

Environmental Easement

APPENDIX

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MAGAVERN, MAGAVERN & GRIMM, L. L. P.

ATTORNEYS AND COUNSELLORS AT LAW

1100 RAND BUILDING • 14 LAFAYETTE SQUARE • BUFFALO, NEW YORK 14203

TEL: 716-856-3500 • FAX: 716-856-3390

WILLIAM J. MAGAVERN, II
DONALD J. EGAN
THOMAS E. SCHOFIELD
EDWARD P. PERLMAN
JOSEPH R. CONNELLY
AVEN RENNIE
JOHN W. ANDREWS

JAMES L. MAGAVERN
JAMES N. CARLO
CHERYL SMITH FISHER
EDWARD J. MARKARIAN
RICHARD A. GRIMM, III
JAMES P. BRACKEN
MEGAN A. STONER

RICHARD A. GRIMM, JR.
LAURENCE H. WOODWARD
ROBERT W. GRIMM, JR.
RICHARD A. MOORE
BRUCE D. REINOSO
ROSA S. SVISCO

SUSAN M. LANKENAU
KATHRYN BRYK FRIEDMAN
SPECIAL COUNSEL
JOHN MARKARIAN
OF COUNSEL

WILLIAM J. MAGAVERN 1866-1945
SAMUEL D. MAGAVERN 1905-1991
RICHARD A. GRIMM 1885-1953

December 11, 2006

Jim Richert
Malcolm Pirnie, Inc.
40 Centre Drive
Orchard Park, NY 14127

Re: Environmental Easement
REHC 5, LLC

Dear Jim:

Enclosed please find copy of Environmental Easement together with copy of receipt showing that the Agreement was recorded in the Chautauqua County Clerk's Office.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

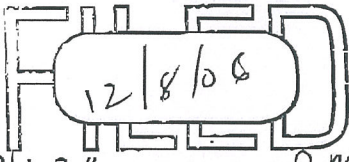
MAGAVERN, MAGAVERN & GRIMM, L.L.P.

Richard A. Moore
Richard A. Moore

RAM/amt
Enclosure

cc: Mr. Scott A. Fairbrother, REHC5, LLC
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CHAUT. CO. CLERK'S OFFICE

COPY**ENVIRONMENTAL EASEMENT**AT 4:29 OCLOCK PM

THIS INDENTURE made this 8th day of November, 2006, between REHC 5, LLC, having an office at 4 Centre Drive, Orchard Park, New York 14127 (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("brownfield sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that environmental easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

WHEREAS, Grantor, is the owner of real property located at 15 South Main Street in the City of Jamestown, Chautauque County, New York, being part of Lot No. 33, Town 2 and Range 11 of the Holland Land Company's Survey, known and designated on the tax map of the County of Chautauque as tax map parcels bearing SBL Nos. 387.49-1-4.1 and 387.49-1-6 (formerly known as tax map parcels bearing SBL Nos. 413-6-19.1 and 413-6-10.2), and described and designated as Job No. 1-03-11A\04437 by Abate Associated Engineers & Surveyors, P.C., issued November 21, 2005, containing 5.80 acres more or less, and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the "Controlled Property"); and;

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of **Brownfield Cleanup Agreement Number B9-0678-04-10, Site #C907029**, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. **Purposes.** Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Institutional and Engineering Controls.** The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for commercial and industrial use as long as the following long-term engineering controls are employed:

(i) Implementation of an approved Soil/Fill Management Plan (SFMP).

(ii) Implementation of an approved Operation, Monitoring and Maintenance Work Plan (OM&M).

(iii) The Plans referenced in (i) and (ii) above provide detailed information relating to required actions and restrictions which include but are not limited to the following items:

- Owner shall prohibit use of the property for uses other than industrial/commercial.
- Owner shall not use groundwater from beneath the property without prior written permission from the regulatory agency and without proper treatment.
- Owner shall maintain proper cover over the entire site. Acceptable cover includes one of the following: concrete building slab foundation; concrete or asphalt pavement; 24-inches of documented clean soil; or, in areas of mature trees, a six-inch thickness of wood mulch at a radius not less than the height of the respective trees.
- Any and all soil excavation on the property requires prior notification and prior approval of NYSDEC and excavated soil must be handled in accordance with the SFMP.

- On an annual basis, the owner shall perform an inspection of the property as required by the approved OM&M and SFM Plans.

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

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

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

D. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

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, or the Satisfactory Completion of Project provided under ECL Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

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

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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

~~REHC, LLC~~
By: [Signature]
Peter J. Krog,

Title: CEO

Date: 11/18, 2006

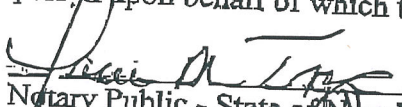
**THIS ENVIRONMENTAL EASEMENT IS HEREBY
ACCEPTED BY THE PEOPLE OF THE STATE OF
NEW YORK, Acting By and Through the Department of
Environmental Conservation**

By: [Signature] for Denise M. Sheehan
Denise M. Sheehan, Commissioner

Grantor's Acknowledgment

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

On the 10th day of NOVEMBER in the year 2006, before me, the undersigned, personally appeared Peter J. Krog, 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.

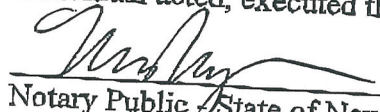

Notary Public - State of New York

JANIE M. TROUP
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMM. EXP. AUG. 31, 2009

Grantee's Acknowledgment

STATE OF NEW YORK)
COUNTY OF) ss:
)

On the 6th day of DECEMBER, in the year 2006, before me, the undersigned, personally appeared LYNETTE M. STARK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public / State of New York

MICHAEL P NAUGHTON
Notary Public New York State
Registration No. 02NA6002587
Qualified In Saratoga County
Commission Expires Feb 9, 2010

SCHEDULE A

A permanent Environmental Easement pursuant to Article 71, Title 36 of the New York State Environmental Conservation Law in, on, over, under and upon the following described property:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Jamestown, County of Chautauqua and State of New York, being part of Lot No. 33, Town 2 and Range 11 of the Holland Land Company's Survey, according to a project by Abate Associates Engineers & Surveyors, P.C., designated as Job No. 1-03-11A/04437 and being more particularly bounded and described as follows:

BEGINNING at a found rebar with cap in the northeasterly highway boundary of South Main Street, said rebar being North 48° 40' 54" West, a distance of 194.62 feet along said northeasterly boundary from its intersection with the northerly highway boundary of Harrison Street, as extended, said rebar also being the westerly corner of lands conveyed by Helen Marie Beshara, Cynthia Amerman and the Trustees of a Trust Agreement and its Restatement to CVS BDI, Inc. as described in a Warranty Deed dated September 9, 2004 and recorded in the Chautauqua County Clerk's Office on September 27, 2004 in Liber 2555 of Deeds at page 610; thence North 48° 40' 54" West along said northeasterly boundary, a distance of 103.25 feet to a set drill hole at the southwesterly corner of lands conveyed to Xue Xian Dong, Zhao Hui Lin and Jin Liang Lin as described in a Warranty Deed dated June 25, 1999 and recorded in said Clerk's Office on June 25, 1999 in Liber 2416 of Deeds at page 221; thence North 75° 56' 06" East along the southerly line of said Dong and Lin, a distance of 235.81 feet to a set drill hole; thence North 13° 39' 08" West along the easterly line of said Dong and Lin, a distance of 162.94 feet to a found iron stake in the southerly line of lands conveyed by the Jamestown Urban Renewal Agency to the City of Jamestown as described in a Warranty Deed dated May 16, 1977 and recorded in said Clerk's Office on May 24, 1977 in Liber 1686 of Deeds at page 27; thence along said lands of the City of Jamestown the following nine courses and distances:

(1) North 76° 20' 52" East, a distance of 63.18 feet to a found iron stake; thence (2) South 51° 28' 57" East, a distance of 8.23 feet to a found iron stake; thence (3) North 79° 42' 43" East, a distance of 199.92 feet to a found iron stake; thence (4) South 88° 12' 30" East, a distance of 43.76 feet to a found rebar with cap; thence (5) North 80° 41' 19" East, a distance of 228.04 feet to a found rebar with cap; thence (6) North 89° 30' 27" East, a distance of 130.92 feet to a found PK nail; thence (7) South 69° 41' 49" East, a distance of 40.73 feet to a found rebar with cap; thence (8) South 47° 41' 33" East, a distance of 88.76 feet to a found PK nail; thence (9) South 26° 09' 55" East, a distance of 56.94 feet to a found rebar with cap at the northeasterly corner of lands conveyed to the Jamestown Urban Renewal Agency as described in a Quit Claim Deed dated December 8, 1988 and recorded in said Clerk's Office on December 9, 1988 in Liber 2178 of Deeds at page 118; thence South 13° 57' 00" East along the easterly line of said lands conveyed to the Jamestown Urban Renewal Agency, a distance of 173.35 feet to a found PK nail in said northerly highway boundary of Harrison Street; thence South 71° 31' 51" West along said boundary of Harrison Street, a distance of 25.96 feet to a point; thence South 76° 02' 59" West, continuing along said boundary of Harrison Street, a distance of 342.97 feet to a found iron stake; thence continuing South 76° 02' 59" West along said boundary of Harrison Street, a distance of 209.39 feet to a point at the southeasterly corner of said lands of CVS BDI, Inc.; thence along said lands of CVS BDI, Inc., the following three courses and distances:

(1) North 13° 55' 57" West, a distance of 197.48 feet to a found drill hole; thence (2) South 76° 04' 03" West, a distance of 304.88 feet to a found magnetic nail; thence (3) South 41° 19' 06" West, a distance of 66.05 feet to the rebar at the point or place of beginning. Containing 5.80 acres, more or less.

TOGETHER with a permanent easement on, over and under:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Jamestown, County of Chautauqua and State of New York and being further bounded and described as follows:

BEGINNING at a point, said point being North 48° 40' 54" West 306.87 feet along the easterly bounds of South Main Street from the intersection of the projected said easterly bounds of South Main Street and the northerly bounds of Harrison Street; thence North 25° 15' 50" East 202.13 feet to a point; thence North 76° 20' 52" East 177.18 feet to a point; thence South 51° 28' 57" East 8.23 feet to a point; thence North 79° 42' 43" East 199.92 feet to a point; thence South 88° 12' 30" East 43.76 feet to a point; thence North 80° 41' 19" East 228.04 feet to a point; thence North 89° 30' 27" East 91.92 feet to a point marking the point of beginning of the permanent easement being described; thence running North 76° 02' 59" East, parallel to Harrison Street, 48 feet to a point; thence South 13° 57' 01" East, 15.93 feet to a point in the northerly bounds of Parcel 7A; thence North 69° 41' 49" West along said northerly bounds of Parcel 7A, a distance of 12.18 feet to a point; thence South 89° 30' 27" West continuing along said northerly bounds of Parcel 7A, a distance of 39 feet to the point of beginning, containing 297.92 square feet or more or less.

** RECEIPT
 Chautauque County Clerk
 Sandra K. Spesh
 County Clerk

REC: 00356334 CTR: ENR
 MASVERN MASVERN & DAVID LLP
 1100 BOND BLDG
 14 LAFAYETTE ST
 BUFFALO, NY 14203

DESCRIPTION	TRANS AMOUNT
COUNTY	41.00
SER/DEA	19.00
Total Fees	60.00
EASEMENT	\$ DE3006007546
DATE: 12/06/2006	TIME: 04:19:00
E/P D 02515 0523 Control# 200612060277	
1 REMC S	
2 NEW YORK STATE PEOPLE OF	
/NYSD&S	
RECEIPT TOTAL	60.00
R CHECK	60.00
TOTAL AMOUNT TENDERED	60.00
TOTAL CHANGE RETURNED	.00
PAYMENT TOTAL	60.00