

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.



633483135EAS0030

Westchester County Recording & Endorsement Page

Submitter Information

Name: Office of the Westchester County Clerk Customer Ser Phone: 9149953111
Address 1: 110 Dr. Martin Luther King Jr. Blvd. Fax:
Address 2: Email: email@westchestergov.com
City/State/Zip: White Plains NY 10601 Reference for Submitter: 130 Midland 914-523-6361

Document Details

Control Number: **633483135** Document Type: **Easement (EAS)**
Package ID: 2023121400120001002 Document Page Count: **9** Total Page Count: **11**

Parties

☐ Additional Parties on Continuation page

1st PARTY

1: 130 MIDLAND AVE OWNER LLC
2:

- Other

1: NEW YORK STATE OF
2:

2nd PARTY

- Other

Property

☒ Additional Properties on Continuation page

Street Address: 130 MIDLAND AVE

Tax Designation: 142.53-1-5.1

City/Town: RYE TOWN

Village: PORT CHESTER

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
RPL 291 Notice Fee: \$0.00
Total Recording Fees Paid: **\$95.00**

Transfer Taxes

Consideration: \$0.00
Transfer Tax: \$0.00
Mansion Tax: \$0.00
Transfer Tax Number: 5746

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

Record and Return To

☐ Pick-up at County Clerk's office



Recorded: 12/14/2023 at 01:51 PM
Control Number: **633483135**
Witness my hand and official seal

Timothy C. Idoni

Timothy C. Idoni
Westchester County Clerk

Mintzer Mauch PLLC
290 Madison Avenue 4th Floor

New York, NY 10017
Attn: Helen C. Mauch, Esq

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.

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Properties Addendum

130 MIDLAND AVE 10573

RYE TOWN

PORT CHESTER

142.53 1 5.2

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

THIS INDENTURE made this 7th day of December, 2023 between Owner, 130 Midland Ave Owner LLC, having an office at 271 Madison Avenue, 18th Floor, New York, NY 10016, 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 130 Midland Avenue in the Town of Rye, 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 142.53 Block 1 Lot 5, being the same as that property conveyed to Grantor by deed dated July 7, 2020 and recorded in the Westchester County Clerk's Office in Instrument No. 601703551. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 6.192 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 11, 2023 and revised on August 21, 2023 and August 24, 2023 prepared by Steven J. Willard of Line & Grade Surveyors D.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: C360195-09-20, 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: C360195
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.

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

Remainder of Page Intentionally Left Blank

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

130 Midland Ave Owner LLC:

By: [Signature]

Print Name: Stephen Matr

Title: Auth. Signatory Date: 11/27/2023

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF Westchester

On the 27 day of Nov, in the year 2023, before me, the undersigned, personally appeared Stephen Matr, 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.

[Signature]
Notary Public - State of New York

Francis J Berlan
Notary Public - State of New York
No. 028E6353619
Qualified in Westchester County
Commission Expires: 01/30/2025

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,

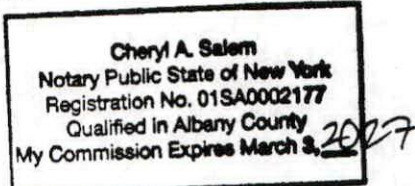
By: Andrew Guglielmi
Andrew O. Guglielmi, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 7th day of December in the year 2023 before me, the undersigned, personally appeared Andrew O. Guglielmi, 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.

Cheryl A. Salem
Notary Public - State of New York



SCHEDULE "A" PROPERTY DESCRIPTION

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Port Chester, Town of Rye, County of Westchester, State of New York, being bounded and described as follows:

BEGINNING at a point formed by the division line between property now or formerly CBD Realty Corp., property now or formerly 130 Midland Ave Owner LLC, and the northwesterly side of Midland Avenue identified by North 787250.0058 and East 721270.7629 (NYSPCS-NAD83-East, U.S. Survey Foot);

thence from said point of beginning North 63 degrees 23 minutes 22 seconds West, a distance of 261.961 feet;

thence North 0 degrees 53 minutes 08 seconds West, a distance of 69.050 feet;

thence South 26 degrees 36 minutes 38 seconds West, a distance of 215.54 feet to the division line between property now or formerly 130 Midland Ave Owner LLC and property now or formerly Home Depot USA Inc.;

thence along said division line, North 63 degrees 23 minutes 22 seconds West, a distance of 246.22 feet to lands now or formerly Penn Central Railroad (New Haven Division);

thence along said last mentioned lands, North 31 degrees 36 minutes 10 seconds East, a distance of 618.18 feet;

thence South 63 degrees 34 minutes 19 seconds East, a distance of 484.795 feet;

thence South 26 degrees 25 minutes 41 seconds West, a distance of 463.092 feet to the point and place of BEGINNING.

Containing 269,747 square feet or 6.1925 acres, more or less.



BRYANT
23 W 43RD ST
NEW YORK, NY 10036-9991
(800) 275-8777

12/18/2023 11:11 AM

Product	Qty	Unit Price	Price
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First-Class Mail® Large Envelope	1		\$1.83
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Port Chester, NY 10573
Weight: 0 lb 2.80 oz
Estimated Delivery Date
Wed 12/20/2023

Certified Mail®			\$4.35
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Tracking #: 9589 0710 5270 1520 8758 09

Return Receipt			\$3.55
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Tracking #: 9590 9402 8396 3156 3675 36

Total			\$9.73
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Grand Total:			\$9.73
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Credit Card Remit			\$9.73
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Card Name: VISA
Account #: XXXXXXXXXX2060
Approval #: 03357C
Transaction #: 705
AID: A0000000031010 Contactless
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CHASE VISA

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Port Chester, NY 10573

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☐ Return Receipt (electronic) \$0.00

☐ Certified Mail Restricted Delivery \$0.00

☐ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.83

Total Postage and Fees \$9.73

Postmark
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12/18/2023

Sent To Curt Lavalla

Street and Apt. No., or PO Box No.

222 Grace Church Street, Suite 202

City, State, ZIP+4®

Port Chester NY 10573

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

Notice to Municipality

December 18, 2023

By Certified Mail – Return Receipt Requested

Curt Lavalla, AICP
Director, Planning and Economic Development
Village of Port Chester
222 Grace Church Street
Suite 202
Port Chester, NY 10573

Re: Environmental Easement

Dear Mr. Lavalla:

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

On: December 7, 2023
By: 130 Midland Ave Owner LLC
For: Property at 130 Midland Avenue, Port Chester, NY 10573
Tax Map No. 142.53-1-5.1 & 5.2
DEC Site No: C360195

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. Department approval is also required prior to any groundwater use.

Article 71, Section 713607 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.

Respectfully submitted,

MINTZER MAUCH PLLC

A handwritten signature in black ink, appearing to read 'MB' followed by a stylized flourish.

By: Matthew Barnett, Esq.

Cc: Kevin Leahy
Jesse Mauser



December 18, 2023

Via Federal Express

Cheryl Salem
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1500

Re: 130 Midland Avenue, Port Chester, New York, BCP Site No. C360195

Dear Ms. Salem:

Enclosed please find the Environmental Easement, a copy of the signed and sealed Westchester County Recording and Endorsement Page, and a copy of a letter and certified mail receipt demonstrating proof of notice to the affected local government in compliance with Article 71, Section 713607 of the New York State Environmental Conservation Law. Thank you.

Respectfully submitted,

MINTZER MAUCH PLLC

A handwritten signature in black ink, appearing to read 'Matthew Barnett', is written over a horizontal line.

By: Matthew Barnett

cc: Kevin Leahey
Jesse Mauser
Helen C. Mauch, Esq.

matthew.barnett@mintzernauch.com
290 Madison Avenue, 4th Floor
New York, NY 10017
646-452-3932