

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

THIS INDENTURE made this 12th day of June, 2008, between Owner(s) City of Schenectady residing at (or having an office at) City Hall, 105 Jay Street, Schenectady, New York (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 714 Broadway in the City of Schenectady, Schenectady County, New York known and designated on the tax map of the City of Schenectady as Section 49 31, Block 1, Lot 34 1, being the same as that property conveyed to Grantor by deed on April 17, 2000, and recorded in the Land Records of the Schenectady County Clerk at page 569, liber 1576 of Deeds, comprised of approximately 0 06 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 State Assistance Contract Number C302650, 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, which would also permit industrial use, as long as the following long-term engineering and/or institutional controls are employed:

- This Environmental Easement.

B. The Controlled Property may not be used for a higher level of use such as residential use and the above-stated engineering and/or institutional 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 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, or such time as NYSDEC may allow, 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: 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.

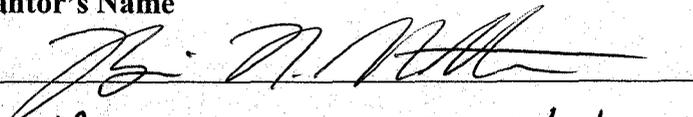
8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed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

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

Grantor's Name

By: 

Title: Mayor

Date: 10/18/07

Grantor's Acknowledgment

STATE OF NEW YORK)
COUNTY OF Schenectady) ss:

On the 18th day of October, in the year 2007, before me, the undersigned, personally appeared Brian U. Stratton 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.

Eileen M. Versaci
Notary Public - State of New York

EILEEN M. VERSACI
Notary Public, State of New York
No. 01VE4872444
Qualified in Schenectady County
Commission Expires 09/29/2010

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

Grantee's Acknowledgment

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the 12th day of June, in the year 2008, 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(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, 2008

C.T. MALE ASSOCIATES, P.C.

**DESCRIPTION
LANDS NOW OR FORMERLY OF
THE CITY OF SCHENECTADY
CITY OF SCHENECTADY, COUNTY OF SCHENECTADY, STATE OF NEW YORK
AREA = 2,580± SQUARE FEET OF LAND**

All that certain tract, piece or parcel of land situate, lying and being in the City of Schenectady, County of Schenectady, State of New York, lying generally North of Broadway and Easterly of Weaver Street, and being more particularly bounded and described as follows:

BEGINNING at the point of intersection of the common line between the lands now or formerly of the City of Schenectady on the South and the lands now or formerly of David P. Hunt as described in Book 1027 of Deeds at Page 974 on the North with the Easterly margin of Weaver Street and runs thence from said point of beginning along said common line North 74 deg. 11 min. 10 sec. East, a distance of 30.00 feet to a point; thence along the 1959 highway boundary of Interstate Route 550-2-3 (Campbell Road to Broadway) South 15 deg. 48 min. 50 sec. East, a distance of 86.00 feet to a point; thence along the North margin of Broadway South 74 deg. 11 min. 10 sec. West, a distance of 30.00 feet to a point on the first herein mentioned Easterly margin of Weaver Street; thence along said Easterly margin North 15 deg. 48 min. 50 sec. West, a distance of 86.00 feet to the point or place of beginning and containing 2,580± square feet of land.

Subject to any covenants, easements or restrictions of record.



March 6, 2008
RNS/arf/aeb
C.T. Male Project No. 05.5086

C.T. MALE ASSOCIATES, P.C.

A handwritten signature in black ink that reads "Robert N. Stewart". The signature is written in a cursive style with a large, prominent "R" and "S".

Robert N. Stewart, PLS



RESOLUTION No. 2007-201

Councilmember Maurizio offered the following:

A resolution authorizing the conveyance of an environmental easement which will require that 714 Broadway be used for industrial or commercial uses to the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

WHEREAS, the City owns real property located at and known as 714 Broadway (SBL 49.31 - 1 -34.1); and

WHEREAS, the property was determined to be contaminated and has been remediated pursuant to the terms and conditions of State Assistance Contract No. C302650, and

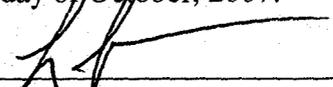
WHEREAS, the terms and conditions of the State Assistance Contract require that the City convey an environmental easement to the State restricting future use of the remediated property by the City and any subsequent owners.

DEED Book 1785 Page 217
Doc No 2008-2786

NOW, BE IT THEREFORE

RESOLVED: that the Mayor is authorized to execute such documents necessary to convey environmental easement which will require that 714 Broadway be used for industrial or commercial uses to the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law, a full copy of which is appended to this resolution and incorporated herein by reference.

Approved as to form this
9th day of October, 2007.


L. JOHN VAN NORDEN, ESQ.
CORPORATION COUNSEL

RESOLUTION adopted unanimously
by Councilmembers
OCT 09 2007
Approved by Mayor
Vetoed by Mayor
OCT 11 2007