

JUL 05 2006

ENVIRONMENTAL EASEMENT

ERIE COUNTY
CLERK'S OFFICE

THIS INDENTURE made this 8th day of June, 2006, between 2530 Hamburg Turnpike, LLC having an office at 2530 Hamburg Turnpike, Lackawanna, New York 14218, (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 at 2530 Hamburg Turnpike in the City of Lackawanna, Erie County, New York known and designated on the tax map of the City of Lackawanna as tax map parcel number 141.67-4-2.21, being the same as that property conveyed to Grantor by deed on November 2, 2005, and recorded in the Land Records of the Erie County Clerk at page 2300, liber 11104 of Deeds, comprised of approximately 1.37 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 B9-0684-05-03**

Site #C915191, 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 and industrial use as long as the following long-term engineering controls are employed:

The groundwater beneath the site cannot be used as a potable water source. The asphalt cover must be maintained to prevent any contact with the underlying residual soil contamination. The site should be certified every two years for institutional and engineering controls.

B. The Controlled Property may not be used for a higher level of use such as unrestricted/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 of Title 36 to 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 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.

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Lackawanna, Erie County, New York, being part of Lot No. 22, Township 10, Range 8 of the Buffalo Creek Reservation, which is described as follows:

BEGINNING at the intersection of the northerly right-of-way line of Dona Street, a street 50 feet in width and the easterly right-of-way line of Hamburg Turnpike said easterly right-of-way line as shown on Map No. 32 Parcel No. 35, in Notice of Appropriation recorded in the Erie County Clerk's Office in Liber 4641 of Deeds at page 408; thence along said easterly right-of-way line, N 22° 36' 25'' W., 261.72 feet; thence the following 2 courses and distance

(1) S 89° 05' 55'' E., 304.40 feet.

(2) S 0° 54' 05'' E. 240.00 feet to said northerly right-of-way line to Dona Street; thence along said northerly right-of-way line of Dona Street, N. 89° 05' 55'' W., 200.00 feet to the place of beginning.

EXCEPTING THEREFROM that portion of the premises conveyed by Warranty Deed made by Local 424 UAW-CIO Federal Credit Union, as successor by merger to G&R Federal Credit Union, a Federal Credit Union and existing pursuant to Federal Credit Union Act to City of Lackawanna, dated February 11, 2002, and recorded in the Erie County Clerk's Office on February 11, 2002 in Liber 10999 of Deeds, Page 9958.

JUL 05 2006

SUBORDINATION AGREEMENT

ERIE COUNTY
CLERK'S OFFICE

This Subordination Agreement is made by KeyBank National Association on this 5th day of May, 2006.

WHEREAS, KeyBank National Association is the holder of certain interest in real property (the "Interests") as follows:

1. Building Loan Mortgage made by 2530 Hamburg Turnpike, LLC to KeyBank National Association for \$645,000.00 and interest, dated November 2, 2005 and recorded November 2, 2005 in Liber 13255 of Mortgages, at page 6235;
2. Assignment of Rents from 2530 Hamburg Turnpike, LLC to KeyBank National Association recorded November 2, 2005 in Liber 13255 of Mortgages, at page 6247;
3. Building Loan Agreement dated November 2, 2005 and filed November 2, 2005 between KeyBank National Association (Lender) and 2530 Hamburg Turnpike, LLC (Borrower). (Q0150-4347);
4. Notice of Lending dated November 2, 2005 and filed November 2, 2005 for \$645,000.00 between KeyBank National Association (Lender) and 2530 Hamburg Turnpike, LLC (Borrower). (Q0150-4368);
5. Building Loan Mortgage made by 2530 Hamburg Turnpike, LLC to KeyBank National Association for \$387,000.00 and interest, dated November 2, 2005 and recorded November 2, 2005 in Liber 13255 of Mortgages, at page 6255;
6. Assignment of Rents from 2530 Hamburg Turnpike, LLC to KeyBank National Association recorded November 2, 2005 in Liber 13255 of Mortgages, at page 4371;
7. Building Loan Agreement dated November 2, 2005 and filed November 2, 2005 between KeyBank National Association (Lender) and 2530 Hamburg Turnpike, LLC (Borrower). (Q0150-4371).

WHEREAS, 2530 Hamburg Turnpike, LLC has granted to The People of the State of New York Acting Through Their Commissioner of Department of Environmental Conservation an environmental easement as attached hereto as Exhibit "A" and recorded in the Erie County Clerk's Office in Liber 11115 of Deeds at Page 9708 (the "Environmental Easement"); and

WHEREAS, the undersigned desires to subordinate the Interests to the Environmental Easement.

NOW, THEREFORE, the undersigned hereby subordinates the Interests to the terms and conditions of the Environmental Easement.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the day and year first above written.

KEYBANK NATIONAL ASSOCIATION

By: Thomas Maiale

Name: Thomas Maiale, Jr.

Title: AVP

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 5 day of May in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas Maiale, Jr., 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.

David W. Clifford
Notary Public

DAVID W. CLIFFORD
Notary Public, State of New York
Qualified in Niagara County
Commission Expires 5-28-07