

MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE: 1/19/2023
TIME: 9:08:30 AM
RECEIPT: 23008796 - DUPLICATE -

RICHARD STANTON
ACCOUNT #: 0

DUPLICATE RECEIPT

ITEM - 01 785
RECD: 1/19/2023 9:12:32 AM
FILE: 2023010010 BK/PG D 11413/1238
Deed Sequence: TT2022012279
4100 RIVER ROAD PROPERTIES LLC
Recording Fees 90.00
Subtotal 90.00

TOTAL DUE	\$90.00
PAID TOTAL	\$90.00
PAID CREDIT	\$90.00
VISA # xxxx-	

REC BY: Kristin
COUNTY RECORDER

FILED

JAN 19 2023

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36

OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

ERIE COUNTY
CLERK'S OFFICE

THIS INDENTURE made this 24th day of October, 2022 between Owner(s) 4100 River Road Properties LLC, having an office at 247 Rano Street, Buffalo, New York, 14207, in the County of Erie, 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 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 4100 River Road in the Town of Tonawanda, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel number: Section 64.08 Block 1 Lot 4, being the same as that property conveyed to Grantor by deed recorded on November 7, 2008 in the Erie County Clerk's Office in Liber 11152, Page 1170. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 9.6 +/- acres, and is more fully described in the Land Title Survey dated September 13, 2017 prepared by Kenneth M. Hahn, which will be attached to the OM&M Plan (as defined herein). 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

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NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Numbers: B9-0046-84-10 and B9-0047-91-02, as amended, 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 Post-Remedial Construction Operations, Maintenance, and Monitoring Manual ("OM&M Plan"), including any and all Department approved amendments to the OM&M Plan, 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:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the OM&M Plan;

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the OM&M Plan;

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the OM&M Plan;

(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 OM&M Plan;

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

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the OM&M Plan;

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the OM&M Plan;

(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 or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The OM&M Plan describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the OM&M Plan, 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 OM&M Plan 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 OM&M Plan and obtaining an up-to-date version of the OM&M Plan 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 OM&M Plan that the Department approves for the Controlled Property and all Department-approved amendments to that OM&M Plan.

E. 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 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 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 real 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 or operation, maintenance, and monitoring 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 Controlled Property, all rights as fee owner of the Controlled 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 any person violates this Environmental Easement, the Grantee may revoke any Certificate of Completion or No Further Action/Satisfactory Completion Letter issued 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, 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: 915031
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
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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 Controlled Property is situated in the manner prescribed by Article 9 of the Real Property Law.

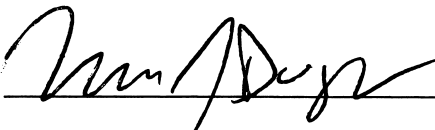
8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Controlled Property 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 Controlled 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.

4100 River Road Properties LLC:

By: 

Print Name: Michael J Duggan

Title: Authorized Number Date: 8/22/2022

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


Notary Public - State of New York



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: Andrew Guglielmi
Andrew Guglielmi, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 24th day of October, in the year 2022 before me, the undersigned,
personally appeared Andrew Guglielmi, 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
acknowledged to me that he executed the same in his capacity as Designee of the 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.

Jennifer Andoloro
Notary Public - State of New York

JENNIFER ANDALORO
Notary Public, State of New York
No. 02AN6098246
Qualified in Albany County 24
Commission Expires January 14, 2024

SCHEDULE "A" PROPERTY DESCRIPTION

PARCEL "A"

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawanda, County of Erie and State of New York, being part of Lot No. 96 of the Niagara River Reservation, described as follows:

BEGINNING at the point of intersection of the south line of lands conveyed to Hambleton Terminal Corporation by deed recorded in the Erie County Clerk's Office on December 28, 1939, in Liber 2953 of Deeds, page 38 and the west line of Erie Canal; thence southerly along said west line of Erie Canal a distance of 351.09 feet; thence westerly along the north line of Parcel "B" as described with a certain deed made to Clarence Materials Corp. recorded in Erie County Clerk's Office on March 27, 1980 in Liber 8892 of Deeds, page 389 and along [t]he westerly extension thereof a distance of 1224.51 feet to the United States Harbor Line; thence northerly along said United States Harbor Line a distance of 351.31 feet to the south line of lands so conveyed to Hambleton Terminal Corporation; thence easterly along said south line of land so conveyed to Hambleton Terminal Corporation a distance of 1156.98 feet to the point of beginning.

PARCEL "B"

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawanda, County of Erie and State of New York, being part of Lot No. 96 of the Niagara River Reservation, described as follows:

BEGINNING at a point in the south line of lands conveyed to Hambleton Terminal Corporation by deed recorded in Erie County Clerk's Office on December 28, 1939 in Liber 2953 of Deeds, page 38 distant 29.39 feet east of the east line of Erie Canal as measured along said south line of lands so conveyed to Hambleton Terminal Corporation; thence westerly along said south line of lands so conveyed to Hambleton Terminal Corporation a distance of 29.39 feet to said east line of Erie Canal; thence southerly along said east line of Erie Canal a distance of 351.87 feet to a point in the north line of Parcel "A" as described with a certain deed made to Clarence Materials Corp. recorded in Erie [County] Clerk's Office on March 27, 1980 in Liber 8892 of Deeds, page 389 a distance of 23.46 feet; thence northerly a distance of 352.06 feet to the point or place of beginning.