

MONROE COUNTY CLERK'S OFFICE
County Clerk's Recording Page

Return To:

TOM WARTH
JAECKLE FLEISCHMAN
39 STATE STREET
ROCHESTER, NY 14614

BRIGHTON TOWN OF

BRIGHTON TOWN OF

FILE FEE-S	\$	4.75
FILE FEE-C	\$	5.25
REC FEE	\$	21.00
	\$.00
	\$.00
	\$.00
	\$.00
	\$.00
	\$.00
Total:	\$	31.00

STATE OF NEW YORK
MONROE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH.

Maggie Brooks, County Clerk

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Instrument RESTRICTIONS

Date : 5/15/2000

Time : 4:02:00

Control # 200005150798

TT#

Employee ID RR

MORTGAGE TAX

MORTGAGE AMOUNT	\$.00
BASIC MORTGAGE TAX	\$.00
SPEC ADDIT MTG TAX	\$.00
ADDITIONAL MTG TAX	\$.00
Total	\$.00

TRANSFER AMT

TRANSFER AMT	\$.00
TRANSFER TAX	\$.00



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DECLARATION OF RESTRICTIONS

THIS DECLARATION made as of the 15 day of May, 2000 by **THE TOWN OF BRIGHTON**, a municipal corporation with offices at 2300 Elmwood Avenue, Rochester, New York 14618

WITNESSETH:

WHEREAS, the Town of Brighton ("Town") is the owner of approximately 65 345 acres of real property consisting of two non-contiguous parcels which are described as follows (A) approximately 32.000 acres located on the south side of Westfall Road, formerly being parts of Tax Map Nos 149 08-01-002 and 149 08-01-001 13, and now being Tax Account No 136 20-01-022 ("Parcel A"), and (B) approximately 32 345 acres located on the south side of New York Interstate Route 590, formerly being part of Tax Map Nos 149 08-01-002 and 149 11-01-002, and now being Tax Account No 149 12-01-036 ("Parcel B") (hereinafter collectively referred to as the "Premises"), and

WHEREAS, the Town and the New York State Department of Environmental Conservation (the "Department") executed State Assistance Contract Number C301310, effective March 20, 2000 ("Contract"), under which the Town agrees to conduct an investigation to determine the nature and extent of contamination in, on, under and emanating from the Premises, and to gather sufficient information to determine the necessity for, and the selection of an appropriate method of, remediating any such contamination (the "Project") and the Department agrees to reimburse the Town on a periodic basis for its eligible costs in conducting the Project in an amount not to exceed One Hundred Eight Thousand One Hundred Seventy Three Dollars (\$108,173), which amount has been determined by the Department to be up to 75% of the estimated eligible costs of such Project, and

WHEREAS, Paragraph 10 of the Contract specifies that the Town's contemplated use

for the Premises is as a public park, which includes active and passive recreation and community uses, including without limitation, athletic fields and courts, playgrounds, picnic facilities, hiking, exercise, bicycling, and/or nature trails, senior citizens' center, access to the Barge Canal, nature and/or agricultural education facilities, swimming facilities and the pavilions, restrooms, maintenance buildings, administrative offices, roads, parking areas, trails and other structures appurtenant to such uses (collectively, the "Contemplated Use"), and

WHEREAS, Paragraph 3 b of the Contract requires the Town to bind itself and its lessees and its successors in title, to a number of conditions and to make those conditions a binding commitment by means of a restrictive covenant, a declaration of restrictions or lease provisions which provide that the Department (in addition to the Town) may enforce such conditions, and the Contract requires the Town to record such document with the Recording Officer of the County in which the Premises are located within 45 days of receipt of notice from the Department that the State Comptroller has approved the Contract, and

WHEREAS, on March 30, 2000, the Town received notice from the Department that the New York State Comptroller approved the Contract

NOW, THEREFORE, the Town agrees and covenants for itself and its successors and assigns as follows

1 The Premises shall not be used for any purposes until the portion of the Premises required to be remediated by the Department's record of decision for the Premises is so remediated, except that

a the Premises may continue to be used consistent with its use at the start of the term of the Contract (March 20, 2000) if the Department determines that the existing state of contamination is such as not to prohibit such use from continuing, giving due regard for human health and environmental protection, and

b there may be a use of any parcel of the Premises for any of the uses specified in Paragraph 3 of this Declaration, provided that the notice and other conditions specified in that Paragraph are satisfied

2 If, before the Premises' remediation is completed to the Department's satisfaction, the Town wishes to further subdivide the Premises into additional separate parcels, it may do so after having submitted a complete application for State Assistance to remediate the Premises, provided, however, that any parcel of the subdivided Premises for which remediation activities are proposed under the application for State assistance to remediate the Premises shall not be used for any purpose until the Department-determined remedial objectives for such parcel are met to the Department's satisfaction

3 If any parcel of the Premises is not subject to proposed remedial activities under the application for State assistance to remediate the Premises, such parcel may be subject to any of the following uses: the transfer of title, the erection of any structure, paving for use as a roadway or parking lot, the creation of a park or other public or private recreational facility, or any other physical alteration or construction constituting a change of use, provided, however, that the title holder to the parcel provides at least sixty (60) days notice to the Department, the Monroe County Clerk and the Brighton Town Clerk before the start of such proposed use, and provided further, that the proposed use meets the following conditions

a the proposed use is not inconsistent with restrictions placed herein upon the use of the Premises, will not, or is not reasonably anticipated to, prevent or interfere significantly with a proposed, ongoing or completed investigation or remediation, and will not expose the public health or the environment to a significantly increased threat of harm or damage at the Premises, and

b the Department does not notify the applicant that the Department has determined that the proposed use is prohibited pursuant to ECL 56-0511 within 45 days after the

Department's receipt of the notice specified above

4 If, before the Premises' remediation is completed to the Department's satisfaction, any successor in title to the Town that itself is not a municipality wishes to further subdivide the Premises into additional separate parcels, such successor in title may do so, provided that such successor in title must first agree to remediate all such parcels under the Department's oversight in accordance with the Department's record of decision and any such subdivided parcel cannot be used until such successor in title meets the parcel's Department-determined remedial objectives to the Department's satisfaction within such time period as the Department may require, except that such successor in title may use any parcel that is not subject to remedial activities and that such successor in title gives notice and proposes a use consistent with the provisions of Paragraph 3 of this Declaration

5 The Premises shall not be used for any purpose requiring a level of residual contamination lower than that serving as the basis for the remediation identified in the Department's record of decision pertaining to the Premises, unless such use has been noticed and is consistent with the requirements in Paragraph 3 of this Declaration

6 In the event that the Department determines that engineering and/or institutional controls (including deed restrictions) are necessary to allow the Premises' Contemplated Use to proceed or are components of the remedies selected in the Department's record of decision pertaining to any or all parcels comprising the Premises, the Town or its lessees, successors in title or their assigns shall cause the development of a plan and submission to the Department for its review and approval to ensure that such controls are promptly implemented and continually operated and maintained. The Town, its lessees, its successors in title and their assigns shall not challenge the imposition or continuance of such controls

7 The Department shall have access to the Premises, at times appropriate to the circumstances and subject to the Premises' health and safety plan, if any, for purposes of

a ensuring that the Premises is investigated and remediated in accordance with the Department-approved plans, that any operation, maintenance and monitoring plan for the Premises' remediation identified in the record of decision is being implemented satisfactorily, and that the engineering and/or institutional controls described in Paragraph 6 of this Declaration are promptly implemented and continually maintained, and

b carrying out any measures necessary to return the Premises to a condition sufficiently protective of human health, in accordance with ECL 56-0509 4

8 The terms contained in the Contract and in this Declaration affect the Premises and shall run with the land and bind all successive grantees, lessees, sublessees, and lienors, and the terms of this Declaration may be enforced by the Department Any future disposition of the Premises or any interests therein, including a security interest, shall make reference to the Contract and to this Declaration of Restrictions and such subsequent disposition or security interest is subject to the terms in the Contract, and this Declaration for so long as it remains in effect

9. This Declaration may be terminated by the filing of a notice of termination by the Town, its lessees, its successors in title, or their assigns with respect to any parcel of the Premises for which the Department finds in the record of decision issued by the Department that the existing conditions are protective of public health and the environment for unrestricted use of the land without the implementation of engineering controls

TOWN OF BRIGHTON

By James R. Vogel
Title acting Supervisor
Date May 15, 2000

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the 15th day of May in the year 2000 before me, the undersigned, personally appeared James R. Vogel, Acting Supervisor, Town of Brighton personally known to me or proved to me on the basis of satisfactory evidence to be the individual~~(s)~~ whose name~~(s)~~ 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

Thomas J. Ward
Notary Public, State of New York / Commissioner of Deeds
Commission Expires 2/24/02

THOMAS J. WARD
Notary Public, State of New York
Commissioned in Monroe County
No 4992188
Commission Expires Feb 24, 2002