



SUFFOLK COUNTY CLERK
 RECORDS OFFICE
 RECORDING PAGE

Type of Instrument: EASEMENT
 Number of Pages: 12
 Receipt Number : 23-0011594
 TRANSFER TAX NUMBER: 22-15430

Recorded: 01/27/2023
 At: 12:01:01 PM
 LIBER: D00013186
 PAGE: 523

District: 0800 Section: 185.00 Block: 01.00 Lot: 009.000

EXAMINED AND CHARGED AS FOLLOWS

Deed Amount: \$0.00

Received the Following Fees For Above Instrument

		Exempt			Exempt
Page/Filing	\$0.00	YES	Handling	\$0.00	YES
COE	\$0.00	YES	NYS SRCHG	\$0.00	YES
TP-584	\$0.00	YES	Notation	\$0.00	YES
Cert.Copies	\$0.00	YES	RPT	\$0.00	YES
Transfer tax	\$0.00	YES			
			Fees Paid	\$0.00	

TRANSFER TAX NUMBER: 22-15430

THIS PAGE IS A PART OF THE INSTRUMENT
 THIS IS NOT A BILL

Vincent Puleo
 County Clerk, Suffolk County

Number of pages

12

RECORDED
2023 Jan 27 12:01:01 PM
Vincent Puleo
CLERK OF
SUFFOLK COUNTY
L D00013196
P 523
DT# 22-15430

This document will be public record. Please remove all Social Security Numbers prior to recording.

Deed / Mortgage Instrument Deed / Mortgage Tax Stamp Recording / Filing Stamps

3 FEES

Page / Filing Fee 600 -

Handling 20 - 5.00

TP-584 5 -

Notation _____

EA-52 17 (County) _____ Sub Total 85 -

EA-5217 (State) _____

R.P.T.S.A. 200

Comm. of Ed. 5.00

Affidavit _____

Certified Copy _____

NYS Surcharge 15.00 Sub Total 220 -

Other _____ Grand Total exempt



Mortgage Amt. _____

1. Basic Tax _____

2. Additional Tax _____

Sub Total _____

Spec./Assit. _____

or _____

Spec. /Add. _____

TOT. MTG. TAX _____

Dual Town _____ Dual County _____

Held for Appointment _____

Transfer Tax _____

Mansion Tax _____

The property covered by this mortgage is or will be improved by a one or two family dwelling only.

YES _____ or NO _____

If NO, see appropriate tax clause on page # _____ of this instrument.

4 Dist. 0800 Section 185.00 Block 01.00 Lot 009.00 5 Community Preservation Fund

Real Property Tax Service Agency Verification

 CAW 1-5-23

Consideration Amount \$ _____

CPF Tax Due \$ _____

6 Satisfactions/Discharges/Releases List Property Owners Mailing Address RECORD & RETURN TO:

Moritt Hock & Hamroff LLP
400 Garden City Plaza, Suite 202
Garden City, NY 11530
Attn: Victoria Jankowski

Improved _____

Vacant Land _____

TD _____

TD _____

TD _____

Mail to: _____

11901

7 Title Company Information

Co. Name Advantage Title

Title # REC-30271

8 Suffolk County Recording & Endorsement Page

This page forms part of the attached Declaration of Covenants and Restrictions made by: _____ (SPECIFY TYPE OF INSTRUMENT)

145 Marcus Blvd., Inc.

The premises herein is situated in SUFFOLK COUNTY, NEW YORK.

TO
NYS Department of Environmental Conservation

In the TOWN of Smithtown
In the VILLAGE _____
or HAMLET of _____

BOXES 6 THRU 8 MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

**DECLARATION OF COVENANTS, RESTRICTIONS
AND ENVIRONMENTAL EASEMENT**

This Declaration of Covenants, Restrictions and Environmental Easement is made this 28th day of September, 2022, by and between 145 Marcus Blvd., Inc, a corporation organized and existing under the laws of the State of New York and having an office for the transaction of business at 139 Country Club Drive, Commack, New York 11725 ("Grantor"), and the People of the State of New York acting through their Commissioner of the New York State Department of Environmental Conservation with its Central Office, located at 625 Broadway, Albany, New York 12233 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of parcels of land located in the 145 Marcus Boulevard, Hauppauge in the Town of Smithtown, County of Suffolk, State of New York, which consists of one parcel conveyed by MCS Realty Co. to 145 Marcus Blvd., Inc. by deed dated October 31, 1991 and filed in the Suffolk County Clerk's Office on November 26, 1991 at Liber # 11376, Page# 0177 also known as District 0800, Section 185.00, Block 01.00, and Lot 009 (hereinafter, the "Property"). The Property subject to this Declaration of Covenants, Restrictions and Environmental Easement comprises approximately 2.5 +/- acres, and is hereinafter more fully described in Exhibit A and depicted in Exhibit B. The Property includes any buildings and improvements thereon and appurtenances thereto and is part of the Computer Circuits Superfund Site ("Site"), which the United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on May 10, 1999; and

WHEREAS, in a Record of Decision dated September 30, 2008, EPA selected, and the New York State Department of Environmental Conservation ("NYSDEC") concurred with, a remedial action for the Site pursuant to CERCLA, which provided for, in pertinent part: the incorporation and the continued operation of two soil vapor extraction ("SVE") systems and the sub-slab depressurization systems previously constructed at the Site to remedy indoor air contamination, sub-slab contamination, and soils contamination at the Site; b) the implementation of a long-term groundwater monitoring program; c) the implementation of an indoor air monitoring program; d) the implementation of Institutional Controls to protect human health from exposure to the existing contamination; e) the development of a Site Management Plan ("SMP") to address soil, groundwater, and indoor air at the Site and ensure the proper management of all Site remedy components; and f) the implementation of five-year reviews, pursuant to Section 121(c) of CERCLA, since hazardous substances may remain at the Site; and

WHEREAS, on March 31, 2009, Region 2 issued a Unilateral Administrative Order, Index Number CERCLA-02-2009-2015 ("Unilateral Order"), which directed Grantor to implement the selected remedial action at the Computer Circuits Superfund Site; and

WHEREAS, the parties hereto have agreed that in accordance with the terms of the Unilateral Order, Grantor shall grant to the Grantee a permanent Environmental Easement pursuant to Article

71, Title 36 of the NYS Environmental Conservation Law, covenant with respect to the restrictions on the use of the Property, and provide a right of access to the Property in favor of Grantee, all of which shall run with the land, for purposes of implementing, facilitating and monitoring the CERCLA response action in order to protect human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: In consideration of the mutual covenants contained herein and the terms and conditions of the SMP and Unilateral Order, Grantor, on behalf of itself, its successors and assigns, , does hereby give, grant, covenant and declare in favor of the Grantee that the Property shall be subject to this Declaration of Covenants, Restrictions and Environmental Easement, and Grantor does further give, grant and convey to the Grantee the perpetual right to enforce said restrictions, covenants, right of access and Declaration of Covenants, Restrictions and Environmental Easement, all of which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination and to impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions on Use and Maintenance of Engineering Controls: The following restrictions, as more comprehensively established in the SMP in the Remedial Action Workplan (“RAWP”) for the Site, dated May 29, 2009, on file with EPA and NYSDEC and as may, from time to time, be amended, apply to the use of the Property, as provided below, run with the land, and are binding on the Grantor and its successors in title and assigns:
 - a) **Industrial and Commercial Use.** The Property may be used for only: Commercial and Industrial uses as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and (iv). This commercial and industrial use restriction will remain in place unless a further soil remediation action is conducted to reduce potential risks associated with alternate land uses.
 - b) **Compliance with SMP:** An SMP was developed to address soil, soil vapor, and groundwater at the Site and should be complied with to provide for the proper management of all site remedy components. Specifically, the SMP includes the following:
 - The proper sampling, handling and treatment and/or disposal of subsurface soils if such soils are disturbed following the completion of the remedial action;
 - Measures that will be taken for the protection of on-site workers, the public and the environment in the event of future subsurface soil disturbance;

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- Procedures for evaluating vapor intrusion, and, if necessary, mitigation of vapor intrusion for any new construction at the Site;
 - Procedures to confirm that the engineering controls and institutional controls remain in place and remain protective;
 - Periodic certification by the Site property owner that the institutional controls remain in place and remain effective;
 - Annual inspection of the Site to determine if soil excavation activities have occurred;
 - Annual search of property records to ensure the institutional controls are in place and remain effective; and
 - Annual notification to local governmental offices, such as the building and zoning offices, of the controls on the site and review of the records in these offices to ascertain whether any applications or other filings have been made regarding the site.
- c) **Restriction of Use of Groundwater.** The use of groundwater underlying the Property is prohibited until applicable groundwater standards are satisfied and as otherwise determined by the New York State Department of Health (“NYSDOH”) or the Suffolk County Department of Health to be safe for use as drinking water or for industrial purposes.
- d) **Vapor Intrusion Evaluation for New Construction.** Construction of new buildings of any kind or new additions that expand or modify the existing footprint or slab is prohibited unless (1) an evaluation of the potential for vapor intrusion into such buildings is conducted in full conformance with NYSDEC and EPA vapor intrusion guidance and regulations in effect at the time such development is under consideration and (2) mitigation, if necessary, is implemented in accordance with the SMP.
- e) **Inspections and Monitoring.** The owner of the Property will implement, or permit implementation by other responsible entities, monitoring of groundwater and private potable water supply, site inspections, and maintenance of fencing and signs on the Property in accordance with the provisions of the SMP.
- f) **Restriction of New Construction.** The owner of the Property shall restrict new construction outside the existing building or inside the existing building if it will compromise the slab, interfere with the operations of existing systems set forth in the SMP, or negatively impact the remediation or monitoring systems.
4. Modification and/or termination of restrictions, covenants, and easement: The restrictions specified in the preceding paragraph of this instrument may only be modified or terminated,

in whole or in part, in writing, by the Grantee with approval of EPA, provided, however, that any modification or termination of said restrictions, covenants, or easement shall not adversely affect the remedy selected by EPA and NYSDEC for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form. Any request by Grantor for a modification or termination of this instrument, or any part thereof, shall be made, in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument not less than 30-days in advance of any modification or termination.

5. Right of access: Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State and EPA may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions, including:
 - a) Implementing the response actions selected in the 2008 ROD.
 - b) Verifying any data or information relating to the Site;
 - c) Verifying that no action is being taken at the Site in violation of the terms of this instrument and/or the SMP;
 - d) Conducting investigations under CERCLA relating to existing environmental contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
 - e) Implementing additional or new response actions under CERCLA in connection with remediating existing environmental contamination at the Site and protecting human health and the environment.
6. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges as fee owner of the Property, including, without limitation, the use of the Property for all purposes which are not inconsistent, or limited by the restrictions, covenants and easements granted herein as well as the right to sell, assign, pledge, or otherwise transfer part or all of the underlying fees interest in the Property, subject to the restrictions, covenants, and easement granted herein.
7. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
8. State authority: Nothing herein shall constitute a waiver of any rights the State may have pursuant to the Environmental Conservation Law, regulations and/or relevant provisions of statutory or common law.
9. No public access and use: No right of access or use by the general public to any portion of the Site is conveyed by this instrument.

10. Public notice: Grantor, on behalf of itself, its successors and assigns, agrees, until such time that the covenants, restrictions, and environmental easement are terminated, to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THIS PROPERTY IS SUBJECT TO A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT DATED _____, 20__ , RECORDED IN THE SUFFOLK COUNTY CLERK'S OFFICE ON _____, 20__, IN BOOK _____, PAGE _____, AND HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36, ARTICLE 71 OF THE ENVIRONMENTAL CONSERVATION LAW. THE DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT SHALL BE ENFORCEABLE BY THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and EPA with a true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

To the extent that the covenants, restrictions, and/or environmental easement have been modified or terminated, in whole or in part, such notice may reference such modification or termination.

11. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.
12. Damages: (A) Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.

(B) Prior notice of violation and an opportunity to cure: 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.

13. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
14. Covenants: Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the real property at the Site, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein and that the Site is free and clear of encumbrances.
15. Notices: Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

145 Marcus Blvd. Inc.
139 Country Club Drive
Commack, New York 11725
Attn: Steve Serota

Moritt Hock & Hamroff LLP
400 Garden City Plaza
Garden City, New York 11530
Attn: Michael S. Re, Esq.

To Grantee:

Office of General Counsel
NYS Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-5500

NYS Department of Environmental
Conservation
Division of Environmental Remediation
Bureau of Site Control
625 Broadway
Albany, New York 12233

A copy of each such communication shall also be sent to EPA in the same manner as to Grantor or Grantee, and addressed to the following two addressees:

U.S. Environmental Protection Agency
Emergency & Remedial Response Division
New York Remediation Branch
Attention: Computer Circuits Superfund Site Remedial Project Manager
290 Broadway, 19th Floor,
New York, New York 10007-1866

U.S. Environmental Protection Agency
Office of Regional Counsel
Attention: Computer Circuits Superfund Site Attorney
290 Broadway, 17th Floor,
New York, New York 10007-1866

16. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the State of New York, and with respect to other matters, shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of New York.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to affect the purpose of this instrument and the policy and purpose of CERCLA. .
- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.
- e) 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.
- f) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the real property at the Site. The term "Grantor", wherever used herein, and any pronouns used in place thereof, 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. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.
- g) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- h) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- i) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the

benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA.

- 17. Recordation: Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner of the New York State Department of Environmental Conservation 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.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

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

Executed this 28th day of September, 2022.

GRANTOR:

By: [Signature]

Title: Vice President, Steven Serota

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF New York)

On the 23rd day of September, in the year 2022, before me, the undersigned, personally appeared Steven Serota, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as VP of 145 Marcus Blvd, Inc., and that by his/her signature on the instrument, the Grantor, upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public - State of New York

Edward Harris
Notary Public, State of New York
No. 01HA6254206
Qualified in New York County
Commission Expires 01/17/2023
2023

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND 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: Andrew Guglielmi
Andrew O. Guglielmi, Director
Division of Environmental Remediation
Date: 9/28/2022

Grantee's Acknowledgment

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

On the 28th day of September, in the year 2022, before me, the undersigned, personally appeared Andrew O. Guglielmi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the People of the State of New York, upon behalf of which the individual acted, executed the instrument.

Jennifer Andaloro
Notary Public - State of New York

JENNIFER ANDALORO
Notary Public, State of New York
No. 02AN6098246
Qualified in Albany County
Commission Expires January 14, 2024

EXHIBIT A
Declaration of Covenants, Restrictions and Environmental Easement
Computer Circuits Superfund Site

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at Hauppauge, Town of Smithtown, Suffolk County, New York, more particularly bounded and described as follows:

BEGINNING at a point on the easterly side of Marcus Blvd. distant 627.45 feet northerly from the northerly end of the curve connecting the easterly side of Marcus Blvd. with the northerly side of Kennedy Drive; running thence North 3 degrees 17 minutes 15 seconds West 311.14 feet along the easterly side of Marcus Blvd; running thence North 86 degrees 42 minutes 45 seconds East 350.00 feet; running thence South 3 degrees 17 minutes 15 seconds East, 311.14 feet; running thence South 86 degrees 42 minutes 45 seconds West, 350.00 feet to the easterly side of Marcus Blvd. at the point or place of BEGINNING. Said premises are also known and described as 145 Marcus Boulevard, Hauppauge, New York 11788

EXHIBIT B
Declaration of Covenants, Restrictions and Environmental Easement
Computer Circuits Company Superfund Site

Property Map / Suffolk County Interactive Map with Parcel Number

