

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program for
the **Washington Street Former MGP Site**
located at 25 Washington Street, Binghamton,
New York under Article 27, Title 14 of the
Environmental Conservation Law
by:

BROWNFIELD SITE
CLEANUP AGREEMENT

Index # A7-0518-0505

Site # C-704046

New York State Electric & Gas Corporation

Applicant.

WHEREAS, the Brownfield Cleanup Program Act was enacted to encourage the voluntary remediation of brownfield sites for reuse and redevelopment so as to advance the policy of the State of New York to conserve, improve, and protect its natural resources and environment, and control water, land, and air pollution; and

WHEREAS, the Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program contained in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, by a certified application filed on February 28, 2005, Applicant New York State Electric & Gas Corporation ("NYSEG" or the "Applicant"), submitted a request to participate in the Brownfield Cleanup Program ("BCP") relative to property located at 24 Water Street & 25 Washington Street in the City of Binghamton, County of Broome, part of a former manufactured gas plant ("MGP") site ("MGP Site") formerly owned and/or operated by New York State Electric and Gas Corporation ("NYSEG") and/or its predecessors or affiliates at which, *inter alia*, coal tar and associated hazardous substances ("MGP Related Contamination") were, or may have been, disposed at various times in the past; and

WHEREAS, the Department has accepted the application for real property, consisting of four (4) adjacent parcels identified by their Tax Map numbers as Parcel 80305 (owned by Thomas A. Torto), and a portion of Parcel 803013 (owned by Thomas A. Torto), Parcel 803032 (owned by Blair Martin Co.) and Parcel 803010 (owned by Southern New York Auto Club, Inc.) (together, the "Site") and further described in metes and bounds on Exhibit "F". A map of the Site showing its general location is attached as Exhibit "A"; and

WHEREAS, the current and intended use of the property is commercial; and

WHEREAS, a parallel application has been submitted by Washington Development Associates, LLC, (“WDA”) for two (2) adjacent properties, also within the boundaries of the MGP Site, which will be investigated and remediated by NYSEG pursuant to a Memorandum of Understanding (“MOU”), between NYSEG and WDA; and

WHEREAS, the each of the owners of the four (4) properties that are the subject of this Application, have agreed to provide NYSEG with access to their properties for the purpose of limited investigation of their property as may be required (“Exhibit “G”); and

WHEREAS, an opportunity for public comment on Applicant’s request to participate in the Brownfield Cleanup Program was provided and the Department duly considered all comments received; and

WHEREAS, upon consideration of the factors enumerated in ECL 27-1407(8) and (9), the Department made a determination, based upon the information contained in the application and the certifications made by the Applicant, as well as any public comment received, that Applicant is eligible to participate in the Brownfield Cleanup Program as a Participant as defined in ECL 27-1405(1)(a).

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Citizen Participation Plan

Within twenty (20) Days after the effective date of this Agreement, Applicant shall submit a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 that, at a minimum (i) updates the names and addresses of the interested public and includes a brownfield site contact list; (ii) identifies major issues of public concern related to the Site; (iii) includes a description of citizen participation activities already performed; and (iv) includes a description and schedule of public participation activities that are either specifically required by law or are needed to address public concerns related to the Site. The Citizen Participation Plan shall be attached to and incorporated into this Agreement as Exhibit “B.”

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans (“Work Plan” or “Work Plans”) under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14 and all applicable laws, rules, regulations, and guidance documents. As NYSEG will be responsible for investigating and remediating the two (2) properties that are the subject of the parallel BCP agreement, the four (4) properties included in this Agreement as well as any off-site MGP Related Contamination, as

well as MGP Related Contamination which is commingled with contamination from non-MGP activities, all Work Plans submitted under this Agreement and the parallel BCP agreement shall be submitted by NYSEG and shall cover the entire MGP Site as a whole. The Work Plans shall be captioned as follows:

1. “Remedial Investigation Work Plan” if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site;
2. “Remedial Work Plan” if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and contamination that has emanated from such Site;
3. “IRM Work Plan” if the Work Plan provides for an interim remedial measure; or
4. “OM&M Work Plan” if the Work Plan provides for operation, maintenance, and/or monitoring.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted within forty (40) Days after the effective date of this Agreement. Thereafter, the Applicant can submit such other and additional work plans as it deems appropriate.

2. A proposed Work Plan shall be submitted for the Department’s review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts to approve, modify, or reject a proposed Work Plan within forty-five (45) Days from its receipt or within fifteen (15) Days from the close of the comment period, if applicable, whichever is later.

i) Upon the Department’s written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Agreement as Exhibit “C” and shall be implemented in accordance with the schedule contained therein.

ii) If the Department modifies a Work Plan, the reasons for such modification shall be provided in writing. Within twenty (20) Days after receiving written notice of such modification, Applicant shall elect in writing to (a) implement the Work Plan as modified; (b) implement any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Paragraph XIII.

iii) If the Department disapproves a Work Plan, the reasons for such disapproval shall be provided in writing. In the event the Department disapproves a Work Plan, within twenty (20) Days after receiving written notice of such disapproval, Applicant shall elect in writing to (a) modify or expand it within thirty (30) Days of receipt of the written disapproval notice; (b) complete any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Subparagraph XIII.

3. An OM&M Work Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities, Applicant shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Applicant to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and which shall be enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Applicant invokes dispute resolution pursuant to Paragraph XIV, either party may terminate this Agreement pursuant to Paragraph XIII.

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Applicant shall submit a Final Report that shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings.

i) The Final Report for an Investigation Work Plan shall comply with the requirements set forth at ECL 27-1411(1) and shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 that supports such determination.

ii) A Final Engineering Report certifying that remediation of the Site has been performed in accordance with this Agreement shall be prepared by a Professional Engineer with primary responsibility for the day to day performance of the activities under this Agreement. The Report shall be prepared in accordance with the requirements of ECL 27-1419(1) and (2) and shall contain a certification that all such activities were performed in accordance with the Department

approved Work Plan. The Department shall review such Report, the submittals made pursuant to the Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL 27-1419. Such Certificate of Completion may be modified or revoked, after notice and an opportunity for hearing, upon a finding that either Applicant or Applicant's successors or assigns has (a) failed to comply with this Agreement; (b) made a misrepresentation of material fact in connection with the Application or any certification that cleanup levels required by this Agreement were reached; or (c) good cause exists for such modification or revocation.

iii) All other Work Plan Final Reports shall contain a certification by a Professional Engineer (or other expert approved by the Department) with primary responsibility for the day to day performance of the activities under this Agreement that all such activities were performed in full accordance with the Department approved Work Plan.

2. Within sixty (60) Days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XIII.

E. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reasons for its disapproval and may request Applicant to modify or expand the submittal. Within twenty (20) Days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) Days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIV; or (iv) terminate this Agreement pursuant to Paragraph XIII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

F. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be filed an Environmental Easement in accordance with Paragraph X within sixty (60) Days of receipt of the Department's determination.

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or a revision to an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to Paragraph I of this Agreement. If the Department determines following the close of the public comment period that revisions are needed, Applicant agrees to negotiate revisions to the proposed Remedial Work Plan in accordance with Paragraph II.C. If Applicant elects not to develop a Work Plan under this Subparagraph or if either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XIII.

G. Submission of Annual Reports, if required

In the event that the remedy for the Site, if any, or any Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Applicant shall file a report annually (unless a different frequency is specified in an approved Work Plan) on the 1st day of the month following the anniversary of the start of the OM&M and continuing until the Department notifies Applicant in writing that such report may be discontinued. Such report shall be signed by a Professional Engineer or by an expert approved by the Department to perform that function and certified under penalty of perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved OM&M Plan. Applicant shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Applicant shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the report required by this Subparagraph as well as in any progress reports required by Paragraph XI. Applicant can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such

petition must be supported by a Professional Engineer or other expert approved by the Department stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

III. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) Days of when it obtains knowledge of any such event. Applicant shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Applicant shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL 27-1431.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement.

V. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Agreement, Applicant shall pay to the Department the sum of \$0.00, which shall represent reimbursement for State Costs as set forth in the cost summary attached as Exhibit "D." Applicant acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Agreement.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs for negotiating this Agreement, and all costs associated with this Agreement up to and including the date upon which the Certificate of Completion is issued, the Department approves the Final Report relative to OM&M, or this Agreement is terminated pursuant to Paragraph XIII, whichever is later.

C. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be

documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Applicant at the following address:

Tracy L. Blazicek, CHMM
New York State Electric & Gas Corporation
P.O. Box 5224
Binghamton, NY 13902-5224

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Applicant may contest, in writing, invoiced costs under this Agreement if it believes (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities reimbursable under this Agreement; or (iii) the Department is not otherwise legally entitled to such costs. If Applicant objects to an invoiced cost, Applicant shall pay all costs not objected to within the time frame set forth in Subparagraph V.A and shall, within thirty (30) Days of receipt of an invoice, identify in writing all costs objected to and identify the basis of the objection. This objection shall be filed with the Director of the Bureau of Program Management ("BPM Director") who shall have the authority to relieve Applicant of the obligation to pay invalid costs. Within forty-five (45) Days of the Department's determination of the objection, Applicant shall pay to the Department the amount which the BPM Director or the BPM Director's designee determines Applicant is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

H. In the event any instrument for the payment of money due under this Agreement is not honored when presented for payment, Applicant shall be in violation of this Agreement, provided (i) the Department gives Applicant written notice of such failure of collection, and (ii) the Department does not receive a certified check or bank check from Applicant within fourteen (14) Days after the date of the Department's written notification.

I. In the event that an eligible party applies for a technical assistance grant in connection with the Site, Applicant may be required to provide such a grant, in accordance with ECL 27-1417(4), in an amount not to exceed \$50,000, with the cost of such grant serving as an offset against State Costs payable pursuant to this Paragraph.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL 27-1421, subject to the terms and conditions stated therein. A Notice of the Liability Limitation shall be filed with the recording officer of the county in which the Site is located within thirty (30) Days of (i) the effective date of the Certificate of Completion or (ii) the date Applicant acquires title to the Site, whichever is later.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall provide Applicant with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) Days in advance of any change of use, as defined in ECL 27-1425, which is proposed for the Site. In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) Days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) Days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within thirty (30) Days after the Department's determination pursuant to Subparagraph II.F.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval Environmental Easements, to be executed by each of the owners of the four (4) properties that are the subject of this Application, to run with the land in favor of the State which comply with the requirements of ECL Article 71, Title 36. The submittals shall be substantially similar to Exhibit "E." Applicant shall cause such instruments to be recorded with the recording officer for the county in which the Site is located within thirty (30) Days after the Department's approval of such instruments. Applicant shall provide the Department with a copy of such instruments certified by the recording officer to be a true and faithful copy within thirty (30) Days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) Day period).

B. Applicant or any of the owners of the four (4) properties that are the subject of this Application may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the property is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XII.A.1 by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage

of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Applicant shall be sent to:

Robert Schick P.E., Bureau Director
Remediation Bureau C
Division of Environmental Remediation
Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7014

Note: three copies (one unbound) of work plans are required to be sent.

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Note: two copies of work plans are required to be sent, and

Larry S. Eckhaus, Esq.
Senior Attorney
Superfund & Brownfields Restoration Bureau
Division of Environmental Enforcement
Department of Environmental Conservation
625 Broadway - 14th Floor
Albany, New York 12233-5500
(Correspondence only)

2. Communication from the Department to Applicant shall be sent to:

Tracy L. Blazicek, CHMM
New York State Electric & Gas Corporation
P.O. Box 5224
Binghamton, NY 13902-5224

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses listed in this Paragraph XII or in Paragraph V.

XIII. Termination of Agreement

Applicant may terminate this Agreement at any time by providing written notification to the parties listed in Subparagraph XII.A.1. The Department may terminate this Agreement at any time pursuant to Subparagraph XV.A or in the event Applicant fails to substantially comply with the Agreement's terms and conditions. The Department shall provide written notification to Applicant setting forth the basis for termination of the Agreement. The termination shall be effective the 5th Day after the non-terminating party's receipt of such written notification, except that such termination shall not affect the provisions contained in Paragraphs V, VII.B, and VIII.

XIV. Dispute Resolution

A. In the event disputes arise regarding any notice of disapproval of a submittal, proposed Work Plan or Final Report, or during the implementation of any Work Plan, or in connection with any notice from the Department to the Applicant pursuant to Paragraph IX that a proposed Change of Use is prohibited, Applicant may, within thirty (30) Days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. The Department and Applicant shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIV.B. The period for informal negotiations shall not exceed thirty (30) Days from Applicant's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Applicant notifies the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XIV.B.

B. 1. Applicant shall file with the Office of Hearings and Mediation ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Applicant relies (hereinafter called the "Statement of

Position”). A copy of such request and written statement shall be provided contemporaneously to the Director of the Division of Environmental Remediation (“DER Director”) and to the parties listed under Subparagraph XII.A.1.

2. The Department shall serve its Statement of Position no later than twenty (20) Days after receipt of Applicant’s Statement of Position.

3. Applicant shall have the burden of proving by substantial evidence that the Department’s position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the DER Director who shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Applicant shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Applicant notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director’s final decision. Applicant shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within sixty (60) Days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the sixty (60) Day period provided. In the event that Applicant seeks judicial review, Applicant shall be in violation of this Agreement if it fails to comply with the final Court Order or settlement within thirty (30) Days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Applicant’s obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph XIV shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Applicant regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph XIV which shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph XIV shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or Section 375-2.1.

XV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void *ab initio* fifteen (15) Days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) Days after issuance of a final decision resolving a dispute pursuant to Paragraph XIV, whichever is later, unless Applicant submits information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

B. Applicant shall allow the Department to attend, and shall notify the Department at least seven (7) Days in advance of, any field activities to be conducted pursuant to this Agreement, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; nothing in this Agreement shall be construed to require Applicant to allow the Department to attend portions of meetings where privileged matters are discussed.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement that (i) is conducted on the Site or on different premises that are under common control or contiguous to or physically connected with the Site and such activity manages exclusively contamination from such Site, and (ii) satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit, as determined by the Department.

D. Applicant shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Applicant's obligations under this Agreement. If, despite Applicant's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained, Applicant shall promptly notify the Department, and include a summary of the steps taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

E. All approved Work Plans, Final Reports, and other documents required under this Agreement shall be submitted to the Department in an electronic format acceptable to the

Department within thirty (30) Days of approval. If any document cannot be converted into electronic format, Applicant shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

F. Applicant shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and shall condition all contracts entered into for the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Applicant or its contractor(s) shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Applicant shall nonetheless be responsible for ensuring that Applicant's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

G. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

H. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of Applicant's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "C." Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, other than a provision of a Work Plan or a time frame, Applicant shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XII.A.1.

ii. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

I. 1. If there are multiple parties signing this Agreement, the term “Applicant” shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XV.I.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

J. Applicant shall be entitled to contribution protection to the extent authorized by ECL 27-1421(6).

K. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

L. Applicant and Applicant’s agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant’s responsibilities under this Agreement.

M. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Agreement or its Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

N. Applicant’s obligations under this Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

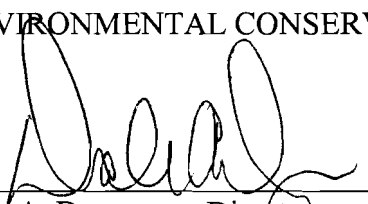
O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

P. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: OCT 17 2005

DENISE M. SHEEHAN
ACTING COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

NEW YORK STATE ELECTRIC &
GAS CORPORATION

By: *Jeffrey R. Clark*

Title: *Managing Attorney*

Date: *9/22/05*

STATE OF NEW YORK)
) ss:
COUNTY OF *Monroe*)

On the *22nd* day of *Sept*, in the year 200*5*, before me, the undersigned, personally appeared *Jeffrey R. Clark*, 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.

Marie C. Villeneuve
Signature and Office of individual
taking acknowledgment

MARIE C. VILLENEUVE
Notary Public, State of New York
No. 01V14819084
Qualified in Monroe County
Commission Expires Oct. 31, 20*06*

Glossary of Terms

The following terms shall have the following meanings:

“Day”: a calendar day. In computing any period of time under this Agreement, if the last day would fall on a Saturday, Sunday, or State holiday, the period shall run until the close of business of the next working day.

“Force Majeure Event”: an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Applicant’s reasonable control.

“IRM”: an interim remedial measure which is a discrete set of activities which can be undertaken without extensive investigation and evaluation to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site.

“OM&M”: operation, maintenance, and monitoring.

“Professional engineer”: an individual registered as a professional engineer or otherwise authorized in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

“State Costs”: all the State’s expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, and administering this Agreement. Approved agency fringe benefit and indirect cost rates will be applied.

“Termination Date”: the date upon which (i) the Department issues the Certificate of Completion or approves the Final Report relative to the OM&M at the Site, whichever is later, or (ii) the Agreement terminates pursuant to Paragraph XIII or Subparagraph XV.A.,

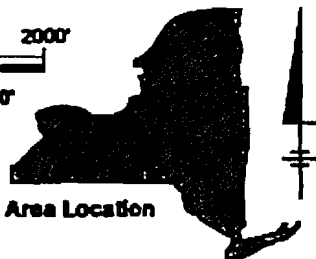
“Work Plan”: a Department-approved work plan, as may be modified, that Applicant shall implement and that is attached to this Agreement.

EXHIBIT "A"

Map



REFERENCE: BASE MAP USGS 7.5 MIN. QUAD., BINGHAMTON, NY, 1968, PHOTOINSPECTED 1976.



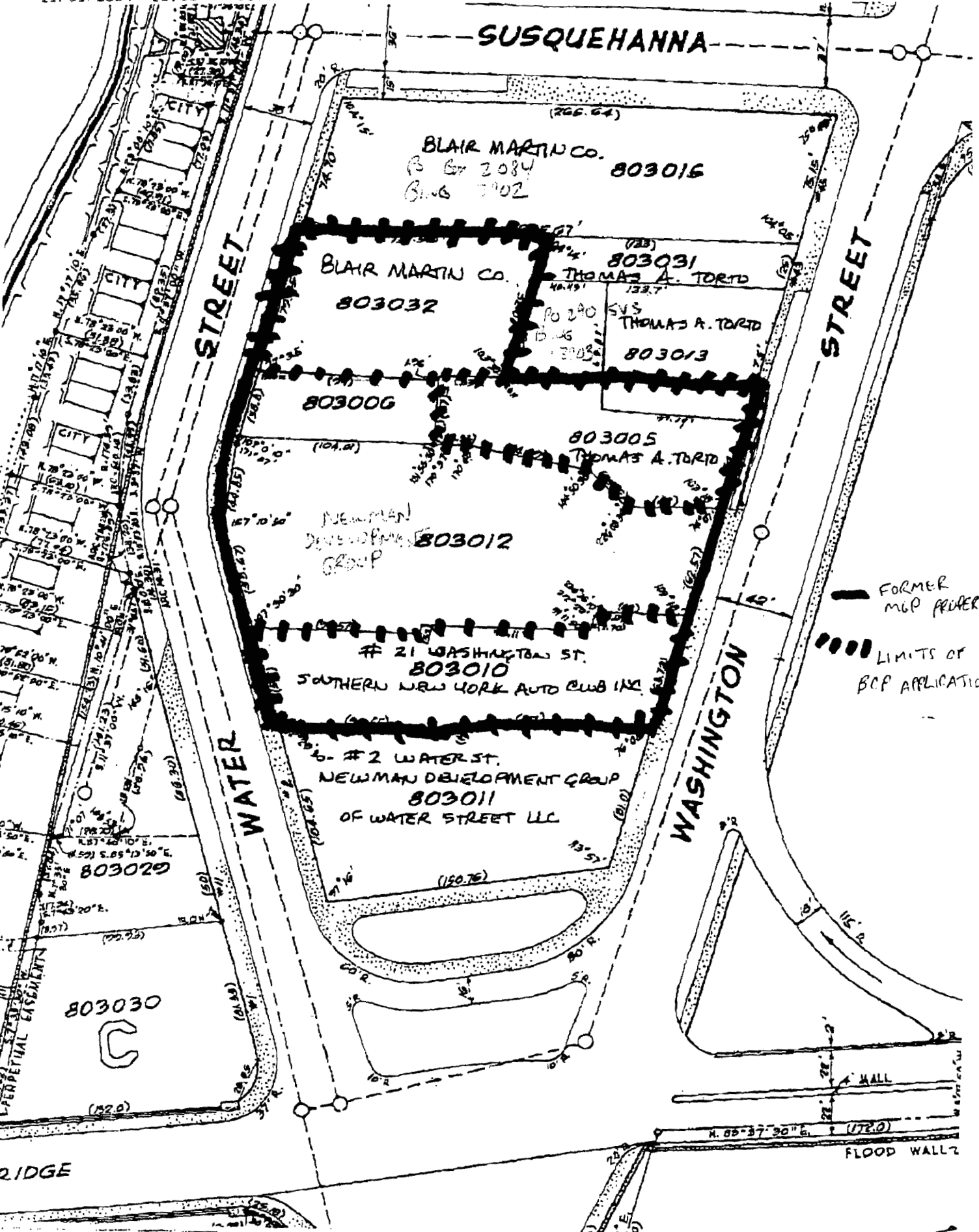
NEW YORK STATE ELECTRIC & GAS CORPORATION
 BINGHAMTON FORMER MGP SITE
 BINGHAMTON, NEW YORK
 REMEDIAL INVESTIGATION

SITE LOCATION MAP

BBL
 BLAIR, BOUCE & LEE, INC.
 ENGINEERS, ARCHITECTS, ENVIRONMENTALISTS

FIGURE
1

020703 BYR-085-DJH
 13050002/13055-01 ccr



— FORMER M&P PROPERTY
 ... LIMITS OF BCP APPLICATION

EXHIBIT "B"

Citizen Participation Plan

EXHIBIT “C”

Approved Work Plans

EXHIBIT “D”

Cost Summary

Intentionally Left Blank

EXHIBIT "E"

Environmental Easement

ENVIRONMENTAL EASEMENT

D

THIS INDENTURE made this ___ day of _____, 200__, between Owner(s) _____ residing at (or having an office at) _____ (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 ("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

R

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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

A

WHEREAS, Grantor, is the owner of real property located in the City/Town/Village of _____, _____ County, New York known and designated on the tax map of the _____ of _____ as tax map parcel number _____, section ___ block ___ lot___, being the same as that property conveyed to Grantor by deed on _____, and recorded in the Land Records of the _____ County Clerk at page ____, liber _____ of Deeds, comprised of approximately ___ acres, and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the " Controlled Property"); and;

F

Attach an adequate legal description of the property subject to the easement, or reference a recorded map. If the easement is on only a part of a parcel of land which is not subdivided into encumbered and unencumbered portions, a legal description needs to be created by a survey bearing the seal and signature of a licensed land surveyor with reference to a metes and bounds description.

T

D

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 Number** _____ /State Assistance Contract Number _____ /Order on Consent Number _____, 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.

A

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

residential
commercial
industrial

F

use as long as the following long-term engineering controls are employed:

B. The Controlled Property may not be used for a higher level of use such as unrestricted/residential / commercial use and the above-stated engineering 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:

T

D 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.

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.

P
D. 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 **A** 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:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or **F** 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 **T**

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 27, Title 14, or 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 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. **D** 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. **A** 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

By: _____

Title: _____

A

Date: _____

**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: **F** _____
Denise M. Sheehan, Acting Commissioner

T

Grantor's Acknowledgment

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

On the _____ day of _____, in the year 200_, before me, the undersigned, personally appeared _____, 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.

R

Notary Public - State of New York

Grantee's Acknowledgment

STATE OF NEW YORK)
)*A*
) ss:
COUNTY OF)

On the _____ day of _____, in the year 200_, before me, the undersigned, personally appeared _____, 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.

F

Notary Public - State of New York

T

Exhibit "F"

Metes & Bounds Description

Metes & Bounds Description

All of that tract or parcel of land described as follows:

Beginning at a point in the west line of Washington Street 29.9 feet southerly from the southeast corner of Lot No. 1 as laid down on a map of the Gas Company's Property recorded in Broome County Clerk's Office in Book of Maps No. 1 at page 181; running thence at an interior angle of $105^{\circ} 53'$ with the west line of Washington Street a distance of 50.37 feet to a point; thence northwestwardly on a line making an interior angle of $133^{\circ} 51' 30''$ a distance of 28.15 feet to a point; thence westwardly with an interior angle of $215^{\circ} 09' 30''$ a distance of 64.89 feet to a point; thence westwardly on a line making an interior angle of $189^{\circ} 12'$ a distance of 13.55 feet to a point; thence westwardly making an interior angle of $180^{\circ} 03'$ a distance of 5.73 feet to a point; thence northwardly 35 feet, more or less, to a point; thence running westwardly a distance of 96.8 feet to a point in the west line of Water Street; thence running north along the easterly line of Water Street making an interior angle of $77^{\circ} 40'$ a distance of 79.35 feet to a point. Said point being a distance of 74.70 feet, as measured along the easterly line of Water Street, from the south line of Susquehanna Street. Thence running eastwardly a distance of 131.5 feet, more or less, to a point; thence running southwardly making an interior angle of $75^{\circ} 46'$, more or less, about 75 feet to a point; thence running eastwardly about 135 feet to the west line of Washington Street; thence running southwardly with an interior angle of $75^{\circ} 51'$ along the west line of Washington Street a distance of 76.05 feet to the point or place of beginning;

As well as all of that tract or parcel of land described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Binghamton, County of Broome and State of New York, bounded and described as follows: Being a lot known and designated as Lot No. Five (5), as said lot is laid down on a map of "Gas Property on Washington and Water Streets", which map was recorded in Broome County Clerk's Office in Book No. 1 of Maps at page 181. Said lot is situate on the east side of Water Street and is bounded on the west by said Water Street; on the south by the lands now or formerly of William F. Young; on the north by the lot designated as Lot No. Four (4) on said map; said lot hereby conveyed is fifty (50) feet front as measured on said Water Street, and is forty-eight (48) feet wide in the rear, and is ninety-five (95) feet deep on the south line, and about one hundred and eight (108) feet deep on the north line, be the said several dimensions more or less, and being a portion of the premises heretofore known as the Binghamton Gas Works Property.

EXCEPTING AND RESERVING THEREFROM, ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Binghamton, County of Broome and State of New York, bounded and described as follows: Beginning at an iron set in the easterly line of Water Street at the northwesterly corner of lands heretofore conveyed by William

Pundis and wife to Crane Co. by deed dated November 30, 1928, and recorded in Book 382 of Deeds at page 512; thence easterly along the northerly line of the said lands conveyed to Crane Co. by William Pundis and wife, a distance of 92.19 feet to a point; thence southerly making an interior angle of $90^{\circ} 00'$, a distance of 5.22 feet to a point; thence westwardly and parallel with the said northerly line of the said lands so conveyed to Crane Co. making an interior angle of $90^{\circ} 00'$, a distance of 90.57 feet to a point in the easterly line of Water Street 5.47 feet southerly from the point or place of beginning; thence northwardly along the easterly line of Water Street making an interior angle of $107^{\circ} 30' 30''$, a distance of 5.47 feet to the point or place of beginning, the last mentioned course making an interior angle of $72^{\circ} 29' 30''$ with the first mentioned course. Being a strip of land along the north line of the parcel heretofore conveyed by William Pundis and wife to Crane Co. by deed dated November 30, 1928, and recorded in Book 382 of Deeds at page 512, and estimated to contain 477 square feet of land, be the same more or less.

Exhibit "G"
Access Agreements

ACCESS AGREEMENT

THIS AGREEMENT, by and between **NEW YORK STATE ELECTRIC & GAS CORPORATION**, a corporation organized and existing under the laws of the State of New York having an office at 18 Link Drive in the Town of Kirkwood, County of Broome, State of New York (hereinafter referred to as "NYSEG"), and **Southern New York Auto Club Inc.**, 21 Washington Street, City of Binghamton, County of Broome, and State of New York (hereinafter referred to as "Owner").

RECITALS:

WHEREAS, NYSEG has the need to perform soil and groundwater testing activities upon Owner's property located at 21 Washington Street in the City of Binghamton, County of Broome, and State of New York; and

WHEREAS, NYSEG must temporarily use, occupy, and travel over the property of the Owner in order to perform the testing, and

WHEREAS, Owner is willing to permit NYSEG to use Owner's property for these purposes subject to the conditions of this agreement.

NOW, THEREFORE, the parties agree as follows:

Section 1. Grant. Owner, being the record owner of or having an interest in land situate in the City of Binghamton, County of Broome, State of New York, identified by City of Binghamton tax map number 803010, which land is shown in Exhibit A, attached hereto and made part hereof, (hereinafter referred to as the "Premises"), for and in consideration of the sum of One Dollar (\$1.00) duly paid, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the performance of the covenants and agreements as herein set forth and expressed, does hereby grant, remise, and relinquish to NYSEG, its successors and assigns the following:

(a) The temporary license to enter upon, use, travel over, alter, improve, and occupy the Premises to install a minimum of four (4) and a maximum of six (6) soil borings, at least one (1) of which will be completed as a groundwater monitoring well, and one (1) monitoring well previously installed on the property by others which may still exist, for the purpose of conducting soil and groundwater sampling, including but not limited to invasive testing, and other activities and work ancillary to the conduct of such investigations, assessments, testing, and work. Additionally the rights to collect sub-slab soil vapor and indoor ambient air samples. This temporary license, and easement is granted for the accommodation of NYSEG's employees, agents, contractors, and subcontractors, as well as construction and other equipment, vehicles, materials, tools, accessories, and other necessary items required for the proper performance of such investigation, assessments, testing, and work on the Premises; It is agreed by the parties that they will agree on the general hours of operation by NYSEG so as not to unduly impact patrons, clients, employees and parking and

(b) The temporary license to use, as a means of entering onto and departing from the Premises, the present and existing roads and driveways located on the Premises leading to adjoining streets, avenues, and highways for all of the purposes set forth herein.

Owner has all requisite authority and right to grant us this temporary license.

Section 2. Other Consideration. As further consideration for the foregoing grant, the Owner and NYSEG agree as follows:

(a) That as part of the use of the Premises herein, NYSEG will be permitted to install a minimum of four (4) and a maximum of six (6) soil borings, at least one (1) of which will be completed as a groundwater monitoring well, and also use one (1) monitoring well previously installed by others that may still exist on the Premises. The location of the soil borings/monitoring well(s) will be situated as mutually agreed by the Owner and NYSEG. "At no time in the future under any circumstances shall NYSEG seek reimbursement from Owner for any of these or other related costs in connection with investigation and/or feasibility studies and remediation costs relating to coal tar contamination undertaken by NYSEG. This covenant shall not apply to any costs NYSEG incurs in connection with the remediation of non-coal tar contamination caused directly by the Owner and its agents. This covenant shall not apply to any costs NYSEG incurs in connection with the investigation of non-coal tar contamination provided that said investigation costs would not otherwise have been incurred in any event by NYSEG as part of a standard RI/FS process." NYSEG further agrees to provide notice to the Owner once it is known that NYSEG's investigation will be in

addition to normal investigation efforts for non-coal tar contamination for which the Owner may be responsible hereunder.

(b) With the exception of one or more monitoring wells to be left on the premises as addressed in Section 2(a), above, within ten (10) business days following the conclusion of all investigations, assessments, testing, and work referred to above, NYSEG will cause to be removed from the Premises all debris, surplus material, and equipment and restore the Premises to substantially its condition before the conduct of such investigations, assessments, testing, and work. Notwithstanding the foregoing, NYSEG will be permitted to leave in place any monitoring or testing devices which NYSEG installed and which NYSEG is required to maintain in order to comply with any applicable federal, state, or municipal laws, rules, or regulations; this right will survive the termination of this easement. NYSEG represents that the monitoring well(s) will not generate noise or other nuisance during operation that will interfere with the Owner's quiet use and enjoyment of the property, provided that the Owner acknowledges that the placement and operation of the monitoring well(s) alone, in accordance with this Agreement, will not be considered a nuisance or interference with the Owner's quiet use and enjoyment of the property.

(c) NYSEG agrees that any fencing, equipment, and other materials to be used, operated, installed, or situated on the Premises will, in general, be used, operated, installed, or situated so as not to interfere with the Owner's business operations and Owner's access to the Premises. Any obstruction required for the performance of work on the Premises will be temporary only and will be removed by NYSEG as soon as practicable following the completion of the activity requiring such obstruction. NYSEG will not block any driveway, or loading docks, and will not occupy or use any more than three (3) contiguous parking spaces for a period longer than 3 days.

(d) In the event that plantings, trees, shrubs and all other flora, fences, driveways, or permanent buildings of the Owner are removed or damaged by NYSEG or its agents during the performance of the work, NYSEG will repair and restore same to a condition fully equal to that existing before construction operations were commenced.

(e) Owner hereby releases NYSEG, its officers, agents, servants, employees, contractors, and subcontractors from any and all liability by reason of trespass upon the Premises. This release is only with respect to trespass and nothing else.

(f) Owner acknowledges and agrees that NYSEG may disclose the results of any testing it performs on soil, groundwater, and air samples taken from the Property to appropriate federal, state, local, and municipal environmental and/or health agencies as deemed necessary or prudent by NYSEG. All results will be simultaneously disclosed to Owner. Except as provided in the immediately preceding sentence and as otherwise required by law, NYSEG will maintain such results in confidence and will not otherwise disclose them to any third party without the Owner's prior written consent.

Section 3. Duration. This Agreement will have a term of five (5) years commencing on the date hereof. All rights and obligations of NYSEG and Owner shall expire at the end of the term. If, during the term, the Owner places the property for sale and a prospective purchaser refuses to sign a purchase agreement with the Owner due primarily to the existence of this Agreement, Owner shall so notify NYSEG and NYSEG shall have a reasonable period of time under the circumstances, but in no event greater than 15 days, to meet and make arrangements with the prospective purchaser that would allow this Agreement to remain in place for its term. If NYSEG is unsuccessful in making such arrangements with the prospective purchaser within fifteen days, NYSEG will notify the Owner and Owner may terminate this Agreement upon 5 days notice, after the fifteen (15) day time period mentioned above, whereupon the rights and obligations of both parties shall expire in their entirety.

Section 4. Indemnification. Except as provided in Section 2(e), above, NYSEG agrees to indemnify, defend, and hold Owner harmless from and against any and all liabilities, losses, costs, damages, punitive damages expenses, and reasonable attorneys fees which Owner may suffer or for which Owner may be held liable by reason of damage to, or destruction of, any property or person arising out of or connected with NYSEG's actions, or the actions of NYSEG's employees, agents, contractors, and/or subcontractors on the Premises, except to the extent that such damage or destruction is due to the act, omission, recklessness, or negligence of the Owner,

or the Owner's officers, agents, servants, employees, contractors, subcontractors, lessees, invitees, or licensees. NYSEG will provide owner with written evidence that Owner is named as an additional insured on a primary and non-contributing basis by NYSEG and each of its contractors/subcontractors who perform work on the premises.

IN WITNESS WHEREOF, the parties hereto have set their respective hands as of the 25th day of August, 2005.

IN-PRESENCE OF:

Southern New York Auto Club Inc.

[Signature]

By: [Signature]

STATE OF NEW YORK)
) SS.
COUNTY OF BROOME)

On the 25th day of August in the year 2005 before me, the undersigned, a Notary Public in and for said State, personally appeared R L Jacobs, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

Lorie A Reynolds
Notary Public

LORIE A. REYNOLDS
Notary Public, State of New York
01RE6024221
5/10/07

CMO

IN PRESENCE OF:

NYSEG

By: [Signature]

STATE OF NEW YORK)
) SS.
COUNTY OF BROOME)

On the 25th day of August in the year 2005 before me, the undersigned, a Notary Public in and for said State, personally appeared [Signature], personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

[Signature]
Notary Public

Debra Marcello
Notary Public, State of New York
Broome County 01MA4648493
Commission Expires 5/31/07

* "For the purposes of this section, the term "person" means any corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited liability company (including a professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, natural person, attorney in fact, real estate investment trust, business trust or other trust custodian, nominee or any other individual or entity in its own or any representative capacity."

ACCESS AGREEMENT

THIS AGREEMENT, by and between **NEW YORK STATE ELECTRIC & GAS CORPORATION**, a corporation organized and existing under the laws of the State of New York having an office at 18 Link Drive in the Town of Kirkwood, County of Broome, State of New York (hereinafter referred to as "NYSEG"), and **Thomas A. Torto**, P. O. Box 290 SVS, City of Binghamton, County of Broome, and State of New York (hereinafter referred to as "Owner").

RECITALS:

WHEREAS, NYSEG has the need to perform soil and groundwater testing activities upon Owner's property located at 33, 37, & 43 Washington Street in the City of Binghamton, County of Broome, and State of New York; and

WHEREAS, NYSEG must temporarily use, occupy, and travel over the property of the Owner in order to perform the testing, and

WHEREAS, Owner is willing to permit NYSEG to use Owner's property for these purposes subject to the conditions of this agreement.

NOW, THEREFORE, the parties agree as follows:

Section 1. Grant. Owner, being the record owner of or having an interest in land situate in the City of Binghamton, County of Broome, State of New York, identified by City of Binghamton tax map numbers 803013, 803005 and 803031, which land is shown in Exhibit A, attached hereto and made part hereof, (hereinafter referred to as the "Premises"), for and in consideration of the sum of One Dollar (\$1.00) duly paid, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the performance of the covenants and agreements as herein set forth and expressed, does hereby grant, remise, and relinquish to NYSEG, its successors and assigns the following:

(a) The temporary license to enter upon, use, travel over, alter, improve, and occupy the Premises to install a minimum of three (3) and a maximum of five (5) soil borings, at least one (1) of which will be completed as a groundwater monitoring well, for the purpose of conducting soil and groundwater sampling, including but not limited to invasive testing, and other activities and work ancillary to the conduct of such investigations, assessments, testing, and work. Additionally the rights to collect sub-slab soil vapor and indoor ambient air samples. This temporary license is granted for the accommodation of NYSEG's employees, agents, contractors, and subcontractors, as well as construction and other equipment, vehicles, materials, tools, accessories, and other necessary items required for the proper performance of such investigation, assessments, testing, and work on the Premises; It is agreed by the parties that they will agree on the general hours of operation by NYSEG so as not to unduly impact patrons, clients, employees and parking and

(b) The temporary license to use, as a means of entering onto and departing from the Premises, the present and existing roads and driveways located on the Premises leading to adjoining streets, avenues, and highways for all of the purposes set forth herein.

Owner has all requisite authority and right to grant us this temporary license.

Section 2. Other Consideration. As further consideration for the foregoing grant, the Owner and NYSEG agree as follows:

(a) That as part of the use of the Premises herein, NYSEG will be permitted to install a minimum of three (3) and a maximum of five (5) soil borings, at least one (1) of which will be completed as a groundwater monitoring well at NYSEG's expense, on the Premises. The location of the soil borings/monitoring well(s) will be situated as mutually agreed by the Owner and NYSEG. "At no time in the future under any circumstances shall NYSEG seek reimbursement from Owner for any of these or other related costs in connection with investigation and/or feasibility studies and remediation costs relating to coal tar contamination undertaken by NYSEG. This covenant shall not apply to any costs NYSEG incurs in connection with the remediation of non-coal tar contamination caused directly by the Owner and its agents. This covenant shall not apply to any costs NYSEG incurs in connection with the investigation of non-coal tar contamination provided that said investigation costs would not otherwise have been incurred in any event by NYSEG as part of a standard RI/FS process." NYSEG further agrees to provide notice to the Owner once it is known that NYSEG's investigation

will be in addition to normal investigation efforts for non-coal tar contamination for which the Owner may be responsible hereunder.

(b) With the exception of one or more monitoring wells to be left on the premises as addressed in Section 2(a), above, within ten (10) business days following the conclusion of all investigations, assessments, testing, and work referred to above, NYSEG will cause to be removed from the Premises all debris, surplus material, and equipment and restore the Premises to substantially its condition before the conduct of such investigations, assessments, testing, and work. Notwithstanding the foregoing, NYSEG will be permitted to leave in place any monitoring or testing devices which NYSEG installed and which NYSEG is required to maintain in order to comply with any applicable federal, state, or municipal laws, rules, or regulations; this right will survive the termination of this easement. NYSEG represents that the monitoring well(s) will not generate noise or other nuisance during operation that will interfere with the Owner's quiet use and enjoyment of the property, provided that the Owner acknowledges that the placement and operation of the monitoring well(s) alone, in accordance with this Agreement, will not be considered a nuisance or interference with the Owner's quiet use and enjoyment of the property.

(c) NYSEG agrees that any fencing, equipment, and other materials to be used, operated, installed, or situated on the Premises will, in general, be used, operated, installed, or situated so as not to interfere with the Owner's business operations and Owner's access to the Premises. Any obstruction required for the performance of work on the Premises will be temporary only and will be removed by NYSEG as soon as practicable following the completion of the activity requiring such obstruction. NYSEG will not block any driveway, or loading docks, and will not occupy or use any more than three (3) contiguous parking spaces for a period longer than three (3) days.

(d) In the event that plantings, trees, shrubs and all other flora, fences, driveways, or permanent buildings of the Owner are removed or damaged by NYSEG or its agents during the performance of the work, NYSEG will repair and restore same to a condition fully equal to that existing before construction operations were commenced.

(e) Owner hereby releases NYSEG, its officers, agents, servants, employees, contractors, and subcontractors from any and all liability by reason of trespass upon the Premises. This release is only with respect to trespass and nothing else.

(f) Owner acknowledges and agrees that NYSEG may disclose the results of any testing it performs on soil, groundwater, and air samples taken from the Property to appropriate federal, state, local, and municipal environmental and/or health agencies as deemed necessary or prudent by NYSEG. All results will be simultaneously disclosed to Owner. Except as provided in the immediately preceding sentence and as otherwise required by law, NYSEG will maintain such results in confidence and will not otherwise disclose them to any third party without the Owner's prior written consent.

Section 3. Duration. This Agreement will have a term of five (5) years commencing on the date hereof. All rights and obligations of NYSEG and Owner shall expire at the end of the term. If, during the term, the Owner places the property for sale and a prospective purchaser refuses to sign a purchase agreement with the Owner due primarily to the existence of this Agreement, Owner shall so notify NYSEG and NYSEG shall have a reasonable period of time under the circumstances, but in no event greater than 15 days, to meet and make arrangements with the prospective purchaser that would allow this Agreement to remain in place for its term. If NYSEG is unsuccessful in making such arrangements with the prospective purchaser within fifteen (15) days, NYSEG will notify the Owner and Owner may terminate this Agreement upon five (5) days notice, after the fifteen (15) day time period mentioned above, whereupon the rights and obligations of both parties shall expire in their entirety.

Section 4. Indemnification. Except as provided in Section 2(e), above, NYSEG agrees to indemnify, defend, and hold Owner harmless from and against any and all liabilities, losses, costs, damages, punitive damages expenses, and reasonable attorneys fees which Owner may suffer or for which Owner may be held liable by reason of damage to, or destruction of, any property or person arising out of or connected with NYSEG's actions, or the actions of NYSEG's

ACCESS AGREEMENT

THIS AGREEMENT, by and between **NEW YORK STATE ELECTRIC & GAS CORPORATION**, a corporation organized and existing under the laws of the State of New York having an office at 18 Link Drive in the Town of Kirkwood, County of Broome, State of New York (hereinafter referred to as "NYSEG"), and **Blair Martin Company**, P. O. Box 2084, City of Binghamton, County of Broome, and State of New York (hereinafter referred to as "Owner").

RECITALS:

WHEREAS, NYSEG has the need to perform soil and groundwater testing activities upon Owner's property located at 40 Water Street and 45 Washington Street in the City of Binghamton, County of Broome, and State of New York; and

WHEREAS, NYSEG must temporarily use, occupy, and travel over the property of the Owner in order to perform the testing, and

WHEREAS, Owner is willing to permit NYSEG to use Owner's property for these purposes subject to the conditions of this agreement.

NOW, THEREFORE, the parties agree as follows:

Section 1. Grant. Owner, being the record owner of or having an interest in land situate in the City of Binghamton, County of Broome, State of New York, identified by City of Binghamton tax map numbers 803015 and 803032, which land is shown in Exhibit A, attached hereto and made part hereof, (hereinafter referred to as the "Premises"), for and in consideration of the sum of One Dollar (\$1.00) duly paid, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the performance of the covenants and agreements as herein set forth and expressed, does hereby grant, remise, and relinquish to NYSEG, its successors and assigns the following:

(a) The temporary license to enter upon, use, travel over, alter, improve, and occupy the Premises to install a minimum of two (2) and a maximum of five (5) soil borings, at least one (1) of which will be completed as a groundwater monitoring well, for the purpose of conducting soil and groundwater sampling, including but not limited to invasive testing, and other activities and work ancillary to the conduct of such investigations, assessments, testing, and work. This temporary license is granted for the accommodation of NYSEG's employees, agents, contractors, and subcontractors, as well as construction and other equipment, vehicles, materials, tools, accessories, and other necessary items required for the proper performance of such investigation, assessments, testing, and work on the Premises; It is agreed by the parties that they will agree on the general hours of operation by NYSEG so as not to unduly impact patrons, clients, employees and parking and

(b) The temporary license to use, as a means of entering onto and departing from the Premises, the present and existing roads and driveways located on the Premises leading to adjoining streets, avenues, and highways for all of the purposes set forth herein.

Owner has all requisite authority and right to grant us this temporary license.

Section 2. Other Consideration. As further consideration for the foregoing grant, the Owner and NYSEG agree as follows:

(a) That as part of the use of the Premises herein, NYSEG will be permitted to install a minimum of two (2) and a maximum of five (5) soil borings, at least one (1) of which will be completed as a groundwater monitoring well, on the Premises. The location of the soil borings/monitoring well(s) will be situated as mutually agreed by the Owner and NYSEG. "At no time in the future under any circumstances shall NYSEG seek reimbursement from Owner for any of these or other related costs in connection with investigation and/or feasibility studies and remediation costs relating to coal tar contamination undertaken by NYSEG. This covenant shall not apply to any costs NYSEG incurs in connection with the remediation of non-coal tar contamination caused directly by the Owner and its agents. This covenant shall not apply to any costs NYSEG incurs in connection with the investigation of non-coal tar contamination provided that said investigation costs would not otherwise have been incurred in any event by NYSEG as part of a standard RI/FS process." NYSEG further agrees to provide notice to the Owner once it is known that NYSEG's investigation will be in addition to normal investigation efforts for non-coal tar contamination for which the Owner may be responsible hereunder.

(b) With the exception of one or more monitoring wells to be left on the premises as addressed in Section 2(a), above, within ten (10) business days following the conclusion of all investigations, assessments, testing, and work referred to above, NYSEG will cause to be removed from the Premises all debris, surplus material, and equipment and restore the Premises to substantially its condition before the conduct of such investigations, assessments, testing, and work. Notwithstanding the foregoing, NYSEG will be permitted to leave in place any monitoring or testing devices which NYSEG installed and which NYSEG is required to maintain in order to comply with any applicable federal, state, or municipal laws, rules, or regulations; this right will survive the termination of this easement. NYSEG represents that the monitoring well(s) will not generate noise or other nuisance during operation that will interfere with the Owner's quiet use and enjoyment of the property, provided that the Owner acknowledges that the placement and operation of the monitoring well(s) alone, in accordance with this Agreement, will not be considered a nuisance or interference with the Owner's quiet use and enjoyment of the property.

(c) NYSEG agrees that any fencing, equipment, and other materials to be used, operated, installed, or situated on the Premises will, in general, be used, operated, installed, or situated so as not to interfere with the Owner's business operations and Owner's access to the Premises. Any obstruction required for the performance of work on the Premises will be temporary only and will be removed by NYSEG as soon as practicable following the completion of the activity requiring such obstruction. NYSEG will not block any driveway, or loading docks, and will not occupy or use any more than three (3) contiguous parking spaces for a period longer than three (3) days.

(d) In the event that plantings, trees, shrubs and all other flora, fences, driveways, or permanent buildings of the Owner are removed or damaged by NYSEG or its agents during the performance of the work, NYSEG will repair and restore same to a condition fully equal to that existing before construction operations were commenced.

(e) Owner hereby releases NYSEG, its officers, agents, servants, employees, contractors, and subcontractors from any and all liability by reason of trespass upon the Premises. This release is only with respect to trespass and nothing else.

(f) Owner acknowledges and agrees that NYSEG may disclose the results of any testing it performs on soil, groundwater, and air samples taken from the Property to appropriate federal, state, local, and municipal environmental and/or health agencies as deemed necessary or prudent by NYSEG. All results will be simultaneously disclosed to Owner. Except as provided in the immediately preceding sentence and as otherwise required by law, NYSEG will maintain such results in confidence and will not otherwise disclose them to any third party without the Owner's prior written consent.

Section 3. Duration. This Agreement will have a term of five (5) years commencing on the date hereof. All rights and obligations of NYSEG and Owner shall expire at the end of the term. If, during the term, the Owner places the property for sale and a prospective purchaser refuses to sign a purchase agreement with the Owner due primarily to the existence of this Agreement, Owner shall so notify NYSEG and NYSEG shall have a reasonable period of time under the circumstances, but in no event greater than fifteen (15) days, to meet and make arrangements with the prospective purchaser within fifteen (15) days, that would allow this Agreement to remain in place for its term. If NYSEG is unsuccessful in making such arrangements with the prospective purchaser, NYSEG will notify the Owner and Owner may terminate this Agreement upon 5 days notice, after the fifteen (15) day time period mentioned above, whereupon the rights and obligations of both parties shall expire in their entirety.

Section 4. Indemnification. Except as provided in Section 2(e), above, NYSEG agrees to indemnify, defend, and hold Owner harmless from and against any and all liabilities, losses, costs, damages, punitive damages expenses, and reasonable attorneys fees which Owner may suffer or for which Owner may be held liable by reason of damage to, or destruction of, any property or person arising out of or connected with NYSEG's actions, or the actions of NYSEG's employees, agents, contractors, and/or subcontractors on the Premises, except to the extent that such damage or destruction is due to the act, omission, recklessness, or negligence of the Owner, or the Owner's officers, agents, servants, employees, contractors, subcontractors, lessees, invitees,

