total:	0.00
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Payment Type:	Check
	Cash
	Charge
	No Fee
Comment:	

Ann G. Rabbitt Orange County Clerk

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Record and Return To:

ELECTRONICALLY RECORDED BY SIMPLIFILE

Section: 9 Block: 1 Lot: 96.1

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

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 1126 River Road in the Town of New Windsor, County of Orange and State of New York, known and designated on the tax map of the County Clerk of Orange as tax map parcel numbers: Section 09.00 Block 1 Lot 96.1, being a portion of the property conveyed to Grantor by deeds dated November 12, 1986 and June 20, 1994 and recorded in the Orange County Clerk's Office in Liber and Page 2635/142 and 4065/85, respectively. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 8.5 +/- acres, and is hereinafter more fully described in the Land Title Survey dated June 24, 2015 and last revised October 23, 2015 prepared by James F. Cook, P.L.S. of C.T. Male Associates, 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: C336087-12-14, 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:

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 Orange 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;
- (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 or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), 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

County: Orange Site No: C336087 Brownfield Cleanup Agreement Index: C336087-12-14

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: C336087

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.

Remainder of Page Intentionally Left Blank

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

Littman Industries, Inc.:
By: Edfrage Little
Print Name: Elfriede Littman
Title: Secretary Date: 1/4/16
Grantor's Acknowledgment
STATE OF NEW YORK)) ss: COUNTY OF)
On the day of, in the year 20 l/c, before me, the undersigned personally appeared Elfriede Littman, 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

JOHN C. CAPPELLO
Notary Public, State of New York
No. 02CA6075555
Qualified in Orange County
Commission Expires June 10, 20

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

BDL, LLC:

By:

Print Name: David Littman

Title: Member Date: 1/4/16

Grantor's Acknowledgment

STATE OF NEW YORK)
. ,) ss:
COUNTY OF	()

On the ______ day of ______, in the year 20 //_, before me, the undersigned, personally appeared <u>David Littman</u>, 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

JOHN C. CAPPELLO
Notary Public, State of New York
No. 02CA6075555
Qualified in Orange County
Commission Expires June 10, 20 19

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 day of day of hunty, in the year 20 to 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 artid, 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.

Record & Return To: Jacobowitz & Gubits, LLP 158 Orange Avenue Walden, NY 12586 County: Orange Site No: C336087 Brownfield Cleanup Agreement Index: C336087-12-14

SCHEDULE "A" PROPERTY DESCRIPTION

DESCRIPTION ENVIRONMENTAL EASEMENT PARCEL B1

LANDS NOW OR FORMERLY OF LITTMAN INDUSTRIES INC. TOWN OF NEW WINDSOR, COUNTY OF ORANGE, STATE OF NEW YORK AREA = 8.5± ACRES OF LAND

All that certain tract, piece or parcel of land situate in the Town of New Windsor, County of Orange, State of New York, lying Easterly of River Road, and being more particularly bounded and described as follows:

BEGINNING at the point of intersection of the division line between the lands now or formerly of Littman Industries Inc. as described in Book 4065 of Deeds at Page 85 and Book 2635 of Deeds at Page 142 on the Southwest and the lands now or formerly of Global Companies LLC as described in Book 13019 of Deeds at Page 1248 on the Northeast with the Easterly highway boundary of River Road and runs thence from the said point of beginning along said division line the following three (3) courses: 1) South 38 deg. 27 min. 59 sec. East 38.64 feet to a point; 2) South 27 deg. 34 min. 12 sec. East 92.37 feet to a point of curvature; and 3) in a Southeasterly direction along a curve to the left having a radius of 30.00 feet, an arc length of 25.16 feet and a chord bearing of South 51 deg. 35 min. 46 sec. East 24.43 feet to a point of tangency at the point of intersection with the division line between the said lands now or formerly of Littman Industries Inc. on the South and the said lands now or formerly of Global Companies LLC on the North; thence along said division line South 75 deg. 37 min. 42 sec. East 78.83 feet to a point of curvature on the division line between the said lands now or formerly of Littman Industries Inc. on the Southwest and the said lands now or formerly of Global Companies LLC on the Northeast; thence along said division line the following two (2) courses: 1) in a Southeasterly direction along a curve to the right having a radius of 162.72 feet, an arc length of 147.83 feet and a chord bearing of South 49 deg. 36 min. 07 sec. East 142.80 feet to a point of reverse curvature; and 2) in a Southeasterly direction along a curve to the left having a radius of 30.00 feet, an arc length of 26.19 feet and a chord bearing of South 48 deg. 35 min. 06 sec. East 25.37 feet to a point of tangency at the point of intersection with the division line between the said lands now or formerly of Littman Industries Inc. on the South and the said lands now or formerly of Global Companies LLC on the North; thence along said division line South 73 deg. 35 min. 34 sec. East 177.86 feet to its point of intersection with the division line between the said lands now or formerly of Littman Industries Inc. on the West and the lands now or formerly of Consolidated Rail Corp. on the East; thence along said division line South 09 deg. 14 min. 33 sec. West 557.91 to its point of intersection with the division line between the said lands now or formerly of Littman Industries Inc. on the South and the said lands now or formerly of Consolidated Rail Corp. on the North; thence along said division line South 80 deg. 45 min. 27 sec. East 25.00 feet to its point of intersection with the division line between the said lands now or formerly of Littman Industries Inc. on the West and the said lands now or formerly of Consolidated Rail Corp. on the East; thence along said division line South 09 deg. 14 min. 33 sec. West 471.91 feet to its point of intersection with the division line between the said lands now or formerly of Littman Industries Inc. on the North and the said lands now or formerly of Consolidated Rail Corp. on the South; thence along said division line North 76 deg. 23 min. 57 sec. West 25.07 feet to its point of intersection with the division line between the said lands now

County: Orange Site No: C336087 Brownfield Cleanup Agreement Index: C336087-12-14

or formerly of Littman Industries Inc. on the North and the lands now or formerly of LOC Realty Inc. as described in Book 5123 of Deeds at Page 165 on the South; thence along said division line North 76 deg. 23 min. 57 sec. West 133.73 feet to its point of intersection with the division line between the said lands now or formerly of Littman Industries Inc. on the East and the said lands now or formerly of LOC Realty Corp. on the West; thence along said division line North 13 deg. 36 min. 03 sec. East 10.00 feet to its point of intersection with the division line between the said lands now or formerly of Littman Industries Inc. on the North and the said lands now or formerly of LOC Realty Corp. on the South; thence along said division line North 76 deg. 23 min. 57 sec. West 164.97 feet to its point of intersection with the Easterly highway boundary of River Road; thence continuing along said Easterly highway boundary of River Road the following five (5) courses: 1) North 14 deg. 26 min. 01 sec. East 96.01 feet to a point; 2) North 05 deg. 08 min. 03 sec. East 475.00 feet to a point; 3) North 10 deg. 28 min. 08 sec. East 82.16 feet to a point; 4) North 15 deg. 30 min. 55 sec. East 39.38 feet to a point; and 5) North 10 deg. 08 min. 38 sec. West 565.07 feet to the point or place of beginning and containing 8.5 acres of land, more or less.