

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

THIS INDENTURE made this 22<sup>nd</sup> day of September, 2010, between Owner(s) Town of Webb, a municipal corporation, having an office at Information Center, State Route 28, Old Forge, New York 13402, County of Herkimer, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

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

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

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

WHEREAS, Grantor, is the owner of real property located at the Northeast Corner, New York State Route 28 and Big Moose Road, Hamlet of Eagle Bay, Town of Webb, County of Herkimer and State of New York, known and designated on the tax map of the County Clerk of Herkimer as tax map parcel number: Section 39.033 Block 1 Lot 51, being the same as that property conveyed to Grantor by deed dated May 22, 2003 and recorded in the Herkimer County Clerk's Office in Book 924 of Deeds at page 374, comprising of approximately 0.4171 ± acres, and hereinafter more fully described in the Land Title Survey dated December 3, 2009, revised August 19, 2010 and September 14, 2010 prepared by Schumaker Consulting Engineering & Land Surveying P.C. Drawing No. 832501, which will be attached to the Site Management Plan. The property description (the "Controlled Property") 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 human 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: C302573, 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, 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:

Regional Remediation Engineer  
NYSDEC – Region 6  
Division of Environmental Remediation  
317 Washington Street  
Watertown, NY 13601-3787,  
Phone: (315) 785 - 2238

or

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:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:  
(i) are in-place;  
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

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

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

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

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

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a

defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

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

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:      Site Number: B00201  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

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

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

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

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

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

Town of Webb:

By: Robert A. Moore

Print Name: Robert A. Moore

Title: Supervisor Date: 9/22/10

**Grantor's Acknowledgment**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF Herkimer )

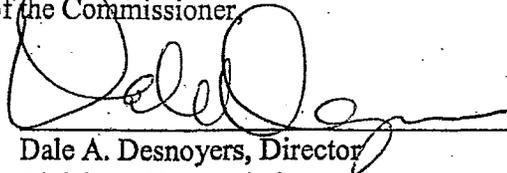
On the 22<sup>nd</sup> day of Sept, in the year 20 10, before me, the undersigned, personally appeared Robert A. Moore, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that 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.

Nanci T. Russell  
Notary Public - State of New York

NANCI T. RUSSELL  
Notary Public In The State Of New York  
No. 01RU6074444  
Appointed In Herkimer County  
My Commission Expires 5/22/2014

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.

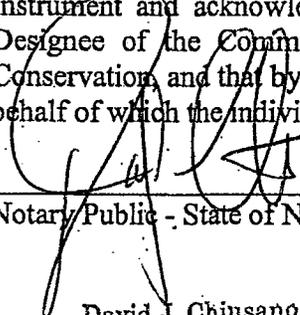
By:

  
Dale A. Desnoyers, Director  
Division of Remediation

Grantee's Acknowledgment

STATE OF NEW YORK )  
COUNTY OF Albany ) ss:

On the 6<sup>th</sup> day of October, in the year 2018 before me, the undersigned, personally appeared Dale Desnoyers 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/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public - State of New York

David J. Chiusano  
Notary Public, State of New York  
No. 01CH5032146  
Qualified in Schenectady County  
Commission Expires August 22, 2017

**SCHEDULE "A" PROPERTY DESCRIPTION**

Tax Map No. : 39.033-1-51

Town of Webb, Herkimer County, NY

**SCHEDULE "A" PROPERTY DESCRIPTION AND ENVIRONMENTAL EASEMENT AREA  
DESCRIPTION**

Being all that tract or parcel of Land, situate in the Town of Webb, County of Herkimer, and the State of New York, and described as follows:

**BEGINNING** at a ½" pipe on the easterly road boundary of Big Moose Road, County Road No. 1 at its intersection with the division line between the property of the Town of Webb on the south and the property of Dorothy M. Kittel on the north;

Thence easterly along said division line between the property of The Town of Webb on the south and the properties of Dorothy M. Kittel; Clarence A. Hawksley and Melba Ruth Hawksley; Cheryl Anne Ashbee Kazzyaka and Cindy Tonkin on the north the following two courses and distances:

1) Easterly along a curve to the right a distance of 71.48 feet having a radius of 1457.69 feet and subtended by a chord having a length of 71.47 feet with a bearing of S 88°23'24" E to a point of tangency;

2) S 86°59'07" E, a distance of 128.28 feet to a point at its intersection with the property of the Town of Webb on the West and the property of the Town of Webb on the east;

Thence S 05°52'52" W along said division line a distance of 106.48 feet to a point at its intersection with the northerly highway boundary of New York State Route 28, State Highway No. 8180;

Thence along said northerly highway boundary the following two (2) courses and distances:

3) N 77°36'33" W, 65.99 feet to a point of curvature;

4) Westerly along a curve to the left a distance of 125.92 feet having a radius of 684.75 feet and subtended by a chord having a length of 125.74 feet with a bearing of N 82°52'38" W to a point at its intersection with the easterly road boundary of Big Moose Road, County Road No. 1;

Thence N 00°23'53" E along said easterly road boundary a distance of 84.92 feet to the **POINT OF BEGINNING**.

The above described parcel containing 0.4171 acres or 18168 square feet.

Being the same as the land conveyed by Charles Thibado and Marlene J. Thibado to the Town of Webb by deed dated May 22, 2003 and recorded June 24, 2003 in the Herkimer County Clerk's Office in Book 924 Page 374 of Deeds.



**TITLE AFFIDAVIT**

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF HERKIMER )

RICHARD A. FRYE, being duly sworn, deposes and says:

1.       That I am the attorney for the Town of Webb, which is the owner of certain property situated on the North side of New York State Route 28 at the intersection of Big Moose Road (County Road No. 1), in Eagle Bay, New York (Town of Webb Tax Map No. 39.033-1-51).

2.       That the Town of Webb has owned and occupied the property since title was acquired from Charles Thibado and Marlene J. Thibado by deed dated May 22, 2003, and recorded in the Herkimer County Clerk's Office on June 24, 2003 in Book 924 of Deeds at Page 374.

3.       That to my knowledge, title to said property has never been disputed or questioned, nor do I know of any facts by reason of which title to, or possession of, said property might be disputed or questioned, or by reason of which any claim to any of said property might be asserted adversely against the Town.

4.       There are no unpaid taxes, assessments, water charges, or sewer rents against the premises now due and owing.

5.       A survey of the premises entitled "Survey of Environmental Easement Area On Lands Owned by the Town of Webb", which survey was dated December 3, 2009, revised August 19, 2010 and September 14, 2010, and prepared by Schumaker Consulting Engineering & Land Surveying, P.C. shows the premises as they exist today.

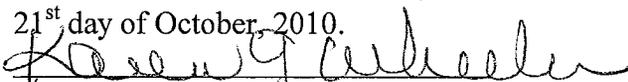
6. That the Town of Webb presently has title to the property which is described in Schedule A attached to the Environmental Easement granted to the State of New York acting through the Department of Environmental Conservation, which easement was recorded on October 15, 2010, in the Herkimer County Clerk's Office as Instrument No. 2010-00161339.

7. That there are no encroachments or easements other than ordinary utility easements on the property, except for a water line easement given by the Town to Harold G. Youmans and Louise L. Youmans whose property is now owned by Brian and Phyllis DeYoung and an unrecorded waterline easement given to the Eagle Bay Park Association, Inc.

8. That I have no knowledge of any violation of any covenant, restriction, agreement or condition affecting the said property or the buildings or improvements situated thereon.

  
\_\_\_\_\_  
RICHARD A. FRYE, ESQ.

Sworn to before me this  
21<sup>st</sup> day of October, 2010.

  
NOTARY PUBLIC - State of N.Y.

KAREN G. WHEELER  
Notary Public in the State of New York  
Appointed in Oneida County  
My Commission Expires 11/30/13