



**The Knoer Group, PLLC**  
424 Main Street, Suite 1820  
Buffalo, New York 14202

(716) 332-0032  
[www.knoergroup.com](http://www.knoergroup.com)

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**Deanne Stachowski**  
[dstachowski@knoergroup.com](mailto:dstachowski@knoergroup.com)

August 9, 2024

**VIA EMAIL**  
[Cheryl.Salem@dec.ny.gov](mailto:Cheryl.Salem@dec.ny.gov)

Cheryl Salem  
New York State Department of  
Environmental Conservation  
625 Broadway, 14th Floor  
Albany, NY 12233-1500

Re: Environmental Easement  
351 Franklin Street LLC  
Property at 351 Franklin Street, Olean, NY  
DEC Site No. C905047

Dear Ms. Salem:

Enclosed please find a copy of the recorded easement along with the municipal notice and returned certified receipt for same.

Please contact Sandy Nasca at [snasca@knoergroup.com](mailto:snasca@knoergroup.com) or at 716-815-4683 if you need anything further.

Very truly yours,

THE KNOER GROUP, PLLC

Deanne Stachowski

/ds

Enc.

CC via email: R. Donald Benson  
Michael Lesakowski  
Brian Rashkow ([brian.rashkow@dec.ny.gov](mailto:brian.rashkow@dec.ny.gov))

Darrell Klute, County Clerk  
303 Court St  
Little Valley, NY 14755  
(716) 938-2293

## Cattaraugus County Clerk Recording Cover Sheet

Received From :  
THE KNOER GROUP PLLC  
424 MAIN STREET SUITE 1820  
BUFFALO, NY 14202

Method Returned : NO MAIL BACK

**First PARTY 1**

351 FRANKLIN STREET LLC

**First PARTY 2**

NEW YORK STATE PEOPLE

Index Type : Deeds

Inst Number : 202409404

Book : Page :

Type of Instrument : Easement

Recording Fee: \$0.00

Recording Pages : 10

**Real Estate Transfer Tax**

RETT # : 7

RETT Amount : \$0.00

Total Fees : \$0.00

State of New York

County of Cattaraugus

I hereby certify that the within and foregoing was  
recorded in the Clerk's office for Cattaraugus  
County, New York

On (Recorded Date) : 08/01/2024

At (Recorded Time) : 11:34:58 AM



Doc ID - 015059450010

Darrell Klute, County Clerk



**Cattaraugus County, NY**  
**Darrell Klute County Clerk**

303 Court St  
Little Valley, NY 14755  
Phone Number : (716) 938-2293  
E-Mail : dtklute@cattco.org

**Official Receipt : 2024-00007907**

**Printed On : 08/01/2024 at 12:01:51 PM**

**By : 193 on LV-CC-XL2442KGF**

**Customer :**

THE KNOER GROUP PLLC  
424 MAIN STREET SUITE 1820  
BUFFALO, NY 14202

**Date Recorded : August 01, 2024**

<b>Instrument ID</b>	<b>Recorded Time</b>	<b>Amount</b>
<b>File Number : 202409404</b>	11:34:58 AM	\$0.00

**Transaction : EASEMENT/ROW**

**Name(s) : 351 FRANKLIN STREET LLC**

**To : NEW YORK STATE PEOPLE**

<b>Total Due :</b>	\$0.00
<b>Change Tendered :</b>	\$0.00

THANK YOU!

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

**THIS INDENTURE** made this 24<sup>th</sup> day of July, 2024, between Owner, 351 Franklin Street LLC, having an office at 30 S Union St., Ste 300, Olean, County of Cattaraugus, State of New York (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 the 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 the address of 351 Franklin Street in the City of Olean, County of Cattaraugus and State of New York, known and designated on the tax map of the County Clerk of Cattaraugus as tax map parcel number: Section 94.040 Block 1 Lot 29.1, being the same as that property conveyed to Grantor by deed dated May 27, 2020 and recorded in the Cattaraugus County Clerk's Office in Instrument No. 202007552. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 6.35 +/- acres, and is hereinafter more fully described in the Land Title Survey dated April 8, 2024, and last revised May 28, 2024, prepared by Kera Ann Mariotti, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the 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 mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C905047-11-20, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements 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. (1) The Controlled Property may be used for:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Cattaraugus County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. 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, 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. The SMP may be modified in accordance with the Department's statutory and regulatory authority. 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:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. 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.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

- (1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).
- (2) the institutional controls and/or engineering controls employed at such site:
  - (i) are in-place;
  - (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
  - (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
- (3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;
- (4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
- (5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;
- (6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and
- (7) the information presented is accurate and complete.

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 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 part or all of the underlying fee interest to the Controlled Property, 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 violates this Environmental Easement, the Grantee may revoke the Certificate of Completion 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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee 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 Brownfield Cleanup Agreement, State Assistance 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: C905047  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to:      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, 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, or the Commissioner's Designee, 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. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

**Remainder of Page Intentionally Left Blank**

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

351 Franklin Street LLC:

By: R. Donald Benson

Print Name: R. Donald Benson

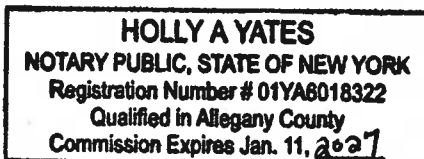
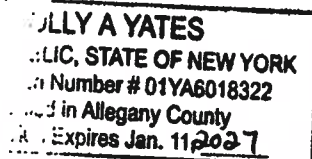
Title: Member Date: 7/11/2024

## Grantor's Acknowledgment

[illegible]

On the 11<sup>th</sup> day of July, in the year 2024, before me, the undersigned, personally appeared R. Donald Benson, 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.

Holly A. Yates  
Notary Public - State of New York



**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting by and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: Andrew O. Guglielmi  
Andrew O. Guglielmi, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 24th day of July, in the year 2024 before me, the undersigned, personally appeared Andrew O. Guglielmi, 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 Designee of 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.

Cheryl A. Salem  
Notary Public - State of New York     Cheryl A. Salem  
Notary Public State of New York  
Registration No. 01SA0002177  
Qualified in Albany County  
My Commission Expires March 3, 2027

**SCHEDULE "A" PROPERTY DESCRIPTION**

**Easement Description**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Olean, Cattaraugus County, State of New York, being part of Lot 4, Section 5, Township 2, Range 4 of the Holland Land Company's Survey, also being a portion of Blocks 65 and 66 of the Olean Depot Plat, according to a map by Joseph Mann, Esq., in 1853, a copy of which is on file in the Cattaraugus County Clerk's Office, bounded and described as follows:

BEGINNING at a point 49.76' south of the intersection of the centerline of Franklin Street with the west bounds of Lot 4, Section 5, thence through the lands of 351 Franklin Street LLC N 56-33-55 E, a distance of 251.47' to a point; thence N 57-35-05 E, a distance of 422.35' to a point, thence S 32-47-48 E along the southwest bounds of lands now or formerly of DST Properties NY LLC, a distance of 351.40' to a pin found, thence S 57-22-12 W along the north bounds of lands now or formerly of Southern Tier Rail Authority, a distance of 899.76' to a capped rebar set, thence N 00-08-29 E along the west bounds of Lot 4, Section 5 (which is the east bounds of lands now or formerly of Nipperland Properties, LLC) a distance of 415.60' to the point of beginning;

Contains 6.35 acres of land.

**Deed Description**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Olean, Cattaraugus County, State of New York, being part of Lot 4, Section 5, Township 2, Range 4 of the Holland Land Company's Survey, also being a portion of Blocks 65 and 66 of the Olean Depot Plat, according to a map by Joseph Mann, Esq., in 1853, a copy of which is on file in the Cattaraugus County Clerk's Office, bounded and described as follows:

BEGINNING at the intersection of the centerline of Franklin Street with the west bounds of Lot 4, Section 5, thence along said centerline of Franklin Street on a curve to the left having a radius of 93.20 an arc distance of 63.47', a chord of N 73-17-12 E, 62.25' to a point; thence N 56-33-17 E, a distance of 163.37' to a point; thence N 57-35-03 E, a distance of 422.63' to a point, thence S 32-47-48 E along the southwest bounds of lands now or formerly of DST Properties NY LLC, a distance of 376.40' to a pin found, thence S 57-22-12 W along the north bounds of lands now or formerly of Southern Tier Rail Authority, a distance of 899.76' to a capped rebar set, thence N 00-08-29 E along the west bounds of Lot 4, Section 5 (which is the east bounds of lands now or formerly of Nipperland Properties, LLC) a distance of 467.07' to the point of beginning;

Contains 6.74 acres of land.

**Notice to Municipality**

August 2, 2024

**VIA CERTIFIED RETURN RECEIPT**

Frank Caputo, City Clerk  
Olean Municipal Bldg.  
101 East State Street  
Olean, NY 14760

Re: Environmental Easement

Dear Clerk Caputo:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("DEC")

On	July 24, 2024
By	351 Franklin Street LLC
For property at	351 Franklin Street, Olean, NY
Tax Map No.	94.040-1-29.1
DEC Site No.:	C905047

The environmental easement for the above-referenced properties has been filed in the Cattaraugus County Clerk's Office on August 1, 2024.

This Environmental Easement restricts future use of the above-referenced property to commercial or industrial uses. Any on-site activity must be done in accordance with the Environmental Easement and the Site Management Plan which is incorporated into the Environmental Easement. Department approval is also required prior to any groundwater use.)

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

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.

An electronic version of every environmental easement that has been accepted by this Department is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,



Deanne Stachowski

/ds  
Enc.

Darrell Klute, County Clerk  
303 Court St  
Little Valley, NY 14755  
(716) 938-2293

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THE KNOER GROUP PLLC  
424 MAIN STREET SUITE 1820  
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**First PARTY 1**

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**First PARTY 2**

NEW YORK STATE PEOPLE

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**Real Estate Transfer Tax**

RETT # : 7

RETT Amount : \$0.00

Total Fees : \$0.00

State of New York

County of Cattaraugus

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On (Recorded Date) : 08/01/2024

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Doc ID - 015059450010

Darrell Klute, County Clerk



**Cattaraugus County, NY**  
**Darrell Klute County Clerk**

303 Court St  
Little Valley, NY 14755  
Phone Number : (716) 938-2293  
E-Mail : dtklute@cattco.org

**Official Receipt : 2024-00007907**

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**By : 193 on LV-CC-XL2442KGF**

**Customer :**

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424 MAIN STREET SUITE 1820  
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**Date Recorded : August 01, 2024**

<b>Instrument ID</b>	<b>Recorded Time</b>	<b>Amount</b>
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**Transaction : EASEMENT/ROW**

**Name(s) : 351 FRANKLIN STREET LLC**

**To : NEW YORK STATE PEOPLE**

<b>Total Due :</b>	\$0.00
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**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 the 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 the address of 351 Franklin Street in the City of Olean, County of Cattaraugus and State of New York, known and designated on the tax map of the County Clerk of Cattaraugus as tax map parcel number: Section 94.040 Block 1 Lot 29.1, being the same as that property conveyed to Grantor by deed dated May 27, 2020 and recorded in the Cattaraugus County Clerk's Office in Instrument No. 202007552. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 6.35 +/- acres, and is hereinafter more fully described in the Land Title Survey dated April 8, 2024, and last revised May 28, 2024, prepared by Kera Ann Mariotti, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the 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 mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C905047-11-20, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements 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. (1) The Controlled Property may be used for:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

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(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Cattaraugus County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. 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, 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. The SMP may be modified in accordance with the Department's statutory and regulatory authority. 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:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. 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.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

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 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 part or all of the underlying fee interest to the Controlled Property, 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 violates this Environmental Easement, the Grantee may revoke the Certificate of Completion 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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee 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 Brownfield Cleanup Agreement, State Assistance 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: C905047  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to:      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, 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, or the Commissioner's Designee, 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. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

**Remainder of Page Intentionally Left Blank**



**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting by and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: Andrew O. Guglielmi  
Andrew O. Guglielmi, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 24th day of July, in the year 2024 before me, the undersigned, personally appeared Andrew O. Guglielmi, 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 Designee of 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.

Cheryl A. Salem  
Notary Public - State of New York     Cheryl A. Salem  
Notary Public State of New York  
Registration No. 01SA0002177  
Qualified in Albany County  
My Commission Expires March 3, 2027



**SCHEDULE "A" PROPERTY DESCRIPTION**

**Easement Description**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Olean, Cattaraugus County, State of New York, being part of Lot 4, Section 5, Township 2, Range 4 of the Holland Land Company's Survey, also being a portion of Blocks 65 and 66 of the Olean Depot Plat, according to a map by Joseph Mann, Esq., in 1853, a copy of which is on file in the Cattaraugus County Clerk's Office, bounded and described as follows:

BEGINNING at a point 49.76' south of the intersection of the centerline of Franklin Street with the west bounds of Lot 4, Section 5, thence through the lands of 351 Franklin Street LLC N 56-33-55 E, a distance of 251.47' to a point; thence N 57-35-05 E, a distance of 422.35' to a point, thence S 32-47-48 E along the southwest bounds of lands now or formerly of DST Properties NY LLC, a distance of 351.40' to a pin found, thence S 57-22-12 W along the north bounds of lands now or formerly of Southern Tier Rail Authority, a distance of 899.76' to a capped rebar set, thence N 00-08-29 E along the west bounds of Lot 4, Section 5 (which is the east bounds of lands now or formerly of Nipperland Properties, LLC) a distance of 415.60' to the point of beginning;

Contains 6.35 acres of land.

**Deed Description**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Olean, Cattaraugus County, State of New York, being part of Lot 4, Section 5, Township 2, Range 4 of the Holland Land Company's Survey, also being a portion of Blocks 65 and 66 of the Olean Depot Plat, according to a map by Joseph Mann, Esq., in 1853, a copy of which is on file in the Cattaraugus County Clerk's Office, bounded and described as follows:

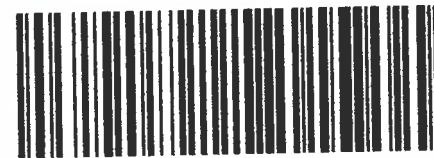
BEGINNING at the intersection of the centerline of Franklin Street with the west bounds of Lot 4, Section 5, thence along said centerline of Franklin Street on a curve to the left having a radius of 93.20 an arc distance of 63.47', a chord of N 73-17-12 E, 62.25' to a point; thence N 56-33-17 E, a distance of 163.37' to a point; thence N 57-35-03 E, a distance of 422.63' to a point, thence S 32-47-48 E along the southwest bounds of lands now or formerly of DST Properties NY LLC, a distance of 376.40' to a pin found, thence S 57-22-12 W along the north bounds of lands now or formerly of Southern Tier Rail Authority, a distance of 899.76' to a capped rebar set, thence N 00-08-29 E along the west bounds of Lot 4, Section 5 (which is the east bounds of lands now or formerly of Nipperland Properties, LLC) a distance of 467.07' to the point of beginning;

Contains 6.74 acres of land.



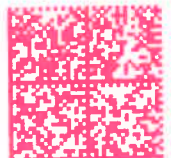
**THE KNOER GROUP, PLLC**  
424 Main Street, Suite 1820  
Buffalo, New York 14202

**CERTIFIED MAIL®**



7020 1810 0000 2359 2277

PITNEY BOWES  
**\$9.64<sup>0</sup>**  
US POSTAGE<sup>PM</sup>  
FIRST-CLASS  
028W0002311067  
2000379371  
ZIP 14202  
AUG 02 2024



Frank Caputo, City Clerk  
Olean Municipal Bldg.  
101 East State Street  
Olean, New York 14760

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Frank Caputo  
Olean Muni Bldg.  
101 East State St.  
Olean, NY 14760



9590 9402 7459 2055 3374 37

2. Article Number (Transfer from service label)

7020 1810 0000 2359 2277

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

- ☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®                    | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       |   |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

# SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.

Print your name and address on the reverse so that we can return the card to you.

Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Frank Caputo  
Olean Muni Bldg.  
101 East State St.  
Olean, NY 14760



9590 9402 7459 2055 3374 37

Article Number (Transfer from service label)

7020 1810 0000 2359 2277

# COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

*Sam Miller*

☒ Agent

☐ Addressee

B. Received by (Printed Name)

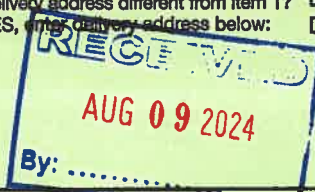
*J. Miller*

C. Date of Delivery

*8/9/24*

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No



3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☒ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery