

Denise M. Sheehan  
Commissioner

**M E M O R A N D U M**

**TO:** Commissioner Denise M. Sheehan

**FROM:** Alison Crocker, Acting General Counsel *Alison Crocker*

**SUBJECT:** Environmental Easement: 432 North Franklin Street Site No. C734089

**DATE:** **DEC 19 2006**

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Attached for your review and signature is the Environmental Easement for the Brownfield Cleanup Program at the 432 North Franklin Street Site No. C734089. The Environmental Easement is being submitted for execution and acceptance by the Department consistent with the recommendation contained in the attached transmittal memorandum.

The restrictions to be placed on the property are: The Controlled Property may be used for commercial and/or industrial use as long as the following long-term engineering controls are employed:

- i) Implementation of the Operation Maintenance & Monitoring Manual, April 2006, as revised December 2006 including the Soils Management Plan, site maintenance, groundwater monitoring plan, and operation of the vapor extraction system;
- ii) Use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for drinking water or industrial purposes, as appropriate, providing the user first obtains permission to do so from the regulatory Agency

The documentation which has been submitted in connection with developing the Easement is sufficient to determine that the Easement will be enforceable as required by ECL 71-3605(2).

Based upon the recommendation as set forth in the transmittal memo, it is respectfully requested that the Environmental Easement be executed and accepted by the Department.

**MEMORANDUM**

RECEIVED

DEC 15 2006

ENVIRONMENTAL  
ENFORCEMENT

**TO:** Richard Sherman, Chief SBRB

**FROM:** Maura Desmone, Senior Attorney, thru  
Joseph Ryan, Field Unit Leader

**SUBJECT:** Environmental Easement: 432 North Franklin Street Site No. C734089

**DATE:** December 14, 2006

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Attached for review and signature is an Environmental Easement for the 432 North Franklin Street Site C734089.

**Volunteers:** Franklin Properties, LLC and 432 North Franklin Properties, LLC

**Site:** 432 North Franklin Street Site, 432 North Franklin Street, City of Syracuse, Onondaga County

**Description of Site:** The site consists of about 1.97 acres located within Franklin Square in a revitalized area of similar buildings in the City of Syracuse. It was formerly used as an industrial and manufacturing facility. This site was initially in the Voluntary Cleanup Program and transitioned into the Brownfield Cleanup Program.

**Intended Use:** The intended use is commercial, professional offices.

**Institutional and Engineering**

**Controls:** The Controlled Property may be used for commercial and/or industrial use as long as the following long-term engineering controls are employed:

- i) Implementation of the Operation Maintenance & Monitoring Manual, April 2006, as revised December 2006 including the Soils Management Plan, site maintenance, groundwater monitoring plan, and operation of the vapor extraction system;

- ii) Use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for drinking water or industrial purposes , as appropriate, providing the user first obtains permission to do so from the regulatory Agency

Site

Boundaries: The property subject to the Easement has the same boundaries as the site defined in the Brownfield Agreement.

Process: Volunteer has submitted the signed Environmental Easement and a title insurance commitment to be issued to the People of the State of New York in connection with the Environmental Easement being granted by 432 North Franklin Properties, LLC and Franklin Properties, LLC, to the People of the State of New York. The title insurance policy insures our interests. Upon execution of the Environmental Easement by the Department, the original document will be returned to and recorded by the Volunteer. The final title policy to be issued by The Talon Group title insurance company insuring the Department easement in the amount of \$35,000 will be issued following recording of the Easement.

Recommendation: Based on review of the Environmental Easement and other title documents submitted, it is recommended that the Environmental Easement be executed and accepted by the Department.

MCD:d:k  
H:D2307  
Enc.

## ENVIRONMENTAL EASEMENT

THIS INDENTURE made this 12<sup>th</sup> day of December, 2006, between 432 North Franklin Properties, LLC and Franklin Properties, LLC, both having an office at 121 West Division Street, Syracuse, New York 13204 (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 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 ("AECL") 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 City of Syracuse, Onondaga, New York known and designated on the tax map of the City of Syracuse as tax parcel number 118.-07-08.0, section 118 block 7 lot 8, being the same as that property conveyed to Grantor by deed on September 19, 2002, and recorded in the Land Records of the Onondaga County Clerk at page 443, liber 4750 of Deeds, comprised of approximately 2.0 acres, and hereinafter more fully described in Schedule A 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 Brownfield Cleanup Agreement Number B7-0615-02-06A, Brownfield Cleanup Agreement Modification B7-0615-02-06, 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 and/or industrial use as long as the following long-term engineering controls are employed:

- i) Implementation of the Operation Maintenance & Monitoring Manual, April 2006, as revised December 2006 including the Soils Management Plan, site maintenance, groundwater monitoring plan, and operation of the vapor extraction system;
- ii) Use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for drinking water or industrial purposes, as appropriate, providing the user first obtains permission to do so from the regulatory Agency

B. The Controlled Property may not be used for a higher level of use such as unrestricted/ 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 of Title 36 to 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 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 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.

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

**432 NORTH FRANKLIN PROPERTIES, LLC**

By: 

**DOUGLAS SUTHERLAND, MANAGER**

Date: DECEMBER 12, 2007

**FRANKLIN PROPERTIES, LLC**

By: 

**DOUGLAS SUTHERLAND, MANAGER**

Date: DECEMBER 12, 2007

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: 

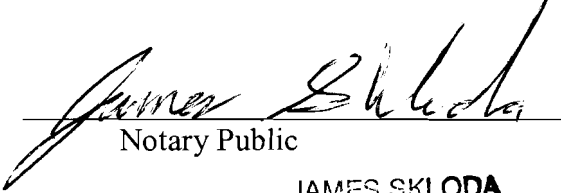
**DENISE M. SHEEHAN, Commissioner**



**Grantor's Acknowledgment**

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

On the 12<sup>th</sup> day of December, in the year 2006, before me, the undersigned, personally appeared **DOUGLAS SUTHERLAND**, 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, and that by his on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**JAMES SKLODA**  
Notary Public in the State of New York  
Qual. in Onon. Co., No. 02SK6089703  
My Commission Expires 3-31-07

**Grantee's Acknowledgment**

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

On the 19<sup>th</sup> day of December, in the year 2006, before me, the undersigned, personally appeared **DENISE M. SHEEHAN**, 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 she executed the same in her capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**MARK D. SANZA**  
Notary Public, State of New York  
No. 02SA6010701  
Qualified in Albany County  
Commission Expires July 20, 2010

## SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga and State of New York and being part of Marsh Lot No. 40 in said city, bounded and described as follows: Beginning at a point in the easterly line of Franklin Street, said point being 206 feet north of Laurel Street, thence north  $31^{\circ} 9' 00''$  west a distance of 18.42 feet to an angle point, thence continuing north  $28^{\circ} 9' 10''$  west a distance of 361.22 feet to a point, thence north  $61^{\circ} 50' 50''$  east a distance of 146.82 feet to a point, thence south  $28^{\circ} 9' 10''$  east, a distance of 3 feet to a point, thence north  $61^{\circ} 50' 50''$  east a distance of 128 feet to a point, thence south  $28^{\circ} 9' 10''$  east, a distance of 73.67 feet to a point, thence southerly along the westerly line of lands owned by the People of the State of New York (formerly New York Central and Hudson River Railroad Company) a distance of 321.30 feet to a point, thence south  $59^{\circ} 25' 40''$  west, a distance of 151.10 feet to the point and place of beginning.