



NASSAU COUNTY CLERK'S OFFICE  
ENDORSEMENT COVER PAGE

Recorded Date: 03-19-2014  
Recorded Time: 10:22:58 a

Liber Book: D 13055  
Pages From: 948  
To: 960

Control  
Number: 359  
Ref #: RE 015079  
Doc Type: D02 EASEMENT

Location:	Section	Block	Lot	Unit
GLEN COVE (2806)	0031	0000G-00	00009	
GLEN COVE (2806)	0031	0000G-00	00211	

	Taxes Total	.00
	Recording Totals	255.00
MXF001	Total Payment	255.00

THIS PAGE IS NOW PART OF THE INSTRUMENT AND SHOULD NOT BE REMOVED.  
MAUREEN O'CONNELL  
County Clerk

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

THIS INDENTURE made this 5<sup>th</sup> day of ~~February~~<sup>March</sup>, 2014, between Owner(s) Herhill Associates, a New York limited partnership, having an office at 66 Herhill Road, Glen Cove, New York 11542, County of Nassau, State of New York (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.

Sec:

31

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

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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

Lots:

9

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211

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, in a Record of Decision dated March 2010, the Department set forth a remedy to eliminate or mitigate all significant threats to public health and the environment presented by the Crown Dykman Site currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 130054 ("Site"); and

WHEREAS, the selected remedy for the Site includes, among other things, remediation of contaminated groundwater using in-situ chemical oxidation of the plume area that has the highest amounts of VOC groundwater contamination; using a LNAPL recovery system to address groundwater contamination in a portion of the Site; continued use of the soil vapor extraction/ sub slab depressurization system to address the remaining soil contamination at the Site and to lessen the possibility for soil vapor intrusion; and the placement of an Environmental Easement that will require that the owner (a) comply with the approved SMP that includes an Institutional and Engineering Control Plan, a Monitoring Plan, and an Operation and Maintenance Plan that will provide for the continued proper operation and maintenance of the components of the selected remedy for the Site; (b) restrict the use of groundwater as a source of

potable or process water, without necessary water quality treatment as determined by the Department, New York State Department of Health (NYSDOH) or Nassau County DOH; (c) complete and submit to the Department, a periodic certification regarding institutional and engineering controls; (d) prohibit agriculture or vegetable gardens on the Controlled Property; and (e) limit the use and development of the Site to commercial use, which will also permit industrial use; and

WHEREAS, Grantor, is the owner of real property located at 66 Herhill Road in the City of Glen Cove, County of Nassau and State of New York, known and designated on the tax map of the County Clerk of Nassau as tax map parcel numbers: Section 31, Block G, Lots 9 and 211, being the same as that property conveyed to Grantor by deed dated December 29, 1980 in Liber 9318 of Deeds at Page 177. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately +/- 1 acre, and is hereinafter more fully described in the Land Title Survey dated September 21, 1994, and revised on March 15, 2013, prepared by A. Agujo Surveying, Inc., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; 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 the Order on Consent and Settlement Agreement dated on or about February 24, 2014, 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 access for the construction of the remedy selected in the ROD and performance of operation, maintenance, and/or monitoring; and to provide an effective and enforceable means of ensuring compliance with the restrictions and the performance of the obligations contained herein; and to ensure the potential restriction of future uses of the land for the protection of human health and the environment.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land, are binding 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 commercial uses, as defined in 6 NYCRR Part 375-1.8(g)(2)(iii) and industrial use, as described in 6 NYCRR Part 375-1.8(g)(2)(iv), as long as the following long-term engineering controls are employed:

(i) No activity that will, or could be reasonably to, interfere with the remedial program at the Controlled Property (i.e., damage to the Site, groundwater monitoring wells or soil vapor extraction/sub-slab depressurization systems) and the performance of operation, maintenance, and/or monitoring or otherwise result in an increased threat of harm to human health or the environment, shall be conducted on the Controlled Property without prior written approval from the Department or if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," shall be notified prior to proceeding with any additional work.

(ii) No physical construction, including, inter-alia, excavation below the pavement or buildings, or change of use, as defined in ECL 27-1425, within the Controlled Property shall be undertaken without prior written approval from the Department.

(iii) If there is any construction, or use or occupancy of the Controlled Property, that results in the disturbance or excavation of soils on the Controlled Property, extra caution should be taken to be alert of any previously unidentified environmental conditions that may exist, which include stained soil, odors and fill material. If any suspect material is uncovered, work will be stopped and the Relevant Agency shall be notified prior to proceeding with any additional work.

(iv) Grantors hereby acknowledge that the ROD requires a soil vapor intrusion evaluation if buildings are developed on the Controlled Property or changes are made to the existing building on the Controlled Property and the provision for mitigation of any impacts identified. Grantors assume on behalf of Grantors and their successors and assigns such evaluation and mitigation with respect to soil vapor intrusion.

(v) The Controlled Property shall not be used for the purposes of agriculture or vegetable gardens.

(vi) The Controlled Property shall not be used as a source of potable or process water, without necessary water quality treatment as determined by the Department; NYSDOH or Nassau County DOH.

B. 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.

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

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.

E. 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 annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable, which may at the Department's sole discretion, include Grantors or Grantors' successors, certifying under penalty of perjury that the institutional controls employed at the Control Property are in-place and 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, that the engineering controls employed at the Controlled Property remain undisturbed and accessible, that nothing has occurred that would impair the ability of such controls to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls.

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: 130054  
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, New York 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.

Herbhill Associates

By: Doris Toffler Cohen

Print Name: Doris Toffler Cohen

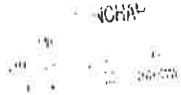
Title: General Partner

Date: 2/24, 2014

STATE OF FLORIDA )  
COUNTY OF Palm Beach ) ss:

On the 24 day of FEBRUARY, in the year 2014, before me, the undersigned, personally appeared DORIS T COHEN 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.

Pamela Blanchard  
Signature and Office of Individual  
taking acknowledgment



Pamela Blanchard  
Commission #EE 010742  
Expires August 16, 2014  
Bounded thru Notary Public Underwrites  
Notary Public  
STATE OF Florida

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.

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

Herbhill Associates  
By: [Signature]  
Print Name: HAROLD S SAMUELS  
Title: GENERAL PARTNER  
Date: 2/24, 2014

STATE OF FLORIDA )  
COUNTY OF PALM BEACH ) ss:


On the 24 day of FEBRUARY, in the year 2014, before me, the undersigned, personally appeared HAROLD SAMUELS 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]  
Signature and Office of Individual  
taking acknowledgment

[Signature]  
Commission Expires 010742  
Expires August 16, 2014  
Board of Notary Public Underwriters  
Notary Public  
State of Florida

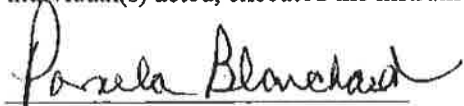



Herbhill Associates

By:   
 Print Name: AUDREY BAUER  
 Title: GENERAL PARTNER  
 Date: 2/24, 2014

STATE OF FLORIDA )  
 COUNTY OF PALM BEACH ) SS:

On the 24 day of FEBRUARY, in the year 2014, before me, the undersigned, personally appeared AUDREY BAUER 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

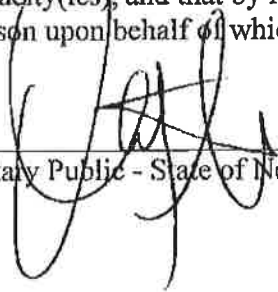
 Pamela BLANCHARD  
 Commission #EE 010742  
 Expires August 16, 2014  
 Banded thru Notary Public Underwriters  
 Notary Public  
 State of Florida

**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

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

On the 6<sup>th</sup> day of March, in the year 2014, 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/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

**David J. Chiusano**  
**Notary Public, State of New York**  
**No. 01CH5082146**  
**Qualified in Schenectady County**  
**Commission Expires August 22, 2014**

**SCHEDULE "A" PROPERTY DESCRIPTION**

**Schedule A Description**

Title Number TDA-12-1376

Policy Number: LX-10196049

Page 1

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Glen Cove, County of Nassau, State of New York, and known as Section 31, Block G, Lot 9 and 211 bounded and described as follows:

BEGINNING at a point on the northerly side of Herbhill Road (formerly Garvies Point Boulevard) distant 340.61 feet (tax map) from the corner formed by the intersection of the northerly side of Herbhill Road and the easterly side of Dickson lane;

RUNNING THENCE northerly along the land now or formerly of Konica Imaging U.S.A. as surveyed by Sidney B. Bowne & Son dated September 21, 1994, North 10 degrees 09 minutes 00 seconds West, 240 feet to a point;

THENCE easterly still along lands now or formerly of Konica Imaging U.S.A. as surveyed by Sidney B. Bowne & Son dated September 21, 1994, North 74 degrees 29 minutes 30 seconds East, 178.66 feet (actual) 175.00 feet (tax map) to a point;

THENCE southerly still along the land now or formerly of Konica Imaging U.S.A. as surveyed by Sidney B. Bowne & Son dated September 21, 1994, South 10 degrees 09 minutes 00 seconds East, 250.00 feet to a point on the northerly side of Herbhill Road;

THENCE westerly along the northerly side of Herbhill Road, South 74 degrees, 29 minutes and 30 seconds West, 178.66 feet (actual) 175.00 feet (tax map) to the point or place of BEGINNING.

For information only

Said premises being known as 66 Herbhill Road, Glen Cove, New York 11542

Section 31, Block G, Lots 9 and 211

RECORD AND RETURN TO:  
Touchdown Abstract Services, Inc.  
350 Moffitt Blvd, 2<sup>nd</sup> Floor  
Islip, New York 11751