

ENVIRONMENTAL EASEMENT

THIS INDENTURE made this 1<sup>st</sup> day of November, 2006, between S&W Redevelopment, LLC residing at (or having an office at ) 430 East Genesee Street, Syracuse, NY 13202, (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 ("brownfield 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 of ensuring the potential 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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

**WHEREAS**, Grantor, is the owner of real property located in the City of Syracuse, County of Onondaga, New York known as 380 and 400-404 Spencer Street and designated on the tax map of the City of Syracuse as tax map parcel numbers 117.08.07.0 section 117 block 08 lot 07.0, and 117.08.06.1 section 117 block 08 lot 06.1, being the same as that property conveyed to Grantor by deed on September 5, 2002, and recorded in the Land Records of the County Clerk at page 807, Liber 4742 of Deeds, comprised of approximately 2.7-acres, and hereinafter more fully described in Schedule A attached hereto and made a part hereof ( the " Controlled Property"); and;

**WHEREAS**, the Commissioner does hereby acknowledge that 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 at this 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 covenants and mutual promises contained herein and the terms and conditions of **Brownfield Cleanup Agreement Number D7-0001-0005**, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

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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 potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls 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. The Controlled Property may be used for restricted commercial or industrial use as long as the following long-term engineering controls are employed:

(i) the Grantor or its successors in title must maintain a barrier layer on the Controlled Property of either one foot of clean fill or an alternative barrier layer approved by the NYSDEC, such as concrete, asphalt, or structure; and

(ii) any proposed soil excavation on the Controlled Property below the barrier layer requires prior notification and prior approval by NYSDEC in accordance with a Site Management Plan approved by NYSDEC for this site, and the excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives; and

(iii) any area of soil excavation below the barrier layer that is to be returned to vegetated soil (i.e.: not concrete, asphalt or structures) must be backfilled with a minimum one (1) foot layer of clean fill underlain by a demarcation layer; and

(iv) any structure(s) that may be constructed in the future on the East Parcel (380 Spencer St.) shall be constructed with an active sub-slab depressurization system approved by the NYSDEC

(v) The Grantor or its successors in title must maintain the concrete floor barrier installed within the existing building on the West Parcel (400-404 Spencer St.) along with labels on the barrier surface.

B. the use of groundwater underlying the Controlled Property is prohibited without prior approval from NYSDEC for treatment to render it safe for use for drinking or industrial purposes.

C. the Controlled Property may not be used for a higher level of use such as unrestricted/ residential / commercial use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

D. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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 of Title 36 to Article 71 of the Environmental Conservation Law.**

E. 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.

F. 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 that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 Controlled Property, including:

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

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, 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 intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or the Satisfactory Completion of Project provided under ECL Article 56, Title 5 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. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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 its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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.

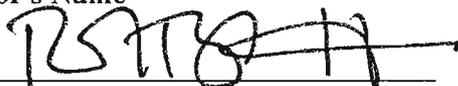
8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed 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 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's Name

By: 

Title: Manager

Date: November 1, 2006

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

By: *Denise M. Sheehan* for *Denise M. Sheehan*  
Denise M. Sheehan, Commissioner

Grantor's Acknowledgment

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

On the 1<sup>st</sup> day of NOV., in the year 2006, before me, the undersigned, personally appeared *Robert Patrowitz*, 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.

*Diane R. Chappell-Daly*

Notary Public - State of New York

DIANE R. CHAPPELL DALY  
Notary Public - State of New York  
Registration No. 02NA047352  
Qualified in Onondaga County  
My Commission Expires July 31, 2007

Grantee's Acknowledgment

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

On the 5<sup>th</sup> day of DECEMBER, in the year 2006, before me, the undersigned, personally appeared *LYNETTE M. STARK*, 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 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.

*Michael P. Naughton*  
MICHAEL P. NAUGHTON  
Notary Public New York State  
Registration No. 02NA6002587  
Qualified In Saratoga County  
Commission Expires Feb 9, 2010

Notary Public - State of New York

SCHEDULE A

## SCHEDULE A

### PARCEL I

ALL THAT TRACT OR PARCEL OF LAND at 400-04 Spencer Street situate in the City of Syracuse, Onondaga County, New York and described as follows:

All that part of Farm Lot 304 of the Onondaga Salt Springs Reservation described as follows:

BEGINNING at a point on the westerly bank of Onondaga Creek and on the center line of Spencer Street produced; said point being 308 feet easterly of the intersection of the center line of Spencer Street produced, with the easterly line of Leavenworth Avenue produced; running thence in a westerly direction along said center line of Spencer Street 50 feet; thence northerly and at right angles to said center line 216 feet, more or less, to the center of the old channel of Onondaga Creek; thence in an easterly direction along said center line of old channel to the westerly bank of the present channel of Onondaga Creek; thence southerly along said westerly bank to the place of beginning.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, described as follows, to wit:

ALL that part of Farm Lot 304 in the Onondaga Salt Springs Reservation described as follows:

BEGINNING at a point 50 feet west of the westerly bank of Onondaga Creek, and on the center line of Spencer Street produced, said point being 258 feet easterly of the intersection of the center line of Spencer Street produced, with the easterly line of Leavenworth Avenue produced; running thence in a westerly direction along said center line of Spencer Street 50 feet; thence northerly and at right angles to said center line 216 feet to the center of the old channel of Onondaga Creek; thence in an easterly direction along said center line of old channel to the westerly line of property owned by Adolph Harnisch; thence southerly along said westerly line to the place of beginning.

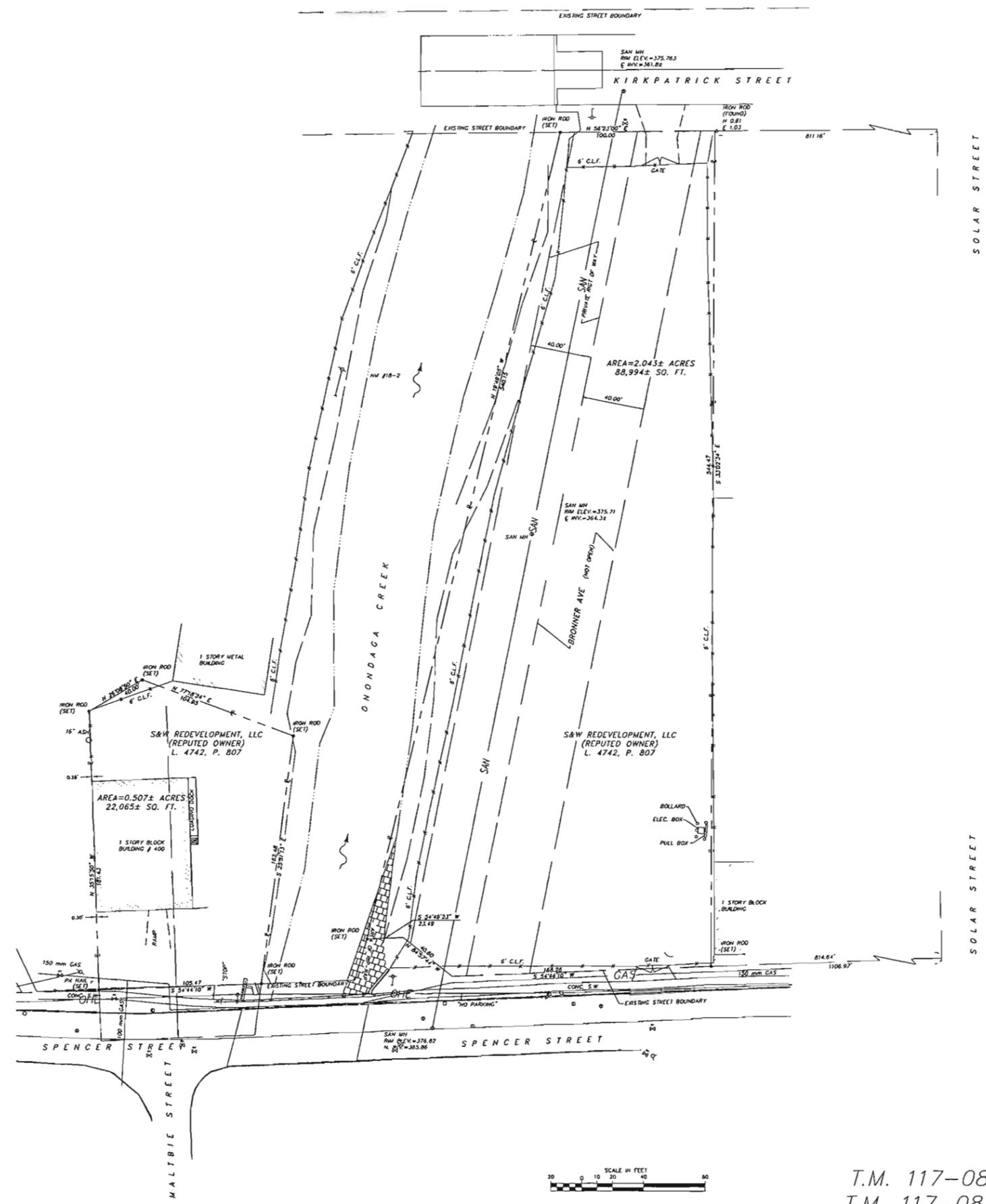
### PARCEL II

ALL THAT TRACT OR PARCEL OF LAND, situate, lying and being in the City of Syracuse, County of Onondaga and State of New York, being part of Salina 15 acre Marsh Lots 35, 36 and 37, Part of Lot 4 and all Lots 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 as shown on an amended map of the Bronner Tract filed in Onondaga County Clerk's Office, January 12, 1893, bounded and described as follows:

BEGINNING at a point in the southeasterly line of Kirkpatrick Street which point is 100 feet easterly from the westerly line of Lot 4 of the Bronner Tract as shown on an amended map of the Bronner Tract filed in the Onondaga County Clerk's Office January 12, 1893; thence South  $56^{\circ} 13' 50''$  West along the southeasterly line of Kirkpatrick Street a distance of 100 feet to the westerly line of Lot 4 of said Bronner Tract; thence southerly along the easterly bank of Onondaga Creek, being also the westerly line of the Bronner Tract to a pipe in the northwesterly line of Spencer Street and the southwest corner of Lot 18 of said Bronner Tract; thence North  $54^{\circ} 35' 00''$  East along the northwesterly line of Spencer Street 214 feet to a point in said line which is about 814.64 feet from the southwesterly line of Solar Street; thence northerly about 535.82 feet to the southeasterly line of Kirkpatrick Street, and the point and place of beginning.

EXCEPTING AND RESERVING THEREFROM, lands appropriated by Appropriation by People of the State of New York, dated February 10, 1993 and recorded February 10, 1993 in the Onondaga County Clerk's Office in Liber 3826 of Deeds, page 48.

STATE OF NEW YORK, COUNTY OF ONONDAGA SS  
I, M. ANN CIARPELLI, CLERK OF THE COUNTY OF ONONDAGA OF THE COUNTY COURT OF SAID  
COUNTY AND OF THE SUPREME COURT BOTH BEING COURTS OF RECORD HAVING A COMMON SEAL  
DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL FILED, RETURNED,  
FILED AND RECORDED, FILED AND ENTERED OR ENTERED IN THIS OFFICE AND THAT THE SAME IS A  
CORRECT TRANSCRIPT THEREOF AND OF THE WHOLE OF SAID ORIGINAL.  
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL  
OF SAID COUNTY  
AND OFFICE ON  
DEC. 14, 2006  
M. Ann Ciarpelli  
CLERK  
FACSIMILE SIGNATURE USED PURSUANT TO SEC. 903 COUNTY LAW.



MAP REFERENCES:

1. SURVEY MAP FOR THE PARCEL ON THE WEST SIDE OF ONONDAGA CREEK BY COTTRELL AND DATED MAY 31, 1985.
2. STATE ACQUISITION MAP FOR SPENCER STREET BIN 2208580 OVER ONONDAGA CREEK, MAP No. 1 PARCEL No. 2 BY ROBERT F. DEVOLVE AND DATED DECEMBER 30, 1992.
3. SURVEY MAP ENTITLED "OPENING OF BRONNER AVENUE" AND FILED IN THE COUNTY CLERK'S OFFICE ON APRIL 3, 1922.

DEED REFERENCES:

1. DEED FROM AMERICAN BAG & METAL TO S&W REDEVELOPMENT, LLC AS FILED IN ONONDAGA COUNTY CLERK'S OFFICE IN LIBER 4742 AT PAGE 807.
2. BARGAIN AND SALE DEED FROM IRVING S. SCHOTZ & DAVID H. SCHOTZ, TO AMERICAN BAG & METAL CO., INC., DATED JULY 1, 1999, AND FILED IN THE ONONDAGA COUNTY CLERK'S OFFICE IN LIBER 4336 ON PAGE 22, ON JULY 9, 1999.
3. BARGAIN AND SALE DEED FROM IRVING S. SCHOTZ & DAVID H. SCHOTZ, TO AMERICAN BAG & METAL CO., INC., DATED JULY 1, 1999, AND FILED IN THE ONONDAGA COUNTY CLERK'S OFFICE IN LIBER 4336 ON PAGE 24, ON JULY 9, 1999.

UTILITY NOTE

EXISTING UNDERGROUND FACILITIES, STRUCTURES, AND UTILITIES HAVE BEEN PLOTTED FROM AVAILABLE PLANS, RECORDS AND SURVEYS. THEIR LOCATION MUST THEREFORE BE CONSIDERED APPROXIMATE AND NO GUARANTEE IS MADE BY BRYANT ASSOCIATES, P.C. TO THE HORIZONTAL OR VERTICAL LOCATION OF SUCH FACILITIES, STRUCTURES AND UTILITIES. THERE MAY BE OTHERS, THE EXISTENCE OF WHICH IS PRESENTLY UNKNOWN. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE HORIZONTAL AND VERTICAL LOCATIONS OF ALL FACILITIES, STRUCTURES AND UTILITIES IN THE FIELD PRIOR TO COMMENCING WORK.

Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, sub-division 2, of the New York State Education Law.

Only copies from the original of this survey marked with an original of the land surveyor's embossed seal shall be considered to be valid true copies.



I HEREBY CERTIFY THAT THIS IS AN ACCURATE MAP MADE FROM AN ACCURATE SURVEY PREPARED UNDER MY DIRECTION

June 14, 2006

*Thomas W. Bock*

THOMAS W. BOCK, P.E., L.S.  
PLS LICENSE No. 049212  
FOR BRYANT ASSOCIATES, P.C.



S&W REDEVELOPMENT, L.L.C.  
(REPUTED OWNER)

CITY OF SYRACUSE  
ONONDAGA COUNTY, NEW YORK

MAP 1 PARCEL

T.M. 117-08-06.1  
T.M. 117-08-07.0

