

County: Onondaga

Site No. C734103

BCA No. B7-0679-04-1 1

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

THIS INDENTURE made this 17th day of December, 2007, between Owner(s) Pioneer Midler Avenue, LLC residing at (or having an office at) 250 South Clinton Street, Syracuse, New York 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 ("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 site remediation 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 621 and 629 S. Midler Avenue in the City of Syracuse, Onondaga County, New York known and designated on the tax map of the City of Syracuse as tax map parcel number section 33.01 block 1 lot 02 and section 33.01 block 1 lot 19 being the same as that property conveyed to Grantor by deed from Surton Investing Corp. on August 31, 2005 , and recorded in the Land Records of the Onondaga County Clerk in liber 4902 of deeds at page 033, and by deed from Pioneer Realty Company, Inc. on August 31, 2005 and recorded in the land records of the Onondaga County Clerk in liber 4902 of deeds at page 029, comprised of approximately 21.8 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 B7-0679-04-11,

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").

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 commercial or industrial use as long as the following long-term engineering controls are employed:

(i) compliance with the Department-approved Site Management Plan ("SMP") for the implemented remedy until the remedial goals for the Controlled Property are attained or deemed complete by the Department;

(ii) maintenance at a minimum of a one foot cover system or a six inch pavement system or buildings over the Site and any disturbance of or excavation from the Site cover system at depths greater than the one foot shall be done in accordance of the requirements of the SMP;

(iii) the groundwater beneath the Controlled Property cannot be used as a potable water source or for any other use without prior written permission of the Department and the pumping and discharge of groundwater to the waters of the State shall not be allowed without appropriate treatment and approval of the governing State, County or Municipal authority;

(iv) continued groundwater monitoring in accordance with the SMP until the Department determines that such monitoring is unnecessary;

(v) installation and maintenance in accordance with the standards and procedures specified in the SMP of subslab depressurization ("SSD") systems for all buildings and building additions to be constructed on the Site and the continued operation and maintenance in accordance with the SMP of those SSD systems already installed on the Site;

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated December 2007. The SMP describes obligations that 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 on the Controlled Property, 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. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP.

The notice shall be a final agency determination. 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:
Region 7
New York State Department of Environmental Conservation
615 Erie Blvd. West
Syracuse, New York 13204-2400

or:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233

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

C. 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 to Title 36 of Article 71 of the Environmental Conservation Law.

D. 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.

E. 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 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 the following information:

County, NYSDEC Site Number, NYSDEC Contract, BCA or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:

Environmental Easement Attorney
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-1500

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.

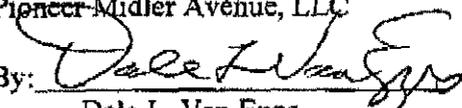
8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed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

Pioneer-Midler Avenue, LLC

By: 

Dale L. Van Epps

Title: Executive Committee Member

Date: December 17, 2007

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

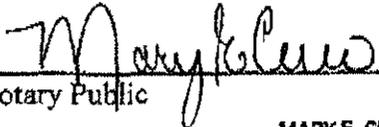
by: 

Alexander B. Grannis, Commissioner

Grantor's Acknowledgment

STATE OF NEW YORK)
)
COUNTY OF ONONDAGA)

On the 17th day of December, in the year 2007, before me, the undersigned, personally appeared Dale L. Van Epps, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

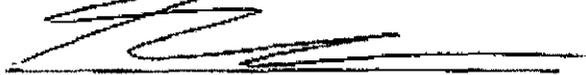

Notary Public

MARY E. CERIO
Notary Public, State of New York
Registered in Onondaga County
No. 4996808
Commission Expires 05/26/10

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 21st day of December, in the year 2007, before me, the undersigned, personally appeared ALEXANDER B. GRANNIS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his 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

SCOTT OWENS
Notary Public, State of New York
No. 0754168872
Qualified in Albany County
Commission Expires April 12, 2008

Parcel Description
Pioneer Midler Avenue LLC
Syracuse, NY

All that tract or parcel of land situate in the City of Syracuse, Onondaga County, State of New York, being part of Military Lot Number 40 of the former Town of Dewitt, bounded and described as follows:

Beginning at a concrete monument on the easterly right of way line of South Midler Avenue as appropriated to the State of New York (Map No. 66, Parcel No. 106 & 107); thence, along the easterly line of said appropriated Parcel No. 106 the following two courses and distances:

North 02°-36'-16" West, a distance of 330.71 feet to a point; thence,

North 07°-30'-43" West, a distance of 276.38 feet to a concrete monument on the southerly right of way line of New York State Route 690 (as appropriated to the State of New York - Map No. 354, Parcel No. 450 & 451; and Map No. 351, Parcel No. 445); thence,

North 71°-46'-10" East, along the southerly right of way line of said Route 690, a distance of 17.28 feet to the northwest corner of Proposed Lot 5; thence, the following three courses and distances along said Lot 5:

South 18°-23'-56" East, a distance of 47.11 feet to a point; thence,

North 73°-21'-19" East, a distance of 23.85 feet to a point; thence,

North 18°-23'-47" West, a distance of 47.77 feet to a point on the southerly right of way line of said Route 690; thence,

North 71°-46'-10" East, along said southerly right of way line of Route 690, a distance of 486.65 feet to an angle point; thence,

North 68°-07'-00" East, continuing along said southerly right of way line of Route 690, a distance of 37.53 feet to the northwest corner of proposed Lot 4; thence, the following three courses and distances along said Lot 4:

South 21°-53'-00" East, a distance of 50.84 feet to a point; thence,

North 68°-07'-00" East, a distance of 23.84 feet to a point; thence,

North 21°-53'-00" West, a distance of 50.84 to a point on the southerly right of way line of said NYS Route 690; thence, continuing along said southerly right of way line of Route 690 the following three courses and distances:

North 68°-07'-00" East, a distance of 65.62 feet to an angle point; thence,

North 77°-43'-00" East, a distance of 197.00 feet to a concrete monument; thence,

North 76°-10'-30" East, a distance of 244.30 feet to the northwest corner of proposed Lot 3; thence, the following three courses and distances along said Lot 3:

South 13°-49'-30" East, a distance of 50.50 feet to a point; thence,

North 76°-10'-30" East, a distance of 23.84 feet to a point; thence,

North 13°-49'-30" West, a distance of 50.50 to a point on the southerly right of way line of said NYS Route 690; thence,

North 76°-10'-30" East, along said southerly right of way line of Route 690, a distance of 126.52 feet to a point; thence,

South 13°-49'-30" East, a distance of 656.54 feet to a point on the northerly line of lands now or formerly of the City of Syracuse (Tax Map No. 33.01-1-20); thence,

North 73°-21'-19" East, on said northerly line, a distance of 996.00 feet to a point on the easterly line of said property of the City of Syracuse; thence,

South 04°-09'-10" East, a distance of 39.81 feet to a point on the northerly line of lands now or formerly of New York Central Lines, LLC; thence,

South 73°-21'-19" West, on said northerly line, a distance of 2356.10 feet to a point on the easterly right of way line of South Midler Avenue; thence,

North 00°-23'-35" West, on said easterly right of way line, a distance of 31.20 feet to a concrete monument; thence,

North 73°-43'-32" East, a distance of 168.40 feet to a point; thence,

North 04°-19'-45" West, a distance of 61.40 feet to the northeast corner of aforesaid appropriation to the State of New York (Map No. 66, Parcel No. 107) ; thence, the following two (2) courses and distances on said appropriation:

South 75°-02'-08" West, a distance of 144.06 feet to a concrete monument; thence,

North 57°-44'-29" West, a distance of 21.26 feet to the Point of Beginning.

Said parcel containing 21.727 acres, more or less, shown on a map prepared by Bergmann Associates entitled "ALTA/ACSM Land Title Survey - Proposed Retail Development, Midler Avenue, Syracuse, New York", dated August 13, 2004, last revised on August 22, 2005.

F:\ADMIN\Dev\STAFF\Sullivan\docs\Midler desc overal 8-21-05.doc