



NASSAU COUNTY CLERK'S OFFICE  
ENDORSEMENT COVER PAGE

Recorded Date: 10-31-2007  
Recorded Time: 9:46:25 a

Liber Book: D 12333  
Pages From: 542  
To: 555

Record and Return To:  
CYNTHIA PSORAS ESQ  
US ENV PROTECTION AGENCY  
290 BROADWAY 20TH FL  
NEW YORK, NY 10007-1866

Control  
Number: 262  
Ref #: RE 007340  
Doc Type: D02 EASEMENT

Location:	Section	Block	Lot	Unit
OYSTER BAY (2824)	0047	0000A-00	00267	

JBK001

Taxes Total	.00
Recording Totals	77.00
Total Payment	77.00

THIS PAGE IS NOW PART OF THE INSTRUMENT AND SHOULD NOT BE REMOVED  
MAUREEN O'CONNELL  
COUNTY CLERK



2007103100262



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Record & Return

Cynthia Psoras, Esq. —  
US Env Protection Agency  
290 Broadway 20th FL.  
New York, NY 10007-1866

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**ENVIRONMENTAL PROTECTION EASEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this 26 day of Sept, 2007, by and between WINDING ROAD PROPERTIES, INC. — ("Grantor"), having an address of 501 Winding Road, Old Bethpage, New York 11804-1336, and, THE UNITED STATES of AMERICA and its assigns, Environmental Protection Agency ("Grantee"), having an address of 290 Broadway New York, New York 10007.

**WITNESSETH:**

WHEREAS, Grantor is the owner of land located in the County of Nassau, State of New York, more particularly described on **Exhibit A** attached hereto and made a part hereof together with any buildings and improvements thereon and appurtenances thereto (the "Property"); and

WHEREAS, the Property is part of the Claremont Polychemical Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on June 10, 1986; and

WHEREAS, in a Record of Decision dated September 28, 1990 ("1990 ROD"), the Regional Administrator of EPA Region II selected, and the New York State Department of Environmental Conservation ("NYSDEC") concurred with, a response action for the Site, which provides, in part, for the following actions: constructing and operating a groundwater extraction and treatment system on the Property; and

WHEREAS, in an Explanation of Significant Differences dated April 2003 ("ESD"), EPA modified the 1990 ROD for the Site, to provide, in part, for the following actions: addressing contaminated soil under a building located on the Property known as the Former Process Building by implementing institutional controls including covenants and/or easements to protect public health from cadmium in soils underneath the Former Process Building and using a soil vapor extraction ("SVE") system to remove volatile organic compounds ("VOCs") from the soil under the Former Process Building;

WHEREAS, EPA is operating the groundwater treatment and SVE systems; and

WHEREAS, the parties hereto have agreed that Grantor shall grant a permanent easement and covenant, a) to provide a right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the response action; and b) to impose on the Property use restrictions that will run with the land for the purpose of protecting human health and the environment; and

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WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the actions it will take pursuant to an "Order Authorizing the Debtor to Sell and Transfer its Premises located at 501 Winding Road, Old Bethpage, New York," issued by the Hon. Joel B. Rosenthal, U.S. Bankruptcy Judge, in case numbers 05-86-739 JBR & 05-86-740 JBR (substantively consolidated), dated August 17, 2007, and other good and valuable consideration, does hereby give, grant, covenant and declare in favor of the Grantee that the Property shall be subject to the restrictions on use and rights of access set forth below, and does give, grant and convey to the Grantee with general warranties of title the perpetual right to enforce said restrictions and rights, which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions on use: The following restrictions on use apply to the use of the Property, run with the land and are binding on the Grantor:
  - a) Grantor shall refrain from any disturbance of the concrete slab underneath the Former Process Building and shall maintain its integrity to minimize direct human exposure to cadmium-contaminated soil underneath it. Modifications to the Former Process Building and/or any new construction affecting the concrete slab shall only be permitted if appropriate health and safety precautions are in place to prevent exposure to the cadmium, all with prior written approval of EPA or its successors and assigns. If Grantor wishes to remove the cadmium-contaminated soils, such actions would require prior written EPA approval;
  - b) So long as the cadmium contaminated-soils underneath the Building are present at the Property, the portion of the Property where the Former Process Building is located shall be restricted to commercial/light industrial uses only; including but not limited to use as a motor truck parking facility, landscape and construction equipment storage facility, or similar uses;
  - c) Grantor shall refrain from interfering with or disturbing the SVE system;



- d) Grantor shall refrain from installing any other wells or withdrawing any groundwater from the Property while the groundwater contamination remains above health-based levels;
  - e) Grantor shall refrain from interfering with or disturbing the operation of the groundwater treatment system; and
  - f) Grantor shall not allow the occupation of buildings on the Property without vapor sampling and mitigation, if necessary.
4. Modification or termination of restrictions: The restrictions on use specified in the preceding paragraph of this instrument may only be modified, or terminated in whole or in part, in writing, by the Grantee, with the prior written consent of EPA, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form.
5. Right of access: A right of access to the Property at all reasonable times for the following purposes shall run with the land and be binding on Grantor:
- a) Implementing the response actions in the ROD and ESD, including but not limited to, operating the groundwater treatment and SVE systems, inspecting, periodic sampling and monitoring, and maintaining equipment related to any response actions at the Property, including but not limited to:
    - i) Inspecting the concrete slab underneath the Former Process Building to ensure that its integrity has been maintained to minimize direct human exposure to cadmium-contaminated soil underneath it. To inspect modifications to this Building and/or any new construction affecting the concrete slab to determine whether appropriate health and safety precautions are in place to prevent exposure to the cadmium. If cadmium-contaminated soils are removed, to inspect the Property to confirm the successful removal of those soils.
    - ii) Installing additional equipment, wells and piping if EPA deems it to be necessary.
    - iii) Inspecting the Property to ascertain whether any prohibited wells have been installed or groundwater has been withdrawn from the Property while the groundwater contamination remains above health-based levels.
    - iv) Inspecting the Property to determine whether the groundwater treatment system has been interfered with or disturbed.



- b) Verifying any data or information relating to the Site;
  - c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
  - d) Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
  - e) Implementing additional or new response actions under CERCLA.
6. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.
  7. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
  8. No public access and use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.
  9. Public notice: Grantor agrees to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS  
SUBJECT TO AN ENVIRONMENTAL PROTECTION  
EASEMENT AND DECLARATION OF RESTRICTIVE  
COVENANTS, DATED \_\_\_\_\_, 2007, RECORDED IN  
THE NASSAU COUNTY CLERK'S OFFICE ON  
\_\_\_\_\_, 2007, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN  
FAVOR OF, AND ENFORCEABLE BY THE UNITED  
STATES OF AMERICA AND THE STATE OF NEW YORK**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

10. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a



breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.

11. Damages: Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.
12. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
13. Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances and that Grantor will forever warrant and defend the title thereto and the quiet possession thereof.
14. Notices: Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Winding Road Properties, Inc.  
501 Winding Road  
Village of Old Bethpage  
New York 11804-1336

To Grantee:

Emergency and Remedial Response Division  
U.S. EPA Region II  
290 Broadway  
New York, New York 10007  
Attn: Claremont Superfund Site Project Manager

and one copy to:

U.S. EPA Region II  
Office of Regional Counsel  
290 Broadway - 17<sup>th</sup> Floor  
New York, New York 10007  
Attn: Claremont Superfund Site Attorney

and one copy to:

New York State Department of  
Environmental Conservation  
Division of Environmental Remediation



625 Broadway  
Albany, New York 12233-0001  
Attn: Claremont Superfund Site Project Manager

15. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) Entire agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein; provided that nothing in this instrument shall be deemed to alter or modify the Consent Decree.
- e) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f) Joint obligation: If there are two or more parties identified as Grantors herein, the obligations imposed by this instrument upon them shall be joint and several.
- g) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor," wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and its personal representatives, heirs, successors, and assigns. The term "Grantee," wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities

named at the beginning of this document, identified as "Grantee" and its personal representatives, heirs, successors, and assigns.

h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

j) Third-Party Beneficiary: Grantor and Grantee hereby agree that NYSDEC shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of NYSDEC.



TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

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

Executed this 29<sup>th</sup> day of Sept, 2007.

Witness:

Sylvia Schneider

Sylvia Schneider

[Signature]

DANIEL N. HOFFNUNG

WINDING ROAD PROPERTIES, INC.

Mark Neitlich

(Printed Name)

By: MARK NEITLICH

Their: PRESIDENT

STATE OF \_\_\_\_\_

) ss

COUNTY OF \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me personally came \_\_\_\_\_ to me known, who, being duly sworn, did depose and say that he/she resides in \_\_\_\_\_; that he/she is president or other officer or director or attorney in fact duly appointed of Winding Road Properties, Inc., the corporation described in and which executed the above instrument; that he/she knows the seals of said corporations; that the seals affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporations, and that he/she signed his/her name thereto by like authority.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the  
State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



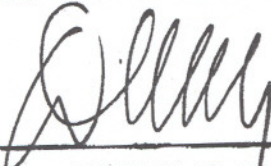
UNIFORM FORM CERTIFICATE OF ACKNOWLEDGMENT

State of Connecticut

ss: New Haven

County of New Haven

On the 26th day of September in the year 2007, before me, the undersigned personally appeared Mark Neulich personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name(s) 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 **DANIEL N. HOPFNUNG**

Commissioner of the Superior Court

RECEIVED IN  
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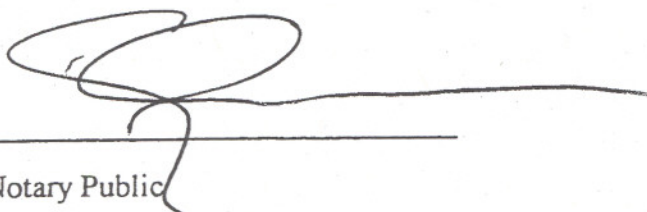
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UNIFORM FORM CERTIFICATE OF ACKNOWLEDGMENT

State of New York

County of New York

On the 28<sup>th</sup> day of Sept. in the year 2007, before me, the undersigned personally appeared Cynthia Psoras personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name(s) 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

STANLEY J. LACHER  
Notary Public, State of New York  
No. 4905605  
Qualified in Suffolk County  
Commission Expires August 24, 2009

LEGIBILITY POOR  
FOR MICROFILM

**Exhibit A**

**Environmental Protection Easement and Declaration of Restrictive Covenants  
between Winding Road Properties, Inc., and the United States of America  
Depicted on the Tax Maps of the Nassau County Clerk as  
Section 47, Block A, Lot 267**

BEGINNING at a point on the easterly side of Winding Road distant 362.09 feet northerly when measured along the easterly side of Winding Road from the corner formed by the intersection of the easterly side of Winding Road with the northerly side of Wood Road; running thence North 09 degrees 53 minutes 22 seconds East along the easterly side of Winding Road 30.00 feet; running thence South 80 degrees 16 minutes 00 seconds East 228.81 feet; running thence South 72 degrees 16 minutes 00 seconds East 136.45 feet; running thence North 22 degrees 52 minutes 00 seconds East 440.00 feet; running thence South 67 degrees 08 minutes 00 seconds East 250.00 feet; running thence South 22 degrees 52 minutes 00 seconds West 284.00 feet; running thence South 65 degrees 20 minutes 10 seconds East 242.58 feet to a land of the New York State Agricultural School; running thence South 22 degrees 52 minutes 00 seconds West along the last mentioned land 47.00 feet to land of the Bethpage State Park; running thence along the last mentioned land the following two courses and distances: (1) South 29 degrees 03 minutes 31 seconds West 151.95 feet; (2) North 68 degrees 35 minutes 51 seconds West 595.88 feet; running thence North 52 degrees 56 minutes 38 seconds West 16.50 feet; running thence North 36 degrees 02 minutes 10 seconds East 19.04 feet; running thence North 80 degrees 16 minutes 00 seconds West 226.71 feet to the easterly side of Winding Road, at the point or place of BEGINNING.