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HURWITZ & FINE, P.C.
ATTORNEYS AT LAW

Kevin J. Zanner
kjz@hurwitzfine.com

December 26, 2019

Bureau of Remediation
Office of General Counsel, 14th Floor
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1500

RE: Environmental Easement
ERP Site # E837015

To Whom It May Concern:


Enclosed please find a copy of the above referenced Environmental Easement, which was recorded in the Orleans County Clerk's Office on November 8, 2019 at Liber 861, page 2454.

Also enclosed is a copy of the Notice to the Town of Ridgeway and proof of mailing.

Please contact me if you have any questions regarding this submission.

Very truly yours,

HURWITZ & FINE, P.C.



Kevin J. Zanner

KJZ/sas
Enclosures
cc: James Whipple, CEO (*via Email Only*)
Bradford Burns, Esq. (*via Email Only*)
Dennis Harkawik, Esq. (*via Email Only*)
Charlotte Theobald (*via Email Only*)

Orleans County
Karen Lake-Maynard County Clerk
3 South Main Street Courthouse Square
Albion NY 14411

Volm-861 Pg-2454

Instrument Number: 2019- 00104358

As

Recorded On: November 08, 2019

Easement

Parties: ORLEANS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

To

THE PEOPLE OF THE STATE OF NEW YORK ACTING THROUGH COM

Billable Pages: 10

Recorded By: ORLEANS COUNTY IDA

Num Of Pages: 11

Comment: RID ORCO IDA & 1 TO NYS

**** Examined and Charged as Follows: ****

Easement	90.00	Coversheet	5.00	TP584 Affidavit	5.00
Recording Charge:	100.00				
	Amount	Consideration Amount	RS#/CS#		
Tax-Transfer	0.00	0.00	389	Basic	0.00
RIDGEWAY				Local	0.00
				Additional	0.00
				Special Additional	0.00
				Transfer	0.00
Tax Charge:	0.00				

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Orleans County,

File Information:

Record and Return To:

Document Number: 2019- 00104358
Receipt Number: 310762
Recorded Date/Time: November 08, 2019 02:37:06P
Book-Vol/Pg: Bk-D VI-861 Pg-2454
Cashier / Station: V Niederhofer / CASH01

ORLEANS COUNTY IDA
121 N MAIN ST
ALBION NY 14411

Liber# 861 PG# 2454
Nov 08, 2019 02:37P
INST # 00104358
ORLEANS COUNTY CLERK
Karen Lake-Maynard



Karen Lake-Maynard
Karen Lake-Maynard
Orleans County Clerk

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

THIS INDENTURE made this 1st day of November, 2019, between Owner(s) County of Orleans Industrial Development Agency, a New York industrial development agency and public benefit corporation, and Orleans Land Restoration Corporation, a New York not-for-profit corporation, both having an office at 121 North Main Street, Albion, New York 14411, County of Orleans, State of New York (collectively 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 Bates Road in the Town of Ridgeway, County of Orleans and State of New York, known and designated on the tax map of the County Clerk of Orleans as tax map parcel numbers: Section 80 Block 1 Lot 20.2, being the same as that property conveyed to Grantor by deed dated July 28, 2006 and recorded in the Orleans County Clerk's Office in Liber and Page 826/3218. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 36.457 +/- acres, and is hereinafter more fully described in the Land Title Survey dated June 29, 2006 prepared by Michael D. O'Neill, P.L.S. of O'Neill-Rodak Land Surveying Associates, P.C., 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 State Assistance Contract Number: C303754, 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"), if any, 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:

Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv) , including its current use for manufacturing and as a rail spur.

(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 Orleans 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, Restricted Residential or Commercial purposes as defined in 6NYCRR 375-1.8(g)(i), (ii) and (iii), 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

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.

County of Orleans Industrial Development Agency:

By: 


Print Name: JAMES WHIPPLE

Title: CEO Date: 9/13/19

Grantor's Acknowledgment

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


On the 13th day of September, in the year 2019 before me, the undersigned, personally appeared James Whipple, 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

KEVIN J ZANNER
Notary Public-State of New York
No. 02ZA5076987
Qualified in Erie County
Commission Expires 04/28/2023

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

Orleans Land Restoration Corporation:

By: 

Print Name: JAMES WHIPPLE

Title: CEO Date: 9/13/19

Grantor's Acknowledgment

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

On the 13th day of September, in the year 2019, before me, the undersigned, personally appeared James Whipple, 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

KEVIN J ZANNER
Notary Public-State of New York
No. 02ZA5076987
Qualified in Erie County
Commission Expires 04/28/2023

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND being part of Lot 25, Range 3, Township 15 of the Holland Land Purchase, situate in the Town of Ridgeway, County of Orleans, State of New York.

Beginning at a point on the easterly side of Bates Road, said point being South 03°-00'-00" West a distance of 491.77 feet, measured from the intersection of said south line of lands formerly belonging to the New York Central Railroad Company, and now or formerly belonging to Conrail; thence

- 1) S 03°-00'-00" W along the easterly side of Bates Road, for a distance of 281.00 feet to a point, said point being the southwest corner of lands formerly belonging to Josephine Plec, as recorded in Liber 172 of Deeds at page 218, said point being the southwest corner of the aforesaid Lot 25; thence
- 2) S 87°-12'-00" E along the south line of said Lot 25, for a distance of 2,189.88 feet to a point; thence
- 3) N 03°-00'-00" E for a distance of 1,146.30 feet to a point on the south line of the aforesaid railroad; thence
- 4) S 83°-16'-00" W along the south line of said railroad, for a distance of 1,236.64 feet to a point; thence
- 5) S 06°-36'-00" E for a distance of 316.14 feet to a point; thence
- 6) S 58°-43'-30" W for a distance of 119.46 feet to a point; thence
- 7) S 06°-36'-00" E for a distance of 161.37 feet to a point; thence
- 8) S 83°-13'-30" W for a distance of 795.08 feet to a point; thence
- 9) N 79°-40'-30" W for a distance of 75.48 feet to a point; thence
- 10) N 87°-12'-00" W for a distance of 93.00 feet to the point of beginning.

Containing approximately 36.457 acres more or less.

December 13, 2019

VIA CERTIFIED MAIL RETURN RECEIPT

Brian Napoli, Supervisor
Town of Ridgeway
410 West Avenue
Medina, New York 14103

Re: Environmental Easement
ERP Site # E837015

Dear Supervisor Napoli:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("Department") on November 1, 2019, by the County of Orleans Industrial Development Agency and the Orleans Land Restoration Corporation, for property at 3959 Bates Road, Medina, New York, Tax Map No. 80.-1-20.0, DEC Site No: E837015.

This Environmental Easement restricts future use of the above-referenced property to restricted 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.)

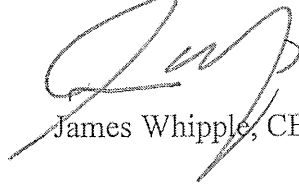
Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

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 the Department is available to the public at: <http://www.dec.ny.gov/chemical/36045.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.

Very truly yours,



James Whipple, CEO

cc: Kevin J. Zanner, Esq.

14103

R2305M145296-07

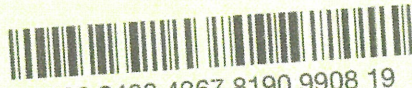
SENDER

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:

BRIAN NAPOLI, SUPERVISOR
 TOWN OF RUGGWAY
 410 WEST AVENUE
 MEDINA, NY 14103



9590 9402 4367 8190 9908 19

2. Article Number (Transfer from service label)

7018 3090 0001 7095 0060

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Joelle Brown

- Agent
- Addressee

B. Received by (Printed Name)

Joelle Brown

C. Date of Delivery

12/16/19

- 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
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt