

MONROE COUNTY CLERK'S OFFICE

ROCHESTER, NY

THIS IS NOT A BILL. THIS IS YOUR RECEIPT

Receipt # 811824

Index DEEDS

Book 11198 Page 561

No. Pages : 9

Instrument EASEMENT AGREEMENT

Date : 12/11/2012

Time : 04:13:22PM

Control # 201212110997

TT # TT0000006609

Ref 1 #

Employee : JoanM

Return To:
BOX 80

3130 MONROE AVE ASSOCIATES LLC

NEW YORK STATE
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

TRANSFER AMT

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

\$1.00

CHERYL DINOLFO
MONROE COUNTY CLERK



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

THIS INDENTURE made this 7th day of December, 2012, between Owner(s) 3130 Monroe Ave. Associates LLC, having an office at 26 S. Main Street, Town of Pittsford, 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 3130 Monroe Avenue in the Town of Pittsford, County of Monroe and State of New York, known and designated on the tax map of the County Clerk of Monroe County as tax map parcel numbers: Section 150.120 Block 0001 Lot 006.0, being the same as that property conveyed to Grantor by deeds recorded May 26, 1999 in Liber 9163 of Deeds, page 460; July 2, 2012 in Liber 11138 of Deeds, page 264 and November 7, 2012 in Liber 11187 of Deeds, page 133, in the Monroe County Clerk's Office, comprising approximately 0.293 ± acres, and hereinafter more fully described in the Land Title Survey dated March 15, 2012, and revised on August 22, November 13, 21, and 27, 2012, and prepared by Michael J. Ennis, PLS, which will be attached to the Site Management Plan. The property description (the "Controlled Property") 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 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

RECORD & RETURN
BOX 80 - PEBERNDT / DRM

2012 DEC 11 PM 4:15
COUNTY CLERK

RECORDED

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Number: B8-0601-01-11, 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 purposes as described in 6 NYCRR 375-1.8(g)(2)(iii);

(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; and

(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 Restricted Residential purposes as described in 6 NYCRR 375-1.8(g)(2)(ii) or Residential purposes as described in 6 NYCRR 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 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: C828109
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.

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Pittsford, County of Monroe and State of New York, lying between Monroe Avenue and the right of way of the Auburn Branch of the New York Central Railroad, more particularly described as Lot B – 2 as shown on a map filed in the Monroe County Clerks Office in Liber 109 of Maps, page 31.

ALSO, ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Pittsford, County of Monroe and State of New York, lying between Monroe Avenue and the right of way of the Auburn Branch of the New York Central Railroad and more particularly described as the southerly 10 feet of Lot B – 1, as shown on said map, which southerly 10 feet adjoin the north line of said Lot B-2.

The above two parcels also described as follows:

Beginning at the southwesterly corner of Sublot B-2, said point being on the northeasterly line of Monroe Avenue (width varies);

Thence N 38°19'08" W along the said northeasterly line of Monroe Avenue, 110.05 feet to a point 10.00 feet northwesterly from the northwesterly line of Sublot B-2, as measured at right angles;

Thence N 45°50'52" E and parallel to the northwesterly line of Sublot B-2, 104.83 feet to a point in the southwesterly line of the N.Y.C. Railroad-Auburn branch, said line also being the northeasterly line of Sublot B-1;

Thence southeasterly along the said southwesterly line of the N.Y.C. Railroad-Auburn branch, along a curve to the right having a radius of 5566.83 feet an arc length of 110.19 feet to the southeasterly corner of Sublot B-2;

Thence S 45°50'52" W along the southeasterly line of Sublot B-2 128.50 feet to the point of beginning, containing 0.293 acres (12,753 square feet) of land, more or less.

Intending and being the same property as that described in deed dated May 25, 1999 from D & L Realty, Inc., to 3130 Monroe Ave. Associates LLC, recorded in book 9163 at page 460 at the Monroe County Clerk's Office on May 26, 1999 and correction warranty deed dated June 21, 2012 recorded in book 11138 at page 264 in the Monroe County Clerk's Office on July 2, 2012 and correction warranty deed dated November 7, 2012 recorded in book 11187 at page 133 in the Monroe County Clerk's Office on November 7, 2012.