

NEW YORK CITY OFFICE OF ENVIRONMENTAL REMEDIATION  
VOLUNTARY CLEANUP PROGRAM  
Title 24, Chapter 9 of the New York City Administrative Code

**VOLUNTARY CLEANUP AGREEMENT**

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In the Matter of a Remedial Program for

**VOLUNTARY  
CLEANUP AGREEMENT**

**Project Name:**

**OER VCP Project #:**

**Project Address:**

Hereinafter referred to as "Project"

by

Hereinafter referred to as "Enrollee"

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**WHEREAS**, the New York City Office of Environmental Remediation ("Office" or "OER") is authorized to administer the Voluntary Cleanup Program ("VCP"), also known as the New York City Brownfield Cleanup Program, pursuant to Title 24, Chapter 9 of the New York City Administrative Code ("NYC Ad Code") and

**WHEREAS**, the Enrollee submitted an application received by the Office; and

**WHEREAS**, the Office has determined that the above referenced real property and party are eligible to participate in the VCP,

**NOW, THEREFORE**, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Enrollee Status

The Enrollee is participating in the VCP as a Volunteer as defined in RCNY § 43-1402.

II. Real Property

The Project subject to this agreement is as follows:

**Street Address:**

**Borough:**

**Block:**

**Lot(s):**

**Titleholder:**

III. Communications

A. All written communications required by this Agreement shall be transmitted by electronic mail.

1. Communication from Enrollee shall be sent to:

Shaminder Chawla, Deputy Director  
NYC Mayor's Office of Environmental Remediation  
[ShaminderC@dep.nyc.gov](mailto:ShaminderC@dep.nyc.gov)

and

Mark P. McIntyre, Director and General Counsel  
NYC Mayor's Office of Environmental Remediation  
[MMcIntyre@cityhall.nyc.gov](mailto:MMcIntyre@cityhall.nyc.gov)

2. Communication from the Office to Enrollee shall be sent to:

and

B. The Office and Enrollee reserve the right to designate additional or different addresses for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph II.

IV. Miscellaneous

A. Appendix “A” – “Standard Clauses for All New York City Voluntary Cleanup Agreements” is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. The effective date of this Agreement is the date it is signed by OER.

DATED:

\_\_\_\_\_  
Mark P. McIntyre, Esq.  
Director  
New York City Mayor’s Office Of  
Environmental Remediation

**Site Name:**

**Site #:**

**OER PM:**

CONSENT BY ENROLLEE

Enrollee hereby consents to the issuing of this Agreement and agrees to be bound by this Agreement.

Enrollee's Name

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_,  
\_\_\_\_\_  
(*full name of Enrollee or Enrollee's authorized representative*), who is personally known to me or who proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, personally appeared before me and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public, State of

## APPENDIX “A”

### STANDARD CLAUSES FOR ALL NEW YORK CITY VOLUNTARY CLEANUP AGREEMENTS

The parties to the Voluntary Cleanup Agreement (hereinafter “the Agreement” or “this Agreement”) agree to be bound by the following clauses which are hereby made a part of the Agreement.

#### I. Public Notice

Pursuant to RCNY § 43-1404(f), the Enrollee shall distribute fact sheets to the site contact list to provide notice of the start and completion of the remedial action.

#### II. Development, Performance, and Reporting of Work Plans

##### A. VCP Documents

By reference, this agreement includes the OER-approved Remedial Action Work Plan, the completed Remedial Investigation Report and fact sheet announcing the availability of the Remedial Action Work Plan for public comment, the VCP application, and the enrollment fee paid as a request for enrollment in the VCP.

##### B. Remedial Action Work Plan Requirements

The Remedial Action Work Plan (“Work Plan”) approved under this Agreement shall be implemented in accordance with RCNY § 43-1406 and all applicable laws, rules, regulations, and guidance documents.

##### C. Remedial Action Report

1. A final Remedial Action Report shall be prepared by a qualified environmental professional and include the certification of a registered professional engineer in accordance with RCNY § 43-1406(b)(3). The Remedial Action Report shall be prepared in accordance with RCNY §§ 43-1406(b) and (c) and shall contain a certification that all such activities were performed in accordance with the Office-approved Work Plan and, if necessary, a Site Management Plan. The Office shall review the Remedial Action Report, the submittals made pursuant to the Agreement, and any other relevant information regarding the Project and determine whether the goals of the remedial program have been or will be achieved in accordance with established timeframes.

2. The Office shall timely notify Enrollee in writing of its approval of the Remedial Action Report. If the report is approved, the Office shall issue a written

Notice of Completion in accordance with NYC Ad Code § 24-906 and a NYC Green Property Certification. A Notice of Completion and a NYC Green Property Certification may be modified or revoked pursuant to NYC Ad Code § 24-906(b). All Office-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

D. Institutional/Engineering Control Certification

1. In the event that the Work Plan for the Project requires site management, including reliance upon institutional or engineering controls, Enrollee shall file a periodic letter describing site management. Such letter shall be signed by a qualified environmental professional or other party approved by the Office to perform that function and include a certification that the institutional and/or engineering controls are unchanged from the previous certification, and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a failure to comply with the approved Site Management Plan.

2. Enrollee shall provide the Office with timely notification of any interruption or termination of one or more controls. Further, Enrollee shall take all actions required by the Office to maintain conditions at the Project that achieve the objectives of the remedy, the Work Plan and/or the Site Management Plan, and are protective of public health and the environment. An explanation of such interruption or termination of one or more controls, and the steps taken in response shall be included in the foregoing notice and in the report required by this Subparagraph as well as in any progress reports required by the Site Management Plan. Enrollee can petition the Office for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer (or other expert approved by the Office) stating that such controls are no longer necessary. The Office shall not unreasonably withhold its approval of such petition.

III. Force Majeure

A. This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Enrollee shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a force majeure event provided it notifies the Office in writing within ten (10) days of when it obtains knowledge of any such event. A force majeure event shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war, rebellion, sabotage, or any other fact or circumstance beyond the reasonable control of the Enrollee.

B. A force majeure event will excuse delay and will extend the time for performance by a period equivalent to the time lost as a result of the force majeure event, provided that the delay or failure (i) was beyond the control of the Enrollee affected and not due to Enrollee's fault or negligence and (ii) was not extended because of Enrollee's

failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome.

C. Enrollee shall include in its notice to the Office the measures taken and to be taken to prevent or minimize any delays and may request an appropriate extension or modification of this Agreement. Enrollee shall have the burden of proving by a preponderance of the evidence that an event qualifies as a force majeure event pursuant to this Paragraph.

#### IV. Entry upon project site

A. Enrollee hereby agrees to provide access to the project site and to all relevant information regarding activities at the Project in accordance with the provisions of NYC Ad Code § 24-903(f). For coordinated brownfield sites, the Enrollee also grants access to any agency with which the Office may be coordinating.

B. The Office shall have the right to periodically inspect the project site to ensure that the use of the property complies with the terms and conditions of this Agreement, Work Plan, and Site Management Plan.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XI.

#### V. Liability Limitation

Subsequent to the issuance of a Notice of Completion pursuant to this Agreement, Enrollee shall be entitled to the statement of liability limitation, which shall be substantially similar to Exhibit "A", and a memorandum of understanding between the Office and the Department of Environmental Protection dated January 18, 2010, attached hereto as Exhibit "B", subject to the terms and conditions stated therein.

Enrollee shall also be entitled to liability limitations outlined in the statement below contained in the memorandum of agreement dated July 10, 2012, between the Office and the Department of Environmental Conservation, attached hereto in relevant part in the following paragraph.

#### **Section IV. Statement of Liability by New York State Department of Environmental Conservation for the properties that have enrolled in the New York City Local Brownfield Cleanup Program**

a. Generally, NYSDEC agrees that a site is of no further interest and it does not plan or anticipate taking administrative or judicial enforcement action seeking to require a removal or remedial action under CERCLA, 42 U.S.C. §9601 et seq. or the ECL at a site addressed by this Agreement (1) while the site remains in compliance with the LBCP and

the terms of any local brownfield cleanup agreement with OER, or (2) when a site investigation or remediation has been completed in accordance with the LBCP and if the site is the subject of a notice of completion.

b. NYSDEC is not granting liability releases under the LBCP program.

c. Nothing herein limits NYSDEC's authority to take action where it deems appropriate.

## VI. Reservation of Rights

A. Enrollee reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Office, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Office. The existence of this Agreement or Enrollee's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Enrollee, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Office's or City's rights with respect to any party, including the Enrollee.

C. Nothing contained in this Agreement shall be construed to prohibit the Office or any other City agency from exercising any summary abatement powers.

D. Nothing contained in this Agreement shall be construed to affect the Office's right to terminate this Agreement at any time during its implementation if the Enrollee fails to substantially comply with this Agreement's terms and conditions.

## VII. Indemnification

A. Unless otherwise approved by the Office, an Enrollee shall indemnify and hold the City and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement except for those claims, suits, actions, and costs arising from the gross negligence or willful or intentional misconduct by the City of New York, and/or its representatives and employees during the course of any activities conducted pursuant to this Agreement.

## VIII. Change of Use

Enrollee shall notify the Office in writing at least sixty (60) days in advance of any change of use, as defined NYC Ad Code § 24-902 and RCNY § 43-1402(d), which is proposed for the Project, except for a transfer of title to a voluntary cleanup site that results in a change in the party implementing a Site Management Plan. The notice shall advise the Office of the contemplated change including, but not limited to, explaining how such change may affect the site's proposed, ongoing, or completed remedial program. Where a change in use arises from transfer of title to a voluntary cleanup site that results in a new party implementing a Site Management Plan, the Enrollee shall notify the Office pursuant to RCNY § 43-1410(c)(3). In the event the Office determines that the proposed change of use is not protective of public health or the environment, the Office shall notify Enrollee of such determination.

## IX. Deed Restriction

A. Prior to issuance of a Notice of Completion by the Office for a site which relies upon one or more institutional and/or engineering controls, the Office may require the Enrollee to submit a Deed Restriction to the Office for approval pursuant to NYC Ad Code § 24-903(i) and RCNY § 43-1407(l)(2)(A). If required, the submittal shall be substantially similar to Exhibit "C." Enrollee shall cause such instrument to be recorded with the recording officer for the county in which the Project is located. Enrollee shall provide the Office with a copy of such instrument certified by the recording officer to be a true and faithful copy prior to the Office's issuance of a Notice of Completion.

B. Enrollee or the owner of the project site may petition the Office to modify or extinguish the Deed Restriction filed pursuant to this Agreement at such time as it can certify that the Project is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a qualified environmental professional approved by the Office. The Office will not unreasonably withhold its consent.

## X. Progress Reports

Enrollee shall submit a written progress report of its actions under this Agreement at a frequency and in a format determined by the Office.

## XI. Termination of Agreement

Enrollee or the Office may terminate this Agreement consistent with the provisions of RCNY § 43-1405(a)(10) by providing written notification to the parties listed in Paragraph III of the Agreement. Such termination shall not affect the provisions contained in Paragraphs VI.B and VII.

## XII. Dispute Resolution

A. The Enrollee shall submit any dispute relating to the Agreement in writing to the Office's designated individual no more than fifteen (15) days after Enrollee knew or should have known of the facts which are the basis for the dispute, and the Office shall render its decision, pursuant to RCNY § 43-1405(a)(6)(A). Enrollee shall have the opportunity to appeal that decision to the designated appeal individual at the Office within twenty (20) days of receipt of that decision pursuant to RCNY § 43-1405(a)(6)(A).

B. The decision of the designated appeal individual at the Office shall be the final decision of the Office.

C. The invocation of dispute resolution shall not extend, postpone, or modify obligations with respect to any item not in dispute unless the Office agrees in writing to an extension, postponement, or modification.

D. The Office shall keep an administrative record of dispute resolution proceedings.

## XIII. Miscellaneous

A. If the information provided and any certifications made by Enrollee are not materially accurate and complete, this Agreement, except with respect to Enrollee's obligations pursuant to Paragraphs VI.B and VII, shall be null and void ab initio fifteen (15) days after the Office's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XII, whichever is later, unless Enrollee submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Notice of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Office shall reserve all rights that it may have under law.

B. By entering into this Agreement, Enrollee agrees to comply with and be bound by the provisions of RCNY § 43-1401 *et seq.*; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement. To the extent that any of the terms and conditions of this Agreement are inconsistent with any provision of RCNY § 43-1401 *et seq.*, the regulatory provisions shall control.

C. Enrollee shall allow the Office to attend, and shall notify the Office at least seven (7) days in advance of, any field activities to be conducted pursuant to this Agreement.

D. Enrollee shall obtain all project site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Enrollee's obligations under this Agreement.

E. All approved Work Plans, Final Reports, and other documents required under this Agreement shall be submitted to the Office in an electronic format acceptable to the Office within thirty (30) days of approval.

F. Enrollee shall be responsible for ensuring that Enrollee's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

G. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

H. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Office and Enrollee concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Office shall be construed as relieving Enrollee of Enrollee's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Enrollee consents to and agrees not to contest the authority and jurisdiction of the Office to enter into or carry out this Agreement.

2. Except as set forth herein, if Enrollee desires that any provision of this Agreement be changed, Enrollee shall make timely written application to the Office.

I. 1. If there are multiple parties signing this Agreement, the term "Enrollee" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Enrollee to implement any obligations under this Agreement shall not affect the obligations of the remaining Enrollee(s) under this Agreement.

2. If Enrollee is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

J. Enrollee and Enrollee's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Enrollee including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Enrollee's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in Title 24, Chapter 9 of the New York City Administrative Code or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Enrollee's fee obligations under the Voluntary Cleanup Program represent payment of city costs, and shall not be deemed to constitute any type of fine or penalty.

M. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

N. Nothing in this agreement shall excuse an Enrollee from obtaining all required City, state, or federal permits.

O. The effective date of this Agreement is the date it is signed by the Director or the Director's designee.

P. Additional Requirements for Coordinated Brownfield Sites:

1. If the Project is a coordinated brownfield site that is subject to the mutually agreed upon form of oversight that is set forth in the "Memorandum of Agreement Between the State of New York Department of Environmental Conservation and the New York City Office of Environmental Remediation," ("MOA"), the Enrollee acknowledges and consents to the terms and conditions of such oversight. The Enrollee further acknowledges that the termination of this Agreement does not terminate or relieve the Enrollee from complying with any order or directive issued by the State with respect to the Project.

2. If the Project is not considered a coordinated brownfield site, and at any point prior to the termination of this Agreement, is later determined to be a coordinated brownfield site covered by the MOA, the Office shall notify the Enrollee in writing within thirty (30) days of such determination. The Enrollee then shall have fifteen (15) days to either proceed with the agreement subject to the terms of paragraph P(1) above, or terminate the VCP Agreement. The Enrollee further acknowledges that the termination of this Agreement does not terminate or relieve the Enrollee from complying with any order or directive issued by the State with respect to the Project.

## **EXHIBIT “A”**

**Upon completion of the remediation, the Office will issue a Notice of Completion which will contain a statement of liability limitation substantially similar to the sample language below.**

Upon issuance of this Notice of Completion, and subject to the terms and conditions set forth herein, the Notice holder(s) shall be entitled to the liability limitation provided in Section 906 of Title 24 of the administrative code of the City of New York. The liability limitation shall run with the land, extending to the Notice holder’s successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in Section 906 of Title 24 of the administrative code of the City of New York, and any other applicable provision of law.

In accordance with a Memorandum of Agreement between the New York State Department of Environmental Conservation and the New York City Mayor’s Office of Environmental Remediation dated July 10, 2012, New York State Department of Environmental Conservation agrees that this site is of no further interest, and it does not plan or anticipate taking administrative or judicial action with regard to the property.

## **EXHIBIT “B”**

### **MEMORANDUM OF UNDERSTANDING Between MAYOR’S OFFICE OF ENVIRONMENTAL REMEDIATION And DEPARTMENT OF ENVIRONMENTAL PROTECTION**

#### **I. PURPOSE**

The purpose of this Memorandum of Understanding (MOU) between the Mayor’s Office of Environmental Remediation (OER) and the New York City Department of Environmental Protection (DEP) (“the Parties”) is to clarify the respective roles and responsibilities of OER and DEP with regard to sites enrolled in the Local Brownfield Cleanup Program (LBCP).

#### **II. BACKGROUND**

Pursuant to Title 24, Chapter 9 of the NYC Administrative Code, OER is responsible for administering the LBCP, which is intended to facilitate the identification, investigation, remediation, and redevelopment of brownfields in support of the city’s economic development. The LBCP is a voluntary program in which developers of lightly to moderately contaminated sites may enroll. After a remedial investigation, the enrollee will submit a remediation plan for OER’s approval. After the work is completed in accordance with the approved plan, OER will issue a certificate of completion.

DEP is responsible for enforcement of the Air Pollution Control Code (the “Air Code”)(Title 24, Chapter 1); the Asbestos Control Program Rules (the “Asbestos Rules”, 15 RCNY Chapter 1); Noise Control Code (the “Noise Code”)(Title 24, Chapter 2); and the Hazardous Substances Emergency Response Law (the “Spill Bill”)(Title 24, Chapter 6).

#### **III. ROLES AND RESPONSIBILITIES**

##### **A. Jurisdiction**

1. It is understood by the Parties that DEP will retain jurisdiction over properties enrolled in the LBCP for purposes of performing inspections and issuing commissioner’s orders (COs) and notices of violation (NOVs) pursuant to relevant provisions of the Air Code, Asbestos Rules, Noise Code, and Spill Bill. DEP will inform OER of all such inspections and the issuance of any COs or NOVs.
2. At such time as the enrollee completes all program requirements of the LBCP, i.e., implements an OER-approved remediation plan and receives a certificate of completion and city liability release, DEP will no longer exercise its authority to respond to the site with regard to the site’s subsurface condition.

**B. Information**

1. As noted above, DEP will inform OER as to any inspections performed at sites enrolled in the LBCP, and will notify OER as to the issuance of any COs or NOV's as a result of said inspections.
2. OER will require that applicants for entry into the LBCP incorporate into their remediation plans provisions related to noise mitigation (in accordance with Subchapter 4 of the Noise Code) and dust mitigation (in accordance with the Construction Dust Rules, 15 RCNY Chapter 13, promulgated pursuant to the Air Code).
3. DEP's Division of Emergency Remediation and Technical Assessment (DERTA) will be informed as to the location of those sites accepted into the LBCP, either by being given access to a database or by other mutually agreeable means.

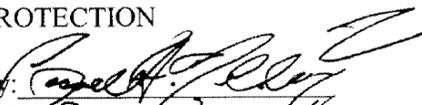
**IV. EFFECTIVE DATE AND ADMINISTRATION**

This MOU shall become effective immediately upon signature by the Director of OER and the DEP Commissioner or their designees. It shall remain in effect until terminated by either Party. Termination may be effected by either Party upon the issuance of a written notice to that effect to the other Party.

MAYOR'S OFFICE OF ENVIRONMENTAL REMEDIATION

By:   
Title: DIRECTOR  
Date: 12/23/09

NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:   
Title: Commissioner  
Date: 01-15-10

## EXHIBIT “C”

**For properties that utilize engineering and/or institutional controls to achieve a remedial action, the property owner may be required to record a deed restriction against title substantially similar to the template deed restriction below.**

### DECLARATION OF COVENANTS AND RESTRICTIONS

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS** is made as of the [ ] day of [ ], 20[ ], by [ ], a [ ] (for/not-for profit) corporation, having an office at [ ].

#### WITNESSETH

**WHEREAS**, [ ] is the current owner of a parcel of real property located at [ ] in [ ] County, State of New York, and comprised of Block [ ], Lot [ ], on the Borough of Tax Assessor’s Map, (the “Property”);

**WHEREAS**, the Property is the subject of a Voluntary Cleanup Agreement, dated [ ], by [ ] and the New York City Office of Environmental Remediation (“Office”) (the “Agreement”);

**WHEREAS**, the Office approved the Remedial Action Work Plan (“RAWP”) for [ ], dated [ ], which sets forth the selected remedy for the Property, and such RAWP required submission of a Site Management Plan (“SMP”) and that the Property be subject to restrictive covenants.

**NOW, THEREFORE**, [ ], for itself and its successors and assigns, covenants that:

1. The Property is hereby made subject to this Declaration of Covenants and Restrictions (“Declaration”).
2. The Property is subject to engineering and institutional controls defined in the SMP, which is included in Section 7.0 of the project’s Remedial Action Report (available at [ ]) and attached hereto as Exhibit A.
  - a. An active sub-slab depressurization system, must be operated and maintained as specified in the SMP and may not be discontinued or modified without an amendment of the SMP or the termination of this Declaration approved by the Office, or if the Office shall no longer exist or no longer have jurisdiction with respect to the enforcement of this Declaration, by any New York City agency or agencies whose purpose shall be to protect the public health and environment of the city (the “Relevant Agency”).
  - b. All inspections and certifications pertinent to site management for the Property must be reported at the frequency and in a manner specified in the SMP.

