

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

THIS INDENTURE made this 12th day of June, 2008, between SCP 2006-C23-186 LLC having an office at 220 Jackson Street, 2nd Floor, San Francisco, CA 94111 (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 of ensuring the potential 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 in the Village of Blasdell, Erie County, New York known and designated on the tax map of the Village of Blasdell as part of tax map parcel number 151.63-5-1.1 being the same as that property conveyed to Grantor by deed on March 13, 2007, and recorded in the Land Records of the Erie County Clerk at page 5255, liber 11126 of Deeds, or computerized system tracking/ identification number C915192, comprised of approximately 0.58 acres, and hereinafter

Refer to:
Mintz Levin
Frederick S. Armstrong
One Financial Center
Boston, MA 02111

Environmental Easement/Page 1 of 7

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more fully described and shown in Exhibit A and Exhibit B attached hereto and made a part hereof (the "Controlled Property"); and;

WHEREAS, the Commissioner does hereby acknowledge that 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 at this 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 covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index No. B9-0683-05-03, Site No. C915192, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL 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 potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls 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. The Controlled Property may be used for commercial and industrial use as long as the following long-term controls are employed:
 - a. The groundwater beneath the site is not to be used as a potable water source.
 - b. The site should be certified every two years for institutional controls.

 - B. The Controlled Property may not be used for a higher level of use such as unrestricted or residential use and the above-stated controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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 of Title 36 to Article 71 of the Environmental Conservation Law.

D. 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.

E. 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 that the 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 NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 Controlled Property, including:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, 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 intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or Article 56, Title 5 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. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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 its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State 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 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:

Environmental Easement Attorney
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation 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 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.

County: Eric

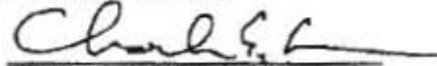
Site No: C915192

Contract/Order No: B9-0683-05-03

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

SCP 2006-C23-186 LLC

By:



Charles S. Swanson

Title: President

Date: 12/7/07

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

By:



Alexander B. Granris, Commissioner

County: Erie


Site No: C915192

Contract/Order No: B9-0683-05-03

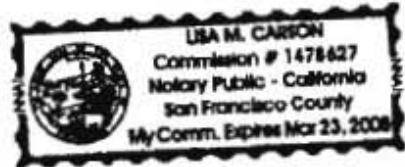
Grantor's Acknowledgment

STATE OF CALIFORNIA)
) ss:
COUNTY OF San Francisco)

On the 21st day of December, in the year 2007, before me, the undersigned, personally appeared Charles S. Swanson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and who, being duly sworn, did depose and say that he is the President duly appointed of SCP 2006-C23-186 LLC the corporation described in and which executed the above instrument; and that he signed his name thereto by the authority of the board of directors of said corporation.



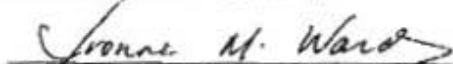
Notary Public - State of California
Comm. Expires 03/23/2008



Grantee's Acknowledgment

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

On the 12th day of June, in the year 2008, before me, the undersigned, personally appeared ALEXANDER B. GRANUS, 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/it executed the same in his capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his 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

Yvonne M. Ward
Notary Public - State of New York
No. 02WA6115886
Qualified in Saratoga County
My Commission Expires Sept. 13, 2008

EXHIBIT A

LEGAL DESCRIPTION

ENVIRONMENTAL EASEMENT

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Blasdell, Town of Hamburg, County of Erie and State of New York, being part of Lot No. 40, Township 10 and Range 7 of the Buffalo Creek Reservation, and being more particularly bounded and described as follows:

BEGINNING at a rebar with cap in the monumented easterly highway boundary of South Park Avenue (U. S. Route No. 62) at its intersection with the northerly line of lands conveyed by John J. Kaczor and Eugene M. Kaczor to John S. Kaczor as described in two (2) Warranty Deeds dated September 15, 2002 and recorded in the Erie County Clerk's Office on September 20, 2002 in Liber 11013 of Deeds at pages 9018 & 9027, said rebar also being 69.00 feet distant northerly along said easterly boundary of South Park Avenue from its intersection with the northerly line of lands conveyed by Frank S. Martin, Virginia M. Saunders, William W. Stambach and Ida Hascall to the Union Free School District No. 8, Town of Hamburg as described in a Warranty Deed dated October 25, 1937 and recorded in said Clerk's Office on November 23, 1937 in Liber 2726 of Deeds at page 432; thence North 00 degrees 00 minutes 55 seconds East along said easterly boundary of South Park Avenue, a distance of 117.92 feet to a point; thence North 00 degrees 09 minutes 40 seconds West, continuing along said easterly boundary of South Park Avenue, a distance of 45.05 feet to a New York State Department of Transportation right of way monument, said monument being at the southerly corner of lands appropriated by the People of the State of New York on August 6, 1989, designated on Map No. 23 as Parcel No. 26; thence North 41 degrees 17 minutes 38 seconds East along the southeasterly line of said parcel No. 26, a distance of 30.21 feet to a drill hole in the monumented southerly highway boundary of Lake Avenue, also known as Lake Avenue Extension; thence South 88 degrees 33 minutes 59 seconds East along said southerly boundary of Lake Avenue, a distance of 109.98 feet to a point at the northwesterly corner of the first of two parcels of land conveyed by Steve Hetey and Paul Munich to the Blasdell Bowling Academy, Inc. as described in a Quit Claim Deed dated July 31, 1948 and recorded in said Clerk's Office on August 4, 1948 in Liber 4374 of Deeds at page 160; thence South 00 degrees 15 minutes 02 seconds West along the westerly line of said first parcel of lands conveyed to the Blasdell Bowling Academy, Inc., a distance of 116.92 feet to a point; thence South 88 degrees 40 minutes 14 seconds East along the southerly line of said first parcel of lands conveyed to the Blasdell Bowling Academy, Inc. a distance of 20.00 feet to a point in the westerly line of the second of two parcels conveyed to the Blasdell Bowling Academy, Inc. as described in said Quit Claim Deed recorded in Liber 4374 of Deeds at page 160; thence South 00 degrees 15 minutes 02 seconds West along said westerly line of the second parcel of land conveyed to the Blasdell Bowling Academy, Inc., a distance of 69.00 feet to a rebar with cap at the northeasterly corner of said lands of Kaczor; thence North 88 degrees 40 minutes 14 seconds West along said northerly line of Kaczor, a distance of 149.01 feet to the railroad spike at the point or place of beginning.

