

**BARGAIN AND SALE DEED  
FORMER INGERSOLL-RAND FOUNDRY SITE  
STEUBEN COUNTY  
PAINTED POST, NEW YORK**

THIS INDENTURE, made as of the 1<sup>st</sup> day of August 2005, by and between **INGERSOLL-RAND COMPANY**, a New Jersey corporation, having an address at 155 Chestnut Ridge Road, Montvale, New Jersey 07645 (the "Grantor") and **PAINTED POST DEVELOPMENT, LLC**, a New York limited liability company, having an address at 5 East Market Street, Suite 301, Corning, New York 14830 (the "Grantee"), and acknowledged by the **VILLAGE OF PAINTED POST, STEUBEN COUNTY, NEW YORK** (the "Village") and the **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION** (the "DEC").

WITNESSETH, that Grantor is the owner of certain real property containing approximately forty-nine (49) acres with certain improvements thereon and located in the vicinity of 450 West Water Street in the Village of Painted Post, Steuben County, New York (the "Foundry Premises" or the "Premises"), as more particularly set forth and described in SCHEDULE "A" attached hereto and made a part hereof, and including a portion of the Premises indicating the presence of contaminated soil within the three-hundred foot (300 ft.) radius of monitoring well 2B (the "MW-2B Area") as depicted on Schedule A attached to the Declaration (as defined below);

WITNESSETH, that the history of prior environmental investigations and remediation conducted at the Premises is described more fully in SCHEDULE C attached hereto and made a part hereof;

WITNESSETH, that part of the selected remedial actions selected by the DEC, in the form of an institutional control, required the Grantor to record a deed restriction on the MW-2B Area identifying the presence of contaminated soil and to minimize the potential for future human exposure to certain environmental conditions by restricting certain uses and activities at the Premises and pursuant thereto the Grantor recorded a Declaration of Conditions, Covenants and Restrictions on the Premises in the Steuben County Clerk's Office on January 10, 2001 at Liber 1697, Page 312 (the "Declaration");

WITNESSETH, that the Grantor has released the Premises from the Declaration pursuant to that certain Release of Property From Declaration of Conditions, Covenants and Restrictions, dated as of August 1, 2005 and to be recorded in the Steuben County Clerk's Office (the "Release") and the DEC acknowledges such Release;

WITNESSETH, that Grantor, in consideration of One And More Dollars lawful money of the United States, the use restrictions contained herein and other good and valuable consideration paid by Grantee, does hereby grant and release unto Grantee, its successors and assigns forever, the Premises;

TOGETHER with the appurtenances and all the estate and rights of Grantor in and to the Premises;

SUBJECT TO all matters of public record, including, but not limited to, all covenants, easements, rights of entry, liens, encumbrances and restrictions of record affecting the Premises and subject to all laws, statutes, ordinances, codes, rules and regulations;

BEING a portion of the parcel conveyed to Grantor by deed recorded on July 26, 2000 at the Steuben County Clerk's Office in Liber 1667 of Deeds at Page 312;

TO HAVE AND TO HOLD the Premises herein granted unto Grantee, its heirs, successors and assigns forever subject to the terms, restrictions and covenants set forth herein and all matters of public record, including, but not limited to all covenants, easements, rights of way, liens, encumbrances and restrictions of record affecting the Premises and subject to all laws, statutes, ordinances, codes, rules and regulations;

AND Grantor and Grantee covenant and agree as follows:

A. Restrictions on Use

FIRST, that in order to protect human health and the environment the Department of Environmental Conservation has required that the uses of the Premises be restricted to industrial uses and/or restricted commercial uses, excluding uses for child care, day care or health care. The Village, in order to promote community objectives, has required the use of the Premises be further restricted to the following uses currently authorized in an "Industrial District" under Section 280.18, entitled "USE REGULATIONS - SCHEDULE OF USES TABLE", of the Village of Painted Post Zoning Law ("the Village Zoning Law"): commercial vehicle; low-profile business; offices-general; offices - one practicing professional in existing building; offices - more than one practicing professional; planned commercial districts (consistent with the restrictions contained herein); retail business or service not otherwise specially mentioned under the Village Zoning law (consistent with the restrictions contained herein); wholesale business or service not otherwise specifically mentioned under the Village Zoning Law; manufacture, fabrication, extraction, assembly warehousing and other handling of material; research laboratories; storage facility indoor; trucking/wholesale warehouse terminals (with approval by a majority of the Village of Painted Post Planning Board); accessory use/building/structure on same or separate lot; communication tower (new or co-location on existing tower) public utility or transportation use - office; public utility or transportation use - repairs, service or storage; satellite dish; and mixed use (more than one of the above permitted uses); provided, however, the following uses, otherwise authorized in an "Industrial District" under the Village Zoning Law, shall be prohibited hereunder: automobile repair garage; bowling alley; car washing station; convenience/mini-markets (with or without gas); day-care center; drive-in movie; equipment rental or sales yard; gasoline filling station; grocery store; laundry or dry cleaning plant; newsrack; newspaper offices and printing shops; restaurant; roadside stand; storage yards for equipment; theater or concert hall; veterinary office, animal hospital or kennels; contractors yard and equipment; storage facility, outdoor; nursing or convalescent home; agricultural use for

crops; agricultural use for manufacture; cemetery; church or other places of worship; club, membership; crematory; cultural facilities (library, art gallery, museum, etc.); golf course or country club; hospital or sanitarium; institutional or philanthropic use; and/or private, public or parochial school. All other uses including, but not limited to, day care center, adult entertainment uses and all uses under the category "Residential Uses" in the "SCHEDULE OF USES TABLE" contained in the Village of Painted Post Zoning Law are strictly prohibited. A copy of the current version of Section 280.18 of the Village of Painted Post Zoning Law along with a copy of the relevant definitions from the Village of Painted Post Zoning Law are attached hereto as SCHEDULE "B" and incorporated herein.

B. Restrictions and Conditions on Activities

SECOND, that certain Notices are given and required to be given before the undertaking of certain physical activities consistent with the uses of the Premises in order to prevent or mitigate exposure of individuals and/or the public from residual contamination as follows:

1. Notice and warning is hereby provided that polynuclear aromatic hydrocarbons ("PAHs"), which are semi-volatile organic compounds, are located in soils at and below the ground surface of the Premises. Notice and warning is hereby provided that such PAHs may pose a risk to humans in a scenario where future use of the Premises includes invasive activities at or below the surface of the Premises, and appropriate precautions should be taken.

2. No disturbance or excavation of surface or subsurface soils or other materials at or below the Premises shall be conducted without prior notification thereof to or consent by the DEC. Any disturbance or excavation of surface or subsurface soils or other materials at or below the Premises shall be conducted (i) consistent with the Remedial Work Plan and the Soil Fill Management Protocol attached thereto, all as more particularly described in SCHEDULE "D" attached hereto and made a part hereof and as may the same may be amended by and between DEC and the Grantee from time to time, or (ii) as otherwise permitted by the DEC.

3. The Grantee, its successors and assigns, shall prohibit the use of ground water underlying the Premises (unless the Grantee, or its successors and assigns, first obtains permission to do so from the DEC), but such responsibility to prohibit such use shall be strictly limited to ground water withdrawn from within the boundaries of the Premises, and the Grantee, its successors and assigns, shall only be responsible to prohibit such use for those individuals that have title to the Premises, or to those individuals that have a legally enforceable leasehold interest in the Premises.

THIRD, that the Grantee is contemplating the acquisition, construction, installation, equipping and operation of a large-scale warehousing and distribution facility of approximately 400,000 square feet at the Premises (the "Development Project") and

(A) Grantee, its successors and assigns, shall notify Grantor in writing sixty (60) days, but not more than one hundred and twenty (120) days, prior to the onset of construction activities as related to the Development Project or Alternate Project (as defined below). Upon receipt of such

written notice, Grantor shall seek to secure environmental insurance for the benefit of Grantor and as related to the Property, in a form, coverage, content (as outlined in Exhibit I to the Transfer Agreement (as defined below)) and a carrier acceptable to Grantor in its sole reasonable discretion, with Grantee named as an additional insured (the "Environmental Insurance"). Grantee, its successors and assigns, shall be solely responsible for the cost and expense of such Environmental Insurance, and any and all such cost and expense in an amount in excess of \$70,000 and arising out of the Development Project, Alternate Project or changes in insurance market conditions, shall be deemed part of and added to the consideration for the conveyance of the Premises pursuant to that certain Settlement and Real Property Transfer Agreement, dated as of August 1, 2005 (the "Transfer Agreement"), by and between the Grantor, Grantee and the Village, and shall be paid to Grantor promptly upon submission by Grantor to Grantee, its successors and assigns, of an invoice pertaining to such Environmental Insurance;

(B) notwithstanding anything contained herein to the contrary, (a) the Grantee, its successors and assigns, shall provide to Grantor (i) reasonable written notice of its intention or desire to pursue a commercial redevelopment project other than the Development Project (such commercial redevelopment project other than the Development Project hereinafter referred to as the "Alternate Project") and (ii) drawings, layouts, plans and other relevant information (collectively, the "Concept Plan") detailing the Alternate Project and (b) the Grantor shall (i) have a reasonable opportunity to review the Concept Plan and may request other reasonable and relevant information in connection with the Alternate Project, (ii) determine whether the Alternate Project is consistent with the uses permitted herein, (iii) have the right to approve the Alternate Project, which approval shall not be unreasonably withheld, delayed or conditioned and (iv) seek to secure the Environmental Insurance at the sole cost and expense of Grantee, its successors and assigns as provided in the foregoing paragraph and

(C) in the event Grantor exercises such right to secure the Environmental Insurance and such Environmental Insurance is unable to be secured, Grantor may withhold any approval of the Alternate Project as provided in the foregoing paragraph.

### C. Enforcement

FOURTH, the restrictions and covenants contained herein are binding on the Grantee, its successors and assigns, and shall run with the Premises, and are forever enforceable by the DEC (the "Beneficiary"). Said restrictions and covenants herein shall bind all owners, lessees, users and occupiers of the Premises or any part thereof, and their respective successors and assigns, as well all parties claiming by, through, or under them or any of them. All of the parties referred to in the immediately preceding sentence agree and covenant, for themselves and for their respective successors and assigns, to conform and observe said covenants and restrictions.

1. As it may be impossible to measure monetarily the damages which may accrue to the Beneficiary by reason of a violation of the provisions hereof, the Beneficiary shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof. The failure of the Beneficiary to enforce any provision hereof shall in no event be construed as a waiver of the right of the Beneficiary to

enforce any provision of this Deed as to the same or similar violation occurring prior to or subsequent to any such failure to enforce. No liability shall attach to the Grantor or any parent, subsidiary or other affiliate of Grantor, or any officer, director, shareholder, employee, member, manager, partner, agent, committee or committee member of any of them, (excepting, however, Grantee, its successors and assigns, and any subsequent owner, lessee, user or occupier of the Premises, or any part thereof, in breach hereof) or to the Beneficiary for failure to enforce the provisions hereof. If the Beneficiary successfully brings an action to extinguish a breach or otherwise enforce the provisions hereof, the costs of such action, including legal fees, shall become a binding, obligation of the owner, lessee, user and/or occupier of the Premises, or any part thereof, in breach hereof. Neither Grantee (its successors and assigns) nor any subsequent owner, lessee, user or occupier of the Premises, or any part thereof, may circumvent the remedies provided for herein or be relieved of their obligations and/or liabilities hereunder by conveying, transferring, or leasing the Premises, or any part thereof, or by assigning any rights or obligations hereunder.

2. The restrictions and covenants contained herein shall be inserted by Grantee, its successors and assigns, and any and all future owners of the Premises, in any deed, lease, easement, right of way or other legal instrument by which Grantee, its successors and assigns, and any and all future owners of the Premises, divests itself of either the fee simple title or any other lesser estate in the Premises or any portion thereof. Notwithstanding this provision, failure to include the restrictions and covenants contained herein in subsequent conveyances does not abrogate the status of such restrictions and covenants as binding upon the parties, their successors and assigns.

3. Grantee, for itself, its successors and assigns, and any and all future owners, lessees, users or occupiers of the Premises or any portion thereof, (i) covenants that it will not undertake or allow any activity on or use of the Premises that would violate the use restrictions and covenants contained herein and (ii) will indemnify, defend and hold harmless the Grantor, its successors and assigns for breach of the aforementioned covenant.

4. Grantor and Grantee agree and understand that the Grantee, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the restrictions and covenants contained herein which restrictions and covenants shall be binding upon and enforceable against the Grantee, its successors and assigns, and any and all future owners, lessees, users and occupiers of the Premises or any part thereof, in perpetuity; and the covenants and restrictions set forth herein are a binding servitude on the Premises herein conveyed.

D. Modification and Termination

FIFTH, any modification or termination of the provisions hereof affecting any part of the Premises shall require the written consent of the DEC which consent shall not be unreasonably withheld, conditioned or delayed. Any modification or termination of the provisions hereof shall not become effective until the instrument evidencing such modification or termination has been

duly recorded in the Steuben County Clerk's Office.

1. Neither the provisions hereof nor any modification thereof shall be interpreted as permitting any action or thing prohibited by the applicable laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the part of the Premises affected or by specific restrictions imposed by any other instrument relating to the Premises or to such part of the Premises.

2. No change of conditions or circumstances shall operate to amend the provisions hereof, and the provisions hereof may be modified or terminated only in the manner provided herein. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

SIXTH, that Grantor covenants that Grantor has not done or suffered anything whereby the Premises have been encumbered in any way whatsoever and that Grantor, in compliance with Section 13 of the Lien Law, will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of any cost of any improvement before using any part of the total of the same for any other purpose.

SEVENTH, Grantee accepts the Premises in its "As Is" condition "with all faults" pursuant to the terms of the Transfer Agreement, the terms of which are incorporated herein by reference.

EIGHTH, any and all references herein to Grantee, and/or Grantee's successors and assigns, shall be deemed to include, and the covenants and restrictions herein shall be binding upon, any and all (i) owners, grantees, transferees, lessees, sublesses, users and occupiers of the Premises or any portion thereof, (ii) licensees, invitees, contractors, easement holders, mineral rights holders, employees, guests and other parties who may enter the Premises (or any portion thereof) or may have right to enter the Premises (or any portion thereof) and (iii) all parties claiming by, through or under any of the aforementioned parties referred to in this paragraph Eighth.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, Grantor has executed this Deed the day and year first above written.

INGERSOLL-RAND COMPANY

By: Barbara A. Santoro  
Name: Barbara A. Santoro  
Title: Secretary

Agreed to and Accepted  
this \_\_\_\_ day of August, 2005 by:

PAINTED POST DEVELOPMENT, LLC

By: \_\_\_\_\_  
Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

By: \_\_\_\_\_  
David A. Munro, Assistant Attorney General  
New York State Department of Law, Environmental Protection Bureau  
on behalf of New York State Department of Environmental Conservation

VILLAGE OF PAINTED POST

By: \_\_\_\_\_  
Edward A. Franklin, Jr., Mayor

PLEASE RECORD AND RETURN TO:

John A. Pappano, Esq.  
Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203  
Tel. (716) 847-5404

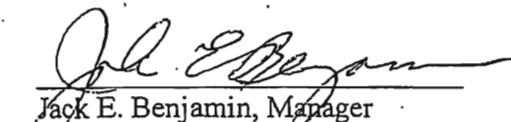
IN WITNESS WHEREOF, Grantor has executed this Deed the day and year first above written.

INGERSOLL-RAND COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Agreed to and Accepted  
this 29<sup>th</sup> day of August, 2005 by:

PAINTED POST DEVELOPMENT, LLC

By:   
Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

By: \_\_\_\_\_  
David A. Munro, Assistant Attorney General  
New York State Department of Law, Environmental Protection Bureau  
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Buffalo, New York 14203  
Tel. (716) 847-5404



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INGERSOLL-RAND COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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this 29<sup>th</sup> day of August, 2005 by:

PAINTED POST DEVELOPMENT, LLC

By: \_\_\_\_\_  
Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

By: David A. Munro  
David A. Munro, Assistant Attorney General  
New York State Department of Law, Environmental Protection Bureau  
on behalf of New York State Department of Environmental Conservation

VILLAGE OF PAINTED POST

By: \_\_\_\_\_  
Edward A. Franklin, Jr., Mayor

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John A. Pappano, Esq.  
Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203  
Tel. (716) 847-5404

STATE OF \_\_\_\_\_)

STATE OF New Jersey  
COUNTY OF Bergen ss.:

On the 12th day of October in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Barbara A. Santoro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

Meryl J. Miller  
Notary Public  
MERYL J. MILLER  
Notary Public of New Jersey  
My Commission Expires Jan. 19, 2006

STATE OF NEW YORK )  
COUNTY OF STEUBEN ) ss.:

On the \_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack E. Benjamin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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 )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Munro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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 \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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 )  
COUNTY OF STEUBEN ) ss.:

On the 29<sup>th</sup> day of August in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack E. Benjamin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

MUNESH PATEL  
Notary Public, State of New York  
No. 02PA6109397  
Qualified in Monroe County  
Commission Expires 05/10/2008

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Munro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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

COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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 )  
COUNTY OF STEUBEN ) ss.:

On the \_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack E. Benjamin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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 )  
COUNTY OF ALBANY ) ss.:

On the 11<sup>th</sup> day of OCTOBER in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Munro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

Lawrence A. Rappoport  
Notary Public

**LAWRENCE A. RAPPOPORT**  
Notary Public, State of New York  
Qualified in Albany County  
No. 4513713  
~~My Commission Expires March 30, 2005~~  
DECEMBER 31, 2005

STATE OF NEW YORK )  
COUNTY OF STEUBEN ) ss.:

STATE OF NEW YORK )  
COUNTY OF STEUBEN ) ss.:

On the 29<sup>th</sup> day of August in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Edward A. Franklin, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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

**MUNESH PATEL**  
Notary Public, State of New York  
No. 02PA6109397  
Qualified in Monroe County  
Commission Expires 05/10/2008

"b"

**SCHEDULE A**  
**DESCRIPTION OF PREMISES**  
**(Ingersoll-Rand Foundry Parcel)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Erwin and Village of Painted Post, Steuben County, New York and being more particularly bounded and described as follows:

Beginning at a concrete highway monument on the easterly highway limit of Interstate Route 86-State Route 17 at its intersection with the southwesterly limit of Chemung Street; thence in a southeasterly direction along the last mentioned limit of Chemung Street, following a curve to the right having a radius of 3787.00 feet, an arc length of 200.99 feet and producing a chord of S 45° 05' 58" E, 200.97 feet to a point of tangency; thence S 43° 25' 14" E, continuing along said southwesterly limit of Chemung Street, passing through a concrete monument at a distance of 443.94 feet, a total distance of 2956.69 feet to an iron pin set, said iron pin being the northeasterly corner of lands now or formerly owned by "Rutledge" (L. 1351, P. 290) and located 195.00 feet northwesterly, as measured along said Chemung Street from its intersection with the northwesterly limit of Charles street; thence in a southwesterly direction along said lands of "Rutledge" and lands now or formerly owned by "Strong", "Hamel", "Law", "Leipold" and "Winters", as more fully shown on the subject map of which this description is written and stated at the end, the following three (3) courses and distances:

1) S 46° 15' 27" W, a distance of 173.87 feet to an iron pin found;

2) S 49° 16' 15" W, a distance of 93.54 feet to an iron pin found;

3) S 51° 02' 10" W, a distance of 42.46 feet to an iron pin found on a line of lands now or formerly owned by "Emo" (L. 1123, P. 196); thence along said lands of "Emo" the next two (2) courses and distances:

1) N 39° 46' 19" W, a distance of 18.00 feet to an iron pin found;

2) S 49° 11' 20" W, a distance of 77.08 feet to an iron pin found on a line of lands now or formerly owned by "Smith & Miraglia" (L. 1394, P. 303); thence N 40° 46' 24" W, along said "Smith & Miraglia" lands and lands now or formerly owned by "Schirmer" (L. 796, P. 547), "Gestwicki" (L. 839, P. 53) and "Kenyon" lands (L. 844, P. 555) a distance of 275.10 feet to an iron pin found; thence S 51° 23' 30" W, along the northwesterly line of "Kenyon", a distance of 147.07 feet to a concrete monument on the northeasterly limit of West Water Street; thence N 26° 18' 11" W, along said West Water Street, a distance of 229.05 feet to a point, said point determined to be in line with the "Foundry Gate" which is reportedly where the public ownership of West Water Street terminates per documentation on file with the Village of Painted Post Offices; thence S 63° 41' 49" W, along the terminus of West Water Street as stated, a distance of 60.00 feet to a point on the southwesterly limit of said West Water Street; thence S 26° 18' 11" E, along said West Water Street, a distance of 239.61 feet to a point; thence S 71° 20' 18" W, through lands now or formerly owned by Ingersoll-Rand Company (L. 1667, P. 312), a distance of 673.87' to a point on the first above mentioned highway limit of Interstate Route 86-State Route 17; thence along said highway limit the following four (4) courses and distances:

1) Along a curve to the right having a radius of 4453.66 feet, an arc length of 1167.00 feet and producing a chord of N 25° 18' 15" W, a distance of 1163.67 feet to a concrete highway monument;

2) N 16° 12' 50" W, a distance of 343.28 feet to a point;

3) N 13° 16' 12" W, a distance of 1262.34 feet to a point;

4) thence N 09° 48' 10" W, continuing along said highway limits, a distance of 59.59 feet to the point or place of beginning, containing 48.772 acres of land, more or less.

"B"



Attached hereto

**SCHEDULE B**  
**VILLAGE ZONING LAW SECTION 280.18 AND DEFINITIONS**

PLANNED DISTRICT - One or more commercial, residential or industrial uses proposed as a unit, in conformance with Article VI.

§ 280.15 NAMES OF ZONING DISTRICTS

B. The following floating zones shall be applicable anywhere that the stated conditions and criteria are met:

- APOD - Aquifer Protection Overlay District
- FPPD - Flood Plain Protection District
- PRD - Planned Residential District
- PCD - Planned Commercial District
- PDD - Planned Development District

M. Planned Development District (PDD) Intent: See Article VI.

§ 280.18 USE REGULATIONS - SCHEDULE OF USES TABLE

The following use regulations apply to the principal and accessory uses as listed in the Schedule of Uses Table.

**SCHEDULE OF USES TABLE**

Abbreviations:

- P - Permitted
- SP - Site Plan Approval Required
- SU - Special Use Permit Required
- Blank - Not Permitted
- LDR - Low density residential
- MDR - Medium density residential
- UCR - Urban Center residential
- UC - Urban Center
- B - Business
- I - Industrial
- PD - Planned District

BUSINESS USES	LDR	MDR	UCR	UC	B	I	PD
Arcade					SU		
Automobile repair garage					SP	SP	
Automobile sales area					SU	SU	
Bar or night club					SP		
Bowling alley					SP	SP	
Car washing station						SU	
Commercial vehicle					P	P	SP



INDUSTRIAL USES	DR	MDE	CCR	UG	B	PD
Contractors yard and equipment						SP
Manufacture, fabrication, extraction, assembly, warehousing and other handling of material						SP
Mining						
Mixed use	SU	SU	SU	SU	SU	SU
Research laboratories					SP	SP
Storage facility, indoor					SP	SU
Storage facility, outdoor					SU	SU
Trucking, wholesale warehouse terminals						SP
RESIDENTIAL USES	DR	MDE	CCR	UG	B	PD
Mixed use	SU	SU	SU	SU	SU	SU
Housing, Non-Transient						
Dwelling, one-unit, detached includes Residential Designed Manufactured Home, Modular Home, Sectional Home	P	P	P	P	P	SP
Cluster Development	SP	SP	SP	SP	SP	SP
Dwelling, one-unit, attached	P	P	P	P	P	SP
Dwelling, two-unit	P	P	P	P	P	SP
Dwelling, multi-unit				SU	SU	SP
Group home	SP	SP	SP	SP	SP	SP
Manufactured home park						
Manufactured home, substandard						
Planned Residential District	SP	SP	SP	SP	SP	SP
Rooming house				SU	SU	SU
Shared housing	P	P	P	P	P	SP
Standard Designed Manufactured Home ("single-wide")				SU		
Housing, Transient						
Bed & Breakfast	SU	SU	SU	SU		SU
Hotel						SU
Motel						SU
Nursing or convalescent home		SP	SP	SP	SP	SP
Vacation Resort						

GENERAL USES	LDR	MDR	UCR	UC	B	I	PD
Accessory use/building/structure on the same lot	P	P	P	P	P	P	SP
Accessory use/building/structure on a separate lot	SU	SU	SU	SU	SU	SU	SU
Agriculture, for crops					SU	SP	
Agriculture, manufacture						SU	SU
Agriculture, nursery					SP		
Animals, raising or keeping of							
Cemetery		SP	SP	SP	SP	SP	SP
Church or other place of worship		SP	SP	SP	SP	SP	SP
Club, membership					SU	SU	
Communication Tower (new)						SP	SP
Communication Tower (co-location on existing tower)	SU	SU	SU	SU	SU	SP	SP
Crematory					SP	SP	SP
Cultural facilities (library, art gallery, museum, etc.)		SP	SP	SP	SP	SP	SP
Golf course or country club		SP	SP	SP	SP	SP	SP
Hospital or sanitarium		SP	SP	SP	SP	SP	SP
Institutional or philanthropic use		SP	SP	SP	SP	SP	SP
Nursery school		SU	SU	SU	SU		SU
Private, public or parochial school		SU	SU	SU	SU	SU	SU
Public utility or transportation use							
a) office					P	P	SP
b) repair, service and storage					SU	P	SP
Satellite dish (<3' in diameter ground-mounted installations)		P	P	P	P	P	SP
Satellite dish (>3' in diameter and/or roof-mounted installations)		SU	SU	SU	P	P	SU

VILLAGE OF PAINTED POST  
 280.28 Density Control Schedule\* (Area bulk Schedule)

**ARTICLE II  
INTERPRETATION AND DEFINITIONS**

**§ 280.7. INTERPRETATION AND APPLICATION**

- A. **LEGISLATIVE INTENT.** In their interpretation and application, the provisions of this Zoning Law shall be held to be minimum requirements adopted to achieve the intent of this Law as set forth in Article I.
- B. **ANNULMENT OF PREVIOUS ORDINANCES.** This Zoning Law shall annul and supercede any previously adopted zoning laws and ordinances of the Village of Painted Post.
- C. **NON-INTERFERENCE AND PRECEDENCE.** Except as noted in Section 280.7B of this Law, this Zoning Law shall not interfere with, abrogate, annul, or repeal any ordinance or any rule, regulation, or permit previously or hereafter enacted, adopted, or issued pursuant to law; provided that, unless specifically excepted, where this Zoning Law imposes greater restrictions its provisions shall control.
- D. **SEPARATE VALIDITY.** If any section, subsection, paragraph, clause, or other provisions of this Law shall be held to be invalid, the invalidity of such section, subsection, paragraph, clause, or other provision shall not affect any of the other provisions of this Law.
- E. The following rules of construction of language shall apply to the text of this Law.
  - 1. Words used in the present tense include the future tense.
  - 2. Words used in the singular include the plural, and words used in the plural include the singular.
  - 3. The word "lot" includes the word "plot" or "parcel."
  - 4. The word "person" includes an individual, firm or corporation.
  - 5. The word "shall" is always mandatory; the word "may" is always permissive.
  - 6. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."
  - 7. A "building" or "structure" includes any part thereof.
  - 8. The phrases, "to erect," "to construct," and "to build" a building, all have the same meaning and includes to excavate for a building and to relocate a building by moving it from one location to another.

**§ 280.8 DEFINITIONS**

The words or phrases as used in this Law are defined as follows:

**ACCESSORY BUILDING:** See "BUILDING, ACCESSORY."

**ACCESSORY USE:** See "USE, ACCESSORY."

**AGRICULTURE, FOR CROPS:** Any parcel of land used commercially for the raising of fruits, vegetables and the like, but not for the raising or keeping of animals.

**AGRICULTURE, MANUFACTURE:** Any parcel of land used for the processing of crops and livestock, such as a cheese factory, tannery, food processing, and the like.

**AGRICULTURE, NURSERY:** A wholesale or retail business which sells primarily trees, shrubs, plants and other landscaping materials and may sell related lawn and garden supplies and ornaments as an accessory use.

**ANIMALS, RAISING OR KEEPING OF:** Any parcel of land used for the raising of animals for commercial purposes, including livestock, horses, poultry, dairy cattle, bees, fur-bearing animals, and other such farm animals, OR for the raising and keeping of wild animals including poisonous animals, skunks, pigeons, fox, mink, birds and the like, BUT excluding pets and kennels.

**ALTERATION:** As applied to a building or structure, a change or rearrangement in the structural parts or existing facilities of such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location to another.

**ANTENNA:** A system of electrical conductors that transmit or receive telephone, television or radio frequency waves. Such devices shall include cellular, paging and personal communication services(PCS) and satellite dishes.

**AQUIFER:** An underground water bearing volume of permeable rock, sand or gravel.

**AQUIFER PROTECTION OVERLAY DISTRICTS:** Those areas as defined below which contribute water to the Village of Painted Post public and community water supply.

**APOD #1: WELL HEAD PROTECTION AREA:** The land area immediately around a well which contributes water to the public and community wells as shown on the Aquifer Protection Overlay District Map. For all community wells and existing public wells, this area is defined as a circle centered on the well with a two hundred (200) foot radius. For new public wells, water at the outermost boundary of the Wellhead Protection Area will reach the wells within a minimum of one-hundred (100) days.

**APOD #2: AQUIFER RECHARGE AREA:** The remaining aquifer area outside APOD #1 Wellhead Protection Area which contributes water to the Village of Painted Post public wells or other municipal wells.

**APOD#3: WATERSHED TRIBUTARY AREA:** The upland watershed which contributes water to APOD #2 Aquifer Recharge Areas as shown on the Aquifer Protection Overlay District Map.

**ARCADE:** A business offering one or more mechanical, electrical or electronic machine(s) or device(s) used or designed to be operated for entertainment or as a game, and either activated by the insertion of a coin, or for the operation or use of which a charge is made.

**BUILDING, SEMI-DETACHED:** A building attached by a party wall to another building normally of the same type on another lot, but having one side yard. See "HOUSING, NON-TRANSIENT."

**BUILDING, PRINCIPAL:** A building in which is conducted the main or principal use of the lot on which said building is situated.

**BUILDING LINE:** The rear line of the required front yard setback.

**BUILDING HEIGHT:** The vertical distance measured from the average finished grade to the highest point of such building or structure.

**BUILDING GROUP:** A group of two or more principal buildings and any buildings accessory thereto, occupying a lot in one ownership and having any yard in common.

**BUILDING, SEMI-DETACHED:** A building attached by a party wall to another building normally of the same type on another lot, but having one side yard.

**BUILDING, PRINCIPAL:** A building in which is conducted the main or principal use of the lot on which said building is situated.

**BUILDING, DETACHED:** A building surrounded by open space on the same lot.

**BUILDING, ACCESSORY:** A building detached from and subordinate to a principal building and used for purposes customarily incidental to those of the principal building. For example, a garage for one or two cars is permitted wherever residences (the principal use) are allowed.

**BUILDING:** Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals or chattel. A building includes attached deck(s) and porch(es).

**BASEMENT:** A story partly below finished grade, but having at least one-half of its height measured from floor to ceiling, but no less than four feet, above average finished grade. A basement shall be counted as one story determining the height of a building in stories. (Also see "CELLAR").

**AZIMUTH:** The angular distance between true south and the point on the horizon directly below the sun. Values to the east of south (in the morning) shall be negative. Values to the west or south (in the afternoon) shall be positive.

**AUTOMOBILE SALES AREA:** A premises, including open areas other than a street or road and showrooms enclosed within a building, used for the storage, display or sale of new or used automobiles, trucks and cargo trailers.

**ATTIC:** That space in a building which is immediately below and wholly or partly within the roof framing. An attic with a finished floor shall be counted as a half story in determining the permissible number of stories. (Also see "STORY, HALF").

**AREA, BUILDING:** The total of covered areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of terraces, and uncovered steps.



**CONTIGUOUS PARCEL:** A tract of land under the control of the applicant or his agent that is not divided by any natural or manmade barriers such as existing roads, highways, railroad tracks, areas with slopes greater than thirty-five (35%), and rivers, and that is not totally bisected by any other water bodies.

**COMMUNITY POLE:** A sign owned and maintained by the Village Board or by a group of business owners as approved by the Village Planning Board and which sign contains several directional signs for the purpose of directing persons to business and community establishments within the Village. Includes "monument sign."

C. **MONOPOLE** - A single pole of variable cross section onto which antennas are affixed.

B. **GUYED TOWER** - Lattice tower supported by wire anchors.

A. **FREESTANDING COMMUNICATIONS TOWER** - Freestanding lattice tower onto which antennas are affixed.

**COMMUNICATIONS TOWER:** A structure on which transmitting and/or receiving antennae are located. This includes but is not limited to freestanding towers, guyed towers, monopoles, and similar structures.

**COMMERCIAL VEHICLE:** A vehicle of more than one and one half ton capacity used for the transportation of persons or goods primarily for gain; or a vehicle of any capacity carrying any sign or lettering of a commercial nature exceeding one square foot in area.

**CO-LOCATION:** The use of a communications tower by more than one carrier.

**CLUB, MEMBERSHIP:** An organization catering exclusively to members and their guests, or premises and buildings for social, educational, recreational or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial activities except as required generally for the purposes of such club.

**CELLAR:** Any space in a building the structural ceiling level of which is less than four feet above average finished grade where such grade meets the exterior walls of the building. A cellar shall not be counted in determining the permissible number of stories. A cellar shall not be occupied as a dwelling unit. (Also see "BASEMENT").

**CARRIER:** A provider of communications service.

**BULK, NONCONFORMING:** That part of a building, other structure or tract of land which was lawfully existing prior to the adoption or amendment of this chapter but which does not conform to one (1) or more of the applicable building regulations of this Zoning Law by reason of such adoption or amendment.

**BULK:** A term used to describe size, volume, area, and shape of buildings and structures. Included in such description is the physical relationship of exterior walls or a building or structure's location to lot lines, other buildings and structures or other walls of the same building. All open spaces required in connection with a building, other structure or tract of land are also included in this term.

**CONTRACTOR'S YARD:** Any space, whether inside or outside a building, used for the storage or keeping of construction equipment, machinery, or vehicles, or parts thereof, which are in active use by a construction contractor.

**COVERAGE:** That lot area or percentage of lot area covered by buildings or structures, including accessory buildings and structures, but not including detached solar collectors used by solar energy systems.

**DAY CARE CENTER:** A facility duly permitted by the New York State Office of Children and Family Services or successor for the care of three (3) or more persons away from their homes for more than three (3) but less than twenty-four (24) hours each day with or without compensation. This definition includes "children's day care center" and "adult day care center." A DAY CARE CENTER is also a facility providing day care services under an operating certificate issued by the NYS Department of Mental Health or successor. This does not include "family day care," "nursery school," or "day camp" as defined by the New York State Sanitary Code, a school program operated for the primary purpose of religious education, or a facility operated by a public school district.

**DAY CARE, FAMILY HOME:** A one family dwelling in which day care is provided for persons in accordance with NYS Office of Children and Family Services or successor definitions and regulations.

**DISTRIBUTOR:** The person, entity or agent or representative thereof responsible for placing and maintaining a newsrack in a public right-of-way including, without limitation, the grassed or paved curb area and sidewalks.

**DRIVE-IN MOVIE:** An open lot or part thereof, which appurtenant facilities devoted primarily to the showing of moving pictures, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

**DWELLING, ONE-FAMILY:** See "HOUSING, NON-TRANSIENT."

**DWELLING, TWO-FAMILY:** See "HOUSING, NON-TRANSIENT."

**DWELLING, MULTI-FAMILY:** See "HOUSING, NON-TRANSIENT."

**DWELLING GROUP:** See "HOUSING, NON-TRANSIENT."

**DWELLING UNIT:** One or more rooms connected together consisting of a, separate, independent housekeeping establishment for owner occupancy, rental or lease, that contains independent cooking, sanitary and sleeping facilities for one family. This shall include sectional, modular and standard designed manufactured home units, and residential designed manufactured home units provided they meet the standards of this law and the New York State Building and Fire Prevention Code. It shall not include motel, hotel or lodging establishments for transient occupancy, substandard mobile homes or trailers.

**EASEMENT:** A vested or acquired right to use land other than as a tenant for a specific purpose, such right being held by someone other than the owner who holds title to the land.

**FAMILY:** Any single person or group of persons who live together in a one dwelling unit and maintain a common household.

HOUSE TRAILER: See "MOBILE HOME, SUBSTANDARD."

HOTEL: See "HOUSING, TRANSIENT."

HOSPITAL: A building containing beds for four or more patients, and used for the diagnosis, treatment, or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment, or care of human ailments.

HOME OCCUPATION, ON SITE SERVICE: A home occupation in which the owner meets customers on premises or receiving a high volume of stock and merchandise and, thus, the business generates additional traffic.

HOME OCCUPATION, OFF SITE SERVICE: A home occupation in which the owner meets customers off premises or electronically and, thus, does not generate additional traffic. A distributorship whose primary function is the processing of orders for merchandise and which does not involve retail sales or a high volume of stock and merchandise on the premises may be deemed an off site home occupation, provided such use meets the intent and all standards of this section.

HOME OCCUPATION: A business use conducted as an accessory use which is clearly incidental to or secondary to the residential use of a dwelling unit and does not change the character thereof, and is carried on wholly within the enclosed walls of a dwelling unit or accessory building by the occupant(s) of such dwelling unit, and in which not more than one (1) person not residing in such dwelling unit is employed on site. Home Occupations are either "off site" or "on site."

HAZARDOUS SUBSTANCES: All substances defined in 6NYCRR Part 597 and all hazardous wastes as defined in 6NYCRR Part 371.

GRAVEL PIT: See "MINING."

GASOLINE FILLING STATION: An area of land, including structures thereon, or any building or part thereof, with pumps and storage tanks that is used primarily for the storage and retail sale of gasoline or any other motor vehicle fuel and for other uses accessory thereto. The sale of lubricants, motor vehicle accessories, washing (which does not require mechanical equipment), or otherwise servicing motor vehicles, are permitted accessory uses.

GARAGE, SERVICE AND REPAIR: An enclosed building for the indoor repair of motor vehicles including painting and the sale of parts and accessories. A junkyard or auto salvage yard is not to be construed as a garage.

FLOOR AREA: The aggregate sum of the gross horizontal areas of the several floors of the building or buildings, measured from the exterior walls or from the centerlines of walls separating the buildings as defined by the NYS Fire Protection and Building Code.

FINISHED GRADE: The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not reasonably horizontal, the finished grade - in computing height of buildings and other structures or for other purposes - shall be the average elevation of all finished grade elevations around the periphery of the building, except that this average shall not exceed one-half (1/2) of the floor-to-ceiling height.

HOUSING, NON-TRANSIENT: A building designed or used principally as the permanent living quarters for one or more families. Such housing is also known as a "residence" but shall not be deemed to include a motel, or hotel or other accommodations used for transient occupancy and shall include the following:

- A. DWELLING, ONE-UNIT DETACHED - A building containing one (1) dwelling unit only on one lot.
- B. DWELLING, ONE-UNIT ATTACHED - A building containing two (2) dwelling units on separate lots. This includes "zero-lot line" one unit homes.
- C. DWELLING, TWO-UNIT - A building containing two (2) dwelling units on one lot. This includes "duplex."
- D. DWELLING, MULTI-UNIT- A building or series of buildings comprising three (3) or more dwelling units with shared entrances and other essential facilities and services on one lot.
- E. DWELLING GROUP - A group of three (3) or more, but not over ten (10), attached one - or two-unit dwellings with common walls between.
- F. GROUP HOME - A one unit dwelling in which resides a group of mentally and/or physically challenged persons, not related by blood, marriage or adoption who maintain a common household as governed by state law. "Group home" includes "community residence."
- G. ROOMING HOUSE - A one unit dwelling containing a common kitchen and dining facility, in which at least three (3) sleeping rooms are offered for rent, with or without meals. A "lodging house" and "boarding house" shall be deemed a "rooming house."
- H. SHARED HOUSING - A one unit dwelling in which persons not related by blood, marriage or adoption live together and maintain a common household.
- I. TOWNHOUSE - A building consisting of three or more attached one unit dwellings each having separate entrances and common vertical walls on separate lots.

HOUSING, TRANSIENT - Any buildings that serve as principle lodging or residence for more than one transient individual that occupies the such building briefly and temporarily. Such housing shall include the following:

- A. BED & BREAKFAST- A one unit dwelling in which sleeping rooms are provided by the owner for compensation, for the accommodation of 15 or fewer transient guests and the entire service is included in one stated price. A "tourist home" shall be deemed a "bed & breakfast."
- B. HOTEL - A building, or any part thereof, which contains living and sleeping accommodations for more than fifteen (15) transient occupancy for compensation, has a common exterior entrance or entrances and which may contain one (1) or more dining rooms.

- C. MOTEL - A building or group of buildings not over two stories in height containing individual living and sleeping accommodations for hire, each of which is provided with a separate exterior entrance and a parking space and is offered for rental and use principally by motor vehicle travelers. The term "motel" includes but is not limited to "auto court," "motor hotel," "motor court," "motor inn," "motor lodge," "tourist court," "tourist cabin" or "roadside hotel."
- D. VACATION RESORT - Any area of land on which are located two or more cabins, cottages or group of buildings, containing living and sleeping accommodations hired out for compensation, which has a public lobby serving the guests, and may contain one or more dining rooms and recreation facilities of a design and character suitable for seasonal or temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonably or otherwise.
- JUNK YARD: An area of land with or without buildings used for or occupied by the storage, keeping, or abandonment of junk, including scrap metals or other scraps, used or salvaged building materials, or the manning, dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof. This includes "auto salvage yard," "dump," "auto junkyard," and "solid waste disposal facility."
- KENNEL: Any place at which there are kept four or more dogs or cats more than four months of age or any number of such animals that are kept for the primary purpose of sale or for the boarding, care or breeding for which a fee is charged or paid.
- LANDFILL, SANITARY: A designated area, where solid waste may be placed for disposal, under the direction and supervision of a designated person; which area is located and operated in compliance with the requirements of the State.
- LOT: A contiguous parcel of land considered as a unit, devoted to a specific use or occupied by a building or group of buildings that are united by a common interest, use or ownership, and the customary accessories and open spaces belonging to the same. A lot shall abut and be accessible from a public or private street.
- LOT, CORNER: A lot situated at the junction of and adjacent to two or more intersecting streets when the interior angle of intersection does not exceed 135 degrees.
- LOT COVERAGE: See "COVERAGE."
- LOT, DEPTH OF: The mean distance from the lot frontage to its rear line.
- LOT LINE, FRONT: A lot line which is coincident with the right-of-way line of a public street or which is measured twenty (20) feet from the edge of the road surface of a private road.
- LOT LINES: The lines bounding a lot as defined herein.
- LOT, THROUGH: A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.
- LOT WIDTH - The width along the building line.

LOW-PROFILE BUSINESS: A small business which is compatible with a residential area in the following respects:

- A. Is carried on by the proprietor and not more than three (3) paid employees.
- B. Has no more than three (3) clients or customers at one time, usually by appointment.
- C. Does not operate during the nighttime hours 10:00 p.m. to 8:00 a.m.
- D. Does not create undue traffic or parking problems.
- E. Does not require more frequent trash or garbage collection than residences in the same district.
- F. Does not create excessive noise, dirt, odor or electrical interference.

MANUFACTURED HOME, RESIDENTIAL DESIGNED: A single family dwelling built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which meets or exceeds the following criteria. This includes the term "double-wide."

- A. The manufactured home has a minimum width over twenty (20) feet (multi-section)
- B. The manufactured home has a minimum of nine hundred (900) square feet of enclosed living area.
- C. The pitch of the roof has a minimum nominal 3/12 pitch; and has a type of shingle commonly used in standard residential construction.
- D. The exterior siding consists of vinyl or aluminum lap siding, wood, masonry, or other materials similar to the exterior siding commonly used in standard residential construction.
- E. All towing devices, wheels, axles, and hitches must be removed.
- F. The front of the dwelling is parallel to the street.
- G. Permanent landing and steps with handrails are required at each exterior doorway. The structure must include steps which lead to the ground level.

MANUFACTURED HOME, STANDARD DESIGNED: A single family dwelling built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which does not meet the criteria of a Residential Designed Manufactured Home. This includes the term "single-wide."

MOBILE HOME, SUBSTANDARD: A single family dwelling that is wholly, or in part, fabricated in an off-site manufacturing facility for installation or assembly at the building site, designed to be a permanent residence, and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of June 15, 1976.

**MANUFACTURED/MOBILE HOME PARK:** A contiguous parcel of land, which is planned and improved specifically for such a purpose, on which two (2) or more manufactured/mobile homes (with or without the wheels and axles in place) are located. Such a park consists entirely of manufactured/mobile homes, each located on a site leased or rented to its occupants who either own, rent, or lease the living unit as a permanent residence.

**MINING:** Excavation of earth materials for commercial purposes such as gravel pits, rock quarrying, stripping of topsoil, subsoil removal and/or the removal of such materials for sale other than what may be required in the erection of buildings on site.

**MIXED USE:** A building or a lot used for more than one permitted principal use.

**MODULAR HOME:** A dwelling unit constructed off-site, consisting of two or more segments and designed to be permanently anchored to a foundation, to become a fixed part of the real estate and which meets all State requirements. This includes the term "sectional home."

**MOTEL:** See "HOUSING, TRANSIENT".

**NEWSRACK:** Any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and distribution or sale of newspapers or other news or informational periodicals. This includes "honor box," "newspaper box," or "real estate box."

**NON-CONFORMING BULK:** See "BULK, NONCONFORMING."

**NONCONFORMING USE:** See "USE, NONCONFORMING."

**NURSERY SCHOOL:** A non-public school organized for the purpose of providing regular daytime care or instruction for three or more children less than seven years of age for less than three hours per day, (two sessions may be held daily), as registered and certified by the NYS Education Department. This includes "day nursery" or "kindergarten" but does not include "day care center."

**NURSING OR CONVALESCENT HOME:** A building where persons are lodged and furnished with meals and long-term or permanent nursing care as defined by the NYS Department of Social Services or successor. This definition includes "assisted care living units," "health care services facility," and "home for the aged" but does not include "hospital," or "halfway home."

**PARKING SPACE:** An off-street space available for the parking of one motor vehicle exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

**PERSONAL SERVICE ESTABLISHMENTS:** Establishments which provide services to an individual consumer for compensation including but not limited to barber shops, beauty shops, shoe repair shops and other uses of a similar nature.

**PETROLEUM BULK STORAGE REGULATIONS:** New York State's standards and regulations of petroleum administered by the New York State Department of Environmental Conservation as defined in 6NYCRR Parts 611 through 614.

**PLANNED RESIDENTIAL DISTRICT** - A form of residential development characterized by a unified site design and providing density increases, a mix of building types and common open space. It permits the calculation of densities over the entire parcel and involves additional requirements as set forth in Article V.

**PREMISES:** A lot together with all the buildings and uses thereon.

**PROFESSIONAL OFFICE:** An office operation involving the practice of or associated with medicine, dentistry, law, architecture, engineering and similar fields.

**RESIDENCE:** A building, or any part of a building, which contains living and sleeping accommodations for permanent occupancy. "Residence," therefore, includes all non-transient housing. However, "residence" shall not include the following:

- A. Transient housing, such as hotels, and motels.
- B. That part of a mixed use which is used for any non-residential uses.

**RIDING ACADEMY:** Any establishment where horses are kept for riding, driving or stabling for compensation.

**RIGHT-OF-WAY:** The property under ownership or easement normally used for the movement of vehicles, including but not restricted to the pavement area.

**ROADSIDE STAND:** A light structure with a roof, either attached to the ground or movable, used for the sale of local produce on a seasonal basis.

**SATELLITE DISH:** An antenna capable of receiving communications from space. Includes "satellite dish."

**SETBACK:** The required distance in feet between any building and any lot line of the lot on which it is located.

**SIGN:** Any structure or part thereof, or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking, or representation used as, or which is in the nature of, an announcement, direction or advertisement. A "sign" includes a billboard, but does not include the flag or insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious or similar organizations, campaign, drive, movement, or event which is temporary in nature.

This definition shall not include official notices issued by a court or public body or officer, or directional, warning or information signs or structures required by or authorized by law or by federal, state, county, town or Village authority.

**SIGN, BUSINESS:** A "sign" which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall be deemed a "business sign."



**SIGN, DIRECTONAL:** A "sign" which directs attention to a business, commodity, service or entertainment conducted, sold, or offered elsewhere than on the premises.

**SIGN, DIRECTLY ILLUMINATED:** A sign which incorporates any artificial lighting as an inherent part or feature or which depends for its illumination on transparent or translucent material or electricity or radio activated or gaseous material or substance.

**SIGN, FLASHING:** An illuminated sign on which the artificial lighting is not maintained stationary or constant in intensity and color at all times while in use.

**SIGN, INDIRECTLY ILLUMINATED:** A sign illuminated with an artificial light which is separated from or is not an intrinsic part of the sign itself.

**SIGN, REPRESENTATIONAL:** Any three-dimensional sign which is built so as to physically represent the object advertised.

**SIGN AREA:** The area within the shortest lines that can be drawn around the outside perimeter of a sign including all decorations and lights, but excluding the supports if they are not used for advertising purposes. All faces of the sign shall be counted in computing the area.

**SIGN TEMPORARY:** A sign which directs attention to a special activity or entertainment to be conducted for a limited time only.

**SINGLE OWNERSHIP:** Possession of land under single or unified control, whether by sole, joint, common or other ownership or by a lease having a term of not less than thirty years, regardless of any division of such land into parcels for the purpose of financing.

**SOLAR COLLECTOR:** A device, or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy, that contributes significantly to a structure's energy supply, and components for containing and supporting such device.

**SOLAR COLLECTOR, DETACHED:** A solar collector, as defined herein, physically detached from the structure for which solar energy is to be supplied.

**SPECIAL USE PERMIT:** The authorization of a particular land use which is permitted in the Village of Painted Post Zoning Law, subject to requirements as described in Article XII to assure that the proposed use is in harmony with the Zoning Law and will not adversely affect the neighborhood if such requirements are met.

**STORAGE FACILITY, INDOOR:** A building or grouping of buildings designed and constructed for the common, long-term and/or seasonal interior storage of individual or business property by persons other than the property owner. The wholesale storage and/or transfer of goods by commercial enterprises is not included in this definition. See also "TRUCKING TERMINAL" and "WAREHOUSE."

**STORAGE FACILITY, OUTDOOR:** A lot designed for and/or used for the common, long-term and/or seasonal outdoor storage of individual or business property by persons other than the property owner.

STORAGE YARDS FOR EQUIPMENT: A lot designed for and/or used for the long-term and/or seasonal outdoor storage of business property by the property owner.

STORY: That part of a building comprised between a floor and the floor or roof next above it. (See "ATTIC", "BASEMENT", and "CELLAR").

STORY, HALF: That portion of a building situated above a full story and having a least two opposite exterior walls meeting a sloping roof at a level not higher above the floor than a distance equal to one-half the floor-to-ceiling height of the story below.

STREET, DEAD-END - A street or portion of a street with only one vehicular access.

STREET, PRIVATE - A road, serving not more than two residential lots, built to Village specifications and that remains in the ownership of and is maintained by the developer or development association and is not dedicated to the Village. This includes "private road."

STREET, PUBLIC - A right-of-way for vehicular traffic, whether designated as a road, highway, thoroughfare, parkway, street, avenue, boulevard, lane, place, alley, or however otherwise designated, that is built to Village specifications and dedicated to the Village for maintenance, but not including a private street. This includes "road."

STREET WIDTH: The width of the right-of-way or the distance between property lines on opposite sides of a street.

STRUCTURE: A static construction of building materials, including buildings, stadiums, platforms, towers, sheds, display stands, storage bins, signs, reviewing stands, gasoline pumps, mobile dwellings (whether mobile or stationary at the time), and the like.

STRUCTURE, ACCESSORY - A structure detached from and subordinate to a principal building on the same lot used for purposes customarily incidental to those of the principal building. Accessory structures include but are not limited to, portable, demountable or permanent detached enclosures, shade structures, carports, garages, and storage sheds. Accessory structures are non-habitable, have no sewer or water utilities and exceed 120 sq. ft.

SWIMMING POOL: An artificial pool of water having a depth at any point of more than eighteen (18) inches and a surface area of greater than one hundred (100) square feet, designed or intended for the purpose of bathing or swimming and including all appurtenant equipment.

TOWN HOUSE: See, "HOUSING, NON-TRANSIENT."

TRAILER, HOUSE: See, "MOBILE HOME, SUBSTANDARD."

TRAILER - A structure that is:

A. Intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and

B. is designed for temporary use as sleeping quarters, but does not satisfy one or more of the definition criteria of a manufactured home as defined in this law. This includes "travel trailer" and "camper."

USE: This term is employed in referring to:

A. The purpose for which any buildings, other structures or land may be arranged, designed, intended, maintained, or conducted.

B. Any occupation, business activity, or operation conducted in a building or other structure, or on land.

USE, ACCESSORY : A use customarily incidental and subordinate to the principal use or building. Accessory uses may occur as an open land use, as a separate building(s) or within the principal building. An accessory use does not have any greater impact on the environment than the principal use.

USE, NONCONFORMING: Any use of a building, other structure or tract of land which was lawfully existing prior to the adoption or amendment of this chapter but which does not conform to the use regulations for the district in which such use is located by reason of such adoption or amendment.

USE, PRINCIPAL - The main or primary permitted use of the lot or structure.

VACATION RESORT: See "HOUSING, TRANSIENT."

VARIANCE, AREA: The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

VARIANCE, USE: The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

VETERINARY HOSPITAL: A building for the treatment of animal illness including kennels or other similar facilities for boarding animals.

WAREHOUSE : A structure or premises, for storing of goods, wares, and merchandise, whether for the owner or for others, prior to shipment to final retail sale operation, whether it is in public or private ownership and use.

WAY: A thoroughfare, however designated, permanently established for passage of persons or vehicles.

YARD, FRONT: A yard extending along the full length of the front lot line between the side lot lines, not including any land within the right-of-way of public or private streets.

YARD, REAR: A yard extending along the full-length of the rear lot line, between the side lot lines, not including any land within the right-of-way of public or private streets.

**YARD, REQUIRED:** That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

**YARD, SIDE:** A yard situated between the building and the side line of a lot and extending from the front yard rear line (or from the front lot line, if there is no required front yard) to the rear yard front line (or rear lot line).

- Section 280.9 (Reserved)
- Section 280.10 (Reserved)
- Section 280.11 (Reserved)
- Section 280.12 (Reserved)
- Section 280.13 (Reserved)

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## SCHEDULE C

### HISTORICAL INVESTIGATIONS AND REMEDIAL ACTIONS

The Premises consist of approximately forty-nine (49) acres of land upon which there existed a 287,000+/- square foot foundry. The Foundry operated from approximately 1920 through December 1985, and produced gray iron castings principally for Ingersoll-Rand Company's ("I-R") compressor plant located at a separate site in Painted Post, New York. The operations consisted of pattern construction, sand mold lines, melt furnaces, castings, shakeout, casting, clearing and pattern and casting storage. After the foundry was idled in December 1985, an environmental evaluation and cleanup was conducted by I-R as part of its facility closure activity. In addition, pursuant to an Order on Consent with the DEC, I-R has performed further investigation and remediation activities at the Premises.

Documentary information with respect to the environmental investigations and cleanup that have taken place at the Premises, and any areas of the Premises that may have been impacted by releases of hazardous wastes, substances or constituents, can currently be obtained from documents submitted to DEC at its Albany, New York office (currently at 625 Broadway, Albany, New York 12233), and its Region 8 office at Avon, New York (currently at 6274 East Avon-Lima Road, Avon, New York 14414). Further information with respect to past activities at the Premises, including the use of foundry sand as backfill throughout wide portions of the MW-2B Area of the Premises, current activities, previous environmental investigations, information and investigations concerning the foundry sand at the Premises, groundwater quality, soil contamination, areas of possible environmental concern, topography, geology, hydrogeology, human health and environmental impacts can be obtained from the documentary information and other documents submitted to the DEC at the above-identified locations.

Such documentary information includes, but is not limited to, DEC's Record of Decision, dated March 1994 ("ROD") entitled "Ingersoll-Rand Foundry Inactive Hazardous Waste Site; Site Number 8-51-012, Village of Painted Post, Steuben County, New York". That ROD, in part, summarizes environmental sampling data which identified polynuclear aromatic hydrocarbons ("PAHs") near the MW-2B Area. Soil samples collected from within the fill material in this area confirmed that the PAHs in the fill were stationary and not migrating. The PAHs in the fill material appear to be petroleum based, and are commonly found in creosote, coal tar, and heavy oil-type products. The PAHs have been detected in an approximately three hundred (300) foot radial area surrounding the MW-2B Area, at a depth of approximately three (3) to six (6) feet below ground surface. Subsequent environmental investigations, as identified below, have detected PAHs in other areas of the Premises.

The DEC has determined that the PAHs at the Premises may pose a risk to humans in a scenario where future use includes invasive activities at the Premises. To address this concern, as part of the DEC's selected remedy under the ROD, a restriction was placed on the Premises indicating the presence of in-place soils contaminated by PAHs. The declarations by I-R in the Declaration satisfied and the restrictions, covenants and notices contained in this Deed are intended to satisfy the elements of the ROD's selected remedy and minimize the potential for

future human exposure.

In April, 2004, the Grantee, as part of its due diligence investigation in connection with acquisition of the Premises, performed supplemental environmental investigations. Soil borings were installed to delineate and characterize the extent of PAHs within the MW-2B Area. Samples of the soil fill material were also collected as part of a pre-construction geotechnical study. Results of the investigations indicated that fill material contained elevated concentrations of PAHs that exceed the NYSDEC TAGM soil clean-up objectives. The fill material also contained elevated nickel, magnesium and zinc at concentrations that exceeded typical background soils concentrations. Documentary and further information with respect to such environmental investigation can be obtained from DEC's Region 8 office in Avon, New York.

In June 2004 through November 2004, Grantee caused to be conducted additional environmental investigations at the Premises, including a remedial investigation in connection with Grantee's application to DEC in regard to the DEC's Brownfield Cleanup Program. The remedial investigation included surface and subsurface soil/fill sampling and groundwater sampling at the Premises. Documentation and further information with respect to such investigations can be obtained from DEC's Region 8 Office in Avon, New York. The deed restrictions which are a part hereof are intended to supplant the above referenced restriction and contemplates a certain level of development at the Premises, in concert with a remedial action plan and related soil management plan, all of which is in connection with the DEC's Brownfield Cleanup Program and consents and approvals related thereto.

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**SCHEDULE D - REMEDIAL WORK PLAN**

Attached hereto

# Soil/Fill Management Protocols

APPENDIX

**A**

The objective of this Soil/Fill Management Plan (SFMP) is to set guidelines for management of soil material during any activities, which would breach the cover system. The SFMP is a portion of the overall remedy, which addresses disturbance/use of any residually contaminated soil fill left on the Site, after other elements of the remedy have been implemented. This SFMP addresses environmental concerns related to soil/fill management. This SFMP is not intended to serve as a design document for construction activities related to redevelopment activities. It is the developer's responsibility to prepare a design that incorporates the requirements for cover and soil management as set forth in this SFMP.

## **A.1 Excavation and Handling of On-Site Soil/Fill**

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No excavation, grading or disturbance of the final vegetated soil cover or existing subgrade soil/fill shall be initiated prior to a minimum of three working days notification to the NYSDEC Region 8, Division of Environmental Remediation. A Professional Engineer with remedial investigation experience, representing the subject property owner or developer will oversee soil/fill excavations or disturbances. The excavation activities will be conducted in accordance with the protocols detailed herein.

All on-site soil/fill will be presumed to contain metals and PAHs and will be handled in accordance with the provisions of this SFMP. Although a number of environmental investigations have been conducted at the Site to characterize the nature and extent of contamination, the nature of investigations does not allow for a 100 percent complete or accurate characterization. It is possible that some quantity of unsuspected contamination may be encountered during redevelopment activities. Therefore, as a safeguard for unknown or

unsuspected contamination presence, during excavation, all soil/fill will be visually inspected for staining and will be field screened for the presence of volatile organic compounds (VOCs). A photoionization detector (PID) will be used to check for VOCs. Visual observation will be sufficient to identify stained soils. Stained soil is soil that is discolored, tinted, dyed, unnaturally mottled, or contains a sheen. Attachment II contains a Standard Operating Procedure for Soil Screening. Excavated soil/fill that is visibly stained or produces elevated PID readings (i.e., sustained 10 PPM or greater) will be considered potentially contaminated and stockpiled separately on-site for further assessment. The potentially contaminated soil/fill will be stockpiled (in maximum 100 cubic yard piles) on polyethylene sheeting and then sampled to determine its ultimate disposition; viz., reuse or off-site disposal. The stockpiled potentially contaminated soil/fill will also be completely covered using polyethylene sheeting to reduce particle runoff and entrain dust. Sampling and analysis will be completed in accordance with the protocols delineated in Section A.2. Soil/fill containing one or more constituents in excess of the site-specific action levels (SSALs) shown in Table A-1 will be transported off-site to a permitted waste management facility. Soil/fill awaiting analytical results or awaiting transportation will be stored continuously on-site under polyethylene sheeting.

Any soil/fill with a pH higher than 12.5 is considered hazardous and therefore must be properly disposed off-site. Additionally, any soil/fill with a pH greater than 9.0 but less than 12.5 may be reused on-site but only to fill in areas below grade. This soil/fill may not be used as backfill in utility trenches or to create berms or other above grade mounds. This soil/fill must also be covered with clean material in accordance with Section 3.2 of the Remedial Work Plan.

If buried drums or underground storage tanks are encountered during soil excavation activities, excavation will cease and the NYSDEC will be immediately notified. All drums and/or underground storage tanks encountered will be evaluated and the Owner will submit a removal plan for NYSDEC approval. Appropriately trained personnel will excavate all of the drums and/or underground storage tanks while following all applicable federal, state, and local regulations. Removed drums and underground storage tanks will be properly characterized and disposed off-site. The soil/fill surrounding the buried drums or underground storage tanks will be considered as potentially contaminated and will be stockpiled and characterized.

TABLE A-1  
SITE SPECIFIC ACTION LEVELS  
SOIL/FILL HANDLING PLAN  
FORMER INGERSOLL-RAND FOUNDRY SITE  
PAINTED POST, NEW YORK

Sample Location Sampling Depth (ft. bgs) Collection D	NYSDEC TAGM 4046 <sup>(1)</sup>	Eastern USA Background Concentrations <sup>(2)</sup>	Maximum Concentration Detected <sup>(3)</sup>	Average Concentration Detected	Frequency of Detections	Proposed Site Specific Action Level (SSAL)
<b>TAL Inorganic Analytes (mg/kg)</b>						
Arsenic	7.5 or SB	3 - 12	14.50	5.25	30 / 31	50 <sup>(4)</sup>
Cadmium	1 or SB	0.1 - 1	2.80	0.59	31 / 31	20 <sup>(4)</sup>
Chromium	10 or SB	1.5 - 40	554	48.3	31 / 31	500 <sup>(4)</sup>
Copper	25 or SB	1 - 50	327	43.2	31 / 31	200
Mercury	0.1	0.001 - 0.2	0.33	0.06	26 / 31	1.0 <sup>(4)</sup>
Nickel	13 or SB	0.5 - 25	164	26.2	31 / 31	100
Total Cyanide	NA	NA	1.67	0.08	1 / 22	50 <sup>(4)</sup>
Zinc	20 or SB	9 - 50	216	76.1	31 / 31	500
<b>Pest/PCBs (mg/kg)</b>						
Total Pesticides	10	NA	0.0	0	0 / 22	10,000 <sup>(4)</sup>
Total PCBs (Surface - 1.0')	1,000	NA	2,400	413	3 / 7	1,000 <sup>(4)</sup>
Total PCBs (Subsurface > 1.0')	10,000	NA	480	91	4 / 15	10,000 <sup>(4)</sup>
<b>Semi-Volatile Organic Compounds - SVOCs (µg/kg)</b>						
Total SVOCs	500,000	NA	143,700	25,969	51 / 54	500,000 <sup>(4)</sup>
<b>Volatile Organic Compounds - VOCs (µg/kg)</b>						
Total VOCs	10,000	NA	19.5	4.1	15 / 22	10,000 <sup>(4)</sup>

Notes:

- (1) New York State Dept. of Environmental Conservation TAGM 4046, Recommended Soil Cleanup Objectives, Dec. 2000.
  - (2) TAL Inorganic Analytes from Eastern USA Background as shown in New York State Dept. of Environmental Conservation TAGM 4046, Dec. 2000.
  - (3) Maximum concentration detected during the subsurface investigation (MPI, April 2004) and the remedial investigation (MPI, October 2004).
  - (4) Site Specific Action Levels for Hanna Furnace former Railroad Yard Area (Subparcel 1), Soil Fill Handling Plan, as prepared by Malcolm Pimie, February 2002. Action levels were negotiated and approved by NYSDEC.
- NA - Not Available.  
ND - Not Detected

All excavations or disturbances must be backfilled as soon as the work allows. Backfilled excavations must be covered with suitable cover material defined in Section 4.2 of the Remedial Action Work Plan) within ten working days of backfilling or as otherwise approved by the NYSDEC.

If no evidence of additional contamination is encountered through the screening during excavation activities, the excavated soil fill will be stockpiled as appropriate on site. No special provisions for separate handling are required other than the characterization defined in Section A.2.

Excavated or disturbed backfill may be used as subgrade, excavation backfill or berm construction following characterization performed in accordance with Section A.2 if it meets the SSAL's presented in Table A-1.

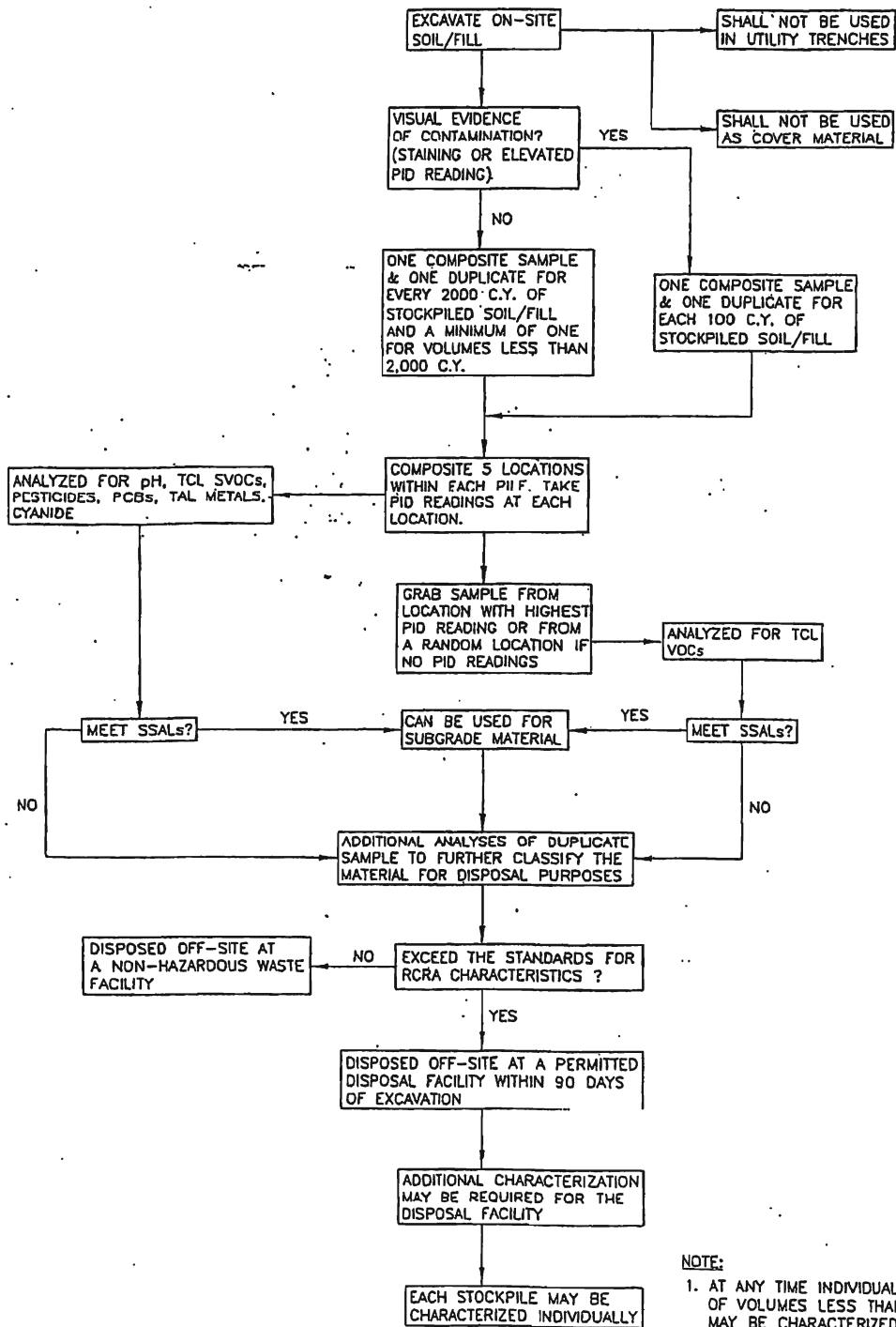
## **A.2 Soil/Fill Sampling and Analysis Protocol**

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A soil/fill characterization flow chart is provided as Figure A-1. As stated in Section A.1, all excavated soil/fill that exhibits evidence of additional contamination through screening (staining or elevated PID measurements) will be stockpiled separately and sampled and classified for reuse or disposal. One composite soil sample will be collected for each 100 cubic yards of soil.

The composite sample will be collected in the manner described in the Standard Operating Procedures (SOPs) included in Attachment II, from five locations within each stockpile. PID measurements will be recorded for each of the five composite sample locations, and one grab sample and one duplicate sample will be collected from the location with the highest PID measurement of the five composite locations. The composite sample will be analyzed by a NYSDOH ELAP-certified laboratory for Target Compound List (TCL) semivolatile organic compounds (SVOCs), pesticides, and polychlorinated biphenyls (PCBs), and the metals arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver plus cyanide using current NYSDEC Analytical Services Protocols (ASP). Additionally, pH will be analyzed using SW-846 Method 9045. The grab sample will be analyzed for TCL volatile organic compounds (VOCs).

**FIGURE A-1  
SOIL/FILL CHARACTERIZATION FLOW CHART**



**NOTE:**  
1. AT ANY TIME INDIVIDUAL STOCKPILES OF VOLUMES LESS THAN THOSE STATED MAY BE CHARACTERIZED INDIVIDUALLY.

Excavated soil/fill that exhibits no evidence of additional contamination (staining or elevated PID measurements) will also require characterization prior to use as subgrade or backfill at the site. Characterization samples will be collected and analyzed at a frequency of not less than one sample for 2000 cubic yards of soil/fill, and a minimum of one sample will be collected for volumes less than 2000 cubic yards. The characterization samples will be collected in accordance with the protocols described above; the sampling efforts shall consist of discrete samples for VOCs and composite samples collected from five locations for the remaining analytes.

Any soil/fill that has been characterized and found to meet the SSALs may be reused as subgrade, excavation subgrade backfill, or for berm construction. If the analysis of the soil/fill samples reveals unacceptably high levels of any analytes (i.e., greater than one or more SSAL), additional analyses will be necessary to further classify the material for hazardous characteristics for disposal purposes. At a minimum, the duplicate sample will be analyzed using the Toxicity Characteristic Leaching Procedure (TCLP) for the particular analytes that were detected at concentrations exceeding the SSALs. The duplicate sample may also be analyzed for RCRA Characteristics including reactivity, corrosivity, and ignitability. If the analytical results indicate that concentrations exceed the standards for either TCLP or RCRA Characteristic analysis, the material will be considered a hazardous waste and must be properly disposed off-site at a permitted disposal facility within 90 days of excavation. Additional characterization sampling for off-site disposal may be required by the disposal facility. To potentially reduce off-site disposal requirements/costs, the owner or site developer may also choose to characterize each stockpile individually.

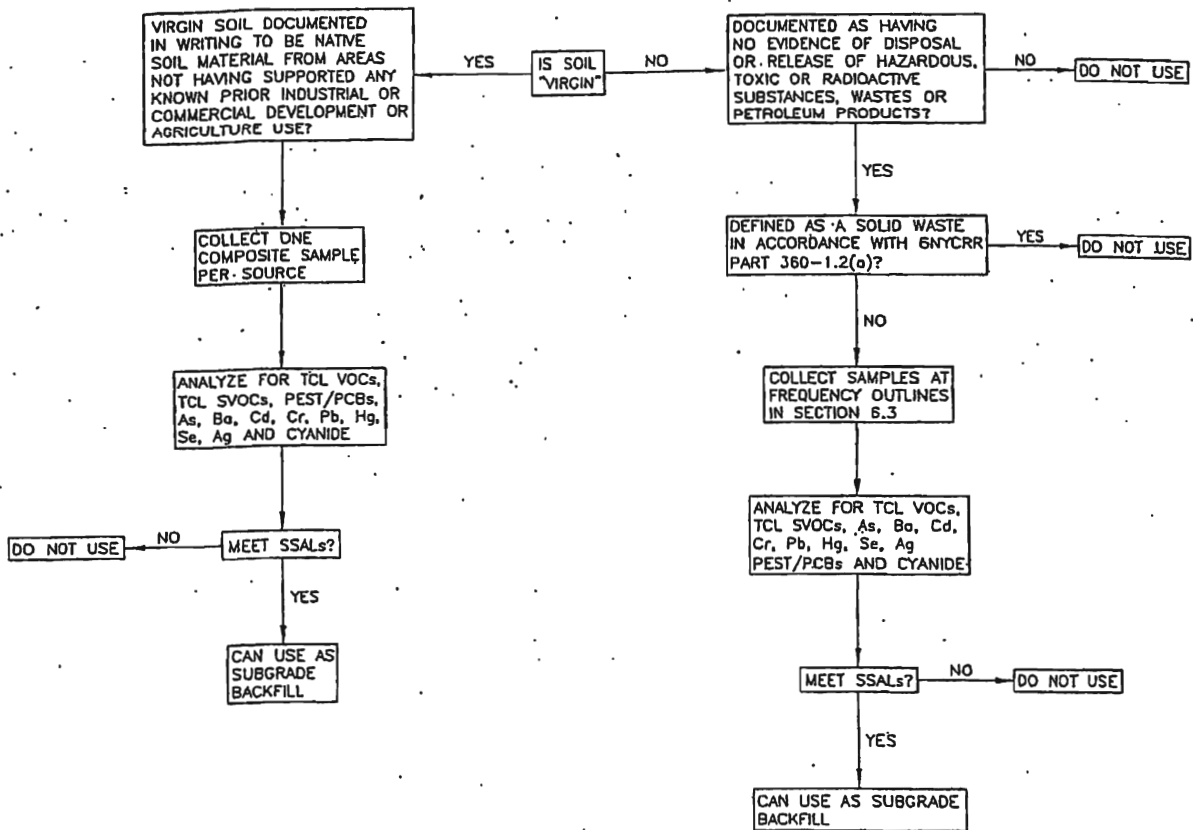
### **A.3 Subgrade Material**

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Subgrade material used to backfill excavations or placed to increase site grades or elevation shall meet the following criteria (see Figure A-2):

- Excavated on-site soil/fill shall either exhibit no evidence of contamination (staining and/or elevated PID measurements) or, if evidence of contamination is present,

**FIGURE A-2  
SUBGRADE MATERIAL FLOW CHART**



**NOTE:**

1. AT ANY TIME INDIVIDUAL STOCKPILES OF VOLUMES LESS THAN THOSE STATED MAY BE CHARACTERIZED INDIVIDUALLY.



analytical results of the soil/fill indicate that the contaminants are present at concentrations below the SSALs.

- Off-site borrow soils will be documented as having originated from locations having no evidence of disposal or release of hazardous, toxic or radioactive substances, wastes or petroleum products.
- Off-site soils intended for use as site backfill cannot otherwise be defined as a solid waste in accordance with 6NYCRR Part 360-1.2(a).
- If the contractor designates a source as "virgin" soil, it shall be further documented in writing to be native soil material from areas not having supported any known prior industrial or commercial development or agricultural use.
- Virgin soils should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, and the metals arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver plus cyanide. The soil will be acceptable for use as backfill provided that all parameters meet the SSALs.
- Non-virgin source area soils will be tested via collection of one composite sample per 500 cubic yards of material from each source area. If more than 1,000 cubic yards of soil are borrowed from a given off-site non-virgin soil source area and both samples of the first 1,000 cubic yards meet the SSALs, the sample collection frequency will be reduced to one composite for every 2,500 cubic yards of additional soils from the same source, up to 5,000 cubic yards. For borrow sources greater than 5,000 cubic yards, sampling frequency may be reduced to one sample per 5,000 cubic yards, provided all earlier samples met the SSALs.

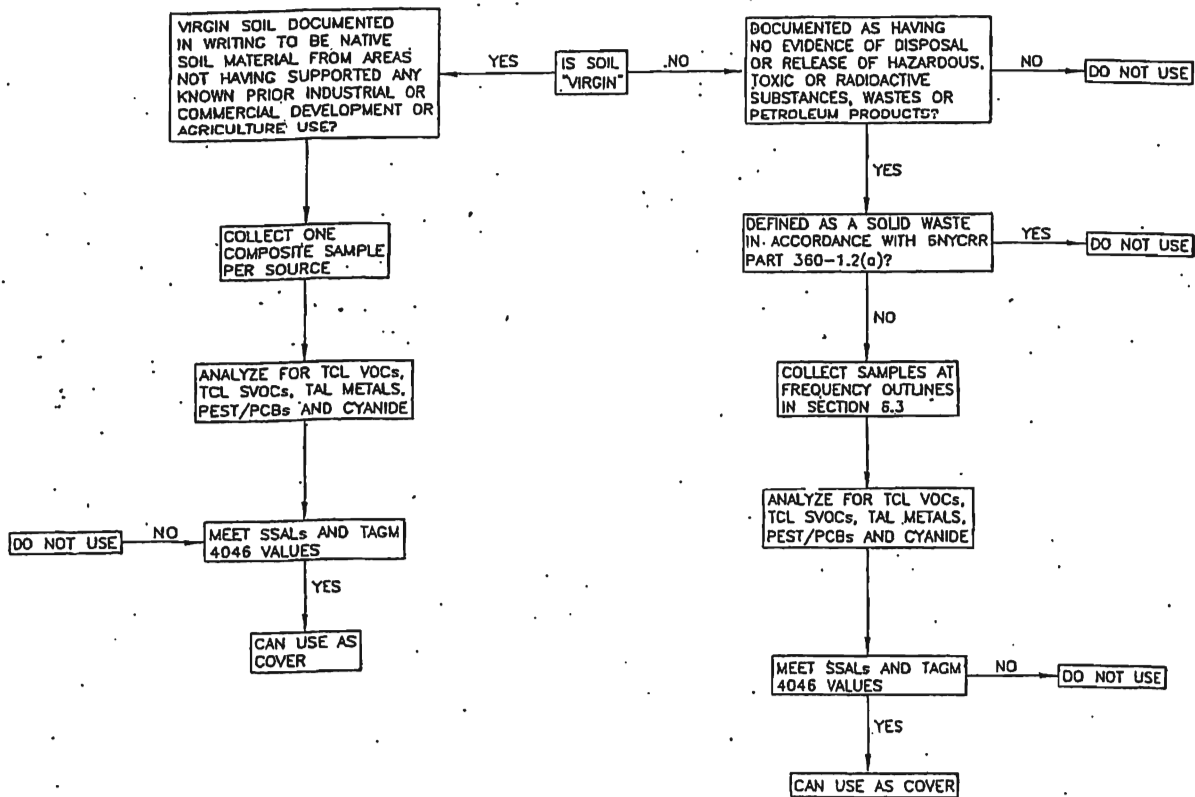
#### **A.4 Final Cover**

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Surface coverage over the entire redeveloped parcel or subparcels will be required by the developer or owner as a pre-condition of occupancy. The purpose of the surface cover is to eliminate the potential for human contact with fill material. Surface coverage will consist of

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**FIGURE A-3  
FINAL COVER MATERIAL FLOW CHART**



**NOTE:**

1. AT ANY TIME INDIVIDUAL STOCKPILES OF VOLUMES LESS THAN THOSE STATED MAY BE CHARACTERIZED INDIVIDUALLY.

documented clean soil with vegetative cover, asphalt or concrete paving, or buildings with concrete floors.

The cover soil material shall meet the following criteria (see Figure A-3):

- Excavated on-site soil/fill shall not be used as cover material.
- Off-site borrow soils will be documented as having originated from locations having no evidence of disposal or release of hazardous, toxic or radioactive substances, wastes or petroleum products.
- Off-site soils intended for use as site cover cannot otherwise be defined as a solid waste in accordance with 6NYCRR Part 360-1.2(a).
- If the contractor designates a source as "virgin" soil, it shall be further documented in writing to be native soil material from areas not having supported any known prior industrial or commercial development or agricultural use.
- Virgin soils should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, and TAL metals plus cyanide. The soil will be acceptable for use as cover material provided that all parameters meet the NYSDEC recommended soil cleanup objectives included in TAGM 4046.
- Non-virgin source area soils will be tested via collection of one composite sample per 500 cubic yards of material from each source area. If more than 1,000 cubic yards of soil are borrowed from a given off-site non-virgin soil source area and both samples of the first 1,000 cubic yards meet the TAGM 4046 criteria, the sample collection frequency will be reduced to one composite for every 2,500 cubic yards of additional soils from the same source, up to 5,000 cubic yards. For borrow sources greater than 5,000 cubic yards, sampling frequency may be reduced to one sample per 5,000 cubic yards, provided all earlier samples met the TAGM 4046 criteria.
- To reduce the potential for disturbance of the soil cover material, berms or mounds composed of clean soil will be constructed in areas in which trees and shrubs will be planted.

## A.5 Erosion Controls

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### A.5.1 General Guidelines

When site development or remedial actions require the disturbance of more than five acres of land, federal and state laws<sup>1</sup> require that the project obtain coverage under the NYSDEC SPDES General Permit for Storm Water Discharges from Construction Activities that are classified as "Associated with Industrial Activity", Permit #GP-93-06 (Construction Storm Water General Permit). Requirements for coverage under the Construction Storm Water General Permit include the submittal of a Notice of Intent form and the development of a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP must fulfill all permit requirements and must be prepared in accordance with "Chapter Four: the Storm Water Management and Erosion Control Plan" in Reducing Impacts of Storm Water Runoff from New Development, NYSDEC, 1992. This Storm Water Management and Erosion Control Plan, in accordance with permit requirements, will provide the following information:

- A background discussion of the scope of the construction project.
- A statement of the storm water management objectives.
- An evaluation of post-development runoff conditions.
- A description of proposed storm water control measures.

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<sup>1</sup> The Federal Water Pollution Control Act (as amended, 33 U.S.C. 1251 et. Seq.) and the New York State Environmental Conservation Law: Article 17, Titles 7 and 8 and Article 70.

- A description of the type and frequency of maintenance activities required to support the control measure.

The SWPPP will address issues such as erosion prevention, sedimentation control, hydraulic loading, pollutant loading, ecological protection, physical site characteristics that impact design, and site management planning. The SWPP will also include a contingency plan to be implemented in the event of heavy rain events. All descriptions of proposed features and structures at the site will include a description of structure placement, supporting engineering data and calculations, construction scheduling, and references to established detailed design criteria. The SWPPP will conform to all requirements as established by applicable regulatory agencies.

Proven soil conservation practices will be incorporated in the construction and development plans to mitigate soil erosion damage, off-site sediment migration, and water pollution from erosion. These practices combine vegetative and structural measures. Many of these measures will be permanent in nature and become part of the completed construction project (design features such as drainage channels and grading). Other measures will be temporary and serve only during the construction stage. The contractor will remove temporary measures at the completion of construction. The selection of erosion and sediment control measures will be based on several general principles, including:

- The minimization of erosion through project design (maximum slopes, phased construction, etc.).
- The incorporation of temporary and permanent erosion control measures.
- The removal of sediment from sediment-laden storm water before it leaves the site.

The generic erosion and surface water control plan included in Attachment III details typical methods of erosion control that must be followed during site redevelopment activities. As described in Attachment III, a specific erosion and surface water control plan must be created prior to implementation of redevelopment activities. The use of appropriate temporary erosion control measures such as silt fencing and/or hay bales will be required around all soil/fill

stockpiles and unvegetated soil surfaces during redevelopment activities. These methods are described below, and Attachment IV includes details for various erosion control measures that might be used during site redevelopment activities. Stockpiles shall be graded and compacted as necessary for positive surface water runoff and dust control. Stockpiles of soil/fill will be placed a minimum of fifty feet from the boundaries.

## **A.5.2 Temporary and Permanent Erosion Control Measures**

### ***A.5.2.1 Temporary Measures***

Temporary erosion and sedimentation control measures and facilities will be employed during active construction stages. Prior to any construction activity, temporary erosion and sediment control measures shall be installed and maintained until they are no longer needed, or until such time that permanent erosion control measures are installed and effective. Additional sediment control measures may also be necessary. Structural measures, as described below, will be designed and installed to provide the required sediment and erosion control. The following temporary measures will be incorporated into construction activities:

- Silt fencing.
- Straw bales.
- Temporary vegetation/mulching.

#### ***A.5.2.1.1 Silt Fencing***

Regrading and capping activities may result in sheet flow to various areas of the site; therefore, silt fencing will be used as the primary sediment control measure. Prior to extensive clearing, grading, excavation, and placement of cover soils, silt fences will be installed along all construction perimeter areas to prevent sedimentation in low areas and drainage areas. The location and orientation of silt fencing to be used during redevelopment operations will be field determined. There may be breaks and overlaps in the silt fencing to allow construction vehicles access to the construction areas.

Intermediate silt fencing will be used upslope of perimeter areas where phased construction activities are occurring. This measure will effectively lower sheet flow velocities and reduce sediment loads to perimeter fencing. In addition, silt fencing around soil stockpiles will be employed.

As sediment collects along the silt fences, they will be cleaned to maintain desired roval performance and prevent structural failure of the fence. Removed sediment will be disposed on-site as general fill in a designated area. The perimeter silt fences will remain in place until construction activities in the area are completed and vegetative cover or other erosion control measures are adequately established. Silt fences will be provided and installed in accordance with the details presented in Attachment IV.

#### *A.5.2.1.2 Straw Bales*

Straw bales will be used to intercept sediment-laden runoff from storm water channels as needed during various phases of construction. Additional straw bale dikes may be necessary in some areas during some phases of construction.

Use of straw bales will be limited to swales and/or diversion ditches where the anticipated flow velocity will not be greater than 5 feet per second (fps). Where flows may eventually exceed 5 fps along a swale or diversion ditch, an intermediate straw bale barrier will be installed upgradient of the final bale barrier. The intermediate bale barrier will effectively reduce flow velocities and sediment load to the final barrier.

As with the silt fencing, sediment will be removed to maintain performance and prevent overtopping or failure of the straw bale barrier. Removed sediment will be disposed of on-site as general fill in a designated area. Sediment laden straw bales that have lost their structural integrity and/or effectiveness will be disposed of off-site as a solid waste. Straw bale barriers will remain in place until construction activities contributing sediment to the barrier are complete and vegetative cover or other erosion control measures are adequately established. Straw bales will be provided and installed in accordance with the details presented in Attachment IV.

#### *A.5.2.1.3 Temporary Vegetation and Mulching*

As a result of phased construction and split construction schedule, portions of the site may be left in intermediate/incomplete conditions. Intermediate areas may include rough graded areas awaiting finer grading or areas awaiting topsoil placement. Intermediate areas where activities will not resume for a period in excess of two weeks shall be seeded with a quick germinating variety of grass or covered with a layer of straw mulch.

The temporary cover will act to stabilize the soil and reduce erosion. As construction progresses, areas containing temporary vegetation or straw mulch can be covered without removal of the temporary vegetation or mulch.

#### *A.5.2.2 Permanent Control Measures*

Permanent erosion control measures and facilities will be incorporated during cover construction and during site redevelopment for long-term erosion protection. Permanent measures and facilities will be installed as early as possible during construction phases. Parking and building systems associated with redevelopment shall not include dry wells or other subsurface injections/disposal piping or facilities.

##### *A.5.2.2.1 Design Features*

The remedial construction activities will involve the installation of cover system including asphalt, concrete, or clean fill over the entire site. Permanent erosion control measures incorporate a combination of design features to limit overall erosion and sediment problems to practical design limits, and the placement of permanent facilities during site restoration for long-term erosion protection. The soil cover system will be designed based on the following criteria:

- Maximum slope of 33% (3H: 1V) to limit erosion.
- Minimize the potential contact with, and migration of, waste fill.
- Provide a medium for the growth of vegetation to control erosion.



Design features incorporated into the construction plans to control erosion will include limiting steep slopes, routing runoff to surface water collection channels, limiting flow velocities in the collection channels to the extent practical, and lining collection channels, where appropriate. In areas where flow will be concentrated (i.e; collection channels) the channel slopes and configuration will be designed to maintain channel stability.

#### *A.5.2.2.2 Construction Features*

Any final slopes greater than 25 percent will be reinforced or have a demarcation layer under the clean cover to indicate if erosion has extended into the subgrade. Following the placement of final cover soils over regraded areas, a revegetation program will be implemented to establish permanent vegetation. Vegetation serves to reduce erosion, enhance evapotranspiration, and improve runoff water quality. The areas to be grassed will be seeded in stages as construction is completed with 70 lbs/acre of seed conforming to the mix included in 3.2.1 of the Remedial Work Plan. In addition to the above seed mixture, mulch, mulch blankets, or synthetic fabric will be placed to prevent erosion during turf establishment. Mulch will be placed on all slopes less than 15% and a mulch blanket on all slopes greater than 15%. Synthetic erosion control fabric will be placed in drainage ditches and swales. As an aid to turf establishment, seeded areas will be fertilized with a starter fertilizer.

## **A.6 Dust Controls**

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The surface of unvegetated or disturbed soil/fill areas will be wetted at all times with water or other dust suppressive agents to control dust during construction. There shall be no visible dust generated during redevelopment activities. Any subgrade material left exposed during extended interim periods (greater than 90 days) prior to placement of final cover shall be covered with a temporary cover system (i.e., tarps, spray type cover system, etc.) or planted with vegetation to control fugitive dust to the extent practicable. Particulate monitoring will be performed along the downwind occupied perimeter of parcels during subgrade excavation, grading, and handling activities in accordance with the Community Air Monitoring Plan further detailed in Section 4.2.

Dust suppression techniques will be employed at the site in accordance with NYSDEC TAGM 4031 (Fugitive Dust Suppression and Particulate Monitoring Program at Inactive Hazardous Waste Sites). This TAGM describes guidance for dust monitoring, and includes a list of effective dust suppression techniques. Dust monitoring is more fully described in Section A.12.2 (Community Air Monitoring Program). As per TAGM 4031, dust suppression techniques that may be used at the site include applying water on roadways, wetting equipment, spraying water on buckets during excavation and dumping, hauling materials in properly covered or watertight containers, covering excavated areas and material after excavation activity ceases, establishing vegetative cover immediately after placement of cover soil, and reducing the excavation size and/or number of excavations.

#### **A.7 Construction Water Management**

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Pumping of water (i.e., groundwater and/or storm water that has accumulated in an excavation) from excavations, if necessary, will be done in such a manner as to prevent the migration of particulates, soil/fill, or unconsolidated concrete materials, and to prevent damage to the existing subgrade. Water pumped from excavations will be managed properly in accordance with all applicable regulations so as to prevent endangerment of public health, property, or any portion of the construction.

The groundwater in excavations will be field screened for VOCs and observed for any noticeable sheens. Water in the excavations will not be discharged to the ground surface if:

- Staining or PID measurements above background are observed in the excavation, or
- A sheen is present on the water surface.

If any of these conditions exist, the water pumped from the excavations will be containerized and analyzed in accordance with the Surface Water and Groundwater quality Standards set forth in 6 NYCRR Part 703.5 and the local sewer authority discharge permit. If the water meets the surface water and groundwater quality standards, it may be discharged to the ground surface. If the water does not meet the surface water and groundwater quality standards, it may

be discharged to the local sewer authority under a discharge permit. If the water quality is such that the local sewer authority discharge permit requirements will be exceeded, or the local sewer authority will not approve the discharge to a sewer, it will be transported off-site for proper disposal or treated on-site via a treatment system that has been approved by NYSDEC.

Runoff from surface discharges shall be controlled. No discharges shall enter a surface water body without proper permits.

### **A.8 Fencing And Access Control**

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Access to soil/fill on the site must be controlled until final cover is placed to prevent direct contact with subgrade materials. To better control site access, obvious access points will be gated. All gates and existing fencing will be posted with "No Trespassing" signs. The majority of the site will be covered with clean fill or vegetated via hydroseeding to limit dust generation.

### **A.9 Property Use Limitations**

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The use of the property will be restricted through verbiage in the Brownfield Cleanup Agreement, to which this Remedial Action Work Plan will be attached.

### **A.10 Notification and Reporting Requirements**

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The following minimum notification and reporting requirements shall be followed by the property owner prior to and following site development, as appropriate:

- The NYSDEC and NYSDOH will be notified that subgrade activities are being initiated a minimum of five working days in advance of construction.
- A construction certification report stamped by a New York State licensed Professional Engineer, will be prepared and submitted to the NYSDEC and NYSDOH within 90 days after development of each parcel or subparcel. At a minimum, the report will include:

- An area map showing the parcel or subparcel that was developed and the property's tax map number.
- A topographic map of the developed property showing actual building locations and dimensions, roads, parking areas, utility locations, berms, fences, property lines, sidewalks, green areas, contours and other pertinent improvements and features. The topographic map will be stamped by a New York State licensed surveyor.
- Plans showing areas and depth of fill removal.
- Description of erosion control measures.
- A text narrative describing the excavation activities performed, health and safety monitoring performed (both site specified and Community Air Monitoring), quantities and locations of soil/fill excavated, disposal locations for the soil/fill, soil sampling locations and results, a description of any problems encountered, location and acceptability test results for backfill sources, and other pertinent information necessary to document that the site activities were carried out properly.
- Plans showing before and after survey elevations on a 100-foot grid system to document the thickness of the clean soil cover system.
- A certification that all work was performed in conformance with the SFMP.

## A.11 Quality Assurance and Quality Control (QA/QC)

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### A.11.1 Analytical Methods

All site soil/fill characterization samples collected during site redevelopment activities will be analyzed using EPA-approved analytical methods using the most recent edition of the EPA's "Test Methods for Evaluating Solid Waste" (SW-846). Methods for Chemical Analysis of Water and Wastes "(EPA 600/4-79-020), Standard Methods for Examination of Waste and Wastewater" (prepared and published jointly by the American Public Health Association, American Waterworks Association and Water Pollution Control Federation).

### **A.11.2 Laboratory**

The laboratory proposed to perform the analyses will be certified through the New York State Department of Health Environmental Laboratory Approval Program (ELAP) to perform Contract Laboratory Program (CLP) analysis and Solid Waste and Hazardous Waste Analytical testing on all media to be sampled during this investigation. The laboratory will maintain this certification for the duration of the project.

### **A.11.3 Data Submittal**

The laboratory will perform the analysis of samples in accordance with the most recent (year 2000) NYSDEC Analytical Services Protocol (ASP). Analytical data will be submitted in complete ASP Category B data packs including documentation of laboratory QA/QC procedures that will provide legally defensible data in a court of law. If requested, the Category B data packs will be submitted to the NYSDEC.

Procedures for chain of custody, laboratory instrumentation calibration, laboratory analyses, reporting of data, internal quality control, and corrective actions shall be followed as per SW-846 and as per the laboratory's Quality Assurance Plan. Where appropriate, trip blanks, field blanks, field duplicates, and matrix spike, matrix spike duplicate shall be performed at a rate of 10% and will be used to assess the quality of the data. The laboratory's in-house QA/QC limits will be utilized whenever they are more stringent than those suggested by the EPA methods.

### **A.11.4 Data Usability Summary Reports**

After receipt of analytical results, the data package will be sent to a qualified, third party, data validation specialist for evaluation. A Data Usability Summary Report (DUSR) will be prepared. The DUSR will provide a determination of whether or not the data meets the project specific criteria for data quality and data use.

## **A.12 Health and Safety Procedures for Intrusive or Maintenance Activities**

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### **A.12.1 Construction Personnel Protection**

Contractors engaged in subsurface (invasive) construction or maintenance activities (e.g., foundation and utility workers) will be required to implement appropriate health and safety procedures. These procedures will involve, at a minimum, donning adequate personal protective equipment, performing appropriate air monitoring, and implementing other engineering controls as necessary to mitigate potential ingestion, inhalation and contact with residual constituents in the soils. A site-specific, activity-specific health and safety plan must be prepared by the contractor prior to on-site construction activities. Recommended health and safety procedures include the following:

- While conducting invasive work at the site, the Contractor shall provide working conditions on each operation that shall be as safe and healthful as the nature of that operation permits. The Contractor shall comply with all New York State Department of Labor regulations and published recommendations and regulations promulgated under the Federal Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969, as amended, and with laws, rules, and regulations of other authorities having jurisdiction. Compliance with governmental requirements is mandated by law and considered only a minimum level of safety performance. The Contractor shall insure that all work is performed in accordance with recognized safe work practices.
- The Contractor shall be responsible for the safety of the Contractor's employees, the public and all other persons at or about the site of the work. The Contractor shall be solely responsible for the adequacy and safety of all construction methods, materials, equipment and the safe prosecution of the work.
- The Contractor shall have a written health and safety plan (HASP) prepared, signed and sealed by a safety professional; a safety professional and/or a trained safety representative(s) active on the job whenever the work is in progress; an effective and documented safety training program; and a safety work method check list system.

- The Contractor shall stop work whenever a work procedure or a condition at a work site is deemed unsafe by the safety professional or his trained safety representative(s).
- The Contractor shall employ a properly qualified safety professional whose duties shall be to initiate, review and implement measures for the protection of health and prevention of accidents. The Contractor shall also employ safety representative(s) whose duties, working under the direct supervision of the safety professional, shall include the implementation the safety program for the work at the site.
- Recognition as a safety professional shall be based on a minimum of certification by the Board of Certified Safety Professionals as a Certified Safety Professional and 5 years of professional safety management experience in the types of construction and conditions expected to be encountered on the site.
- The safety representative(s) who will work under the direction of the safety professional will have appropriate qualifications. The required qualifications shall include a minimum of: five years of relevant construction experience, two years of which were exclusively in construction safety management; successful completion of a 30-hour OSHA Construction Safety and Health training course; 40-hour training as per 29 CFR 1926.65, Hazardous Waste Operations and Emergency Response; and, if confined space entry is required, training as per 29 CFR 1910.146, Permit-Required Confined Spaces.
- The safety professional shall visit and audit all work areas as often as necessary but at least once each week and shall be available for consultation whenever necessary.
- The safety representative(s) must be at the job site full-time (a minimum of 8 hours per working day) whenever intrusive work is in progress. When multiple shift work is in progress more than one safety representative may be required.
- The safety professional and his safety representative(s) shall be responsible for ensuring Contractor compliance with governing laws, rules and regulations as well as of good safety practice.
- The safety staff shall maintain and keep available safety records, up-to-date copies of all pertinent safety rules and regulations, Material Safety Data Sheets, and the Contractors' site specific health and safety plans (HASPs) and the site emergency response plan with emergency and telephone contacts for supportive actions.

- The responsible safety professional shall sign and seal the Contractor's written site-specific HASP and the Plan shall be available to workers on site. The Contractor shall provide copies of the HASP to the Contractors' insurer, if required.
- The HASP will identify and define the following: the hazards anticipated for each major invasive task; the engineering, administrative and/or personal protective equipment control measures that will be implemented; the surveillance methods, and schedules of both walk through surveys and in-depth safety audits to be performed on site; medical monitoring and screening methods; the Contractors' pre-start-up and continuous safety-training program; emergency response equipment, notification, training and procedures; and include copies of safety inspection check-off sheets, specific to the work methods and crews performing work at the various job locations, to be used on a regular basis in evaluating the site and work methods.
- The safety professional and/or his trained safety representative(s) shall as a minimum:
  - Schedule and conduct safety meetings and safety training programs as required by law, the health and safety plan, and good safety practice. A specific schedule of dates of these meetings and an outline of materials to be covered shall be provided with the health and safety plan. All employees shall be instructed on the recognition of hazards, observance of precautions, of the contents of the health and safety plan and the use of protective and emergency equipment.
  - Determine that operators of specific equipment are qualified by training and/or experience before they are allowed to operate such equipment.
  - Develop and implement emergency response procedures. Post the name, address and hours of the nearest medical doctor, name and address of nearby clinics and hospitals, and the telephone numbers of the appropriate ambulance service, fire, and the police department.
  - Post all appropriate notices regarding safety and health regulations at locations that afford maximum exposure to all personnel at the job site.
  - Post appropriate instructions and warning signs in regard to all hazardous areas or conditions that cannot be eliminated. Identification of these areas shall be based on



experience, on site surveillance, and severity of hazard. Such signs shall not be used in place of appropriate workplace controls.

- Ascertain by personal inspection that all safety rules and regulations are enforced. Make inspections at least once a shift to ensure that all machines, tools and equipment are in a safe operating condition; and that all work areas are free of hazards. Take necessary and timely corrective actions to eliminate all unsafe acts and/or conditions, and submit to the Engineer each day a copy of his findings on the inspection check list report forms established in the health and safety plan.
- Provide safety training and orientation to authorized visitors to ensure their safety while occupying the job site.
- Perform all related tasks necessary to achieve the highest degree of safety that the nature of the work permits.
- The Contractor shall have proper safety and rescue equipment, adequately maintained and readily available, for foreseeable contingencies. This equipment may include such applicable items as: proper fire extinguishers, first aid supplies, safety ropes and harnesses, stretchers, water safety devices, oxygen breathing apparatus, resuscitators, gas detectors, oxygen deficiency indicators, combustible gas detectors, etc. This equipment should be kept in protected areas and checked at scheduled intervals. A log shall be maintained indicating who checked the equipment, when it was checked, and that it was acceptable. This equipment log shall be updated monthly and be submitted with the monthly report. Equipment that requires calibration shall have copies of dated calibration certificates on site. Substitute safety and rescue equipment must be provided while primary equipment is being serviced or calibrated.
- All personnel employed by the Contractor or his subcontractors or any visitors whenever entering the job site, shall be required to wear appropriate personal protection equipment required for that area. The Contractor may remove from the site any person who fails to comply with this or any other safety requirement.
- Because water with elevated pH may act as a skin irritant, care must be taken to inhibit dermal contact when handling any groundwater at the site. Actions to inhibit

contact with groundwater may include the use of latex or other waterproof gloves by on-site workers.

### A.12.2 Community Air Monitoring Program

Ambient air monitoring will be conducted by the Professional Engineer monitoring the work on a real-time basis during all subsurface construction activities using a minimum of a photoionization detector and a dust meter. Battery charge level for each instrument will be checked at the beginning and end of each day. The instruments will be calibrated at a frequency recommended by the manufacturer. All air monitoring readings will be recorded in a logbook and will be available for review by the NYSDEC and New York State Department of Health (NYSDOH).

Baseline conditions will be measured at proposed intrusive activity locations prior to commencement of operations. Air quality within the work zone will be monitored in accordance with the site-specific health and safety plan created by the site developer or contractor. In addition to monitoring the work area for worker health and safety, volatile organic compounds will be monitored at the downwind perimeter of the work area every hour. If downwind perimeter organic vapor levels exceed five parts per million (ppm) above the upwind work area perimeter concentrations, the Vapor Emission Response Plan will be implemented.

As described in Section A.6, appropriate dust suppression techniques will be employed at all times during site redevelopment activities. Using a dust meter, particulates will be continuously monitored immediately downwind in the work area and integrated over a period not to exceed 15 minutes. If the downwind particulate level is more than  $150 \text{ ug/m}^3$ , then upwind (background) levels must be measured immediately. If the downwind levels are more than  $100 \text{ ug/m}^3$  above background, additional dust suppression measures must be taken.

#### *A.12.1.1 Vapor Emission Response Plan*

If the downwind area perimeter air concentrations of organic vapors exceed the upwind work area perimeter concentration by 5 ppm but less than 25 ppm, the following actions will be taken:

- Every 30 minutes monitor the perimeter work area location.
- Every 30 minutes monitor the organic vapor concentration 200 feet downwind of the work area perimeter or half the distance to the nearest receptor, whichever is less. If this reading exceeds the perimeter work area upwind organic vapor concentration by 5 ppm, all work must halt and monitoring increased to every 15 minutes. If, at any time, this reading exceeds the perimeter work area upwind concentration by 10 ppm, the Major Vapor Emissions Response Plan will be initiated.
- If organic vapor levels 200 feet downwind of the perimeter work area or half the distance to the nearest downwind receptor, whichever is less, exceeds by 5 ppm the work area perimeter upwind concentration persistently, then air quality monitoring must be performed within 20 feet of the nearest downwind receptor (20-foot zone). If the readings in the 20-foot zone exceed the perimeter work area upwind concentration by 5 ppm for more than 30 minutes, then the Major Vapor Emissions Response Plan will be implemented.
- Work activities can resume only after the downwind 200-foot reading and the 20-foot zone reading are less than 5 ppm above the perimeter work area upwind concentration. In addition, the downwind perimeter work area concentration must be less than 25 ppm above the perimeter work area upwind concentration.

#### *A.12.2.2 Major Vapor Emission Response Plan*

If the downwind work area perimeter organic vapor concentration exceeds the upwind work area perimeter concentration by more than 25 ppm, then the Major Vapor Emission Response Plan will be activated. Upon activation, the following activities will be undertaken:

1. All work will halt.
2. All Emergency Response Contacts as listed in the Health and Safety Plan will be contacted.

3. The NYSDEC, NYSDOH, and the Steuben County Health Department will be notified and advised of the situation.
4. The local police and fire department authorities will immediately be contacted by the Safety Officer and advised of the situation.
5. Frequent air monitoring will be conducted at 30-minute intervals within the 20-Foot Zone. If two successive readings below action levels are measured, air monitoring may be halted or modified by the Safety Officer and work may resume