



County Clerk's Recording Page

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Party 1:
LEROY PROPERTIES INC (THE)

Party 2:
PEOPLE OF THE STATE OF NEW YORK
(THE)

Recording Fees:

Consideration Amount: 1.00

RECORDING	\$75.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
TP584	\$10.00

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

Total: \$105.00

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Michael P. Kearns
Erie County Clerk

Box 466

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

THIS INDENTURE is made this 3rd day of October, 2024, between Owners, The Leroy Properties, Inc., having an office at 2101 Kenmore Avenue, Tonawanda, NY 14207, County of Erie, State of New York and Wood and Brooks Properties LLC, having an office at 2101 Kenmore Avenue, Tonawanda, NY 14207, County of Erie, State of New York; 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. The Leroy Properties, Inc. and Wood and Brooks Properties LLC are referred to collectively herein as "Grantor".

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 the following real property:

- Street Address: 2101 Kenmore Avenue
Section-Block-Lot Number: 77.08-1-1.1 (p/o Former Lot 1)
Owner: The LeRoy Properties, Inc.
- Street Address: 2075 Kenmore Avenue
Section-Block-Lot Number: 77.08-1-1.2 (p/o Former Lot 1)
Owner: Wood and Brooks Properties LLC

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Both above-identified tax parcels are located in the Town of Tonawanda, County of Erie and State of New York, being the same as that property conveyed to Grantor as follows:

- 2101 Kenmore Avenue: Conveyed to The LeRoy Properties, Inc. by deed dated January 5, 1987 and recorded in the Erie County Clerk's Office on May 22, 1987 at Liber 9715, Page 267.
- 2075 Kenmore Avenue: Conveyed to Wood and Brooks Properties LLC by deed dated August 29, 2023 and recorded in the Erie County Clerk's Office on September 7, 2023 at Liber 11421, Page 5802, which deed corrected a previously recorded deed (dated August 3, 2023 and recorded on August 4, 2023 at Liber 11420, Page 2773) between the same grantor and grantee.

The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 2.406 +/- acres, and is hereinafter more fully described in the Land Title Survey dated November 5, 2021, with revisions dated December 15, 2021, December 22, 2021, and February 9, 2022, prepared by Roseanne Frandina, PE, LS, of Frandina Engineering and Land Surveying, PC, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A. The Controlled Property comprises a portion of the two tax lots, 1.1 & 1.2, identified above, which were created as a result of a subdivision of former Section-Block-Lot number 77.08-1-1, effective as of the 2024 Town of Tonawanda Assessment Roll.

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 C915391-12-22, as amended, 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

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

(5) 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;

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

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

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

(9) 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:

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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 annually, or at such time interval as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC finds 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;

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(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 [2/12]

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

The Leroy Properties, Inc.:

By: *J. Wippura*

Print Name: Jon Wippura

Title: President Date: 9/15/24

Grantor's Acknowledgment

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

On the 19 day of Sept, in the year 2024, before me, the undersigned, personally appeared Jon Wippura, 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.

Deanna M. Good
Notary Public - State of New York
DEANNA M. GOOD
NOTARY PUBLIC, STATE OF NEW YORK
Reg. No. 01G06070737
QUALIFIED IN ERRIE COUNTY 26
My Commission Expires July 1, 2026

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 Guglielmi
Andrew O. Guglielmi, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 3 day of October, 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/they executed the same in his/her/their capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/their 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 Area:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawanda, County of Erie and State of New York, being part of Lot No. 42, Township 12, Range 8 of the Holland Land Company's Survey bounded and described as follows:

COMMENCING at the intersection of the northeasterly line of Kenmore Avenue and the southerly line of lands conveyed to Defense Plant Corporation by Wood and Brooks company by Deed recorded in the Erie County Clerk's Office in Liber 3289 of Deeds at page 188; thence S 40°39'53" E along the northeasterly line of Kenmore Avenue (49.5 feet wide) a distance of 587.26 feet to the POINT of BEGINNING; thence continuing along the following twenty-two courses:

- 1) S80°38'13"E a distance of 59.70' to a point;
- 2) thence N 09°21'47" E a distance of 21.00 feet to a point;
- 3) thence S 80°38'13" E a distance of 125.00 feet to a point;
- 4) thence S 09°21'47" W a distance of 21.00 feet to a point;
- 5) thence S 80°38'13" E a distance of 26.53 feet to a point;
- 6) thence S 09°21'47" W a distance of 35.78 feet to a point;
- 7) thence S 80°37'37" E a distance of 183.71 feet to a point;
- 8) thence S09°22'23"W a distance of 39.00' to a point;
- 9) thence S80°37'37"E a distance of 22.00' to a point;
- 10) thence S09°22'23"W a distance of 35.00' to a point;
- 11) thence S80°37'37"E a distance of 29.43' to a point;
- 12) thence S09°19'23"W a distance of 57.07' to a point;
- 13) thence N80°37'37"W a distance of 4.00' to a point;
- 14) thence S09°19'23"W a distance of 102.52' to a point;
- 15) thence S80°40'37"E a distance of 53.00' to a point;
- 16) thence S09°19'23"W a distance of 45.00' to a point;
- 17) thence S80°40'37"E a distance of 57.82' to a point on the westerly line of lands conveyed to the Niagara Falls Power Company by deed recorded in the Erie County Clerk's Office in Liber 917 of Deeds at page 90;
- 18) thence S 09°19'07" W along the west line of said Power Company's lands a distance of 240.77 feet to the northerly line of Kenmore Avenue; being also the division line between the Town of Tonawanda on the northeast and the City of Buffalo on the southwest;
- 19) thence S 37°36'04" W along said division line between the Town of Tonawanda on the northeast and the City of Buffalo on the southwest a distance of 280.60 feet to the easterly line of Kenmore Avenue;
- 20) thence N 01°43'07" E and continuing along the easterly line of Kenmore Avenue a distance of 78.12 feet to the northeasterly line of Kenmore Avenue;
- 21) thence N 37°35'53" W along the northeasterly line of Kenmore Avenue a distance of 40.75 feet to a point;
- 22) thence N 40°39'53" W and continuing along the northeasterly line of Kenmore Avenue a distance of 402.20 feet to the point of beginning, containing 2.406 acres more or less.



October 17, 2024

James Hartz, AICP
Director of Community Development
Town of Tonawanda Office of Planning and Development
Municipal Building
2919 Delaware Avenue
Kenmore NY 14217

**Re: Environmental Easement Wood and Brooks Properties LLC, Site ID No. C915391
2101 Kenmore Avenue, Town of Tonawanda NY 14207**

Dear Mr Hartz:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("Department") on October 3, 2024, by Wood and Brooks Properties, LLC for 2101 Kenmore Avenue, Tonawanda New York 14207, DEC Site No. C315391.

This Environmental Easement restricts future use of the above-referenced property to restricted residential 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 timeframe for the local

HOPKINS SORGI & MCCARTHY PLLC

Attorneys at Law

574 Main Street, Suite 204 • East Aurora, NY 14052

Office: 716-805-7191 • Direct: 716-445-9508 • Fax: 716-427-6501 • Email: mccarthy@hsmlegal.com

www.hsmlegal.com

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 the Department is available to the public at http://www.dec.ny.gov/_____.html. Please forward this notice to your building and/or planning departments, as applicable, to ensure your compliance with these provisions of New York State Environmental Conservation Law. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Ryan P. McCarthy

Enclosures