

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

THIS INDENTURE made this 30th day of September, 2013, between Owner(s) Town of Cortlandville, a Municipal Corporation, having an office at Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, New York, 13045 (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 Sommerville Road in the Town of Cortlandville, County of Cortland and State of New York, known and designated on the tax map of the County Clerk of Cortland as tax map parcel numbers: Section 109.00, Block 1 Lot 2, being the same as that property conveyed to Grantor by deed dated July 03, 1963 and recorded in the Cortland County Clerk's Office in Liber 287 at Page 852, comprising approximately 10.865 ± acres, and hereinafter more fully described in the Land Title Survey dated August 29, 2013 prepared by Fisher Associates, 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 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

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OCT 11 2013

Original Filed

ELIZABETH LARKIN, CO. CLERK

NOW THEREFORE, in consideration of the mutual covenants contained herein, 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:

its current use as a closed and capped landfill.

(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) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) 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;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) 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, Restricted Residential or Commercial purposes as defined in 6NYCRR 375-1.8(g)(2)(i), (ii) and (iii), 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 certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) 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;
- (2) the owner will continue to allow access to such real property;
- (3) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls; and
- (4) 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, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: 712009
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.

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

Grantor: Town of Cortlandville,

By: Richard C. Tupper

Print Name: RICHARD C. TUPPER

Title: Supervisor Date: 9/19/13

Grantor's Acknowledgment

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

On the 19th day of September, in the year 2013, before me, the undersigned, personally appeared Richard C. Tupper, 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.

John B. Folmer
Notary Public - State of New York

JOHN B. FOLMER
Notary Public, State Of New York
No. 5009264
Qualified In Cortland County
Commission Expires March 8, 2015

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: 
Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 30th day of September, in the year 2013, before me, the undersigned, personally appeared Robert W. Schick, 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. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2014

SCHEDULE "A" PROPERTY DESCRIPTION

Property Address: Sommerville Road, Town of Cortlandville, New York
Tax Map: 109.00 – 1- 2

INTENDING AND BEING THE ENTIRE PARCEL OF PROPERTY AS THAT DESCRIBED IN DEED DATED JULY 3, 1963 FROM LOUIS C. RUSSELL AND HELEN B. RUSSELL TO THE TOWN OF CORTLANDVILLE AND RECORDED IN THE CORTLAND COUNTY CLERK'S OFFICE IN BOOK 287 AT PAGE 852.

ALL THAT TRACT OR PARCEL OF LAND BEING KNOWN AS PART OF LOT 100 SITUATED IN THE TOWN OF CORTLANDVILLE, COUNTY OF CORTLAND, STATE OF NEW YORK AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTER LINE OF RIGHT-OF-WAY OF SOUTH HILL ROAD AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN THE LANDS NOW OR FORMERLY OF THE TOWN OF CORTLANDVILLE AS DESCRIBED BY A DEED RECORDED IN THE CORTLAND COUNTY CLERK'S OFFICE IN LIBER 287 OF DEEDS, AT PAGE 852 ON THE WEST AND THE LANDS NOW OR FORMERLY OF GREG SCHMIDT AND CAROLYN SCHMIDT AND ALLEN S. CRAWFORD AND ROBERTA J. CRAWFORD AS DESCRIBED BY A DEED RECORDED IN THE CORTLAND COUNTY CLERK'S OFFICE IN INSTRUMENT NO. 952298-001 ON THE EAST; THENCE

SOUTHEASTERLY ALONG THE LAST MENTIONED DIVISION LINE ON A BEARING OF SOUTH 60°49'51" EAST, A DISTANCE OF 42.00 FEET TO A POINT; THENCE

CONTINUING SOUTHERLY ALONG THE LAST MENTIONED DIVISION LINE ON A BEARING OF SOUTH 03°51'51" EAST, A DISTANCE OF 1218.30 FEET TO A POINT; THENCE

CONTINUING SOUTHERLY ALONG THE LAST MENTIONED DIVISION LINE ON A BEARING OF SOUTH 18°21'51" EAST, A DISTANCE OF 66.50 FEET TO A POINT; THENCE

CONTINUING SOUTHWESTERLY ALONG THE LAST MENTIONED DIVISION LINE ON A BEARING OF SOUTH 44°19'22" WEST, A DISTANCE OF 16.50 FEET TO A POINT ON THE DIVISION LINE BETWEEN THE LANDS OF NOW OR FORMERLY THE TOWN OF CORTLANDVILLE ON THE NORTH AND THE LANDS NOW OF FORMERLY OF DONALD F. JONES, JR. AND DIANE M. ECCLESTON AS TRUSTEES OF THE DONALD F. JONES, SR. AND CATHERINE M. JONES TRUST AS DESCRIBED BY A DEED RECORDED IN THE CORTLAND COUNTY CLERK'S OFFICE IN INSTRUMENT NO. 1031548-001 ON THE SOUTH; THENCE

WESTERLY ALONG THE LAST MENTIONED DIVISION LINE ON A BEARING OF SOUTH 81°16'12" WEST, A DISTANCE OF 263.86 FEET (265± FEET DEED) TO A POINT; THENCE

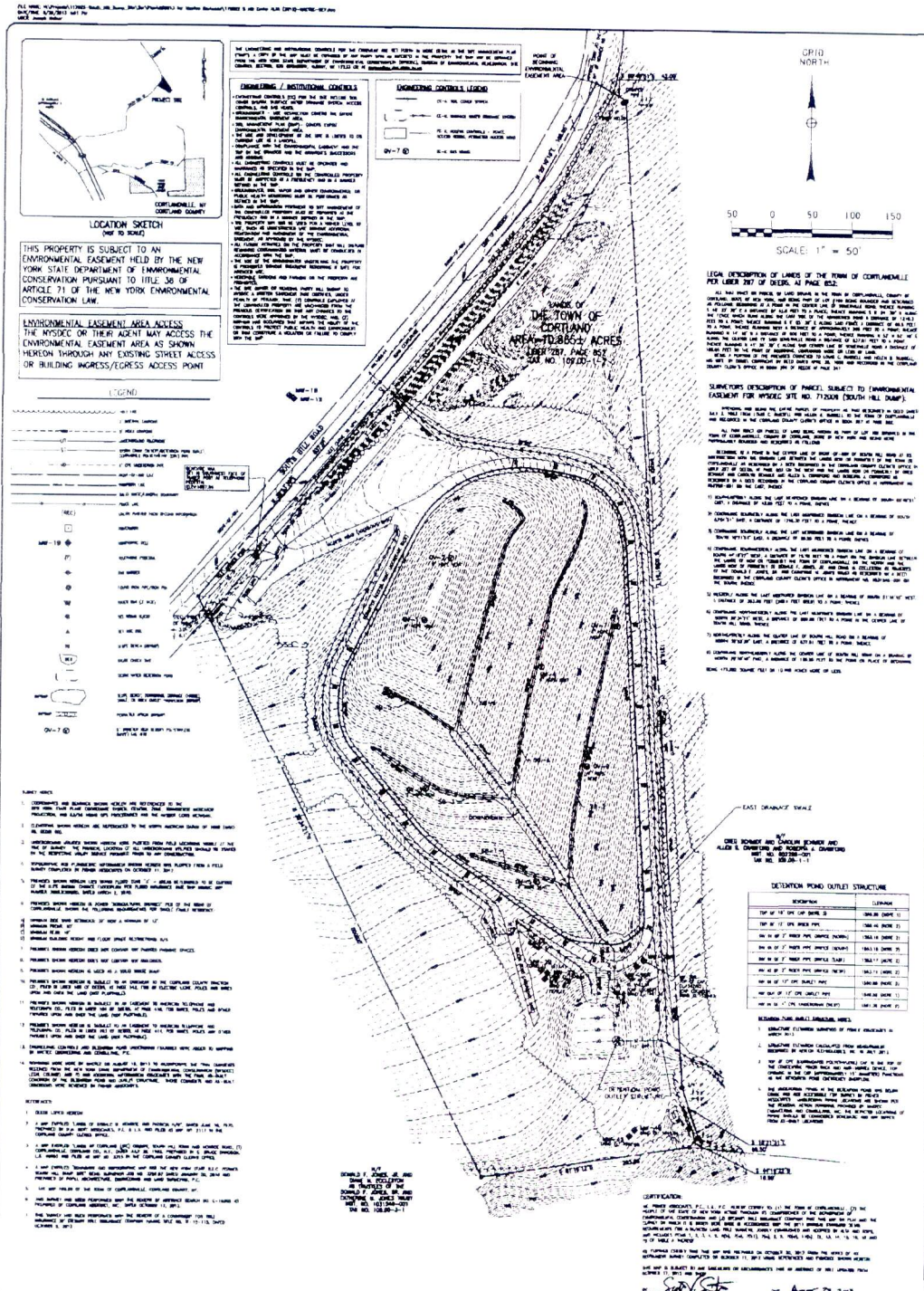
CONTINUING NORTHWESTERLY ALONG THE LAST MENTIONED DIVISION LINE ON A BEARING OF NORTH 26°34'21" WEST, A DISTANCE OF 800.00 FEET TO A POINT IN THE CENTER LINE OF SOUTH HILL ROAD; THENCE

NORTHEASTERLY ALONG THE CENTER LINE OF SOUTH HILL ROAD ON A BEARING OF NORTH 39°53'39" EAST, A DISTANCE OF 637.01 FEET TO A POINT; THENCE

CONTINUING NORTHEASTERLY ALONG THE CENTER LINE OF SOUTH HILL ROAD ON A BEARING OF NORTH 29°10'10" EAST, A DISTANCE OF 168.05 FEET TO THE POINT OR PLACE OF BEGINNING.

BEING 473,282 SQUARE FEET OR 10.865 ACRES MORE OR LESS.

SURVEY



PROPERTY: SOUTH HILL DUMP SITE, TOWN OF CORTLAND, CORTLAND COUNTY, NY, PART OF LOT 100, OLD TOWNSHIP OF WINDSOR, WYSDCC SITE NO. 712009

DATE: 11/20/22

SCALE: 1" = 50'

PROJECT: ALTA/ASIM LAND TITLE SURVEY

FISHER ASSOCIATES

SCOTT SMITH

JOY HENNER

DATE: 11/20/22

SCALE: 1" = 50'

PROJECT: ALTA/ASIM LAND TITLE SURVEY

DATE: 11/20/22

NOTICE OF ENVIRONMENTAL EASEMENT

The New York State Department of Environmental Conservation (the "Grantee"), has been granted an Environmental Easement pursuant to Article 71, Section 36 affecting real property located at the following address:

Sommerville Road (AKA South Hill Road, Town of Cortlandville,
New York .)

Cortland County

Property Owner/Grantor: Town of Cortlandville

The Tax Map Identification No.: 109.00-1-2

NYS Department of Environmental Conservation Site No.: 712009

The Environmental Easement for the above referenced property has been filed in the Cortland County Clerk's Office on 10/11, 2013 at Liber 2013 Page 05304 of Deeds. *INSTRUMENT NO*

The Environmental Easement contains institutional and/or engineering controls that run with the land. The Environmental Easement restricts the use of the above referenced property to its current use as a closed and capped landfill.

NOTICE IS HEREBY GIVEN that any activity on the land which might or will prevent or interfere with the ongoing or completed remedial program, including the controls as set forth in the Environmental Easement and the Site Management Plan, must be done in accordance with the Site Management Plan which is incorporated by reference in the Environmental Easement. A copy of the Site Management Plan can be obtained by contacting the Department at derweb@gw.dec.state.ny.us. Be further advised of the notice provisions of NYCRR 375-1.11(d) relative to contemplated significant changes in use.

Failure to Comply with the terms and conditions of the Environmental Easement may subject violators to penalties of up to \$37,500 per day for violation of 6 NYCRR 375-1.11(b).

An electronic version of this Environmental Easement has been accepted by the New York State Department of Environmental Conservation and is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>.

Original Filed

OCT 11 2013

ELIZABETH LARKIN, CO. CLERK