

**CORRECTED ENVIRONMENTAL EASEMENT**  
**(To Correct the Environmental Easement**  
**Filed on December 28, 2009 in Liber 10831, Page 23)**  
**GRANTED PURSUANT TO ARTICLE 71, TITLE 36 OF**  
**THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

**THIS INDENTURE** made this 25<sup>th</sup> day of April, 2010, between Owner 100 Fernwood Avenue Associates having an office at 183 East Main Street, Rochester, 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**, this Corrected Environmental Easement is being re-recorded to correct an error on the signature page in that the Grantor's Title has been corrected to reflect the proper corporate ownership; and

**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 addresses of 100 and 142 Fernwood Avenue; 31, 35 and 41 Rosemary Drive; and 25, 29, 33, 39, 43, 49, and 55 Ilex Place, in the City of Rochester of Monroe County, New York known and designated on the tax map of

the City of Rochester of Monroe County as tax map parcel numbers 106.27-1-5, 091.83-3-19, 091.83-3-20, 091.83-3-21, 106.27-1-87, 106.27-1-88, 106.27-1-89, 106.27-1-90, 106.27-1-91, 106.27-1-92, and 106.27-1-93 being the same as that property conveyed to Grantor by deed on May 28, 1997, and recorded in the Land Records of the Monroe County Clerk at page 0504, Liber 08873 of Deeds, comprised of approximately 8.095 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 Index Number B8-0660-04-05, Site Number C828119 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 restricted residential, commercial or industrial use with the exception of Area “A” marked on the survey map where no occupied building can be constructed until the remedy in this area is completed to the DEC’s satisfaction as long as the following long-term engineering controls are employed:

- (i) any future activities, including building renovation/expansion, subgrade utility line repair/relocation, and new construction, which will cause a disturbance of the remaining contaminated soil under the top two feet of surface soil must be conducted in accordance with the Department approved Site Management Plan (SMP);

- (ii) vegetable gardens and farming on the Controlled Property is prohibited;
- (iii) The use of groundwater underlying the Controlled Property is prohibited. The City of Rochester Code prohibits the use of groundwater as a potable source;
- (iv) The potential for vapor intrusion must be evaluated for any buildings developed on the Controlled Property, and any potential impacts that are identified must be monitored or mitigated in accordance with the SMP and applicable guidance in effect at the time of the investigation;
- (v) monitor, maintain and replace as necessary groundwater monitoring wells required to be monitored as set forth in the SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated December 2009 (“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:        or  
Region 8  
NYS DEC  
6274 East Avon-Lima Road  
Avon, New York 14414

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

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:

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 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, 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.

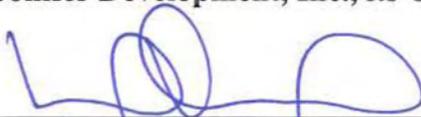
8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed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

**100 Fernwood Avenue Associates**  
**By: Tamarck Associates, its Managing Partner**  
**By: Conifer Development, Inc., its General Partner**

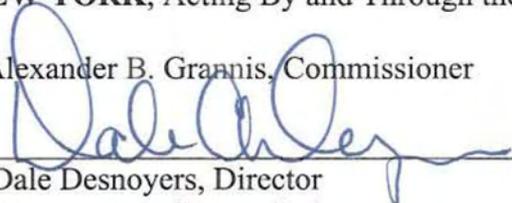
By:   
\_\_\_\_\_  
Richard J. Crossed, President

Date: April 19<sup>th</sup>, 2010

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

Alexander B. Grannis, Commissioner

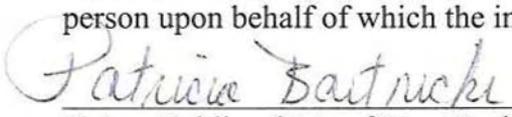
By:

  
Dale Desnoyers, Director  
Department of Remediation

**Grantor's Acknowledgment**

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

On the 19<sup>th</sup> day of April, in the year 2010, before me, the undersigned, personally appeared RICHARD CROSS, 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.

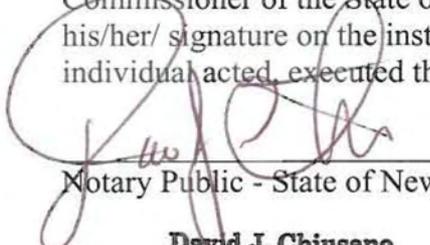
  
Notary Public - State of New York

PATRICIA BARTNICKI  
Notary Public, State of New York  
Reg. No. 01BA4767424  
Qualified in Monroe County  
Commission Expires 3/31/10

**Grantee's Acknowledgment**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF )

On the 23<sup>rd</sup> day of Apr. 1, 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/ 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.

  
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, 2010

SCHEDULE "A"  
PROPERTY DESCRIPTION

Survey description of land owned by 100 Fernwood Avenue Associates.

**ALL THAT TRACT OR PARCEL OF LAND**, situate in part of Town Lot 46, Township 14, South Range of the Phelps and Gorham Purchase, City of Rochester, County of Monroe, State of New York, bounded and described as follows:

**BEGINNING** at a point in the north line of Fernwood Avenue (a 66-foot wide right-of-way), said point being S 84° 34' 10" W, 90.24 feet from the west line of Petrossi Drive; running thence:

- (1) S 84° 34' 10" W, along the north line of Fernwood Avenue, 465.16 feet to a railroad spike marking the southeast corner of land now or formerly owned by 690 Portland Avenue Co., as recorded in Liber 5954 of Deeds at Page 8; thence:
- (2) N 00° 03' 00" W, along the east line of land now or formerly owned by said 690 Portland Avenue Co. and the east line of land now or formerly owned by Comida-JML Optical Ind., as recorded in Liber 5898 of Deeds at Page 301, for a total distance of 376.23 feet to an iron pin; thence:
- (3) S 85° 55' 16" W, along land now or formerly owned by said Comida-JML Optical Ind., 22.06 feet to a point; thence:
- (4) N 9° 00' 16" E, along the east line of land now or formerly owned by said Comida-JML Optical Ind. and the east line of land owned by the City of Rochester, for a total distance of 197.21 feet to a point marking the southwest corner of land reputedly owned by Stephen, Mark, and Charles Battle, said point marking the former centerline of Ilex Place; thence:
- (5) S 80° 08' 34" E, along the south line of land reputedly owned by said Battle being the former centerline of Ilex Place, 225.77 feet to a point; thence:

- (6) N 00° 08' 06" W, along the east line of land reputedly owned by said Battle and the east line of land reputedly owned by David C. Hildreth, for a total distance of 271.01 feet to a point; thence:
- (7) N 00° 23' 41" W, along the east line of land reputedly owned by said Hildreth, 157.34 feet to an iron pin in the south line of land reputedly owned by Marcelino and Rosa Cintra; thence:
- (8) N 84° 35' 50" E, along the south line of land reputedly owned by said Cintra and the south line of land reputedly owned by Oliemae C. Bennett, for a total distance of 61.98 feet to a point; thence:
- (9) N 05° 18' 06" W, along the east line of land reputedly owned by said Bennett, 78.00 feet to a point in the south line of Rosemary Drive; thence:
- (10) N 84° 35' 50" E, along the south line of Rosemary Drive, 120.00 feet to a point marking the northwest corner of land reputedly owned by Marie E. Macko; thence:
- (11) S 05° 18' 06" E, along the west line of land reputedly owned by said Macko, 78.00 feet to a point; thence:
- (12) N 84° 35' 50" E, along the south line of land reputedly owned by said Macko and the south line of land reputedly owned by Scott Grove, 50.93 feet to a point marking the northwest corner of land reputedly owned by Michele L. and Nancy B. Viola; thence:
- (13) S 00° 08' 00" E, along the west line of Lots fronting on Petrossi Drive known as the John Petrossi Tract, for a total distance of 936.23 feet to the point and place of beginning, comprising an area of 8.095 acres or 352,607 square feet according to a survey prepared by Kocher Surveying, P.C., dated August 12, 2009, Project No. N09-104.

County: Monroe

Site No:C828119

BCA Index No: B8-0660-04-05

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***BEING AND INTENDING*** to describe the same premises conveyed in the Deed: Tamarack III Associates and Tamarack Associates to 100 Fernwood Avenue Associates, dated March 30, 1995 and recorded in the Office of the Monroe County Clerk in Liber 8873 of Deeds at Page 504.