

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

THIS INDENTURE made this 2nd day of December, 2009, between Owner(s) BN Partners Associate, LLC., having offices at 695 Rotterdam Industrial Park, Schenectady, New York, 12306 (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 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 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 1510 and 1520 Maxon Road, in the City and County of Schenectady, State of New York, known and designated on the tax map of the County Clerk of Schenectady as tax map parcel number: Section 39.50 Block 1 Lot 9.1 and Section 39.49 Block 3 Lot 1 commonly known as the College Park Site, being the same as that property conveyed to Grantor by bargain and sale deed on November 14, 2008, and recorded on November 26, 2008 in Book 1793 at page 766, comprising of approximately 8.36 ± acres and hereinafter more fully described in the ALTA/ACSM Land Title Survey of 1510 & 1520 Maxon Road, dated November 7, 2008, (revised on November 05, 2009) prepared by Hershberg & Hershberg Consulting Engineers and Land Surveyors, and corresponding Schedule "A" property description, 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

**NOW THEREFORE**, in consideration of the covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number A4-0520-0705 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. 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 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 commercial use as described within 6 NYCRR Part 375- 1.8 (g) (2) (iii), as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to:

Engineering Controls (ECs)

1. Protected Cover Systems - comprising of asphalt parking surfaces, concrete surfaces, or a minimum 1.0 foot clean soil horizon in all green space / exposed surface soil areas must be maintained. In the event the cover system is breached, penetrated or temporarily removed, and any underlying remaining impacted soil is disturbed, the Excavation Plan in the SMP outlines the procedures required to be implemented. Procedures for the inspection and maintenance of this cover are provided in the Monitoring Plan included in the SMP. The composite cover system is a permanent control and the quality and integrity of this system must be inspected at defined, regular intervals (i.e., quarterly) in perpetuity.

2. Groundwater Evaluation Measures - Procedures for groundwater evaluation measures are included in the Monitoring Plan of the SMP. The Monitoring Plan also addresses severe condition inspections in the event that a severe condition, which may affect controls at the site, occurs. Groundwater evaluation must continue until permission to discontinue is granted in writing by NYSDEC.

3. Sub-Slab Depressurization Systems - The SSDS must be operated continuously. A licensed professional engineer or authorized NYSDEC qualified environmental professional for the owner will certify the operation of the SSDS on an annual basis. Operation and Maintenance the Sub-Slab Depressurization System is described in the Operation and Maintenance Plan of the SMP. The active SSDS must not be discontinued unless prior written approval is granted by the NYSDEC. In the event that monitoring data indicates that the SSDS is no longer required, a proposal to discontinue the SSDS will be submitted by the property owner to the NYSDEC and New York State Department of Health (NYSDOH).

4. Foundation Drain System - Procedures for operating and maintaining the Foundation Drain System are documented in the Operation and Maintenance Plan of the SMP. Procedures for monitoring the system are included in the Monitoring Plan of the SMP. The Monitoring Plan also addresses severe condition inspections in the event that a severe condition, which may affect controls at the site, occurs. The active analytical testing of the Foundation Drain System will not be discontinued unless prior written approval is granted by the NYSDEC. In the event that analytical data indicate that monitoring the Foundation Drain System is no longer required, a proposal to discontinue monitoring the Foundation Drain System will be submitted by the property owner to the NYSDEC and NYSDOH.



Institutional Controls (ICs)

1. All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);
2. All Engineering Controls on the Site must be inspected and certified at a frequency and in a manner defined in the SMP;
3. Groundwater, soil, vapor, and other environmental or public health monitoring must be performed as defined in the SMP;
4. Data and information pertinent to Site Management for the Controlled Property must be reported at the frequency and in a manner defined in the SMP;
5. On-site environmental monitoring devices, including but not limited to, groundwater monitoring wells and soil vapor probes, must be protected and replaced as necessary to ensure continued functioning in the manner specified in the SMP;

In addition, the following restrictions are placed on the property:

1. Protective cover systems at the site must be maintained;
2. Use of groundwater underlying the property is prohibited without treatment rendering it safe for the intended use;
3. All future activities on the property that would disturb remaining impacted media must be conducted in accordance with the Excavation Plan included in the SMP;
4. The potential for vapor intrusion must be evaluated for any buildings developed on the site in the future and any potential impacts that are identified must be mitigated;

B. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan ("SMP") that the Department has approved for the Controlled Property and all Department-approved amendments to that SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated September 21, 2009. 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 on the Controlled Property, 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. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. 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:

Regional Remediation Engineer  
NYSDEC - Region 4  
Division of Environmental Remediation  
1130 North Westcott Road  
Schenectady, NY 12306-2014  
Phone: (518) 357-2045 fax: (518) 357-2087

or Site Control Section  
Division of Environmental Remediation  
NYS DEC  
625 Broadway  
Albany, New York 12233

C. The Controlled Property may not be used for a higher level of use such as unrestricted residential or restricted residential and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.



D. 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 of Title 36 to  
Article 71 of the Environmental Conservation Law.**

E. 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.

F. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, 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 Certificate of Completion provided under ECL Article 56, Title 5 or ECL Article 27 Title 14 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 the following information: County, NYSDEC Site Number, NYSDEC 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: C 447037  
Department of Environmental Enforcement  
Office of General Counsel  
NYSDEC  
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.

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

Grantor's Name: BN Partners Associates, LLC

By: FG Ventures, Inc. ("Galesi")

By: David M. Buicko - Manager

Title: Evrg member Date: 11-16-09

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, Commissioner  
Dale A. Desnoyers, Director  
Division of Remediation

Grantor's Acknowledgment

STATE OF NEW YORK )  
COUNTY OF Schenectady ) ss:

On the 16 day of November, in the year 2009, before me, the undersigned, personally appeared David Buicko, 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.

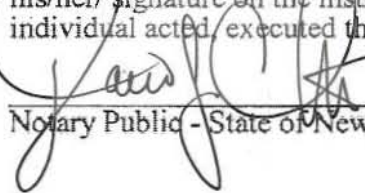
Sandra D. Andi  
Notary Public - State of New York

SANDRA D. ANDI  
Notary Public, State of New York  
No. 4737914  
Qualified in Albany County  
Commission Expires November 30, 2013

**Grantee's Acknowledgment**

STATE OF NEW YORK     )  
                                      ) ss:  
COUNTY OF                 )

On the 2<sup>nd</sup> day of December, in the year 2009, before me, the undersigned, personally appeared Dale Desnoyers, 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

**David J. Chiusano**  
**Notary Public, State of New York**  
**No. 01CH5032146**  
**Qualified in Schenectady County**  
**Commission Expires August 22, 2010**



**SCHEDULE "A" PROPERTY DESCRIPTION**

ADDRESS: 1520 - 1520 Maxon Road  
Schenectady, NY  
TAX MAP ID: 39.49 - 3 - 1 & 39.50 - 1 - 9.1

**SCHEDULE A DESCRIPTION**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, situate, lying and being in the City of Schenectady, County of Schenectady, State of New York and is further described as follows:

BEGINNING at a point located at the intersection of the southeasterly bounds of Maxon Road with the southerly bounds of Peek Street; thence from said point of beginning along the southerly bounds of Peek Street S.  $62^{\circ}42'00''$ E., a distance of 391.06 feet to a point; thence along the division line between lands now or formerly of Puzzuoli as described in Liber 959 at Page 899 to the East and North and the herein described parcel to the West and South the following two courses and distances:

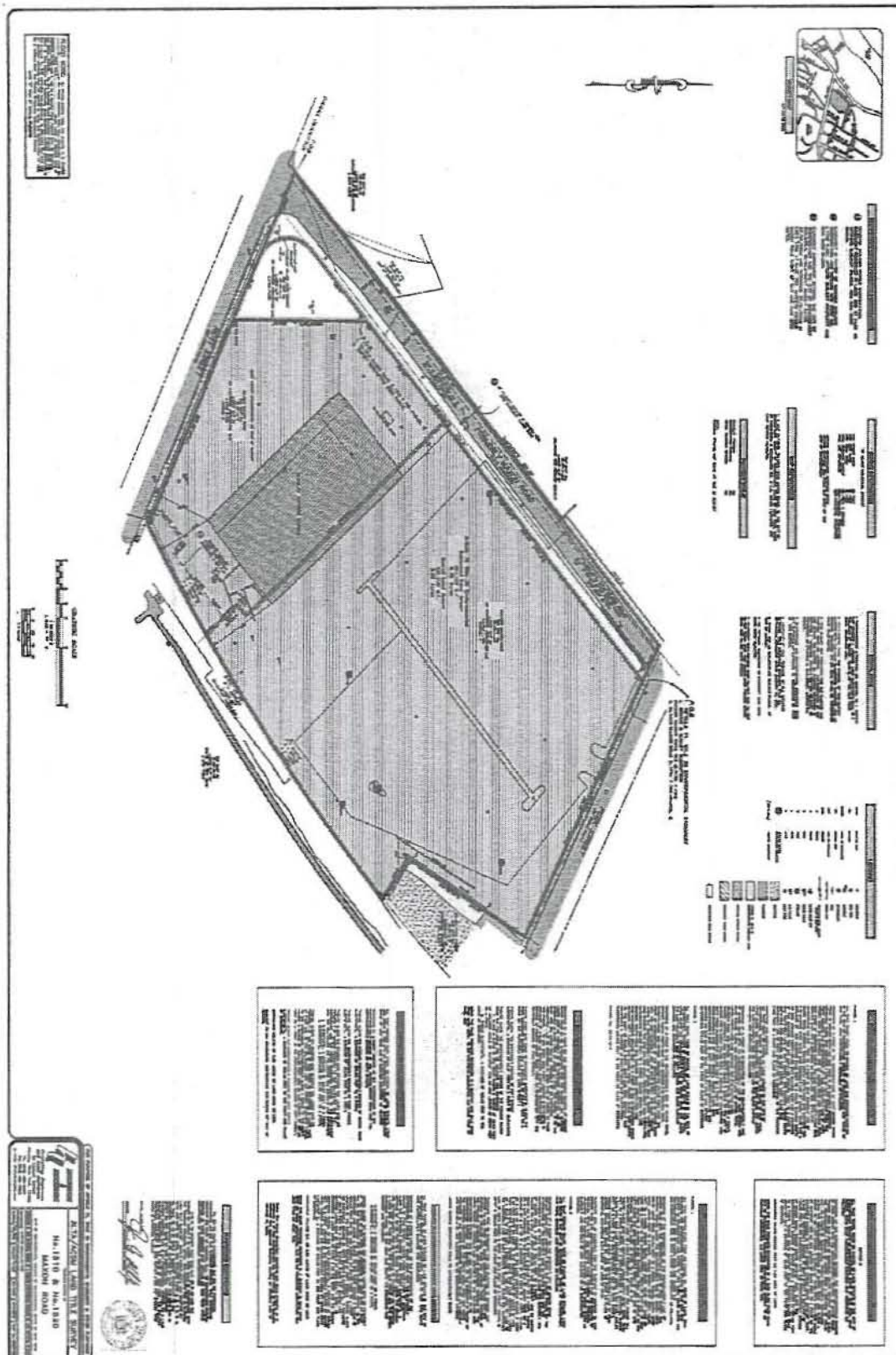
S.  $31^{\circ}06'00''$ W., a distance of 210.07 feet to a point;  
S.  $55^{\circ}02'00''$ E., a distance of 67.32 feet to a point;

Thence along the division line between lands now or formerly of the State of New York as described in Liber 1075 at Page 542 to the southeast and the herein described parcel to the northwest and along a curve to the right having a radius of 2815.50 feet and an arc length of 621.66 feet to a point located in the northerly bounds of Nott Street; thence along the northerly bounds of Nott Street N.  $65^{\circ}00'00''$ W., a distance of 307.23 feet to a point; thence along the division line between lands now or formerly of Hess Realty Corp. as described in Liber 1080 at Page 3 to the West and the herein described parcel to the East N.  $00^{\circ}47'00''$ E., a distance of 202.66 feet to a point located in the southeasterly bounds of Maxon Road; thence along the southeasterly bounds of Maxon Road N.  $49^{\circ}10'00''$ E., a distance of 646.08 feet to the point and place of beginning.

SBL: 39.49-3-1 & 39.50-1-9.1



## SURVEY



ED  
MS  
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355  
876