



State of Vermont
Department of Environmental Conservation
Waste Management and Prevention Division
1 National Life Drive-Davis 1
Montpelier, VT 05620-3704

AGENCY OF NATURAL RESOURCES

MEMORANDUM

To: David Mears, Commissioner, Department of Environmental Conservation
From: George Desch, Director, Waste Management and Prevention Division
Thru: Patricia Coppolino
Date: May 10, 2014
Subject: Certificate of Completion - BRELLA

Attached is a Certificate of Completion for your signature, for participation in the state brownfield program (BRELLA – Brownfield Reuse and Environmental Liability Limitation Program). The Brownfields program fully supports this project and agrees that the site is ready for closure through the BRELLA program. After the Certificate of Completion has been signed, please review and sign the memo approving the Easement on this property and forward to the Secretary and Governor for approval.

Sonic Properties – Sonic Properties purchased the former Laundromat and drycleaning facility for reuse as arts space. All necessary Phase I, Phase II Assessment and corrective action were complete at this property to ensure that the property will be safe for reuse and redevelopment.

MEMORANDUM

TO: Peter Shumlin, Governor

THROUGH: Deb Markowitz, Secretary, Agency of Natural Resources *DM*

FROM: David Mears, Commissioner, Department of Environmental Conservation *DKM*

DATE: May 23, 2014

SUBJECT: Easement Acquisition Approval – Sonic Properties LLC
118 Elliot Street, Brattleboro

Your approval is requested pursuant to Title 10, § 6615 and 10 V.S.A. Chapter 155, for the acceptance of the easement acquisition referenced below. Natural Resources Land Acquisition Committee approval is not required for this acquisition. Joint Fiscal approval is not required for this acquisition.

Description and Background

This property consists of a 0.37 acre asphalt lot with a vacant single story building of approximately 3,000 square feet. Historical property use of environmental concern included laundry and dry cleaning operations. Additional environmental concerns included the property's urban location and proximity to several other commercial and industrial properties with known or potential hazardous chemical use. Proposed redevelopment by Sonic Properties LLC includes a cooperative arts and educational center providing local arts organizations, non-profit groups and visitors from other venues low-cost access to collaborative working areas, private offices and performance space.

The following environmental issues exist and necessitate the Agency of Natural Resources acquiring this easement. These land use restrictions provide the Agency of Natural Resources access to the property and limit earth disturbing activities and groundwater extraction on and beneath the property in order to protect public health and the environment.

- Exterior surface soils are impacted by the polycyclic aromatic hydrocarbon (PAH) benzo(a)pyrene in excess of Department of Environmental Conservation residential and industrial soil criteria.
- Soils south of the existing building are impacted by the volatile organic compound tetrachloroethene (PCE) in excess of Department of Environmental Conservation residential soil criteria.
- The bedrock aquifer beneath the property is impacted by PCE in excess of Vermont's Groundwater Enforcement Standard. PCE has been detected in the bedrock aquifer throughout the property; however, it does not exceed its enforcement standard at the hydraulic cross gradient or down gradient property boundaries. Data collected as part of the above investigations indicates that historical property use has in part contributed to adversely affecting the water quality of the bedrock aquifer, however, a larger off-site source is suspected. Several potential properties of environmental concern exist immediately adjacent to and hydraulically up gradient of the subject property.

This property is participating in the Department of Environmental Conservation's Brownfield Reuse and Environmental Liability Limitation Program. Sonic Properties LLC (prospective purchaser) submitted an application to BRELLA on October 8, 2012. A determination of eligibility was granted on December 21, 2012. The property was purchased on July 16, 2013.

Ownership and Management

The property is owned by Sonic Properties LLC. The primary responsibility of ensuring compliance with these easements rests with the current property owner. The State of Vermont has oversight authority and enforcement authority over these restrictions and the current owner.

Budget and Funding

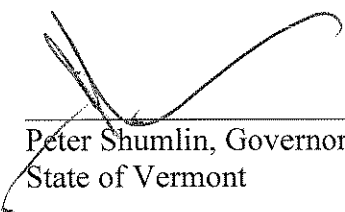
Funding for the continuing obligation of any future required property maintenance is funded by the current owner.

APPROVAL FOR LAND ACQUISITION

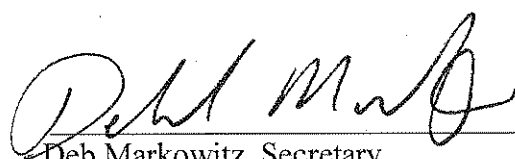
We, the undersigned, hereby approve the acquisition by the State of Vermont, Agency of Natural Resources, Department of Environmental Conservation, of the Grant of Use Restrictions and Access Rights Easement on the property consisting of 0.37 acre, more or less, located at 118 Elliot Street, Brattleboro, Windham County, Vermont to be owned and maintained by Sonic Properties LLC.

This approval is pursuant to Title 10 §§ 6615 and 10 V.S.A. Chapter 155.

6/4/14
Date


Peter Shumlin, Governor
State of Vermont

5.27.14
Date


Deb Markowitz, Secretary
Agency of Natural Resources

5/27/14
Date


David K. Mears, Commissioner
Dept. of Environmental Conservation

**GRANT OF ENVIRONMENTAL RESTRICTIONS,
RIGHT OF ACCESS, AND EASEMENT**

THIS GRANT OF ENVIRONMENTAL RESTRICTIONS, RIGHT OF ACCESS, AND EASEMENT ("Grant") is made this 27th day of May, 2014, by Sonic Properties LLC with its principal place of business located in Brattleboro, VT, its successors and assigns ("Grantor"), for the benefit of the State of Vermont, Agency of Natural Resources, and any successor agencies, Grantee ("Agency of Natural Resources").

WITNESSETH:

WHEREAS, the 118 Elliot Street Property, is situated on lands and premises owned by Grantor, Sonic Properties LLC, consisting of 0.37 acres, more or less, located off 118 Elliot Street in the Town of Brattleboro, in Windham County, Vermont (the "Parcel"), as more particularly described in Exhibit A; and

WHEREAS, certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Parcel for construction, operation, and maintenance of response actions at the site and to ensure that future activities at the Parcel, including the areas owned by Grantor, do not interfere with response activities, or in any way increase the ecological, human, or environmental risks at the Parcel; and

WHEREAS, it is the purpose of this instrument to convey real property rights from the Grantor, Sonic Properties LLC, to the Grantee, the State of Vermont, Agency of Natural Resources, including, but not limited to, easements, rights of access, other rights, obligations, covenants and use restrictions, all in perpetuity, to the Agency of Natural Resources, which will run with the Parcel, in perpetuity; and

WHEREAS, these environmental restrictions, right of access and easement are required under the terms of the Certificate of Completion issued by Grantee to Grantor and dated _____, a true and correct copy of which is attached hereto as Exhibit B, and

WHEREAS, the Grantor agrees that these environmental restrictions, right of access and easement will run with the Parcel in perpetuity.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Certificate of Completion, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Grantor and Grantee, the Grantor, on behalf of itself, by these presents does hereby GIVE, GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto the Grantee, and its authorized representatives, successors and assigns, and with WARRANTY, COVENANTS forever, these environmental restrictions, right of access and easement, and shall apply to the Parcel identified in Exhibit C, as set forth below:

1. Easement Rights of Access. Grantor grants to Grantee the perpetual right and easement and right of access in, on, upon, to, through, over and under the Parcel for the following purposes:
 - a. Sampling monitoring wells;
 - b. conducting investigations relating to the hydrology, hydrogeology, or contamination at or near the Parcel;
 - c. verifying any data or information submitted to the Agency of Natural Resources;
 - d. assessing the need for, planning, or implementing additional response actions at or near the Parcel;
 - e. determining whether the Parcel is being used in a manner that is prohibited or restricted;
 - f. enforcing the rights of Grantees to the Parcel and the covenants of the Grantor set forth herein;
 - g. ingress and egress to and from the Parcel; and
 - h. all other activities necessary to ensure the maintenance of the response actions.
2. Restricted Uses and Activities. Grantor makes the following covenants and agrees to permanent use restrictions and obligations on behalf of Grantor, its successors and assigns, for the benefit of Grantee, its authorized representatives, successors and assigns, which covenants, restrictions and obligations shall run with and bind the Parcel in perpetuity:

- a. Grantor shall comply with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants on or from the Parcel;
- b. Grantor shall not use the Parcel or conduct any activities on the Parcel, or allow uses or activities to be conducted on the Parcel that would:
 - i. unreasonably interfere with any investigations of the environmental conditions at the Parcel;
 - ii. cause or exacerbate contamination of the Parcel or contamination of off-site properties; or
 - iii. pose or present any risk to the implementation, construction, operation, or maintenance of the remedy.
- c. Grantor is prohibited from taking or authorizing any of the following activities or actions on the Parcel without the prior express written consent from the Grantee:
 - i. Any construction activity on the surface of the remedy that will disturb impacted soils as indicated in Exhibit B; or
 - ii. Any activity on the property that has the potential to damage the existing monitoring wells; or
 - iii. Use of the existing bedrock supply as indicated in Exhibit B.
 - iv. Installation of wells at any location or use of the groundwater underlying the Parcel;
 - v. Construction, substantial improvement, or stabilization of buildings, camping accommodations or mobile homes, or any other structures;
 - vi. Plowing, tilling, ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, or building of roads or changing the topography of the land;

- vii. Removal, destruction or cutting of trees or plants, planting of trees or plants, use of fertilizers, spraying with biocides, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner;
- viii. Storage, treatment or disposal of solid waste or hazardous materials or wastes, including, but not limited to, fuel, solvents, lubricants, ashes, trash, garbage, construction or demolition debris, or other unsightly or offensive material; land application or disposal of biosolids, sludges, or septage; or activities which could cause erosion or siltation on the Parcel;
- ix. Construction activities which will materially change hydrogeologic conditions or will likely cause migration of contaminated groundwater;
- x. Manipulation or alteration of natural water courses, marshes or other water bodies, or any other activity which would be detrimental to water quality, or which could alter natural water level and/or flow; or
- xi. Any other use that may impact or adversely affect the implementation, construction, operation, and maintenance of the remedy.

3. Enforcement.

- a. The Grantee shall be entitled to enforce the terms of these Environmental Restrictions by resort to specific performance or other legal process, including enforcement in the courts of the State of Vermont.
- b. The Grantor agrees that a violation of the Environmental Restrictions will constitute irreparable harm and entitle Grantee to injunctive relief.
- c. All reasonable costs and expenses of Grantee, including, but not limited to, attorneys' fees, incurred in any enforcement action shall be borne by the Grantor or its successors in interest or assigns if Grantee prevails in any such action.
- d. All remedies available hereunder shall be in addition to any and all remedies at law or in equity, including but not limited to federal and state hazardous waste management statutes. Nothing in these Environmental Restrictions shall be construed to limit or otherwise affect the Agency of Natural Resources' rights of entry and access provided by law or regulation.

- e. Enforcement of the terms of these Environmental Restrictions shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise their rights under these Environmental Restrictions shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under these Environmental Restrictions.
 - f. Grantee shall be entitled to recover monetary damages for violations of the terms of these Environmental Restrictions, or for any injury to the response actions.
 - g. Grantee shall be entitled to recover damages for injury to the public health and welfare or to the environment protected by these Environmental Restrictions.
4. Severability. The provisions of these Environmental Restrictions are severable. If any provision of these Environmental Restrictions is invalid, or if any application of these Environmental Restrictions to any circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
5. Provisions to Run With the Land in Perpetuity. The environmental restrictions, rights of access, easements, obligations and covenants, granted in this instrument shall run with the land, and any portion thereof, in perpetuity, and shall be binding on the Grantor, the Grantor's agents, successors and assigns, and shall inure to the benefit of the Grantee and its authorized representatives, successors and assigns.
6. Incorporation into Leases. Grantor hereby agrees to incorporate these Environmental Restrictions, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Parcel, or any portion thereof, is conveyed.
7. Termination.
- a. This Grant of environmental restrictions, right of access and easement may be modified, or terminated in whole or in part only upon written agreement between of the Grantor, its successors or assigns, and the Grantee, signed by the Grantee and recorded in the land records in the Town of Brattleboro.
 - b. The Grantee may terminate, in whole or in part, the environmental restrictions, right of access and easement at such time or times, if ever, when the Grantee, in its sole reasonable discretion, determines that termination is necessary or that the purposes for which these environmental restrictions, right of access and easement were created have been achieved.

8. Miscellaneous Rights and Obligations.

- a. Nothing contained herein shall give or grant to the public a right to enter upon or to use the Parcel or any portion thereof where no such right existed in the public immediately prior to the execution of these Environmental Restrictions.
- b. If Grantor or its successors and assigns become delinquent in payment of said taxes or assessments such that a lien against the Parcel is created, the Grantee shall have the right to take actions as may be necessary to protect the Grantee's interest in the Parcel and to assure the continued enforceability of the rights granted herein.
- c. Grantor does further covenant and represent that the Grantor is seized of the Parcel in fee simple and warrants that it has good right and title to grant and convey the interests granted herein, and that the Parcel is free and clear of any and all encumbrances, that Grantor shall warrant, defend, and indemnify against all lawful claims whatever, and that Grantee and its successors and assigns shall have the use of and enjoyment all of the benefits derived from and arising out of these Environmental Restrictions.
- d. Grantee shall be entitled to record these Environmental Restrictions, or to record a notice making reference to the existence of these Environmental Restrictions, in the Land Records for the Town of Brattleboro as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A. Chapter 5, Subchapter 7, including 27 V.S.A. §§ 603 and 605.
- e. The parties hereto recognize and agree that the benefits of the environmental restrictions, easement, and right of access granted and imposed herein are in gross and are assignable by Grantee, subject to notice to Grantor and recording of the assignment in the Land Records for the Town Brattleboro.

TO HAVE AND TO HOLD this Grant of Environmental Restrictions, Rights of Access and Easements unto the said Grantee Agency of Natural Resources of Vermont, its authorized representatives, successors and assigns forever.

IN WITNESS WHEREOF, the Grantor, Sonic Properties LLC, has caused these presents to be executed and sealed below the day and year first above written.

_____ by: _____

Witness

Printed name: [Grantor Name]

STATE OF VERMONT

COUNTY OF _____, ss.

At _____ this ____ day of _____, 2014, _____
_____ of _____, personally appeared and
acknowledged this instrument by him sealed and subscribed to be his own free act and deed.

Before me: _____

Notary Public

Commission expires _____

[Affix Seal]

SCHEDULE A

Being all and the same land and premises as were conveyed to Stone Fence Realty Company by warranty deed from George H. Stebbins and Norma F. Stebbins dated December 30, 1983, recorded on December 30, 1983 in Book 176, Page 362 of the Brattleboro Land Records and being therein described as follows:

Being all and the same land and premises as conveyed to said George H. Stebbins and Norma F. Stebbins by Warranty Deed of R. Willard Beebe and Beryl S. Beebe, dated April 30, 1974 and recorded in Book 139, Page 348 of Brattleboro Land Records and in said deed described as follows:

"Being all and the same land and premises as conveyed to the said R. Willard Beebe and Beryl S. Beebe by Warranty Deed of Charles W. Stockwell dated February 10, 1959 and recorded in Book 103, Page 1 of Brattleboro Land Records and in said deed described as follows:

"Being all and the same land and premises as conveyed to the said Charles W. Stockwell by Warranty Deed of Emma Toney, Nathan Toney and Thomas Toney of even date herewith, to be recorded in Brattleboro Land Records, and in said deed described as follows:

"Beginning at a point on the South side of Elliot Street, said point being four and three-tenths (4.3) feet from the Northwest corner of the building on the premises herein conveyed. Thence Southwesterly passing the said corner of the aforementioned building a distance of fifty-six and five tenths (56.5) feet to an iron pin set in the ground. Thence running Southwesterly a distance of thirty-nine and five-tenths (39.5) feet to an iron pin near the face of a retaining wall. Thence Westerly a distance of five and five-tenths (5.5) feet to an iron pin set in the ground. Thence Southerly a distance of sixty (60.0) feet to an iron pin on the North side of Flat Street. Thence Southeasterly a distance of one hundred thirty-two (132.0) feet along the North side of Flat Street to an iron pin set in the ground two (2.0) feet West of the West face of a foundation wall. Thence running North 38° West, two (2.0) feet West of said wall a distance of fifty-four (54.0) feet to a point on a flight of concrete steps leading to a lower floor of the VanDoorn House, now an apartment building. Thence turning an angle to the right of 26° 00' and running North 12° West a distance of one hundred twenty-five (125.0) feet to an iron pin on the South side of Elliot Street. Thence Westerly along the South side of said street a distance of eighty-two and six-tenths (82.6) feet to the place of beginning.

"Being all and the same land and premises conveyed to Gustaf Hertzberg by Addie C. VanDoorn by deed dated 23 October 1909 recorded in the Brattleboro Land Records (Vol. 50, Page 415), and to Elizabeth Hertzberg by Edgar H. and Emily E.

Davenport by deed dated 3 December 1912, recorded in the Brattleboro Land Records (Vol. 53, Page 144), except those premises heretofore conveyed by the Grantors to Jason E. and Florence M. Bushnell by deed dated 14 October 1921, recorded in the Brattleboro Land Records (Vol. 60, Page 272) and to Cecil E. Palmer by deed dated 12 November 1925, recorded in the Brattleboro Land Records (Vol. 64, Page 625).

"The one-fourth (1/4) interest of the said Amos Toney was decreed to the said Emma Toney, Nathan Toney and Thomas Toney by Decree of Distribution dated June 19, 1950 and recorded in Book 89, Pages 278-9 of the Brattleboro Land Records."

Certificate of Completion
Applicant-Sonic Properties LLC
SMS #2011-4193
118 Elliot Street
Brattleboro, Vermont

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<u>Land Use Restriction</u>	2
<u>Certificate of Completion</u>	2

Site History

This property consists of a 0.37 acre asphalt lot with a vacant single story building of approximately 3,000 square feet. Historical property use of environmental concern included laundry and dry cleaning operations. Additional environmental concerns included the property's urban location and proximity to several other commercial and industrial properties with known or potential hazardous chemical use. Proposed redevelopment by Sonic Properties LLC includes a cooperative arts and educational center providing local arts organizations, non-profit groups and visitors from other venues low-cost access to collaborative working areas, private offices and performance space.

Site Investigation and Remedial Activities

The Vermont Department of Environmental Conservation (VT DEC) has received the following reports regarding site investigation activities:

1. *Phase I Environmental Site Assessment- July 1, 2011*
2. *Groundwater Sampling Summary letter-July 1, 2011*
3. *Underground Storage Tank Closure Report-August 26, 2011*
4. *Recognized Environmental Conditions Summary Report-September 2, 2011*
5. *Phase II Environmental Site Assessment-September 2012*
6. *Supplemental Site Investigation/Grid Sampling Report-October 2012*
7. *Supplemental Phase II Environmental Site Assessment-July 15, 2013*

The VT DEC has reviewed these reports and determined that site investigation activities are complete. The following environmental issues exist, and may be required by the VT DEC to be addressed should future redevelopment plans disturb these areas of concern.

- Exterior surface soils are impacted by the polycyclic aromatic hydrocarbon (PAH) benzo(a)pyrene in excess of VT DEC industrial soil criteria.

- Soils south of the existing building in the immediate vicinity of borings SS-17 & SS-18, as shown on figures 4 and 5 of the Supplemental Phase II Environmental Site Assessment dated July 15, 2013, are impacted by the volatile organic compound tetrachloroethene (PCE) in excess of VT DEC residential soil criteria.
- The bedrock aquifer beneath the property is impacted by PCE in excess of Vermont's Groundwater Enforcement Standard in the former supply well and monitoring well MW12-2 as shown on figure 7 of the Supplemental Phase II Environmental Site Assessment dated July 15, 2013. PCE has been detected in the bedrock aquifer throughout the property; however, it does not exceed its enforcement standard at the hydraulic cross gradient or down gradient property boundaries. Data collected as part of the above investigations indicates that historical property use has in part contributed to adversely affecting the water quality of the bedrock aquifer, however, a larger off-site source remains suspected. Several potential properties of environmental concern exist immediately adjacent to and hydraulically up gradient of the subject property.

History and Ownership of the Site in the Brownfield Reuse and Environmental Liability Limitation Program

Sonic Properties LLC (prospective purchaser) submitted an application to BRELLA on October 8, 2012. A determination of eligibility was granted on December 21, 2012. The property was purchased on July 16, 2013.

Corrective Action

Based on the findings in the above mentioned reports, the VTDEC has determined that no further investigation, abatement, removal, or remediation activities are required to adequately protect human health or the environment; work at the site has met all applicable remediation standards. This decision is also supported by the following findings:

1. The planned redevelopment of the site will not cause, allow, contribute to, worsen, or delay any releases or threatened release of hazardous materials at the property; and
2. The releases or threatened releases that are not abated, removed, or remediated do not pose an unacceptable risk to human health and the environment.

Proposed future use of the former supply well as part of a closed-loop geothermal system requires no corrective action.

Site Monitoring and Maintenance

Annual inspection of the integrity of the remedy, i.e. existing asphalt surface or other future approved ground surface which prohibit the direct contact with impacted soils is required to be conducted by the property owner. Maintenance is required as needed.

Land Use Restriction

A deed restriction, captioned *Grant of Environmental Restrictions, Right of Access, and Easement* from Sonic Properties, LLC to the State of Vermont, Agency of Natural Resources will be placed on this site and recorded in the Brattleboro Land Records. To ensure that the deed restriction is being complied with an annual inspection of the restricted areas must be completed and reported on annually by October 1st to ANR. The deed restriction requirements must be complied with as a condition to receiving the benefits of this Certificate of Completion.

Use of the former supply well and or further bedrock aquifer development for potable or other commercial or industrial processes not including a proposed closed-loop geothermal system is prohibited without Agency of Natural Resources approval.

Certificate of Completion

The rights, obligations, covenants, and restrictions granted in this certificate of completion shall run with the land, and any portion thereof, and shall be binding on the Agency of Natural Resources and successor Agency, and shall inure to the benefit of Sonic

Properties LLC and its authorized representatives, successors and assigns. All required assessment has been completed at this site and no further work is required at this time. As required by the Program, this Certificate of Completion should be recorded in the Town of Brattleboro land records for this property. Once recording is complete, the protection from liability provided in 10 V.S.A. §6641 is in effect.

Signed: _____

David K. Mears, Commissioner
Department of Environmental Conservation

Date: _____

5/27/14

