

MONROE COUNTY CLERK'S OFFICE

Return To:

TOWN OF BRIGHTON  
2300 ELMWOOD AVENUE  
ROCHESTER NY 14618

BRIGHTON TOWN OF

BRIGHTON TOWN OF

Index DEEDS

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No. Pages 0010

Instrument AMEND TO DECLAR

Date : 1/14/2003

Time : 4:01:00

Control # 200301141030

TT#

TT# TT 0000 011859

Employee ID BZ40

MORTGAGE TAX

FILE FEE-S	\$	19.00
FILE FEE-C	\$	8.00
REC FEE	\$	30.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
Total:	\$	57.00

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

STATE OF NEW YORK  
MONROE COUNTY CLERK'S OFFICE

TRANSFER AMT

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 OR REMOVE.

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

Maggie Brooks, County Clerk



D097320425

**FIRST AMENDED DECLARATION OF RESTRICTIONS**  
**(Reserved Parcel, being portion of Parcel A of former Gonsenhauser Farm)**

**THIS FIRST AMENDED DECLARATION** is made as of the 20 day of DECEMBER 2002 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 5 4565 acres of real property located on the south side of Westfall Road which parcel is described as Tax Account No 136 20-01-022 2 ("Reserved Parcel"), formerly being part of a parcel owned by the Town which parcel measured approximately 32 00 acres and was designated as Tax Account No 136 20-01-022 ("Parcel A") and which parcel was part of the former Gonsenhauser Farm, and

**WHEREAS**, the Town and the New York State Department of Environmental Conservation (the "Department") executed State Assistance Contract Number C301310 ("Contract"), under which the Town agreed to conduct an investigation to determine the nature and extent of contamination in, on, under and emanating from, among other properties, Parcel A, and to gather sufficient information to determine the necessity for, and the selection of an appropriate method of, remediating any such contamination and the Department agreed to provide the Town with a limited reimbursement on a periodic basis for its eligible costs in conducting such investigation, and

**WHEREAS**, Paragraph 10 of the Contract specifies that the Town's contemplated use for Parcel A 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, nature and/or agricultural education facilities, swimming facilities and the pavilions, restrooms, maintenance buildings,

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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 Parcel A is located within 45 days of receipt of notice from the Department that the State Comptroller has approved the Contract,

**WHEREAS**, on March 30, 2000, the Town was notified that the Contract had been approved by the New York State Comptroller,

**WHEREAS**, on May 15, 2000, the Town submitted to the Monroe County Clerk for recording a Declaration of Restrictions for, among other properties, Parcel A ("Prior Declaration"), which is recorded in Book of Deeds 9308 at Page 636 in the Monroe County Clerk's office,

**WHEREAS**, pursuant to the Contract, the Town completed a site investigation and analysis of alternatives for, among other properties, Parcel A and summarized it in a report which it submitted to the Department in January 2001 ("SI/RA Report"),

**WHEREAS**, the SI/RA Report identified two overlapping areas of environmental concern (collectively, the "Area of Concern") located on the Reserved Parcel near the former maintenance building and the SI/RA Report evaluated various alternatives for addressing such Area of Concern,

**WHEREAS**, in March 2002, the Department issued a Record of Decision ("ROD"),

which selected from the alternatives discussed in the SI/RA Report the following remedial activities for addressing the Area of Concern on the Reserved Parcel: demolition of an overlying building, excavation and off-site disposal of impacted soils, follow-up groundwater monitoring, and a restriction on the use of groundwater until subsequent monitoring indicates that groundwater standards have been met (collectively, the "Remediation Work"),

**WHEREAS**, pursuant to the Prior Declaration and Paragraph 3 b of the Contract, the Reserved Parcel may not be used for any purpose until the Area of Concern is remediated under Department oversight in accordance with the ROD, and the Department-determined remedial objectives are met to the Department's satisfaction within such time period as the Department may require,

**WHEREAS**, in March 2002, the Town submitted to the Department a complete application for State assistance pursuant to the Clean Water/Clean Air Bond Act of 1996 ("Bond Act") to remediate Parcel A in accordance with the ROD,

**WHEREAS**, via letter dated June 17, 2002 (the "Subdivision Notice"), the Town notified the Department and the clerks for the Town and Monroe County of its intent to subdivide Parcel A into the Reserved Parcel, which consists of the Area of Concern and a buffer zone around that Area that is no less than 100 feet on all sides, and the remainder of Parcel A (the "Park Parcel"), and in the Subdivision Notice, the Town proposed that the Reserved Parcel a) will be subject to the Remediation Work to be implemented through one or a combination of an additional State assistance contract pursuant to the Bond Act or a binding agreement pursuant to the Department's voluntary cleanup program, b) will not be used for any other purpose until the Department determines in writing that the remedial objectives in the ROD are met, and c) will comply with the groundwater monitoring and use restrictions contained in the ROD,

**WHEREAS**, more than sixty days have elapsed since the Department and Town and County clerks have received the Subdivision Notice and the Department has not notified the

Town that the Department will not authorize the subdivision and change of use proposed therein,

**WHEREAS**, in a letter dated July 5, 2002, the Department notified the Town that, if the Town entered into a voluntary cleanup agreement with the Department and completed the Remedial Work as called for in the ROD, the Town would not thereby lose the limitations on liability and indemnification from the State provided under the Bond Act in return for the Town's compliance with the Contract, and would not thereby lose the Town's right to apply for additional funding under the Bond Act if it is otherwise eligible for such funding,

**WHEREAS**, the Town consulted with the appropriate Department personnel to develop boundaries for the Reserved Parcel and engineering and institutional controls sufficient to assure that the subdivision of Parcel A and the Contemplated Use of the Park Parcel will not violate the Contract or interfere with the completion of the Remedial Work pursuant to the ROD, and

**WHEREAS**, on DECEMBER 20, 2002, Parcel A was subdivided into the Reserved Parcel and the Park Parcel, which is described as Tax Account No /36, 20-01-022,1  
(L 314 P 71)

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

1 For the Reserved Parcel, this First Amended Declaration hereby terminates and supercedes the restrictions specified in the Prior Declaration, which was recorded on May 15, 2000 in Book of Deeds 9308 at Page 636

2 The Reserved Parcel shall not be used for any purposes until the portion of the Reserved Parcel required to be remediated by the ROD is so remediated, except that

a the Reserved Parcel 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 Reserved Parcel for any of the uses specified in Paragraph 3 of this First Amended Declaration, provided that the notice and other conditions specified in that Paragraph are satisfied

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

4 If any parcel of the Reserved Parcel is not subject to proposed remedial activities under the application for State assistance to remediate the Reserved Parcel, 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 Reserved Parcel, 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 Reserved Parcel, 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

5 If, before the remediation of the Reserved Parcel 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 Reserved Parcel 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 ROD 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 First Amended Declaration

6 The Reserved Parcel 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 ROD pertaining to the Reserved Parcel, unless such use has been noticed and is consistent with the requirements in Paragraph 3 of this First Amended Declaration

7 In the event that the Department determines that engineering and/or institutional controls (including further deed restrictions) are necessary to allow the Reserved Parcel's Contemplated Use to proceed or are components of the remedies selected in the ROD pertaining to any or all parcels comprising the Reserved Parcel, 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, and the Town, its lessees, its successors in title and their assigns shall not challenge the imposition or continuance of such controls

8 Groundwater located beneath the Reserved Parcel shall not be used for drinking, irrigation, or any other purpose other than for sampling pursuant to the ROD until the Department determines that such groundwater meets applicable regulatory groundwater quality standards and the owner of the Reserved Parcel shall provide the Department with a written certification annually which states that the groundwater restrictions contained in the ROD and herein have been adhered to. The first such certification shall be sent to the Department on the first anniversary of the date on which this First Amended Declaration is recorded and a new certification shall be sent on each succeeding anniversary until the Department determines that the groundwater meets applicable regulatory groundwater quality standards.

9 The Department shall have access to the Reserved Parcel, at times appropriate to the circumstances and subject to the Reserved Parcel's health and safety plan, if any, for purposes of

a ensuring that the Reserved Parcel is investigated and remediated in accordance with the Department-approved plans, that any operation, maintenance and monitoring plan for the Reserved Parcel identified in the ROD is being implemented satisfactorily, and that the engineering and/or institutional controls described in Paragraphs 6, 7 and 8 of this First Amended Declaration are promptly implemented and continually maintained, and

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

10 The terms contained in the Contract and in this First Amended Declaration affect the Reserved Parcel and shall run with the land and bind all successive grantees, lessees, sublessees, and lienors, and the terms of this First Amended Declaration may be enforced by the Town or the Department. Any future disposition of the Reserved Parcel or any interests therein, including a security interest, shall make reference to the Contract and to this First Amended Declaration and such subsequent disposition or security interest is subject to the terms in the



Contract, and this First Amended Declaration for so long as it remains in effect

11 This First Amended 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 portion of the Reserved Parcel for which the Department finds 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 Paul J. Frankel  
PAUL J. FRANKEL

Title SUPERVISOR

Date DECEMBER 17, 2002

STATE OF NEW YORK     )  
  )ss  
COUNTY OF MONROE     )

On this 10<sup>th</sup> day of March in the year 2002 before me, the undersigned, personally appeared Barbara P. Moehle 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

Barbara P. Moehle  
Notary Public, State of New York / ~~Commissioner of Deeds~~  
Commission Expires \_\_\_\_\_

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BARBARA P. MOEHLE  
NOTARY PUBLIC STATE OF NEW YORK  
MONROE COUNTY - 01M06060042  
MY COMMISSION EXPIRES 6/11/2003