

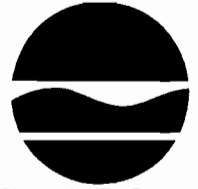
New York State Department of Environmental Conservation

Office of General Counsel, 14th Floor

625 Broadway, Albany, New York 12233-5500

Phone: (518) 402-9509 • FAX: (518) 402-9019

Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

August 04, 2008

RECEIVED

AUG 05 2008

Oksana M. Ludd, Esq.
Hiscock & Barclay LLP
50 Beaver Street
Albany, NY 12207-2830

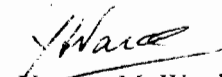
Re: Environmental Easement /Site No.: B-00053/SAC No.: C302580
City of Schenectady Industrial Development Agency
433 State Street
Schenectady, NY 12305

Dear Ms. Ludd:

Enclosed please find an originally-executed Environmental Easement covering the above - referenced property, which was accepted today by Commissioner Grannis. Please have your client record and index this easement & survey in the Office of the Schenectady County Clerk, in the manner prescribed by New York State Real Property Law Article 9 and Environmental Conservation Law Article 71, Title 36. A TP 584.2 form is provided with this letter. Once this environmental easement is recorded, the local municipality will need to be notified.

Please return a copy of the recorded easement marked by the recorder with the date and location of recording, a certified copy of the municipal notice along with the final title insurance policy to my attention. Please feel free to contact me if you need further assistance with this matter.

Very truly yours,


Yvonne M. Ward

Easement Attorney

Enclosure: Environmental Easement
TP.584.2

cc: David Crosby \Section Chief\ DER\NYSDEC ✓
Cathy Eastman P.E. \ DER\NYSDEC

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 Environmental Restoration Project Number: B00053-4**, 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 or light industrial use as long as the following long-term engineering controls are employed:

Institutional Controls

Because of the known presence and potential yet unknown presence of contaminated ground water and soils, the conditions and site-use requirements set forth in the Site Management Plan are imposed upon the "Lot 6" and adjoining "sewer line" parcels. These institutional controls included in this Plan consider three aspects of control:

- General site use restrictions,
- Specific restrictions regarding handling and use of ground water, and
- Specific restrictions regarding soil disturbance.

Any future, proposed actions that are subject to the provisions of the Site Management Plan must be submitted to the appropriate Division of the NYSDEC in writing for review and acceptance prior to implementation.

Specific institutional controls are presented below:

General Site Use Restrictions

SU-1. The property shall be restricted from residential development. In addition, the property shall not be developed for, or allow use that may bring any "high risk" human

population (e.g. children's day-care, elder care, health care facility, etc.) in contact with site sub-surface soils, ground water, or potential soil vapor intrusion or collection, unless specific design, operational and institutional controls are engineered and/or prepared by a licensed professional to provide secure environmental and human health protections for these specific uses.

SU-2. The property shall not be developed for, or allow, any agricultural activity or cultivation of vegetables or other crops for human consumption.

SU-3. Any future construction of buildings on the property must include preventative measures to address the potential for soil vapor intrusion and include confirmation that those measures are effective and remain effective as needed to eliminate the potential for exposures that may result from contaminated soil vapor.

Ground Water Restrictions

GW-1. Ground water may not be withdrawn for use as a potable source for drinking, cooking or personal washing, or other human or animal contact.

GW-2. Ground water may not be withdrawn for use in irrigation of vegetable or other crop growth for consumption

GW-3. Ground water withdrawn for any other purpose shall be tested and monitored in accordance with a plan prepared by an environmental professional appropriate for the intended use, and shall include consideration of the contaminants of record (petroleum constituents, VOCs, SVOCs) and consideration of hydrogeologic effects of withdrawal on the site ground water.

GW-4. Ground water collection or drainage related to construction or other site grading or site alteration shall only be allowed subject to a testing and monitoring plan similar to that described in GW-3 above.

Soil Disturbance Restrictions

Soil Disturbance – General

SDG-1. Soil disturbance, grading, or excavation greater than one foot depth will proceed only under a Plan developed by an environmental or industrial hygiene professional in consideration of the property environmental history. This Plan shall include provisions for appropriate screening for petroleum constituents, VOCs, and SVOCs during soil disturbance activities, and shall define threshold conditions that will require implementation of additional levels of monitoring, testing, or site security to protect worker and community health, and shall describe contingency activities in the event currently unknown contaminated conditions should be discovered.

This Plan shall include provisions for appropriate screening for petroleum constituents, volatile organic compounds (VOCs), and semi-volatile organic compounds (SVOCs) during all soil excavation/disturbance activities, and shall define threshold conditions that will require implementation of additional levels of monitoring, testing, odor controls, site security to protect worker and community health and shall describe contingency activities in the event currently unknown contaminated conditions are discovered.

The Health and Safety Plan developed for any future project at the Riverside Technology Park Lot 6 Site (the site specific HASP) will refer to and include the current NYSDOH Generic Community Air Monitoring Plan (GCAMP). The site specific HASP must state that, "if contaminated soil or groundwater is encountered during future excavation work, the GCAMP must be followed to limit off-site migration of VOCs in air, dust, or odors that might affect nearby workers or community."

All wastes generated by actions regulated under the Site Management Plan will be properly characterized, managed, reused or disposed of as per applicable local, state and federal regulations.

Soil Disturbance – Soil Management Areas

SDMA-1. Soil disturbance, grading, or excavation activities shall proceed only in accordance with condition SDG-1, above.

In addition to general soil disturbance conditions, any soil disturbance in defined Soil Management Area A or Area B (see filed survey drawing titled "Map Showing Survey, Riverside Technology Park, Revised Lot 6" by ABD Engineers & Surveyors, Dwg. No. 2447A-NEW6, Rev. 1, 10-3-05), shall proceed only in accordance with a Health and Safety Plan (HASP) prepared specifically for the nature and depth of excavation anticipated. The HASP shall be prepared cognizant of the Site environmental history and conditions described in documents prepared for NYSDEC Brownfield Environmental Restoration Project No. B00053, Riverside Technology Park – Lot 6, Schenectady, NY, specifically the Site Investigation / Remedial Alternatives Report and the Engineering Certification Report.

The HASP shall be implemented and enforced during all excavation activities in defined Soil Management Areas. All excavation shall proceed with full-time, on-site monitoring of excavation and excavation perimeter air quality and screening of properly recovered and handled soil samples for VOC's by properly calibrated and operated appropriate PID instrumentation, suitable for indicating contaminant presence by the characteristics of known previous or remaining on-site contamination.

Encountered excavation ground water shall be considered to be contaminated with petroleum constituents, and the HASP and excavation screening and monitoring plan shall address the sampling, monitoring, testing, and handling of excavation water.

SDMA-2. All excavated soil shall be screened visually and by appropriate PID instrumentation and if contaminated conditions are indicated shall be tested by a qualified environmental laboratory for the presence of petroleum hydrocarbons, VOCs, and SVOCs

by appropriated laboratory methods. Excavated contaminated soil shall be properly handled and disposed of in a manner and at a facility properly permitted to dispose of such materials.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated **July, 2008** ("SMP"). The SMP describes obligations that 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 on the Controlled Property, 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. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. 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:

Regional Remediation Engineer:
Region 4
NYS DEC
1150 North Westcott Road
Schenectady, NY 12306

or Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233

B. The Controlled Property may not be used for a higher level of use such as **unrestricted or restricted residential** use and the above-stated engineering 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 to Title 36 of 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
NYSDEC
625 Broadway
Albany New York 12233-1500

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.

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

Grantor's Name: City of Schenectady Industrial Development Agency (COSIDA)

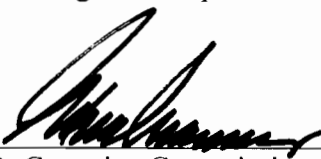
By:  _____

Title: Chairman

Date: _____

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

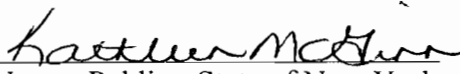
by:


Alexander B. Grannis, Commissioner

Grantor's Acknowledgment

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

On the 16th day of July, in the year 2008, before me, the undersigned, personally appeared Denise Brucker, 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.

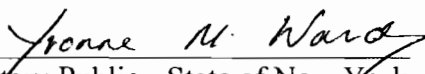

Notary Public - State of New York

KATHLEEN MCGINN
Notary Public - State of New York
No. 01
Qualified in Saratoga County
Commission Expires Oct. 01, 2010

Grantee's Acknowledgment

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

On the 17th day of August, in the year 2008, before me, the undersigned, personally appeared ALEXANDER B. GRANNIS, 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 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. 02WA6115685
Qualified in Saratoga County
My Commission Expires Sept. 13, 2008

Schedule "A" Property Description

New Lot 6

Technology Drive

All that parcel of land situated in the City of Schenectady, County of Schenectady and State of New York and being more particularly bounded and described as follows:

BEGINNING at a point located on the northerly boundary of Technology Drive at its intersection with the division line between Lot 6 on the east and Lot 5 on the west, said lots being shown on map entitled "Riverside Technology Park, Subdivision of Lands of City of Schenectady Industrial Development Agency Lot Reorganization Map for Lots 5, 5A and 6", as prepared by Environmental Design Partnership, dated June 26, 1998; thence North 35°-29'-00" West along said division line a distance of 169.74 feet to a point; thence through said Lot 6 and partially along the southerly boundary of an existing sewer easement the following six (6) courses and distances:

1. North 54°-49'-23" East a distance of 277.26 feet to a point;
2. South 35°-10'-37" East a distance of 10.00 feet to a point;
3. North 54°-49'-23" East a distance of 110.00 feet to a point;
4. North 35°-10'-37" West a distance of 10.00 feet to a point;
5. North 54°-49'-23" East a distance of 136.84 feet to a point;
6. North 45°-14'-30" East a distance of 69.50 feet to a point;

thence South 33°-05'-00" East along the division line between said Lot 6 on the west and lands now or formerly City of Schenectady and Technology Drive on the east a distance of 69.20 feet to a point; thence continuing along said northerly boundary of Technology Drive the following three (3) courses and distances:

1. South 23°-42'-10" West a distance of 138.38 feet to a point;
2. Along a curve to the right having a radius of 270.00 feet, an arc distance of 145.21 feet to a point, said curve containing a chord of South 39°-06'-30" West, 143.47 feet;
3. South 54°-31'-00" West a distance of 332.62 feet to the **POINT OF BEGINNING** containing 2.02 acres.

Subject to any easements, restrictions and/or covenants of record, if any.

Description
Soil Management Plan Area A
Technology Drive

All that parcel of land situated in the City of Schenectady, County of Schenectady and State of New York and being more particularly bounded and described as follows:

COMMENCING at a point located on the northerly boundary of Technology Drive at its intersection with the division line between Lot 6 on the east and Lot 5 on the west, said lots being shown on map entitled "Riverside Technology Park, Subdivision of Lands of City of Schenectady Industrial Development Agency Lot Reorganization Map for Lots 5, 5A and 6", as prepared by Environmental Design Partnership, dated June 26, 1998; thence North 43°-00'-16" east through said Lot 6 a distance of 267.26 feet to the **POINT OF BEGINNING**, said point being the southwest corner of Soil Management Plan Area A, herein described; thence through said Lot 6 the following four (4) courses and distances:

1. North 35°-10'-37" West a distance of 30.00 feet to a point;
2. North 54°-49'-23" East a distance of 60.00 feet to a point;
3. South 35°-10'-37" East a distance of 30.00 feet to a point;
4. South 54°-49'-23" West a distance of 60.00 feet to the **POINT OF BEGINNING**, containing 0.04 acres.

Subject to any easements, restrictions and/or covenants of record, if any.

Description
Soil Management Plan Area B
Technology Drive

All that parcel of land situated in the City of Schenectady, County of Schenectady and State of New York and being more particularly bounded and described as follows:

COMMENCING at a point located on the northerly boundary of Technology Drive at its intersection with the division line between Lot 6 on the east and Lot 5 on the west, said lots being shown on map entitled "Riverside Technology Park, Subdivision of Lands of City of Schenectady Industrial Development Agency Lot Reorganization Map for Lots 5, 5A and 6", as prepared by Environmental Design Partnership, dated June 26, 1998; thence North 35°-29'-00" West along said division line a distance of 204.88 feet to a point; thence along the division line between said Lot 6 on the southeast and lands now or formerly City of Schenectady on the northwest the following two (2) courses and distances:

1. North 55°-16'-40" East a distance of 265.89 feet to a point;
2. North 57°-18'-30" East a distance of 11.58 feet to the **POINT OF BEGINNING**;

thence North 57°-18'-30" East continuing along said division line a distance of 110.10 feet to a point; thence through said Lot 6 the following three (3) courses and distances:

1. South 35°-10'-37" East a distance of 37.75 feet to a point;
2. South 54°-49'-23" West a distance of 110.00 feet to a point;
3. North 35°-10'-37" West a distance of 42.53 feet to the **POINT OF BEGINNING** containing 0.10 acres.

Subject to any easements, restrictions and/or covenants of record, if any.

Survey

