

AJ 206-337C  
B: 2382  
L: 16  
Bronx

## ENVIRONMENTAL EASEMENT

THIS INDENTURE made this 4<sup>th</sup> day of MARCH, 2006, between BX Parkview Housing Development Fund Corp. ("Grantor Fee Owner"), a New York Not-for profit corporation, having an office at 811 Courtland Avenue, Bronx, New York 10451, and BX Parkview Associates LLC ("Grantor Beneficial Owner"), a New York limited liability company, having an office at 1865 Palmer Avenue, Suite 203, Larchmont, New York 10538 (collectively 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

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:

WHEREAS, Grantor Fee Owner, is the owner of real property located in the City of New York, Bronx County, New York known and designated on the tax map of the Borough of Bronx as tax map section 9 block 2382 lot 16, being the same as that property conveyed to Grantor Fee Owner by deed from BX Parkview Associates LLC on December 8, 2004, and recorded on January 3, 2005 in the Land Records of the Office of the City Register of the City of New York, Bronx County as CRFN: 1005000001215, comprised of approximately 0.67 acres, consisting of former lots 16, 20, 22, 23, 24, 25, 27, 28, 30 consolidated on November 3, 2005, and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the "Controlled Property"); and:

WHEREAS, Grantor Beneficial Owner. is the owner of the beneficial interest in the Controlled Property being the same as that beneficial interest conveyed to Grantor Beneficial Owner by means of a Declaration of Interest and Nominee Agreement dated December 8, 2004 between BX Parkview Housing Development Fund Corp. and BX Parkview Associates LLC. and recorded on January 3, 2005 in the Land Records of the Office of the City Register of the City of New York. Bronx County as CRFN: 2005000001216; and;

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

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index No.: W2-1 024-04-1 0, 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 as long as the following long-term engineering controls are employed:

- a) the barrier layer consisting of the asphalt in the parking area. impervious sidewalks/walkways, the soil cover in the courtyard area. and the building structures is maintained in accordance with the NYSDEC-approved Site Management Plan.
- b) all future soil disturbance activities. including building renovation/expansion, subgrade utility line repair/relocation, and new construction are conducted in accordance with the NYSDEC-approved Site Management Plan.
- e) vegetable gardens are prohibited.
- d) the use of the groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for intended purpose.

e) groundwater and other environmental or public health monitoring, and reporting of information thus obtained, will be performed in a manner specified in the NYSDEC-approved Site Management Plan.

f) on-site environmental monitoring devices, including but not limited to, groundwater monitor wells and soil vapor monitoring stacks, will be protected and replaced as necessary to ensure continued functioning in the manner specified in the NYSDEC-approved Site Management Plan, and

g) sub-slab soil vapor extraction system will be operated and maintained in a manner specified in the NYSDEC-approved Site Management Plan. Annual inspection and reporting, including operational and monitoring data, will be performed in a manner specified in the NYSDEC-approved Site Management Plan.

B. The Controlled Property may not be used for a higher level of use such as unrestricted 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:

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

B. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

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

B. If any person intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under EeL 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 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 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. 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.

BX Parkview Housing Development Fund Corp.

By:  \_\_\_\_\_

Title: Director \_\_\_\_\_

Date: March 24, 2006 \_\_\_\_\_

BX Parkview Associates LLC  
By: BX Parkview Housing Development Fund Corp.  
BY: [Signature]  
Title: DIRECTOR  
Date: MARCH 24 2006

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: [Signature]  
Denise M. Sheehan, Commissioner

Grantor Fee Owner's Acknowledgment

STATE OF NEW YORK )  
 ) 55:  
COUNTY OF WESTCHESTER

On the 24<sup>th</sup> day of MARCH, in the year 2006, before me, the undersigned, personally appeared ROMULO MEXIA 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/on behalf of which the individual acted, executed the instrument.

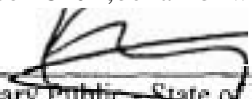
[Signature]  
Notary Public - State of New York

KEVIN P. MCCARTHY  
Notary Public, State of New York  
No. 01MC6008702  
Qualified in Westchester County  
Commission Expires June 15, 2006

Grantor Fee Beneficial Owner's Acknowledgment

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ~~WESTCHESTER~~ )

On the 24th day of March, in the year 2006, before me, the undersigned, personally appeared Conita McEly, 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.

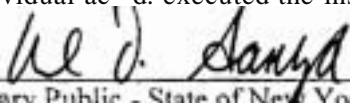
  
Notary Public - State of New York

KEVIN F. McCAFERTY  
Notary Public State of New York  
No. 011428008702  
Qualified in Westchester County  
Commission Expires June 15, 2006

Grantee's Acknowledgment

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF Albany )

On the 17th day of August in the year 2006 before me, the undersigned, personally appeared Denise M. Sheehan 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 as Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public - State of New York

MARK D. SANZA  
Notary Public, State of New York  
No. 025A6010701  
Qualified in Albany County 10  
Commission Expires July 20, 2010

Record - Robert  
Kevin McElroy  
L-11 Safety Parkways  
1865 Park Ave - Suite 203  
Lehman, NY 10538

ALL NEW YORK TITLE AGENCY, INC.

Title No. ANY2006-3371(

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough and County of the Bronx, City and State of New York bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of East 161<sup>st</sup> Street (100 feet wide) with the westerly side of Elton Avenue (50 feet wide);

RUNNING THENCE westerly along the southerly side of East 161<sup>st</sup> Street 150 feet to a point;

RUNNING THENCE southerly at right angles to the southerly side of 161<sup>st</sup> Street, 90 feet to a point;

RUNNING THENCE westerly at right angles to the last mentioned course, 22 feet to a point;

RUNNING THENCE southerly at right angles to the last mentioned course 25 feet to a point;

RUNNING THENCE westerly at right angles to the last mentioned course, 28 feet to a point;

RUNNING THENCE southerly at right angles to the mentioned course, 75 feet to the northerly side of eliminated East 160<sup>th</sup> Street.

RUNNING THENCE easterly along the northerly side of eliminated East 160<sup>th</sup> Street, 200 feet to the corner formed by the intersection of the northerly side of said East 160<sup>th</sup> Street with the westerly side of Elton Avenue;

RUNNING THENCE northerly along the westerly side of Elton Avenue, 105 feet to the corner, the point or place of BEGINNING,

Said premises are known as Block 2382, Lot 16, COULLY of Bronx, City of New York.