

**COUNTY OF WAYNE
OFFICE OF THE COUNTY ATTORNEY**

WAYNE COUNTY COURTHOUSE
26 CHURCH STREET, LYONS, NEW YORK 14489
FAX: (315) 946-5942

DANIEL M. WYNER, ESQ.
COUNTY ATTORNEY
(315) 946-7442

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ASSISTANT COUNTY ATTORNEY
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July 29, 2008

Yvonne M. Ward
Easement Attorney
New York State Department of Environmental Conservation
Office of General Counsel, 14th Floor
625 Broadway
Albany, New York 12233

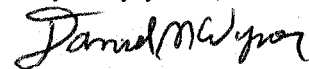
Re: Site No.: B-00143/State Assistant Contract No.: C 3031397
Wayne County
Schoepfel Chevrolet
7106 East Ridge Road
Sodus, New York 14551

Dear Ms. Ward,

Please find enclosed herein a copy of the recording page and recorded instrument regarding the environmental easement relating to the above mentioned property. A copy of a notice letter sent to the Town of Sodus pursuant to Environmental Conservation Law §71-3607 is also enclosed. Please note that I will forward a copy of the title insurance to you as soon as it becomes available.

RECEIVED
JUL 31 2008
OFFICE OF
GENERAL COUNSEL

Very truly yours,



Daniel M. Wyner, Esq.
Wayne County Attorney

DMW/klb
CC: Sharon Lilla, Director of Planning
Enclosure/

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THIS INDENTURE made this 12th day of June, 20⁰⁸, between Wayne County having an office 26 Church Street, Lyons, NY 14489, (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 ("brownfield 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 maintenance, monitoring or operation 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 be effective, or which requires groundwater use 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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum, and,

WHEREAS, Grantor, is the owner of real property located in the Town of Sodus, Wayne County, New York known and designated on the tax map of the Town of Sodus as 37117-07-671781 being the same as that property conveyed to Grantor by deed on December 13, 2000 and recorded in the Land Records of the Wayne County Clerk at Liber 989 of Deeds, page 305, comprised of approximately 2.329 acres, and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the " Controlled Property"), and,

a metes and bounds description of said parcel

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts

Environmental Easement/August 2004
NYSDEC



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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 C301397, 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 maintenance, monitoring or operation 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/industrial use as long as the following the long-term engineering controls are employed:

(i) The NYSDEC approved Site Management Plan is adhered to; and

(ii) Groundwater use is restricted against use for potable or process water, without necessary water quality treatment as determined by the New York State Department of Health; and

(iii) any soil on the property must be covered by a barrier layer approved by NYSDEC such as concrete, asphalt or structures or must be covered with a 1 foot layer of clean soil and this barrier layer must be maintained; and

(iv) any proposed soil excavation on the property below the cover requires adherence to the Site Management Plan approved by NYSDEC for this Controlled Property and the excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC



Description of Schoepfel Property Sodus

ALL THAT TRACT OR PARCEL OF LAND located in the Town Of Sodus, County of Wayne and State of New York, bounded and described as follows: Beginning at the NE Corner of Ralph Odell L585 - P513, Thence following course list below:

1. S 55° 04' E 364.77 Along Ridge Road
2. S 34° 37' W 121.13
3. S 53° 31' W 109.29
4. N 55° 58' W 49.00
5. S 34° 27' W 15.87
6. S 55° 33' W 88.00
7. S 34° 27' W 8.88
8. S 54° 35' W 309.83 Along the Centerline of Old Ridge Road
9. N 34° 56' E 127.39
10. S 55° 04' E 117.75
11. N 34° 06' E 121.02

To the point of Beginning containing 2.329 Acres. Described by a survey map made by Pullen & Gowdy, Job No 1119, filed in the Wayne County Clerks office # 14461.

RECEIVED

AUG 13 2004

DER/HAZ. WASTE REMED
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Wayne County Clerk

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regulations and directives; and

(v) the potential for vapor intrusion into any buildings developed on the site must be evaluated, including provisions for mitigation of any impacts identified.

B. 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.

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 to Article 71 of the Environmental Conservation Law.

C. 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.

D. 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 the Satisfactory Completion of Project 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 its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:



Division of Environmental Enforcement
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany New York 12233-5500

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.
11. Costs and Liabilities. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including but not limited to the obligation to maintain adequate liability insurance coverage.
12. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority.
13. Successors. The term "Grantor", wherever used herein, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.



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(315) 946-7444

July 29, 2008

CERTIFIED MAIL


Steve LeRoy
Town Supervisor, Town Of Sodus
14-16 Mill Street
Sodus, New York 14551

Re: Schoepfel Easement
Tax Id No.: 37117-07-671781

Dear Steve,

Pursuant to Environmental Conservation Law §71-3607, a copy of which is enclosed herein, please find enclosed herein a recorded environmental easement regarding the above mentioned property.

Very truly yours,


Daniel M. Wyner, Esq.
Wayne County Attorney

DMW/klb
Enclosure/

ent is extinguished, the property deed relating to the subject property shall This property is subject to an environmental conservation law.

it to this title shall be enforceable in each instrument transferring an interest de a specific reference to the recorded

to this section may be extinguished or e easement executed by the commis- ng officer for the county or counties ed by article nine of the real property

nvironmental easement the department ed by section 27-1419 of this chapter

ily by the state, except that the state or hold any environmental easement en of the constitution.

rded and indexed as such in the office ities where the land is situate in the erty law. The property deed and all to the property encumbered by the ber, the environmental easement. Such e eligible property is subject to the rument for the purpose of creating, mental easement shall not be effective

nvironmental easement in the database pter and make such database readily

in law or equity by its grantor, by the l in section 71-3603 of this title. Such e burdened property, any lessees, and t be defeated because of any subse- waiver. No general law of the state interest in real property shall operate l easement unless such general law ent of such easement or provides for It is not a defense in any action to

roperty;

ized traditionally at common law;

owner of any interest in the burdened

roperty;

r
ation.
f the state may enter and inspect the

property burdened by an environmental easement in a reasonable manner and at reasonable times to assure compliance with the restriction.

12. The department may promulgate regulations establishing standards and procedures for environmental easements.

HISTORY:

Add, L 2003, ch 1, § 2 (Part A), eff Oct 7, 2003.

Sub 2, amd, L 2004, ch 577, § 1 (Part B), eff Oct 5, 2004.

Sub 2, opening par, amd, L 2004, ch 577, § 1 (Part B), eff Oct 5, 2004.

The 2004 act deleted at fig 1 "provided by regulation of".

Sub 8, amd, L 2004, ch 577, § 1 (Part B), eff Oct 5, 2004.

The 2004 act deleted at fig 1 "The easement shall describe the property encumbered by the easement by adequate legal description or by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor or, if the easement encumbers the entire property described in a deed of record, the easement may incorporate by reference the description in such deed, otherwise it shall refer to the liber and page of the deed or deeds of the record owner or owners of the real property burdened by the environmental easement."

§ 71-3607. Coordination with local governments

1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.

2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

HISTORY:

Add, L 2003, ch 1, § 2 (Part A), eff Oct 7, 2003.

§ 71-3609. Scope of this title

This title shall not affect any interests or rights in real property which are not environmental easements, and shall not affect the rights of owners to convey any interests in real property which they could now create under existing law without reference to the terms of this title. Nothing in this title shall diminish the powers granted by any other law to acquire interests or rights in real property by purchase, gift, eminent domain, or otherwise and to use the same for public purposes.

HISTORY:

Add, L 2003, ch 1, § 2 (Part A), eff Oct 7, 2003.

§ 71-3611. Severability

The provisions of this title shall be severable, and if any clause, sentence, paragraph, subdivision, or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part thereof directly involved in the controversy in which such judgment shall have been rendered; provided that if an environmental easement created pursuant to this title is determined by any court of competent jurisdiction to be land or