



69 Cascade Drive, Suite 102, Rochester, New York 14614 • 585-270-6922 • www.HNHattorneys.com

Ronald G. Hull, Partner
(585) 270-6207
RHull@HNHattorneys.com

October 10, 2019

Jennifer Andaloro, Esq.
Section Chief A
Remediation Bureau
Office of General Counsel
New York State Department of
Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500

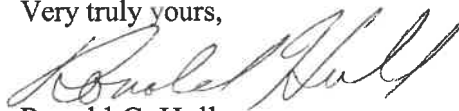
Re: Former Sherwood Shoe Company Site
New York State Brownfield Site C828201
Environmental Easement

Dear Ms. Andaloro:

Enclosed please find a copy of the recorded easement marked by the Monroe County Clerk's Office with the date and location of recording and a copy (with receipt from the City of Rochester acknowledging delivery) of the municipal notice to the City of Rochester.

If you have any questions or concerns relating to this matter, please contact me.

Very truly yours,



Ronald G. Hull

RGH:jih
Enclosures

cc: Bradford D. Burns, Esq. (w/o Encs.)
Highland Grove LLC (w/Encs.)

Adam J. Bello, County Clerk
Monroe County Clerk
39 West Main Street
Rochester, NY 14614

625 South Goodman St.

Receipt #: 2225149
Transaction #: 7844443
Transaction Date: 09/30/2019 11:37:43 AM
Payment Comment:

Fees for: EASEMENT AGREEMENT		\$0.00
Book / Page: D 12247 0409		
Instrument #: 201909300676		
Ref #: TT0000004365		
Recorded: 09/30/2019 11:37:43 AM		
Recording Fee	\$26.00	HIGHLAND GROVE LLC, DEPARTMENT OF ENVIORNMENTAL CONSERVATION,
Pages Fee	\$45.00	DEPARTMENT OF ENVIORNMENTAL CONSERVATION,
State Fee Cultural Education	\$14.25	HIGHLAND GROVE LLC,
State Fee Records Management	\$4.75	
TP-584 Form Fee	\$5.00	

Total Charges for Transaction:	\$95.00
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Payments Received:	
Check (1066)	\$95.00
Change	\$0.00

Cashier: ED

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

Monroe County Clerk's Office
SEP 30 2019

RECORDED
Time: 11:23

THIS INDENTURE made this 17th day of September, 2019 between Owner(s) Highland Grove LLC, having an office at 301 Exchange Boulevard, Rochester, New York 14608, 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 625 South Goodman Street in the City of Rochester, 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 121.65 Block 2 Lot 39, being the same as that property conveyed to Grantor by deed dated September 1, 2016 and recorded in the Monroe County Clerk's Office as Control # 201609210838. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.8 +/- acres, and is hereinafter more fully described in the Land Title Survey dated April 29, 2019 prepared by John H. Sciarabba, L.L.S. of Land Tech Surveying & Planning P.L.L.C., 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

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C828201-02-18, 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: C828201
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.

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Highland Grove LLC:

By: Steven M Dimarzo

Print Name: STEVEN M DIMARZO

Title: MEMBER Date: 8/28/2019

Grantor's Acknowledgment

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

On the 27th day of August, in the year 20 19, before me, the undersigned, personally appeared Steven M Dimarzo 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.

C.M.N.
Notary Public - State of New York

CHRISTIAN M. NADLER, ESQ
Notary Public, State of New York
Reg# 02NAB158723
Qualified in Monroe County
Commission Expires Nov. 20, 2020

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: 
Michael J. Ryan, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 17th day of September, in the year 2019 before me, the undersigned, personally appeared Michael J. Ryan, 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. Chiuano
Notary Public, State of New York
No. 01CH5082146
Qualified in Schenectady County
Commission Expires August 22, 2022

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the City of Rochester, County of Monroe, State of New York, the premises known and described as Parcel Nos. 369 and 371 on said Map No. 367 and Parcel No. 420 on said Map No. 370, which maps are entitled "Rochester City: Genesee Expressway (Rochester Inner Loop to Rochester City Line)" and which were filed in the Monroe County Clerk's Office on December 31, 1970 and March 25, 1971, respectively; and

Beginning at a point on the westerly highway boundary line of South Goodman Street at its intersection with the northerly highway boundary line of Uhlen Place, said point of beginning being northeasterly 33.93 feet, measured at right angles from Station 10+94.07 of the hereinafter described 2012 survey baseline for the conveyance of State property; thence northeasterly along the aforesaid westerly highway boundary line of South Goodman Street, 72.90 feet to a point, said point being northeasterly 106.82 feet measured at right angles from baseline Station 10+92.82, thence along the southerly highway boundary line of Interstate Route Connection 580: Rochester City (Eastern Expressway Parts 1 & 2) F.I.C. 58-2 the following: northerly on an angle to the right of 160°-33'-00", 30.04 feet to a point; thence northerly on an angle to the right of 155°-59'-00", 15.05 feet to a point; thence northwesterly on an angle to the right of 136°-27'-00" 53.44 feet to a point; thence westerly on an angle to the right of 167°-58'-00", 100.90 feet to a point; thence westerly on an angle to the right of 180°-32'-23", 144.91 feet to a point; thence westerly on an angle to the right of 183°-45'-37", 128.98 feet to a point as its intersection with the division line between People of the State of New York on the southeast and Ronal K. Geck and Richard Geck (reputed owners) on the northwest; thence southwesterly on an angle to the right of 130°-00'-16", 140.70 feet to a point; thence southeasterly on an angle to the right of 69°-56'-17" 254.39 feet to a point; thence southeasterly on an angle to the right of 199°-28'-40", 75.00 feet to a point on the northwesterly highway boundary line of Karges Place; thence northeasterly, along the aforesaid highway boundary line of Karges Place, on an angle to the right of 90°-00'-00", 191.25 feet to a point; thence southeasterly on an angle to the right of 235°-19'-47", 110.46 feet to the point of beginning and 90°-00'-00" from the first course; containing 78,316 S.F. 1.8± Acres.

The above mentioned 2012 survey base baseline is for the conveyance of State property and described as follows:

BEGINNING at Station I 0+00.00 thence South 65°-50'-02" East to station I 0+98.66. All bearings referred to True North at the 78°-35'-00" MERIDIAN OF WEST LONGITUDE (1983 N.A. Datum).

Subject to covenants, easements and restrictions of record.

Adam J. Bello, County Clerk

Monroe County Clerk

39 West Main Street

Rochester, NY 14614

625 South Goodman St.

Receipt #: 2225149
Transaction #: 7844443
Transaction Date: 09/30/2019 11:37:43 AM
Payment Comment:

Fees for: EASEMENT AGREEMENT		\$0.00
Book / Page: D 12247 0409		
Instrument #: 201909300676		
Ref #: TT0000004365		
Recorded: 09/30/2019 11:37:43 AM		
Recording Fee	\$26.00	
Pages Fee	\$45.00	
State Fee Cultural Education	\$14.25	
State Fee Records Management	\$4.75	
TP-584 Form Fee	\$5.00	
		HIGHLAND GROVE LLC, DEPARTMENT OF ENVIORNMENTAL CONSERVATION, DEPARTMENT OF ENVIORNMENTAL CONSERVATION, HIGHLAND GROVE LLC,

Total Charges for Transaction:	\$95.00
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Payments Received:	
Check (1066)	\$95.00
Change	\$0.00

Cashier: ED

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- 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. Lovely A. Warren, Mayor
City of Rochester
City Hall
30 Church Street
Rochester, NY 14614



9590 9402 4116 8092 0948 97

2. Article Number (Transfer from service label)

7017 2620 0000 4283 0666

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature: *[Signature]* Agent Addressee

B. Received by (Printed Name): *[Signature]* Date of Delivery: *10/9/19*

D. Is delivery address different from item 1? Yes No

RECEIVED
OCT 09 2019

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt



69 Cascade Drive, Suite 102, Rochester, New York 14614 • 585-270-6922 • www.HNHattorneys.com

Ronald G. Hull, Partner
(585) 270-6207
RHull@HNHattorneys.com

October 2, 2019

Honorable Lovely A. Warren, Mayor
City of Rochester
City Hall
30 Church Street
Rochester, New York 14614

**CERTIFIED MAIL,
RETURN RECEIPT
REQUESTED**

Re: Environmental Easement for 625 South Goodman Street

Dear Mayor Warren:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("Department") On September 17, 2019 and recorded on September 30, 2019, by Highland Grove LLC, for property at 625 South Goodman Street, Tax Map No. Section 121.65 Block 2 Lot 39, DEC Site No: C828201.

This Environmental Easement restricts future use of the above-referenced property to restricted residential, or commercial or industrial uses. 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. Department approval is also required prior to any groundwater use.)

Article 71, Section 713607 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 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

Honorable Lovely A. Warren, Mayor

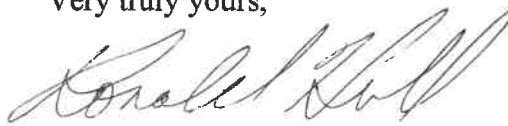
October 1, 2019

Page 2

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 the Department is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>. Please forward this notice to your building and/or planning departments, as applicable, to ensure your compliance with these provisions of New York State Environmental Conservation Law. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald G. Hull". The signature is fluid and cursive, with the first name "Ronald" being more prominent than the last name "Hull".

Ronald G. Hull

RGH:jih
Enclosure

cc: Highland Grove LLC