

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

THIS INDENTURE made this 15<sup>th</sup> day of September, 2008, between Owner(s) Genesee Gateway Houses, Inc., and Genesee Commons Associates Limited Partnership having an office at 183 East Main Street, 6<sup>th</sup> Floor, Rochester, New York 14604 (together the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS**, the Legislature of the State of New York has declared that environmental easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located at the address of 185 Mount Hope Avenue in the City of Rochester, Monroe County, New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel Section 121.55 Block 01 Lot 59.001 and 59.002 being the same as that property conveyed to Grantor by deeds on October 23, 1973 and March 09, 1974, and recorded in the Land Records of the Monroe County Clerk at Liber 4566, pages 172 and Liber 4631, page 265 of Deeds, comprised of approximately 6.177 (Parcel I), 0.875 (Parcel II) and 0.088 (Parcel III) acres, and hereinafter more fully described in Schedule "A" attached hereto and made a part hereof (the "Site"); and

**WHEREAS**, this Environmental Easement shall encumber a portion of the Site, known and designated as tax map parcel Section 121.55 Block 01 Lot 59.002 and consisting of 1.105 acres, which is hereinafter more fully described in Schedule "B", attached hereto and made a part hereof (the "Controlled Property"); and

**WHEREAS**, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the covenants and mutual promises contained herein and the terms and conditions of **Brownfield Cleanup Agreement Number B 8-0673-04-08 N** Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. **Purposes.** Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Institutional and Engineering Controls.** The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for restricted **residential** use, identified future uses in accordance with 6 NYCRR Part 375-1.8 (g)(2)(ii), as long as the following long-term engineering controls are employed:

i) The Controlled Property shall not be used to grow crops or livestock for human consumption unless such use is specifically approved by NYSDEC;

ii) the groundwater beneath the Controlled Property may not be used for potable or non-potable purposes;

iii) the Site Management Plan(SMP), dated June 2008, must be implemented for the Controlled Property;

iv) soils at the Controlled Property shall be managed in accordance with the SMP, dated June 2008; The SMP includes requirements for the characterization, handling, and disposal/re-use of residual contaminated media (e.g., soil, fill, groundwater) and requirements for soils imported to the site;

v) the existing surface and near surface soil, asphalt-paved surfaces, concrete-paved surfaces, and the building itself, act as a cover system at the Controlled Property. Disturbances and incidental damage to this cover system shall be repaired upon discovery with one or more of the components listed above or other cover materials approved by the NYSDEC and the NYSDOH;

vi) the potential for vapor intrusion for any new buildings developed on the Controlled Property must be evaluated and mitigation shall be implemented, if needed, prior to occupancy. If a vapor mitigation system is required, it shall be operated and maintained until such time NYSDEC deems it is no longer needed;

vii) Grantor shall provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan dated June 2008, that the Department has approved for the Controlled Property and all Department-approved amendments to the Site Management Plan.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated **June, 2008 ("SMP")**. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system on the Controlled Property, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Regional Remediation Engineer:                      or  
Region 8  
NYS Department of Environmental Conservation  
6274 East Avon-Lima Road  
East Avon, New York 14414

Site Control Section  
Division of Environmental Remediation  
NYS DEC  
625 Broadway  
Albany, NY 12233

B. The Controlled Property may not be used for a higher level of use such as **residential or agricultural** 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:

**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.**

D. 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.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. **Right to Enter and Inspect.** Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. **Reserved Grantor's Rights.** Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

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 otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This environmental easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this environmental easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or 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 bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information: County, NYSDEC Site Number, NYSDEC Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:

If for Grantee:

Site No. C 828124  
Environmental Easement Attorney  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

If for Grantor to:

Attn: Timothy D. Fournier  
Genesee Gateway Houses, Inc.  
183 East Main Street, 6<sup>th</sup> Floor  
Rochester, New York 14604

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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

Grantor's Name: **Genesee Gateway Houses, Inc**

By:   
Timothy D. Fournier, Secretary

Title: \_\_\_\_\_ Date: 8/28/08

**Genesee Commons Associates Limited Partnership**


By: **Genesee Riverfront Commons, LLC**

By: **Corifer Realty, LLC**

By:   
Timothy D. Fournier, President

Title: \_\_\_\_\_ Date: 8/28/08

**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation**

by:   
Alexander B. Grannis, Commissioner

**Grantor's Acknowledgment**

STATE OF NEW YORK )

COUNTY OF Monroe )

ss:

On the 28<sup>th</sup> day of August, in the year 2008, before me, the undersigned, personally appeared Timothy Fournier, 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.

Patricia Bartnicki  
Notary Public - State of New York

PATRICIA BARTNICKI  
Notary Public, State of New York  
Reg. No. 01BA4767424  
Qualified in Monroe County  
Commission Expires 5/31/10

**Grantor's Acknowledgment**

STATE OF NEW YORK )

COUNTY OF Monroe )

ss:

On the 28<sup>th</sup> day of August, in the year 2008, before me, the undersigned, personally appeared Timothy Fournier, 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.

Patricia Bartnicki  
Notary Public - State of New York

PATRICIA BARTNICKI  
Notary Public, State of New York  
Reg. No. 01BA4767424  
Qualified in Monroe County  
Commission Expires 5/31/10

**Grantee's Acknowledgment**

STATE OF NEW YORK )

COUNTY OF ALBANY )

ss:

On the 15<sup>th</sup> day of September in the year 2008 before me, the undersigned, personally appeared Alexander B. Francis 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/ 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.

Yvonne M. Ward  
Notary Public - State of New York

Yvonne M. Ward  
Notary Public - State of New York  
No. 02WA6115685  
Qualified in Saratoga County  
My Commission Expires Sept. 13, 2008

**SCHEDULE "A"**

**PROPERTY DESCRIPTION**

Address: 205-405 Mt. Hope Avenue, Rochester, NY  
Tax Id No: 121.55-1-59.001

**PARCEL I**

ALL THAT TRACT OR PARCEL OF LAND containing 6.177 acres, more or less, situate in the City of Rochester, County of Monroe, State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the westerly right-of-way of Mt. Hope Avenue (66 feet wide), said point being located north 28° 41' 31" east, 142.00 feet from the northerly end of a 170.44 foot radius junction curve formed by the northerly right-of-way of Clarissa Street and the aforesaid right-of-way of Mt. Hope Avenue; thence (1) north 60° 38' 29" west a distance of 199.91 feet to a point; thence (2) south 45° 21' 31" west, a distance of 8.24 feet to a point; thence (3) north 54° 21' 30" west, a distance of 37.90 feet to a point; thence (4) north 41° 08' 15" east, a distance of 334.06 feet to a point; thence (5) northeasterly, on a curve to the left, having a radius of 2,010.08 feet, a distance of 321.82 feet to a point; thence (6) north 26° 52' 15" east, a distance of 761.09 feet to a point; thence (7) north 35° 38' 30" east, a distance of 179.66 feet to a point; thence (8) south 54° 21' 30" east, a distance of 175.00 feet to a point; thence (9) south 36° 08' 10" west, a distance of 22.57 feet to a point; thence (10) north 54° 22' 20" west a distance of 8.47 feet to a point; thence (11) southwesterly on a curve to the right, having a radius of 6875.50 feet a distance of 181.92 feet to a point; thence (12) southwesterly on a curve to the right, having a radius of 11,459.27 feet a distance of 174.00 feet to a point; thence (13) south 54° 21' 30" east a distance of 119.99 feet to a point; thence (14) south 35° 38' 30" west, along the aforesaid right of way of Mt. Hope Avenue, a distance of 234.46, feet to a point; thence (15) south 30° 00' 19" west along the aforesaid right of way of Mt. Hope Avenue, a distance of 628.07 feet to a point; thence (16) south 28° 41' 31" west along the aforesaid right of way of Mt. Hope Avenue, a distance of 321.80 feet to the first mentioned point or place of beginning.

**PARCEL II**

ALL THAT TRACT OR PARCEL OF LAND containing 0.875 acres, more or less, situate in the City of Rochester, county of Monroe, State of New York being more particularly bounded and described as follows:

BEGINNING at a point on the westerly right-of-way of Mt. Hope Avenue (66 feet wide), said point being located north 28° 41' 31" east, 463.80 feet; thence north 30° 00' 19" east, 628.07 feet; thence north 35° 38' 30" east, 234.46 feet from the northerly right-of-way of Clarissa Street and the aforesaid right-of-way of Mt. Hope Avenue; thence (1) north 54° 21' 30" west, a distance of 119.99 feet to a point; thence (2) northeasterly, on a curve to the left, having a radius of 11,459.27 feet a distance of 174.00 feet to a point; thence (3) northeasterly on a curve to the left, having a radius of 6,875.50 feet, a distance of 181.92 feet to a point; thence (4) south 54° 22' 20" east, a distance of 8.47 feet to a point; thence (5) north 36° 08' 10" east, a distance of 22.57 feet to a point; thence (6) north 54° 21' 30" west, a distance of 175 feet to a point; thence (7) south 35° 38' 30" west, a distance of 179.66 feet to a point; thence (8) north 26° 52' 15" east, a distance of 32.79 feet to a point; thence (9) north 35° 38' 30" east, a distance of 150.25 feet to a point; thence (10) south 54° 21' 30" east, a distance of 249.90 feet to a point; thence (11) south 35° 38' 30" west, along the westerly right-of-way line of Mt. Hope Avenue, a distance of 379.07 feet to the point of beginning.

**PARCEL III**

**ALL THAT TRACT OR PARCEL OF LAND** containing 0.088 acres, more or less, situate in the City of Rochester, County of Monroe, State of New York and being more particularly bounded and described as follows:

**BEGINNING** at a point on the westerly right-of-way of Mt. Hope Avenue (66 feet wide), said point being located north 28° 41' 31" east, 111.78 feet from the northerly end of a 170.44 foot radius junction curve formed by the northerly right-of-way of Clarissa Street and the aforesaid right-of-way of Mt. Hope Avenue; thence (1) north 54° 21' 30" west, a distance of 203.76 feet to a point; thence (2) north 45° 21' 31" east, a distance of 8.24 feet to a point; thence (3) south 60° 38' 29" east, a distance of 199.91 feet to a point; thence (4) south 28° 41' 31" west, along the aforesaid right-of-way of Mt. Hope Avenue, a distance of 30.22 feet to the first mentioned point or place of beginning.

**EXCEPTING AND RESERVING ALL** that tract or parcel of land, situated in the City of Rochester, County of Monroe, State of New York, and being more particularly described as follows: **BEGINNING** on the Westerly right of way of Mt. Hope Avenue, (66' row), at the Southeasterly property corner of Tax Account No. 121.55-01-058; **RUNNING THENCE** South 34 degrees 59 minutes 13 seconds West, along said right of way, a distance of 196.00 feet to a point; **RUNNING THENCE** North 55 degrees 00 minutes 47 seconds West, a distance of 242.84 feet to a point; **RUNNING THENCE** North 26 degrees 12 minutes 58 seconds East, a distance of 46.29 feet to a point; **RUNNING THENCE** North 34 degrees 59 minutes 13 seconds East, a distance of 150.25 feet to a point; **RUNNING THENCE** South 55 degrees 00 minutes 47 seconds East, a distance of 249.90 feet to the point of beginning.



**ENVIRONMENTAL EASEMENT**  
**CONTROLLED PROPERTY DESCRIPTION**  
**SCHEDULE "B"**

Address: 185 Mt. Hope Avenue, Rochester, NY  
Tax Id No: 121.55-1-59.002

ALL that tract or parcel of land, situated in the City of Rochester, County of Monroe, State of New York, and being more particularly described as follows:

BEGINNING on the Westerly right of way of Mt. Hope Avenue, (66' row), at the Southeasterly property corner of Tax Account No. 121.55-01-058;

RUNNING THENCE South 34 degrees 59 minutes 13 seconds West, along said right of way, a distance of 196.00 feet to a point;

RUNNING THENCE North 55 degrees 00 minutes 47 seconds West, a distance of 242.84 feet to a point;

RUNNING THENCE North 26 degrees 12 minutes 58 seconds East, a distance of 46.29 feet to a point;

RUNNING THENCE North 34 degrees 59 minutes 13 seconds East, a distance of 150.25 feet to a point;

RUNNING THENCE South 55 degrees 00 minutes 47 seconds East, a distance of 249.90 feet to the point of beginning.

Together with the benefits of a Declaration of Easement and Covenants made by Genesee Common Associates Limited Partnership and Genesee Gateway Houses, Inc., dated September 7, 2005 and recorded September 13, 2005 in Monroe County Clerk's Office in Liber 10184 of Deeds, page 194.

