THE LAW OFFICE OF JOSEPH YAU, PLLC

ATTORNEY AND COUNSELOR-AT-LAW

139 Centre Street Suite 816 New York New York 10013 telephone 347.788.8304 facsimile 347.658.5989 Joseph Yau, Esq. jyau@jyaulaw.com

August 18, 2016

Via first class mail and email

Bradford Burns, Esq.
NYS Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany NY 12207-2942
bradford.burns@dec.ny.gov

RE:

Environmental Easement for 1128 31st Dr Astoria NY 11106

Site ID No.: C241159

County of Queens, State of New York

Dear Mr. Burns:

Reference is made to the above matter. Enclosed is a copy of the environmental easement recorded on August 12, 2016 as City Register File Number 2016000278636 with the Office of the City Register of the City of New York, County of Queens, together with a true copy of the notice of recorded easement served on the respective local municipalities and proof of service thereof.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Enclosures:

Recorded environmental easement
Notice to municipality

Proof of service (certified mail receipts)

cc:

Sondra Martinkat via email sondra.martinkat@dec.ny.gov Jessica Albin, Esq. via email jessica.albin@dec.ny.gov



NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 10** Document ID: 2016080300503001 Document Date: 07-26-2016 Preparation Date: 08-10-2016 Document Type: EASEMENT Document Page Count: 9 PRESENTER: **RETURN TO:** THE LAW OFFICE OF JOSEPH YAU, PLLC THE LAW OFFICE OF JOSEPH YAU, PLLC 139 CENTRE ST STE 816 139 CENTRE ST STE 816 NEW YORK, NY 10013 NEW YORK, NY 10013 347-788-8304 347-788-8304 PROPERTY DATA Borough Block Lot Unit Address **OUEENS** 502 22 Entire Lot 1128 31ST DR Property Type: INDUSTRIAL BUILDING Easement CROSS REFERENCE DATA CRFN DocumentID Year Reel Page or File Number **PARTIES** GRANTOR/SELLER: GRANTEE/BUYER: NYS DEPT OF ENVIRONMENTAL CONSERVATION GBT REAL ESTATE LLC 1083 MAPLE LN 625 BROADWAY NEW HYDE PARK, NY 11040

ALBANY, NY 12233

NYC Real Property Transfer Tax:

NYS Real Estate Transfer Tax:

Filing Fee:

FEES AND TAXES Mortgage: Mortgage Amount: 0.00 Taxable Mortgage Amount: 0.00 Exemption: TAXES: County (Basic): \$ 0.00 City (Additional): \$ 0.00 Spec (Additional): \$ 0.00 TASF: \$ 0.00 MTA: \$ 0.00 NYCTA: \$ 0.00 Additional MRT: \$ 0.00 TOTAL: \$ 0.00 Recording Fee: \$ 82.00 Affidavit Fee: \$ 0.00

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE

CITY OF NEW YORK

Recorded/Filed

08-12-2016 10:48 City Register File No.(CRFN):

2016000278636

100.00

0.00

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City Register Official Signature

OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

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 11-28 31st Drive in the City of New York, County of Queens and State of New York, known and designated on the tax map of the New York City Department of Finance as tax map parcel number: Block 502 Lot 22, being the same as that property conveyed to Grantor by deed dated February 7, 2014 and recorded in the City Register of the City of New York as CRFN # 20140000061160. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.055 +/- acres, and is hereinafter more fully described in the Land Title Survey dated May 25, 2016 prepared by Vincent J. Dicce, L.S. of Boro Land Surveying, P.C., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

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 Brownfield Cleanup Agreement Index Number: C241159-04-14, 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. <u>Purposes</u>. 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. <u>Institutional and Engineering Controls</u>. 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:

Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii), 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 as specified in the Site Management Plan (SMP);
- (3) All Engineering Controls must be inspected 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 New York City Department of Health and Mental Hygiene 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;
- (5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;
- (6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

- (7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;
- (8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;
- (9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;
- (10) 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.
- B. The Controlled Property shall not be used for Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.
- C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. 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 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, the property deed and 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, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:
- (1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).
 - (2) 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 b 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;
- (3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;
- (4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
- (5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;
- (6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and
 - (7) the information presented is accurate and complete.
- 3. <u>Right to Enter and Inspect</u>. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.
- 4. <u>Reserved Grantor's Rights</u>. 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;

County: Queens Site No: C241159 Brownfield Cleanup Agreement Index: C241159-04-14

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 Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give 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 Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.
- D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.
- 6. <u>Notice</u>. 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:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:

Site Number: C241159

Office of General Counsel

NYSDEC 625 Broadway

Albany New York 12233-5500

With a copy to:

Site Control Section

Division of Environmental Remediation

NYSDEC 625 Broadway Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. <u>Recordation</u>. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by 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. <u>Amendment</u>. Any amendment to this Environmental Easement may only be executed 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.
- 9. <u>Extinguishment.</u> 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. <u>Joint Obligation</u>. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Print Name: Gange Han

Title: Member Date: 7/26/2016

GBT Real Estate LLC:

Grantor's Acknowledgment

| STATE OF NEW YORK) |
|--|
| COUNTY OF How tork) ss: |
| On the day of day of , in the year 20 b, before me, the undersigned, personally appeared George Hon, personally known to me or proved to me on the basis |
| of satisfactory evidence be 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 State of New York Notary Public State of New York |
| Qualified in Kings County Commission Expires May 5, 2020 |

County: Queens Site No: C241159 Brownfield Cleanup Agreement Index: C241159-04-14

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 day of day of day, in the year 20 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 Fublic - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5082146
Qualified in Schenectady County
Commission Expires August 22, 20

County: Queens Site No: C241159 Brownfield Cleanup Agreement Index: C241159-04-14

SCHEDULE "A" PROPERTY DESCRIPTION

Legal Description of the Easement Area

ALL that certain plot, piece or parcel of land with the buildings or improvements thereon, erected, situate, lying and being in the Astoria, Long Island City, in the Borough and County of Queens, City and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the southerly side of 31st Drive, distant 175 feet westerly from the corner formed by the intersection of the southerly side of 31st Drive with the westerly side of 12th Street;

RUNNING THENCE southerly at right angles to 31st Drive, 95 feet 11-3/8ths inches to the southerly side of the land on the map hereinafter mentioned and to the land now or formerly of Robert Moore;

THENCE westerly along the said land and along the southerly line of said lot, 25 feet ½ inch to the westerly side of said lot on said map;

THENCE northerly along the westerly line of said lot on said map at right angles to 31st Drive, 97 feet 4-3/8ths inches to the southerly side of 31st Drive;

THENCE easterly along the southerly side of 31st Drive, 25 feet to the point or place of BEGINNING.

Containing approximately 2,416 square feet or 0.055 acres more or less.

GBT Real Estate LLC 1083 Maple Ln New Hyde Park NY 11040-2305

August 12, 2016

Via certified mail

John Young, Borough Director New York City Department of Planning 12055 Queens Blvd Rm 201 Kew Gardens NY 11424-1015

Derek Lee, RA, Borough Commissioner NYC Department of Buildings 12055 Queens Blvd Kew Gardens NY 11424-1015

Queens Borough President 12055 Queens Blvd Kew Gardens NY 11424-1015 Lucille Hartmann, District Manager Joseph Risi, Chairman Queens Community Board 1 4502 Ditmars Blvd Ste 1025 Astoria NY 11105-1363

Hon. Bill De Blasio New York City Mayor 1 City Hall New York NY 10007-1298

Notice to Municipality

RE:

Environmental Easement 1128 31st Dr Astoria NY 11106 Block: 502 Lot: 22 Site No. C241159

Dear Sir or Madam:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("Department")

on July 26, 2016 and recorded on August 12, 2016 as CRFN 2016000278636 by GBT Real Estate LLC for property at 1128 31st Dr Astoria NY 11106 Tax Map No.: Block 502 Lot 22 DEC Site No: C241159

This Environmental Easement restricts future use of the above-referenced property to

(a) restricted residential use as described in 6 NYCRR Part 375-1.8(g)(2)(ii),

- (b) commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii), and
- (c) industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv).

Any on-site activity must be done in accordance with the Environmental Easement and the Site Management Plan which is incorporated into the Environmental Easement. Department approval is also required prior to any groundwater use.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

- 1) Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.
- 2) Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

An electronic version of every environmental easement that has been accepted by the Department is available to the public at: http://www.dec.ny.gov/chemical/36045.html. Please forward this notice to your building and/or planning departments, as applicable, to ensure your compliance with these provisions of New York State Environmental Conservation Law. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

GBT Real Estate LLC

Bv:

Name: George Man

Title: member



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