

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

THIS INDENTURE made this 18th day of October, 2011, between Owner(s) Town of Gorham, having an office at 4736 South Street, P.O.Box 224, Gorham, NY 14461 (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 at the address of 2624 Main Street in the Town of Gorham, County of Ontario and State of New York, known and designated on the tax map of the County Clerk of Ontario as tax map parcel numbers: Section 144.10 Block 1 Lot 25, being the same as that property conveyed to Grantor by deed dated November 1, 2000 and recorded in the Ontario County Clerk's Office in Liber 1047 at Page 369. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.432 +/- acres, and is hereinafter more fully described in the Land Title Survey dated October 12, 2011 prepared by Freeland-Parrinello Land Surveyors, which will be attached to the Site Management Plan. The Controlled Property description and survey is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public 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 Environmental Restoration Project Site Number: C303091, 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:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(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 Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), 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:

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:

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- (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.

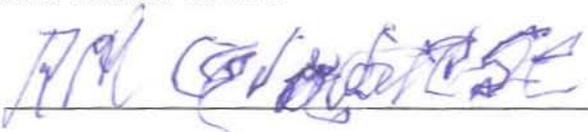
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the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by 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: Town of Gorham

By: 

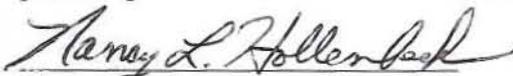
Print Name: Richard M. Calabrese

Title: Supervisor Date: 10/12/11

Grantor's Acknowledgment

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

On the 12th day of October, in the year 2011, before me, the undersigned, personally appeared Richard M. Calabrese 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

NANCY L. HOLLENBECK
Notary Public, State of New York
No. 01HO5061372
Qualified in Ontario County
Commission Expires 6-3-14

SCHEDULE "A" PROPERTY DESCRIPTION

Address: 2624 Main Street, Town of Gorham, Ontario County, New York

Tax Map: 144.10 – 1 – 25

Legal Description**Environmental Easement Area Description****NYSDEC ERP Site No. B00153-8**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Gorham, County of Ontario and State of New York, situate, lying and being on the north side of the highway running east and west through the Hamlet of Gorham, known as the Main Street; and bounded on the south by the center of said highway or street, on the east by the west line of premises formerly known and designated as the Gorham Hotel Lot, formerly owned and occupied by Martin E. Bain; on the north by the south line of premises known as the Gorham Mill Lot, formerly owned by the Gorham Mill Company, and on the west by the line of said Mill Lot, and the east line of a store lot formerly owned by Bowen Cook; together with the one-half of the cellar wall on the west side of said premises.

The above premises hereby intended to be conveyed are more particularly described according to a survey thereof made by John Handrahan, C.E., October 7, 1925, as follows: Beginning at an iron pin in the northerly line of the highway running east and west through said Village, known as Main Street, in the easterly line of lands of said Whyte, and running thence northerly in the easterly line of lands of said Whyte and of the Gorham Mill Property, one hundred sixty two and two-tenths (162.2) feet to an iron pin; thence easterly in the southerly line of the Gorham Mill property, sixty and six tenths (60.6) feet to an iron pin; thence southerly in the west line of lands of one Lewis, and along other lands of Shepherd and Teece, one hundred sixty two and two-tenths (162.2) feet to an iron pin in the northerly line of said highway and running thence westerly in the northerly line of said highway, sixty two and one-tenth (62.1) feet to the place of beginning, together with the right, title and interest of Shepperd and Teece in and to the highway running along the southerly side of said premises

Also a right of way in common with others over a strip of land sixteen (16) feet in width and one hundred thirty (130) feet in depth, along the easterly side of the premises hereby conveyed for the passage of pedestrians and vehicles thereover, and for the storage of cars thereon, without interfering with the access to the barn at the rear of said right of way.

ALSO ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Gorham, County of Ontario, and State of New York, described as follows: Beginning at the northwest corner of the above described parcel conveyed to Alexander M. Lane, recorded in Ontario County Clerk's Office in Liber 390 of Deeds at page 500; thence northerly along the prolongation of said Lane's west line as described in said deed to its intersection with the south line of lands now or formerly of Charles Thomas; thence easterly along the south line of said Thomas land to its intersection with the westerly line of lands now or formerly of James Lewis; thence southerly about 61 feet along said westerly line Lewis' land and the westerly line of lands of Gorham Oil Company to the northeast corner of Lane's land as described in said deed; thence westerly about 60.6 feet along the north line of said Lane's land as described in said deed to the place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Gorham, County of Ontario, and State of New York, described as follows: Beginning at the northwest corner of the second above described parcel conveyed to Alexander M. Lane, recorded in Ontario County Clerk's Office in Liber 463 of Deeds, page 496; thence southerly along the west line of the above described parcel 152 feet to the north line of premises on which is located the U.S. Post office; thence westerly along the north line approximately 21 feet; thence northerly and parallel with the east line of this parcel a distance of approximately 152 feet to the south line of premises now or formerly of Charles Thomas; thence easterly along said south line approximately 21 feet to the place of beginning.

The above premises are more recently shown on a Plan of Land prepared by David A. Freeland, dated October 12, 2011, such Plan of Land to be filed in the Ontario County Clerks Office simultaneously with the aforesaid Environmental Easement, and described as follows.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Gorham, County of Ontario, and State of New York being more particularly described as follows: Beginning at a point in the north line of Main Street, said point being the southeast corner of lands of 625 Holdings LLC, Liber 1183 of Deeds at page 137, and proceeding thence, N 10° 35' 12" E, along the east line of said 625 Holdings LLC, for a distance of 70.45 feet to a point; thence, N 81° 01' 00" W, along the north line of 625 Holdings LLC, for a distance of 21.00 feet to a point; thence, N 10° 35' 12" E, along the east line of 625 Holdings LLC, for a distance of 152.00 feet to a point in the south line of lands of Scott V. and Tracy A. Kelly, Liber 847 of Deeds at page 460; thence, S 81° 01' 00" E, along the south line of Scott V. and Tracy A. Kelly, for a distance of 81.04 feet to a point in the west line of lands of Roy L. Stahlman, Liber 625 of Deeds at page 228; thence, S 10° 03' 25" W, along the west line of Roy L. Stahlman and the west line of lands of The Town of Gorham, Liber 1212 of Deeds at page 670, for a distance of 222.41 feet to a point in the north line of Main Street; thence, S 10° 03' 25" W, for a distance of 33.00 feet to a point in the centerline of Main Street; thence, N 81° 01' 00" W, along the centerline of Main Street, for a distance of 62.41 feet; thence N 10° 35' 12" E for a distance of 33.00 feet, to the point and place of beginning and containing 0.432 acre of land. The survey description intends to describe the same parcels of land as contained in deed dated November 1, 2000 and recorded on December 18, 2000 in Liber 1047, page 369.

