

Ulster County  
Nina Postupack  
County Clerk  
Kingston, NY 12401

05-21810

60 2011 00014539

Volm-5201 Pg-263

Instrument Number: 2011- 00014539

As

Recorded On: October 28, 2011

D14 - Easement

Parties: KITHKIN CORP

To

MARBLETOWN TOWN BY BD

Billable Pages: 12

Recorded By: DISTASI MORIELLO&MURPHY LAW PLLC

Num Of Pages: 12

Comment:

**\*\* Examined and Charged as Follows: \*\***

D14 - Easement	100.50	Tax Affidavit TP 584	5.00				
Recording Charge:	105.50						
	Amount	Consideration Amount	RS#/CS#				
Tax-Transfer	0.00	0.00	1042	Basic	0.00		
MARBLETOWN				Local	0.00	Special Additional	0.00
				Additional	0.00	Transfer	0.00
Tax Charge:	0.00						

**\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\***

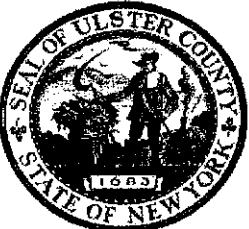
I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Ulster County,

**File Information:**

Document Number: 2011- 00014539  
Receipt Number: 1085790  
Recorded Date/Time: October 28, 2011 12:02:38P  
Book-Vol/Pg: Bk-D VI-5201 Pg-263  
Cashier / Station: s smar / Cashier Workstation 6

**Record and Return To:**

DISTASI MORIELLO&MURPHY LAW PLLC  
PO BOX 915  
HIGHLAND NY 12528



*Nina Postupack*

Nina Postupack Ulster County Clerk

12  
17  
34

**AMENDED ENVIRONMENTAL PROTECTION EASEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this 9 day of AUGUST, 2011, by and between Kithkin Corp., ("Grantor"), having an address of 186 Mohonk Road, High Falls, New York 12440, and the Town Boards of the Towns of Marbletown and Rosendale, as Commissioners of the High Falls Water Districts, two ad valorem special improvement districts created in 2000 and managed under an inter-municipal agreement between the Town of Marbletown, Ulster County, New York, and the Town of Rosendale, Ulster County, New York, and having its principal places of business at Marbletown Town Hall, Route 209, Stone Ridge, New York, 12484 and Rosendale Town Hall, 424 Main Street, Rosendale, New York, 12472, ("Grantee") .

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the county of Ulster, State of New York, more particularly described on **Exhibit A**, attached hereto and made a part hereof, together with any buildings and improvements thereon and appurtenances thereto (the "Property"), which Property is also subject to a deed executed on the 19th day of August, 2005 and recorded as Ulster County Document Number 2005-00021811 which conveyed a portion of the Property and an access road easement to the High Falls Water District;

WHEREAS, the Property is part of the Mohonk Road Industrial Plant Superfund Site ("Site"), which the U.S. 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 January 19, 1999; and

WHEREAS, in a Record of Decision dated March 31, 2000 (the "ROD"), the Regional Administrator of EPA Region II selected, and the New York State Department of Environmental Conservation ("NYSDEC") concurred with, a "response action" for the Site, which provides, in part, for the following actions: continued operation of a groundwater extraction and treatment plant ("GWTP") constructed by EPA in 1999 as part of a removal action in order to contain migration of the most significantly contaminated groundwater emanating from the Property (the "nearfield plume"), expansion of the extraction and treatment system to address the rest of the plume (the "farfield plume"), construction of a drinking water treatment plant ("DWTP") as an alternative public water supply, excavation and disposal off-Site of contaminated soils discovered at the MRIP Property during EPA's removal action, and the implementation

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of institutional controls to prevent future use of the bedrock aquifer in the impacted or threatened area and protect the effectiveness of the remedy; and

WHEREAS, the soil removal work has been completed and construction of the DWTP was projected to begin in the Summer of 2005 with a projected completion date of Summer 2006; and

WHEREAS, the parties hereto have agreed that Grantor shall grant a permanent easement and covenant a) to provide a right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the response action; and b) to impose on the Property use restrictions that will run with the land for the purpose of protecting 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: Grantor, on behalf of itself, its successors and assigns, in consideration of the implementation and operation of the remedy selected in the ROD and other good and valuable consideration, including EPA's agreement described in Paragraph 3.c., below, to offer to Grantor the GWTP as such time as it is surplus, does hereby give, grant, covenant and declare in favor of the Grantee that the Property shall be subject to the restrictions on use and rights of access set forth below, and does give, grant and convey to the Grantee with general warranties of title the perpetual right to enforce said restrictions and rights, 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, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions on use: The following restrictions on use apply to the use of the Property, run with the land and are binding on the Grantor: Grantor shall refrain from installing or using any groundwater wells at the Site, without EPA's permission; and disturbing or interfering with the groundwater treatment remedy selected in the March 31, 2000 Record of Decision for the Site, including any extraction wells, pipes, discharge systems or related equipment, without EPA's written permission. In addition, if Grantor expands the existing building or constructs a new building, Grantor shall take appropriate measures to ensure that there is no excess soil vapor intrusion.

- a) Modification or termination of restrictions: The restrictions on use 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 the prior written consent of EPA, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form.
- b) Right of access: A right of access to the Property at all reasonable times for the following purposes shall run with the land and be binding on Grantor:
- i) Implementing the response actions in the ROD, including but not limited to, continued operation of the GWTP, including the near-field and far-field plume extraction wells and appurtenant piping and related utilities, construction and operation of the DWTP, including water distribution pipelines, the use, as long as necessary, of the near- and far-field extraction wells and piping as a back-up source of water for the DWTP, and implementation of a groundwater monitoring program to evaluate the effectiveness of the remedy;
  - ii) Verifying any environmental data or information relating to the Site;
  - iii) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
  - iv) Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
  - v) Implementing additional or new response actions under CERCLA.
- c) Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein. In particular, EPA agrees that Grantor reserves its rights to the Property underlying the GWTP constructed and operated by EPA. Grantor's conveyance of this easement is conditioned on the agreement that at such time as EPA (or, if during such time as the operation and maintenance ("O&M") of the Site has been assumed by NYSDEC, the NYSDEC), in its sole discretion determines that groundwater quality standards have been achieved and that the GWTP is surplus, the GWTP shall be offered to the Grantor as surplus property. If Grantor determines that the GWTP and/or the equipment therein are not of use to Grantor, the GWTP and/or the equipment therein shall be removed by EPA, or by NYSDEC if during the period of NYSDEC's O&M operations. This agreement to remove the GWTP at such time shall not affect the continued right of the Grantee to use the extraction well system as a back up water supply source.

- d) 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.
- e) No public access and use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.
- f) Public notice: Grantor agrees 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: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE [insert name of records office] ON \_\_\_\_\_, 20\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND ENFORCEABLE BY, THE HIGH FALLS WATER DISTRICT, AND, AS THIRD PARTY BENEFICIARIES, BY THE UNITED STATES OF AMERICA AND THE STATE OF NEW YORK.**

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

- g) 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.
- h) Damages: 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.
- i) Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
- j) Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is

free and clear of encumbrances and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

- k) 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:

Kithkin Corp.  
186 Mohonk Road  
High Falls, New York 12440

To Grantee:

Town Boards of the Towns of Marbletown and Rosendale  
as Commissioners of the High Falls Water Districts  
Marbletown Town Hall,  
Route 209  
Stone Ridge, NY 12484

and

Rosendale Town Hall  
424 Main Street  
Rosendale, NY 12472

A copy of each such communication shall also be sent to the following:

To EPA:

Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 17th Floor  
New York, NY 10007-1866  
Att: Mohonk Rd. Ind. Plant  
Superfund Site Attorney

and

To NYSDEC:

Director, Division of Environmental Remediation  
NYS Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-7014  
Att: Mohonk Rd. Ind. Plant  
Superfund Site Project Manager

1) General provisions:

i) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.

ii) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

iii) 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.

iv) Entire agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein; provided that nothing in this instrument shall be deemed to alter or modify the Consent Decree.

v) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

vi) 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.

vii) 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 Property. 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 include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns.

viii) 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.

ix) 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.

x) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, and NYSDEC shall be, on behalf of the public, third-party beneficiaries 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 or NYSDEC.

xi) Amendment of Prior Easement: This environmental easement amends the provisions of a prior environmental easement dated August 19, 2005 and filed with the Ulster County Clerk's Office as Instrument Number 2005-00021810 by adding to Paragraph 3 the requirement that, if Grantor expands the existing building or constructs a new building, Grantor shall take appropriate measures to ensure that there is no excess soil vapor intrusion. ✓

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 9th day of August, 2011.

Kithkin Corp.

By: *Sidney Reiss*

Sidney Reiss

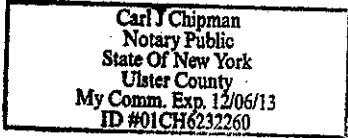
Its: President



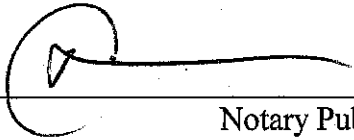
STATE OF NEW YORK )

)ss.:

COUNTY OF ULSTER )



On the 9th day of August, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared SIDNEY REISS, President of Kithkin Corp., 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, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

This instrument is accepted this 18 day of August, 2011.

Town Boards of the Towns of Marbletown and Rosendale  
as Commissioners of the High Falls Water Districts

By: [Signature]  
Brooke Pickering Cole  
High Falls Water District  
By Supervisor Town of Marbletown

~~STATE OF New York )  
 ) ss  
COUNTY OF Ulster )~~

On the 18 day of August in the year 2011 before me personally came Brooke Pickering Cole to me known, who, being duly sworn, did depose and say that he/she/they reside(s) in Town of Marbletown [if the place of residence is in a city, include the street and street number, if any, thereof]; that he/she/they is [are] the [president or other officer or director or attorney in fact duly appointed] of the [name corporation], the corporation described in and which executed the above instrument; that he/she/they know(s) the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he/she/they signed his/her/their name(s) thereto by like authority.

Witness my hand and official seal hereto affixed the day and year written above.

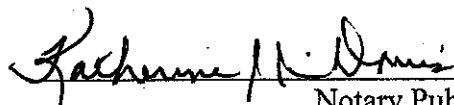
[Signature]  
Tamara  
Town of Marbletown

[Signature]  
Notary Public in and for the  
State of New York  
My Commission Expires: 07/31/2013

KATHERINE A. CAIRO DAVIS  
Notary Public, State of New York  
4843340  
Qualified in Ulster County  
Commission Expires 07/31/2013

STATE OF NEW YORK )  
 )ss.:  
COUNTY OF ULSTER )

On the 18th day of August, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared BROOKE PICKERING COLE, Supervisor Town of Marbletown, for Commissioners of the High Falls Water District, 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, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

KATHERINE A. CAIRO DAVIS  
Notary Public, State of New York  
4843340

Qualified in Ulster County  
Commission Expires 07/31/2013

Attachment:

Exhibit A - legal description of the  
Property

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Marbletown, near High Falls, County of Ulster, State of New York, being bounded and described as follows:

BEGINNING at a point on the presumed centerline of Mohonk Road (a.k.a Mountain Rest Road) where the same is intersected by the southeasterly prolongation of the southwesterly bounds of the lands, now or formerly, Mary Lou Richards, as described in Liber 1514 of deeds at Page 671 and as marked by a stonewall. Said point being South  $40^{\circ} 5' 10''$  E. 35.75 feet from a one inch diameter iron pipe found near the end of the stonewall.

Thence along the presumed centerline of Mohonk Road, South  $39^{\circ} 48' 43''$  W. 627.00 feet.

thence leaving the road and passing through a  $5/8$ " diameter iron rod, set on line at 18.00 feet, running with the traces of a barbed wire fence for the beginning of the course and with the trend of a stonewall, for the latter portion of the course, North  $40^{\circ} 22' 15''$  W. 1085.53 feet to a red cedar tree at a stonewall corner, marking an angle point in the bounds of the land, now or formerly, Daniel Kelly, as described in Liber 1891 of Deeds at Page 301.

Thence along the southeasterly bounds of the lands of Daniel Kelly running with the trend of a stonewall, North  $49^{\circ} 50' 40''$  E. 617.28 feet to a white oak tree at a stonewall intersection, marking the southwesterly bounds of the lands, now or formerly, Louis & Adaire Crepet, as described in Liber 695 of Deeds at Page 591.

Thence along the southwesterly bounds of Crepet, running along a stonewall, South  $40^{\circ} 56' 40''$  E. 270.79 feet to a red oak tree at a stonewall and wire fence intersection, marking the westerly corner of the lands, now or formerly, Mary Lou Richards, as described in Liber 1514 of Deeds at Page 671.

Thence along the southwesterly bounds of the lands of Mary Lou Richards, running at or near a stonewall, the following two courses: 1) South  $40^{\circ} 20' 10''$  East. 307.98 feet. 2) South  $40^{\circ} 05' 10''$  East, 397.55 feet to the point of beginning. Bearings based on Magnetic North Sept. 1989.

RECORD AND RETURN TO:

✓ Di Stasi Moriello & Murphy Law PLLC

P. O. Box 915

Highland, NY 12528