

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Violations of Article 27
of the New York State Environmental Conservation Law,
and Title 6 of the Official Compilation of Codes, Rules
and Regulations of the State of New York

**ORDER ON CONSENT
Case No. CO 1-20181004
EPA ID No. NYD000707901**

- By -

I.PARK EAST FISHKILL LLC,
Respondent,

I.PARK EAST FISHKILL I LLC,
Respondent,

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Respondent, and

GLOBALFOUNDRIES U.S. 2 LLC,
Respondent.
-----X

WHEREAS:

Parties and Jurisdiction

1. The New York State Department of Environmental Conservation (the "Department") is vested with jurisdiction to enforce laws governing hazardous waste management pursuant to Article 27, Title 9 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").
2. This Order is issued pursuant to the Department's enforcement authority under Article 71 of the ECL.
3. Respondent, i.Park East Fishkill LLC ("Respondent i.Park EF"), is a foreign limited liability company authorized to do business in New York State with an address for service of process listed with the New York State Department of State as 80 State Street, Albany, New York, 12207-2543.
4. Respondent, i.Park East Fishkill I LLC ("Respondent i.Park (I)"), is a foreign limited liability company authorized to do business in New York State with an address for

service of process listed with the New York State Department of State as 80 State Street, Albany, New York, 12207-2543.

5. Respondent, International Business Machines Corporation ("Respondent IBM"), is a domestic business corporation with an address for service of process listed with the New York State Department of State as International Business Machines Corporation, New Orchard Road, Armonk, New York, 10504.

6. Respondent, GLOBALFOUNDRIES U.S. 2 LLC ("Respondent Global"), is a foreign limited liability company authorized to do business in New York State with an address for service of process listed with the New York State Department of State as C/O Corporation Service Company, 80 State Street, Albany, New York, 12207-2543.

7. Respondent i.Park EF and Respondent i.Park (I) will hereinafter be refer to jointly as "Respondent i.Park".

8. Respondent i.Park, Respondent IBM, and Respondent Global will hereinafter be referred to jointly as "Respondents."

9. Respondents own and/or operate all or a portion of a facility located in the Town of East Fishkill, Dutchess County, New York 12533 bordered to the north by State Route 52, to the east by County Highway 27, and to the south by Interstate 84 ("Site").

10. Each Respondent is a person, and an owner and/or operator as defined pursuant to 6 NYCRR 370.2(b)(136); 6 NYCRR 370.2(b)(137); and 6 NYCRR 370.2(b)(141).

Applicable Law

11. Respondents are subject to New York State laws, rules and regulations governing solid and hazardous waste, specifically Article 27 of the ECL and the regulations promulgated thereunder.

12. Respondents are also subject to NYSDEC Part 373 Corrective Action Permit 3-1323-0025/00249 ("Part 373 Permit") for the Site.

Facts

13. The Site is a Class 2 inactive hazardous waste disposal site, designated by the Department as Site #314054.

14. Respondent Global, and Respondent i.Park each own a portion of the Site. Respondent i. Park EF is the sole owner of the portion of the property that is the subject of noncompliance. Respondent IBM is the operator with regard to the Part 373 Permit;

Respondent IBM does not own any portion of the Site or operate any portion of the Site other than as the “operator” with regard to the Part 373 Permit.

15. Before September 15, 2018, Respondent i.Park EF leased a property within its portion of the Site to Sloop Brewing Co.

16. On September 15, 2018, Sloop Brewing Co. opened its business to the public, operating a tasting room and a restaurant at the Site.

17. On September 21, 2018, Department Staff notified Respondent i.Park EF that, due to Sloop Brewing Co.’s operations, Respondent i.Park EF was in violation of the Part 373 Permit for allowing the operation of a commercial business activity on a Site only authorized to have industrial activities.

18. On November 1, 2018, Department Staff again notified Respondent i.Park EF that, due to Sloop Brewing Co.’s operations, Respondent i.Park EF was in violation of the Part 373 Permit, as well as ECL Article 27, Title 9, and its implementing regulations at 6 NYCRR Parts 370 *et seq.*

19. On November 28, 2018, Department Staff met with Respondents and informed them that, due to Sloop Brewing Co.’s operations, Respondents were in violation of the Part 373 Permit, as well as ECL Article 27, Title 9, and its implementing regulations at 6 NYCRR Parts 370 *et seq.*

Violations

20. Respondent i.Park EF’s actions, as set forth herein, constitute violations of Respondents’ Part 373 Permit as set forth in Appendix A attached to this Order. Any violation of a Part 373 Permit is also a violation of ECL article 27, Title 9 as established in 6 NYCRR 373-1.6(a)(1). The violations contained in Appendix A are hereby incorporated as enforceable terms of this Order on Consent.

Applicable Penalty Provisions

21. Pursuant to ECL § 71-2705, any person who violates any of the provisions of, or who fails to perform any duty imposed by Article 27, Title 9, 11, or 13 or any rule or regulation promulgated thereto, shall be liable for penalties of up to \$37,500 per day per violation.

22. Respondent i.Park EF affirmatively states that its actions, not the actions of Respondent IBM and Respondent Global was the cause of the violations.

23. Respondents affirmatively waive their right to a hearing in this matter in the manner as provided by law, consents to the issuance of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, THEREFORE, HAVING CONSIDERED THIS MATTER AND BEING DULY ADVISED, IT IS ORDERED THAT:

I. COMPLIANCE

- A. Respondents have as of the date hereof submitted to the Department a statement, signed by each Respondent, agreeing to change the deed restrictions on the relevant portions of the Site, as set forth in Exhibit A (which is a map of the designated area attached hereto) ("Exhibit A area"), from industrial use to commercial use subject to Respondent iPark EF satisfying all the requirements of this Order and related work plans or other work products, and complying with the terms of the i.Park 84 Commercial Uses Agreement entered into by the Respondents.
- B. In accordance with a work plan(s) approved by the Department, and in addition to the requirements of Section C immediately below, i.Park EF shall design, install, operate, and maintain active (i.e., fan- or blower-powered) sub-slab depressurization systems (SSD) in the ground floor of all indoor areas of the Exhibit A area prior to occupancy of such areas. These systems must be installed in accordance with Department-approved work plans and within 180 days of such Department approval.
- C. Respondent i.Park EF must comply with the approved workplans as attached as Exhibit B for performing necessary testing and remedial work at the Exhibit A area to meet all commercial use standards.
 - a. Building 330C Sloop Brewing – Respondent iPark EF submitted the *Full-Scale Sub Slab Depressurization System Design Report – Sloop Brewery*, dated June 18, 2019. The Department and Department of Health (collectively 'the Departments') sent comments on August 2, 2019. Respondent iPark EF submitted the *Revised Full-Scale Sub Slab Depressurization System Design Report – Sloop Brewery*, dated August 14, 2019. The Department sent a response letter dated September 20, 2019, requiring additional indoor air sampling. Respondent iPark EF submitted *Addendum #1 to the Revised Full-*

Scale Sub Slab Depressurization System Design Report - Sloop Brewery, dated November 19, 2019, to the

Department describing proposed indoor air sampling following installation of the sub slab depressurization system.

- b. Open Area – Respondent iPark EF submitted a workplan, dated March 6, 2019, to sample the grassy areas and the parking lot in the Exhibit A area, and the Department conditionally approved that workplan on March 15, 2019. The *Site Investigation Report – Sloop Brewery / B338*, dated April 26, 2019, was approved by the Department on June 7, 2019 with the additional conditions requiring that the soil cover be maintained and the parking lots to be repaved and then maintained.
- c. Building 338 – Respondent iPark EF submitted the *Sub-Slab Vapor Investigation Report - Building 338*, dated July 17, 2019, and the Department conditionally approved the report on September 12, 2019 and directed that an additional vapor intrusion investigation would be required before occupancy was allowed. Respondent iPark EF submitted the revised *Sub-Slab Vapor Investigation Report - Building 338*, dated September 16, 2019, to address the Department's comment.
 - i. Building 339 - Respondent iPark EF submitted the *B339 Pre-Construction Sampling Work Plan*, dated September 10, 2019 which described the planned vapor intrusion assessment. The Department conditionally approved the work plan on September 26, 2019. iPark EF submitted the revised *Building 339 Pre-Construction Sampling Work Plan*, dated September 26, 2019, to address comments in the Department's September 26, 2019 letter, and the Department approved the revised work plan on September 27, 2019. Respondent iPark EF submitted the *Building 339 Pre-Construction Sampling Summary Report* dated October 23, 2019. Respondent iPark EF submitted the *B339 Vapor Mitigation System Basis of Design*, dated November 7, 2019, and the Department is in the process of reviewing it. Respondent iPark EF submitted an *Indoor Air Quality Testing Plan*, dated November 20, 2019, and an *Indoor Air Quality Testing Summary*

Report, dated December 6, 2019. The Department approved the testing report in a December 13, 2019 letter

- D. A Professional Engineer must certify, stamp and sign any subsequent work plans and any other subsequent technical submissions. The work plans shall include, among other things, a provision for monthly progress reports until the termination date of this Order. The work plans shall be in accordance with Department regulations and requirements.
- E. Once approved by the Department, compliance with the work plan and schedule required in this Section, shall constitute compliance with the ECL and 6 NYCRR solely with regards to the violations alleged in Appendix A.
- F. Respondent i.Park EF shall be authorized to allow the the commercial use of the Exhibit A area in the interim period, provided that it timely complies with the requirements of this Order and completes any and all necessary investigation and remediation including those described in the work plan. Upon completion of the investigation and remediation, the Department may issue an amended Statement of Basis for the Exhibit A area, which will detail any and all remedial work required for Respondent i.Park EF to complete to allow for commercial use of such area.
- G. Within 45 days of the Department's issuance of a major permit modification, including the amended Statement of Basis, Respondents shall submit to the Department a request to modify the Part 373 Permit for the Facility to allow for the commercial use of the Exhibit A area.
- H. Respondent i.Park must obtain approval in writing from the Department for any new proposed uses or activities on the Site, including but not limited to any new tenant uses or activities, prior to any and all construction or fitting up or any other activity related to the commencement of that new activity. The Department's review and approval shall take into consideration the proposed activities' use classification (i.e., industrial, commercial, etc.) and the current use restrictions in place at the Site.
- I. Respondent i.Park EF must submit to the Department the requisite 60-day notice for any new proposed use or activities on the Site, including but not limited to any new tenant uses or activities, prior to any and all construction or fitting up or any other activity related to the commencement of that new activity, and otherwise comply with the Department's requirements.

II. CIVIL PENALTY

Respondent i.Park EF shall pay a penalty for the cited violations in the amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)**.

The civil penalty shall be paid within thirty (30) days of the Department's execution of this Order, by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check. The check shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.

The original signed and notarized Order on Consent, along with any applicable submissions, shall be sent to the Department of Environmental Conservation, Office of General Counsel, 625 Broadway 12233, Attention: Benjamin Conlon.

III. RELEASE, SETTLEMENT AND RESERVATION OF RIGHTS

This Order shall be in full satisfaction and settlement of all civil and administrative claims that could be asserted by the Department against Respondents, their directors, trustees, officers, servants, agents, employees, successors and assigns, for those violations specifically set forth herein, provided, however, that this Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge. Nothing contained in this Order shall be construed as otherwise barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee, including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers, with respect to any party, including Respondents. The Department reserves the right to require Respondents to undertake any additional measures required to protect human health or the environment and the Department's rights to exercise its authorities under law to protect human health and the environment or to otherwise require compliance with the law.

IV. ACCESS

For the purpose of monitoring or determining compliance with this Order, duly authorized representatives of the Department shall be provided access to the Site, sites, or records owned, controlled or maintained by Respondents at the Site related to the Exhibit A

area, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, to take photographs, or to perform any other lawful duty or responsibility. Such duly authorized representatives shall comply with Respondents' health and safety and confidentiality requirements.

V. FAILURE, DEFAULT, VIOLATION OF ORDER, AND STIPULATED PENALTIES

Respondents' failure to comply with any applicable provision, term or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL. Discovery of any of the violations cited in this Order or Appendix A during a future visit to or inspection of the Site shall constitute a repeat violation, a violation of this Order, the ECL, and 6 NYCRR, subjecting Respondent i.Park EF to any penalty provided for by this Order, or by state or federal law.

The penalty assessed to Respondent i.Park EF in the Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty become due.

Respondent i.Park EF shall be responsible for stipulated penalties in the amount of one thousand DOLLARS (\$1,000.00) per day for failure to comply with this Order. "Compliance" by Respondent i.Park EF shall include completion of all payments and activities required under this Order, or any plan, report or other deliverable approved under this Order and within the specified time schedules established by and approved under this Order.

VI. FINANCIAL ASSURANCE

To ensure the full and final completion of the requirements of this Order, Respondent i.Park EF shall establish, within 90 days of the effective date of this order, and maintain financial assurance of a performance guarantee, initially in the amount of 100,000 DOLLARS (\$100,000), for the benefit of the Department. The performance guarantee, which must be satisfactory in form and substance to the Department, shall be in the form of one or more of

the mechanisms provided in 6 NYCRR 373-2.8(d).

VII. FORMAL TERMS

No terms, conditions, understanding or agreements purporting to modify or vary the terms of this Order shall be binding unless made in writing pursuant to the procedure set forth in Paragraph X below. No informal oral or written advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondents, shall be construed as relieving Respondents' obligation to obtain such formal approvals as may be required by the terms of this Order on Consent.

VIII. INDEMNIFICATION

Respondents shall indemnify and hold the Department, the State of New York, their representatives, employees, agents and contractors harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondents, their directors, officers, trustees, employees, servant, agents, successors (including successors in title) and assigns to the extent that they are not caused by negligent or reckless acts.

IX. BINDING EFFECT

Respondents and Respondents' successors, and assigns shall be bound by this Order. Respondents through their officers, directors, agents, servants, employees, successors, and assigns shall be responsible for implementing the terms of this Order. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order. Respondents' officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondents.

Within thirty (30) days of any change in ownership or corporate status, the Department must be notified of the change. This notification will specify the nature of the change in status, and the name and address of the new responsible party. Once notified of the change, the Department will mail this Order to the new respondent. The Order will then be executed and notarized by the new respondent in the same manner as the original. All terms and conditions contained herein will then be applicable to the new respondent.

X. MODIFICATION

In those instances in which Respondents desire that any of the provisions, terms or conditions of this Order be changed, Respondents shall make written application, setting forth the grounds for the relief sought, and such changes shall not become effective except as specifically set forth by written order of the Commissioner or Commissioner's designee.

XI. COMMUNICATIONS

All communications required by this Order to the Department shall be transmitted to:

Benjamin Conlon
NYS Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233-1500
Benjamin.Conlon@dec.ny.gov

Jessica LaClair
NYS Department of Environmental Conservation
Central Office
625 Broadway
Albany, NY 12233-1500
Jess.LaClair@dec.ny.gov

Copies of all correspondence to Respondents under this Order on Consent shall be provided to:

Joseph Cotter
National Resources
485 West Putnam Avenue
Greenwich, CT 06830
JCotter@nationalresources.com

Dean Chartrand
Corporate Environmental Affairs
IBM Corporation
8976 Wellington Road
Manassas, VA 20109
Chartd@us.ibm.com

Steve Groseclose
GLOBALFOUNDRIES
400 Stone Break Rd Extension
Malta, NY 12020
Steve.Groseclose@globalfoundries.com

The Department and Respondents, respectively, reserve the right to designate other or different addressees on written notice to the other.

XII. FORCE MAJEURE

Respondents shall not suffer any penalty under this Order, or be deemed to be in violation hereof or be subject to any proceeding or action if any Respondents' compliance with any requirement hereof is rendered impossible by a natural event, war, strike, work stoppage, delays attributable to any governmental body other than the Department in issuing permits or approvals needed by the Site, riot or other catastrophe as to which negligence or misconduct on the part of any Respondent was not the proximate cause; provided, however, that Respondent shall make its best efforts to comply nonetheless and shall, within seventy-two (72) hours, notify the Department by telephone and in writing, pursuant to the communications paragraph set forth in Paragraph XI of this Order, after obtaining knowledge of any such condition or event, and shall request an appropriate extension or modification of this Order.

XIII. ENTIRE ORDER

This Order shall constitute the entire agreement and inure to the benefit of and be binding upon the Department and Respondents, their agents, employees, successors and assigns, and all persons, firms, or corporations acting subordinate thereto, with respect to settlement of the violations specifically referenced herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing pursuant to Paragraph XI of this Order, and subscribed by the party to be bound.

XIV. EFFECTIVE AND TERMINATION DATES

The effective date of this Order on Consent shall be the date it is signed by the Commissioner or Commissioner's designee. This Order on Consent shall terminate upon Respondents' strict and timely compliance with all of its terms, including but not limited to the Department's issuance of modifications to the Part 373 Permit; The Department will provide Respondents (or Respondents' counsels) with a fully executed copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee signs it.

Dated: Albany, New York
May 1, 2020

Basil Seggos, Commissioner
N.Y.S. Department of Environmental Conservation

By: 

David Vitale, Director
Division of Materials Management

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

I.PARK EAST FISHKILL LLC, Respondent

By (Signature):  _____

Print Name: Joseph Cotter

Title: President


Date: April 2, 2020

ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss:

COUNTY OF WESTCHESTER)

On the 2nd day of April in the year 2020 before me personally came JOSEPH COTTER to me known, who, being by me duly sworn, did depose and say that s/he resides in Greenwich, CT; that s/he is an officer I.PARK EAST FISHKILL LLC; namely the President of I.PARK EAST FISHKILL LLC; that s/he is authorized by the governing body of said corporation to sign on behalf of the corporation; and the s/he did sign the foregoing instrument on behalf of, and with the authority to bind, said corporation.  _____

Notary Public

Signature and Office of individual taking acknowledgment

DANIEL SCHUYLER
Notary Public, State of New York
No. 01SC5084025
Qualified in Orange County
Commission Expires Aug. 25, 2021

I.PARK EAST FISHKILL I LLC, Respondent

By (Signature): _____

Print Name: Joseph Cotter

Title: President

Date: April 2, 2020

ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss:

COUNTY OF WESTCHESTER)

On the 2nd day of April in the year 2020 before me personally came JOSEPH COTTER to me known, who, being by me duly sworn, did depose and say that s/he resides in Greenwich, CT; that s/he is an officer I.PARK EAST FISHKILL I LLC; namely the President of I.PARK EAST FISHKILL I LLC; that s/he is authorized by the governing body of said corporation to sign on behalf of the corporation; and the s/he did sign the foregoing instrument on behalf of, and with the authority to bind, said corporation.

D. Schuyler
Notary Public

Signature and Office of individual taking acknowledgment

DANIEL SCHUYLER
Notary Public, State of New York
No. 01SC5034925
Qualified in Orange County
Commission Expires Aug. 25, 2021

Respondent International Business Machines Corporation hereby consents to the issuing and entering of this Order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order. The undersigned further hereby declares that they have been given the authority to bind the Respondent to the requirements of this Order.

Edan Dionne

By [signature]:

Title: Vice President, Environmental, Energy & Chemical Management Programs, IBM Corporate Environmental Affairs

Date: _____

On the _____ day of _____, in the year 2020, before me, the undersigned, personally appeared _____, 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


In signing this document, I acknowledge under penalty of perjury that I understand the contents and purpose of this document; the signature above is my own and I signed willingly. I am aware that any false statement made herein is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Edan
Dionne

Digitally signed by
Edan Dionne
Date: 2020.04.06
06:34:26 -04'00'

Edan Dionne

GLOBALFOUNDRIES U.S. 2 LLC, Respondent

By (Signature): 

Print Name: Steve Groseclose

Title: VP EHS & Risk Management

Date: Apr 6, 2020

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) ss:

On the _____ day of _____ in the year 2020 before me personally came _____ to me known, who, being by me duly sworn, did depose and say that s/he resides in _____; that s/he is an officer _____; namely the _____ of GLOBALFOUNDRIES U.S. 2 LLC; that s/he is authorized by the governing body of said corporation to sign on behalf of the corporation; and the s/he did sign the foregoing instrument on behalf of, and with the authority to bind, said corporation.

Notary Public
Signature and Office of individual taking acknowledgment

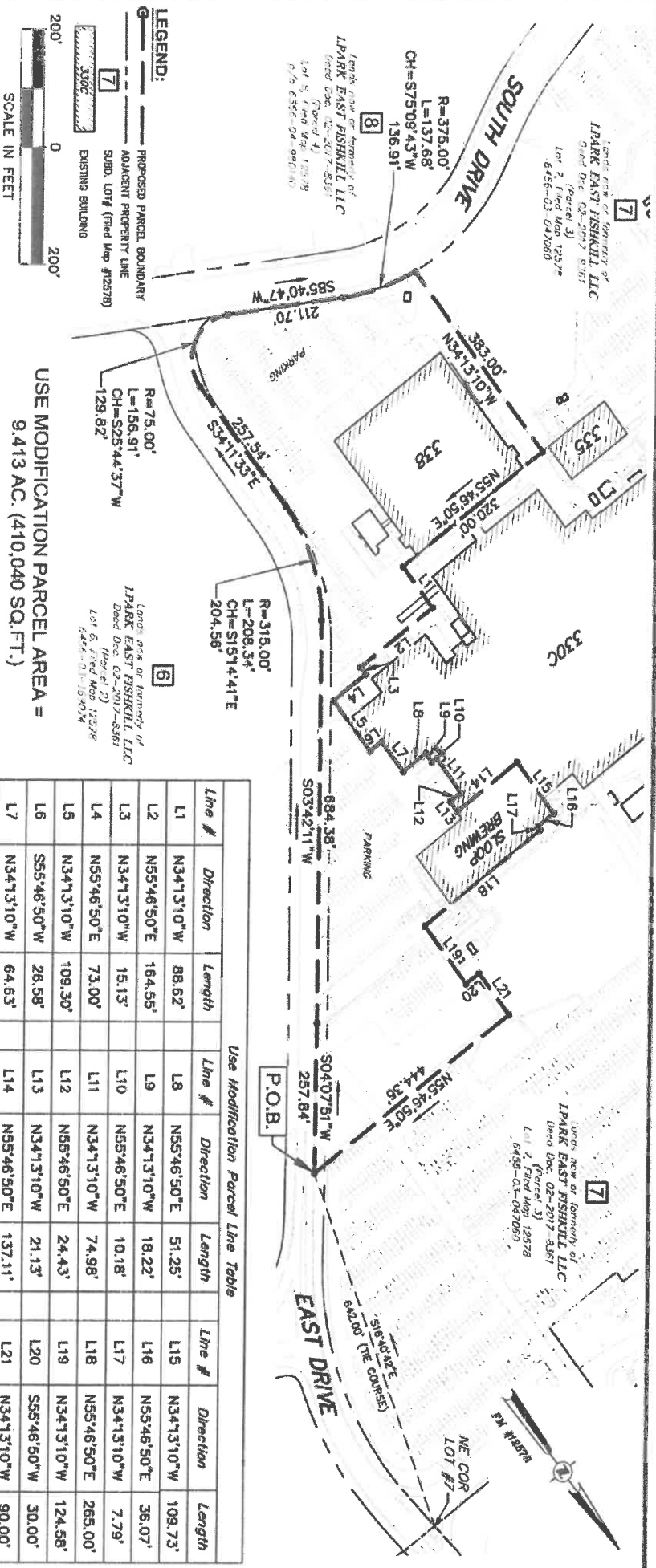
Appendix A - List of Hazardous Waste Violations

Site: i.Park East Fishkill LLC

EPA ID No. NYD000707901

Beginning Date of Violation: September 15, 2018

1. 6 NYCRR Part 373-1.6(a)(1)—Respondent i.Park EF violated the conditions of their Part 373 Corrective Action Permit for NYD000707901. Specifically, Respondent i.Park EF violated Section 7 of the Statement of Basis, which allows the use and development of the Site for “industrial use.” This violation refers to Sloop Brewing Co.’s operation of a tasting room and restaurant at the Site, which constitutes a commercial use rather than an industrial use.



Use Modification Parcel Line Table									
Line #	Direction	Length	Line #	Direction	Length	Line #	Direction	Length	Line #
L1	N34°13'10"W	88.62'	L8	N55°46'50"E	51.25'	L15	N34°13'10"W	108.73'	L22
L2	N55°46'50"E	164.55'	L9	N34°13'10"W	18.22'	L16	N55°46'50"E	36.07'	L23
L3	N34°13'10"W	15.13'	L10	N55°46'50"E	10.16'	L17	N34°13'10"W	7.79'	L24
L4	N55°46'50"E	73.00'	L11	N34°13'10"W	74.98'	L18	N55°46'50"E	265.00'	L25
L5	N34°13'10"W	109.30'	L12	N55°46'50"E	24.43'	L19	N34°13'10"W	124.58'	L26
L6	S55°46'50"W	26.58'	L13	N34°13'10"W	21.13'	L20	S55°46'50"W	30.00'	L27
L7	N34°13'10"W	64.63'	L14	N55°46'50"E	137.11'	L21	N34°13'10"W	90.00'	L28

CHAZEN ENGINEERING, LAND SURVEYING

Office Locations:

- ☒ Hudson Valley Office:
247 River Street
Poughkeepsie, New York 12601
Phone: (845) 454-3980
- ☐ New York County Office:
20 Elm Street (Suite 110)
Camden, New York 13611
Phone: (815) 102-0513
- ☐ Capital District Office:
327 River Street
Poughkeepsie, New York 12601
Phone: (845) 454-3980
- ☐ Westchester County Office:
1 North Broadway, Suite 803
White Plains, New York 10601
Phone: (914) 937-8510
- ☐ Nashville Tennessee Office:
1000 East Main St. (Suite 103)
Nashville, Tennessee 37203
Phone: (615) 272-0026
- ☐ Chattanooga Tennessee Office:
427 E. 3rd St. (Suite 207)
Chattanooga, Tennessee 37403
Phone: (423) 261-8573

LANDSCAPE ARCHITECTURE CO., D.P.C.

EXHIBIT MAP OF USE MODIFICATION PARCEL

TOWN OF EAST FISHKILL, DUTCHESS COUNTY, NEW YORK

SLOOP BREWING COMPANY

NE COR LOT #7

SVI

designed: JMT
checked: JMT
date: 08/12/19
scale: 1"=200'
project no.: 51718.03
sheet no.: SVI

THIS MAP IS PREPARED BY CHAZEN ENGINEERING, LAND SURVEYING, INC. AND LANDSCAPE ARCHITECTURE CO., D.P.C. IN ACCORDANCE WITH THE REQUIREMENTS OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF SURVEYING AND MAPPING, AND THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, DIVISION OF LANDS, FORESTS AND WATER. THE MAP IS BASED ON A FIELD SURVEY CONDUCTED BY CHAZEN ENGINEERING, LAND SURVEYING, INC. AND LANDSCAPE ARCHITECTURE CO., D.P.C. ON AUGUST 12, 2019. THE MAP IS BASED ON A FIELD SURVEY CONDUCTED BY CHAZEN ENGINEERING, LAND SURVEYING, INC. AND LANDSCAPE ARCHITECTURE CO., D.P.C. ON AUGUST 12, 2019. THE MAP IS BASED ON A FIELD SURVEY CONDUCTED BY CHAZEN ENGINEERING, LAND SURVEYING, INC. AND LANDSCAPE ARCHITECTURE CO., D.P.C. ON AUGUST 12, 2019.

Exhibit B

The following is a list of the documents referenced in the Order which represent work remaining to be completed:

Building 330C (Sloop Brewing)

- *Revised Full-Scale Sub Slab Depressurization System Design Report – Sloop Brewery*, prepared by GZA GeoEnvironmental, dated August 14, 2019.
- Letter from NYSDEC to iPark, *SSDS Design Report – Sloop Brewery*, dated September 20, 2019.
- *Full-Scale Sub Slab Depressurization System Design Report – Sloop Brewery Addendum No. 1*, prepared by GZA GeoEnvironmental, dated November 19, 2019.

Open Area

- *Site Investigation Report – Sloop Brewing / B338*, prepared by GZA GeoEnvironmental, dated April 26, 2019.
- Letter from NYSDEC to iPark, *Site Investigation Report – Sloop Brewery / Building 338*, dated June 7, 2019.

Building 338

- Letter from NYSDEC to iPark, *Sub-Slab Vapor Investigation Report – Building 338*, dated September 12, 2019.
- *Revised Building 338 Sub-Slab Vapor Investigation Report*, prepared by GZA GeoEnvironmental, dated September 16, 2019.

Building 339

- *Building 339 Pre-Construction Sampling Summary Report*, prepared by Walden Environmental Engineering, PLLC, dated October 23, 2019.
- *Revised Building 339 Vapor Mitigation System Basis of Design*, prepared by Walden Environmental Engineering, PLLC, dated November 7, 2019.
- *Building 339 – Jane Bakes, Indoor Air Quality Testing Plan*, prepared by Walden Environmental Engineering, PLLC, dated November 20, 2019.

- Letter from NYSDEC to iPark, *Building 339 – Jane Bakes Indoor Air Quality Testing Plan*, dated November 22, 2019.
- *B339 Jane Bakes Indoor Air Quality Testing Summary Report*, prepared by Walden Environmental Engineering, PLLC, dated December 6, 2019.
- Letter from NYSDEC to iPark, *B339 Jane Bakes Indoor Air Quality Testing Summary Report*, dated December 13, 2019.

FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS, EASEMENTS AND COVENANTS

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS, EASEMENTS AND COVENANTS (this “Amendment”) is made as of this ___ day of April, 2020, by and among **INTERNATIONAL BUSINESS MACHINES CORPORATION**, a New York corporation, having an address at One New Orchard Road, Armonk, New York (“Declarant”), **I.PARK EAST FISHKILL LLC**, a Delaware limited liability company, having an address at 485 West Putnam Avenue, Greenwich, Connecticut 06830 (“i.Park EF”).

RECITALS

WHEREAS, Declarant is the “Declarant” under that certain Declaration of Restrictions, Easements and Covenants, recorded with the Dutchess County Clerk on July 9, 2015, Document # 02 2015 4059 (the “Declaration”);

WHEREAS, i.Park EF owns the portion of the Property (as defined in the Declaration) wherein the Designated Area (as hereinafter defined) is located.

NOW, THEREFORE, Declarant does hereby modify the Declaration such that the Property (as defined in the Declaration) shall hereafter be held, sold, transferred, conveyed, leased and occupied subject to the restrictions, easements, covenants and obligations set forth in the Declaration, as modified herein:

1. Undefined Capitalized Terms. All capitalized terms used in this Amendment but not defined herein shall have the same meanings ascribed to such terms in the Declaration.

2. Modification of Core Area. The Declaration is hereby modified to remove from the Core Area that portion of the Property shown in Exhibit A-1 attached hereto and made a part hereof, as more particularly described in Exhibit A-2 attached hereto and made a part hereof (the “Designated Area”), which Designated Area may be used for Commercial Uses.

3. Miscellaneous.

(a) This Amendment has been duly authorized, executed and delivered by each party and is a valid and binding obligation of such party enforceable against it in accordance with the terms hereof.

(b) Except as amended herein, the Declaration shall remain in full force and effect. In the event of any conflicts or inconsistencies between the provisions of the Declaration and the provisions of this Amendment, the provisions of this Amendment shall control.

(c) This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one agreement.

(d) If any term, covenant or condition of this Amendment shall be held to be invalid, illegal or unenforceable in any respect, this Amendment shall be construed without such provision.

(e) This Amendment may not be modified, amended, waived, changed or terminated orally, but only by an agreement in writing signed by the owner of the Property impacted and Declaration, which consent shall not be unreasonably withheld.

(f) The provisions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their successors and assigns.

(g) The interpretation and performance of this Amendment shall be governed by the laws of the State of New York.

(h) The captions of the various sections of this Amendment are solely for the purpose of convenience. Such captions are not a part hereof and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Amendment.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals to this Amendment as of the day and year first above written.

INTERNATIONAL BUSINESS MACHINES CORPORATION

Edan
Dionne

Digitally signed by Edan
Dionne
Date: 2020.04.07
12:29:11 -04'00'

By:

Name:

Title:

State of New York

ss.:

County of Westchester

On **the**__ day of _____ in the year of 2019, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the executed the instrument.

Notary Public - State of New York

I.PARK EAST FISHKILL LLC

By: _____
Name: Joseph Cotter
Title: President

State of New York

ss.:

County of Westchester

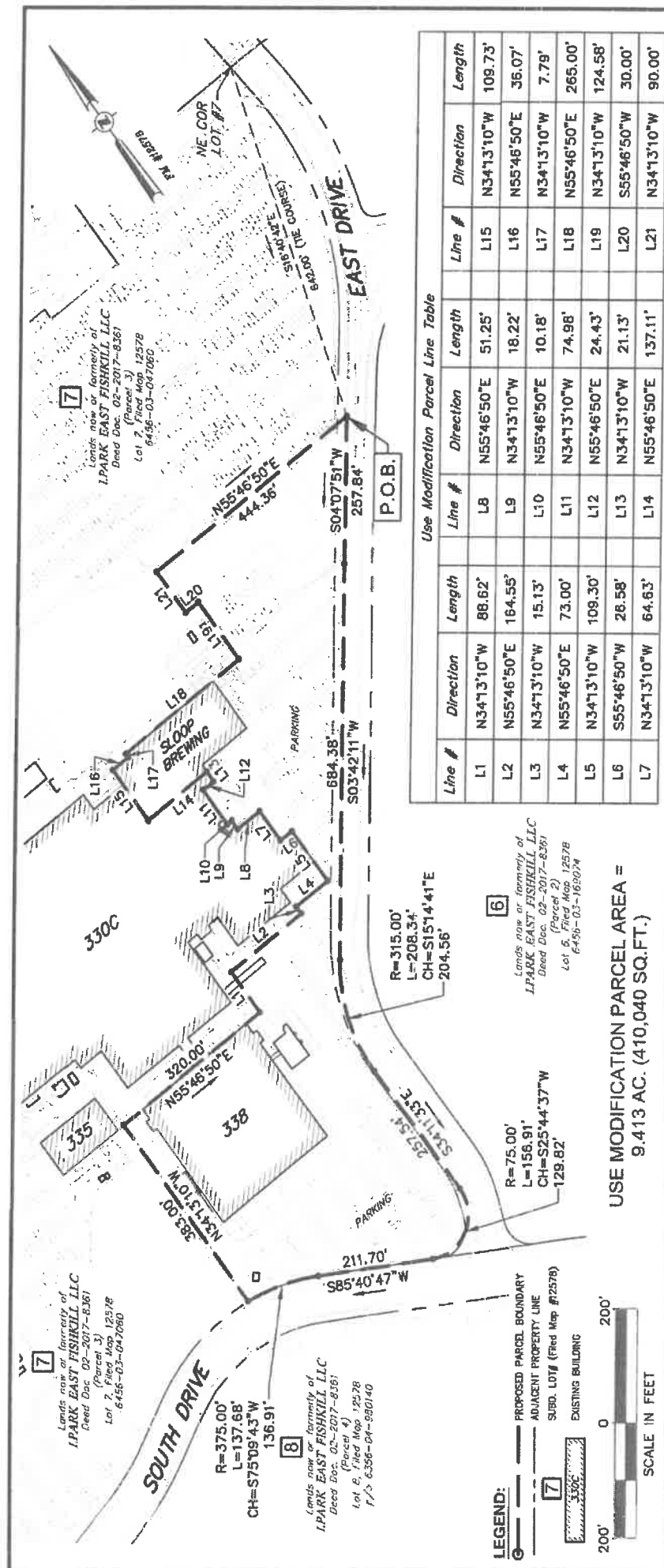
On the 2nd day of April in the year of 2019, before me, the undersigned, personally appeared Joseph Cotter, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the executed the instrument.

Daniel Schuyler
Notary Public - State of New York

DANIEL SCHUYLER
Notary Public, State of New York
No. 01111111111111111111
Qualified to Notary Public County
Commission Expires Aug. 25, 2021

Exhibit A-1

Map of Designated Area



Use Modification Parcel Line Table

Line #	Direction	Length	Line #	Direction	Length
L1	N34°13'10"W	88.62'	L8	N55°46'50"E	51.25'
L2	N55°46'50"E	164.55'	L9	N34°13'10"W	18.22'
L3	N34°13'10"W	15.13'	L10	N55°46'50"E	10.18'
L4	N55°46'50"E	73.00'	L11	N34°13'10"W	74.98'
L5	N34°13'10"W	109.30'	L12	N55°46'50"E	24.43'
L6	S55°46'50"W	28.58'	L13	N34°13'10"W	21.13'
L7	N34°13'10"W	64.63'	L14	N55°46'50"E	137.11'
			L21	N34°13'10"W	90.00'

checked
FJM
date
08/12/19
scale
1"=200'
project no.
51718.03
sheet no.
SV1

LANDSCAPE ARCHITECTURE CO., D.P.C. CHAZEN ENGINEERING, LAND SURVEYING EXHIBIT MAP OF USE MODIFICATION PARCEL SLOOP BREWING COMPANY TOWN OF EAST FISHKILL, DUTCHESS COUNTY, NEW YORK

ALL RIGHTS RESERVED. NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF CHAZEN ENGINEERING, LAND SURVEYING. THIS MAP IS BASED ON AN ACTUAL FIELD SURVEY COMPLETED JULY 24, 2019 AND "AS SHOWN" MAP WAS MADE BY ME OR UNDER MY DIRECTION, AND CONFORMS WITH THE USUAL STANDARD PRACTICES ADOPTED BY THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND SURVEYORS.

OFFICE LOCATIONS:

- 20 Hudson Valley Office:
21 Fair Street
Poughkeepsie, New York 12601
Phone: (845) 454-3880
- North Country Office:
20 Elm Street, Suite 110
Fort Plain, New York 13061
Phone: (518) 897-0013
- Capital District Office:
2418 34th Street, Suite 103
Saratoga Springs, New York 12156
Phone: (518) 273-0655
- Westchester NY Office:
1 North Broadway, Suite 803
Yonkers, New York 10701
Phone: (914) 897-8510
- Shawnee, Tennessee Office:
2418 34th Street, Suite 103
Nashville, Tennessee 37212
Phone: (615) 380-1359
- Chattanooga, Tennessee Office:
427 E. 5th St., Suite 201
Chattanooga, Tennessee 37403
Phone: (423) 241-8375



USE MODIFICATION PARCEL AREA =
9.413 AC. (410,040 SQ.FT.)

LEGEND:

- PROPOSED PARCEL BOUNDARY
- ADJACENT PROPERTY LINE
- SUBD. LOT# (Filed Map #72578)
- EXISTING BUILDING

SCALE IN FEET

200' 0 200'

Exhibit A-2

Description of Designated Area



Civil Engineers
Land Surveyors
Planners
Environmental & Safety Professionals
Landscape Architects
Transportation Planners & Engineers

HUDSON VALLEY OFFICE

21 Fox Street
Poughkeepsie, NY 12601
P: 845.454.3980 or 888.539.9073
www.chazencompanies.com

SURVEY DESCRIPTION

ALL that certain plot, piece or parcel of land situate, lying and being in the Town of East Fishkill, County of Dutchess, and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the westerly edge of the paved road of East Drive at the northeasterly corner of the herein described parcel, said point being located S 16°40'42" E 642.00 feet from the northeasterly corner of Lot 7 as shown a map entitled "Final Subdivision Plat Globalfoundries U.S. 2 LLC" prepared by Chazen Engineering, Land Surveying & Landscape Architecture Co., D.P.C., dated April 1, 2016 and recorded in the Office of the Dutchess County Clerk on August 3, 2017 as Filed Map No. 12578;

Thence running southerly through East Drive, along the easterly side of the herein described parcel, and generally along the westerly side of the paved road of East Drive, S 04°07'51" W 257.84 feet, S 03°42'11" W 684.38 feet to a point;

Thence continuing through East Drive on a curve to the left having a radius of 315.00 feet, an arc length of 208.34 feet, and a chord bearing S 15°14'41" E 204.56 feet to a point;

Thence along the westerly line of East Drive, S 34°11'33" E 257.54 feet, and on a curve to the right having a radius of 75.00 feet, an arc length of 156.91 feet, and a chord bearing S 25°44'37" W 129.82 feet to a point on the southerly side of the herein described parcel, said point also being on the division line between Lot 7 and South Drive as shown on said Filed Map;

Thence running westerly along the northerly line of said South Drive and the southerly line of said Lot 7, S 85°40'47" W 211.70 feet, on a curve to the left having a radius of 375.00 feet, an arc length of 137.68 feet, and a chord bearing S 75°09'43" W 136.91 feet to a point being the southwest corner of the herein described parcel,

Thence through said Lot 7, N 34°13'10" W 383.00 feet to a point in range with the north line of a building, easterly along the north line of said building, N 55°46'50" E 320.00 feet to a point, N 34°13'10" W 88.62 feet, N 55°46'50" E 164.55 feet, N 34°13'10" W 15.13 feet, N 55°46'50" E 73.00 feet to a point in range with the east line of a building, and N 34°13'10" W 109.30 feet to a building corner;

Thence running along the lines of said building the following courses and distances, S 55°46'50" W 26.58 feet to a building corner, N 34°13'10" W 64.63 feet to a building corner, S 55°46'50" W 51.25 feet to a building corner, N 34°13'10" W 18.22 feet to a building corner, S 55°46'50" W 10.18 feet to a building corner, N 34°13'10" W 74.98 feet to a building corner, N 55°46'50" E 24.43 feet to a building corner, N 34°13'10" W 21.13 feet to a point along said building line;

Thence through said building, S 55°46'50" W 137.11 feet, and N 34°13'10" W 109.73 feet to a building corner;

Thence running easterly along the northerly lines of said building, N 55°46'50" E 36.07 feet to a building corner, N 34°13'10" W 7.79 feet to a building corner, and N 55°46'50" E 265.00 feet to a point,

Thence continuing through Lot 7, N 34°13'10" W 124.58 feet, S 55°46'50" W 30.00 feet, and N 34°13'10" W 90.00 feet to the northwest corner of the herein described parcel;

Thence easterly continuing through Lot 7 and along the northerly line of the herein described parcel, N 55°46'50" E 444.36 feet to the point or place of **BEGINNING**.

CONTAINING 9.413 ACRES MORE OR LESS

August 12, 2019

New York: Hudson Valley • Capital District • North Country • Westchester

Tennessee: Nashville • Chattanooga **Oregon:** Portland

Chazen Engineering, Land Surveying & Landscape Architecture Co. DPC (NY) • Chazen Engineering Consultants, LLC (TN/OR)