

UNDEVELOPED PARCEL SITE
MOUNT KISCO, WESTCHESTER COUNTY, NEW YORK

Final Engineering Report

NYSDEC Site Number: C360112

Prepared for:

Crème de la Crème (Mt. Kisco) Inc.
6400 East Prentice Avenue, Suite 1320
Greenwood Village, CO 80111

Prepared by:

Carlin-Simpson & Associates
61 Main Street
Sayreville, NJ 08872
732-432-5757

DECEMBER 2014

CERTIFICATIONS

I, Robert B. Simpson, am currently a registered professional engineer licensed by the State of New York, I had primary direct responsibility for implementation of the remedial program activities, and I certify that the Remedial Program was implemented and that all remedial activities were completed in substantial conformance with the Department-approved Remedial Program.

I certify that the data submitted to the Department in the Remedial Investigation Report and with this Final Engineering Report demonstrates that the remediation requirements set forth in the Decision Document and in all applicable statutes and regulations have been or will be achieved in accordance with the time frames, if any, established in for the remedy.

I certify that all use restrictions, Institutional Controls, Engineering Controls, and/or any operation and maintenance requirements applicable to the Site are contained in an environmental easement created and recorded pursuant ECL 71-3605 and that all affected local governments, as defined in ECL 71-3603, have been notified that such easement has been recorded.

I certify that a Site Management Plan has been submitted for the continual and proper operation, maintenance, and monitoring of all Engineering Controls employed at the Site, including the proper maintenance of all remaining monitoring wells, and that such plan has been approved by Department.

I certify that all documents generated in support of this report have been submitted in accordance with the DER's electronic submission protocols and have been accepted by the Department.

I certify that all data generated in support of this report have been submitted in accordance with the Department's electronic data deliverable and have been accepted by the Department.

I certify that all information and statements in this certification form are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law. I, Robert B. Simpson, of Carlin-Simpson & Associates, 61 Main Street, Sayreville, New Jersey, am certifying as Owner's Designated Site Representative for the site.

081840
NYS Professional Engineer #

12/16/14
Date

Robert Simpson
Signature



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FIGURES

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Appendix B: Digital Copy of FE Report (CD)

Appendix C: Environmental Easement

FINAL ENGINEERING REPORT

1.0 BACKGROUND AND SITE DESCRIPTION

Crème de la Crème (Mt. Kisco) Inc. entered into a Brownfield Cleanup Agreement (BCA) with the New York State Department of Environmental Conservation (NYSDEC) in June 2010 to investigate and remediate a 4.0-acre property located in the Town and Village of Mount Kisco, New York. A map showing the location of the Site is presented on Figure 1. The property was remediated to commercial use standards.

The Site is located at 6 Morgan Drive, Mount Kisco, Westchester County, New York and is identified as Parcel 80.55-1-2.1/3 (Section 80, Sheet 55, Block 1, Lot 2.1/3) on the Mount Kisco Tax Map. The Site is bounded on the north and east by State wetlands, a town service road and the Kisco River; to the southeast by vacant land (the Morgan Drive Lot 3 Site at 2 Morgan Drive); to the southwest by Morgan Drive and the United States Postal Service; and to the south by Radio Circle Drive and additional commercial and industrial properties. A survey of the property is presented as Figure 2. Currently, the Site is vacant and undeveloped. The boundaries of the site are fully described in Appendix A: Metes and Bounds.

An electronic copy of this FER with all supporting documentation is included as Appendix B.

2.0 SUMMARY OF SITE REMEDY

2.1 REMEDIAL ACTION OBJECTIVES

Based on the results of the Remedial Investigation, the following Remedial Action Objectives (RAOs) were identified for this site.

2.1.1 Groundwater RAOs

- None

2.1.2 Soil RAOs

RAOs for Public Health Protection

- Prevent ingestion/direct contact with contaminated soil.

2.1.3 Surface Water RAOs

- None

2.1.4 Sediment RAOs

- None

2.2 DESCRIPTION OF SELECTED REMEDY

The site was remediated in accordance with the remedy selected by the NYSDEC in the Decision Document dated December 2014. The selected remedy for the Site is referred to as the Institutional/Engineering Controls and Cover System remedy. The findings of the remedial investigation of the Site indicate that the Site does not pose a threat to human health or the environment. The selected remedy is effective in protecting human health and the environment and complies with NYSDEC standards, criteria and guidance. No action is required beyond the institutional and engineering controls (IC/ECs) and site management plan discussed below.

The factors considered during the selection of the remedy are those listed in 6 NYCRR 375-1.8. The following are the components of the selected remedy:

1. A site cover, consisting of at least one foot of soil, currently exists on-site that meets commercial use soil cleanup objectives (CUSCOs). The site cover, serving as an

engineering control, will be maintained to prevent human exposure to contaminated soil/fill remaining at the site while allowing for commercial/industrial use of the site. Any site redevelopment will maintain the site cover, which may consist either of structures such as buildings, pavement, and sidewalks comprising the site development, or a soil cover in areas where the upper one foot of exposed surface soil will exceed the applicable SCOs. Where a soil cover is required it will be a minimum of one foot of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for commercial use.

2. Imposition of an institutional control in the form of an environmental easement for the Site that:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification (Periodic Review Report) that the institutional and engineering controls remain in-place and effective;
- limits the use and development of the Site for commercial and industrial uses;
- restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH; and
- requires compliance with a Department-approved Site Management Plan.

3. Development and implementation of an approved Site Management Plan (SMP) that specifies the methods necessary to ensure compliance with all IC/ECs required by the environmental easement for long-term management of contamination remaining at the Site. This plan includes:

- an Excavation Plan which details the provisions for management of future excavations on the Site, and must be prepared and submitted for Department review and approval prior to any excavation at the Site;
- descriptions of the provisions of the environmental easement including any land and groundwater use restrictions;

- provisions for the management and inspection of the identified engineering controls (i.e., site cover);
- maintaining site access controls and Department notification; and
- the steps necessary for the periodic reviews and certification of the institutional and engineering controls.

3.0 INTERIM REMEDIAL MEASURES, OPERABLE UNITS AND REMEDIAL CONTRACTS

The remedy for the Site was performed as a single project and no interim remedial measures, operable units, or separate construction contracts were performed.

4.0 DESCRIPTION OF REMEDIAL ACTIONS PERFORMED

Remedial activities completed at the Site were conducted in accordance with the NYSDEC-approved Remedial Program for the Undeveloped Parcel Site. Based on the results of the remedial investigation, no remedial actions were necessary to implement the remedy put forth by the NYSDEC in the Decision Document for the subject site.

4.1 CONTAMINATION REMAINING AT THE SITE

- The remedial investigation identified four (4) subsurface soil samples (SF-31, SL-3, F-23, and PH-16) that contained at least one (1) metal and/or one (1) semi-volatile organic compound (SVOC) at concentrations exceeding the NYSDEC Commercial Use Soil Cleanup Objectives (SCOs). The metals included barium, cadmium, copper, and mercury. The SVOCs included benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, and dibenz(a,h) anthracene. These constituents were detected at levels exceeding commercial use SCOs at four sporadic locations across the site at depths greater than six feet below the ground surface. There does not appear to be widespread contamination present on the property. Sample locations that exceed the commercial use SCOs are shown on Figure 4.
- The remedial investigation also identified 55 surface or subsurface soil samples that contain at least one (1) constituent at a concentration exceeding the NYSDEC Unrestricted Use SCOs. These compounds included metals (arsenic, chromium, copper, lead, silver, zinc, and mercury), SVOCs (benzo(k)fluoranthene, chrysene, and indeno(1,2,3-cd)pyrene), volatile organic compounds (VOCs) (2-butanone, acetone, toluene, and xylenes), pesticides (4,4'-DDD, 4,4'-DDE, 4,4'-DDT, and dieldrin), and PCBs. Sample locations that exceed the unrestricted use SCOs are shown on Figure 3.

Figures 3 and 4 summarize the results of all soil samples remaining at the site after completion of the Remedial Program that exceed unrestricted use and commercial use SCOs, respectively.

Since contaminated soil remains in the subsurface beneath the site after completion of the Remedial Program, Institutional and Engineering Controls are required to protect human

health and the environment. These Engineering and Institutional Controls (ECs/ICs) are described in the following sections. Long-term management of these EC/ICs and residual contamination will be performed under the Site Management Plan (SMP) approved by the NYSDEC.

4.2 SOIL COVER SYSTEM

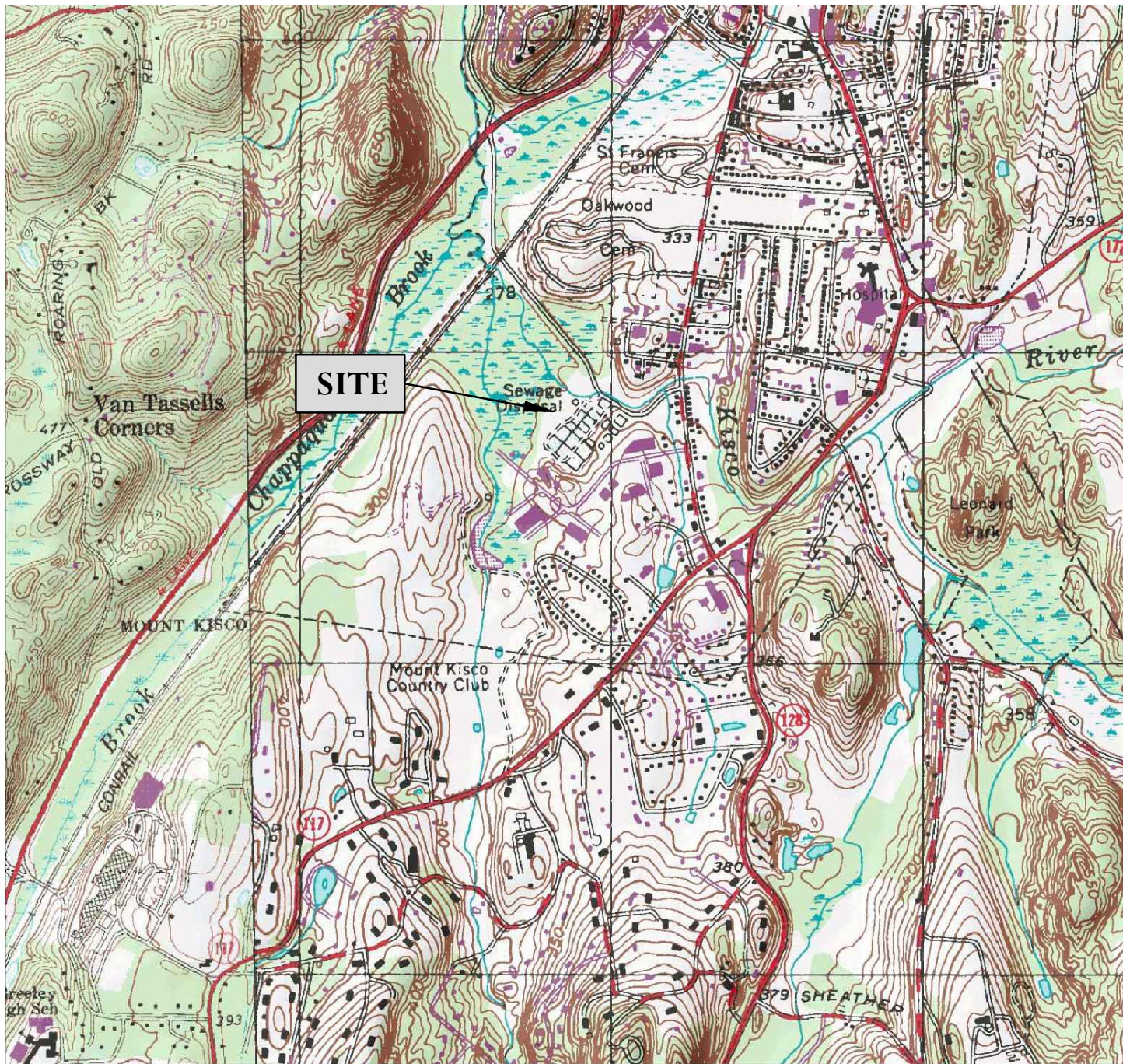
Exposure to remaining contamination in soil/fill at the site is prevented by utilizing the existing soils currently in-place as a cover over the entire site. This cover system is comprised of a minimum of 12 inches of in-place soil that meets the Commercial Use SCOs. An Excavation Work Plan, which outlines the procedures required in the event the cover system and/or underlying residual contamination are disturbed, is provided in Appendix A of the SMP.

4.3 INSTITUTIONAL CONTROLS

The site remedy requires that an environmental easement be placed on the property to (1) implement, maintain and monitor the Engineering Controls; (2) prevent future exposure to remaining contamination by controlling disturbances of the subsurface contamination; and, (3) limit the use and development of the site to commercial or industrial uses only.

The environmental easement for the site was executed by the Department on September 29, 2014, and filed with the Westchester County Clerk on November 18, 2014. The County Recording Identifier number for this filing is 543023183. A copy of the easement and proof of filing is provided in Appendix C.

FIGURES



0 0.5 Mi
0 2000 Ft

Map provided by MyTopo.com

ROBERT B. SIMPSON, P.E.
PROFESSIONAL ENGINEER

081840
LICENSE NO.

Robert Simpson
SIGNATURE

09/15/14
DATE

SITE LOCATION MAP

BCP SITE NO.C360112
UNDEVELOPED PARCEL SITE
MT. KISCO, NEW YORK

DRAWN	MRA	SCALE	NTS
CHECKED	RBS	DATE	09.15.14
PROJECT NO.	01-109	DWG NO.	FIG -1
APPROVED			

CARLIN-SIMPSON AND ASSOCIATES
61 Main Street
Sayreville, NJ 08872
Consulting Geotechnical and
Environmental Engineers



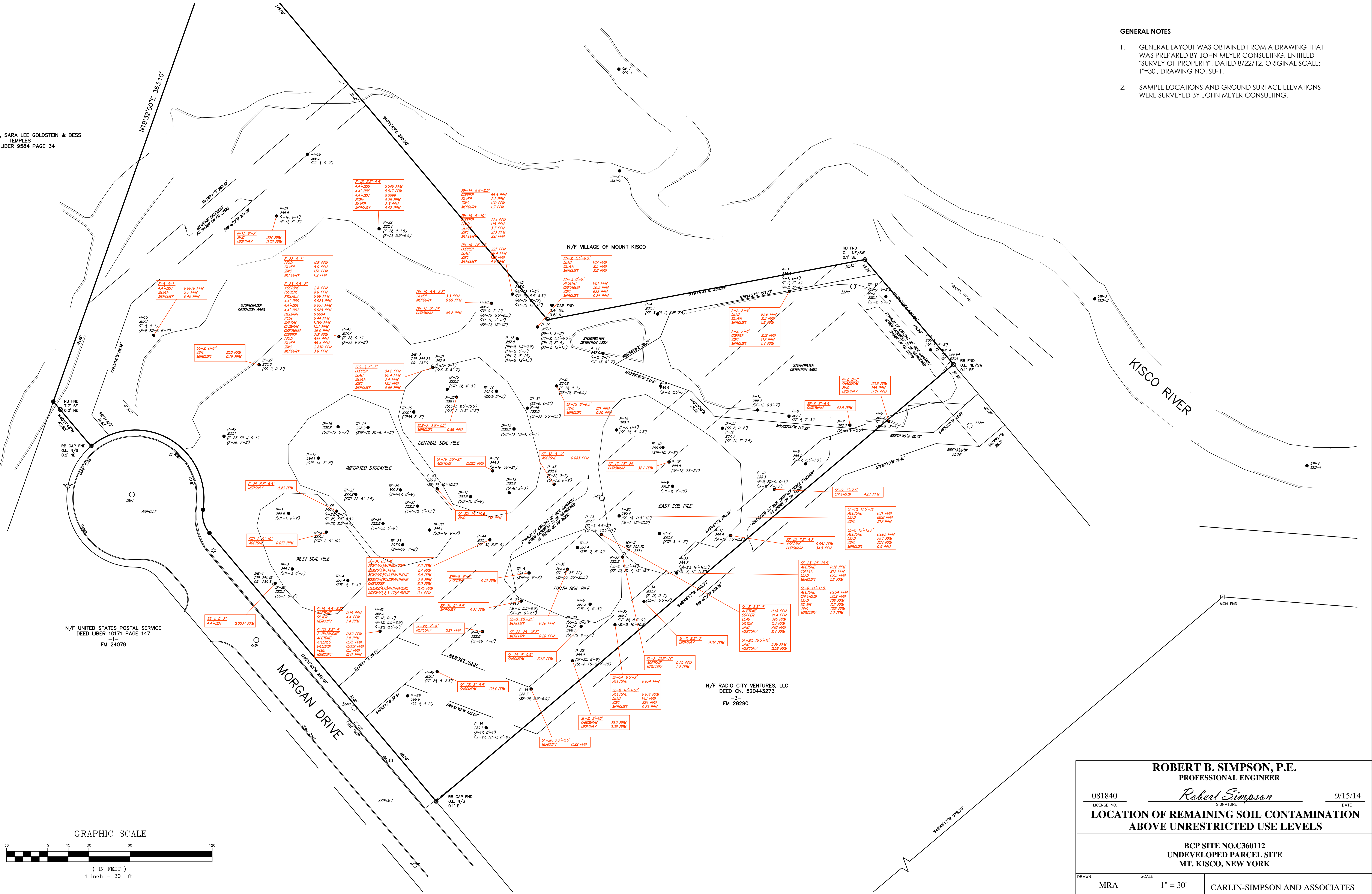
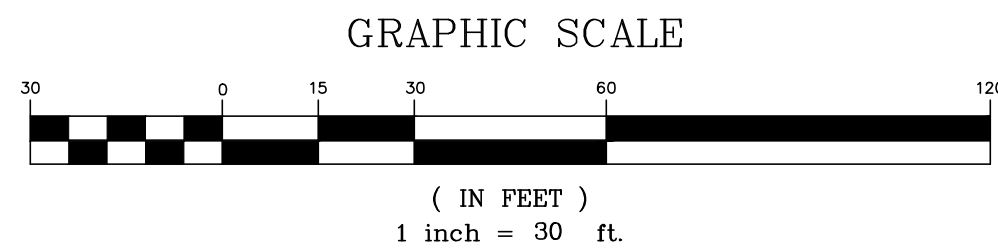
MAP SOURCE

USGS 7.5 Minute Quadrangle
Mount Kisco, New York

UL KATZ, SARA LEE GOLDSTEIN & BESS
TEMPLES
DEED LIBER 9584 PAGE 34

GENERAL NOTES

- GENERAL LAYOUT WAS OBTAINED FROM A DRAWING THAT WAS PREPARED BY JOHN MEYER CONSULTING, ENTITLED "SURVEY OF PROPERTY", DATED 8/22/12. ORIGINAL SCALE: 1"=30', DRAWING NO. SU-1.
- SAMPLE LOCATIONS AND GROUND SURFACE ELEVATIONS WERE SURVEYED BY JOHN MEYER CONSULTING.



ROBERT B. SIMPSON, P.E.
PROFESSIONAL ENGINEER

081840
LICENSE NO.

Robert Simpson
SIGNATURE

9/15/14
DATE

LOCATION OF REMAINING SOIL CONTAMINATION
ABOVE UNRESTRICTED USE LEVELS

BCP SITE NO.C360112
UNDEVELOPED PARCEL SITE
MT. KISCO, NEW YORK

DRAWN
MRA
CHECKED
RBS
PROJECT NO.
01-109
APPROVED

SCALE
1" = 30'
DATE
09.15.14
DWG NO.
FIG -3

CARLIN-SIMPSON AND ASSOCIATES
61 Main Street
Sayreville, NJ 08872

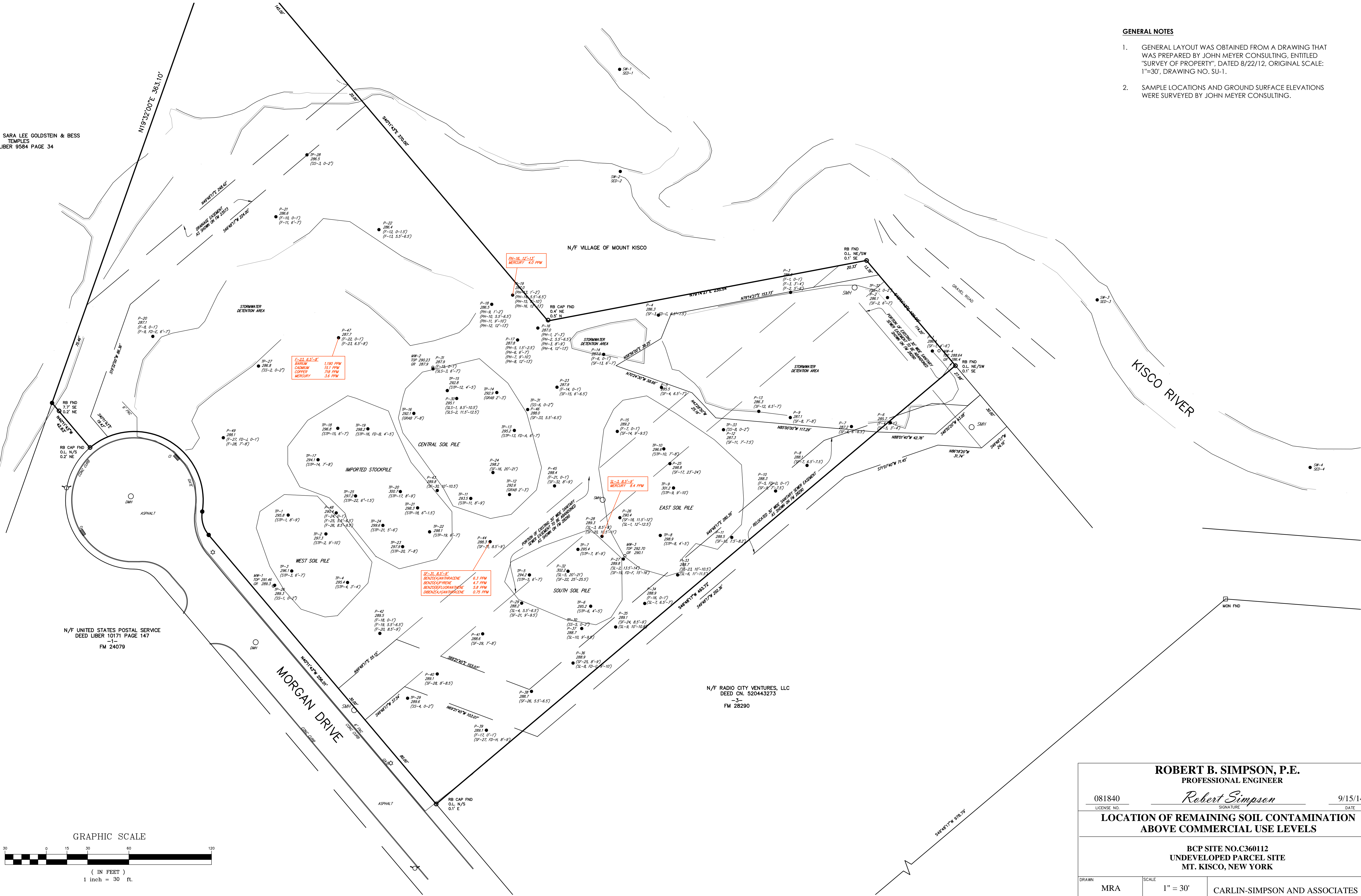
Consulting Geotechnical and
Environmental Engineers



UL KATZ, SARA LEE GOLDSTEIN & BESS
TEMPLES
DEED LIBER 9584 PAGE 34

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- SAMPLE LOCATIONS AND GROUND SURFACE ELEVATIONS WERE SURVEYED BY JOHN MEYER CONSULTING.



ROBERT B. SIMPSON, P.E.
PROFESSIONAL ENGINEER

081840

LICENSE NO.

Robert Simpson
SIGNATURE

9/15/14

DATE

LOCATION OF REMAINING SOIL CONTAMINATION
ABOVE COMMERCIAL USE LEVELS

BCP SITE NO. C360112
UNDEVELOPED PARCEL SITE
MT. KISCO, NEW YORK

DRAWN

MRA

SCALE

1" = 30'

CHECKED

RBS

DATE

09.15.14

PROJECT NO.

01-109

DWG NO.

FIG -4

APPROVED

CARLIN-SIMPSON AND ASSOCIATES
61 Main Street
Sayreville, NJ 08872

Consulting Geotechnical and
Environmental Engineers



APPENDIX A – METES AND BOUNDS

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING THE TOWN OF MOUNT KISCO, COUNTY OF WESTCHESTER AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE NORTHERLY LINE OF MORGAN DRIVE WHERE THE SAME IS INTERSECTED BY THE DIVISION LINE BETWEEN LOT 2 ON THE NORTHWEST AND LOT 3 ON THE SOUTHEAST AS SHOWN ON A MAP TITLED "FINAL PLAT LOT LINE CHANGE" PREPARED BY STEPHEN T. JOHNSON, LAST DATED JUNE 19, 2007 AND FILED IN THE WESTCHESTER COUNTY CLERKS OFFICE AS MAP NO. 28290;

THENCE RUNNING ALONG SAID NORTHERLY LINE OF MORGAN DRIVE THE FOLLOWING THREE COURSES AND DISTANCES.

- 1) NORTH 40 DEGREES 11 MINUTES 43 SECONDS WEST, 256.01 FEET;
- 2) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 21.00 FEET, A CENTRAL ANGLE OF 49 DEGREES 37 MINUTES 03 SECONDS AND ALONG AN ARC LENGTH OF 18.19 FEET;
- 3) ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 139 DEGREES 37 MINUTES 06 SECONDS AND ALONG AN ARC LENGTH OF 121.84 FEET TO THE DIVISION LINE BETWEEN SAID LOT 2 ON THE NORTHEAST AND LOT 1B ON THE SOUTHWEST AS SHOWN ON A MAP TITLED "RE-SUBDIVISION OF LOT NO. 1" PREPARED BY H. STANLEY JOHNSON AND COMPANY, LAST DATED MARCH 17, 1989 AND FILED IN THE WESTCHESTER COUNTY CLERKS OFFICE AS MAP NO. 24079;

THENCE RUNNING ALONG SAID DIVISION LINE, NORTH 40 DEGREES 11 MINUTES 43 SECONDS WEST, 42.63 FEET, TO THE DIVISION LINE BETWEEN THE HEREIN DESCRIBED LANDS ON THE SOUTHEAST AND LANDS OF NOW OR FORMERLY SAUL KATZ, SARA LEE GOLDSTEIN & BESS TEMPLES AS DESCRIBED IN DEED LIBER 9584 AT PAGE 34 ON THE NORTHWEST;

THENCE RUNNING ALONG SAID DIVISION LINE, NORTH 19 DEGREES 32 MINUTES 00 SECONDS EAST, 363.10 FEET TO A WESTERLY LINE OF LANDS NOW OR FORMERLY VILLAGE OF MOUNT KISCO;

THENCE RUNNING ALONG SAID LANDS THE FOLLOWING THREE COURSES AND DISTANCES:

- 1) SOUTH 40 DEGREES 11 MINUTES 43 SECONDS EAST, 370.00 FEET;
- 2) NORTH 79 DEGREES 14 MINUTES 27 SECONDS EAST, 235.54 FEET;
- 3) SOUTH 40 DEGREES 11 MINUTES 43 SECONDS EAST, 100.00 FEET TO ITS POINT OF INTERSECTION WITH THE AFORESAID DIVISION LINE BETWEEN LOT 2 ON THE NORTHWEST AND LOT 3 ON THE SOUTHEAST.

THENCE RUNNING ALONG SAID DIVISION LINE, SOUTH 49 DEGREES 48 MINUTES 17

THE ABOVE DESCRIBED PROPERTY CONTAINS 4.06049± ACRES OR 176,875± SQUARE FEET.

APPENDIX B – DIGITAL COPY OF FE REPORT (CD)

APPENDIX C – ENVIRONMENTAL EASEMENT

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.



543023183EAS003T

Westchester County Recording & Endorsement Page

Submitter Information

Name: Conlin, McKenney & Philbrick, P.D.
Address 1: 350 South Main Street, Suite 400
Address 2:
City/State/Zip: Ann Arbor MI 48104-2131

Phone: 734-761-9000
Fax:
Email: kim@cmplaw.com
Reference for Submitter: Mount Kisco

Document Details

Control Number: **543023183**

Document Type: **Easement (EAS)**

Package ID: 2014102900097001003

Document Page Count: **9**

Total Page Count: **10**

Parties

☐ Additional Parties on Continuation page

1st PARTY

1: CREME DE LA CREM MT KISCO INC
2:

- Other

1: NEW YORK STATE PEOPLE OF
2:

- Other

Property

☐ Additional Properties on Continuation page

Street Address: 6 MORGAN DRIVE

Tax Designation: 80.55-1-2.1/3

City/Town: MOUNT KISCO

Village:

Cross-References

☐ Additional Cross-Refs on Continuation page

1: 2: 3: 4:

Supporting Documents

1: TP-584

Recording Fees

Statutory Recording Fee:	\$40.00
Page Fee:	\$50.00
Cross-Reference Fee:	\$0.00
Mortgage Affidavit Filing Fee:	\$0.00
RP-5217 Filing Fee:	\$0.00
TP-584 Filing Fee:	\$5.00
Total Recording Fees Paid:	\$95.00

Transfer Taxes

Consideration:	\$0.00
Transfer Tax:	\$0.00
Mansion Tax:	\$0.00
Transfer Tax Number:	4875

Mortgage Taxes

Document Date:
Mortgage Amount:

Basic:	\$0.00
Westchester:	\$0.00
Additional:	\$0.00
MTA:	\$0.00
Special:	\$0.00
Yonkers:	\$0.00
Total Mortgage Tax:	\$0.00

Dwelling Type: Exempt: ☐
Serial #:

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK



Recorded: 11/18/2014 at 10:08 AM

Control Number: **543023183**

Witness my hand and official seal

Timothy C. Idoni
Westchester County Clerk

Record and Return To

☐ Pick-up at County Clerk's office

Douglas G. McClure
Conlin, McKenney & Philbrick, P.C.
350 South Main Street, Suite 400
Ann Arbor, MI 48104-2131

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

THIS INDENTURE made this 29th day of September, 2014, between Owner(s) Crème de la Crème (Mt. Kisco), Inc., having an office at 8400 East Prentice Avenue, County of Arapahoe, State of Colorado (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 6 Morgan Drive in the Village of Mount Kisco, County of Westchester and State of New York, known and designated on the tax map of the County Clerk of Westchester as tax map parcel number: Section 80.55 Block 1 Lot 2.1/3, being the same as that property conveyed to Grantor by deeds dated April 29, 2004 and August 6, 2004 and recorded in the Westchester County Clerk's Office in Instrument No. 442231357 and 442720596. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 4.06 +/- acres, and is hereinafter more fully described in the Land Title Survey dated May 21, 2014 and revised on September 18, 2014 as prepared by Thomas M. Schmidt, 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 IndexNumber: C360112, 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 Westchester County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(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: C360112
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.

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

Enter Grantor's Name:

CREME DE LA CREME (MT. KISCO), INC.

By: _____

B T Karpas

Print Name: BRUCE T. KARPAS

Title: PRESIDENT Date: 9/25/14

Grantor's Acknowledgment

STATE OF COLORADO)
) ss:
COUNTY OF ARAPAHOE)
T.

On the 25th day of SEPTEMBER in the year 2014, before me, the undersigned, personally appeared BRUCE KARDAS, 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.

Linda D Otken-Roberts
Notary Public - State of

**LINDA D OTTKEN-ROBERTS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20004027631
MY COMMISSION EXPIRES DECEMBER 15, 2016**

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

SEP 29 2014

Grantee's Acknowledgment

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

On the 29th day of September, in the year 2014, 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

ANDREW O. GUGLIELMI
Notary Public, State of New York
No. 02GU6177593
Qualified in Albany County
Commission Expires November 13, 2015

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING THE TOWN OF MOUNT KISCO, COUNTY OF WESTCHESTER AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE NORTHERLY LINE OF MORGAN DRIVE WHERE THE SAME IS INTERSECTED BY THE DIVISION LINE BETWEEN LOT 2 ON THE NORTHWEST AND LOT 3 ON THE SOUTHEAST AS SHOWN ON A MAP TITLED "FINAL PLAT LOT LINE CHANGE" PREPARED BY STEPHEN T. JOHNSON, LAST DATED JUNE 19, 2007 AND FILED IN THE WESTCHESTER COUNTY CLERKS OFFICE AS MAP NO. 28290;

THENCE RUNNING ALONG SAID NORTHERLY LINE OF MORGAN DRIVE THE FOLLOWING THREE COURSES AND DISTANCES.

- 1) NORTH 40 DEGREES 11 MINUTES 43 SECONDS WEST, 256.01 FEET;
- 2) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 21.00 FEET, A CENTRAL ANGLE OF 49 DEGREES 37 MINUTES 03 SECONDS AND ALONG AN ARC LENGTH OF 18.19 FEET;
- 3) ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 139 DEGREES 37 MINUTES 06 SECONDS AND ALONG AN ARC LENGTH OF 121.84 FEET TO THE DIVISION LINE BETWEEN SAID LOT 2 ON THE NORTHEAST AND LOT 1B ON THE SOUTHWEST AS SHOWN ON A MAP TITLED "RE-SUBDIVISION OF LOT NO. 1" PREPARED BY H. STANLEY JOHNSON AND COMPANY, LAST DATED MARCH 17, 1989 AND FILED IN THE WESTCHESTER COUNTY CLERKS OFFICE AS MAP NO. 24079;

THENCE RUNNING ALONG SAID DIVISION LINE, NORTH 40 DEGREES 11 MINUTES 43 SECONDS WEST, 42.63 FEET, TO THE DIVISION LINE BETWEEN THE HEREIN DESCRIBED LANDS ON THE SOUTHEAST AND LANDS OF NOW OR FORMERLY SAUL KATZ, SARA LEE GOLDSTEIN & BESS TEMPLES AS DESCRIBED IN DEED LIBER 9584 AT PAGE 34 ON THE NORTHWEST;

THENCE RUNNING ALONG SAID DIVISION LINE, NORTH 19 DEGREES 32 MINUTES 00 SECONDS EAST, 363.10 FEET TO A WESTERLY LINE OF LANDS NOW OR FORMERLY VILLAGE OF MOUNT KISCO;

THENCE RUNNING ALONG SAID LANDS THE FOLLOWING THREE COURSES AND DISTANCES:

- 1) SOUTH 40 DEGREES 11 MINUTES 43 SECONDS EAST, 370.00 FEET;
- 2) NORTH 79 DEGREES 14 MINUTES 27 SECONDS EAST, 235.54 FEET;
- 3) SOUTH 40 DEGREES 11 MINUTES 43 SECONDS EAST, 100.00 FEET TO ITS POINT OF INTERSECTION WITH THE AFORESAID DIVISION LINE BETWEEN LOT 2 ON THE NORTHWEST AND LOT 3 ON THE SOUTHEAST.

THENCE RUNNING ALONG SAID DIVISION LINE, SOUTH 49 DEGREES 48 MINUTES 17

THE ABOVE DESCRIBED PROPERTY CONTAINS 4.06049± ACRES OR 176,875± SQUARE FEET.