

Lamson, Joan M.

From: noreply@cscglobal.com
Sent: Monday, October 7, 2024 10:17 AM
To: Lamson, Joan M.
Subject: CSC ePrepare Notification - Package 81299714 has recorded in Saratoga County, NY
Attachments: 81299714 Delaration Of Covenants, Restrictions And Environmental Easement.pdf

Hello,

Package: **81299714** has returned with the following document(s).

Recorded Date: 10/7/2024 10:05:22 AM

Jurisdiction: Saratoga County, NY

Document Name: 81299714 Delaration Of Covenants, Restrictions And Environmental Easement

Status: Recorded

Recordation Fee: \$0.00

Entry Number: 2024024999

Thank you!

CSC®
eRecording.com
cscglobal.com



We are the business behind business



SARATOGA COUNTY – STATE OF NEW YORK
SARATOGA COUNTY CLERK
CRAIG A. HAYNER
40 MCMASTER STREET, BALLSTON SPA, NY 12020

COUNTY CLERK'S RECORDING PAGE
THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH



INSTRUMENT #: 2024024999

Receipt#: 2024212550889

Clerk: AMM

Rec Date: 10/07/2024 10:05:22 AM

Doc Grp: D

Descrip: DECLARATION OF RESTRICTIONS
W/EASEMENTS

Num Pgs: 14

Party1: SARATOGA RESTAURANT HOSPITALITY
LLC

Party2: STATE OF NEW YORK PEOPLE OF
Town: SARATOGA SPRINGS

Recording:

Pages	0.00
Cultural Ed	0.00
Records Management - Coun	0.00
Records Management - Stat	0.00
Names	0.00

Sub Total: 0.00

Transfer Tax
Transfer Tax 0.00

Sub Total: 0.00

Total: 0.00

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
Transfer Tax #: 1347
Transfer Tax

Total: 0.00

Record and Return To:

ELECTRONICALLY RECORDED BY CSC INGE0

This page constitutes the Clerk's endorsement, required by section 316-a (5) & 319 of the Real Property Law of the State of New York with a stamped signature underneath.

Saratoga County Clerk

County: Saratoga

Site No: NYD980664361

DEC Site No.: 546015

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

This Declaration of Covenants, Restrictions and Environmental Easement is made this 18 day of September 12, 2024, by and between Saratoga Restaurant Hospitality LLC, a limited liability company organized and existing under the laws of the State of New York, having its principal office at 116 Wolf Road Albany NY 12205 ("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 a parcel of land located at 47 Excelsior Avenue, City of Saratoga Springs, County of Saratoga Springs, State of New York, which is more particularly described on Exhibit A (hereinafter, the "Property"), and is attached hereto and made a part hereof. The Property is within the Niagara Mohawk Power Corporation Superfund Site ("Site") together with any buildings and improvements thereon and appurtenances thereto 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 February 21, 1990, 55 Fed. Reg. 6154; and

WHEREAS, in a Record of Decision dated September 29, 1995 ("ROD"), 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: a) removal of soil contaminated with Polycyclic Aromatic Hydrocarbons ("PAH") and non-aqueous phase liquid ("NAPL"); b) subsurface barrier wall installation and groundwater management; c) groundwater treatment and monitoring; d) dredging and treatment of contaminated sediments; e) remediation of historic sewers followed by sealing in order to remove sewers as a contamination pathway; and f) implementation of institutional controls; and

WHEREAS, on May 15, 1997 a Consent Decree, Index no: 97-CV-0136, was entered in the United States District Court for the Northern District of New York, and requires Niagara Mohawk Power Corporation ("NMPC") to implement the remedy selected in the ROD. The Consent Decree required NMPC to secure institutional controls on property not owned by NMPC should EPA determine they were necessary. These institutional controls included: a) limiting the use of properties for solely industrial or commercial, non-residential purposes; b) prohibiting the use of groundwater for any non-remedial purposes; c) restricting the use of any property in a manner that EPA determines would adversely affect the integrity of any containment system, treatment system, collection system, or monitoring system; d) prohibiting the disturbance of either the surface or subsurface of the property by filing, drilling, excavation,

removal of topsoil, and other materials except as approved by the United States; and e) ensuring that the property shall not be used in any manner that would diminish the effectiveness of the remedial activities. Exhibit B describes and depicts the remedial elements that exist at and below ground level at the Property, and is attached hereto and made a part hereof; and

WHEREAS, the parties hereto have agreed that 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 and EPA, 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: Grantor, on behalf of itself, its successors and assigns, for ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, 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 Non-Interference with Engineering Controls: The following restrictions 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) Activities that could affect the integrity of the remedial elements described and depicted in Exhibit B, including, excavation, digging, and construction activities extending below the ground surface are prohibited unless conducted in compliance with an EPA-approved Site Management Plan ("SMP") that contains long-term management provisions for ensuring protection of the remedy;
 - b) Use of the Property is limited to commercial and/or industrial purposes;
 - c) Construction of any new structures shall be prohibited without the performance of an evaluation for vapor intrusion followed by, if necessary, mitigation measures performed pursuant to an EPA-approved SMP;

-
- d) The shallow groundwater aquifer (above the silty-clay stratigraphic layer) underlying the Property shall not be used for drinking water or any other purpose excluding for the purpose of conducting remedial activities related to the Site; and
- e) Grantor, for itself and its successors and assigns, covenants and agrees to cooperate and not interfere with NMPC's operation, maintenance, and monitoring of the following engineering controls at the Property:
- i. containment system in the form of: (1) a low-permeability subsurface mat and liner systems; (2) subsurface barrier walls constructed of either water-tight steel sheet pile or grout; and (3) in-situ soil solidification/stabilization monolith;
 - ii. soil cover system consisting of either: (1) a composite surface cap that includes an impermeable liner system; or (2) approximately 0.5 to 2 feet of clean soil/stone material overlying a geotextile demarcation layer; and
 - iii. any monitoring wells and associated piping existing on the Property.
4. Modification or termination of restrictions and covenants: 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, provided, however, that any modification or termination of said restrictions 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 shall be made, not less than 30-days in advance of any modification or termination, in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument.
5. Right of access: Grantors hereby convey to Grantee and to EPA a right of access to the Property at all reasonable times for the following purposes, which right of access shall run with the land and be binding on Grantor, its successors and /or assigns, and on any tenants or any other parties having an interest and/or rights to any portion of the Property:
- a) Implementing the response actions selected in the 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 or of any federal or state environmental laws or regulations;
 - d) Conducting investigations under CERCLA relating to 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.
6. 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.
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 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 A
DECLARATION OF COVENANTS, RESTRICTIONS AND
ENVIRONMENTAL EASEMENT, DATED _____, 2024, RECORDED IN
THE SARATOGA COUNTY CLERK'S OFFICE ON _____, 2024, IN
BOOK _____, PAGE _____, IN FAVOR OF, AND 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 certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

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: 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.
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:

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
Superfund and Emergency Management Division
New York Remediation Branch
Attention: Maria Jon, Niagara Mohawk Power Corporation 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: Walter Sainsbury, Niagara Mohawk Power Corporation 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. 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.
- 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.

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.

County: Saratoga

Site No: NYD980664361/ DEC Site No.: 546015

Order No:

Executed this 18th day of Sept, 2024

GRANTOR

SARATOGA RESTAURANT HOSPITALITY LLC

By: John P. King

Title: Member

Grantor's Acknowledgment

STATE OF NEW YORK)
COUNTY OF Albany) ss:

On the 18th day of September, in the year 2024 before me, the undersigned, personally appeared John P. King, 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 Member of Saratoga Restaurant and that by his/her signature on the instrument, the Grantor, upon behalf of which the individual acted, executed the instrument.

Hayley V Smith
Notary Public - State of New York

HAYLEY V SMITH NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01SM6391344 Qualified in Saratoga County My Commission Expires: <u>5/6/2027</u>
--

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 Guglielmi, Director
Division of Environmental Remediation

Date: 10/2/24

Grantee's Acknowledgment

STATE OF NEW YORK)

) ss:
COUNTY OF Albany)

On the 2 day of October, in the year 2024, before me, the undersigned, personally appeared Andrew 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.

Cheryl A. Salem
Notary Public - State of New York

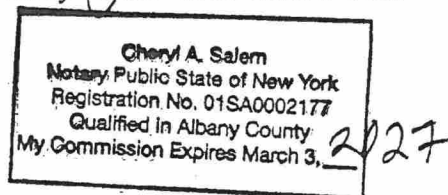


EXHIBIT A
To
Declaration of Covenants, Restrictions and Environmental Easement

Property Description

Niagara Mohawk Power Corporation Superfund Site

All that parcel of land situate in the City of Saratoga Springs, County of Saratoga, State of New York and being more particularly bounded and described as follows:

Beginning at a point located in the northerly bounds of Excelsior Avenue at its intersection with the division line between Niagara Mohawk Power Corp. (L.808, P.191) on the east and lands now or formerly of Spa Steel Products Co., Inc. on the west; thence South 71° 09' 00" West along said northerly bounds, a distance of 214.32 feet to a point; thence through said lands now or formerly of Spa Steel Products Co. Inc. the following three (3) courses and distances:

- 1) North 18° 59' 03" West, a distance of 87.00 feet to a point;
- 2) North 05° 54' 03" East, a distance of 38.98 feet to a point;
- 3) North 52° 10' 25" East, a distance of 246.16 feet to a point located at its

intersection with the division line between lands now or formerly of Niagara Mohawk Power Corporation (L.778, P.320 and L.808, P.191) on the east and lands herein described on the west; thence along said division line the following three (3) courses and distances:

- 1) South 16° 08' 30" East, a distance of 47.78 feet to a point;
- 2) South 71° 23' 20" West, a distance of 25.00 feet to a point;
- 3) South 16° 08' 30" East, a distance of 155.00 feet to the POINT OF

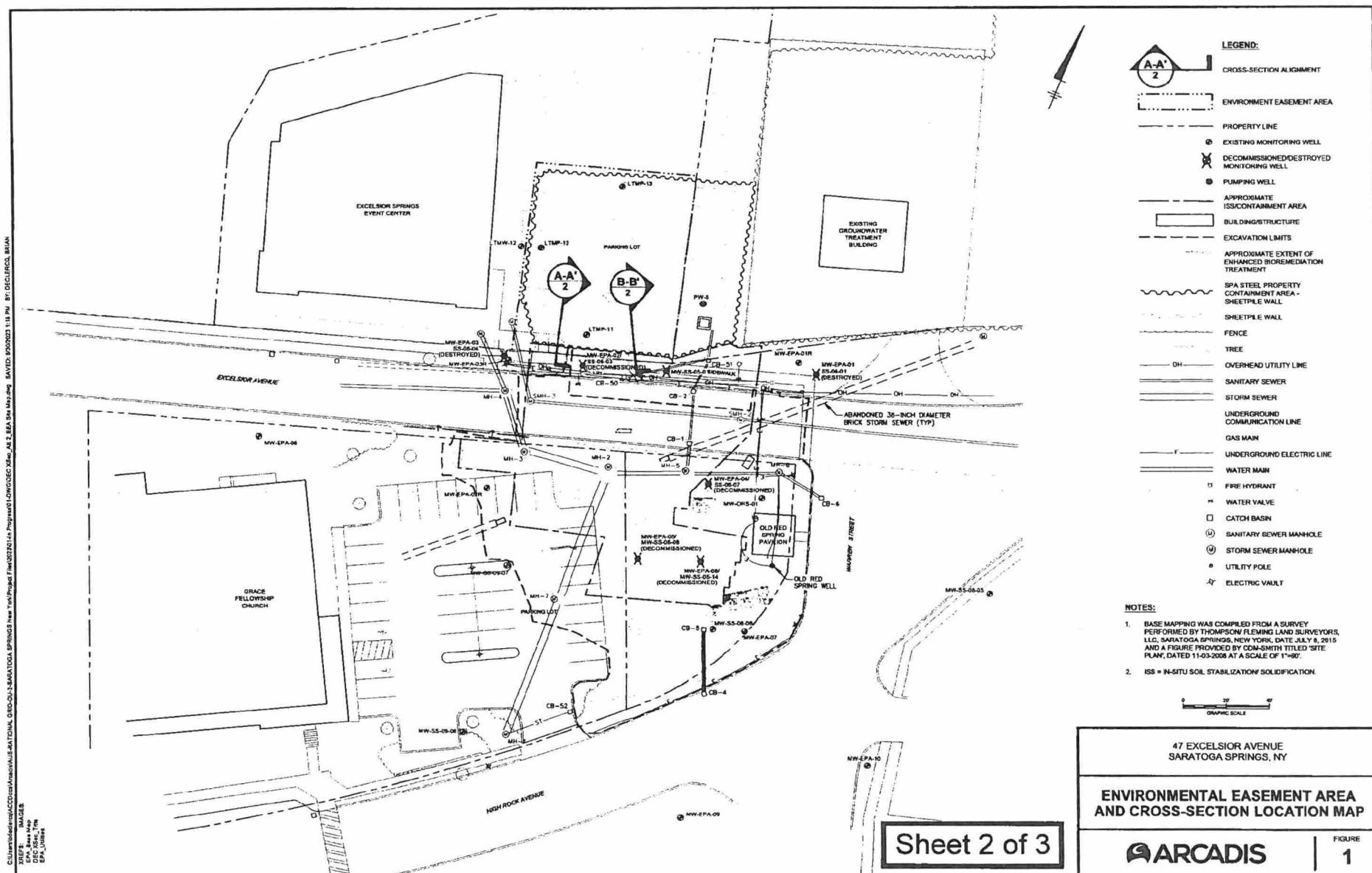
BEGINNING, containing 0.80 acres, more or less.

EXHIBIT B
To
Declaration of Covenants, Restrictions and Environmental Easement
Metes and Bounds Description of Remedial Elements Remaining at the Property
and Depiction (Map)

Niagara Mohawk Power Corporation Superfund Site

All that tract or parcel of land situate in the City of Saratoga Springs, Saratoga County, NY, bounded and described as follows:

Beginning at a point at the intersection of the northerly line of Excelsior Avenue and the westerly line of lands now or formerly of Niagara Mohawk Power Corp. as recorded the Saratoga County Clerk's Office in Book 808 of Deeds, page 191. Thence along the northerly line of said Excelsior Avenue S71°20'53"W, 75.00 feet to a point. Thence through the lands of the grantor N15°56'20"W, 90.01 feet to a point and N71°21'10"E, 75.00 feet to a point. Thence along the westerly line of lands of said Niagara Mohawk Power Corp. S15°56'20"E, 90.00 feet to the point of beginning. Containing 6,743 square feet or 0.155 acre of land.





- NOTES:**
1. SOIL LAYERS AND GROUNDWATER ELEVATION WERE IDENTIFIED USING SOIL BORINGS INSTALLED PREVIOUSLY DURING THE PRE-DESIGN INVESTIGATION AND SUPPLEMENTAL INVESTIGATIONS. SOIL LAYERS AND GEOLOGICAL CONTACT LOCATIONS ARE APPROXIMATE AND INFERRED BETWEEN BORING LOCATIONS.
 2. GROUND SURFACE, IN-SITU SOIL SOLIDIFICATION (STABILIZATION) (SS) MONITOR, SUBSURFACE MAT, AND IMPORTED GROUND FILL AND TOPSOIL LOCATIONS ARE BASED ON SURVEY MEASUREMENTS COLLECTED DURING THE SOIL REMEDIATION ACTION. AS PRESENTED IN THE REMEDIAL ACTION REPORT (ARCADIS, JUNE 2020).
 3. HORIZONTAL SCALE ON SECTION REPRESENTS STATIONING IN FEET.
 4. EXISTING AZ-13 SHEET PILE WALL INSTALLED IN DECEMBER 2007 AND FEBRUARY 2008 BY D.A. COLLINS ENVIRONMENTAL SERVICES AS SHOWN IN THE JANUARY 2008 CONSTRUCTION CERTIFICATION REPORT. TOP OF SUBSISTANCE WALL 2 FEET BELOW GROUND SURFACE.



**CROSS SECTION A-A' &
CROSS SECTION B-B'**

FIGURE 2