

LAW

ULREDC

URBAN LEAGUE OF ROCHESTER ECONOMIC DEVELOPMENT CORPORATION

312 State Street, Rochester, New York 14608 tel: (585) 454-5710 fax: (585) 697-1185

October 21, 2015

Mayor Lovely A. Warren
City of Rochester
City Hall, Room 307A
30 Church St.
Rochester NY 14614

2015 OCT 30 A 10:43
OFFICE OF THE MAYOR

Dear Sir or Madam:

Re: Environmental Easement

Attached please find a copy of an environmental easement executed by the New York State Department of Environmental Conservation ("DEC") on September 14, 2015 and recorded in the Monroe County Clerk's Office on October 1, 2015 at Liber 11599, Page 427, by M+M Housing Development Fund Corp.as nominee for Mills and Michelsen LLC, for property located at 182 Avenue D - Tax Parcel Number 091.77-2-31, DEC Site No: C828189.


This Environmental Easement restricts future use of the above-referenced property to restricted residential uses. Any on-site activity must be done in accordance with the Environmental Easement and the Site Management Plan which is incorporated into the Environmental Easement. Department approval is also required prior to any groundwater use.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.
2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

An electronic version of every environmental easement that has been accepted by this Department is available to the public at: <http://www.dec.ny.gov/cfm/xtapps/derfoil/index.cfm?pageid>. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,


Carolyn Vitale, Vice President/COO
Enclosure

William G. Clark
President/Chief Executive Officer



Carolyn Vitale
Vice President/Chief Operating Officer

MONROE COUNTY CLERK'S OFFICE
ROCHESTER, NY

THIS IS NOT A BILL. THIS IS YOUR RECEIPT

Return To:
BOX 30 AMY REICHHART

Receipt # 1307624
Index DEEDS
Book 11599 Page 427
No. Pages : 11
Instrument EASEMENT AGREEMENT
Date : 10/01/2015
Time : 04:26:21PM
Control # 201510010816
TT # TT0000003761
Ref 1 #
Employee : TracyC

M7M HOUSING DEVELOPMENT FUND CORP
MILLS AND MICHELSEN LLC

PEOPLT OF THE STATE OF NEW YORK
COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
NYSDEC

COUNTY FEE TP584	\$	5.00
COUNTY FEE NUMBER PAGES	\$	50.00
RECORDING FEE	\$	45.00
STATE FEE TRANSFER TAX	\$	0.00

Total \$ 100.00

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 OR REMOVE.

TRANSFER AMT

TRANSFER AMT

\$1.00

CHERYL DINOLFO
MONROE COUNTY CLERK



PI182-201510010816-11

MONROE COUNTY CLERK'S OFFICE
3864 HJ 11 100114
3864 HJ 11 100114

16

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

THIS INDENTURE made this 14th day of SEPTEMBER 2015 between Owner(s) M+M Housing Development Fund Corp., (the "Grantor Fee Owner") having an office at 312 State Street, Rochester, New York 14608, County of Monroes, State of New York, and Mills and Michelsen LLC, (the "Grantor Beneficial Owner"), having an office at 312 State Street, Rochester, New York 14608, County of Monroe, State of New York (collectively, the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 182 Avenue D in the City of Rochester, County of Monroe and State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel numbers: Section 091.77 Block 2 Lot 31.001, being the same as that property conveyed to Grantor by deeds dated September 17, 2014 and October 16, 2014 and recorded in the Monroe County Clerk's Office in Liber and Page 11456/217 and 11456/211, respectively. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.630 +/- acres, and is hereinafter more fully described in the Land Title Survey dated January 30, 2014 and last revised June 15, 2015 prepared by Dana C. Grover, NYSPLS of Grover & Bates Associates, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as

Box 30 Amy Reichhart

Schedule A;

WHEREAS, Grantor Beneficial Owner, is the owner of the beneficial interest in the Controlled Property being the same as a portion of that beneficial interest conveyed to Grantor Beneficial Owner by means of a Declaration of Interest and Nominee Agreement dated October 16, 2014 and recorded in the Monroe County Clerk's Office in Liber and Page 11456/224 ; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C828189-09-14 as amended May 20, 2015, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),
Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial
as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without

necessary water quality treatment as determined by the NYSDOH or the Monroe County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

F. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, 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 an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

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

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. 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.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: C828189
 Office of General Counsel

NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative 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. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, 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.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, 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. 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.

Remainder of Page Intentionally Left Blank

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

M+M Housing Development Fund Corp.:

By: [Signature]

Print Name: Carolyn Vitale

Title: Vice Pres/ Sec Date: 8/26/2015

Grantor Fee Owner's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

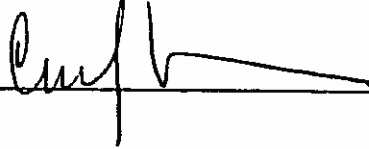
On the 26 day of August, in the year 2015, before me, the undersigned, personally appeared Carolyn Vitale personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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]
Notary Public - State of New York

STEPHANIE L. YOUNG
NOTARY PUBLIC-STATE OF NEW YORK
No. 01YO6089740
Qualified in Monroe County
My Commission Expires March 31, 2019

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

Mills and Michelsen LLC:

By: 

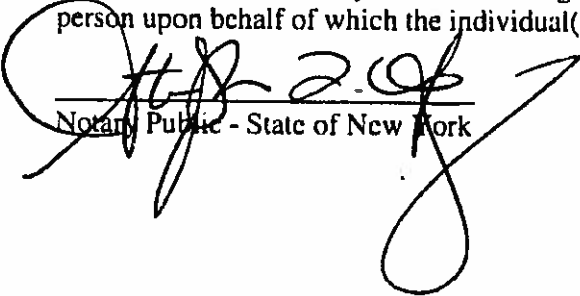
Print Name: Carolyn Vitale

Title: Vice / Sec. Date: 8/26/2015

Grantor Beneficial Owner's Acknowledgment


STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 26 day of August, in the year 20 __, before me, the undersigned, personally appeared Carolyn Vitale, 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.


Notary Public - State of New York

STEPHANIE L. YOUNG
NOTARY PUBLIC-STATE OF NEW YORK
No. 01Y06089740
Qualified in Monroe County
My Commission Expires March 31, 2019

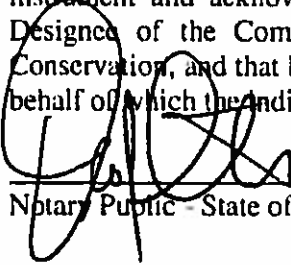
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.

By: 
Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 14th day of September, in the year 2015, before me, the undersigned, personally appeared Robert W. Schick, 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/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2016

SCHEDULE "A" PROPERTY DESCRIPTION

Perimeter Description of 182 Ave. D
and 374 Conkey Avenue

All that tract or parcel of land being part of Lots 1,2,5,6 and all of Lots 3 and 4 of the C. A. Davis subdivision situate in the City of Rochester, County of Monroe, State of New York bounded and described as follows. Beginning at the intersection of the north line of Avenue D with the east line of Conkey Avenue; thence

- 1) Easterly and along the northerly line of Avenue D for a distance of 117.82 feet to a point; thence
- 2) Northerly turning an interior angle to the right of 89° 28' 30" for a distance of 149.87 feet to a point; thence
- 3) Easterly turning an interior angle to the right of 270° 31' 34" for a distance of 12.19 feet to a point; thence
- 4) Northerly turning an interior angle to the right of 89° 33' 01" for a distance of 75.00 feet to a point; thence
- 5) Westerly turning an interior angle to the right of 90° 26' 55" for a distance of 130.47 feet to the easterly line of Conkey Avenue; thence
- 6) Southerly turning an interior angle of 89° 23' 00" and along the easterly line of Conkey Avenue for a distance of 224.87 feet to the point of beginning.

Containing therein 0.630 acres.



Recording Office Time Stamp

Real Estate Transfer Tax Return For Public Utility Companies' and Governmental Agencies' Easements and Licenses

This form may only be used by public utility companies regulated by the Public Service Commission and governmental agencies for the recording of easements and licenses where the consideration for the grant of such easement or license is \$500.00 or less.

Name of grantee (public utility company or governmental agency)
The People of the State of New York via Commissioner of Dept. of Environmental Conservation

Federal employer identification number
(if applicable) 14-6013200

Address of grantee
625 Broadway, Albany, NY 12233

Name and telephone number of person to contact
Bradford D. Burns: 518-402-9518

Name(s) of Grantor Of Easement or License	Address of Property	Consideration Given For Easement or License
1. M+M Housing Development Fund Corp.	182 Avenue D, City of Rochester	\$0.00
2. M+M Housing Development Fund Corp.	374 Conkey Avenue, City of Rochester	\$0.00
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

If more than fifteen conveyances are to be recorded, attach a schedule of such other conveyances.

Signature of Grantee

I certify that the grantee is a public utility regulated by the Public Service Commission or is a governmental agency and the grantee of the easements and/or licenses above; that it is true to the best knowledge of the grantee that the granting of each such easement and/or license is exempt from Real Estate Transfer Tax imposed by Article 31 of the Tax Law by reason that each such conveyance is for a consideration of five hundred dollars or less and/or the conveyance is being made to a governmental agency.

M+M Housing Development Fund Corp.

By: _____
Name of grantee

Andrew Guglielmi
Signature of partner, officer of corporation, governmental official, etc.
Andrew Guglielmi, Attorney
Title
NYSDEC