

County: Bronx

Site No: C20303 I

Brownfield Agreement No: W2-1061-05-03

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

THIS INDENTURE made this 21<sup>st</sup> day of December, 2007, between Owner(s) White Plains Commercial LLC, having offices at c/o Arker Companies, 930 Broadway, Woodmere, NY 11598 and DCAN-White Plains Housing Development Fund Corp., having an office at 4049 Broadway, New York 10032 (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 2040 White Plains Road, in the City of New York, Bronx County, New York known and designated on the tax map of the Borough of the Bronx as tax map parcel numbers Block 4284, Lots 1001 and 1002, being the same as that property conveyed to Grantor UCAN-White Plains Housing Development Fund Corp. by deed on September 19, 2005, and recorded in the Land Records of the City Register for Bronx County on December 30, 2005 at computerized system tracking/ identification number 2005000717398, and Grantor White Plains Commercial LLC by deed on May 5, 2007, and recorded in the Land Records of the City Register for Bronx County on November 14, 2007 at computerized system tracking/ identification number 2007000568244, comprised of approximately 0.6 acres, and hereinafter more fully described in Schedule A (Description of Property) and Schedule B (Map of Property) 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 W2-1061-05-03, 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 unrestricted use so long as the following short-term engineering controls are employed:

- (i) The use of the groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for the intended use and approval by the NYS Department of Health;
- (ii) Compliance with all elements of the NYSDEC-approved Site Management Plan, dated December 2007 ("SMP").

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved SMP. The SMP describes obligations that 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 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. This 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	Site Control Section
Region 2		Division of Environmental Remediation
NYSDEC		NYSDEC

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One Hunter's Plaza  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11 101

625 Broadway  
Albany, New York 12233

B. 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 to Title 36 of 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:

I. 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: Environmental Easement Attorney  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

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

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.
8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.
9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.
10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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

\* As to Power of Attorney  
 refer to Agreement  
 Recorded 12/21/2005  
 CRFN 2005000700611  
 Par. 2.

Grantor's Name:UCAN-HDFC

By: White Plains Courtyard LP its Attorney in Fact  
 BY: Metro Management I LLC, as General Partner

By:   
 Sol Arker as Managing Member

- and -

White Plains Commercial LLC

By: Metro Management I LLC, as Managing Member

By:   
 Sol Arker, as Managing Member

Grantor's Acknowledgment

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

On the 19 day of December, in the year 2007, before me, the undersigned, personally appeared Sor Aron, 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 in be which the individual(s) acted, executed the instrument.

Carol Giuliani  
Notary Public - State of New York

CAROL GIULIANI  
Notary Public, State of New York  
No. 24-4803300  
Qualified in Nassau County  
Commission Expires July 31, 2010

**SEAL**

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  
Alexander B. Grannis, Commissioner

Grantee's Acknowledgment

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

On the 21 day of December, in the year 2007 before me, the undersigned, personally appeared ALEXANDER B. GRANNIS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument the individual, or the person upon behalf of which the individual acted, executed the instrument.

Scott Owens  
Notary Public - State of New York

SCOTT OWENS  
Notary Public, State of New York  
No. 020W6108092  
Qualified in Albany County  
Commission Expires April 12, 2008

**SEAL SEAL**

## SCHEDULE A

## LEGAL DESCRIPTION OF PROPERTY

ALL that certain piece or parcel of land, situate lying and being in the Borough and County of Bronx, City and State of New York, shown as Block 4284 Lot 1001 (formerly Block 4284 Part of Lot 5) as shown on the New York City Tax Map, and being more particularly described as follows: BEGINNING at the corner formed by the intersection of the southerly side of Brady Avenue with the easterly side of White Plains Road forming an interior angle of  $90^{\circ} 00' 00''$ , as streets are legally opened; THENCE easterly along the southerly side of Brady Avenue a distance of 100.00 feet to a point; THENCE southerly and parallel with the easterly side of White Plains Road forming an interior angle of  $90^{\circ} 00' 00''$  a distance of 331.20 feet to the northerly side of Bronxdale Avenue, as legally opened; THENCE northwesterly along the northerly side of Bronxdale Avenue forming an interior angle of  $51^{\circ} 56' 30''$  a distance of 127.001 feet to the easterly side of White Plains Road; and THENCE northerly along the easterly side of White Plains Road forming an interior angle of  $128^{\circ} 03' 30''$  a distance of 252.91 feet to the point of BEGINNING.

EDMS # 287086

1,

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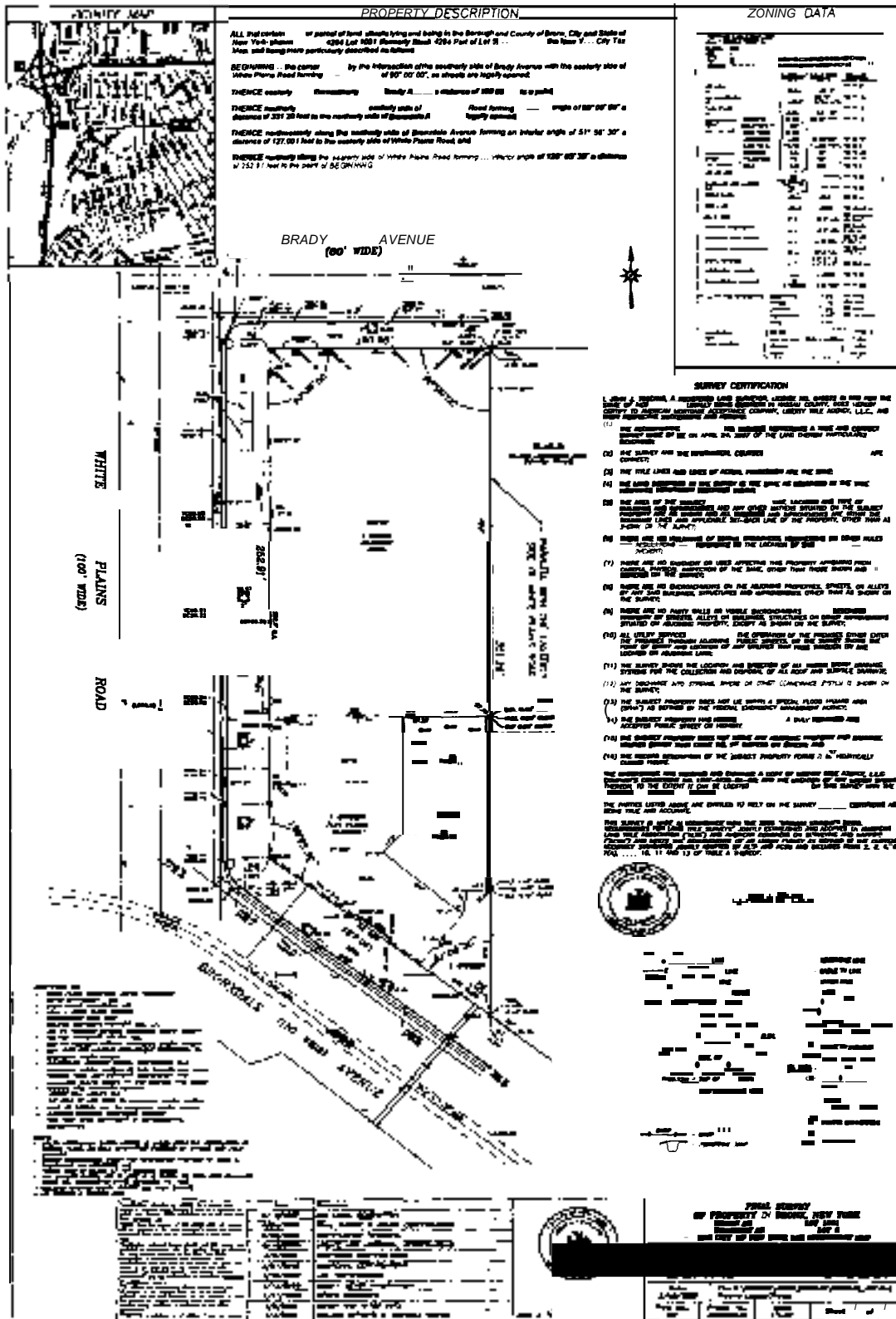
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SCHEDULE B

MAP OF CONTROLLED PROPERTY







**PROPERTY DESCRIPTION**

ALL that certain lot or parcel of land... lying and being in the Borough and County of Bronx, City and State of New York...  
 BEGINS... by the intersection of the southerly side of Brady Avenue with the easterly side of White Plains Road forming an angle of 90° 00' 00", as streets are legally opened.  
 THENCE easterly... southerly side of... distance of 100.00... to a point.  
 THENCE southerly... southerly side of... Road forming... angle of 107° 04' 00" a distance of 331.25 feet to the southerly side of...  
 THENCE westerly along the southerly side of... forming an interior angle of 51° 56' 30" a distance of 127.00 feet to the easterly side of White Plains Road, and  
 THENCE southerly along the easterly side of White Plains Road forming... interior angle of 128° 02' 30" a distance of 152.11 feet to the point of BEGINNING.

**ZONING DATA**

Zone	Permitted Uses	Prohibited Uses
...	...	...
...	...	...
...	...	...

- SURVEY CERTIFICATION**
1. I, the undersigned, a Registered Land Surveyor, having no interest in and not the owner of the land described in this map, certify that I am a duly qualified and licensed Land Surveyor in the State of New York.
  2. THE INFORMATION... FOR THESE PURPOSES A TRUE AND CORRECT COPY OF THE RECORDS OF THE OFFICE OF THE CLERK OF THE COUNTY OF BRONX, NEW YORK, HAS BEEN REVIEWED BY ME ON APRIL 24, 2007 OF THE LAND DESCRIBED PARTICULARLY HEREIN.
  3. THE SURVEY AND THE INFORMATION... ARE CORRECT.
  4. THE FIELD LINES AND LINES OF ADJACENT PROPERTIES ARE THE SAME.
  5. THE LAND DESCRIBED IN THE SURVEY IS THE SAME AS DESCRIBED IN THE PREVIOUS SURVEYING RECORDS.
  6. THE AREA OF THE SURVEY... THE LOCATION AND TYPE OF THE PROPERTY... AND ANY OTHER MATTER PERTAINING TO THE SURVEY... HAS BEEN DETERMINED BY ME AND IS SHOWN ON THE MAP AS SHOWN ON THE MAP.
  7. THERE ARE NO ENCUMBRANCES, EASEMENTS, OR OTHER RIGHTS AFFECTING THE SURVEY... OTHER THAN THOSE SHOWN AND DESCRIBED ON THE MAP.
  8. THERE ARE NO ENCUMBRANCES, EASEMENTS, OR OTHER RIGHTS AFFECTING THE SURVEY... OTHER THAN THOSE SHOWN AND DESCRIBED ON THE MAP.
  9. THERE ARE NO PARTIAL WALLS OR OTHER ENCUMBRANCES... OTHER THAN THOSE SHOWN AND DESCRIBED ON THE MAP.
  10. ALL UTILITY SERVICES... THE LOCATION OF THE PROPERTY... HAS BEEN DETERMINED BY ME AND IS SHOWN ON THE MAP AS SHOWN ON THE MAP.
  11. THE SURVEY SHOWS THE LOCATION AND EXTENT OF ALL PUBLIC RIGHTS, EASEMENTS, AND OTHER MATTERS PERTAINING TO THE SURVEY... AS SHOWN ON THE MAP.
  12. ANY ENCUMBRANCES AND OTHER MATTERS PERTAINING TO THE SURVEY... AS SHOWN ON THE MAP.
  13. THE SURVEY PROPERTY HAS BEEN... A DAY... HAS BEEN DETERMINED BY ME AND IS SHOWN ON THE MAP AS SHOWN ON THE MAP.
  14. THE SURVEY PROPERTY HAS BEEN... A DAY... HAS BEEN DETERMINED BY ME AND IS SHOWN ON THE MAP AS SHOWN ON THE MAP.

This is a true and correct copy of the original document recorded in the Office of the City Register of New York as attested by  
*Quinn M. Hill* on the 28 day of December of 2007. (not valid unless signed and dated)