

**ENVIRONMENTAL EASEMENT GRANTED
PURSUANT TO TITLE 36 OF ARTICLE 71 OF THE
ENVIRONMENTAL CONSERVATION LAW**

RECEIVED

2004 JUN 17 P 2:28

This Environmental Easement Agreement is made this 17th day of June, 2004, between OLINDO ENTERPRISES, INC., having an office at 1510 Lyell Avenue, Rochester, New York 14606 (the "Grantor"), and the State of New York, acting through the New York State Department of Environmental Conservation with its headquarters located at 625 Broadway, Albany, New York 12233 (the "Grantee").

WHEREAS the Grantor, owner in fee of real property located in the City of Rochester, Monroe County, New York known and designated on the tax map of the Monroe County as tax parcel no. 105.61-1-64, being the same as that Property conveyed to Grantor by deed on January 10, 2002, and recorded in the Land Records of the Monroe County Clerk at Liber 9565 of Deeds, at page 127, comprised of approximately two acres, and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS the Legislature of the State of New York has declared that it is in the public interest to create environmental easements because such easements are necessary for the protection of human health and the environment; to achieve the requirements for remediation established at contaminated sites by providing a means to ensure the performance of operation, maintenance, and monitoring; and to ensure the enforcement potential restriction of future uses of the land; and

WHEREAS the Property is a contaminated site which has undergone an environmental remediation project which has removed contaminated soils but left some residual contamination at levels that have been determined to be safe for a specific use, but not all uses, and which includes an asphalt cap (the "Asphalt Cap") that must be maintained or protected against damage to be effective, and which requires groundwater use restrictions; and

WHEREAS soils in Excavation Areas 4, 6, and 7, as shown on the Instrument Survey Map of the Property (the "Survey Map") prepared by David S. Staerr, P.L.S. dated March 31, 2004, and revised April 7, 2004, a copy of which is annexed as Exhibit "B," exceed cleanup levels approved by the New York State Department of Environmental Conservation; and

WHEREAS the Grantor has furnished documentation to the Grantee to enable the Grantee to determine that this Environmental Easement is enforceable; and

WHEREAS John Sexton & Co., Olindo Import Foods, Inc. and Olindo DiFrancesco have entered into a Voluntary Site Cleanup Agreement Index No. B8-0552-99-03 (the "Agreement") for the Property, Site No. V00217-8. Pursuant to the Agreement, Grantor has agreed to record an environmental easement to run with the land in favor of the State which complies with the requirements of Environmental Conservation Law ("ECL") Article 71, Title 36; and

WHEREAS the Grantee agrees to accept this Environmental Easement for the protection of human health and the environment.

NOW THEREFORE, Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Agreement and other valuable consideration, does hereby give, grant, covenant and declare in favor of the Grantee, pursuant to ECL Article 71 Title 36, that the Property shall be subject to this Environmental Easement; and with respect to the Property, does give, grant, and convey to the Grantee with general warranties of title the perpetual right to enforce this Environmental Easement which shall be of the nature and character, and to the extent set forth herein.

1. **Purpose.** It is the purpose of this Environmental Easement to convey to the Grantee real property rights, which will run with the land, to achieve the requirements for remediation established for the Property and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. **Restrictions.** The following restrictions specifically apply to the Property, run with the land and are binding on the Grantor:

a. Unless prior written approval by the Grantee is first obtained, there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property which threatens the integrity of the Asphalt Cap covering Excavation Areas 4, 6 or 7, or which results in unacceptable human exposure to contaminated soils.

b. The owner of the Property shall maintain the Asphalt Cap covering Excavation Areas 4, 6 or 7 on the Property by maintaining the asphalt cover or, after obtaining the written approval of the Grantee, by capping the Property with another material.

c. The owner of the Property shall prohibit the Property from ever being used for purposes other than for industrial or commercial purposes, including but not limited to storage, retail sales and commercial warehousing for food and food-related products, but not residential or day care/child care facilities, without the express written waiver of such prohibition by the Grantee.

d. The owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Grantee.

e. The owner of the Property shall continue in full force and effect any institutional and engineering controls required under the Agreement and maintain such controls unless the owner first obtains permission to discontinue such controls from the Grantee. These controls include: (1) all soil disturbance shall comply with the requirements of the Soil Management Plan approved by Grantee and on file with the Department under Index No. B8-0552-99-03; and (2) the Grantor shall annually certify to Grantee that the Asphalt Cap covering Excavation Areas 4, 6 or 7 is maintained and the conditions of this Easement are in compliance.

f. Any lease, license, or other instrument granting a right to use the Property shall incorporate, either in full or by reference, this Environmental Easement.

3. **Right to Enter and Inspect.** To assure compliance with the restrictions contained herein, the Grantee, its agents, employees, or other representatives of the State may enter and inspect the Property at reasonable times in a reasonable manner.

4. **Reserved Grantor's Rights.** Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights accruing from its ownership of the Property, including, without limitation, the right to sell, transfer or encumber the Property, as owner, subject to the restrictions and covenants set forth in this Environmental Easement; and the right to engage in, or permit others to engage in, all uses of the property that are not expressly prohibited herein and are not inconsistent with the purposes of this Environmental Easement.

5. **Enforcement.** This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

6. **Revocation of Assignable Release and Covenant Not to Sue.** If any person intentionally violates this Environmental Easement, the Grantee may revoke the **Assignable Release and Covenant Not to Sue** provided under the Agreement with respect to the Property.

7. **Recordation.** Grantor shall record this instrument, within thirty (30) days of Grantee's approval of the language contained herein, 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. **Deed and Subsequent Instruments of Conveyance.** The Property deed and all subsequent instruments of conveyance, including without limitation, transfer of title or mortgage, relating to the Property shall state in at least fifteen-point bold-faced type the following language until such time as the Environmental Easement is extinguished:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

Such deed and instrument shall reference, by liber and page number, the Environmental Easement and shall also specify that the property is subject to the restrictions contained in such easement.

9. **Amendment.** This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation 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. **Extinguishment.** This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation 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.

11. **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

12. **Costs and Liabilities.** Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage.

13. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority.

14. **Successors.** The term "Grantor", wherever used herein, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

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

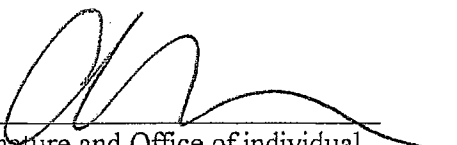
OLINDO ENTERPRISES, INC.

By: *Olindo DiFrancesco*
Olindo DiFrancesco, President

Date: 6-17-2004 *PRH*

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

On the 17th day of June, in the year 2004, before me, the undersigned, personally appeared Olindo DiFrancesco, 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.



Signature and Office of individual
taking acknowledgment

ALAN J. KNAUF
Notary Public, State of New York
Monroe County
My Commission Expires May 30, 2008

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Rochester, County of Monroe and State of New York, and being the same premises described in the agreement between Leach Steel Corporation and Hyman Bobry and Sarah Bobry, his wife, which said agreement is dated April 28, 1928 and recorded May 4, 1928 in Liber 1456 of Deeds at page 325; said agreement intended to fix and establish the northern boundary line of the property conveyed to Hyman Bobry and Sarah Bobry, his wife, and which said northern boundary line was the southern boundary line of the property conveyed to the Leach Steel Corporation. It was agreed in said agreement that the north boundary of the Two Acre Tract belonging to the said Hyman Bobry and Sarah Bobry, his wife, and the southern boundary of the property belonging to the Leach Steel Corporation is a line commencing at a point on the east side of Adele Street, three hundred ninety-one and three tenths (391.3) feet northerly from the north side of Lyell Avenue and proceeding in an easterly direction parallel with Lyell Avenue to the westerly boundary of the right of way of the Rochester, Buffalo and Pittsburgh Railway, and shown on a map of the property conveyed to the Leach Steel Corporation in Liber 1411 of Deeds at page 236, made by W.R. Storey, dated March 26, 1926 and filed in the Monroe County Clerk's Office in Liber 74 of Maps at page 11; and it was hereby agreed that such line was a boundary line between the premises of the Leach Steel Corporation and the premises of Hyman Bobry and Sarah Bobry, his wife, and the Leach Steel Corporation quit-claimed to Hyman Bobry and Sarah Bobry, his wife, all right, title and interest which said Leach Steel Corporation may have had to any land lying to the south of said line and the said Hyman Bobry and Sarah Bobry, his wife, quit-claimed to the said Leach Steel Corporation all right, title and interest which said Hyman Bobry and Sarah Bobry, his wife, may have had to the land lying to the north of said line.

Hereby intending to convey to the party of the second part, any and all land lying to the south of the above-mentioned line.

The above described property is also described as follows, pursuant to a new survey description.

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Rochester, County of Monroe and State of New York, being part of Lot 83 of the 2000 acre tract, hereby described as follows:

Beginning at a point in the North R.O.W. line of Lyell Avenue, said point being 221.6 feet East of the East R.O.W. line of Steel Street.

Thence 1. Westerly along the North R.O.W. line of Lyell Avenue a distance of 221.6 feet to a point in the East R.O.W. line of Steel Street

Thence 2. Northerly along the East R.O.W. line of Steel Street making an interior angle of 90-35-10 with Course 1. a distance of 391.3 feet to a point.

Thence 3. Easterly along a line making an interior angle of 89-24-50 with Course 2. a distance of 227.04 feet to a point in the Westerly R.O.W. line of the B.R. & P Railroad property.

Thence 4. Southerly along the Westerly R.O.W. line of the B.R. & P. Railroad property, along a curve to the left, said curve having a radius of 2414.93 feet a distance of 133.55 feet to a point, said point being the P.T. of the curve.

Thence 5. Southerly along the Westerly R.O.W. line of the B.R. & P. Railroad property a distance of 257.76 feet to a point in the North R.O.W. line of Lyell Avenue, said point being the point of beginning.

Hereby intending to describe a parcel of land as shown on a map dated 12-7-98, made by Robert M. Dunn, Professional Land Surveyor

Exhibit A

