

MONROE COUNTY CLERK'S OFFICE

ROCHESTER, NY

THIS IS NOT A BILL. THIS IS YOUR RECEIPT

Receipt # 345685

Index DEEDS

Book 10865 Page 268

No. Pages : 10

Instrument DECLARATION OF COVENANTS

Date : 04/16/2010

Time : 11:14:14AM

Control # 201004160312

TT # TT0000012817

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ROCHESTER GAS AND ELECTRIC CORPORATION

PEOPLE OF THE STATE OF NEW YORK

COUNTY FEE NUMBER PAGES	\$	30.00
COUNTY FEE RECORDING	\$	8.00
COUNTY FEE TP584	\$	5.00
STATE FEE CULTURAL EDUCATION	\$	14.25
STATE FEE RECORDS MANAGEMENT	\$	4.75
STATE FEE TRANSFER TAX	\$	0.00

Total \$ 62.00

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



app.

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") made this 15th day of April, 2010, by **ROCHESTER GAS AND ELECTRIC CORPORATION**, a corporation with offices at 89 East Avenue, Rochester, New York 14649 ("RG&E"), for benefit of **THE PEOPLE OF THE STATE OF NEW YORK** (the "State"); and

WHEREAS, RG&E is the owner of real property located on the east bank of the Genesee River adjoining the Middle Falls Dam consisting of approximately 13.1 acres that is designated on the Monroe County Tax Map as Parcel No. 105.28-2-3.1, and was conveyed to RG&E, formerly known as Rochester Railway and Light Company, by deed on May 2, 1917 and recorded in the Land Records of Monroe County Clerk at page 437, liber 1010 of Deeds (the "Large Parcel"); and

WHEREAS, RG&E is the owner of real property consisting of the bed of the Genesee River from the east bank of the Large Parcel to the center, or thread, of the River ("Underwater Property"); and

WHEREAS, RG&E is the owner of real property consisting of approximately 3.315 acres of the Large Parcel and associated Underwater Property as delineated on the map set forth in Appendix "A", and as described in Appendix "B", which map and description are attached hereto and made a part hereof, (the "Controlled Property"); and

WHEREAS, the soils and groundwater of the Controlled Property are subject to the terms and conditions of the Voluntary Cleanup Agreement Number B8-0547-98-12 ("VCA"), which was entered into by and between the RG&E, Rochester Pure Waters District, Monroe County and the Department of Environmental Conservation (the "Department") on behalf of the State;

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of the VCA, RG&E, for itself and its successors and/or assigns, covenants that:

1. **Purposes.** The Purpose of this Declaration is to create real property covenants and restrictions 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 restrict future uses of the land and groundwater that are inconsistent with the above-stated purpose.
2. **Institutional and Engineering Controls.** The following covenants and restrictions apply to the use of the Controlled Property, run with the land, are binding on RG&E and

Box 147
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RG&E's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property is hereby restricted from being used for any purposes other than restricted residential, commercial, or industrial use, which uses include both operation and maintenance of RG&E's hydroelectric facilities and passive recreation, including hiking, biking, parking and fishing, unless the express written waiver of such restriction is obtained from the Department or if the Department shall no longer exist, any New York State agency, department, bureau or other entity replacing the Department (the "Relevant Agency");

B. The Controlled Property is further restricted from being used for any restricted residential, commercial or industrial use, other than for operation and maintenance of the RG&E's hydroelectric facilities, unless the following long-term engineering controls are employed:

(i) any and all excavation of the subgrade of the Controlled Property shall be implemented in accordance with the site management plan approved by the Department pursuant to the VCA or any subsequent Department- or Relevant Agency-approved plan for the performance of long term management of residual contaminants at the Controlled Property (collectively, the "Site Management Plan"); and

(ii) the vegetative cover over the surfaces of the Controlled Property that are not covered by rock outcrop, crushed stone, asphalt, concrete, or structures shall be continually maintained, all as provided in the Site Management Plan, unless the Department or Relevant Agency expressly waives in writing such requirement or requirements; and

(iii) the cap which has been constructed over the Rock Ledge, i.e., over the formerly exposed rock surface located at the base of the easternmost portion of the Middle Falls Dam, shall be periodically inspected for structural integrity and evidence of any seepage of dense non-aqueous phase liquid on a schedule as agreed upon with the Department as noted in the Site Management Plan. The results of each such inspection shall be reported to the Department or Relevant Agency, all as provided in the Site Management Plan; and

(iv) there shall be no use of groundwater underlying the Controlled Property for drinking water, industrial, or other purposes except to the extent of any use is or uses are specifically approved in advance by the Department or Relevant Agency in writing, all as provided in the Site Management Plan.

C. RG&E covenants and agrees that this Declaration shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

D. RG&E covenants and agrees that it shall annually, or such time as the Department or Relevant Agency may allow, submit to the Department a written statement by a qualified person that the Department may find acceptable certifying under penalty of perjury that the institutional and engineering controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the Department or Relevant Agency, and that nothing has occurred that would impair the ability of such controls to protect the public health and environment or constitute a violation or failure to comply with the Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

E. The institutional and engineering controls described in this paragraph 2 may not be discontinued, unless the Department or Relevant Agency expressly waives in writing such requirement or requirements.

3. **Right to Enter and Inspect.** RG&E covenants and agrees to allow the Department, its agents, employees, or other representatives of the State to enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. **Reserved RG&E's Rights.** RG&E reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

A. Use of the Controlled Property for all purposes consistent with the terms of this Declaration;

B. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, by lease or by indenture, subject and subordinate to this Declaration; provided that, no fewer than 60 days before such sale, lease or transfer, notice is provided to the Department, Rochester Pure Waters District and Monroe County in a writing setting forth the identity of the transferee and the nature and proposed date of the transfer and written notice of the applicability of the VCA and this Declaration is provided to the transferee, with a copy to the Department, which notices are not conditions precedent to an effective sale, lease or transfer.

5. **Enforcement.**

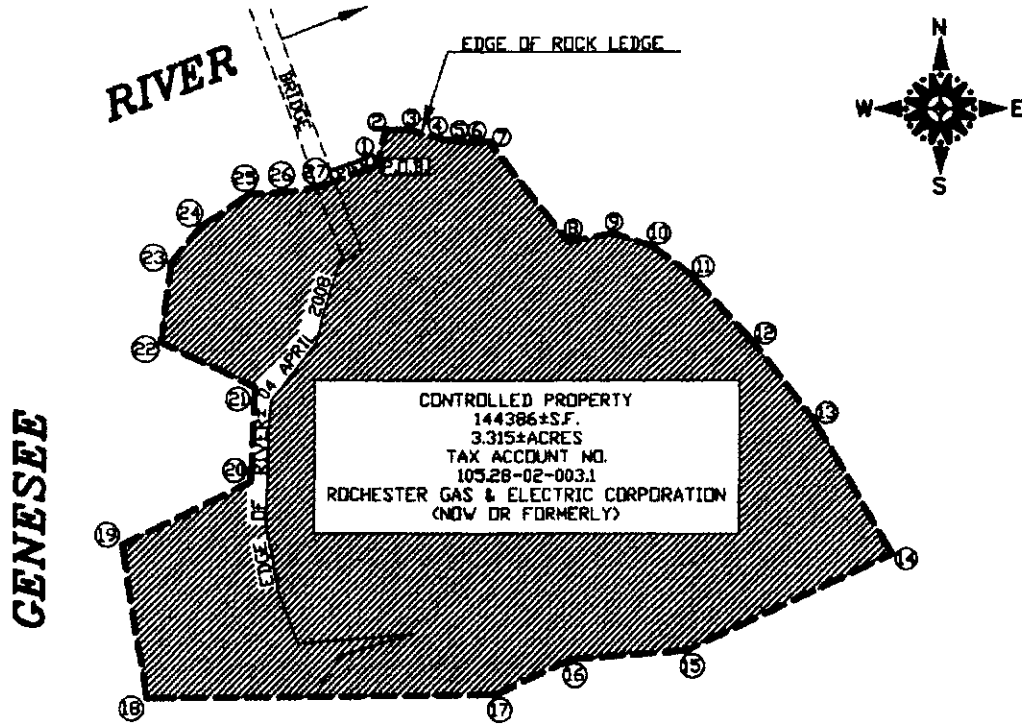
A. The covenants and restrictions of this Declaration are enforceable by RG&E and the Department or Relevant Agency. RG&E on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department or Relevant Agency of these covenants and restrictions and covenants not to contest such enforcement.

Appendix "A" to
DECLARATION OF COVENANTS AND RESTRICTIONS
of
Rochester Gas and Electric Corporation

Map of Controlled Property

**CONTROLLED PROPERTY UNDER DECLARATION OF COVENANTS AND RESTRICTIONS
TO BE GRANTED TO
THE PEOPLE OF THE STATE OF NEW YORK
625 BROADWAY * ALBANY, NEW YORK 12233**

For ROCHESTER GAS & ELECTRIC CORPORATION Parcel at CITY OF ROCHESTER * COUNTY OF MONROE * STATE OF NEW YORK
 Street 125 BREWER STREET Subdivision 1000 ACRE TRACT
 Reference Data: Liber _____ of Maps, Page _____; Liber 624/1010 of Deeds, Page 340/437
 Abstract MONROE TITLE INSURANCE CORPORATION * ABSTRACT NO. 138893 * DATED 18 JANUARY 2008 Lot No. PART OF TOWN LOT 44
 Note: If a current abstract of this was not provided, this parcel is subject to any easements or encroachments that a current abstract of this may disclose.



LINE	BEARING	DISTANCE
1-2	N-13°-32'-36'-E	25.93'
2-3	N-88°-53'-02'-E	16.99'
3-4	S-73°-35'-50'-E	23.97'
4-5	S-82°-49'-20'-E	13.21'
5-6	S-85°-27'-36'-E	10.92'
6-7	N-84°-16'-32'-E	9.07'
7-8	S-38°-39'-25'-E	90.74'
8-9	N-79°-22'-49'-E	32.56'
9-10	S-72°-45'-35'-E	29.15'
10-11	S-52°-27'-03'-E	35.34'
11-12	S-41°-53'-56'-E	62.18'
12-13	S-37°-42'-55'-E	69.71'
13-14	S-30°-23'-29'-E	109.67'
14-15	S-65°-01'-11'-W	159.09'

LINE	BEARING	DISTANCE
15-16	S-85°-37'-30'-W	82.39'
16-17	S-64°-44'-49'-W	58.60'
17-18	S-89°-20'-32'-W	247.50'
18-19	N-08°-58'-54'-W	108.55'
19-20	N-64°-12'-44'-E	100.44'
20-21	N-02°-44'-39'-E	67.26'
21-22	N-64°-31'-07'-W	74.32'
22-23	N-07°-26'-57'-E	57.42'
23-24	N-39°-58'-37'-E	32.76'
24-25	N-56°-57'-21'-E	42.74'
25-26	N-87°-30'-38'-E	23.02'
26-27	N-82°-29'-41'-E	26.05'
27-1	N-69°-17'-57'-E	43.62'

Scale 1" = 100 FEET

Job No. STA5WELLCRD
 Drawing No. STA5WELL-2.DWG
 F.B. No. _____ Pg. No. _____

I hereby certify to the following that this map was made from notes of a survey, completed on 04 April 2008

1. THE PEOPLE OF THE STATE OF NEW YORK

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

Dated: _____ Signed: _____

Appendix "B" to
DECLARATION OF COVENANTS AND RESTRICTIONS
of
Rochester Gas and Electric Corporation

Metes and Bounds Description of Controlled Property

**CONTROLLED PROPERTY UNDER
DECLARATION OF COVENANTS AND
RESTRICTIONS
TO
THE PEOPLE OF THE STATE OF NEW YORK**

All that tract or parcel of land situate in the City of Rochester, County of Monroe, State of New York being part of Town Lot Number 44 of the 1000 Acre Tract, and being further described as follows:

Commencing at a point at the southeasterly corner of the existing concrete pier at Rochester Gas & Electric Corporation Station 5 Head Gates, and thence the following courses through said Rochester Gas and Electric Corporation property designated as Tax account Number 105.28-02-003.1:

1. N-13°-32'-36"-E, a distance of 25.93 feet to a point;
2. N-88°-53'-02"-E, a distance of 16.99 feet to a point;
3. S-73°-35'-50"-E, a distance of 23.97 feet to a point;
4. S-82°-49'-20"-E, a distance of 13.21 feet to a point;
5. S-85°-27'-36"-E, a distance of 10.92 feet to a point;
6. N-84°-16'-32"-E, a distance of 9.07 feet to a point;
7. S-38°-39'-25"-E, a distance of 90.74 feet to a point;
8. N-79°-22'-49"-E, a distance of 32.56 feet to a point;
9. S-72°-45'-35"-E, a distance of 29.15 feet to a point;
10. S-52°-27'-03"-E, a distance of 35.34 feet to a point;
11. S-41°-53'-56"-E, a distance of 62.18 feet to a point;
12. S-37°-42'-55"-E, a distance of 69.71 feet to a point;
13. S-30°-23'-29"-E, a distance of 109.67 feet to a point;
14. S-65°-01'-11"-W, a distance of 159.09 feet to a point;
15. S-85°-37'-30"-W, a distance of 82.39 feet to a point;
16. S-64°-44'-49"-W, a distance of 58.60 feet to a point;
17. S-89°-20'-32"-W, a distance of 247.50 feet to a point;
18. N-08°-58'-54"-W, a distance of 108.55 feet to a point;
19. N-64°-12'-44"-E, a distance of 100.44 feet to a point;
20. N-02°-44'-39"-E, a distance of 67.26 feet to a point;
21. N-64°-31'-07"-W, a distance of 74.32 feet to a point;

22.N-07°-26'-57"-E, a distance of 57.42 feet to a point;
23.N-39°-58'-37"-E, a distance of 32.76 feet to a point;
24.N-56°-57'-21"-E, a distance of 42.74 feet to a point;
25.N-87°-30'-38"-E, a distance of 23.02 feet to a point;
26.N-82°-29'-41"-E, a distance of 26.05 feet to a point;
27.N-69°-17'-57"-E, a distance of 43.62 feet to a point; said point being
the point and place of beginning for the premises herein described.
Containing 3.315+/- Acres

Also subject to all covenants, easements and restrictions of record, if any,
affecting said premises.

All as shown on a map prepared by Stephen M. Bly, P.L.S., dated xx xxxx
xxxx.

Tax Account No. 105.28-02-003.1
Property Address: 125 Brewer Street