



Saratoga County Clerk

CRAIG A. HAYNER

40 McMaster Street, Ballston Spa, New York 12020

Phone (518) 885-2213

Receipt

Receipt Date: 08/22/2024 10:47:12 AM

RECEIPT # 2024212544774

Recording Clerk: AM

Cash Drawer: CASH1

Rec'd Frm: SMPR TITLE AGENCY INC

Instr#: 2024020682

DOC: DECLARATION OF RESTRICTIONS

W/EASEMENTS

DEED STAMP: 472

OR Party: NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

EE Party: NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Recording Fees

Pages	\$50.00
Cover Sheet Fee	\$5.00
Recording Fee	\$20.00
Cultural Ed	\$14.25
Records Management - County	\$1.00
Records Management - State	\$4.75
Names	\$0.00
TP 584	\$5.00

Transfer Tax

Transfer Tax \$0.00

DOCUMENT TOTAL: ----> \$100.00

Receipt Summary

Document Count: 1

TOTAL RECEIPT: ----> \$100.00

TOTAL RECEIVED: ----> \$100.00

CASH BACK: ----> \$0.00

PAYMENTS

Check # 206687 -> \$100.00

County: Saratoga

Site No: NYD980535124

Civil Action No. 98-CV-0014

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

This Declaration of Covenants, Restrictions and Environmental Easement ("Declaration") is made this 7th day of August, 2024, by and between NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, a New York public-benefit corporation ("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 259.97 acre parcel of land located in Town of Malta, County of Saratoga, State of New York, designated on the tax map of the County of Saratoga as parcel number 230-1-75.11 (Section 230, Block 1, Lot 75.11) and located on Hermes Road, Town of Malta, New York, being the same property conveyed to Grantor by deed dated August 20, 1968, and recorded in the Saratoga County Clerk's Office in Book 836 and Page 114, and depicted on the map attached hereto as Exhibit A (hereinafter, the "Property"). The Property includes any buildings and improvements thereon and appurtenances thereto and is part of the Malta Rocket Fuel Area Site ("Site"), which the United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on July 22, 1987; and

WHEREAS, The Site includes a former 165-acre square area ("Test Station"), which was the historic center of rocket and other testing at the Site from approximately 1945 to 1984. The Site also includes portions of predominantly undeveloped woodlands that surround the Test Station parts of which have been impacted by Site-related contaminants in the underlying groundwater.

WHEREAS, in a Record of Decision dated July 18, 1996 ("ROD"), EPA selected the remedy for the Site, which provides for response action that includes, in relevant part, the implementation and maintenance of institutional controls in the form of deed restrictions to prevent ingestion of contaminated groundwater, to restrict withdrawal of groundwater within the vicinity of the plume of volatile organic compounds that could adversely impact the groundwater remedy, and to restrict the Test Station to commercial/industrial use, which is its current land use; and

WHEREAS, the ROD remedy is being implemented at the Site pursuant to a consent decree entitled, United States of America v. Curtiss-Wright Corporation, et. al., bearing Docket Number 98-CV-0014 and entered in the United States District Court for the Northern District of New York on March 16, 1998 ("CD"), with the General Electric Company ("GE") as the "Performing Settling Defendant" under the CD; and

WHEREAS, Grantor entered into an Environmental Restriction Easement and Declaration of Restrictive Covenants, recorded on June 11, 1999, in the Saratoga County Clerk's Office in

Book 1520 and Page 484 ("1999 NYSERDA Easement"), with GE as Grantee, concerning the Site, that, among other things, prohibits extracting, consuming, exposing and/or utilizing the groundwater underlying the Property. The 1999 NYSERDA Easement remains in full force and effect; and

WHEREAS, beginning in 2004, the Test Station and some of the surrounding lands were acquired by the Luther Forest Technology Campus Economic Development Corporation for redevelopment as a technology center; and

WHEREAS, in 2011 and 2014, containers, including drums and cylinders, as well as other waste material were encountered during excavation activities at the Test Station; and

WHEREAS, in May 2018, EPA issued an Explanation of Significant Differences ("ESD") that selected, as more particularly described for the Property below, additional institutional controls for the ROD remedy related to building occupancy and future excavation at the Test Station and within a 200-foot buffer area surrounding the Test Station ("200-Foot Buffer"); and

WHEREAS, a portion of the 200-Foot Buffer is located on the Property and is also more fully depicted on the map attached as Exhibit A (hereinafter, "Property Buffer Area"); 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 Site, and also provide a right of access to the Property in favor of Grantee, all of which shall run with the land, for purposes of implementing, facilitating and monitoring the CERCLA response action in order to protect human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of 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.

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3. Restriction on Use: Grantor shall limit occupancy of new construction in the Property Buffer Area unless appropriate vapor intrusion investigations are conducted and/or mitigation measures (including periodic monitoring) are implemented and approved by EPA. This restriction on the use of the Property, runs with the land and is binding on the Grantor and its successors in title and assigns.
 4. Modification or termination of restrictions and covenants: The restriction specified in the preceding paragraph of this instrument may only be modified or terminated, in whole or in part, in writing, by the Grantee with approval of EPA, provided, however, that any modification or termination of said restriction 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 and ESD;
 - 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: THIS PROPERTY IS SUBJECT TO A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT, DATED _____, 20__, RECORDED IN THE _____ COUNTY CLERK'S OFFICE ON _____, 20__, IN BOOK _____, PAGE _____, AND HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36, ARTICLE 71 OF THE ENVIRONMENTAL CONSERVATION LAW. THE DECLARATION OF COVENANTS, RESTRICTIONS, AND ENVIRONMENTAL EASEMENT IS 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:
 Office of General Counsel
 NYSERDA
 17 Columbia Circle
 Albany, NY 12203-6399

To Grantee:
 Office of General Counsel
 NYS Department of Environmental Conservation
 625 Broadway
 Albany, NY 12233-5500

NYS Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Site Control
625 Broadway
Albany, NY 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 Emergency & Management Division
New York Remediation Branch
Attention: Malta Rocket Fuel Area 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: Malta Rocket Fuel Area 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 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.
- 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 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 mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.

g) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

h) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

i) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA.

17. Recordation: Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner of the New York State Department of Environmental Conservation or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.
 IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Executed this 12th day of MARCH, 2024.

GRANTOR: Doreen M. Harris

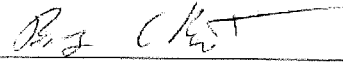
By: Doreen M. Harris

Title: President and CEO

Grantor's Acknowledgment

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

On the 12 day of March, in the year 2024, before me, the undersigned, personally appeared Doreen M Harris, 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 President + CEO of NYSEPDA, and that by his/her signature on the instrument, the Grantor, upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

BARRY C. ROBERTS
NOTARY PUBLIC STATE OF NEW YORK
SARATOGA COUNTY
NO. 01RO6132854
EXPIRES 8/29/20 25

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: 8/7/24

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 7th day of August, 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.

Jennifer Andaloro
Notary Public - State of New York
JENNIFER ANDALORO
Notary Public, State of New York
No. 02AN6098246
Qualified in Albany County
Commission Expires January 14, 2028

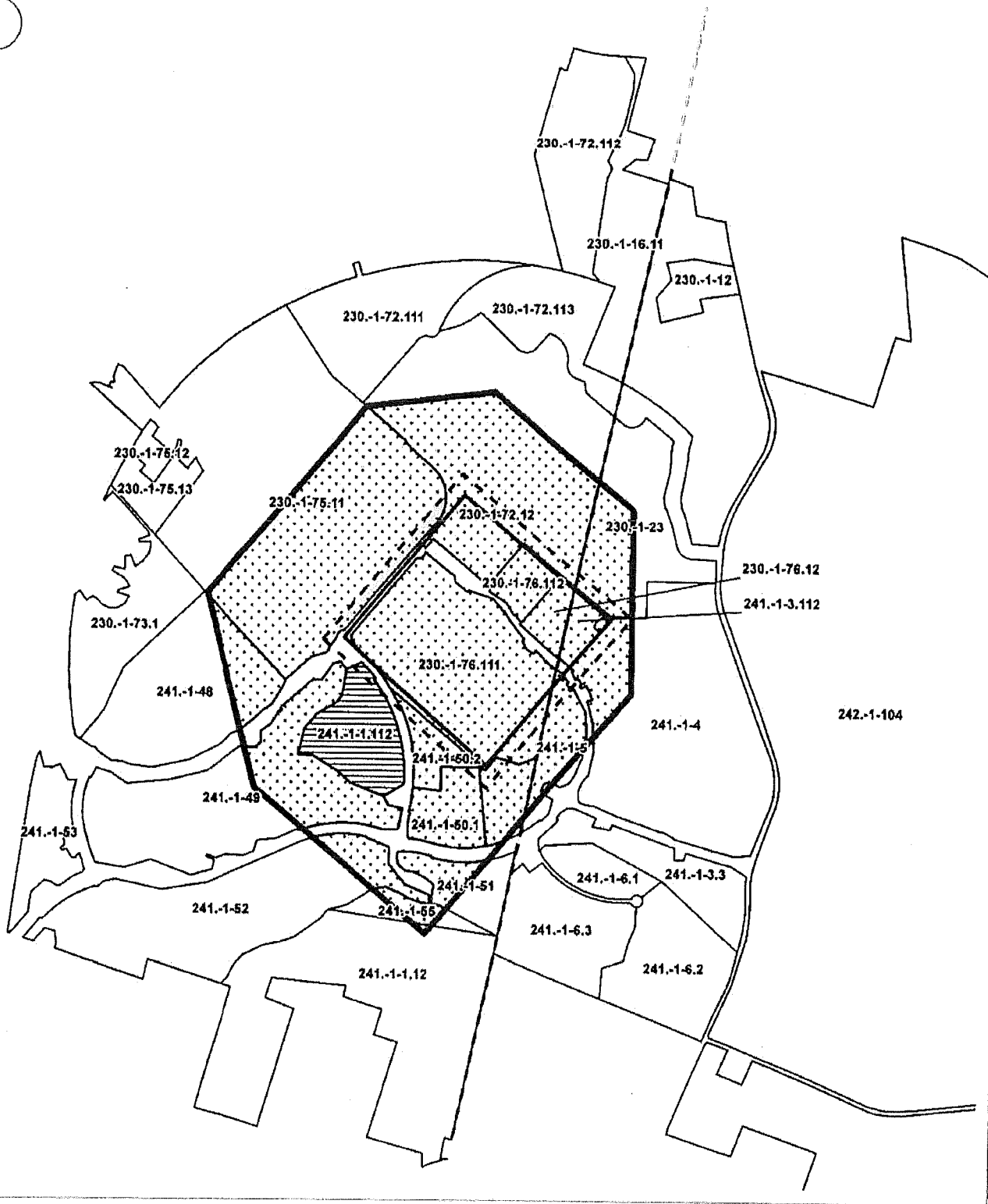
County: Saratoga

Site No: NYD980535124

Civil Action No. 98-CV-0014

EXHIBIT A
To
Declaration of Covenants, Restrictions and Environmental Easement

Property Depiction (Map)
Malta Rocket Fuel Area Superfund Site

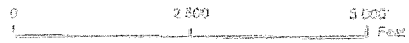


- | | | | |
|--|--|--|---|
| | ENVIRONMENTAL RESTRICTION ZONE | | TOWN LINE |
| | FORMER TEST STATION PROPERTY 200-FT BUFFER | | OTHER PARCELS |
| | FORMER TEST STATION PROPERTY | | LANDS WITHIN ENVIRONMENTAL RESTRICTION ZONE |
| | FORMER TEST STATION PROPERTY | | LANDS OF TOWN OF MALTA NY |

BUFFER ZONE AND EASEMENT BASEMAP

FIGURE 1

RAMBOLL US CONSULTING, INC.
A RAMBOLL COMPANY



Malta Rocket Fuel Area Site
Malta, New York

