

# BOND SCHOENECK & KING

350 Linden Oaks, Suite 310 | Rochester, NY 14625-2825 | [bsk.com](http://bsk.com)

KARL S. ESSLER, ESQ.  
[kessler@bsk.com](mailto:kessler@bsk.com)  
P: 585.362.4711  
F: 585.362.4772

May 13, 2015

## VIA UPS OVERNIGHT

Andrew Guglielmi, Esq.  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14th Floor  
Albany, New York 12233-1500

Re: *Site Name: Former Speedy's Cleaner Site No. 828128*  
*Town of Brighton, Monroe County*

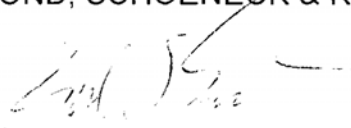
Dear Andrew:

Enclosed for your file is my Affidavit confirming delivery of the Notice to Municipality, along with a copy of the Environmental Easement, to the Town of Brighton. Please let me know if there is anything further that you need in order to finalize the Environmental Easement process.

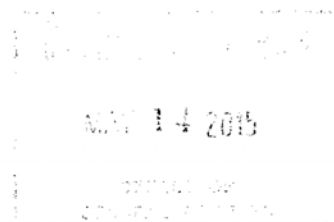
Thank you very much for your cooperation.

Very truly yours,

BOND, SCHOENECK & KING, PLLC

  
Karl S. Essler  
Senior Counsel

KSE/wsp  
Enclosures



cc: Mr. John A. Casciani (w/enclosures via first class mail)

2496622.1 5/13/2015

**AFFIDAVIT**

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF MONROE         )

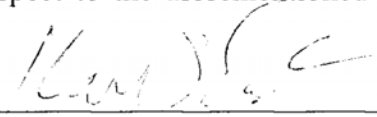
**KARL S. ESSLER**, being duly sworn, deposes and says:

1. I am a Senior Counsel with the firm of Bond, Schoeneck & King, PLLC, the attorneys for John Casciani, the owner of certain real property located at 2150 Monroe Avenue, Brighton, New York, and identified as DEC Site No. 828128, and as to which Mr. Casciani granted the New York State Department of Environmental Conservation ("DEC") an Environmental Easement dated April 22, 2015 and recorded in the Monroe County Clerk's Office on May 6, 2015 in Book 11531 of Deeds, page 505.


2. Pursuant to DEC regulations, I thereafter sent a copy of the Notice to Municipality, annexed hereto as Exhibit A, to the Town of Brighton by certified mail, return receipt requested on May 6, 2015.

3. The Town of Brighton acknowledged receipt of this Notice to Municipality by certified mail on May 8, 2015, as indicated in the United States Postal Service receipt card, a copy of which is annexed hereto as Exhibit B.

4. I can therefore certify and affirm that the Town of Brighton has received the Notice to Municipality in a timely fashion with respect to the aforementioned Environmental Easement.

  
\_\_\_\_\_  
Karl S. Essler

Sworn to before me this  
13 day of May, 2015.

  
\_\_\_\_\_  
Notary Public

**WENDY S. PETTRONE**  
Notary Public, State of New York  
Monroe County, Reg. #01PE6101976  
My Commission Expires Nov. 24, 2015

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
*Domestic Mail Only*

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

OFFICIAL USE

7014 1620 0001 3783 0162

Postage	\$ 6.90
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.90

Postmark  
Here

Sent To Hon William W. Muchie  
Street & Apt. No.,  
or PO Box No. Town of Brighton, 2320 Elmwood  
City, State, ZIP+4 Rochester 14618 AVC.

PS Form 3800, July 2014

See Reverse for Instructions

May 6, 2015

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Hon. William W. Moehle  
Supervisor  
Town of Brighton  
2300 Elmwood Avenue  
Rochester, New York 14618

Re: *John Casciani – 2150 Monroe Avenue, Brighton, New York*  
Environmental Easement for DEC Site No. 828128

Dear Bill:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("DEC"):

on April 22, 2015,  
by John A. Casciani,  
for property at 2150 Monroe Avenue,  
Tax Map No. 137.14-2-9,  
DEC Site No: 828128,  
Monroe County Recording: May 6, 2015, Book 11531 of Deeds, Page 505

This Environmental Easement restricts future use of the above-referenced property to restricted commercial, residential and industrial uses, of course subject to Town Zoning Code provisions. Any on-site activity must be done in accordance with the Environmental Easement and the Site Management Plan which is incorporated into the Environmental Easement. (DEC approval is also required prior to any groundwater use.)

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.
2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land

Hon. William W. Moehle, Supervisor  
May 6, 2015  
Page 2

that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

An electronic version of every environmental easement that has been accepted by this Department is available to the public at: <http://www.dec.ny.gov/chemical/36045.html> If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Karl S. Essler

KSE/tbm  
Enclosure

cc: Andrew Guglielmi, Esq. (DEC) (w/encl) (via First Class Mail)  
Mr. John A. Casciani (w/encl) (via email)

MONROE COUNTY CLERK'S OFFICE

ROCHESTER, NY

THIS IS NOT A BILL. THIS IS YOUR RECEIPT

Receipt # 1235284

Index DEEDS

Book 11531 Page 505

No. Pages : 9

Instrument EASEMENT AGREEMENT

Date : 05/06/2015

Time : 09:34:34AM

Control # 201505060097

TT # TT0000013637

Ref 1 #

Employee : JoanM

Return To:  
BOX 115  
ATTN NICOLE MARRO

CASCIANI, JOHN A

PEOPLE OF THE STATE OF NEW YORK  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

COUNTY FEE TP584	\$	5.00
COUNTY FEE NUMBER PAGES	\$	40.00
RECORDING FEE	\$	45.00
STATE FEE TRANSFER TAX	\$	0.00

Total \$ 90.00

State of New York

MONROE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

TRANSFER AMT

TRANSFER AMT

\$1.00

CHERYL DINOLFO  
MONROE COUNTY CLERK



(S)

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

THIS INDENTURE made this 22<sup>nd</sup> day of April, 2015 between Owner(s) John A. Casciani, having an office at 893 DeWitt Road, Webster, 14580, County of Monroe, State of 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 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 2150 Monroe Avenue in the Town of Brighton, County of Monroe and State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel numbers: Section 137 Block 14 Lot 2-9, being the same as that property conveyed to Grantor by deed dated October 18, 1999 and recorded in the Monroe County Clerk's Office in Liber and Page 09228/554. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.166 +/- acres, and is hereinafter more fully described in the Land Title Survey dated June 10, 2014 prepared by Warren R. McGrail 42513, which will be attached to the Site Management Plan. The Controlled Property description 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

Box 115

RECORDED  
MAY - 5 AM '15  
33

RECORDED

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, 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:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),  
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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Monroe County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

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

(6) 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;

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



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

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

(10) 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 purposes as defined in 6NYCRR 375-1.8(g)(2)(i), 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, at such time as NYSDEC may require, 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: 828128  
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.

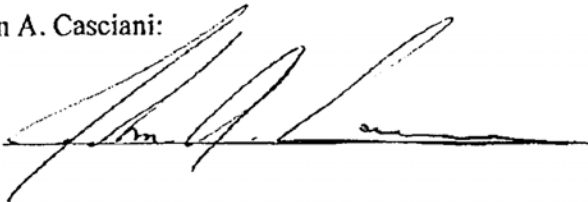
8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated 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.

John A. Casciani:

By: 

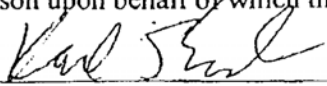
Print Name: JOHN A CASCIANI

Title: OWNER Date: 4/7/15

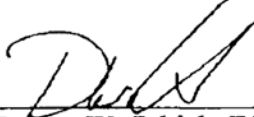
**Grantor's Acknowledgment**

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

On the 7<sup>th</sup> day of April, in the year 2015, before me, the undersigned, personally appeared John Casciani, 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

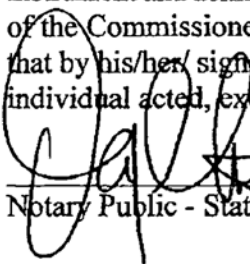
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:   
Robert W. Schick, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 22<sup>nd</sup> day of April, in the year 2015, before me, the undersigned, personally appeared Robert W. Schick, 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 Designee of the 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, 2018

**SCHEDULE "A" PROPERTY DESCRIPTION**

Description of environmental easement over property located at 2150 Monroe Avenue, Lot 67 of the Malvern Tract, Town of Brighton, County of Monroe, State of New York and described as follows:

Beginning at a point on the northeast right of way of Monroe Avenue, said point being the intersection with the northwest right of way of Hampshire Drive, thence;

1. Northwesterly and along the northeast right of way of Monroe Avenue a distance of 50.00 feet to a point, thence;
2. Northeasterly and forming an interior angle of 90 degrees a distance of 150.00 feet to a point, thence;
3. Southeasterly and forming an interior angle of 90 degrees a distance of 38.32 feet to a point on the northwest right of way of Hampshire Drive, thence;
4. Southwesterly and along said northwest right of way and along a curve to the right, said curve having a radius of 200.00 feet a distance of 68.70 feet to a point of tangency, thence;
5. Continuing southwesterly and along said northwest right of way a distance of 82.65 feet to a point on the northeast right of way of Monroe Avenue, said point being the point and place of beginning. Course 5 having an interior angle with Course 1 of 90 degrees.

Containing 0.166 acres

Subject to any and all easements, restrictions and covenants that an updated Abstract of Title may show.

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. William W. Mochic  
 Supervisor  
 Town of Brighton  
 2300 Elmwood Avenue  
 Rochester, NY 14618

2. Article Number  
(Transfer from: \_\_\_\_\_)

7014 1820 0001 3783 0162

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Kevin Winters*  Agent  
 Addressee

B. Received by (Printed Name)

*Winters*

C. Date of Delivery

*3/18/11*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Certified Mail®  Priority Mail Express™
- Registered  Return Receipt for Merchandise
- Insured Mail  Collect on Delivery

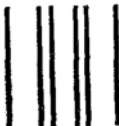
4. Restricted Delivery? (Extra Fee)  Yes

PS Form 3811, July 2013

Domestic Return Receipt

UNITED STATES POSTAL SERVICE

NY 146  
 08 MAY 11  
 PHIL



First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box •

Bond, Schoeneck & King, PLLC  
 350 Linden Oaks, Suite 310  
 Rochester, New York 14625  
 Attn: Wendy

*RC Cacciani*

