

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

THIS INDENTURE made this 7<sup>th</sup> day of December, 2009, between Owner(s) Gary and Marcia Stern Family Limited Partnership, having an office at 274 North Goodman Street, Rochester, New York 14607, (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 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- 348 North Goodman Street, in the City of Rochester, County of Monroe, State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel numbers: Section 106.84 Block 01 Lot 01; being the same as that property conveyed to Grantor by Warranty Deed dated July 14, 2003 and recorded on July 15, 2003 in the Monroe County Clerk's Office in Book 09814 at page 0559 of deeds, comprising of approximately 2.699 ± acres, and hereinafter more fully described in the ALTA/ACSM Land Title Survey dated March 31, 2009 (revised December 2009), prepared by Magdeland Surveying, P.C. and corresponding Schedule "A" property description, both documents are 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 Index Number B8-0657-04-03, 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 use as described within 6 NYCRR Part 375-1.8 (g) (2) (iii), as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to:

(i) The Site Management Plan (SMP) dated December 2009, must be implemented for the Controlled Property:

(ii) The existing surface and near surface soil, asphalt-paved surfaces, and the building itself, as depicted in ALTA survey dated December 4, 2009, act as a cover system at the Controlled Property, disturbances and incidental damage to this cover system shall be repaired upon discovery with cover materials approved by the NYSDEC and the NYSDOH.

(iii) any intrusive activities, including building renovation/expansion, subgrade utility line repair/relocation, and new construction which will cause a disturbance of the soil below any concrete, asphalt, or structures must be conducted in accordance with the Department approved SMP;

(iv) The use of groundwater underlying the Controlled Property is prohibited. The City of Rochester code prohibits the use of groundwater as a potable source;

(v) the installed soil vapor mitigation system as depicted in the final engineering report prepared by LaBella and dated December 2009, shall be inspected, certified, operated and maintained as required in the SMP;

(vi) monitor, maintain and replace as necessary groundwater monitoring wells required to be monitored as set forth in the SMP.

B. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan ("SMP") that the Department has approved for the Controlled Property and all Department-approved amendments to that SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated December 2009. 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 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  
NYSDEC - Region 8  
Division of Environmental Remediation  
6274 East Avon-Lima Road  
Avon, NY 14414-9519  
Phone: (585) 226-5363 fax: (585) 226-9485

or  
Site Control Section  
Division of Environmental Remediation  
NYS DEC  
625 Broadway  
Albany, New York 12233

C. The Controlled Property may not be used for a higher level of use such as unrestricted or restricted residential 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:

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 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 56, Title 5 or ECL Article 27 Title 14 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 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: C 828115  
Department of Environmental Enforcement  
Office of General Counsel  
NYSDEC  
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: Gary and Marcia Stern Family Limited Partnership.

By: Gary Stern

Title: Pres. Date: 12-7-09

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: Dale Desnoyers  
Alexander B. Grannis, Commissioner  
by Dale Desnoyers - Director  
Department of Environmental Remediation

Grantor's Acknowledgment

STATE OF NEW YORK )  
COUNTY OF Monroe ) ss:

On the 7th day of December, in the year 2009, before me, the undersigned, personally appeared GARY STERN, 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.

Bonnie A. Eskildsen  
Notary Public - State of New York

BONNIE A. ESKILDSEN  
Notary Public, State of New York  
No. 01ES4636951  
Qualified in Monroe County  
My Commission Expires Dec. 31, 20 10

Grantee's Acknowledgment

STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss:

On the 15<sup>th</sup> day of December in the year 2008, before me, the undersigned, personally appeared Dale Desjars, 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 a designated authority granted by 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.

David S. Sampson  
Notary Public - State of New York  
DAVID S. Sampson 025A5013268  
Notary public, State of New York  
Qualified in Rensselaer County  
Commission expires July 15, 2011

**SCHEDULE "A" PROPERTY DESCRIPTION****LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Rochester, County of Monroe and State of New York, being part of Lot 50, Second Division, Township 13, Range 7, and more particularly bounded and described as follows: Beginning at the point of intersection of the easterly line of North Goodman Street and the southerly line of the land of the New York Central Railroad Company 495.5 feet to the northwest corner of premises now or formerly of Gary L. and Marcia Stern, Liber 8778 of Deeds, page 79; thence (2) southwesterly making an interior angle of 90° with the last described course, and along the westerly line of the premises so conveyed to Stern, as aforesaid, 146.89 feet to a PK nail; thence (3) easterly making an interior angle of 284° 50' 53" and continuing along the westerly line of lands now or formerly Stern as aforesaid, 51.2 feet to a PK nail; thence (4) southerly making an interior angle of 90° with the last described course and continuing along the westerly line of premises now or formerly Stern, as aforesaid 45.00 feet to a PK nail in the northerly line of other premises now or formerly Gary L. Stern and Marcia Stern, Liber 8778 of Deeds, page 79; thence (5) westerly making an interior angle of 90° with the last described course and along the northerly line of the lands now or formerly Stern, as aforesaid, 490.31 feet to a point in the easterly line of North Goodman Street, which point is marked by a PK nail and is 478.83 feet northerly from the intersection of the northerly line of Anderson Avenue and the easterly line of North Goodman Street; and thence (6) northerly, making an interior angle of 90° 22' 07" with the last described course and along the easterly line of North Goodman Street 313.97 feet to the point and place of beginning, containing 2.699 acres of land, more or less.

Together with all the right, title and interest of the mortgagor in and to all easements and agreements in connection with the railroad tracks and subsidiary tracks on the premises hereby mortgaged on the premises conveyed by Rochester Drug Cooperative, Inc. to Frank & Fraser Wholesale Lumber Corporation and on the premises conveyed by Thomas C. Spencer, as Trustee and Agent to Gleason Fund Incorporated by deed recorded in Monroe County Clerk's Office in Liber 2744 of Deeds, page 119 on March 31, 1952, as described in said deed, together with the right to use the railroad sidings and all existing track facilities now located upon premises hereby mortgaged, on the premises so conveyed by Thomas G. Spencer, as Trustee and Agent to Gleason Fund Incorporated, as aforesaid. Also together with the right and easements reserved by Rochester Drug Cooperative, Inc. in the deed made June 3, 1952 to Frank & Fraser Wholesale Lumber Corp. recorded June 4, 1952 in the Monroe County Clerk's Office in Liber 2756 of Deeds, Page 292.

**SURVEY**

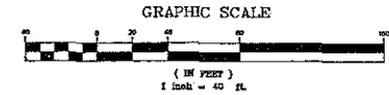
**REFERENCES**

1. ROCHESTER DRUG COOPERATIVE INC. TO GARY & MARCIA STERN FAMILY LIMITED PARTNERSHIP BY DEED RECORDED JULY 15, 2003 AT LIBER 3814, PAGE 509.
2. FIDELITY NATIONAL TITLE INSURANCE COMPANY, TITLE NABT-23387 AND DATED MARCH 26, 2009.
3. MAP OF A SURVEY PREPARED BY DONALD C. NELL OF 320 NORTH GOODMAN STREET, LAST DATED 02/02/01
4. RELEASE OF EASEMENT RECORDED AUGUST 19, 2009 AT LIBER 10781 OF DEEDS, PAGE 519

UTILITIES SERVED BY:  
 WATER - CITY OF ROCHESTER WATER BUREAU  
 10 PLUM STREET  
 ROCHESTER, NY 14611 585-428-7568  
 GAS & ELECTRIC - ROCHESTER GAS & ELECTRIC CO.  
 89 EAST AVENUE  
 ROCHESTER, NY 14640 1-800-456-5153  
 SEWER - ROCHESTER PURE WATERS DISTRICT (MONROE COUNTY PURE WATERS)  
 50 WEST MAIN STREET  
 ROCHESTER, NY 14602-725-7800  
 TELEPHONE - FRONTIER COMMUNICATIONS  
 1225 WEST HENRIETTA ROAD  
 ROCHESTER, NY 14623 585-777-1234

**Legend of Symbols & Abbreviations**

- METAL FENCE
- OVERHEAD ELECTRIC
- LIGHT POLE
- STEAM SEWER MAINLINE
- CATCH BASIN AND CLEANOUT
- WATER VALVE, HYDRANT AND SHUT OFF
- POST INDICATOR VALVE
- POWER POLE W/ ANCHOR WIRE
- GAS VALVE
- TWO & ONE POST SIGNS
- SURVEY MONUMENT
- MONITORING WELL
- RESTRICTED PARKING AREA



**Engineering / Institutional Controls Subject to Easement**

- SUB-SLAB DEPRESSURIZATION SYSTEM (SSDS) AREA - SSDS WATER MITIGATION SYSTEM IS BEING MAINTAINED BY THE SITE MANAGEMENT PLAN
- COVER SYSTEM [SURFACE SOIL, ASPHALT PAVED SURFACES INCLUDING PARKING LOT AND BUILDING ITSELF], AND
- ENTIRE ENVIRONMENTAL EASEMENT AREA SUBJECT TO SITE MANAGEMENT PLAN, WHICH REQUIRES ALL INTRUSIVE WORK OR DISTURBANCE OF COVER SYSTEM TO BE CONDUCTED IN ACCORDANCE WITH THE SITE MANAGEMENT PLAN; AND
- GROUNDWATER USE RESTRICTION COVERS ENTIRE EASEMENT AREA / PARCELS AND
- GROUNDWATER WELL MONITORING WELLS REQUIRED TO BE MONITORED AS REQUIRED BY SITE MANAGEMENT PLAN.

NOTE: SEE ENVIRONMENTAL EASEMENT FOR DETAILS ON THE ENGINEERING AND INSTITUTIONAL CONTROLS

**RECORD TITLE DESCRIPTION**

Note: The Environmental Easement Area is the same as the Record Title Description.

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Rochester, County of Monroe and State of New York, being part of Lot 20, Second Division, Township 13, Range 7, and more particularly bounded and described as follows: Beginning at the point of intersection of the westerly line of North Goodman Street and the southerly line of the land of the New York Central Railroad Company, thence (1) southeasterly making an interior angle of 74° 47' 00" with the westerly line of North Goodman Street and along the southerly line of the land of the New York Central Railroad Company 462.5 feet to the northwest corner of premises now or formerly of Gary I. Stern and Marcia Stern, Liber 2778 of Deeds, page 79; thence (2) southeasterly making an interior angle of 90° with the last described course, and along the westerly line of the premises so conveyed to Stern, an acreage, 148.29 feet to a PK nail; thence (3) westerly making an interior angle of 264° 50' 13" and continuing along the westerly line of said line or formerly Stern, an acreage, 510.02 feet to a PK nail; thence (4) southerly making an interior angle of 90° with the last described course and continuing along the westerly line of said premises now or formerly Stern, an acreage, 45.00 feet to a PK nail in the northerly line of other premises now or formerly Gary I. Stern and Marcia Stern, Liber 2778 of Deeds, page 79; thence (5) westerly making an interior angle of 90° with the last described course and, along the northerly line of the lot now or formerly Stern, an acreage, 480.21 feet to a point in the westerly line of North Goodman Street, which point is marked by a PK nail and is 478.63 feet easterly from the intersection of the northerly line of Anderson Avenue and the westerly line of North Goodman Street; and thence (6) northerly, making an interior angle of 90° 02' 07" with the last described course and along the westerly line of North Goodman Street 313.97 feet to the point and place of beginning, containing 2.609 acres of land, more or less.

Together with all the right, title and interest of the mortgagee in and to all easements and covenants in connection with the railroad tracks and subsidiary tracks on the premises hereby mortgaged on the premises conveyed by Rochester Drug Cooperative, Inc. to Frank & Frazar Wholesale Lumber Corporation and on the premises conveyed by Thomas G. Spencer, as Trustee and Agent to Gleason Fund incorporated by deed recorded in Monroe County Clerk's Office in Liber 2744 of Deeds, page 119 on March 31, 1952, as described in said deed, together with the right to use the railroad tracks and all existing track facilities now located upon premises hereby mortgaged, on the premises so conveyed by Thomas G. Spencer, as Trustee and Agent to Gleason Fund incorporated, as aforesaid.

Also together with the right and easements reserved by Rochester Drug Cooperative, Inc. in the deed made June 3, 1954 by Frank & Frazar Wholesale Lumber Corp. recorded June 4, 1952 in the Monroe County Clerk's Office in Liber 2756 of Deeds, Page 292.

**CERTIFY TO:**

- 1) The People of the State of New York acting through their Commissioner of the Department of Environmental Conservation
- 2) Gary and Marcia Stern Limited Family Partnership
- 3) Knox Show LLP and
- 4) Four Corner Abstract



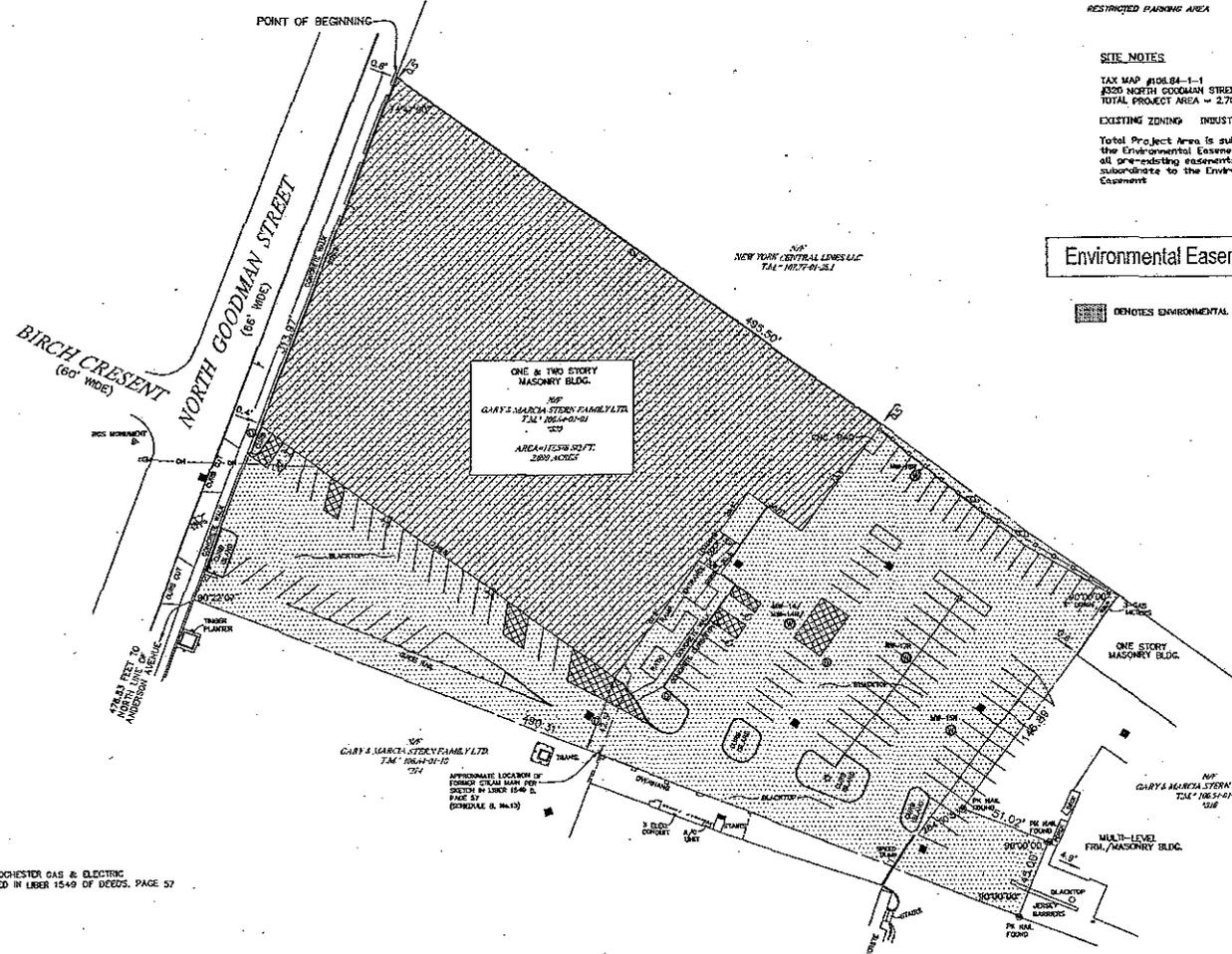
WE, MAGDE LAND SURVEYING, P.C., HEREBY CERTIFY THAT THIS MAP WAS PREPARED FROM NOTES OF A FIELD SURVEY COMPLETED ON MARCH 31, 2009 AND FROM THE REFERENCES LISTED HEREON, SUBJECT TO ANY FACTS AN FURTHER ABSTRACT OF TITLE MAY REVEAL.

Douglas M. Magde, L.S. License No. 2049857

12/4/09 revise per revised title report/add cert.

**Environmental Easement Area**

■ DENOTES ENVIRONMENTAL EASEMENT AREA



**SCHEDULE B**

13. EASEMENT AGREEMENT GRANTED TO ROCHESTER GAS & ELECTRIC CORPORATION UNDER AGREEMENT RECORDED IN LIBER 1540 OF DEEDS, PAGE 57 ON JUNE 27, 1930, SHOWN

Magde Land Surveying, P.C.  
 4480 CULVER ROAD  
 ROCHESTER, NY 14622  
 (585) 654-5897  
 (585) 654-6149 (FAX)  
 email: dmagde@magdesurvey.com

**ALTAIACSM LAND TITLE SURVEY**  
 PREPARED FOR  
**320 NORTH GOODMAN STREET**  
 LOT 50, SECOND DIVISION, TOWNSHIP 13, RANGE 7  
 CITY OF ROCHESTER, MONROE COUNTY, NEW YORK

