

**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, 2010 between Owner(s) the City of Mechanicville, a municipal corporation established under the laws of the State of New York, located in the County of Saratoga having an office at 356 North Main Street, Mechanicville, New York 12118 (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 the 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 on Clement Street in the City of Mechanicville and the Town of Halfmoon, County of Saratoga and State of New York, known and designated on the tax map of the County Clerk of Saratoga as tax map parcel numbers: Section 261.51 Block 1 Lot 2 (in the City of Mechanicville) and Section: 261 Block: 1 Lot: 3.112 (in the Town of Halfmoon), being the same as that property conveyed to Grantor by deed dated July 3, 1996 and recorded in the Saratoga County Clerk's Office on July 8, 1996 at Liber 1439 cp 400, comprising approximately 25.719 ± acres, and hereinafter more fully described in the Land Title Survey dated March 31, 2010 and revised on August 9, 2010 and October 1, 2010 prepared by David A. Flanders Surveying & Site Consultant, PLLC, which will be attached to the Site Management Plan. The property description and survey (the "Controlled Property") is set forth in Exhibit A and shown in Exhibit B, which exhibits are attached hereto and made a part hereof; and

WHEREAS, 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 for the 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 mutual covenants contained herein and the terms and conditions of State Assistance Contract Number: C303093, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Institutional and Engineering Controls.** The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements 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. (1) The Controlled Property may be used for:

(i) **Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii), as to the Western Portion of the Controlled Property which consists of the existing baseball field and an area intended for a future softball field comprising of approximately 8 ± acres.**

(ii) **Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv), as to the Eastern Portion of the Controlled Property, a portion of which is currently occupied by the Mechanicville Department of Public Works office and garage comprising of approximately 17 ± acres.**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Eastern Portion of the Controlled Property shall not be used for Residential, Restricted Residential or Commercial purposes, and the Western Portion of the Controlled Property shall not be used for Residential purposes and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. 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, 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. The SMP may be modified in accordance with the Department's statutory and regulatory authority. 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 5
P.O. Box 296
1115 State Route 86,
Ray Brook, NY 12977-0296
Phone: (518) 891 - 2295

or

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL 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.

F. 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.

G. 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, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:
(i) are in-place;
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

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 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 part or all of the underlying fee interest to the Controlled Property, 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 violates this Environmental Easement, the Grantee may revoke the Certificate of Completion 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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee 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 Brownfield Cleanup Agreement, State Assistance 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: E 546050
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to:

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

All notices and correspondence shall be delivered by hand, 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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, 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, or the Commissioner's Designee, 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:

City of Mechanicville, New York

By: [Handwritten Signature]

Print Name: Anthony J. Sylvester

Title: Mayor Date: 12/15/10

Grantor's Acknowledgment

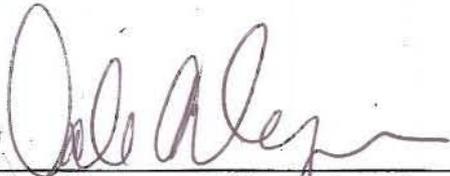
STATE OF NEW YORK)
) ss:
COUNTY OF SARATOGA)

On the 15th day of Dec, in the year 2010, before me, the undersigned, personally appeared Anthony Sylvester, 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.

[Handwritten Signature]
Notary Public - State of New York

 VAL M. SERGALIK, ESQ.
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN SARATOGA COUNTY
MY COMMISSION EXPIRES DEC. 30, 2012

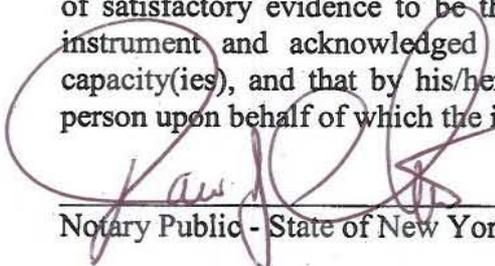
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: 
Dale A. Desnoyers, Director
Division of Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
COUNTY OF Albany) ss:

On the 28th day of December, in the year 2010, before me, the undersigned, personally appeared Dale Desnoyers, 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.


Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2014

SCHEDULE "A" ENVIRONMENTAL EASEMENT
PROPERTY DESCRIPTION

Clement Street

Section 261.51 Block 1 Lot 2 and Section 261 Block 1 Lot 3.112

Description of a 25.719 +- Acre Parcel

Portion of Lands of City of Mechanicville

Mechanicville Industrial Park

City of Mechanicville & Town of Halfmoon

Saratoga County, New York

ALL THAT CERTAIN TRACT PIECE OR PARCEL OF LAND situate in the City of Mechanicville and the Town of Halfmoon, Saratoga County, New York, lying along the Northwesterly margin of Vial Avenue, the northeasterly margin of Davenport Street, the northerly margin of Clement Street and the northeasterly margin of Elizabeth Street Extension, being more particularly bounded and described as follows;

Beginning at an iron rod marker set on the northeasterly margin of Elizabeth Street Extension, said point of beginning lying distant, North 24 degrees 26 minutes 45 seconds West 331.99 feet as measured along said northeasterly road margin from the point of intersection formed by said northeasterly margin of Elizabeth Street Extension with the northerly margin of Elizabeth Street and runs thence from said Point of Beginning, along said northeasterly margin of Elizabeth Street Extension, North 24 degrees 26 minutes 45 seconds West, 440.33 feet to a punch mark set in a railroad spike; thence along the southwesterly lines of the lands now or formerly of Mechanicville Warehouse Corporation, as set forth in the record descriptions and as conveyed by deed dated June 1, 1989, as filed in the Saratoga County Clerk's Office in Liber 1320, page 18 the following two (2) courses:

1. North 70 degrees 51 minutes 30 seconds East, 253.13 feet to a capped iron rod marker;
2. North 65 degrees 54 minutes 10 seconds East, 109.59 feet to a capped iron rod marker;

thence along the northwesterly line of the herein described lands of the City of Mechanicville, North 58 degrees 47 minutes 13 seconds East, 317.73 feet to a capped iron rod marker; thence along the northerly line of said lands of the City of Mechanicville, North 21 degrees 30 minutes 49 seconds East, 409.93 feet to a capped iron rod marker set at a point lying 30.0 feet perpendicularly distant southwesterly from the centerline of the Main Tracks as they presently exist on lands now or formerly of the Boston and Maine Railroad; thence along a line lying 30.0 feet perpendicularly distant southwesterly from and parallel to the said main tracks, South 49 degrees 57 minutes 37 seconds East, 1323.75 feet to a point of curvature; thence continuing along said parallel line, along a curve to the right of radius 2146.80 feet, an arc distance of 264.77 feet, (chord: South 46 degrees 25 minutes 38 seconds East, 264.60 feet) to a point of tangency; thence continuing along said line lying 30.0 feet perpendicularly distant southwesterly from and parallel to said centerline of the main tracks, South 42 degrees 53 minutes 38 seconds East, 295.11 feet to a point of curvature; thence continuing along said parallel line, along a curve to the right of radius 1379.00 feet, an arc distance of 91.20 feet, (chord: South 40 degrees 59 minutes 57 seconds East, 91.19 feet), to a drill hole set in the top of the concrete corner post of a concrete post fence line on the northwesterly margin of Vial Avenue, (AKA Depot Square), thence along said northwesterly road margin, South 53 degrees 18 minutes 32 seconds West, 42.62 feet to an existing iron rod marker; thence along the northeasterly line of the lands now or formerly of City of Mechanicville, (Strang Firehouse parcel), as conveyed by deed dated February 27, 1991, as filed in the Saratoga County Clerk's Office in Liber 1311, page 253, North

36 degrees 34 minutes 28 seconds West, 73.74 feet to a point; thence along the southwesterly line of said lands of City of Mechanicville, North 53 degrees 25 minutes 31 seconds East, 10.00 feet to a point; thence along the northeasterly line of said lands of City of Mechanicville, North 49 degrees 23 minutes 32 seconds East, 69.00 feet to a capped iron rod marker; thence along the northwesterly line of said lands of City of Mechanicville, South 41 degrees 18 minutes 02 seconds West, 134.00 feet to a mag nail set in the asphalt on the northeasterly margin of Davenport Street; thence along said northeasterly line, North 46 degrees 24 minutes 57 seconds West, 414.83 feet to an existing iron rod marker at the intersection of said northeasterly line with the northerly line of Clement Street; thence along said northerly line of Clement Street, North 89 degrees 05 minutes 15 seconds West, 1115.29 feet to a capped iron rod marker; thence along the reputed westerly line of said Clement Street, South 00 degrees 54 minutes 45 seconds West, 50.00 feet to a capped iron rod marker; thence along the northerly line of lands reputedly of the Town of Halfmoon, (Mechanicville-Stillwater Little League ball field site), North 89 degrees 05 minutes 15 seconds West, 417.59 feet to a capped iron rod marker set on the northeasterly margin of Elizabeth Street Extension and the point or place of beginning, being a parcel of land containing approximately 25.719 acres.

SURVEY

