



ONEIDA COUNTY – STATE OF NEW YORK
SANDRA J. DEPERNO COUNTY CLERK
800 PARK AVENUE, UTICA, NEW YORK 13501

COUNTY CLERK'S RECORDING PAGE
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Cover Page	20.00
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INSTRUMENT #: 2020-006989

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Clerk: ST
Rec Date: 06/10/2020 10:46:38 AM
Doc Grp: RP
Descrip: DECLARATION
Num Pgs: 9

Total: 85.00

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

Party1: 2160 ERIE LLC
Party2: AREC 39, LLC
Town: UTICA

Record and Return To:

ELECTRONICALLY RECORDED BY SIMPLIFILE

WARNING***

I hereby certify that the within and foregoing was recorded in the Oneida County Clerk's Office, State of New York. This sheet constitutes the Clerks endorsement required by Section 316 of the Real Property Law of the State of New York.

Sandra J. DePerno
Oneida County Clerk

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT is made the 3rd day of June 2020, by AREC 39, LLC, a Delaware limited liability company, having an office for the transaction of business at 2727 N. Central Avenue, Phoenix, Arizona 85004.

WHEREAS, V00642, Former Foster Paper is the subject of Voluntary Cleanup Program executed by City of Utica as part of the New York State Department of Environmental Conservation's (the "Department's") Voluntary Cleanup Program, namely that parcel of real property located on 2160 Erie Street in the City of Utica, County of Oneida, State of New York, which is part of lands conveyed by David G. Goldbas, Esq. in his capacity as Special Master to 2160 Erie, LLC by deed dated December 15, 2015 and recorded in the Oneida County Clerk's Office as Instrument No. 2016-002339, and being more particularly described in Appendix "A," attached to this declaration and made a part hereof, and hereinafter referred to as "the Property"; and

WHEREAS, 2160 Erie, LLC conveyed the Property to AREC 39, LLC by bargain and sale deed, dated October 11, 2019 and recorded in the Oneida County Clerk's Office as Instrument No. 2019-015342; and

WHEREAS, the Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property and such remedy requires that the Property be subject to restrictive covenants.

WHEREAS, the City of Utica placed restrictions upon the Property pursuant to a Declaration of Covenants and Restrictions, dated June 30, 2003 and recorded in the Oneida County Clerk's Office as Instrument No. 2003-016810; and

WHEREAS, AREC 39, LLC desires to amend and restate the covenants and restrictions set forth in the Declaration of Covenants and Restrictions, dated June 30, 2003.

NOW, THEREFORE, AREC 39, LLC, for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions is as shown on a map attached to this declaration as Appendix "B" and made a part hereof.

Second, unless prior written approval by the Department or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, where contamination remains at the Property subject to the provisions of the Site Management Plan ("SMP"), there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property which threatens the integrity of the engineering controls or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall not disturb, remove, or otherwise interfere with the installation, use, operation, and maintenance of engineering controls required for the Remedy, which are described in the SMP, unless in each instance the owner first obtains a written waiver of such prohibition from the Department or Relevant Agency.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for commercial purposes as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and industrial purposes as described in 6 NYCRR Part 375-1.8(g)(2)(iv) without the express written waiver of such prohibition by the Department or Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment to render it safe for drinking water or for industrial purposes, as appropriate, and the user must first notify and obtain written approval to do so from the Department or Relevant Agency.

Sixth, the owner of the Property shall provide a periodic certification, prepared and submitted by a professional engineer or environmental professional acceptable to the Department or Relevant Agency, which will certify that the institutional and engineering controls put in place are unchanged from the previous certification, comply with the SMP, and have not been impaired.


Seventh, the owner of the Property shall continue in full force and effect any institutional and engineering controls required for the Remedy and maintain such controls, unless the owner first obtains permission to discontinue such controls from the Department or Relevant Agency, in compliance with the approved SMP, which is incorporated and made enforceable hereto, subject to modifications as approved by the Department or Relevant Agency.

Eighth, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner and its successors and assigns consent to enforcement by the Department or Relevant Agency of the prohibitions and restrictions that the Voluntary Cleanup Program requires to be recorded, and hereby covenant not to contest the authority of the Department or Relevant Agency to seek enforcement.

Ninth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Department or Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

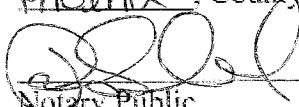
IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

AREC 39, LLC

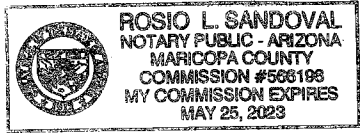
By: 
Print Name: MATTHEW F. BUCCIA
Title: PRESIDENT Date: 06/03/2020

STATE OF Arizona)
) ss:
COUNTY OF Maricopa

On the 3rd day of June, in the year 2020, before me, the undersigned, personally appeared Matthew F. Braccia, 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 in the Town/City of Phoenix, County of Maricopa, State of Arizona.



Notary Public
Commission Expires: 5/25/2023



APPENDIX A

Legal Description

All of that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being described as follows:

PARCEL I:

ALL THAT PIECE OR PARCEL OF LAND situate in the City of Utica, County of Oneida, State of New York and more particularly described as follows:

COMMENCING at a point of intersection of the northerly highway boundary of existing Erie Street with the division line between Daniel J. Loconti (liber 2057, page 597) on the east and City of Utica (liber 2818, page 78) on the west; thence N 79° 29' 39" W, along the last mentioned street boundary 70.28 feet to an iron pin set at the point of beginning for the herein described Parcel B to be conveyed; thence N 79° 29' 30" W, continuing along the northerly highway boundary of existing Erie Street 618.25 feet to an iron pin found at an angle point; thence N 10° 31' 07" E, along the division line between Utica Converters, Inc. (Liber 2369, Page 230) on the west and City of Utica (liber 2800, page 637) on the east, 104.69 feet to an iron pin found at an angle point; thence N 78° 17' 23" W, along the division line between Utica Converters, Inc. (liber 2369, page 230) on the south and City of Utica (liber 2800, page 637) on the north 10.00 feet to an iron pin found at an angle point; thence N 10° 30' 37" E, along the division line between Utica Converters, Inc. (liber 2369, page 230) on the west and City of Utica (liber 2800, page 637) on the east, 165.20 feet to an angle point; thence N 12° 16' 07" E, along the division between Utica Converters, Inc. (liber 2369, page 230) on the west and City of Utica (liber 2800, page 637) on the east, 92.85 feet to a point on the southerly highway boundary of existing Oriskany Boulevard; thence S 77° 15' 54" E, along the last mentioned highway boundary 614.92 feet to an iron pin set at an angle point; thence S 12° 35' 03" W, along a proposed division line between Parcel A on the east and Parcel B on the west 4.03 feet to an iron pin set at an angle point; thence southeasterly along a 24.00 foot radius curve to the right and along a proposed division line between Parcel A on the northeast and Parcel B on the southwest an arc distance of 37.80 feet to an iron pin set at a point of tangency; thence S 10° 10' 27" W, along a proposed division line between Parcel A on the east and Parcel B on the west, 11.53 feet to an iron pin set at a point of curvature; thence southwesterly along a 20.00 foot radius curve to the right and along a proposed division line between Parcel A on the southeast and Parcel B on the northwest an arc distance of 15.71 feet to an iron pin set at a point of tangency; thence S 55° 10' 27" W, along a proposed division line between Parcel A on the southeast and Parcel B on the northwest 20.74 feet to an iron pin set at a point of curvature; thence southwesterly along a 20.00 foot radius curve to the left and along a proposed division line between Parcel A on the southeast and Parcel B on the northwest an arc distance of 15.59 feet to a point of tangency; thence S 10° 30' 21" W, along a proposed division line between Parcel A on the east and Parcel B on the west, a distance of 117.84 feet to an iron pin set at an angle point; thence southeasterly along a 15.00 foot radius curve to the left and along a proposed division line between Parcel A on the northeast and Parcel B on the southwest an arc distance of 11.78 feet to an iron pin set at a point of tangency; thence S 34° 29' 39" E, along a proposed division line between Parcel A on the northeast and Parcel B on the southwest 5.77 feet to an iron pin set at a point of curvature; thence southeasterly along a 15.00 foot radius curve to the right and along a proposed division line between Parcel A on the northeast and Parcel B on the southwest an arc distance of 11.78 feet to an iron pin set at a point of tangency;

thence S 10° 30' 21" W, along a proposed division line between Parcel A on the east and Parcel B on the west 113.46 feet to the point of beginning.

The above mentioned courses and distances are as shown as Parcel B on a map entitled "Map and Survey showing lands to be conveyed by City of Utica, County of Oneida, State of New York" surveyed by Christopher S. Nash, L.L.S. #049163, and dated August 2, 2002, last revised June 19, 2006.

PARCEL II:

TOGETHER with the benefits and burdens of an easement described in a Deed made by and between Utica Urban Renewal Agency to Butler Real Estate, Inc., dated July 11, 2003 and recorded on July 14, 2003 in the Oneida County Clerk's Office, Instrument #2003-016815.

PARCEL III:

TOGETHER with a non-exclusive easement granted by an Utility Line Easement Agreement by and between Utica Converters, Inc., as grantor, to Butler Real Estate, Inc., as grantee, dated May 24, 2006 and recorded June 30, 2006 in the Oneida County Clerk's Office as Instrument No. R2006-000908, which easement is described as follows:

COMMENCING at a point of intersection of the southerly highway boundary of existing Oriskany Boulevard with the division line between Butler Real Estate, Inc. (instrument number 2003-016815) on the east and Utica Converters (reputed owner) on the west; thence S. 12° 16' 07" W, along the last mentioned division line 92.85 feet to an angle point; thence S. 10° 30' 37" W, along the division line between Butler Real Estate, Inc. (instrument number 2003-016815) on the east and Utica Converters (reputed owner) on the west 42.00 feet to the point of Beginning for the herein described Maintenance and Utility Easement; thence S. 10° 30' 37" W, along the division line, between Butler Real Estate, Inc. (instrument number 2003-016815) on the east and Utica Converters (reputed owner) on the west 52.13 feet to an angle point; thence N. 79° 29' 23" W, along a proposed easement line 10.13 feet to an angle point and an existing building line; thence N. 11° 18' 15" E, along a proposed easement line and an existing building line and its extension 52.13 feet to an angle point; thence S. 79° 29' 23" E, along a proposed easement line 9.44 feet to the point of Beginning.

PARCEL IV:

TOGETHER with an access easement for pedestrian and vehicular ingress, egress and regress pursuant to a Reciprocal Access Easement by and between Utica Converters, Inc. and Butler Real Estate, Inc. dated May 24, 2006 and recorded June 30, 2006 in the Oneida County Clerk's Office as Instrument No. R2006-000907, which easement is described as follows:

BEGINNING at a point of Intersection of the southerly highway boundary of existing Oriskany Boulevard with the division line between Butler Real Estate, Inc. (instrument number 2003-016815) on the east and Utica Converters (reputed owner) on the west; thence S. 12° 16' 07" W, along the last mentioned division line 92.85 feet to an angle point; thence N. 77° 43' 53" W, along a proposed easement line 40.00 feet to an angle point; thence N. 12° 16' 07" E, along a proposed easement line 93.18 feet to the southerly highway boundary of the first mentioned Oriskany Boulevard; thence S. 77° 15' 54" E, along the last mentioned highway boundary 40.00 feet to the point of Beginning.

Also known on the Official Tax Map of the City of Utica, County of Oneida, as Section 306.17; Block 1; Lot 59, commonly known as 2160 Erie Street, Utica, New York.

APPENDIX B

