



GENESEE COUNTY - STATE OF NEW YORK
MICHAEL T. CIANFRINI, COUNTY CLERK
15 MAIN STREET, BATAVIA, NEW YORK 14020

Received

JAN 06 2025

NYSDEC OGC

COUNTY CLERK'S RECORDING PAGE

THIS PAGE IS PART OF THE DOCUMENT - DO NOT DETACH



Recording:

Cover Page	0.00
Recording Fee	0.00
Cultural Ed	0.00
Records Management - Coun	0.00
Records Management - Stat	0.00
TP584	0.00

Sub Total: 0.00

Transfer Tax	0.00
Transfer Tax - State	0.00

Sub Total: 0.00

Total: 0.00
**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
Transfer Tax #: 295
Exempt
Consideration: 0.00

Total: 0.00

INSTRUMENT #: DE2024-1402

Receipt#: 16716
Clerk: NYGEFEE
Rec Date: 09/23/2024 09:52:25 AM
Doc Grp: D
Descrip: AGMT REC'D IN DEEDS
Num Pgs: 11
Rec'd Frm: RONALD/AMB

Party1: BASKET PLACE LLC
Party2: STATE OF NEW YORK DEPT OF
ENVIRONMENTAL CONSERVATION
Town: BATAVIA CITY
085.09-1-14

Record and Return To:

NEW YORK STATE DEPT OF ENVIRONMENTAL
CONSERVATION
625 BROADWAY
ALBANY NY 12233

WARNING***

*** Information may be amended during the verification process, and may not be reflected on this cover page.

THIS PAGE CONSTITUTES THE CLERK'S
ENDORSEMENT, REQUIRED BY SECTION 316-a (5) &
319 OF THE REAL PROPERTY LAW OF THE STATE OF
NEW YORK

Michael T. Cianfrini

Michael T. Cianfrini
Genesee County Clerk

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

THIS INDENTURE made this 9th day of August, 2024 between Owner, Basket Place, LLC, having an office at 34 Clinton St, Batavia, County of Genesee, 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 34-40 Clinton Street in the City of Batavia, County of Genesee and State of New York, known and designated on the tax map of the County Clerk of Genesee as tax map parcel number: Section 85.09 Block 1 Lot 14, being the same as that property conveyed to Grantor by deed dated October 4, 1996 and recorded in the Genesee County Clerk's Office in Liber and Page 684/20. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 22.850 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 25, 2023, and last revised September 19, 2023, prepared by John E. McIntosh III, 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: C819022-03-19, 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 Genesee 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: C819022
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.

Basket Place, LLC:

By: Bernard S. Skalny

Print Name: BERNARD S. SKALNY

Title: MANAGING PARTNER Date: 07/31/2024

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

JENNIFER E GAROFALO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GA6241700
Qualified in Genesee County
My Commission Expires 05/23/2027

On the 31ST day of JULY, in the year 2024, before me, the undersigned, personally appeared BERNARD S. SKALNY, 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.

Jennifer E. Garofalo
Notary Public - State of New York

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 9th day of August, in the year 2024, 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.

Joseph A. Salem
Notary Public, State of New York
Notary Public State of New York
Registration No. 01SA0002177
Qualified in Albany County
My Commission Expires March 3, 2027

SCHEDULE "A" PROPERTY DESCRIPTION

Easement and Deed Description

All That Tract or Parcel of Land situate in the City of Batavia, County of Genesee and State of New York, and being part of Lots 10 and 12, Section 8, Township 12, Range 1 of the Holland Land Company Survey, bounded and described as follows:

Beginning at a point on the southerly boundary of Clinton Street (N.Y. Route 33) (Clinton Street being 66.0 feet wide), at the northeasterly corner of the lands described in a deed to Eaton, Yale and Towne, Inc., recorded in Liber 389 of Deeds at Page 66, which point of beginning is on the westerly line of lands conveyed to Harold K. and Doris Tootell recorded in Liber 318 of Deeds at Page 361.

Running thence South 30° 00' 00" East, along the westerly line of the said Tootell, a distance of 320.59 feet to the southwesterly corner thereof, which point is on the northerly line of the lands described in a deed to Eaton, Yale and Towne, Inc., recorded in Liber 333 of Deeds at Page 60.

Running thence North 83° 05' 30" East, along the northerly line of the said Eaton, Yale & Towne, Inc., lands last above referred to, a distance of 469.38 feet to the northeasterly corner thereof, which point is on the west line of lands now or formerly owned by Maurice B. and Mildred Nicholson.

Running thence South 07° 18' 12" East, along the west line of the said Nicholson and also along the east line of the lands described in a deed to Batavia Chamber of Commerce recorded in Liber 247 of Deeds at Page 72, a distance of 143.32 feet to the northwesterly corner of the lands described in a deed to Yale & Towne Manufacturing Co., Inc., recorded in Liber 364 of Deeds at Page 16.

Running thence South 86° 20' 42" East, along the northerly line of the said Yale & Towne Manufacturing Co., Inc., lands, a distance of 788.44 feet to the northeasterly corner thereof.

Running thence South 03° 32' 02" West, along the easterly line of the said Yale & Towne Manufacturing Co., Inc., lands, a distance of 443.60 feet to the southeasterly corner thereof, which point is on the northerly boundary of the Erie Railroad Company lands.

Running thence Westerly, along the northerly boundary of the Erie Railroad lands and on a curve to the left having a radius of 5,762.58 feet, an arc distance of 1,550.00 feet to a point of tangency.

Continuing thence South 82° 40' 20" West, along the northerly boundary of the Erie Railroad lands, a distance of 519.26 feet to the southwesterly corner of the lands described in a deed to Eaton Corporation recorded in Liber 418 of Deeds at Page 812.

Running thence the following courses and distances along the lines of the said Eaton Corporation lands as referred to above:

North 65° 07' 20" East, a distance of 97.08 feet to an angle therein.

North 46° 15' 00" East, a distance of 98.0 feet to an angle therein.

North 20° 45' 00" West, a distance of 133.0 feet to an angle therein.

North 59° 55' 00" East, a distance of 126.21 feet to a point on the westerly line of the lands described in a deed to Eaton, Yale & Towne, Inc., by deed recorded in Liber 415 of Deeds at Page 245.

Running thence North 20° 45' 00" West, along the westerly line of the Eaton Yale & Towne, Inc. lands last above referred to a distance of 117.23 feet to the northwesterly corner thereof;

Running thence North 59° 55' 00" East, along the northerly line of the Eaton Yale & Towne, Inc. lands by deed recorded in Liber 415 of Deeds at Page 245 a distance of 218.45 feet to the northeasterly corner thereof.

Running thence South 30° 05' 00" East, along the easterly line of the said Eaton Yale & Towne, Inc. lands and an extension thereof a distance of 110.22 feet to a point on a westerly line of the lands described in a deed to Eaton Yale & Towne, Inc. recorded in Liber 400 of Deeds at Page 410; said point being the southeasterly corner of the lands described in a deed to Niagara Mohawk Power Company recorded in Liber 328 of Deeds at Page 360.

Running thence the following courses and distances along the lines of the said Eaton Yale & Towne, Inc. lands as referred to above:

North 35° 00' 15" East, a distance of 21.0 feet to an angle therein.

North 12° 46' 49" East, a distance of 44.36 feet to an angle therein.

North 59° 57' 20" East, a distance of 17.0 feet to an angle therein.

North 30° 02' 40" West, a distance of 26.0 feet to an angle therein.

North 59° 57' 20" East, a distance of 9.79 feet to a northeasterly corner of the lands described in Liber 400 of Deeds at Page 410; which point is the southwesterly corner of the lands described in a deed to the City of Batavia recorded in Liber 400 of Deeds at Page 413.

Running thence North 59° 57' 20" East, along the southerly line of the said City of Batavia lands a distance of 52.21 feet to an angle therein.

Running thence South 30° 02' 40" East, along a westerly line of the said City of Batavia lands a distance of 26.0 feet to a southwesterly corner thereof.

Running thence North 59° 57' 20" East, along the southerly line of the said City of Batavia lands a distance of 20.0 feet to the southeasterly corner of the said City of Batavia lands.

Running thence North 30° 02' 40" West, along the easterly line of the said City of Batavia lands a distance of 268.0 feet to the northeasterly corner thereof; which point is on the southerly boundary of Clinton Street.

Running thence North 60° 00' 00" East, along the southerly boundary of Clinton Street a distance of 300.13 feet to the point of beginning.



1630 Empire Blvd, Suite 3B, Webster, NY 14580-2182 • 585-270-6922 • www.HNHattorneys.com

Ronald G. Hull, Partner
(585) 270-6207
RHull@HNHattorneys.com

December 13, 2024

Rachael Tabelski, City Manager
City of Batavia
One Batavia City Centre
Batavia, NY 14020

Re: Environmental Easement

Dear Ms. Tabelski:

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

On August 9, 2024,
by Basket Place, LLC,
and recorded in the Genesee County Clerk's Office,
on September 23, 2024,
for property at 34-40 Clinton St., Batavia, NY 14020,
Tax Map No. 85.009-1-14,
DEC Site No: C819022.

This Environmental Easement restricts future use of the above-referenced property to restricted commercial or 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 71-3607 of the New York State Environmental Conservation Law requires that:

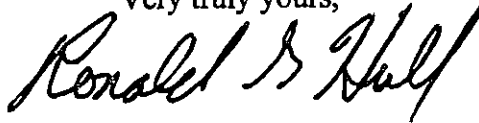
1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.
2. Whenever an affected local government receives an application 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

Rachael Tabelski, City Manager
December 13, 2024
Page 2

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,

A handwritten signature in black ink, appearing to read "Ronald G. Hull", written in a cursive style.

Ronald G. Hull

RGH:jih
Enclosure

cc: Melissa Valle, Esq.
New York State Department of Environmental Conservation



1630 Empire Blvd, Suite 3B, Webster, NY 14580-2182 • 585-270-6922 • www.HNHattorneys.com

Ronald G. Hull, Partner
(585) 270-6207
RHull@HNHattorneys.com

December 26, 2024

Received

JAN 06 2025

NYSDEC OGC

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

Re: Site Number C819022
34-40 Clinton Street, Batavia, New York
Recorded Environmental Easement and Notice to Municipality

Dear Sir or Madam:

Enclosed please find the Environmental Easement Granted Pursuant to Article 71, Title 36 of the New York State Environmental Conservation Law relating to the above-listed site and recorded in the Office of the Genesee County Clerk on September 23, 2024.

Also enclosed is a copy of the Notice to Municipality sent to the City of Batavia notifying the City of Batavia of the recording of the easement.

Please contact me if there are any questions.

Very truly yours,

A handwritten signature in blue ink that reads 'Ronald G. Hull'.

Ronald G. Hull

RGH:
Enclosures

cc: Clayton Hale, Esq. (w/encs.)
Melissa Valle, Esq. (w/encs.)