

Lisa Dell, County Clerk
401 Montgomery Street
Room 200
Syracuse, NY 13202
(315) 435-2229

Onondaga County Clerk Recording Cover Sheet

Received From :

ONONDAGA COUNTY LAW DEPARTMENT
421 MONTGOMERY ST 10TH FLOOR
SYRACUSE, NY 13202

Return To :

ONONDAGA COUNTY LAW DEPARTMENT
421 MONTGOMERY ST 10TH FLOOR
SYRACUSE, NY 13202

First PARTY 1

COUNTY OF ONONDAGA

First PARTY 2

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Index Type : Land Records

Instr Number : 2022-00006961

Book : **Page :**

Type of Instrument : Easement

Type of Transaction : Ease, R-Way

Recording Fee: \$0.00

Recording Pages : 10

The Property affected by this instrument is situated in Syracuse, in the
County of Onondaga, New York

Real Estate Transfer Tax

RETT # : 7922

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$0.00

State of New York

County of Onondaga

I hereby certify that the within and foregoing was
recorded in the Clerk's office for Onondaga
County, New York

On (Recorded Date) : 02/16/2022

At (Recorded Time) : 11:29:56 AM



Doc ID - 046605480010

Lisa Dell
Lisa Dell, County Clerk



THIS IS NOT A BILL

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

THIS INDENTURE made this 7th day of February, 2022, between Owner(s) the County of Onondaga, having an office at 421 Montgomery Street, Syracuse, New York 13202, County of Onondaga, 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 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 540 State Fair Boulevard Rear in the City of Syracuse, County of Onondaga and State of New York, known and designated on the tax map of the County Clerk of Onondaga as tax map parcel numbers: Section 114 Block 02 Lot 44.0, being a portion of the property conveyed to Grantor by deed dated April 22, 2021 and recorded in the Onondaga County Clerk's Office in Instrument No. 2021-00017783. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 4.43 +/- acres, and is hereinafter more fully described in the Land Title Survey dated July 2, 2018 and last revised September 20, 2018 prepared by David William Hannig, P.L.S., 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 the Consent Decree dated October 11, 2006 in State of New York v. Honeywell International Inc., Matter # 89-CV-815 filed in the United States District Court Northern District of New York, and "So Ordered" by the Honorable Frederick J. Scullin, Jr. on

January 4, 2007, 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, as applicable to Grantor as the tax parcel Owner, 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 lands underwater, which includes passive recreational uses, which are public uses with limited potential for soil contact;

(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 Onondaga 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 use or Restricted-Residential use purposes as defined in 6 NYCRR 375-1.8(g)(i) and (ii), 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 or Responsible Party assumes, each on behalf of itself, their successors and assigns. The Grantor's assumption of its obligations contained in the SMP 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 its obligations in the SMP and the Grantor assumes the burden of 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 and/or Responsible Party shall, in accordance with the terms of the SMP and 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 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 Controlled 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 Grantor or its successors violates the institutional controls of this Environmental Easement, or takes any action to remove, alter or disturb any of the engineering controls placed on the Controlled Property, the Grantee may take any action available to it in law or equity.

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 periodic 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: 734030
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.

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

The County of Onondaga:

By: [Signature]

Print Name: J Ryan McMahon, II

Title: County Executive Date: 1-7-2022

Grantor's Acknowledgment

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

On the 7th day of January, in the year 2022, before me, the undersigned, personally appeared J Ryan McMahon, II, 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 executed the same in his capacity(ies), and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public

MARGARET M DOHERTY
Notary Public, State of New York
Registration #01DO6278230
Qualified In Onondaga County
Commission Expires March 18, 2025

Site No: 734030

By: Susan Edwards
Susan Edwards, Acting Director
Division of Environmental Remediation

[illegible]

Seniela Andoloro
Notary Public - State of New York

JENNIFER ANDALORO
Notary Public, State of New York
No. 02AN6098246
Qualified in Albany County
Commission Expires January 14, 2024

SCHEDULE "A" PROPERTY DESCRIPTION

DESCRIPTION OF TAX MAP PARCEL 114-02-44
540 STATE FAIR BOULEVARD REAR
CITY OF SYRACUSE, ONONDAGA COUNTY, NEW YORK
Lot 40

BEGINNING AT A POINT, said point being the following courses and distances from southerly corner of the City of Syracuse N/F, L 2562 P. 243 at the northerly line of the New York Central Railroad N/F, L 4370 P. 92, along a curve to the right having a radius of 2768.50 feet and an arc length of 487.41, being subtended by a chord of South 65 degrees 46 minutes 12 seconds West for a distance of 486.78 feet to a point, along a curve to the right having a radius of 2833.68 feet and an arc length of 364.58, being subtended by a chord of North 81 degrees 05 minutes 05 seconds West for a distance of 364.33 feet to a point of compound curve, along a curve to the right having a radius of 3403.17 and an arc length of 715.68 feet, being subtended by a chord of North 71 degrees 22 minutes 14 seconds West for a distance of 714.37 feet to a point on the westerly line of Reclaim Lot 41 and easterly line of Reclaimed Lot 40 and North 10 degrees 11 minutes 30 seconds East for a distance of 602.27 feet along the easterly line of Reclaimed Lot 40.

THENCE North 57 degrees 09 minutes 01 seconds West for a distance of 428.38 feet to a point;

THENCE North 50 degrees 51 minutes 39 seconds West for a distance of 210.40 feet to a point on the westerly line of Reclaim Lot 40;

THENCE North 62 degrees 13 minutes 01 seconds East for a distance of 500.11 feet along the westerly line of Reclaim Lot 40 to the northwesterly corner of Reclaimed Lot 40;

THENCE South 57 degrees 37 minutes 30 seconds East for a distance of 200.00 feet along the northerly line of Reclaimed Lot 40 to the northeasterly corner of Reclaimed Lot 40;

THENCE South 10 degrees 11 minutes 30 seconds West for a distance of 499.07 feet along the easterly line of Reclaimed Lot 40 TO THE POINT AND PLACE OF BEGINNING.

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 4.43 acres more or less.