



DORMITORY AUTHORITY — STATE OF NEW YORK

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To:	<u>Maurice Moore</u>		
Company:	<u>NYSDEC - Region 9</u>		
Telephone No.	<u>716-851-7220</u>	Facsimile No.	<u>716-851-7226</u>

From:	<u>Deborah Yau</u>		
Telephone No.	<u>518-257-3452</u>	Facsimile No.	<u>518-257-3100</u>
Pages (Including This Cover Sheet)	7		

Comments:

Maurice,
Here is a copy of the recorded restrictive covenants for Gowanda Day Rehab.

Deborah

If you do not receive all pages, please call the number indicated above.

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THANK YOU.

Gail H. Gordon, Chair
David D. Brown, IV, Executive Director

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Page:1

Office of

CATTARAUGUS COUNTY CLERK

Cattaraugus County Center 303 Court Street
Little Valley, NY 14755



(716) 938-9111

DATE: 02/22/2008

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item	Description	Remarks	Amount
001	RESTRICTIVE COVENANTS	NYS OFFICE MENTAL RI	0.00

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Page Total: 0.00

96693

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James K. Griffith
CATTARAUGUS COUNTY CLERK

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Little Valley, NY 14755

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Instrument Number

96693-001

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Document Type: RESTRICTIVE COVENANTS

Parties To Transaction: NYS OFFICE MENTAL RETARDATION & DEV

Town/City:

Deed Information

Mortgage Information

Consideration:

Mortgage Amount:

Transfer Tax:

Basic Mtge. Tax:

RETT No: 00000

Special Mtge. Tax:

Additional Mtge. Tax:

State of New York
Cattaraugus County Clerk

Mortgage Serial No.:

This sheet constitutes the Clerk endorsement required by Section 316-A(5) & Section 319 of the Real Property Law of the State of New York.

Cattaraugus County Clerk

Please do not remove this page.



DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT, made this 31 day of JANUARY 2008 by The State of New York, acting by and through the **New York State Office of Mental Retardation and Developmental Disabilities**, an agency of the State of New York, with its primary office located at 44 Holland Avenue, Albany, New York 12229, which agency is hereinafter referred to as the "volunteer agency".

WHEREAS, the State of New York acquired a parcel of real property for the New York State Office of Mental Retardation and Developmental Disabilities which parcel is commonly referred to as the Gowanda Day Habilitation Center (the "Site" or "controlled property"), located at 4 Industrial Place in the Village of Gowanda, County of Cattaraugus, and State of New York; and

WHEREAS, the Site is comprised of approximately 5.94 acres, acquired by the State of New York by appropriation pursuant to Article 71 of the Mental Hygiene Law and the Eminent Domain Procedure, *In the Matter of the Appropriation of Property by the People of the State of New York for the J.N. Adam Developmental Center AVM Building, Hostel No. 2430*, as shown on Map 35, Parcel 35 recorded in the Cattaraugus County Clerk's Office in Liber 886 of Deeds at Page 671 on January 13, 1989; and

WHEREAS, the Site has been assigned ^{Cattaraugus} ~~Chautauque~~ County Tax Map Identifier # 16.027-2-11, and is more particularly described in paragraph "FIRST" hereof, ~~and a diagram of the Site is attached as Schedule "A" to this Declaration and made a part hereof;~~ and

WHEREAS, the volunteer agency is participating in the Voluntary Cleanup Program of the New York State Department of Environmental Conservation (the "Department") and the Site is the subject of a Voluntary Cleanup Agreement ("VCA"), number B9-0596-01-07, Site #V-00463-9, entered into by the volunteer agency and the Department; and

WHEREAS, the Department approved a remedy to eliminate or mitigate all significant threats to the human health and the environment presented by the contamination disposed at the Site and such remedy requires that the Site be subject to restrictive covenants.

NOW, THEREFORE, the property owner, the State of New York, acting by and through the volunteer agency, the New York State Office of Mental Retardation and Developmental Disabilities, for itself and its successors and/or assigns, covenants that:

FIRST: The Site subject to this "Declaration of Covenants and Restrictions", is described as follows:

^{Cattaraugus} ~~Chautauque~~ All that certain piece or parcel of land situated in the Village of Gowanda, County of ~~Chautauque~~ and State of New York being part of Lot 27, Township 6, Range 8 of the Holland Land Company's Survey, being bounded and described as follows:

Beginning at a point located on the westerly street boundary of Industrial Street (50.0 feet wide) said point being 136.22 feet southerly from the

southerly street boundary of Torrance Place as measured along the westerly street boundary of Industrial Street; thence continuing southerly along the westerly street boundary of Industrial Street a distance of 276.63 feet to a point; thence westerly at right angles a distance of 243.0 feet to a point; thence southerly at right angles a distance of 250.27 feet to a point; thence westerly along the northerly right-of-way of the Cattaraugus County Industrial Agency Railroad on a curve to the left having a radius of 1465.0 feet a distance of 366.20 feet to a point; thence northwesterly along the southwesterly line of lands conveyed under Liber 840 Page 1184 a distance of 183.25 feet to a point; thence northeasterly at right angles a distance of 632.78 feet to a point; thence easterly at an interior angle of $124^{\circ} 31' 56''$ a distance of 377.84 feet to the place or point of beginning, said parcel containing 259,471.075± square feet or 5.957± acres more or less.

SECOND: The purpose of this Declaration of Covenants and Restrictions is to establish institutional and engineering controls applicable to the Site that are to run with the land in order to provide an effective and enforceable means of encouraging the reuse and re-development of the Site (the "controlled property") at a level that has been determined to be safe for a specific use while ensuring the performance, maintenance, and/or monitoring requirements applicable to the controlled property; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

THIRD: The following controls apply to the use of the controlled property, run with the land, are binding on the property owner and its successors and assigns, and are enforceable in law or equity against the property owner, its successors and assigns, any lessees, and any person using the controlled property. The property owner, its successors and assigns, its lessees and licensees, consent to the enforcement by the Department of these controls and the prohibitions and restrictions herein established. The property owner, its successors and assigns, lessees and licensees covenant not to contest the authority of the Department to seek such enforcement.

A. The controlled property may be used for industrial or commercial use, excluding day care, child care and medical uses, as long as the following long-term engineering controls are employed:

(i) until the remedial goals for the site are attained or deemed complete by the Department, the Site Management Plan (SMP) for the implemented remedy [which plan was developed by Bergmann Associates, is dated October, 2006, and includes an Operations, Monitoring and Maintenance (OM&M) plan and a Soils Management Plan], must be adhered to.

(ii) before occupancy, a sub-slab vapor mitigation system must be installed to maintain a measurable vacuum in the sub-slab of the portion of the existing building to be re-occupied and in any new structures. Performance sampling, as outlined in the OM&M plan must be completed to document system

effectiveness. This system must be independent of the currently installed or future remedial system(s).

(iii) before occupancy, if an active remediation system(s) is in place, measures must be implemented to restrict access to portions of the building, specifically the portions of the building occupied by the remedial system(s), and rooms/hallways with extraction wells. Re-use of these area would require engineering controls to manage off-gassing and fugitive emissions from the remedial system(s), such as isolating the treatment area or installing a ventilation system to ensure that the active remediation areas are isolated from occupied areas. Restriction of the active system includes isolation of potential vapor pathways, such as , drop ceilings with shared air spaces, shared cold air return vents, and large openings between the areas, etc.

(iv) the groundwater beneath the site cannot be used as a potable water source or for any other use without prior written permission of the Department.

B. The controlled property may not be used for a higher level of use (such as residential use or restricted residential use) and the above-stated engineering controls may not be discontinued without prior written permission of the Department. Such permission, if granted, must be attached to and made a part of any amendment or extinguishment of this "Declaration of Covenants and Restrictions"

C. The property owner covenants and agrees that until such time as this "Declaration of Covenants and Restrictions" is extinguished with the prior written permission of the Department, 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 a Declaration of Covenants and Restrictions required by reason of a voluntary cleanup agreement entered into by the New York State Office of Mental Retardation and Developmental Disabilities and the New York State Department of Environmental Conservation.

D. The property owner covenants and agrees that this "Declaration of Covenants and Restrictions" shall be recorded in the Office of the Clerk of the County of Cattaraugus within thirty (30) days of its execution by the property owner, and it shall also be incorporated in full by reference in any leases, licenses, or other instruments granting a right to use the controlled property.

E. The property owner covenants and agrees that it shall annually, or such

time as the Department may allow, submit to the Department a written statement by an expert the Department finds acceptable certifying under penalty of perjury that the controls employed at the controlled property are unchanged from the previous certification or that any changes to the controls employed at the controlled property were approved by the Department, and that nothing has occurred that would impair the ability of such controls to protect the public health and environment or constitute a violation or failure to comply with the SMP for such controls, and giving access to such controlled property to evaluate continued maintenance of such controls.

FOURTH: The controlled property is subject to a right herein granted to the Department, its agents, employees or other representatives, to enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-state restrictions.

FIFTH: The term "Department" as herein referenced means the New York State Department of Environmental Conservation, or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants and Restrictions on the date hereafter written.

Dated: 1/31/08

NEW YORK STATE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

By: James Moran

Acknowledgment

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

On the 31 day of JANUARY in the year 2008, before me, the undersigned, personally appeared JAMES F MORAN, 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.

Robert P. Mascali
Notary Public - State of New York
ROBERT P. MASCALI
Notary Public, State of New York
No. 4654687
Qualified in Albany County
Commission Expires April 30, 20 11