

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

**THIS INDENTURE** made this 31<sup>st</sup> day of July, 2015, between Owner(s) Merani Hospitality, Inc., having an office at 7001 Buffalo Avenue, Niagara Falls, NY 14304, County of Niagara, State of New York (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 the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

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

**WHEREAS**, Grantor, is the owner of real property located at the address of 401, 402 and 430 Buffalo Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 159.1 Block 2 Lot 9, Section 159.54 Block 1 Lot 46 and Section 159.54 Block 1 Lot 45, respectively, being the same as that property conveyed to Grantor by deeds dated September 23, 2009 (as to 401 Buffalo Avenue) and October 2, 2013 (as to 402 and 430 Buffalo Avenue) and recorded in the Niagara County Clerk's Office in Liber 2009 Page 17925 and Liber 2013 Page 19886, respectively. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 6.2 +/- acres, and is hereinafter more fully described in the Land Title Survey dated September 29, 2014 and revised on March 12, 2015 (401 Buffalo Street) and February 12, 2015 (402 and 430 Buffalo Avenue) prepared by Jerod C. McIntyre, P.L.S. of McIntyre Land Surveying, P.C., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

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

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C932164-05-14, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),  
Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial  
as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled

Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held**

by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. 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.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:  
(i) are in-place;  
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

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 Property, including:

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

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;



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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

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

10. 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.

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

Merani Hospitality, Inc.:

By: [Signature]

Print Name: FAISAL MERANI

Title: PRESIDENT Date: 5/7/15

**Grantor's Acknowledgment**

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

On the 7<sup>th</sup> day of May, in the year 2015, before me, the undersigned, personally appeared Faisal Merani; 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.

[Signature]  
Notary Public - State of New York

**CRAIG A. SLATER**  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires October 31, 2015



**SCHEDULE "A" PROPERTY DESCRIPTION**

**401 Buffalo Avenue (SBL # 159.13-2-9)**

**ALL THAT TRACT OR PARCEL OF LAND** situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot No. 43 & 44 of the New York Mile Reserve and also described as part of Subdivision Lots 48, 50, 52, 54, 56, 58, 60, 62 and 67 and all of Subdivision Lots 53, 55, 57, 59, 61, 63 and 65 on the southerly-side of Buffalo Avenue (formerly Buffalo Street) as shown on a map by Jesse P. Haines, Surveyor dated 1861 and filed in the Niagara County Clerk's Office on December 20, 1861 under cover no. 389, now in Book 5 of Microfilmed maps at pages 462 & 463, bounded and more particularly described as follows:

**BEGINNING** at the point of intersection of the southerly line of Buffalo Avenue with the easterly line of Fourth Street, which point is also the northwesterly corner of Subdivision Lot 53; running thence southerly along the said easterly line of Fourth Street, a distance of 334.04 feet to the north line of lands conveyed to the People of the State of New York by deed recorded in the Niagara County Clerk's Office in Liber 1278 of Deeds at Page 394; running thence southeasterly at a bearing of S-80<sup>0</sup>-43'-58"-E, a distance of 66.66 feet to an angle point; running thence southeasterly at a bearing of S-82<sup>0</sup>-04'-58"-E, a distance of 66.00 feet to an angle point; running thence southeasterly at a bearing of S-85<sup>0</sup>-17'-43"-E, a distance of 66.00 feet to an angle point; running thence easterly at a bearing of S-89<sup>0</sup>-56'-13"-E, a distance of 66.00 feet to a point of curvature (P.C.); running thence northeasterly along an arc to the left having a radius of 2000.00 feet, an arc length distance of 248.65 feet to a point along the westerly line of Holly Place; running thence northerly along the westerly line of said Holly Place, a distance of 174.75 feet to an angle point; running thence northwesterly along the westerly line of Holly Place at an interior angle of 171<sup>0</sup>-58'-22", a distance of 122.39 feet to the intersection of the said westerly line of Holly Street and the southerly line of said Buffalo Avenue; running thence westerly along the southerly line of said Buffalo Avenue, a distance of 492.02 feet to the point or place of beginning. Having an area of 166,899.41 square feet or 3.83 acres more or less.

**402 Buffalo Avenue (SBL # 159.54-1-46) and 430 Buffalo Avenue (SBL # 159.54-1-45)**

**ALL THAT TRACT OR PARCEL OF LAND** situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot No. 43 of the New York Mile Reserve and also described as Subdivision Lot 38, Part of Subdivision Lot 40 & all of Subdivision Lots 42,44,46,48,50,52 & 54 on the northerly-side of Buffalo Avenue (formerly Buffalo Street) as shown on a map by Jesse P. Haines, Surveyor dated 1861 and filed in the Niagara County Clerk's Office on December 20, 1861 under cover no. 389, now in Book 5 of Microfilmed maps at pages 462 & 463, bounded and more particularly described as follows:

**BEGINNING** at the point of intersection of the northerly line of Buffalo Avenue and the easterly line of Fourth Street, thence northerly along the east line of said Fourth Street, a distance of 172.03 feet to a point along the southerly line of a 13.0 foot wide city alleyway; running thence easterly along the southerly line of said city alleyway, a distance of 79.0 feet to land conveyed to Iroquois Gas Corporation by deed and recorded in the N.C.C.O. in Liber 1368 of Deeds at page 359; thence southerly along the westerly line of said Iroquois Gas Corporation lands a distance of 27.03 feet to a point; running thence easterly along the southerly line of said Iroquois Gas Corporation lands, a distance of 20 feet to a point; running thence northerly and parallel with the east line of said Fourth Street, a distance of 27.03 feet to a point along the southerly line of said city alleyway; running thence easterly along the southerly line of said city alleyway, a distance of 529.70 feet to the west line of Sixth Street; running thence southerly along the west line of said Sixth Street to its intersection with the northerly line of said Buffalo Avenue a distance of 172.03 feet; running thence westerly along the northerly line of said Buffalo Avenue, a distance of 628.70 to the point or place of beginning. Having an area of 107,611.25 square feet or 2.47 acres more or less.