

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

THIS INDENTURE made this _____ day of SEPT. 2009, between
Owner(s) The Village of Manchester having an office at 8 Clifton Street, Manchester, New
York 14504 (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 of ensuring the
potential 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 147 State Street, in the Village of
Manchester, County of Ontario, State of New York, known and designated on the tax map of the
County Clerk of Ontario as tax map parcels: Section 31.20 Block 1 Lots 4.000 being the same as
that property conveyed to Grantor by Warranty Deed on September 22, 1967 and recorded in the
Ontario County Clerk's Office in Liber 686 at page 661, comprised of approximately 0.479 acres,
and hereinafter more fully described in Schedule "A" property description and ALTA/ACSM
Land and Title Survey of "Lands of the Village of Manchester being in the Village of Manchester
Ontario County, New York" prepared by Freeland-Parrinello Land Surveyors, dated January 5,
2009, attached hereto and made a part hereof (the "Controlled Property"); and

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 State Assistance Contract Number: C 302654 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 restricted residential, commercial or industrial use (identified future uses) in accordance with 6 NYCRR Part 375 - 1.8 (g) (2) (ii), (iii) & (iv), as long as the following long-term engineering and institutional controls are employed:

- (i) Any use of groundwater as a source of potable or process water without necessary water quality treatment as determined by the New York State Department of Health, and prior notification and approval of the NYSDEC, shall not be permitted; and
- (ii) Any proposed structure constructed on the property shall have an approved soil vapor intrusion barrier system installed in accordance with NYSDEC regulations and directives.

B. The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated February, 2009 ("SMP"). 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 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
NYSDEC - Region 8
Division of Environmental Remediation
6274 East Avon-Lima Road
Avon, NY 14414-9519
Phone: (585) 226-5363 fax: (585) 226-9485

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

C. The Controlled Property may not be used for a higher level of use such as residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

D. 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 of Title 36 to Article 71 of the Environmental Conservation Law.

E. 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.

F. 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:

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 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 or Release provided under ECL 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:

If for Grantee: Site No. : B 00131
Department of Environmental Enforcement
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

If for Grantor to:

Attn: Village of Manchester
8 Clifton Street
Manchester, New York 14504

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

County: Ontario Site No: B 00131 Contract No: C 302654

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: **The Village of Manchester**

By: Nancy W. Johnson

Title: MAYOR Date: 9/4/09

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: [Signature]
Alexander B. Grannis, Commissioner
Dale A. Desnoyers, Director
Division of Remediation

Grantor's Acknowledgment

STATE OF NEW YORK)
COUNTY OF Ontario) ss:

On the 4th day of Sept., in the year 2009, before me, the undersigned, personally appeared Nancy W. Johnson, 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.

Rita J. Gurewitsch
Notary Public - State of New York

RITA J. GUREWITCH
Notary Public, State of New York
Ontario County #01GU5027334
Commission Expires May 09, ~~10~~ 2010

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 14th day of October, in the year 2009, 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(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 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, 2010

SCHEDULE "A"
ENVIRONMENTAL EASEMENT
PROPERTY DESCRIPTION
Village of Manchester
Frederick Property
South side, State Street

Address: 147 State Street, Manchester, Ontario, NY
Tax Id No: Section 31.20 - Block 1 - Lot 4.000

All That Tract or Parcel of Land, situate in the Village of Manchester, Town of Manchester, County of Ontario and State of New York, more particularly bounded and described as follows:

Beginning at a point marked by a reinforced rod set in the south street line of State Street, which said point is located approximately 175.1 feet west of the west line of Bennett Avenue; thence, S 03° 00' 00" W a distance of 319.25 feet along the west line of premises of various owners to a point marked by a reinforced rod; thence, N 70° 13' 00" W along the north line of premises now or formerly of Niagara Mohawk Power Company a distance of 36.55 feet to a point marked by a reinforced rod; thence, N 09° 53' 30" W along the east line of premises now or formerly of Richard Cirulli and Sharon Cirulli (Liber 976 of Deeds at page 795) a distance of 296.51 feet to a point in the south line of State Street; thence, N 82° 00' 00" E along the south line of State Street a distance of 103.04 feet to the point or place of beginning; containing an area of 0.479 acre of land as depicted upon a map of a survey prepared by Freeland-Parrinello Land Surveyors, which said map is dated January 5, 2009, a copy of which said map is annexed hereto.

Subject to easements, covenants and restriction of record, if any, affecting said premises.

Being the same premises conveyed to the Village of Manchester by Joseph S. Frederick by warranty deed dated September 22, 1967, which said deed is recorded in the Ontario County Clerk's Office in Liber 686 of Deeds, at page 661.

State Street

Property legal description: Beginning at a point in the southerly street line of State Street, said point being 175.1 feet, plus or minus, from the west line of Bennett Avenue; thence (1) S03°00'00"W a distance of 319.25 feet to a point; thence (2) N70°13'00"W a distance of 36.55 feet to a point; thence (3) N09°53'30"W a distance of 296.51 feet to a point on the southerly street line of State Street; thence (4) along said street line N82°00'00"E a distance of 103.04 feet to the point or place of beginning. All containing 0.479 acres of land.

References

1. Liber 686, page 661 of deeds
2. Filed Map Nos.: 911, 346, 19950, 20656
3. Pole Line Easement to RG&E Corp., L.352 P.70
4. Search No. 085004 by Crossroads Abstract, dated December 31, 2008
5. NOTE: water main location per report of Vill. of Manchester official

Legend

- utility pole
- monitoring well
- survey monumentation, as noted

Certification: New York State—Department of Environmental Conservation

ALTA/ACSM Land and Title Survey
of Lands of the
Village of Manchester
being in the Village of Manchester
Ontario County, New York

Scale: 1 inch = 40 feet January 5, 2009

I certify that this plan was prepared January 5, 2009 from notes of an instrument survey completed December 29, 2008 and from materials referenced herein.

David M. Parrinello
David M. Parrinello NYSPLS 049724



Freeland-Parrinello
LAND SURVEYORS
42 Beeman Street
Canandaigua, New York 14424
(585)394-5110 2001-116R

