

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

THIS INDENTURE made this 15th day of December, 2008, between Owner(s) Seneca Market I LLC having an office at 4 Centre Drive, Orchard Park, New York 14127 (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 16 North Franklin Street in the Village of Watkins Glen, Town of Dix, County of Schuyler and State of New York known and designated on the tax map of the County Clerk of Schuyler as tax map parcel numbers; Section 65.09 Block 2 Lot 56; Section 65.09 Block 2 Lot 58; Section 65.09 Block 2 Lot 59.1 and Section 65.09 Block 2 Lot 61.22, being the same as that property conveyed to Grantor by Deed dated January 09, 2007 [Lot 56] recorded in Liber 353 page 127; Deed dated November 16, 2005 [Lot 58] recorded at Liber 347 page 475; Deed dated September 27, 2006 [Lot 59.1] recorded at Liber 350 page 418 and Deed dated February 14, 2006 [Lot 61.22] recorded at Liber 348 page 232 in the Land Records of the Schuyler County Clerk., comprised of approximately 2.27 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 B8-0699-05-08 and Site Code Number 849002, 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").

2008 DEC 23 PM 12:51

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 and industrial** use as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to :

1. All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);
2. All Engineering Controls on the Controlled Property (the Site) must be inspected and certified at a frequency and in a manner defined in the SMP;
3. Groundwater, soil vapor, and other environmental or public health monitoring must be performed as defined in the SMP;
4. Data and information pertinent to Site Management for the Controlled Property must be reported at the frequency and in a manner defined in the SMP;
5. On-Site environmental monitoring devices, including but not limited to groundwater monitoring wells must be protected and replaced as necessary to ensure continued functioning in the manner specified in the SMP;
6. Compliance with this Environmental Easement by the Grantor and the Grantor's successors and adherence to all elements of the SMP is required;
7. A composite cover system consisting of concrete building foundation, concrete sidewalks, a vapor barrier beneath the building, one foot of topsoil cover in areas not covered with the building, concrete or asphalt, and asphalt parking surfaces must be inspected, certified, operated and maintained as required in the SMP;
8. The Sub-Slab Depressurization System under the building structure at the site, must be inspected, certified, operated and maintained as required in the SMP;
9. Engineering Controls may not be discontinued without an amendment or extinguishment of the Environmental Easement and without obtaining approval from the Department.

The Controlled Property has a series of Institutional Controls in the form of Site restrictions. Adherence to these Institutional Controls is required under the Environmental Easement. Site restrictions that apply to the Controlled Property are:

1. Vegetable gardens, residences (single and multi family homes), and farming on the Controlled Property are prohibited;

2. Use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for the intended use. Approval by the New York State Department of Health must be obtained prior to such intended use;
3. All future activities on the Controlled Property that will disturb residual contaminated material (any soil/fill material below the cover system) are prohibited unless they are conducted in accordance with the soil management provisions in the SMP;
4. The Controlled Property may be used for commercial and industrial use only provided the long-term Engineering and Institutional Controls included in the SMP remain in use;
5. The one foot of topsoil soil cover, asphalt-paved surfaces, concrete-paved surfaces, and the building itself, act as a cover system at the Controlled Property. Disturbances and incidental damage to this cover system shall be repaired upon discovery in a manner that complies with the SMP. If the type of cover system changes from that which existed prior to disturbances or incidental damage, the cover system must be implemented as required in the SMP.
6. Any new buildings developed on the Controlled Property must be constructed with a vapor mitigation system, prior to occupancy. The vapor mitigation system shall be operated and maintained until such time as the NYSDEC and NYSDOH deems it is no longer needed.
7. The Grantor and its successors and assigns must provide a periodic certification of institutional and engineering controls, prepared and submitted by a professional engineer or such other expert acceptable to the Department, until the Department notifies the property owner in writing that this certification is no longer needed. This submittal would: (a) contain certification that the institutional controls and engineering controls put in place are still in place and are either unchanged from the previous certification or are compliant with Department-approved modifications; (b) allow the Department access to the site; and (c) state that nothing has occurred that would impair the ability of the control to protect public health or the environment, or constitute a violation or failure to comply with the site management plan unless otherwise approved by the Department.

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

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated September, 2008 ("SMP") and all Department-approved amendments to the SMP. 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:
Region 8,
NYS DEC
6274 Avon-Lima Road
(Routes 5-20)
Avon, NY 14414-9519

or

Site Control Section
Division of Environmental Remediation
NYS DEC
625 Broadway
Albany, NY 12233

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

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 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 849004
Environmental Easement Attorney
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.

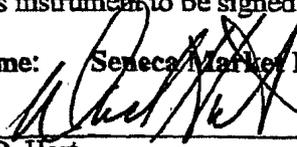
9. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed 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.

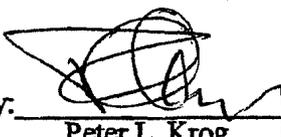
County: SCHUYLER Site No: C 849004 BCA Index No:- B8-0699-05-08/Code-849002

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

Grantor's Name: Seneca Market I LLC

By: 
David P. Hart

Title: Managing Member Date: 12/4/08

By: 
Peter L. Krog

Title: Managing Member Date: 12/2/08

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)
) ss:
COUNTY OF Erie)

On the 4th day of December, in the year 2008, before me, the undersigned, personally appeared DAVID Hart, 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.

Tina Croom
Notary Public - State of New York

TINA CROOM
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 2/07/2010

Grantor's Acknowledgment

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

On the 2nd day of Dec, in the year 2008, before me, the undersigned, personally appeared Peter R. Brode, 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.

Janie M. Troup
Notary Public - State of New York

JANIE M. TROUP
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES AUG. 31, 2009

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 15th day of December, in the year 2008 before me, the undersigned, personally appeared ALEXANDER B. CRANING 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.

Yvonne M. Ward
Notary Public - State of New York

Yvonne M. Ward
Notary Public - State of New York
No. 02WA6115685
Qualified in Saratoga County
My Commission Expires Sept. 13, 2012

SCHEDULE "A"
PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the Village of Watkins Glen, Town of Dix, Schuyler County, New York, and being more particularly bounded and described as follows:

BEGINNING at the intersection of the northerly limit of First Street and the westerly limit of Decatur Street; thence South along the northerly limit of First Street a distance of 400.57 feet to a point; thence North 22° 31' 0" West a distance of 30.22 feet to a point; thence South 67° 29' 0" West a distance of 100 feet to the easterly limit of North Franklin Street; thence northerly along the easterly limit of North Franklin Street to a point that is 175.78 feet north of the intersection of the easterly limit of North Franklin Street and the northerly limit of First Street; thence North 67° 29' 0" East a distance of 100 feet to a point; thence North 22° 31' 0" West a distance of 103.81 feet to a point; thence South 83° 11' 56" East a distance of 87.29 feet to a point; thence North 16° 18' 38" East a distance of 50.52 feet to a point; thence South 81° 52' 17" East a distance of 142.91 feet to a point; thence South 86° 12' 04" East a distance of 98.30 feet to a point; thence South 86° 59' 15" East a distance of 87.41 feet to a point; thence South 87° 41' 39" East a distance of 3.22 feet to the Westerly limit of Decatur Street; thence Southerly along the Westerly limit of Decatur Street; thence South 22° 28' 44" East a distance of 120.19 feet to the Northerly limit of First Street, being the point or place of beginning; comprising an area of 2.27 ± acres.

