

MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE:12/16/2021
TIME:10:30:39 AM
RECEIPT: 21205727 - DUPLICATE -

CARL P PALADINO
ACCOUNT #: 8907

DUPLICATE RECEIPT

ITEM - 01 CNT
RECD: 12/16/2021 10:42:51 AM
FILE: 2021251112 BK/PG D 11392/8345
Deed Sequence: TT2021010822
4216 GROUP LLC
Recording Fees 70.50
TP584 10.00
Subtotal 80.50

ITEM - 02 785
RECD: 12/16/2021 10:42:51 AM
FILE: 2021251113 BK/PG D 11392/8351
Deed Sequence: TT2021010823
COOPERAGE LLC
Recording Fees 90.50
TP584 10.00
Subtotal 100.50

ITEM - 03 785
RECD: 12/16/2021 10:42:51 AM
FILE: 2021251114 BK/PG D 11392/8361
Deed Sequence: TT2021010824
4216 GROUP LLC
Recording Fees 90.50
TP584 10.00
Subtotal 100.50

ITEM - 04 SERVICE
DEBIT ESCROW 11.00
Subtotal 11.00

TOTAL DUE \$292.50
PAID TOTAL \$292.50
PAID CHECK \$292.50
Check #000383: 292.50

REC BY: Donna G
COUNTY RECORDER

Return to:
Box 239

COPY
DEC 16 2021
ERIE COUNTY
CLERK'S OFFICE

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

THIS INDENTURE made this 13th day of December, 2021, between Owner, Cooperage, LLC, having an office at 295 Main Street, Suite 700, Buffalo, New York 14203, County of Erie, 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 a portion of real property located at the address of 55 Chicago Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel number: Section 122.10 Block 2 Lot 15.21, being the same as that property conveyed to Grantor by deed dated May 3, 2018 and recorded in the Erie County Clerk's Office in Liber and Page 11329/2532. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.009 +/- acres, and is hereinafter more fully described in the Land Title Survey dated March 18, 2019 and last revised November 5, 2020 prepared by Frances C. Delles, L.L.S. of Millard, MacKay & Delles Land Surveyors, LLP, 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 Order on Consent Index Number: C915257-09-11, 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:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),
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 Erie 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 purposes as defined in 6NYCRR 375-1.8(g)(2)(i), 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

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.

Cooperage, LLC:

By: Nancy Ware
Print Name: Nancy Ware, Manager of
Ware Property Services, LLC

Title: Manager Date: 12/8/21

Grantor's Acknowledgment

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

On the 6th day of December, in the year 20 21, before me, the undersigned, personally appeared Nancy Ware, 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.

Lori E. Carbaugh
Notary Public - State of New York

LORI E. CARBAUGH
Notary Public, State of New York
Reg #02CA6226718
Qualified in Erie County
My Commission Expires August 16, 20 22

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: Susan Edwards
Susan Edwards, Acting Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 13th day of December, in the year 2021, before me, the undersigned, personally appeared Susan Edwards, 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.

Jennifer Andoloro
Notary Public - State of New York

JENNIFER ANDALORO
Notary Public, State of New York
No. 02AN6098246
Qualified in Albany County
Commission Expires January 14, 2024

SCHEDULE "A" PROPERTY DESCRIPTION

RESTRICTED-RESIDENTIAL AREA (55 CHICAGO STREET, S.B.L. 122.10-2-15.21)

Former 71, 73 & 75 Chicago Street

ALL THAT PLOT OF LAND SITUATE in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot No. 56 in said City, and bounded as follows:

BEGINNING at the point of intersection of southerly line of Mackinaw Street with the easterly line of Chicago Street, thence easterly along said southerly line of Mackinaw Street, one hundred forty (140) feet; thence southerly parallel with Chicago Street fifty-four (54) feet; thence westerly parallel with Mackinaw Street one hundred forty (140) feet to the easterly line of Chicago Street; and thence northerly fifty-four (54) feet to the place of beginning.

Former 49 Mackinaw Street and parts of 11 Chicago Street and 53 Mackinaw Street

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot No. 56 in said City, bounded and described as follows:

BEGINNING at a point in the southerly line of Mackinaw Street, distant 140.00 feet easterly from the southerly line of Chicago Street; running thence easterly along the southerly line a Mackinaw Street, a distance of 108.00 feet to a point, thence southerly along a line drawn parallel with Chicago Street, a distance of 197.24 feet, thence westerly along a line drawn at right angles with Chicago Street, a distance of 21.00 feet, thence southerly along a line drawn parallel with Chicago Street, a distance of 106.92 feet; thence westerly along a line drawn at right angles with Chicago Street, a distance of 227.00 feet to the easternly line of Chicago street; thence northerly along the easternly line of lands conveyed to 4216 Group, LLC by deed recorded in the Erie County Clerk's Office in Liber 11207 of Deeds at page 9857, thence ^{66.31 feet} easterly along a northerly line of said lands conveyed to 4216 Group, LLC and parallel with the southerly line of Mackinaw Street, a distance of 61.00 feet to a point; thence southerly along a easterly line of said lands conveyed to 4216 Group, LLC and parallel with the easterly line of Chicago street, a distance of 20.00 feet to a point; thence easterly along a northerly line of said lands conveyed to 4216 Group, LLC and parallel with the southerly line of Mackinaw Street, a distance of 91.00 feet to a point; thence northerly along a westerly line of said lands conveyed to 4216 Group, LLC and parallel with the easterly line of Chicago Street, a distance of 158.50 feet to a point; thence westerly along a southerly line of said lands conveyed to 4216 Group, LLC and parallel with Mackinaw Street, a distance of 12.00 feet to a point; thence northerly along the westerly line of said lands conveyed to 4216 Group, LLC and parallel with the easterly line of Chicago Street, a distance of 100.00 feet to the point of beginning. said parcel containing an area of 0.84 acres, more or less.

Said parcels containing an area of 39,995± square feet (1.009± acre)