

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

THIS INDENTURE made this 10th day of August, 2016, between Owner(s) One Point Street, Inc., having an office at One Point Street (P.O. Box 863), Yonkers, New York 10702, County of Westchester, 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 addresses of 60 Point Street, 76 Point Street, 35 Babcock Place, 39 Water Grant Street, 39-B Water Grant Street, 40 Water Grant Street, 41 Water Grant Street, 41-B Water Grant Street, 42 Water Grant Street, 42-A Water Grant Street, 42-B Water Grant Street, and 41-Rear Water Grant Street in the City of Yonkers, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 2, Block 2114, Lot 20-35 (Parcel A), Section 2 Block 2114, Lot 17 (Parcel B), Section 2, Block 2620, Lots 35 and 40; Section 2, Block 2625, Lots 15, 17, 21 and 23; and Section 2 Block 2630, Lots 1, 2, 3 and 10 (Parcel C), being the same as that property conveyed to Grantor by deed dated April 5, 2010 and recorded in the Westchester County Clerk's Office as Control # 501483185. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 21.2195 +/- acres, and is hereinafter more fully described in the Land Title Survey dated March 29, 2011 and last revised March 11, 2016 prepared by William H. Free, Jr., L.L.S. of Ward Carpenter Engineers Inc., 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: W3-1063-05-03 as amended October 16, 2015, 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 Westchester 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:

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 violates this Environmental Easement, the Grantee may revoke the Certificate of Completion 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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee 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 Brownfield Cleanup Agreement, State Assistance 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: Site Number: C360051
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. 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.

One Point Street, Inc.:

By: 

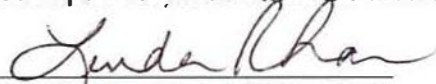
Print Name: Ronnie Shemesh

Title: CEO/President Date: July 29, 2016

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER

On the 29th day of July, in the year 2016, before me, the undersigned, personally appeared Ronnie Shemesh, 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

LINDA R. SHAW
Notary Public, State of New York
No. 92346043577
Qualified in Monroe County, NY
Commission Expires June 19, 2017

SCHEDULE "A" PROPERTY DESCRIPTION

**BROWNFIELD CLEANUP PROGRAM SITE# C360051
FORMER BICC CABLES SITE
ENVIRONMENTAL EASEMENT AREA**

PARCEL A (Section 2, Block 2114, Lots 20-35)

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

BEGINNING at the corner formed by the intersection of the southerly side of Point Street with the westerly side of Ravine Avenue;

RUNNING THENCE along the westerly side of Ravine Avenue, South 11 degrees 40 minutes 45 seconds West 180.67 feet northerly line of land now or formerly of Clyne P. Starke;

THENCE westerly along the northerly line of said land now or formerly of Clyne P. Starke and City of Yonkers, North 73 degrees 01 minutes 15 seconds West 241.76 feet to the easterly side of Glenwood Terrace;

THENCE northerly along the easterly side of Glenwood Terrace along a curve to the right having a radius of 3953.00 feet, a distance of 184.89 feet to the southerly side of Point Street;

THENCE along the southerly side of Point Street, South 73 degrees 01 minutes 15 seconds East 267.60 feet to the point or place of BEGINNING.

Containing 45,958 Sq. ft. or 1.0551 acres, more or less.

PARCEL B (Section 2, Block 2114, Lot 17)

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

BEGINNING at a point on the easterly side of lands of The New York Central Railroad Company said easterly side of said lands is intersected or would be intersected by the prolongation westerly of the southerly side of Point Street and;

RUNNING THENCE South 73 degrees 01 minutes 15 seconds East, along the southerly side of, or the prolongation westerly of, the southerly side of Point Street 25.55 feet to the westerly side of Glenwood Terrace;

THENCE southerly along the westerly line of Glenwood Terrace on a curve to the left having a radius of 3,978 feet an arc distance of 184.4 feet to the lands now or formerly of the City of Yonkers;

THENCE North 73 degrees 01 minutes 38 seconds West, along said lands now or formerly of the City of Yonkers, 25.82 feet to a point in the easterly side of the lands of The New York Central Railroad Company;

Thence northerly, along the easterly side of the lands of the New York Central Railroad Company on a curve to the right having a radius of 4,003 feet an arc distance of 184.77 feet to the point or place of BEGINNING.

Containing 4,621 sq. ft. or 0.1061 acres, more or less.

PARCEL C (Section 2, Block 2620, Lots 35 and 40; Section 2, Block 2625, Lots 15, 17, 21 and 23; and Section 2, Block 2630, Lots 1, 2, 3 and 10)

ALL that certain piece or parcel of property situate, lying and being located in the City of Yonkers, County of Westchester, State of New York being more particularly bound and described as follows:

Beginning at a point in the southeast corner of the herein described Environmental Easement, said point being distant 119.15 feet as measured on a course of N.81°47'32"W from the intersection of the westerly side of the Polychrome Place (formerly Alexander Street) with the westerly prolongation of the northerly side of Babcock Place;

thence from said point of beginning along the westerly prolongation of the northerly side of Babcock Place, N 81° 47' 32" W., a distance of 39.09 feet to the division line between property now or formerly One Point Street, Inc. and property now or formerly B S 96 Corp.;

thence along said division line, N.10°00'28"E., a distance of 540.98 feet;

thence N.81°47'32"W., a distance of 152.79 feet;

thence S. 14° 22' 06" W., a distance of 35.21 feet to a point on the division line between property now or formerly One Point Street, Inc. and property now or formerly B J 96 Corp.;

thence N.81°47'32"W., a distance of 344.71 feet to a point on the westerly side of the herein described property and Environmental Easement;

thence along the Pier Line as established by the Common council of the City of Yonkers on April 12, 1886 and the westerly side of the Environmental Easement, N.09°20'24"E., a distance of 24.90 feet;

thence S.81°47'36"E., a distance of 53.6 feet;

thence N.10°27'11"E., a distance of 125.07 feet;

thence N.81°47'36"W., a distance of 56.03 feet;

thence N.08°54'54"E., a distance of 199.99 feet;

thence leaving the Pier line, S.81°47'36"E., a distance of 190.00 feet;

thence N.14°00'08"E., a distance of 155.34 feet(comp.), 150.7(map);

thence N.81°31'58"W., a distance of 18.27 feet;

thence N.09°50'06"E., a distance of 350.08 feet;

thence N.81°48'37"W., a distance of 156.61 feet to the aforesaid Pier Line as established by City Council of the City of Yonkers;

thence along said Pier Line, N.09°04'52"E., a distance of 150.10 feet;

thence leaving said Pier Line, S.81°38'00"E., a distance of 174.58 feet;

thence N.08°22'00"E., a distance of 200.00 feet;

thence N.81°38'00"W., a distance of 172.08 feet to the aforesaid Pier Line;

thence along the aforesaid Pier Line, N.09°04'52"E., a distance of 167.01 feet;

thence N.09°21'00"E., a distance of 454.18 feet to a point on the northerly side of the herein described Environmental Easement;

thence along the northerly side of the herein described property and Environmental Easement, S.77°06'40"E., a distance of 521.74 feet;

thence along the division line between property now or formerly One Point Street, Inc. and property formerly New York Central Railroad, now or formerly Metropolitan Transportation Authority (Hudson Division) southerly, a distance of 224.47 feet along a non tangent curve to the left of which the radius point lies S.81°46'19"E., a radius of 4,066.00 feet, and having a central angle of 03°09'47";

thence S.18°32'13"W., a distance of 45.65 feet;

thence S.81°32'42"E., a distance of 12.85 feet;

thence S.09°51'44"W., a distance of 137.98 feet;

thence S.10°31'11"W., a distance of 174.04 feet;

thence S.17°38'35"W., a distance of 167.48 feet;

thence S.01°01'27"W., a distance of 392.15 feet;

thence S.08°50'15"W., a distance of 157.55 feet;

thence S.04°00'02"E., a distance of 140.01 feet;

thence S.01°30'20"W., a distance of 73.62 feet;

thence along the division line between property now or formerly One Point Street, Inc. and property now or formerly Babcock Plaza Associates, S.86°07'28"W., a distance of 93.11 feet;

thence S.10°07'58"W., a distance of 506.56 feet;

thence S.10°17'58"W., a distance of 260.23 feet to the point and place of BEGINNING.

Containing 837,739 square feet or 20.0583 acres, more or less.

NOTE: Metes and bounds listed above are based on rotation of property to New York State Plane coordinate system (East Zone) and are left 0 degrees 18 minutes 02 seconds of deed system.