

**New York State Department of Environmental Conservation**  
**Division of Environmental Remediation**  
**Office of the Director, 12<sup>th</sup> Floor**  
625 Broadway, Albany, New York 12233-7011  
**Phone:** (518) 402-9706 • **FAX:** (518) 402-9020  
**Website:** www.dec.state.ny.us



Alexander B. Grannis  
Commissioner

**DEC 31 2009**

Linda Shaw, Esq.  
Knauf Shaw, LLP  
1125 Crossroads Building  
2 State Street  
Rochester, NY 14614

Re: Certificate of Completion  
Former Steve Joy's Sunoco  
Town of Henrietta, Monroe County  
Site No. C828134

Dear Ms. Shaw:

Congratulations on having satisfactorily completed the remedial program at the Former Steve Joy's Sunoco site. Enclosed please find an original, signed Certificate of Completion. The New York State Department of Environmental Conservation (NYSDEC) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the Certificate of Completion (COC) to be issued for the above-referenced site.

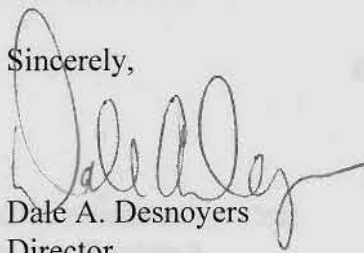
Please note that you are required to perform the following tasks:

- If you are the site owner, you must record a notice of the COC in the recording office for the County (or Counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record a notice of the COC within 30 days of the date that you acquire the site. A standard notice form is attached to this letter;
- Provide a notice of the COC and a fact sheet describing the institutional and engineering controls (IC/EC) that are required at the site to the Brownfield Site Contact list within 10 days of issuance of the COC;
- Implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and you must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC Certifications. The site IC/ECs are identified on the attached Site Management Form. The first PRR including the certification of the IC/ECs is due to the Department in June 2011; and

- You and your lessees must submit an annual report to the New York State Department of Taxation and Finance within one year and for each of the following eleven years after the execution of the Brownfield Site Cleanup Agreement. The Report must provide the information required by Chapter 390 of the Laws of 2008, Tax Law Section 171-s.

If you have any questions regarding any of these items, please contact the NYSDEC Project Manager for this site, Matthew P. Gillette, at 585-226-5308.

Sincerely,



Dale A. Desnoyers

Director

Division of Environmental Remediation

cc w/enc.:

G. Litwin - NYSDOH

cc w/o enc.:

James Charles

Benjamin Conlon

Matthew P. Gillette

Robert Knizek

Bartholomew H. Putzig

Deborah McNaughton – NYSDOH

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)  
**CERTIFICATE OF COMPLETION**

**CERTIFICATE HOLDER(S):**

**Name**

R.J. DORSCHER CORP.

**Address**

3817 West Henrietta Road, Rochester, NY 14623

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 6/12/06 **Agreement Execution:** 7/5/06 **Agreement Index No.:** B8-0719-06-06

**Application Approval Amendment:** 3/26/07

**Agreement Execution Amendment:** 4/26/07

**SITE INFORMATION**

**Site No.:** C828134 **Site Name:** Former Steve Joy's Sunoco

**Site Owner:** R.J. DORSCHER CORP.

**Street Address:** 3865 West Henrietta Road

**Municipality:** Rochester **County:** Monroe **DEC Region:** 8

**Site Size:** 2.50 Acres

**Tax Map Identification Number(s):** 161.15-1-20.1, 161.19-1-9

**Percentage of site located in an EnZone:** 0 - 49 %

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

**CERTIFICATE ISSUANCE**

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

**Allowable Uses under the BCP:** Commercial and Industrial

**Cleanup Track:** Track 2: Restricted use with generic soil cleanup objectives

**Tax Credit Provisions for Entities Taxable Under Article 9, 9-A, 32, and 33:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 12 %.

Tangible Property Credit Component Rate is 12 %.

**Tax Credit Provisions for Entities Taxable Under Article 22 & S Corporations:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 10 %.

Tangible Property Credit Component Rate is 10 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Monroe County as 200912220876.

#### **LIABILITY LIMITATION**

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

#### **CERTIFICATE TRANSFERABILITY**

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

#### **CERTIFICATE MODIFICATION/REVOCATION**

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

(1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;

(2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;

(3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;

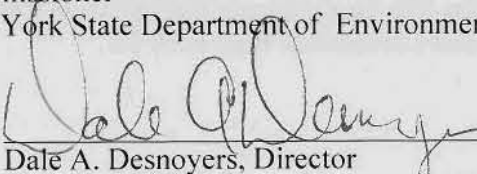
(4) there is good cause for such modification or revocation;

(5) either the Applicant or the Applicant's successors or assigns failed to manage the controls or monitoring in full compliance with the terms of the remedial program;

(6) the terms and conditions of the environmental easement have been intentionally violated or found to be not protective or enforceable.

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Alexander B. Grannis  
Commissioner  
New York State Department of Environmental Conservation

By:  Dale A. Desnoyers, Director  
Division of Environmental Remediation

Date: 12/31/09



## **NOTICE OF CERTIFICATE OF COMPLETION**

### **Brownfield Cleanup Program 6 NYCRR Part 375-1.9(d)**

***Former Steve Joy's Sunoco Site, C828134  
3865 and 3875 West Henrietta Road, Henrietta, New York 14623***

**PLEASE TAKE NOTICE**, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to the RJ Dorschel Corp. for a parcel approximately 2.5 acres located at 3865 and 3875 West Henrietta Road in the Town of Henrietta, Monroe County.

**PLEASE TAKE NOTICE**, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

**PLEASE TAKE NOTICE**, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual use is subject to local zoning requirements):

- ☐ Residential Use, as set forth in 6NYCRR 375-1.8(g)(2)i.
- ☐ Restricted Residential Use, as set forth in 6NYCRR 375-1.8(g)(2)ii.
- ☒ Commercial Use, as set forth in 6NYCRR 375-1.8(g)(2)iii.
- ☐ Industrial Use, as set forth in 6NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

**PLEASE TAKE NOTICE**, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Monroe County as Doc#: 200912220876 on December 22, 2009.

**PLEASE TAKE NOTICE**, the Environmental Easement requires that the approved site management plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Region 8 Division of Environmental Remediation, 6274 East Avon-Lima Road, Avon, New York 14414.

**PLEASE TAKE NOTICE**, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

**PLEASE TAKE NOTICE**, the Certificate may entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

*Former Steve Joy's Sunoco, C828134*  
**3865 and 3875 West Henrietta Road, Henrietta, NY 14623**

**PLEASE TAKE NOTICE**, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

**PLEASE TAKE NOTICE**, the Certificate may be only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the Certificate.

**PLEASE TAKE NOTICE**, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

**PLEASE TAKE NOTICE**, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

**PLEASE TAKE NOTICE**, a copy of the Certificate can be reviewed at the NYSDEC's Region 8 located at 6274 East Avon-Lima Road, Avon, New York 14414 by contacting the Regional Environmental Remediation Engineer.

**WHEREFORE**, the undersigned has signed this Notice of Certificate

(Applicant)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW YORK ) SS:  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**Please record and return to:**

(Applicant) \_\_\_\_\_

(Applicant address) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

12/03/09

TRACT I

ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Hamlet, County of Monroe and State of New York, being part of Town Lot No. 10 in the Fifth Range of Lots in Township No. 12, Range No. 1 and being more particularly bounded and described as follows:

**EXHIBIT A**

**PROPERTY DESCRIPTION**

Beginning at a point in the original westerly right-of-way line of West Hamlet Road distant southeasterly 400.00 feet measured along said original right-of-way line from the intersection of said original westerly right-of-way line with the north line of said Town Lot No. 10; running thence (1) South 31° 25' 00" West along the original westerly right-of-way line of West Hamlet Road a distance of 200.00 feet to a point; thence (2) running North 81° 30' 00" West on a line parallel with the westerly line of said Town Lot No. 10 a distance of 275.00 feet to a point; thence (3) running North 71° 25' 00" East on a line parallel with said westerly right-of-way line of West Hamlet Road a distance of 200.00 feet to a point; thence (4) running South 81° 30' 00" East on a line parallel with the westerly line of said Town Lot No. 10 a distance of 275.00 feet to the point and place of beginning.

EXCEPTING from the premises described above in Tract I below those portions thereof heretofore taken or appropriated by the State of New York in connection with proceedings for the improvement of West Hamlet Road as identified by Notice of such appropriation directed to Monroe County Clerk's Office on September 22, 1908 in Liber 9065 of Deeds, page 75, such lands appropriated further identified as Parcel No. 150 shown on Map No. 129 of such proceedings and as filed in the Monroe County Clerk's Office in Liber 1188 of Maps, page 235.

TRACT II

ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Hamlet, County of Monroe and State of New York, being part of Town Lot No. 10 in the Fifth Range of Lots in Township No. 12, Range No. 1 and being more particularly bounded and described as follows:

Beginning at a point in the original westerly right-of-way line of West Hamlet Road distant southeasterly 800.00 feet measured along said original right-of-way line from the intersection of said original westerly right-of-way line with the north line of said Town Lot No. 10; running thence (1) southerly along the original westerly right-of-way line of West Hamlet Road a distance of 200.00 feet to a point; thence (2) westerly and making an interior angle of 87° 04' 00" with course No. 1 a distance of 275 feet to a point; thence (3) westerly and making an interior angle of 201° 56' 00" with course No. 2 a distance of 140.75 feet to a point; thence (4) southerly and making an interior angle of 97° 00' 00" with course No. 3 a distance of 175.75 feet to a point; thence (5) easterly and making an interior angle of 38° 30' 00" with course No. 4 a distance of 408.10 feet to the point and place of beginning.

EXCEPTING from the premises described above in Tract II below those portions thereof heretofore taken or appropriated by the State of New York in connection with proceedings for the improvement of West Hamlet Road as identified by Notice of such appropriation directed to Monroe County Clerk's Office on September 22, 1908 in Liber 9065 of Deeds, page 75, such lands appropriated further identified as Parcel No. 150 shown on Map No. 129 of such proceedings and as filed in the Monroe County Clerk's Office in Liber 1188 of Maps, page 235.

## **TRACT I**

**ALL THAT TRACT OR PARCEL OF LAND** situate in the Town of Henrietta, County of Monroe and State of New York, being part of Town Lot No. 10 in the Fifth Range of Lots in Township No. 12, Range No. 7 and being more particularly bounded and described as follows:

Beginning at a point in the original westerly right-of-way line of West Henrietta Road distant southwesterly 400.00 feet measured along said original right-of-way line from the intersection of said original westerly right-of-way line with the north line of aforesaid Town Lot No. 10; running thence (1) South 31° 26' 00" West along the original westerly right-of-way line of West Henrietta Road a distance of 200.00 feet to a point; thence (2) running North 81° 30' 00" West on a line parallel with the northerly line of said Town Lot No. 10 a distance of 275.00 feet to a point; thence (3) running North 31° 26' 00" East on a line parallel with said westerly right-of-way line of West Henrietta Road a distance of 200.00 feet to a point; thence (4) running South 81° 30' 00" East on a line parallel with the northerly line of said Town Lot No. 10 a distance of 275.00 feet to the point and place of beginning.

**EXCEPTING** from the premises described above in Tract 1 hereof those portions thereof heretofore taken or appropriated by the State of New York in connection with proceedings for the improvement of West Henrietta Road as identified by Notice of such appropriation directed to Cortese Properties, (and others), recorded in the Monroe County Clerk's Office on September 25, 1998 in Liber 9065 of Deeds, page 77, such lands appropriated further identified as Parcel No. 260 shown on Map No. 239 of such proceedings and as tiled in the Monroe County Clerk's Office in Liber 1186 of Maps, page 326.

## **TRACT II**

**ALL THAT TRACT OR PARCEL OF LAND** situate in the Town of Henrietta, County of Monroe and State of New York, being part of Town Lot No. 10 in the Fifth Range of Lots in Township No. 12, Range No. 7 and being more particularly bounded and described as follows:

Beginning at a point in the original westerly right-of-way line of West Henrietta Road distant southwesterly 800.00 feet measured along said original right-of-way line from the intersection of said original westerly right-of-way line with the north line of aforesaid Town Lot No. 10; running thence (1) northerly along the original westerly right-of-way line of West Henrietta Road a distance of 200.00 feet to a point; thence (2) westerly and making an interior angle of 67° 04' 00" with course No. 1 herein a distance of 275 feet to a point; thence (3) westerly and making an interior angle of 202° 56' 00" with course No. 2 herein a distance of 146.73 feet to a point; thence (4) southerly and making an interior angle of 90° 00' 00" with course No. 3 herein a distance of 174.22 feet to a point; thence (5) easterly and making an interior angle of 78° 30' 00" with course No. 4 herein a distance of 408.19 feet to the point and place of beginning.

**EXCEPTING** from the premises described above in Tract II hereof those portions thereof heretofore taken or appropriated by the State of New York in connection with proceedings for the improvement of West Henrietta Road as identified by Notice of such appropriation directed to Cortese Properties, (and others), recorded in the Monroe County Clerk's Office on September 25, 1998 in Liber 9065 of Deeds, page 75, such lands appropriated further identified as Parcel No. 259 shown on Map No. 238 of such proceedings and as filed in the Monroe County Clerk's Office in Liber 1186 of Maps, page 323.



**EXHIBIT B**  
**SITE SURVEY**



## ENVIRONMENTAL EASEMENT:

BEGINNING AT A POINT IN THE WESTERLY RIGHT-OF-WAY FOR WEST HENRIETTA ROAD AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN LANDS NOW OR FORMERLY OF R.J. DORSCHER CORP. TAX PARCEL 161.19-1-9 ON THE NORTH AND LANDS NOW OR FORMERLY OF LINLEIGH REALTY, L.P. TAX PARCEL 161.19-1-8.1 ON THE SOUTH; THENCE  
 1) N 20°45'58" E ALONG SAID RIGHT-OF-WAY FOR WEST HENRIETTA ROAD A DISTANCE OF 396.37 FEET TO A POINT IN THE DIVISION LINE BETWEEN LANDS NOW OR FORMERLY OF R.J. DORSCHER CORP. TAX PARCEL 161.15-1-22 ON THE NORTH; THENCE  
 2) S 87°49'58" W ALONG SAID DIVISION LINE A DISTANCE OF 257.01 FEET TO A POINT IN THE DIVISION LINE BETWEEN LANDS NOW OR FORMERLY OF R.J. DORSCHER CORP. TAX PARCEL 161.15-1-20.1 ON THE EAST AND LANDS NOW OR FORMERLY OF LINLEIGH REALTY, L.P. TAX PARCEL 161.19-1-8.1 ON THE WEST; THENCE  
 3) S 20°45'48" W ALONG SAID DIVISION LINE A DISTANCE OF 200.00 FEET TO AN ANGLE POINT; THENCE  
 4) N 69°14'02" W CONTINUING ALONG SAID DIVISION LINE A DISTANCE OF 146.73 FEET TO AN ANGLE POINT; THENCE  
 5) S 20°45'57" W CONTINUING ALONG SAID DIVISION LINE A DISTANCE OF 174.22 FEET TO AN ANGLE POINT; THENCE  
 6) S 80°44'02" E CONTINUING ALONG SAID DIVISION LINE A DISTANCE OF 391.27 FEET TO THE POINT OF BEGINNING.  
 THE ABOVE DESCRIBED PARCEL CONTAINS 2.5 ACRES (111038 SQ. FT.)

## SCHEDULE B

1. Restrictive covenants contained or set forth in that deed from George Lee to Oliver B. Ashman, dated and recorded July 15, 1954 in Liber 2908 of Deeds, page 404.
2. Covenants, agreements, licenses or provisions contained in that Easement agreement made by and among John K. Sheets, Steve Joy's Marketplace Auto Service, Inc. and Ruth Holtz, dated April 4, 1989 and recorded April 28, 1989 in Liber 7620 of Deeds, page 1.
3. Covenants or obligations contained, set forth or provided in that agreement made by and between Cortese Properties, LP. and Linleigh Realty, LP., dated October 25, 2006 and recorded November 17, 2006 in Liber 10385 of Deeds, page 318.
4. Easement granted by Charles H. Bailey, Brinard T. Bailey and Elizabeth A. Bailey to Rochester Gas and Electric Corporation, dated May 2, 1924 and recorded May 3, 1924 in Liber 1273 of Deeds, page 259.

## RECORD TITLE DESCRIPTION

Note: The Environmental Easement Area is the same as the Record Title Description.

LEGAL DESCRIPTION WHOLE PROPERTY LIBER 10256 P581 AND LIBER 10385 PAGE 323

## TRACT 1

TA# 161.15-1-20.1

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE TOWN OF HENRIETTA, COUNTY OF MONROE AND STATE OF NEW YORK, BEING PART OF TOWN LOT NO. 10 IN THE FIFTH RANGE OF LOTS IN TOWNSHIP NO. 12, RANGE NO. 7 AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE ORIGINAL WESTERLY RIGHT-OF-WAY LINE OF WEST HENRIETTA ROAD DISTANT SOUTHWESTERLY 400.00 FEET MEASURED ALONG SAID ORIGINAL RIGHT-OF-WAY LINE FROM THE INTERSECTION OF SAID ORIGINAL WESTERLY RIGHT-OF-WAY LINE WITH THE NORTH LINE OF AFORESAID TOWN LOT NO. 10; RUNNING THENCE (1) SOUTH 31° 26' 00" WEST ALONG THE ORIGINAL WESTERLY RIGHT-OF-WAY LINE OF WEST HENRIETTA ROAD A DISTANCE OF 200.00 FEET TO A POINT; THENCE (2) RUNNING NORTH 81° 30' 00" WEST ON A LINE PARALLEL WITH THE NORTHERLY LINE OF SAID TOWN LOT NO. 10 A DISTANCE OF 275.00 FEET TO A POINT; THENCE (3) RUNNING NORTH 31° 26' 00" EAST ON A LINE PARALLEL WITH SAID WESTERLY RIGHT-OF-WAY LINE OF WEST HENRIETTA ROAD A DISTANCE OF 200.00 FEET TO A POINT; THENCE (4) RUNNING SOUTH 81° 30' 00" EAST ON A LINE PARALLEL WITH THE NORTHERLY LINE OF SAID TOWN LOT NO. 10 A DISTANCE OF 275.00 FEET TO THE POINT AND PLACE OF BEGINNING.

EXCEPTING FROM THE PREMISES DESCRIBED ABOVE THOSE PORTIONS THEREOF HERETOFORE TAKEN OR APPROPRIATED BY THE STATE OF NEW YORK IN CONNECTION WITH PROCEEDINGS FOR THE IMPROVEMENT OF WEST HENRIETTA ROAD AS IDENTIFIED BY NOTICE OF SUCH APPROPRIATION DIRECTED TO CORTSE PROPERTIES, (AND OTHERS), RECORDED IN THE MONROE COUNTY CLERK'S OFFICE ON SEPTEMBER 25, 1998 IN LIBER 9065 OF DEEDS, PAGE 77, SUCH LANDS APPROPRIATED FURTHER IDENTIFIED AS PARCEL NO. 260 SHOWN ON MAP NO. 239 OF SUCH PROCEEDINGS AND AS FILED IN THE MONROE COUNTY CLERK'S OFFICE IN LIBER 1186 OF MAPS, PAGE 326.

## TRACT 2

TA# 161.19-1-9

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE TOWN OF HENRIETTA, COUNTY OF MONROE AND STATE OF NEW YORK, BEING PART OF TOWN LOT NO. 10 IN THE FIFTH RANGE OF LOTS IN TOWNSHIP NO. 12, RANGE NO. 7 AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE ORIGINAL WESTERLY RIGHT-OF-WAY LINE OF WEST HENRIETTA ROAD DISTANT SOUTHWESTERLY 800.00 FEET MEASURED ALONG SAID ORIGINAL RIGHT-OF-WAY LINE FROM THE INTERSECTION OF SAID ORIGINAL WESTERLY RIGHT-OF-WAY LINE WITH THE NORTH LINE OF AFORESAID TOWN LOT NO. 10; RUNNING THENCE (1) NORTHERLY ALONG THE ORIGINAL WESTERLY RIGHT-OF-WAY LINE OF WEST HENRIETTA ROAD A DISTANCE OF 200.00 FEET TO A POINT; THENCE (2) WESTERLY AND MAKING AN INTERIOR ANGLE OF 67° 04' 00" WITH COURSE NO. 1 HEREIN A DISTANCE OF 275 FEET TO A POINT; THENCE (3) WESTERLY AND MAKING AN INTERIOR ANGLE OF 102° 56' 00" WITH COURSE NO. 2 HEREIN A DISTANCE OF 146.73 FEET TO A POINT; THENCE (4) SOUTHERLY AND MAKING AN INTERIOR ANGLE OF 90° 00' 00" WITH COURSE NO. 3 HEREIN A DISTANCE OF 174.22 FEET TO A POINT; THENCE (5) EASTERLY AND MAKING AN INTERIOR ANGLE OF 78° 30' 00" WITH COURSE NO. 4 HEREIN A DISTANCE OF 408.19 FEET TO THE POINT AND PLACE OF BEGINNING.

EXCEPTING FROM THE PREMISES DESCRIBED ABOVE THOSE PORTIONS THEREOF HERETOFORE TAKEN OR APPROPRIATED BY THE STATE OF NEW YORK IN CONNECTION WITH PROCEEDINGS FOR THE IMPROVEMENT OF WEST HENRIETTA ROAD AS IDENTIFIED BY NOTICE OF SUCH APPROPRIATION DIRECTED TO CORTSE PROPERTIES, (AND OTHERS), RECORDED IN THE MONROE COUNTY CLERK'S OFFICE ON SEPTEMBER 25, 1998 IN LIBER 9065 OF DEEDS, PAGE 75, SUCH LANDS APPROPRIATED FURTHER IDENTIFIED AS PARCEL NO. 259 SHOWN ON MAP NO. 238 OF SUCH PROCEEDINGS AND AS FILED IN THE MONROE COUNTY CLERK'S OFFICE IN LIBER 1186 OF MAPS, PAGE 323.



1	2	3	4	5	6

**LABELIA**  
 ASSOCIATES, P.C.  
 300 STATE STREET  
 ROCHESTER, NY 14614  
 P: (585) 644-4110  
 F: (585) 644-3008  
 www.labelia.com

3865 & 3875 W. HENRIETTA RD  
 HENRIETTA, N.Y., 14623

R. J. Dorschel Corp.  
 Henrietta, N.Y., 14623

ALTA SURVEY  
 ENVIRONMENTAL EASEMENT

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

209080

**SUB-2**



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

THIS INDENTURE made this 9<sup>th</sup> day of December, 2009, between Owner(s) R.J. Dorschel Corp., having an office at 3817 West Henrietta Road, Rochester, New York 14623, (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 3865 and 3875 West Henrietta Road, Henrietta, Monroe County, State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel numbers: Section 161.15 Block 1 Lot 20.1, being the same as that property conveyed to Grantor by Warranty Deed dated February 13, 2006 in Liber 10256 at page 581 and parcel number Section 161.19 Block 1 Lot 9.0 being the same as that property conveyed to Grantor by Warranty Deed dated October 25, 2006 recorded in Liber 10385 at page 323 of deeds in the Monroe County Clerk's Office, comprising of approximately 2.65± acres, and hereinafter more fully described in the ALTA/ACSM Land Title Survey dated January 6, 2009 (revised December 2009), prepared by LaBella Associates, P.C., and corresponding Schedule "A" property description, both documents are 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 B8-0719-06-06, Site Number C828134, dated June 27, 2006, and thereafter amended on April 26, 2007 ("BCA"), 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 industrial use as described within 6 NYCRR Part 375- 1.8 (g) (2) (iii) and (iv), as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to:

- (i) any activities which will cause a disturbance of the soil at this site must be conducted in accordance with the Department approved Site Management Plan (SMP);
- (ii) vegetable gardens and farming on the Controlled Property is prohibited;
- (iii) the use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for use as drinking water or for industrial use, and the user must first notify and obtain written approval from the Department and Monroe County Department of Health;
- (iv) any installed soil vapor mitigation systems on this property shall be inspected, certified, operated, and maintained as required in the SMP; and
- (v) the site owner must comply with the requirements of the SMP by submitting a work plan for the evaluation of any new building construction or modification at this site, prior to occupancy, using the State's most recent guidance on evaluating soil vapor intrusion.

B. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan ("SMP") that the Department has approved for the Controlled Property and all Department-approved amendments to that SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated December 2009. 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) 226-5349 fax: (585) 226-8696

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 unrestricted residential or restricted 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 provided under ECL Article 27, Title 14 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: Site Number: C 828134

Department of Environmental Enforcement  
Office of General Counsel  
NYSDEC  
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.



Title: President Date: 1/9/09

Atexander B. Gramms, Commissioner

Environmental Easement/Page 5 of 10



## Grantee's Acknowledgment

STATE OF NEW YORK

COUNTY OF ALBANY } ss:

On the 15<sup>th</sup> day of December, in the year 2007, before me, the undersigned, personally appeared Dale Desjardins, 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 a designated authority granted by the 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.

David S. Sampson  
Notary Public - State of New York

DAVID S. SAMPSON 02SA5013268  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN RENSSELAER COUNTY  
COMMISSION EXPIRES JULY 15, 2010

**SCHEDULE "A" PROPERTY DESCRIPTION****TRACT I**

**ALL THAT TRACT OR PARCEL OF LAND** situate in the Town of Henrietta, County of Monroe and State of New York, being part of Town Lot No. 10 in the Fifth Range of Lots in Township No. 12, Range No. 7 and being more particularly bounded and described as follows:

Beginning at a point in the original westerly right-of-way line of West Henrietta Road distant southwesterly 400.00 feet measured along said original right-of-way line from the intersection of said original westerly right-of-way line with the north line of aforesaid Town Lot No. 10; running thence (1) South  $31^{\circ} 26' 00''$  West along the original westerly right-of-way line of West Henrietta Road a distance of 200.00 feet to a point; thence (2) running North  $81^{\circ} 30' 00''$  West on a line parallel with the northerly line of said Town Lot No. 10 a distance of 275.00 feet to a point; thence (3) running North  $31^{\circ} 26' 00''$  East on a line parallel with said westerly right-of-way line of West Henrietta Road a distance of 200.00 feet to a point; thence (4) running South  $81^{\circ} 30' 00''$  East on a line parallel with the northerly line of said Town Lot No. 10 a distance of 275.00 feet to the point and place of beginning.

**EXCEPTING** from the premises described above in Tract I hereof those portions thereof heretofore taken or appropriated by the State of New York in connection with proceedings for the improvement of West Henrietta Road as identified by Notice of such appropriation directed to Cortese Properties, (and others), recorded in the Monroe County Clerk's Office on September 25, 1998 in Liber 9065 of Deeds, page 77, such lands appropriated further identified as Parcel No. 260 shown on Map No. 239 of such proceedings and as filed in the Monroe County Clerk's Office in Liber 1186 of Maps, page 326.

**TRACT II**

**ALL THAT TRACT OR PARCEL OF LAND** situate in the Town of Henrietta, County of Monroe and State of New York, being part of Town Lot No. 10 in the Fifth Range of Lots in Township No. 12, Range No. 7 and being more particularly bounded and described as follows:

Beginning at a point in the original westerly right-of-way line of West Henrietta Road distant southwesterly 800.00 feet measured along said original right-of-way line from the intersection of said original westerly right-of-way line with the north line of aforesaid Town Lot No. 10; running thence (1) northerly along the original westerly right-of-way line of West Henrietta Road a distance of 200.00 feet to a point; thence (2) westerly and making an interior angle of  $67^{\circ} 04' 00''$  with course No. 1 herein a distance of 275 feet to a point; thence (3) westerly and making an interior angle of  $202^{\circ} 56' 00''$  with course No. 2 herein a distance of 146.73 feet to a point; thence (4) southerly and making an interior angle of  $90^{\circ} 00' 00''$  with course No. 3 herein a distance of 174.22 feet to a point; thence (5) easterly and making an interior angle of

78° 30' 00" with course No. 4 herein a distance of 408.19 feet to the point and place of beginning.

**EXCEPTING** from the premises described above in Tract II hereof those portions thereof heretofore taken or appropriated by the State of New York in connection with proceedings for the improvement of West Henrietta Road as identified by Notice of such appropriation directed to Cortese Properties, (and others), recorded in the Monroe County Clerk's Office on September 25, 1998 in Liber 9065 of Deeds, page 75, such lands appropriated further identified as Parcel No. 259 shown on Map No. 238 of such proceedings and as filed in the Monroe County Clerk's Office in Liber 1186 of Maps, page 323.



# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Site Management Form

12/30/2009



### SITE DESCRIPTION

SITE NO. C828134

SITE NAME Former Steve Joy's Sunoco

SITE ADDRESS: 3865 West Henrietta Road ZIP CODE: 14623

CITY/TOWN: Rochester

COUNTY: Monroe

ALLOWABLE USE: Commercial and Industrial

### SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES: YES NO

IC/EC Certification Plan ☐ ☐

Monitoring Plan ☐ ☐

Operation and Maintenance (O&M) Plan ☐ ☐

Periodic Review Frequency: 1 year

### Description of Institutional Control

#### R.J. Dorschel Corp.

3865 West Henrietta Road

Environmental Easement

Block: 1

Lot: 20

Sublot: 1

Section: 161

Subsection: 15

S\_B\_L Image: 161.15-1-20.1

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

O&M Plan

Site Management Plan

Soil Management Plan

Lot: 9

Sublot:

Section: 161



Subsection: 10

S\_B\_L Image: 161.19-1-9

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

Site Management Plan

Soil Management Plan

### Description of Engineering Control

**R.J. Dorschel Corp.**

3865 West Henrietta Road

Environmental Easement

Block: 1

Lot: 20

Sublot: 1

Section: 161

Subsection: 15

S\_B\_L Image: 161.15-1-20.1

Vapor Mitigation