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

THIS INDENTURE made this 3rd day of January, 2012 between Owner(s) County of Chautauqua, having an office at Gerace Office Building, 3 North Erie Street, Mayville, New York 14757 (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233.

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 320 South Roberts Road in the City of Dunkirk, County of Chautauqua and State of New York, known and designated on the tax map of the County Clerk of Chautauqua as tax map parcel numbers: Section 79.12 Block 4 Lot(s) 29 and 30, being the same as that property conveyed to Grantor by deed dated December 1, 2001 and recorded on May 23, 2002 in the Chautauqua County Clerk's Office in Book 2494 at Page 59 and by deed dated December 1, 2001 and recorded on May 23, 2002 in the Chautauqua County Clerk's Office in Book 2494 at Page 49. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 11.83 +/- acres, and is hereinafter more fully described in the ALTA/ACSM Land Title Survey dated August 18, 2009 prepared by TVGA Consultants, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of State Assistance Contract Number: C302808, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

[6/11]

- (1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).
- (2) the institutional controls and/or engineering controls employed at such site:
 - (i) are in-place;
 - (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
 - (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
- (3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;
- (4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
- (5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;
- (6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and
- (7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

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

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

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

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

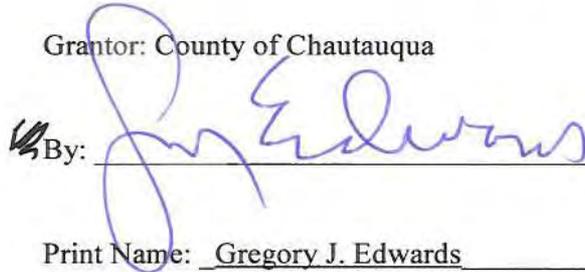
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9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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

Grantor: County of Chautauqua

By: 

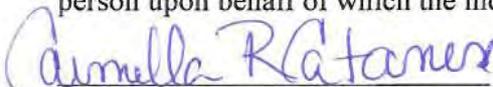
Print Name: Gregory J. Edwards

Title: County Executive Date: 12/29/11

Grantor's Acknowledgment

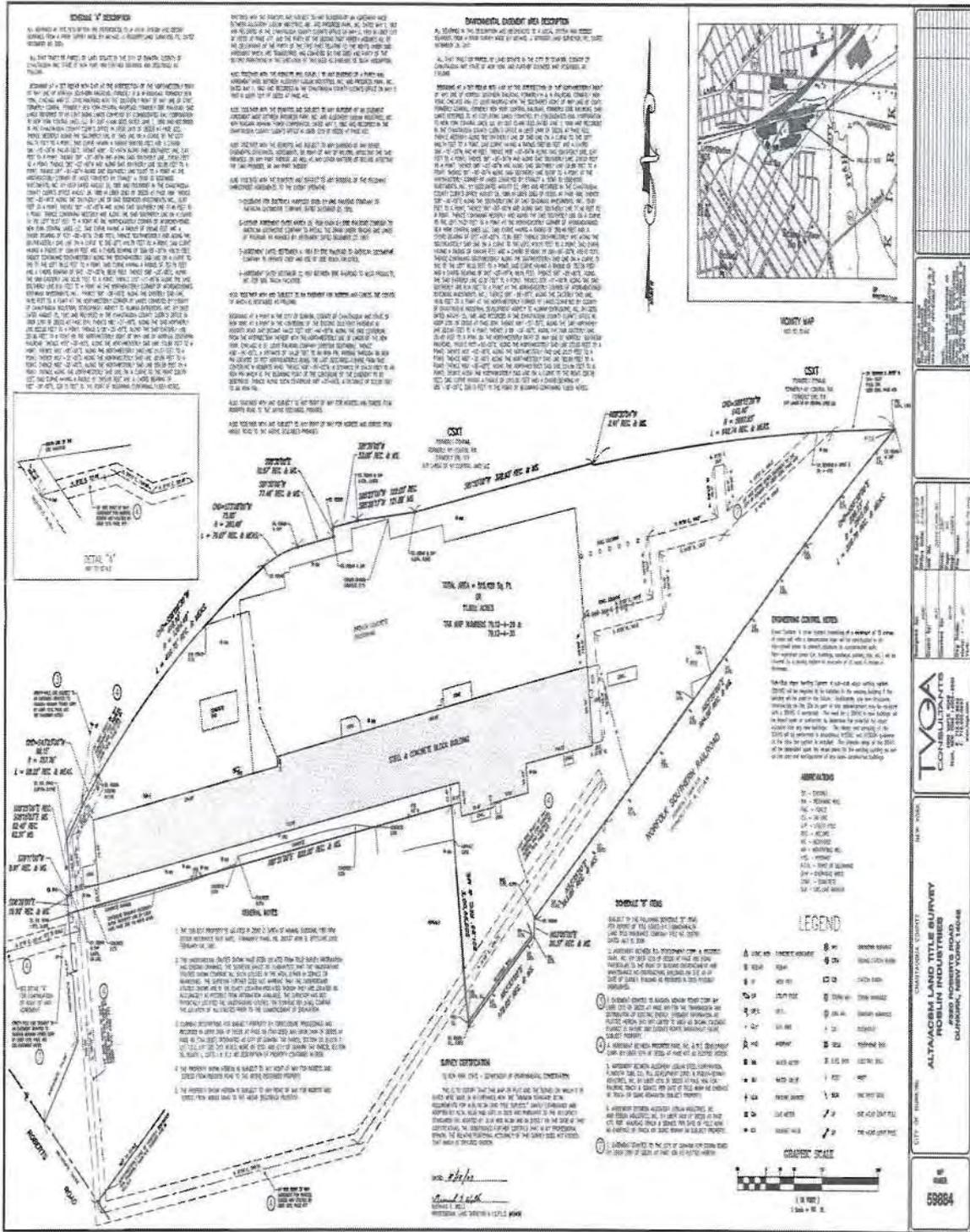
STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 29th day of December in the year 20 11, before me, the undersigned, personally appeared Gregory J. Edwards, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public - State of New York

CARMELLA R. CATANESE
Notary Public - State of New York
No. 01CA5026583
Qualified in Chautauqua County
My Commission Expires 4/25/20 14

SURVEY



SCHEDULE "A" PROPERTY DESCRIPTION

Property Address: 320 South Roberts Road, Dunkirk, Chautauqua County, NY
Tax Map: 79.12 - 4 - 29 & 79.12 - 4 - 30

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Policy No. Pro Forma policy Draft No. 4 Title No. 292765

Schedule "A" Description

All that tract or parcel of land situate in the city of Dunkirk, county of Chautauqua and state of New York and further bounded and described as follows:

Beginning at a set rebar with cap at the intersection of the northwesterly right of way line of Norfolk Southern Railroad, formerly N & W Railroad, formerly New York, Chicago and St. Louis Railroad with the southerly right of way line of CSXT, formerly Conrail, formerly New York Central Railroad, formerly Erie Railroad, said lands referred to as CSXT being lands conveyed by Consolidated Rail Corporation to New York Central Lines, LLC by quit claim deed dated June 1, 1999 and recorded in the Chautauqua County Clerk's Office in Liber 2418 of deeds at page 623; thence westerly along the southerly line of said line on a curve to the left 642.74 feet to a point, said curve having a radius 5687.65 feet and a chord S86°-15'-29"W, 642.40 feet; thence N08°-30'-04"W along said southerly line, 2.41 feet to a point; thence S81°-30'-00"W and along said southerly line, 378.93 feet to a point; thence S85°-22'-00"W and along said southerly line 121.88 feet to a point; thence S81°-30'-00"W along said southerly line 53.00' to a point at the northeasterly corner of lands conveyed by Stanley A. Star to Edgewood Investments, Inc. by deed dated August 23, 1985 and recorded in the Chautauqua County Clerk's Office August 26, 1985 in Liber 2063 of deeds at page 488; thence S08°-30'-00"E along the southerly line of said Edgewood Investments, Inc., 10.97 feet to a point; thence S81°-30'-00"W and along said southerly line 77.46 feet to a point; thence continuing westerly and along the said southerly line on a curve to the left 76.07 feet to a point at the northeasterly corner of aforementioned New York Central Lines, LLC, said curve having a radius of 260.49 feet and a chord S73°-08'-00"W, 75.80 feet; thence southwestwesterly and along the southeasterly said line on a curve to the left, 419.75 feet to a point, said curve having a radius of 1364.49 feet and a chord S56°-09'-30"W, 418.10 feet; thence continuing southwestwesterly along the southeasterly said line on a curve to the to the left 98.22 feet to a point said curve having a radius of 757.76 feet and a chord S43°-23'-00"W, 98.15 feet; thence S08°-25'-00"E along the said easterly line 62.51 feet to a point; thence S79°-11'-00"W along the said southerly line 8.91 feet to a point at the northeasterly corner of aforementioned Edgewood Investments, Inc.; thence S08°-39'-00"E along the easterly said line, 19.90 feet to a point at the northwesterly corner of lands conveyed by County of Chautauqua Industrial Development Agency to Alumax Extrusions, Inc. by deed dated August 25, 1995 and recorded in the Chautauqua County Clerk's Office in Liber 2351 of deeds at page 874; thence N81°-

Page 2

Schedule A

31'-00"E along the said northerly line 822.00 feet to a point; thence S08°-29'-00"E along the said easterly line 251.95 feet to a point on the northwesterly right of way line of Norfolk Southern Railroad; thence N53°-33'-00"E along the northwesterly said line 172.65 feet to a point; thence N03°-05'-00"E along the northwesterly said line 20.37 feet to a point; thence N53°-33'-00"E along the northwesterly said line 183.89 feet to a point; thence N53°-35'-00"E along the northwesterly said line 524.58 feet to a point; thence along the northwesterly said line on a curve to the right 228.79 feet, said curve having a radius of 2915.00 feet and a chord N55°-38'-00"E, 228.73 feet to the point of beginning.

Environmental Easement Area Description

All that tract or parcel of land situate in the city of Dunkirk, county of Chautauqua and state of New York and further bounded and described as follows:

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Schedule A

and along the southeasterly said line on a curve to the left, 419.75 feet to a point, said curve having a radius of 1364.49 feet and a chord bearing S56-09'-30"W, 418.10 feet; thence continuing southwesterly along the southeasterly said line on a curve to the to the left 98.22 feet to a point said curve having a radius of 757.76 feet and a chord bearing S43°-23'-00"W, 98.15 feet; thence S08°-25'-00"E along the said easterly line 62.51 feet to a point; thence S79°-11'-00"W along the said southerly line 8.91 feet to a point at the northeasterly corner of aforementioned Edgewood Investments, Inc.; thence S08°-39'-00"E along the easterly said line, 19.90 feet to a point at the northwesterly corner of lands conveyed by County of Chautauqua Industrial Development Agency to Alumax Extrusions, Inc. by deed dated August 25, 1995 and recorded in the Chautauqua County Clerk's Office in Liber 2351 of deeds at page 874; thence N81°-31'-00"E along the said northerly line 822.00 feet to a point; thence S08°-29'-00"E along the said easterly line 251.95 feet to a point on the northwesterly right of way line of Norfolk Southern Railroad; thence N53°-33'-00"E along the northwesterly said line 172.65 feet to a point; thence N03°-05'-00"E along the northwesterly said line 20.37 feet to a point; thence N53°-33'-00"E along the northwesterly said line 183.89 feet to a point; thence N53°-35'-00"E along the northwesterly said line 524.58 feet to a point; thence along the northwesterly said line on a curve to the right 228.79 feet, said curve having a radius of 2915.00 feet and a chord bearing N55°-38'-00"E, 228.73 feet to the point of beginning.