

*** DO NOT DETACH ***

Oneida County Clerk's Office

Recording Page

Receipt #:	263122	-----FEES-----	
Instrument #:	2005-025356	Recording and Filing:	129.00
Date:	11/29/2005	Transfer Tax:	0.00
Time:	11:32A	Basic Tax:	0.00
Doc Type:	DECLARATION	Additional Tax:	0.00
1st OR:	GAETANO CHARLES A	Special Tax:	0.00
1st EE:	GAETANO CHARLES A	Withheld:	0.00
Town:	-	Total:	129.00
Pages:	35		
Serial #:	-	-----MORTGAGE TAX-----	
Employee ID:	JAB	Amount Taxed:	0.00
Transfer Tax #:		-----TRANSFER TAX-----	
		Consideration Amount:	0.00
Return Address:	BOND SCHONECK & KING 1 LINCOLN CENTER SYRCAUSE NY 13202		

State of New York
County of Oneida

*** WARNING -

I hereby certify that the within and foregoing was recorded
in the Oneida County Clerk's Office, State of New York.

This sheet constitutes the Clerks endorsement required by
Section 316 of the Real Property Law of the State of New York.

Richard D. Allen
County Clerk

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Richard D. Allen, Oneida County Clerk DEC

**DECLARATION OF
RESTRICTIVE COVENANTS
Canterbury Parcel**

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Deed Restriction") is made this 29th day of November, 2005 by Charles A. Gaetano, the owner of property located between Railroad and Mill Streets in the City of Rome, County of Oneida, which was formerly owned by the General Cable Company (the "Site"). The Site was subdivided in an approval granted by the City of Rome Planning Board on April 1, 1997. This Deed Restriction relates to Parcel No. 6 of that subdivision consisting of 0.866 acres and known as the Canterbury Parcel. This parcel is more particularly described in the property description set forth in the attached Exhibit A.

RECITALS

1. General Cable Corporation formerly owned certain real property of approximately 17 acres located in Rome, New York on which it operated a cable manufacturing facility (the "Site"). Charles A. Gaetano ("Gaetano") initially acquired title to the Site on December 18, 1975. The Site was subdivided into seven parcels by approval granted by the City of Rome Planning Board on April 1, 1997.

2. Gaetano entered into a Voluntary Remedial Agreement with the New York State Department of Environmental Conservation (the "Department") in the Matter of the Implementation of a Remedial Response for the Old General Cable Site a/k/a the Central Core of the East Rome Business Park (Index # D6-0001-97-07) (the "Order"). The Order became effective upon the signature of John P. Cahill, the Commissioner of the Department, on March 8, 1999.

3. Gaetano consented to the issuance of the Order for the purposes of addressing the environmental conditions at the Site (with the exception of the Roadway Parcel) so that it can be redeveloped and used for commercial and industrial purposes. The Order does not cover the portion of the Site known as the Roadway Parcel, because that parcel was conveyed by Gaetano to the City of Rome on May 6, 1997.

4. There are three (3) separate Remedial Work Plans for the areas of the Site that are described in the Order, including one for the Canterbury Parcel. The Remedial Work Plan for the Canterbury Parcel is attached as Exhibit E to the Order.

5. Upon the completion of the remedial activities described in the Remedial Work Plan for the Canterbury Parcel, Gaetano was required to submit for the Department's approval a Closure Report, summarizing the work. Jack Eisenbach Engineering, P.C. ("JEE"), on behalf of Gaetano, submitted a Closure Report to the Department for the Canterbury Parcel on July 17, 2000 and an amendment to the Report on July 28, 2000 (the "Canterbury Parcel Closure Report").



6. By its letter dated September 22, 2000 which was signed on October 3, 2000 (the "Assignable Release and Covenant Not to Sue"), the Department approved the Canterbury Parcel Closure Report and a copy of the Department's letter is attached as Exhibit B to this Deed Restriction.

7. Under Subparagraph XI.C of the Order, Gaetano is required to record a deed restriction covering the Canterbury Parcel within 30 days of his receipt of the Department's written approval of the Canterbury Parcel Closure Report. This time period was extended by the Department until December 7, 2005 due to the termination of the proposed transfer of the Canterbury Parcel to the Canterbury Printing Company of Rome, Inc., a transaction that was referenced at paragraph 3.B of the Order, but subsequently rescinded by a Cancellation and Release Agreement made on the 10th day of March 2005.

8. The Department approved the form of this Deed Restriction by its letter dated November 7, 2005 to Synapse Risk Management (the "Approval Letter") and this Deed Restriction is being recorded to comply with Subparagraph XI.C of the Order and the terms of the Approval Letter.

NOW, THEREFORE, Charles A. Gaetano, intending to be legally bound, and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby declare as follows:

1. Use Restrictions

(a) The Canterbury Parcel is hereby prohibited from ever being used for purposes other than for commercial or industrial use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, respecting the parcel in question.

(b) The use of groundwater underlying the Canterbury Parcel is prohibited without treatment to render it safe for use as drinking water or industrial purposes as determined by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department.

(c) The future development of the Canterbury Parcel shall be conducted in accordance with the Soils Management Plan attached as Exhibit C except as that Plan may be modified in writing by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department.

(d) The fee owner of the Canterbury Parcel as of December 31 of the calendar year shall submit by March 31st of the following year a report, certifying whether there had been compliance over the calendar year just ended with the use restrictions set forth in this Deed Restriction (or as those restrictions may have been modified in accordance with this Deed Restriction), and if not, detail the instance(s) in which compliance was not maintained, and the



EXHIBIT A

Property Description For The Canterbury Parcel

All the piece or parcel of real property lying and being in the City of Rome, County of Oneida and State of New York bounded and described as follows:

Commencing at a point of reference on the northeasterly bounds of Mill Street at its intersection with the division line between the lands of Sam and Mildred Mosca on the northwest and the lands of Charles Gaetano on the southeast; thence along said division line N44°-23'-34"E, 53.36 feet to a point on the division line between the lands of Sam and Mildred Mosca on the west and the lands of Charles Gaetano on the east; thence along said division line and a continuation thereof N18°-08'-34"E, 105.39 feet to a point on the northwesterly bounds of a proposed right-of-way, the point of beginning of the premises herein described; thence along the division line between the lands of Canterbury Printing Co. of Rome, Inc. on the west and the lands of Charles Gaetano on the east N18°-08'-34"E, 146.35 feet to a point on the division line between the lands of Canterbury Printing Co. of Rome, Inc. on the north and the lands of Charles Gaetano on the south; thence along said division line S71°-51'-26"E, 41.00 feet to a point on the division line between the lands of Canterbury Printing Co. of Rome, Inc. on the west and the lands of Charles Gaetano on the east; thence along said division line the following two (2) courses and distances: N20°-15'-04"E, 92.75 feet; N02°-43'-36"W, 21.63 feet to a point on the division line between the lands of Nash Metalware Co. Inc. on the north and the lands of Charles Gaetano on the south; thence along said division line S89°-32'-46"E, 28.15 feet to a point on the division line between the lands of Nash Metalware Co. Inc. on the northwest and the lands of Charles Gaetano on the southeast; thence along said division line N50°-37'-14"E, 106.89 feet to



a point; thence continuing along said division line N35°-54'-14"E. 6.18 feet to a point on the southwesterly bounds of a proposed right-of-way; thence along said right-of-way S47°-45'-27"E, 113.22 feet to a point; thence on a curve to the right with a radius of 15.00 feet a distance of 24.36 feet to a point on the northwesterly bounds of said right-of-way; thence along said right-of-way on a curve to the right with a radius of 970.00 feet a distance of 327.88 feet to a point; thence continuing along said right-of-way S64°-38'-53"W, 52.12 feet to the point of beginning containing 0.866 acres of land.

The above described premises being a portion of the premises conveyed by the Board of County Legislators of the County of Oneida to Charles A. Gaetano by deed dated July 16, 1987 and recorded in the Oneida County Clerk's Office in Liber 2356 of Deeds at page 315.

The above described premises also being Parcel No. 6 of the East Rome Business Park Subdivision as shown on the final subdivision map of the East Rome Business Park dated February 7, 1997 and filed in the Oneida County Clerk's Office on April 17, 1997 in Map Roll 1688.



EXHIBIT B

Copy of Assignable Release and Covenant Not to Sue (the "Release") from the New York State Department of Environmental Conservation addressed to Mr. Charles A. Gaetano, 311 Turner Street, Utica, New York. The Release is dated September 22, 2000 and it was signed on October 3, 2000.



**New York State Department of Environmental Conservation
Division of Environmental Enforcement**

Bureau of State Superfund and Voluntary Cleanup, Room 410A

50 Wolf Road, Albany, New York 12233-5550

Phone: (518) 457-4347 • **FAX:** (518) 457-7819

Website: www.dec.state.ny.us



September 22, 2000

Assignable Release and Covenant Not To Sue

Mr. Charles A. Gaetano
311 Turner Street
Utica, New York 13501

Re: Old General Cable Site, "Canterbury Parcel", Rome, New York
Consent Order, Index No. D6-0001-97-07

Dear Mr. Gaetano:

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of an Order issued by the New York State Department of Environmental Conservation (the "Department") to you ("Volunteer"), Index No. D6-0001-97-07 (the "Order").

The Department is pleased to report that the Department is satisfied that the Department-approved remediation Work Plan to implement a response program at the parcel of land located within the Old General Cable Site, which is referred to in the Order as the Canterbury Parcel, has been successfully implemented. The Canterbury Parcel (the "Property") as identified as parcel No. 6, in Subparagraph 2.D of the Order referenced herein is more particularly described in the property description and site map that are attached collectively hereto as Appendix "A."

Assignable Release and Covenant Not To Sue:

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer or Volunteer's lessees, sublessees, heirs, successors, assigns and their respective secured creditors, for the further investigation and remediation of the Property, or for natural resources damages, based upon the release or threatened release of Existing Contamination, provided that (a) the appropriate notice and deed restriction have been recorded in accordance with Paragraphs X and XI of the Order and the Department receives a copy of the deed restriction in accordance with Subparagraph XI.D of this Order, and (b)



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Volunteer and/or his lessees, sublessees, heirs, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any.

Nonetheless, to the extent a reopener condition exists, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, natural resource damages or any further investigation or remedial action the Department deems necessary to be undertaken. A reopener condition for purposes of this Assignable Release and Covenant Not to Sue shall be:

- i. the presence of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan for the Property disclosed the existence or potential existence of such presence; or
- ii. environmental conditions related to the Property that were unknown to the Department at the time of its approval of the Work Plan for the Property which indicate that conditions at the Property are not sufficiently protective of human health and the environment for the Contemplated Use or which indicate that any remaining hazardous wastes disposed at the Property constitute a significant threat to the environment; or
- iii. information received, in whole or in part, after the Department's approval of the Closure Report or Revised Closure Report for the Property, which indicates that the activities identified in the Work Plan for the Property performed under this Order are not sufficiently protective of human health and the environment for the Contemplated Use or that any remaining hazardous wastes disposed at the Property constitute a significant threat to the environment; or
- iv. Volunteer's failure to implement his obligations under Paragraph VII, IX, or XIII of this Order to the Department's satisfaction; or
- v. fraud committed, or mistake made, by Volunteer in demonstrating that the cleanup levels identified in, or to be identified in accordance with, the Work Plan for the Property were reached; or
- vi. Volunteer causes a, or suffers the, release or threat of release at the Property of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]), other than Existing Contamination, after the effective date of the Order; or
- vii. Volunteer causes a, or suffers the use of the Property to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

Additionally, the Department and the Trustee hereby reserve all of their respective rights against a Volunteer's lessee, sublessee, heir, successor, or assign concerning, and such release, covenant not to sue, and forbearance shall not extend to, natural resource damages or any further investigation or remedial action the Department deems necessary to be undertaken to the extent that the Volunteer lessee, sublessee, heir, successor or assign: (i) causes a, or suffers the, release



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or threat of release, at the Property of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Existing Contamination, after the effective date of the Order; or (ii) causes a, or suffers the use of the Property to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or (iii) is otherwise a party responsible under law for the remediation of the Existing Contamination prior to the effective date of the Order.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

Notwithstanding any other provision in this release, if with respect to the Property, there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

In conclusion, the Department is pleased to be part of this effort to return this Property to productive use of benefit to the entire community. This letter may be filed in the Office of the Oneida County Clerk.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND
TRUSTEE OF NEW YORK STATE'S NATURAL
RESOURCES

By: Dale Desnoyers

Its: Bureau Chief, SSF + UCP

STATE OF NEW YORK)

) ss.:

COUNTY OF)

On the 3RD day of October before me, the undersigned, a notary public in and for said state, personally appeared Dale Desnoyers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument the individual, or the person upon behalf of which the individual acted, executed the instrument.

Philip J. Lodico
Notary Public



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PHILIP J. LODICO
Notary Public, State of New York
No. 02L05038057

Qualified in Albany County

My Commission Expires January 17, 2007

EXHIBIT "A"

**Property Description
For The
Canterbury Parcel**

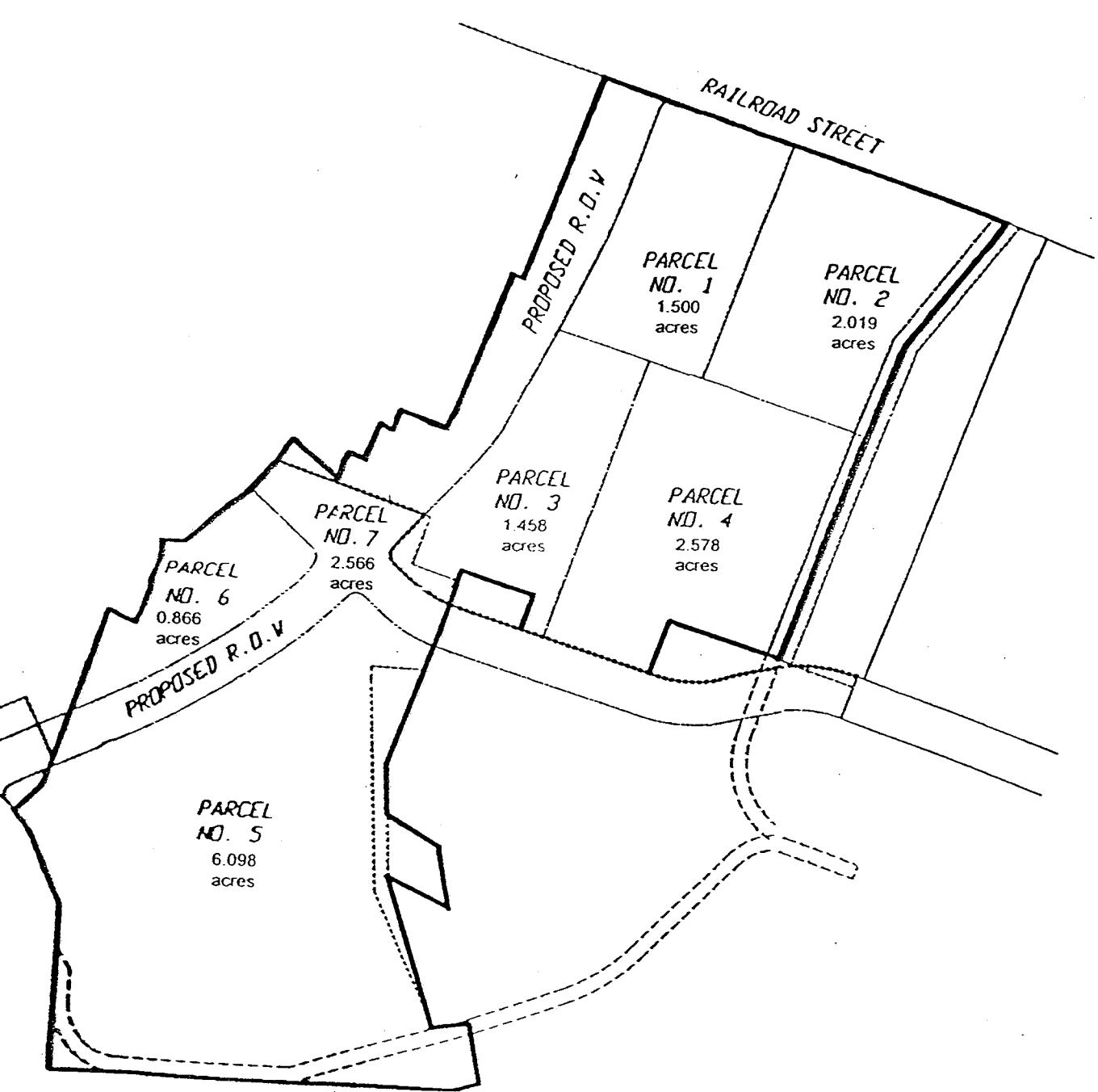


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SKETCH OF SUBDIVIDED PARCELS
IN CENTRAL CORE OF
EAST ROME BUSINESS PARK
ONEIDA COUNTY NEW YORK



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APPENDIX A

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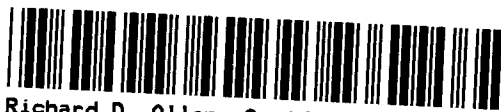
Richard D. Allen, Oneida County Clerk DEC

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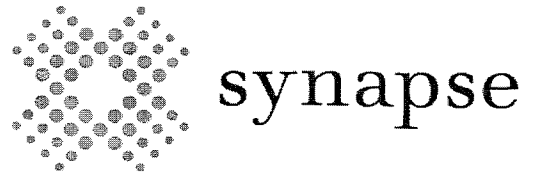
EXHIBIT C

SOILS MANAGEMENT PLAN (November 2005)



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SOILS MANAGEMENT PLAN

**CANTERBURY PARCEL
OLD GENERAL CABLE SITE
ROME, NEW YORK**

VCA INDEX NO. D6-0001-97-07

Prepared for:

**Charles A. Gaetano
311 Turner Street
Utica, NY 13501**

Prepared by:

**Synapse Risk Management, LLC
400 University Building
120 East Washington Street
Syracuse, NY 13202
(315) 475-3700**

November 2005



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LIST OF FIGURES

Figure 1 – Existing Cover Systems

LIST OF EXHIBITS

Exhibit 1 – Assignable Release and Covenant Not to Sue

Exhibit 2 – Rome Community Center Massing Diagram (Full Build-Out Option)



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1.0 OVERVIEW AND OBJECTIVES

Overview

The site is a 0.866-acre vacant former industrial parcel currently owned by Charles A. Gaetano (herein after "the Property"). The Property is identified herein and is commonly referred to in other documents as the Canterbury Parcel, or Parcel No. 6 of the Old General Cable Site in the City of Rome, New York. The location of the Property is shown on Figure 1 - Site Location Plan.

The Property has been investigated and remediated under New York State's Voluntary Cleanup Program (VCP), pursuant to a Voluntary Cleanup Agreement (VCA) between Mr. Gaetano and the New York State Department of Environmental Conservation (NYSDEC). The investigation and remediation of the Property and environmental condition have been documented in the following reports and workplans:

- Limited Phase II Environmental Investigation of the Former General Cable Property, Rome, New York, The Saratoga Associates, Saratoga Springs (February 1996), Remediation Technologies, Inc. (July 1996a);
- Phase II Investigation of the East Rome Business Park Core Area, Rome, New York, Remediation Technologies, Inc. (July 1997); and
- Canterbury Parcel Closure Report, Voluntary Remedial Agreement, Index # D6-0001-97-07, Jack Eisenbach Engineering, P.C. (July 2000).

Objective

The objective of this Soils Management Plan (SMP) is to: (1) set forth guidance for management of soil during future Property activities including redevelopment that could potentially breach the current cover system at the Property and (2) provide for establishing modified cover systems that are compatible with the redevelopment plans (i.e. asphalt pavement). This SMP addresses environmental concerns related to soil management, and has been reviewed and approved by NYSDEC, as provided in Exhibit 1.



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2.0 NATURE AND EXTENT OF IMPACTS

The environmental condition of the Property has been investigated and remediated pursuant to a VCA with the NYSDEC, as detailed in the above-referenced documents. The following provides an overview of the residual environmental conditions at the Property that are set forth in greater detail in the above reports.

2.1 Soil

Previous soil investigations identified metals as constituents of potential concern (COPCs) in soil based on information obtained from the Limited Phase II Investigation (Remediation Technologies, Inc., 1996) or the Phase II Investigation of the East Rome Business Park Core Area, (Remediation Technologies, Inc., July 1997). The COPCs for soil are summarized as follows.

- Laboratory analytical data from the soil samples collected at the property identified several metals at concentrations, above respective Recommended Soil Cleanup Objective (RSCOs) set forth in NYSDEC Technical and Administrative Guidance Memorandum: Determination of Soil Cleanup Objectives and Cleanup Levels, HWR-94-4046, January 24, 1994 (TAGM 4046).
 - Beryllium, chromium, copper, nickel, and zinc, were detected at concentrations of 0.687 milligrams per kilogram (mg/kg), 19 mg/kg, 1650 mg/kg, 28 mg/kg, and 79.3 mg/kg respectively from soil boring SB-6. The RSCOs for the detected parameters are as follows: beryllium 0.16 mg/kg, chromium 10 mg/kg, copper 25 mg/kg, nickel 13 mg/kg, and zinc 20 mg/kg;
 - Beryllium, chromium, copper, nickel, and zinc, were detected at concentrations of 0.808 mg/kg, 17 mg/kg, 1810 mg/kg, 25 mg/kg, and 125 mg/kg respectively from soil boring SB-7. The RSCOs for the detected parameters are as follows: beryllium 0.16 mg/kg, chromium 10 mg/kg, copper 25 mg/kg, nickel 13 mg/kg, and zinc 20 mg/kg;
 - Beryllium, chromium, copper, nickel, and zinc, were detected at concentrations of 1.02 mg/kg, 23.3 mg/kg, 43.1 mg/kg, 46.4 mg/kg, and 85.2 mg/kg respectively from soil boring SB-10. The RSCOs for the detected parameters are as follows: beryllium 0.16 mg/kg, chromium 10 mg/kg, copper 25 mg/kg, nickel 13 mg/kg, and zinc 20 mg/kg; and
 - Beryllium, copper, and zinc, were detected at concentrations of 0.494 mg/kg, 491 mg/kg, and 105 mg/kg respectively from soil boring MW-14. The RSCOs for the detected parameters are as follows: beryllium 0.16 mg/kg, copper 25 mg/kg, and zinc 20 mg/kg;

The risk from exposure to the COPCs will be minimized through the maintenance of existing cover systems and potential construction of modified cover systems associated with future development plans in accordance with this Soils Management Plan. This Soils Management Plan will be attached to the recorded Deed Restriction for the property as an Exhibit. The Deed Restriction and Soils Management Plan may be modified only by an amendment approved by NYSDEC.

2.2 Groundwater

The COPCs for groundwater, as set forth in the Limited Phase II Investigation (Remediation Technologies, Inc., 1997), are summarized as follows.

- Laboratory analytical data from the groundwater samples collected from SB-6 identified one VOC at concentrations above NYSDEC groundwater quality standards set forth in Technical Operational Guidance Series (TOGS) 1.1.1.
 - One VOC, trichloroethylene (TCE), was detected at a concentration of 7 micrograms per liter (ug/l) collected from soil boring SB-6. The NYSDEC TCE groundwater quality standard is 5 ug/l.
- Laboratory analytical data from the groundwater samples collected from MW-14 identified three metals at concentrations above NYSDEC groundwater quality standards set forth in TOGS 1.1.1.
 - Antimony, arsenic and chromium were detected at concentrations of 0.029, 0.04, and 0.016 ug/l, respectively collected from MW-14.

TCE has a low to moderate solubility and mobility in groundwater. Natural degradation of TCE is anticipated to continue, and mobility will be reduced via placement and management of the existing cover systems, and construction of modified cover systems associated with future development plans. Recorded Deed Restriction for the Property will restrict future groundwater use.



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3.0 CONTEMPLATED FUTURE USE

The Property is to be conveyed to the City of Rome as part of the redevelopment project that will support the Rome Community Recreational Center as depicted in Exhibit 2 – Rome Community Center Massing Diagram (Full Build-Out Option). As part of this redevelopment project, the Property is intended to be used as overflow parking for the area or will be marketed for commercial use.

The Deed Restriction for the property shall prohibit the Property from being used for purposes other than commercial or industrial, without the express written waiver of such prohibition by NYSDEC.



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4.0 PURPOSE AND DESCRIPTION OF SURFACE COVER SYSTEMS

4.1 Purpose

The purpose of a surface cover system is to minimize the potential for human contact with impacted material and the potential for impacted runoff from the Property. The surface cover systems that exist at the time of completion of the VCA closure activities in July 2000 the Property (See Figure 1) will be utilized and they consist of one of the following types of material:

- Soil: A minimum of six inches of clean soil or fill and vegetation cover in areas where asphalt or concrete are not present.
- Asphalt: a minimum of six inches of material (asphalt and subbase material) in areas that will become roadways, sidewalks, and parking lots. Actual cross sections will be determined based on the intended use of the area.
- Concrete: a minimum of six inches of material (concrete and subbase material) in areas that will become slab-on-grade structures or for roadways, sidewalks, and parking lots in lieu of asphalt. For slab-on-grade structures, engineering controls will be placed beneath the concrete. Actual cross sections will be determined based on the intended use of the area.

4.2 Existing Surface Cover System

As of the completion of the VCA closure activities in July 2000, greater than approximately 95% of the Property has a concrete cover system. A soil cover system is located in the northeast corner of the Property adjacent to Harbor Way. This area currently maintains a clean soil cover greater than six inches that is predominantly vegetated.

4.2 Future Surface Cover System

The intended future use of the Property is to incorporate the Property into the redevelopment project for the Rome Community Recreational Center. While plans for this redevelopment project continue to evolve, future use of the Property may include the construction and enhancement of the existing cover system at the Property, including the placement of asphalt pavement for overflow parking.



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5.0 MANAGEMENT OF SOILS/FILL AND LONG TERM MAINTENANCE OF COVER SYSTEM

This section presents environmental guidelines for management of subsurface soils/fill, and for the long-term maintenance of the cover systems. The intent of the existing and future cover systems are to be maintained without breach. In the event that future intrusive work breaches the cover system, the following conditions will be obligatory:

- Any breach of the cover system, including for the purposes of construction or utilities work, must be replaced or repaired using an acceptable borrow source that requires no regulatory approval for use at the property. The repaired area must be covered with material from an acceptable borrow source and reseeded or covered with impervious product such as concrete or asphalt, as described in Section 4, to prevent erosion in the future.
- Control of surface erosion and run-off of the Property at all times, including during construction activities. This includes proper maintenance of the vegetative cover established on the Property, as needed.
- Soil that is excavated and is intended to be removed from the Property must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives.
- Soil excavated at the Property may be reused as backfill material on-site provided it contains no visual or olfactory evidence of contamination, and it is placed beneath a cover system component as described in Section 4.
- Any off-site fill material brought to the Property for filling and grading purposes shall be from an acceptable borrow source that requires no regulatory approval for use at the property. Off-site borrow sources shall be subject to collection of one representative composite sample per source. The sample should be analyzed for Target Compound List (TCL) VOCs, SVOCs, pesticides, polychlorinated biphenyls (PCBs), and Target Analyte List (TAL) metals plus cyanide. The soil will be acceptable for use provided that all parameters meet the NYSDEC RSCOs
- Prior to any construction activities, workers are to be notified of the site conditions with clear instructions regarding how the work is to proceed. Invasive work performed at the property will be performed in accordance with all applicable local, state, and federal regulations to protect worker health and safety.

5.1 Annual Certification

The fee owner of the Property, as of December 31 of the calendar year, shall complete and submit to NYSDEC an annual report by March 31st of the following year. Such annual report shall contain a certification that the institutional controls put in place, pursuant to the Deed Restriction, are still in place and the cover system on the Property has not been modified except in accordance with this Soils Management Plan or in a matter approved by NYSDEC.



If the cover system has been breached during the year covered by that Annual Report, the owner of the Property shall include in that annual report a certification that all work was performed in conformance with this SMP.

The first annual report shall be submitted by March 31 of the following calendar year when the Deed Restriction is recorded.

5.2 Management of the Excavated Soil/Fill for Off-site Disposal.

Soil/fill that is excavated during redevelopment activities that can not be used as fill below the cover system will be further characterized prior to transportation off-site for disposal at a permitted facility.

For excavated soil/fill with visual evidence of contamination (i.e., staining or elevated PID measurements), one composite sample and a duplicate sample will be collected for each 100 cubic yards of stockpiled soil/fill. For excavated soil/fill that does not exhibit visual evidence of contamination but must be sent for off-site disposal, one composite sample and one duplicate sample will be collected for each 2,000 cubic yards of stockpiled soil, and a minimum of 1 composite sample will be collected for volumes less than 2,000 cubic yards.

Composite samples of stockpiled soil will be collected from five locations within each stockpile. A duplicate composite sample will also be collected. PID measurements will be recorded for each of the five individual locations. One grab sample will be collected from the individual location with the highest PID measurement. If none of the five individual sample locations exhibit PID readings, one location will be selected at random. The composite sample will be analyzed by a NYSDOH ELAP-certified laboratory for pH (EPA Method 9045C), TCL SVOCs, pesticides, and PCBs, and TAL metals, and cyanide. The grab sample will be analyzed for TCL VOCs.

Soil samples will be composited by placing equal portions from each of the five composite sample locations into a pre-cleaned, stainless steel (or Pyrex glass) mixing bowl. The soil/fill will be thoroughly homogenized using a stainless steel scoop or trowel and transferred to dedicated sample containers provided by the laboratory. Samples will then be transported to the laboratory utilizing standard chain-of-custody protocols.

Additional characterization for off-site disposal may be required by the selected disposal facility. To potentially reduce off-site disposal requirements/costs, the owner or site developer may also choose to characterize each stockpile individually. If the analytical results indicate that concentrations exceed the standards for RCRA characteristics, the material will be considered a hazardous waste and must be properly disposed off-site at a permitted disposal facility within 90 days of excavation. If analytical results indicate that the soil is not a hazardous waste, the material may be properly disposed off-site at a non-hazardous waste facility. Stockpiled soil cannot be transported off-site prior to receipt of analytical results.

5.3 Management of Subgrade Material

Subgrade material to be used as excavation backfill, or placed to increase site grades or elevation, shall meet the following criteria:

**SOILS MANAGEMENT PLAN
CANTERBURY PARCEL
OLD GENERAL CABLE SITE
ROME, NEW YORK**

- Excavated on-site soil/fill which appears to be visually impacted shall be characterized as discussed in the preceding Section 5.2. If analytical results indicate that COPCs, if any, are present at concentrations below the RSCOs set forth in TAGM 4046, the soil/fill can be used as backfill on-site.
- Off-site fill material brought to the Property for filling and grading purposes shall be from a borrow source that requires no regulatory approval for use at the property.
- "Virgin" soil sources shall be documented in writing to be native soil material from areas not having supported any known prior industrial or commercial development or agricultural use.
- Virgin soils shall also be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, and cyanide. The soil will be acceptable for use as backfill provided that all parameters meet the TAGM 4046 RSCOs.
- Non-virgin soils will be tested via collection of one composite sample per 500 cubic yards of material from each source area. If more than 1,000 cubic yards of soil are borrowed from a given off-site non-virgin soil source area, and both samples of the first 1,000 cubic yards meet TAGM 4046 RSCOs, the sample collection frequency will be reduced to one composite sample for every 2,500 cubic yards of additional soils from the same source, up to 5,000 cubic yards. For borrow sources greater than 5,000 cubic yards, sampling frequency may be reduced to one sample per 5,000 cubic yards, provided all earlier samples met the TAGM 4046 RSCOs.



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FIGURES

Soils Management Plan
Canterbury Parcel
Old General Cable Site
Rome, New York

November 2005

Figure 1 – Existing Cover Systems

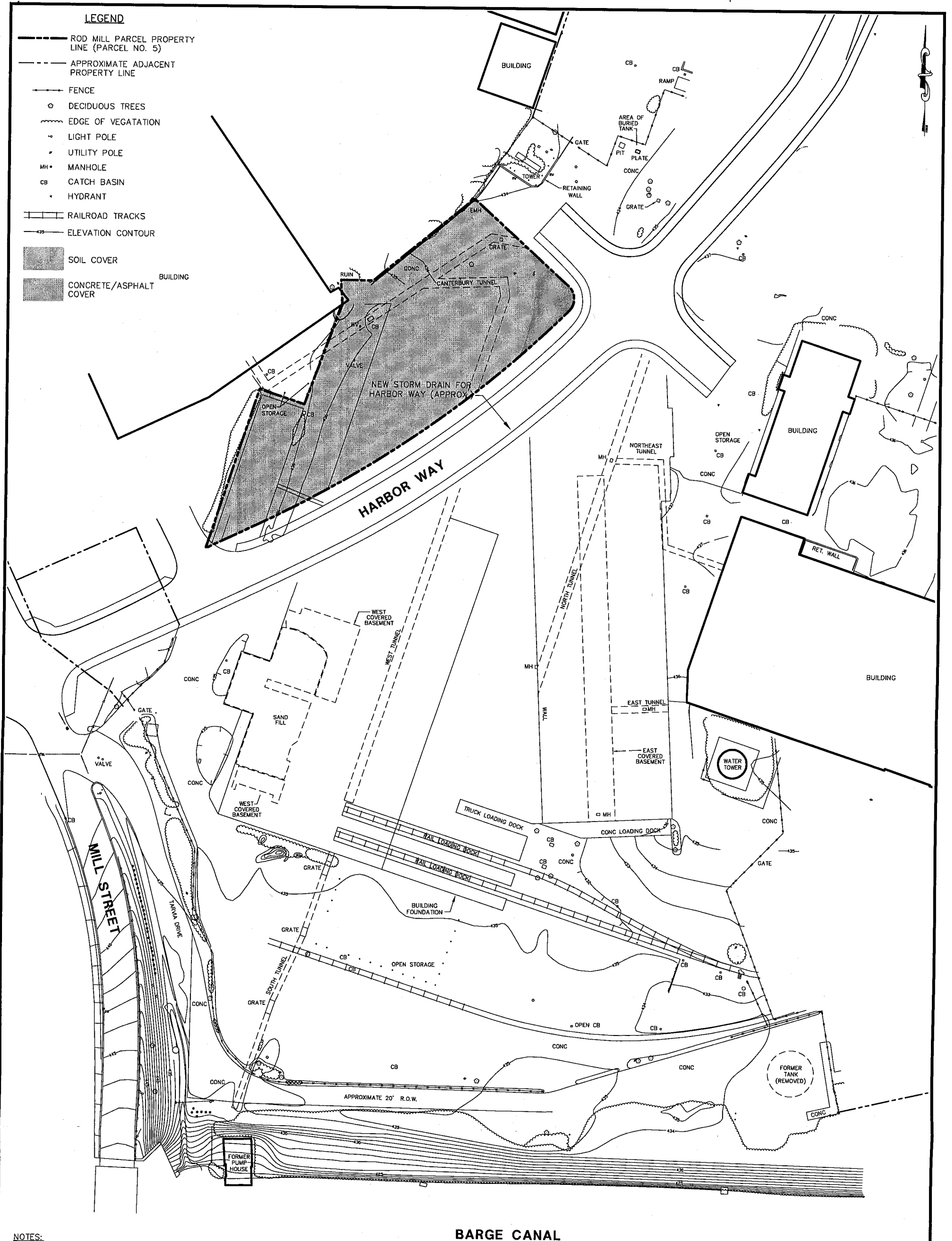


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BARGE CANAL



EXHIBIT 1
ASSIGNABLE RELEASE AND COVENANT NOT TO SUE

Soils Management Plan
Canterbury Parcel
Old General Cable Site
Rome, New York

November 2005



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New York State Department of Environmental Conservation

Division of Environmental Enforcement

Bureau of State Superfund and Voluntary Cleanup, Room 410A

50 Wolf Road, Albany, New York 12233-5550

Phone: (518) 457-4347 • FAX: (518) 457-7819

Website: www.dec.state.ny.us



September 22, 2000

Assignable Release and Covenant Not To Sue

Mr. Charles A. Gaetano
311 Turner Street
Utica, New York 13501

Re: Old General Cable Site, "Canterbury Parcel", Rome, New York
Consent Order, Index No. D6-0001-97-07

Dear Mr. Gaetano:

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of an Order issued by the New York State Department of Environmental Conservation (the "Department") to you ("Volunteer"), Index No. D6-0001-97-07 (the "Order").

The Department is pleased to report that the Department is satisfied that the Department-approved remediation Work Plan to implement a response program at the parcel of land located within the Old General Cable Site, which is referred to in the Order as the Canterbury Parcel, has been successfully implemented. The Canterbury Parcel (the "Property") as identified as parcel No. 6, in Subparagraph 2.D of the Order referenced herein is more particularly described in the property description and site map that are attached collectively hereto as Appendix "A."

Assignable Release and Covenant Not To Sue:

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer or Volunteer's lessees, sublessees, heirs, successors, assigns and their respective secured creditors, for the further investigation and remediation of the Property, or for natural resources damages, based upon the release or threatened release of Existing Contamination, provided that (a) the appropriate notice and deed restriction have been recorded in accordance with Paragraphs X and XI of the Order and the Department receives a copy of the deed restriction in accordance with Subparagraph XI.D of this Order, and (b)



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Volunteer and/or his lessees, sublessees, heirs, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any.

Nonetheless, to the extent a reopener condition exists, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, natural resource damages or any further investigation or remedial action the Department deems necessary to be undertaken. A reopener condition for purposes of this Assignable Release and Covenant Not to Sue shall be:

- i. the presence of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan for the Property disclosed the existence or potential existence of such presence; or
- ii. environmental conditions related to the Property that were unknown to the Department at the time of its approval of the Work Plan for the Property which indicate that conditions at the Property are not sufficiently protective of human health and the environment for the Contemplated Use or which indicate that any remaining hazardous wastes disposed at the Property constitute a significant threat to the environment; or
- iii. information received, in whole or in part, after the Department's approval of the Closure Report or Revised Closure Report for the Property, which indicates that the activities identified in the Work Plan for the Property performed under this Order are not sufficiently protective of human health and the environment for the Contemplated Use or that any remaining hazardous wastes disposed at the Property constitute a significant threat to the environment; or
- iv. Volunteer's failure to implement his obligations under Paragraph VII, IX, or XIII of this Order to the Department's satisfaction; or
- v. fraud committed, or mistake made, by Volunteer in demonstrating that the cleanup levels identified in, or to be identified in accordance with, the Work Plan for the Property were reached; or
- vi. Volunteer causes a, or suffers the, release or threat of release at the Property of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]), other than Existing Contamination, after the effective date of the Order; or
- vii. Volunteer causes a, or suffers the use of the Property to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

Additionally, the Department and the Trustee hereby reserve all of their respective rights against a Volunteer's lessee, sublessee, heir, successor, or assign concerning, and such release, covenant not to sue, and forbearance shall not extend to, natural resource damages or any further investigation or remedial action the Department deems necessary to be undertaken to the extent that the Volunteer lessee, sublessee, heir, successor or assign: (i) causes a, or suffers the, release



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EXHIBIT 2
ROME COMMUNITY CENTER MASSING DIAGRAM (FULL BUILD-OUT OPTION)

Soils Management Plan
Canterbury Parcel
Old General Cable Site
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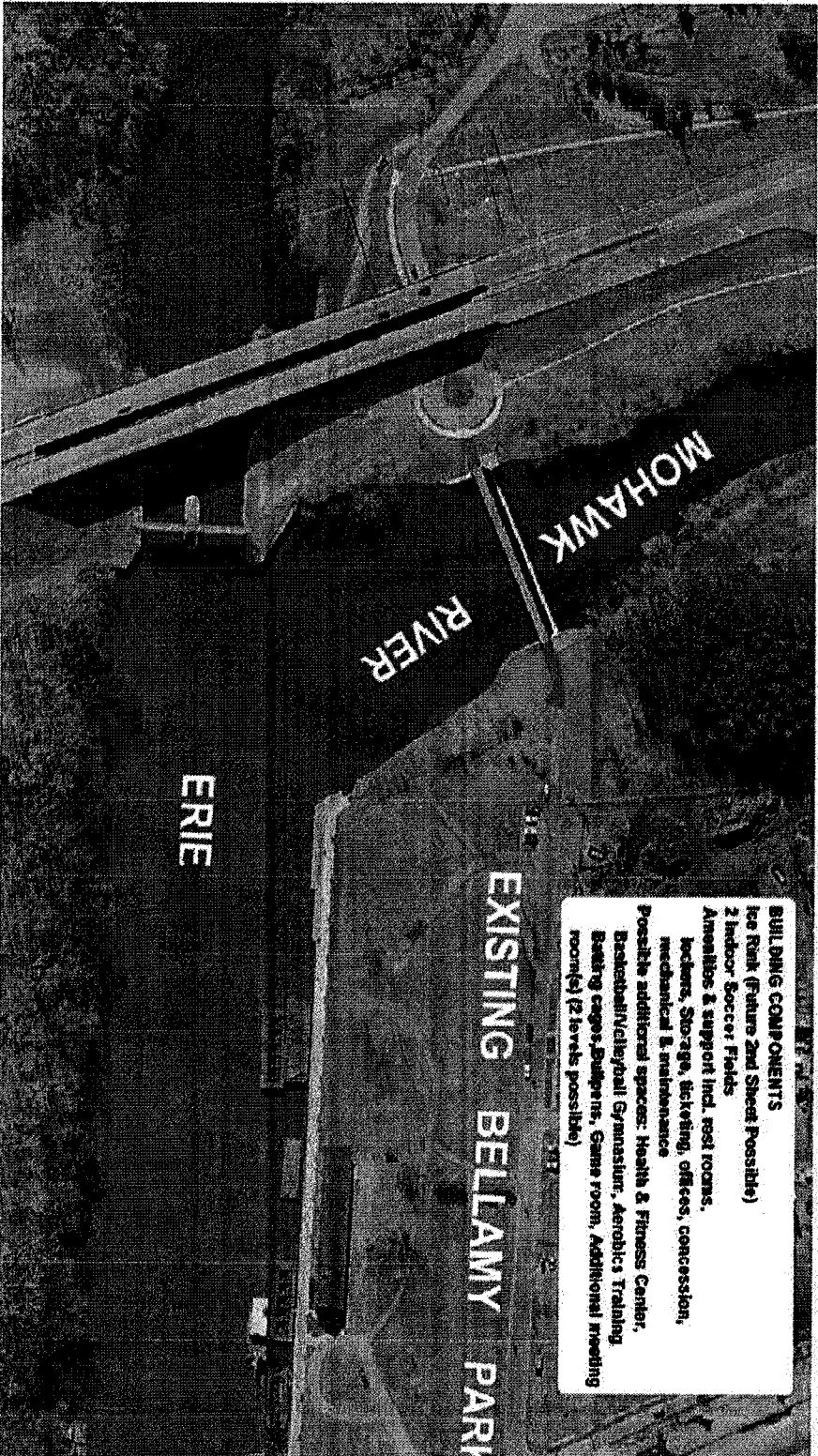
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Artist's Concept of Indoor Facilities (View from Dominick Street)



BUILDING COMPONENTS
Ice Rink (Future 2nd Street Possible)
2 Indoor Soccer Fields
Amenities & support incl. rest rooms, lockers, storage, ticketing, offices, concession, mechanical & maintenance
Possible additional spaces: Health & Fitness Center, Basketball/Volleyball Gymnasium, Aerobics Training, Bowling cages, Barbers, Game room, Additional meeting room(s) (2 levels possible)



— Pedestrian Circulation
— Vehicular Circulation
— Parking
— Future Parking
— Playground
* Viewshed Terminus

CANAL-SIDE IMPROVEMENTS
Boat Dock / Canal-Side Walkway
Fishing Access
Boat House
Pedestrian Path Connection to Bellamy Park (below Bridge)

OUTDOOR COMPONENTS
Restored Water Tower as focal point/landmark
2 Outdoor Soccerfields-sport fields
Parking Areas
Auxiliary or Future Parking across Harbor Way and Railroad Street
Landscaped Railroad median along Railroad St.
Restrooms / Concessions near outdoor fields
Pavilion / Passive Use Area / Pavilion
Playgrounds

GRAPHIC SCALE
1" = 100' L
1" = 100' B

October 18, 2004

CLOUGH HARBOUR
SPORTS

