

Paul Piperato, County Clerk
1 South Main St., Ste. 100
New City, NY 10956
(845) 638-5070

Rockland County Clerk Recording Cover Sheet

Received From :
FIRST AMERICAN TITLE INSURANCE CO-NY
666 THIRD AVE
5TH FLOOR
NY, NY 10017

Return To :
FIRST AMERICAN TITLE INSURANCE CO-NY
666 THIRD AVE
5TH FLOOR
NY, NY 10017

Method Returned : ERECORDING

First GRANTOR

NEWTON ASSOCIATES LLC

First GRANTEE

NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Index Type : Land Records

Instr Number : 2015-00032455

Book : Page :

Type of Instrument : Easement

Type of Transaction : Ease, R-Way, Asmt Rent-Lease

Recording Fee: \$96.00

Recording Pages : 10

The Property affected by this instrument is situated in Clarksdown, in the
County of Rockland, New York

Real Estate Transfer Tax

RETT # : 1780

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$96.00

State of New York

County of Rockland

I hereby certify that the within and foregoing was
recorded in the Clerk's office for Rockland County,
New York

On (Recorded Date) : 11/09/2015

At (Recorded Time) 7 45 00 AM



Paul Piperato, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

3020-762013

County: Rockland Site No: C344065 Brownfield Cleanup Agreement Index : A3-0561-0806

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

THIS INDENTURE made this 22nd day of October, 2015 between Owner(s) Newton Associates, LLC, having an office at c/o Kamber Management Company, LLC, 551 Fifth Avenue, Suite 2200, New York, New York 10176, County of New York, 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 44 North Main Street in the Town of Clarkstown, County of Rockland and State of New York, known and designated on the tax map of the County Clerk of Rockland as tax map parcel numbers: Section 43.15 Block 1 Lot 22, being a portion of the property conveyed to Grantor by deed dated March 6, 1998 and recorded in the Rockland County Clerk's Office in Instrument No. 1998-00018495. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.1387 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 30, 2015 prepared by Aidan C. McCann, NYSPLS of Sound View Engineers and Surveyors, LLC, 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

Section
43.15
Block
1
Lot
22

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: A3-0561-0806, 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 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 Rockland 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;

(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 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 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 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;

(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. Right to Enter and Inspect. 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. 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 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. 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:

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: C344065
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. Recordation. 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. Amendment. 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. 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.

Remainder of Page Intentionally Left Blank

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

Newton Associates, L.L.C.

By: 

Print Name: Steven Levy / Peter Levy

Title: Members Date: 10/7/15

Grantor's Acknowledgment

STATE OF NEW YORK)

COUNTY OF New York) ss:

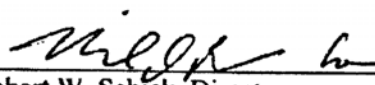
On the 7th day of October, in the year 20 15, before me, the undersigned, personally appeared Steven Levy / Peter Levy personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/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

PAUL R. SKLAR
Notary Public, State of New York
No. 4752724
Qualified in New York County
Commission Expires 11/30/17 2017

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 22 day of October, in the year 2015, 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. 01CH6082146
Qualified in Schenectady County
Commission Expires August 22, 2018

SCHEDULE "A" PROPERTY DESCRIPTION

All that certain lot, piece or parcel of land, situated in the Town of Clarkstown, County of Rockland and State of New York, being an Environmental Easement on property known as 44 North Main Street. Said Easement more particularly bounded and described as follows:

Beginning at a stone monument on the easterly boundary of Main Street, County Highway Route 29 distant 393.33 feet northerly from the northerly side of Congers Road;

Thence in a easterly direction along lands now or formerly of Leemilt's Petroleum, South 74° 56' 45" East a distance of 95.93 feet. Thence in a southeasterly direction through lands now or formerly of Newton Associates, LLC, South 48° 39' 41" East a distance of 273.74 feet, to the northeast corner of lands now or formerly of Ramnauth; thence in a westerly direction along lands now or formerly of Ramnauth; North 71° 43' 25" West a distance of 83.67 feet, to the northwest corner of lands now or formerly of Ramnauth. Thence continuing along lands now or formerly of Ramnauth, in a southerly direction, South 19° 16' 35" West a distance of 100.31 feet point on the easterly side of West Evergreen Road and lands now or formerly of Newton Associates, LLC. Thence continuing westerly through lands now or formerly of Newton Associates, LLC, North 73° 56' 21" West a distance of 252.60 to the easterly side of Main Street. Thence generally in a northerly direction along the easterly line of Main Street, North 15° 58' 53" East a distance of 30.15 feet, South 74° 01' 08" East a distance of 5.98 feet, North 15° 58' 52" East a distance of 52.49 feet, North 15° 05' 54" East a distance of 34.78 feet, North 74° 54' 11" West a distance of 5.19 feet, and North 15° 05' 52" East a distance of 94.80 feet to the point or place of beginning containing 1.1387 Acres, more or less.



JOHN E. ICKLAN
Associate

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct: (973) 596-4687 Fax: (973) 639-8327
jicklan@gibbonslaw.com

November 20, 2015

BY FEDERAL EXPRESS

Town of Clarkstown, Town Clerk's Office
Attn: Justin Sweet, Town Clerk
10 Maple Avenue
New City, New York 10956

Town of Clarkstown, Dept. of Environmental Control
Attn: K. Luke Kalarickal, P.E., Director
10 Maple Avenue
New City, New York 10956

**Re: Environmental Easement
New City Plaza f/k/a New Place Shopping Center
DEC Site No: C344065
44 North Main Street, New City, Town of Clarkstown
Rockland County, New York**

Dear Sir or Madam:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("DEC") on October 22, 2015 by Newton Associates, LLC, for property located at 44 North Main Street, New City, Town of Clarkstown, Rockland County, New York (Tax Map No. 43.15, Block 1, Lot 22). This easement was recorded with the Rockland County Clerk on November 9, 2015.

This Environmental Easement restricts future use of the above-referenced property to restricted commercial and industrial uses. 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. DEC 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

GIBBONS P.C.

November 20, 2015

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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 DEC is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John E. Icklan', with a stylized flourish at the end.

John E. Icklan
Associate



JOHN E. ICKLAN
Associate

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct: (973) 596-4687 Fax: (973) 639-8327
jicklan@gibbonslaw.com

November 20, 2015

BY FEDERAL EXPRESS

Environmental Easement Attorney
Office of General Counsel, 14th Floor
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-1500

**Re: Environmental Easement
New City Plaza f/k/a New Place Shopping Center
DEC Site No: C344065
44 North Main Street, New City, Town of Clarkstown
Rockland County, New York**

AFFIDAVIT OF SERVICE

STATE OF NEW JERSEY)
) ss:
COUNTY OF ESSEX)

I, **John E. Icklan**, certify as follows:

1. I am an Associate at the law firm of Gibbons P.C. and am admitted to practice law in the State of New York.

2. I hereby certify that on November 20, 2015, I caused an original copy of the enclosed November 20, 2015 letter and one copy of the enclosed October 22, 2015 environmental easement (and its associated November 9, 2015 notice of formal recording) to be sent via Federal Express to:

- (a) Town of Clarkstown, Town Clerk's Office
Attn: Justin Sweet, Town Clerk
10 Maple Avenue
New City, New York 10956
- (b) Town of Clarkstown, Dept. of Environmental Control
Attn: K. Luke Kalarickal, P.E., Director
10 Maple Avenue
New City, New York 10956

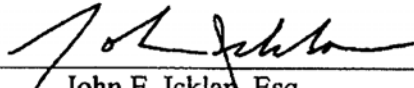
November 20, 2015

Page 2

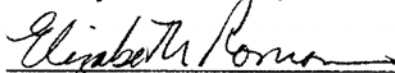
3. I further certify that on that same date, I caused courtesy copies of the above referenced documents and this affidavit of service to be sent via email to the following individuals:

- (a) Ms. Jane O'Connell
New York State Department of Environmental Conservation
jane.oconnell@dec.ny.gov
- (b) Mr. Brad Burns
New York State Department of Environmental Conservation
brad.burns@dec.ny.gov

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.


John E. Icklan, Esq.

Sworn to before me this
20th day of November, 2015



Notary Public

ELIZABETH ROMAN
Notary Public of State of New Jersey
ID # 2328834
Qualified in Union County
Commission Expires: 5-9-2020