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570053160EAS004R

Westchester County Recording & Endorsement Page

Submitter Information

Name: dleeforchelli Phone: 516-248-1700
Address 1: 333 Earle Ovington Blvd., Suite 1010 Fax:
Address 2: Email: dlee@forchellilaw.com
City/State/Zip: Uniondale NY 11553 Reference for Submitter: Cablevision Env Easement

Document Details

Control Number: **570053160** Document Type: **Easement (EAS)**
Package ID: 2017010500099001004 Document Page Count: **10** Total Page Count: **12**

Parties

☐ Additional Parties on Continuation page
2nd PARTY

1st PARTY
1: CABLEVISION OF SOUTHERN WESTCHESTER INC - Other 1: NEW YORK STATE OF - Other
2: 2:

Property

☒ Additional Properties on Continuation page

Street Address: 605 CENTER AVENUE Tax Designation: 8-829-51
City/Town: MAMARONECK TOWN Village:

Cross- References

☐ Additional Cross-Refs on Continuation page

1: 2: 3: 4:

Supporting Documents

1: TP-584

Recording Fees

Statutory Recording Fee: \$40.00
Page Fee: \$55.00
Cross-Reference Fee: \$0.00
Mortgage Affidavit Filing Fee: \$0.00
RP-5217 Filing Fee: \$0.00
TP-584 Filing Fee: \$5.00
Total Recording Fees Paid: **\$100.00**

Transfer Taxes

Consideration: \$0.00
Transfer Tax: \$0.00
Mansion Tax: \$0.00
Transfer Tax Number: 10574

Mortgage Taxes

Document Date:
Mortgage Amount:
Basic: \$0.00
Westchester: \$0.00
Additional: \$0.00
MTA: \$0.00
Special: \$0.00
Yonkers: \$0.00
Total Mortgage Tax: **\$0.00**

Dwelling Type: Exempt: ☐
Serial #:

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK



Recorded: 03/16/2017 at 11:38 AM

Control Number: **570053160**

Witness my hand and official seal

Timothy C. Idoni
Westchester County Clerk

Record and Return To

☐ Pick-up at County Clerk's office

Forchelli, Curto, et al.
333 Earle Ovington Blvd. Suite 1010

Uniondale, NY 11553
Attn: Dana Lee, Esq.

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Properties Addendum

604 FAYETTE AVENUE 10543

MAMARONECK TOWN

8 829 69

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

THIS INDENTURE made this 7th day of February, 2017, between Owner(s) Cablevision of Southern Westchester, Inc. f/k/a UA-Columbia Cablevision of Westchester, Inc., having an office at 1111 Stewart Avenue, Bethpage, NY 11714, County of Nassau, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 605 Center Avenue and 604 Fayette Avenue in the Village of Mamaroneck, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel numbers: Section 8 Block 829 and Lots 51 and 69, respectively, being the same as that property conveyed to Grantor by deed dated September 22, 1988 and recorded in the Westchester County Clerk's Office in Liber 9350 and Page 255. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.344 +/- acres, and is hereinafter more fully described in the Land Title Survey dated June, 2010 and last revised on May 10, 2012 prepared by URS Corporation, which is attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, pursuant to Order on Consent Index # A3-0534-1205, the construction activities associated with the remedial action at the Site have been completed by Rohm and Haas

Company, having an office at 3100 State Road, Croyden, Pennsylvania 19021 ("Respondent") and groundwater remediation and long-term monitoring activities are ongoing;

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: A3-0534-1205, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained by Respondent as specified in the Site Management Plan (SMP);

(i) Grantor and subsequent Site owners shall ensure that the Environmental Easement remains in place and effect.

(3) All Engineering Controls must be inspected by Respondent at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Westchester County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

- (i) Grantor shall adhere to the institutional controls required by the Environmental Easement, including the prohibition of the use of groundwater underlying the property without treatment rendering it safe for intended use and the prohibition of vegetable gardens and farming; and
- (ii) Respondent shall undertake periodic groundwater sampling.

(5) Data and information pertinent to Site Management of the Controlled Property must be reported by Respondent at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

- (i) Grantor and subsequent Site owners shall submit a written statement certifying that to the their knowledge and belief the controls at the property are unchanged from the previous certification;
- (ii) Grantor and subsequent Site owners shall notify the Department of changes of Site use and/or ownership; and
- (iii) Grantor and subsequent Site owners shall report emergencies to the Department and other appropriate authorities.

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

- (i) Respondent shall prepare periodic review reports evaluating institutional and engineering controls; and
- (ii) Respondent shall prepare and implement a corrective measures plan, if necessary.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

- (i) Respondent shall operate, maintain, monitor, inspect, and prepare reports evaluating mechanical or physical components of the remedy; and
- (ii) Respondent shall decommission Site monitoring wells at an appropriate time to be determined by the Department.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement. Grantor shall have the right to have a representative accompany agents, employees or other representatives of the State at all times when they are at the site. The unavailability of a representative at the Site shall not be grounds to deny access as contemplated herein.

B. The Controlled Property shall not be used for Residential or Restricted Residential

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

C. The SMP describes certain obligations that the Grantor assumes as a result of Grantor's fee ownership of the Controlled Property. The Grantor assumes the obligations identified in Paragraphs 2(A)(1), 2(A)(2)(i), 2(A)(4)(i), 2(A)(6) and 2(A)(9) above. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP as identified in Paragraphs 2(A)(1), 2(A)(2)(i), 2(A)(4)(i), 2(A)(6) and 2(A)(9) above and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall annually, or at such time as NYSDEC may require, submit to NYSDEC a written statement certifying under penalty of perjury, in such form and manner as the Department may require, that to the best of its knowledge:

- (1) the institutional controls and/or engineering controls employed at such site:
 - (i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(2) the owner will continue to allow the Department and Respondent access to such real property to evaluate such controls;

(3) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(4) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property with reasonable prior notice, in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions. Grantor shall have the right to have a representative accompany agents, employees or other representatives of the State at all times when they are at the site. The unavailability of a representative at the Site shall not be grounds to deny access as contemplated herein.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Respondent and Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Respondent and Grantor can cure such breach or suspected breach and give Respondent and 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 Respondent and Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

Notice to Grantee shall go to:

With a copy to:

Notice to Grantor shall go to:

With a copy to:

All notices and correspondence shall be delivered by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of receipt of the executed instrument from the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Grantor and the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: _____

Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 7th day of February, in the year 2017 before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2018

SCHEDULE "A" PROPERTY DESCRIPTION

Legal Description
Former EMCA Site
Village of Mamaroneck, Westchester County, New York
Known as Site # 360025

SITE DESCRIPTION Being and lying in Town of Mamaroneck, County of Westchester,
State of New York

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHWESTERLY SIDE OF OGDEN AVENUE AND THE NORTHWESTERLY SIDE OF CENTER AVENUE, BEING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED PIECE, THENCE RUNNING ALONG THE NORTHWESTERLY SIDE OF CENTER AVENUE SOUTH 40°26'25" WEST, A DISTANCE OF 75.00 FEET TO A POINT; THENCE TURNING AND RUNNING NORTH 49°33'35" WEST, A DISTANCE OF 100.00 FEET ALONG LAND NOW OR FORMERLY OF UA-COLUMBIA CABLEVISION OF WESTCHESTER, INC.; THENCE RUNNING NORTH 49°33'35" WEST, A DISTANCE OF 100.00 FEET ALONG LAND NOW OR FORMERLY OF 610 FAYETTE ASSOCIATES TO A POINT ON THE SOUTHEASTERLY SIDE OF FAYETTE AVENUE; THENCE TURNING AND RUNNING ALONG SAID STREET NORTH 40°26'25" EAST, A DISTANCE OF 75.00 FEET TO A POINT MARKING THE INTERSECTION OF THE SOUTHEASTERLY SIDE OF FAYETTE AVENUE AND THE SOUTHWESTERLY SIDE OF OGDEN AVENUE; THENCE TURNING AND RUNNING ALONG SAID OGDEN AVENUE SOUTH 49°33'35" EAST, A DISTANCE OF 200.00 FEET TO THE POINT AND PLACE OF BEGINNING. THE ABOVE DESCRIBED PARCEL CONTAINS 15,000 SQUARE FEET OR 0.3444 ACRES OF LAND.