



LEVENE GOULDIN & THOMPSON, LLP

ATTORNEYS AT LAW

2006 DEC -1 PM 12:04

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06-W-1466

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(1924-2005)

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John R. Normile, Jr.
John F. Artman**

* also admitted in FL
** also admitted in PA
† also admitted in MA

November 29, 2006

Via Certified Mail-Return Receipt Requested

Jacqueline Brilling
Secretary to the Public Service Commission
3 Empire State Plaza
Albany, NY 12223

**RE: Joint Petition to Transfer the Helen J. Binder
Water Distribution System**

Dear Jacqueline:

We represent the Estate of Helen J. Binder, and its executrix Doreen Layton, in connection with the transfer of the Helen J. Binder Water Distribution System. Enclosed please find the Joint Petition by Doreen Layton as executrix of the Estate of Helen J. Binder and the Town of Binghamton to obtain the New York State Public Service Commission's consent to transfer the Helen J. Binder Water Distribution System pursuant to N.Y. Pub. Serv. Law Section 89-H.

Would you please forward the enclosed petition to the appropriate individual(s) within the Public Service Commission for its' review and approval. Thank you in advance for your prompt attention to this matter, it is greatly appreciated. Should you have any questions please do not hesitate to contact me.

Very truly yours,

LEVENE GOULDIN & THOMPSON, LLP

Jeremy R. Root, Esq.

JRR/slb

Enc.

cc: John Krol (w/ enclosure)
Kurt Schrader
Mark and Doreen Layton

450 Plaza Drive • Vestal, NY 13850 • Phone: 607.763.9200
Mailing Address: P.O. Box F-1706 • Binghamton, NY 13902-0106 • Fax: 607.763.9211

**JOINT PETITION
BY
DOREEN LAYTON AS EXECUTRIX OF THE ESTATE OF HELEN J. BINDER
AND
THE TOWN OF BINGHAMTON
TO TRANSFER THE HELEN J. BINDER WATER DISTRIBUTION SYSTEM**

Please accept this as a formal petition on behalf of Doreen Layton, as executrix of the Estate of Helen J. Binder (the "Estate"), and the Town of Binghamton to obtain the New York State Public Service Commission's consent to transfer the Helen J. Binder Water Distribution System pursuant to N.Y. Pub. Serv. Law § 89-h (Consol. 2006), as interpreted by the Third Department of the New York State Supreme Court's Appellate Division in *Spring Brook Water Co. v. Hudson Falls*, 269 A.D. 515, 519-520 (N.Y. App. Div. 1945).

The following paragraphs outline the reasons necessitating the Estate's transfer of the water distribution system to the Town, the reasons why the transfer of the water distribution system to the Town is in the public interest, and the method through which the water distribution system will be transferred to the Town.

1. A developer named Joseph Kaminsky ("Kaminsky") installed a private water distribution system known by the Public Service Commission as the Helen J. Binder Water Distribution System (the "Distribution System") approximately 55 years ago to service a development he built on and around Lillian Drive in the Town of Binghamton, New York.

2. Upon Kaminsky's death in 1969, the Distribution System was owned and operated by various members of the Kaminsky family until it eventually became owned and operated by Mr. Kaminsky's last surviving daughter, Helen Binder. Helen Binder operated the water distribution system until her death in 1999.

3. Since Helen Binder's death in 1999 the Distribution System has been owned by the Estate of Helen Binder.

4. Doreen M. Layton ("Doreen") is the Executrix of the Estate of Helen Binder. Consequently, upon Helen Binder's death over six years ago it became Doreen's responsibility to manage all of the Estate's property, including the Distribution System, until all of the property is distributed to the beneficiaries. It is in this executrix capacity that Doreen has involuntarily become the operator of the Distribution System.

5. Doreen, with help from her husband, Mark Layton ("Mark"), have handled the billing of customers and the day-to-day operations of the Distribution System since the death of Helen Binder. They are the only people who make sure the needs of the Distribution System's customers are met.

6. The Estate's ownership of the Distribution System has precluded it from being completely administered and closed out. The fact that the Distribution System is an asset with obligations and duties has made the beneficiaries of the Estate unwilling to accept it as part of their distribution of the Estate. Moreover, the Distribution System has significant problems due to its age, and the inability to perform adequate preventative maintenance, which makes the beneficiaries of the Estate even more unwilling to accept it because of the potential for personal liability.

7. Based on the unwillingness of the beneficiaries of the Estate to accept the Distribution System, and concerns regarding their personal liability in light of the condition of the Distribution System, Doreen, upon recommendation of counsel, has retained the Distribution System in the Estate to limit the liability to the assets of the Estate. Therefore, the Estate will continue to own the Distribution System and Doreen will remain indefinitely bound to continue operating the Distribution System by the fiduciary duties attendant to her executrix capacity until the Distribution System can be disposed of. It is significant to note that during the six years that the Estate has owned the Distribution System, two of the beneficiaries of the Estate have died.

8. The Distribution System currently services 26 residents on Powers Road and Lillian Drive in the Town of Binghamton. The Distribution System has been operating with relatively the same number of customers for at least the past seven years, and there is no expectation of additional customers in the foreseeable future.

9. It has been established that there are periodic problems with the water quality and the operation of the Distribution System.

10. A Water Supply Facilities Report drafted in February of 2005 by the engineering firm of Clark Patterson Associates found that the Distribution System's water mains along Lillian Drive are 4 inches or smaller. The report found that the small size of the water mains results in inadequate water volume and inadequate water pressure to the residents at the upper end of Lillian Drive.

11. Specifically, Clark Patterson Associates has determined that the Distribution System does not currently meet New York State Health Department Requirements because the minimum pressure at the users point of use falls below 20 pounds per square inch.

12. Clark Patterson Associates has also determined that the Distribution System does not meet Town of Binghamton standards for residential fire flow.

13. Currently, fire protection service is not and cannot be provided by the Distribution System, due to its inadequacies.

14. The Town Board of Binghamton, in its resolution to create a Lillian Drive Water District to replace the Distribution System, found that the Distribution System has

repeatedly failed to provide sufficient water for the residences and water users in the service area.

15. The Town Board of Binghamton has also found that the establishment of a Lillian Drive Water District is in the public interest because of fire dangers and the potential public health concerns due to water borne health dangers that result from an insufficient water supply.

16. The Broome County Health Department has been involved with the Distribution System since 1978 providing inspections and technical advice with regards to maintaining quality drinking water.

17. The Broome County Health Department has noted that during this time period the Distribution System has had its share of maintenance problems. The Broome County Health Department attributes these maintenance problems to the fact that the Distribution System serves only a small number of residents, making preventative maintenance economically difficult for the owner.

18. Accordingly, the Broome County Health Department has suggested that the Town of Binghamton take over the Distribution System. The Broome County Health Department has found that a takeover by the Town would be advantageous because it would provide a quality workforce and certified operator to oversee the Distribution System.

19. The Distribution System's maintenance issues, inadequate water volume and inadequate water pressure have been a concern to the residents of Powers Road and Lillian Drive and the owner of the Distribution System since April of 1998. At a Town of Binghamton Board Meeting held on April 21, 1998, the Town Board Supervisor indicated that twenty-one of the then landowners in the Lillian Drive subdivision signed a petition requesting that the Town take over the Distribution System.

20. The engineering firm, Clark Patterson Associates, has determined that in order to meet New York State Health Department Requirements for minimum pressure and Town of Binghamton standards for residential fire flow, the Distribution System would require new hydrants and new water services, replacement of the 4" main on Lillian Drive with an 8" main, and a pump station to boost the minimum working pressure and provide fire flow.

21. Clark Patterson Associates has estimated that the improvements to the Distribution System mentioned above would cost \$175,445.00 in construction costs alone. Including engineering, legal fees and contingencies Clark Patterson Associates estimates a total project cost of \$281,000.00.

22. The revenue of the Distribution System and the assets of the Estate are insufficient to cover the cost of the improvements found necessary by the engineering firm Clark Patterson Associates for the Distribution System to comply with New York State Health

Department Requirements for minimum pressure and Town of Binghamton standards for residential fire flow.

23. Moreover, the revenue of the Distribution System and the assets of the Estate are insufficient to cover the cost of repairing or replacing the Distribution System should an emergency occur or if such work otherwise became necessary.

24. The Town of Binghamton is willing to assume ownership of the Distribution System, provided the Distribution System is renovated to meet state requirements for minimum pressure and town standards for residential fire flow, and a Water District is formed to bond for improvements and to operate and maintain the system.

25. On February 15, 2005 the public hearing to consider the increase in cost of the establishment of the Lillian Drive Water District was held, and afterwards the Town Board of the Town of Binghamton adopted a resolution, subject to a permissive referendum, establishing the Lillian Drive Water District and accepting the cost adjustment of the project not to exceed \$281,000. The Town Board also found that the establishment of a Lillian Drive Water District was in the public interest and adopted an order approving the establishment of a Lillian Drive Water District at a maximum project cost of \$281,000.

26. On March 1, 2005 the Town Board of the Town of Binghamton approved the submission of an application for approval of formation of the Lillian Drive Water District to the Office of the State Comptroller. Accordingly, on March 5, 2005 an application to the New York State Comptroller to establish a Lillian Drive Water District was signed by Mr. Timothy Whitesell on behalf of the Town Board of the Town of Binghamton.

27. On January 31, 2006 the New York State Comptroller approved the Town of Binghamton's application for permission to establish the Lillian Drive Water District.

28. Currently, the Town of Binghamton is in the process of obtaining loan approval of from the United States Department of Agriculture, Rural Development for a low interest loan of the funds necessary to establish the Lillian Drive Water District.

29. Once the Town of Binghamton has received loan approval from the United States Department of Agriculture, Rural Development for the funds to establish the Lillian Drive Water District, Doreen, as Executrix of the Estate, will:

(a) Transfer all of the Estate's right, title and interest in and to the Distribution System to the Town by assignment;

(b) Convey the 25 foot wide easement through which water passes from the City of Binghamton line, which is located on real property currently owned in fee by Robert Haskell II ("Haskell") on Powers Road. Doreen, as Executrix of the Estate, owns the

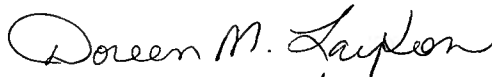
Easement as set forth in the reservation excepted from the deed attached hereto as Schedule "A";

(c) Cause Haskell to convey to the Town by warranty deed, a fee interest in a parcel as needed by the Town for a pump station ("Pump Parcel") from the real property owned by Haskell. Doreen, as Executrix of the Estate, is party to an Option Agreement with Haskell which requires him to convey the Pump Parcel to the Town, or to Doreen for the sole purpose of reconveying it to the Town; a copy of the Option Agreement is attached hereto as Schedule "B";

(d) Release the mortgage held by Doreen, as Executrix of the Estate, on the Pump Parcel. The Pump Parcel is subject to a mortgage from Haskell to the Executrix. It is a default under said mortgage if Haskell does not convey the Pump Parcel to the Town or to Doreen. A copy of the said mortgage is attached hereto as Schedule "C"; and

(e) Take any other actions reasonably necessary to complete the transfer of the Distribution System to the Town and enable the Town to distribute water to the residences currently served by the Distribution System.

Therefore, as the foregoing paragraphs detail, it is both necessary and in the public interest for the Estate to transfer its ownership of the Distribution System to the Town. As such, Doreen, as Executrix of the Estate, and the Town respectfully request that their joint petition to transfer ownership of the Distribution System from the Estate to the Town be granted.


as Executrix

Doreen Layton, as Executrix of the Estate of Helen J. Binder



Timothy Whitesell, Supervisor of the Town of Binghamton

BROOME COUNTY CLERK
RECORDING PAGE



Return To:

LEVENE GOULDIN & THOMPSON
BOX F 1706

BINGHAMTON NY 13901

HASKELL
ROBERT
LAYTON
DOREEN
BINDER
HELEN

D II
M-EXRX
J/EXRX

Index MORTGAGE BOOKS

Book 02641 Page 0646

No. Pages 0011

Instrument MORTGAGE

Date : 1/12/2001

Time : 3:50:05

Control # 200101120099

FIL#1 MT CR 005171

FIL#2

Employee ID PMD32748

MORTGAGE TAX

RECORDING	\$	38.25
CTY TAX	\$	117.50
BASIC MTG	\$	235.00
SP AD MTG	\$	117.50
REC MGMT	\$	4.75
MTAX AFF	\$	.00
	\$	.00
	\$	.00
	\$	.00

Total: \$ 513.00

MTG AMT	\$	47,000.00
BASIC	\$	235.00
SPECIAL	\$	117.50
ADDL	\$	117.50
Total	\$	470.00

STATE OF NEW YORK
BROOME COUNTY CLERK

TRANSFER TAX

WARNING-THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 316-A(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH

TAXABLE AMT \$.00

TRANSFER TAX \$.00

BARBARA FIALA



M026410646

Comp *P*
Ver. *P*
Bk.

Schedule "C"

CONSULT YOUR LAWYER BEFORE SIGNING THIS FORM—THIS FORM SHOULD BE USED BY LAWYERS ONLY.

Mortgage

Date.....January.....12.....2001

PartiesMortgagor ROBERT D. HASKELL II, residing at
1908 Route 26, Vestal, New York 13850Mortgagee DOREEN M. LAYTON, as Executrix of the Last Will and Testament of
Helen J. Binder, residing at 409 Pinecrest Road, Vestal, New York 13850**Transfer of
rights in the
Property****Underlying
debt, future
advances****Property
mortgaged**

The Mortgagor promises and agrees as follows:

1. The Mortgagor hereby mortgages to the Mortgagee the Property described in this Mortgage. Mortgagor can lose the Property for failure to keep the promises in this Mortgage.

2. This Mortgage is made to secure a Debt of the Mortgagor to the Mortgagee for Forty-Seven Thousand and 00/100-----dollars (\$ 47,000.00), payable with interest according to a Bond or Note having the same date as this Mortgage. The Mortgagee may make advances in the future to the Mortgagor or future owners of the Property. In addition to the above Debt the Bond or Note and this Mortgage is intended to secure any more debts now or in the future owed by the Mortgagor to the Mortgagee. The maximum amount of debt secured by the Bond or Note and this Mortgage shall not be greater than the Debt stated above. Mortgagee is not obligated to make future advances.

3. The Property mortgaged (the "Property") is
(a) All

Schedule "A" attached hereto and made a part hereof.

Schedule "B" attached hereto and made a part hereof.

building and
improvements
streets
fixtures
awards

Payment and
late charge

Insurance

Maintenance
No sale or
alteration

- (b) Together with the buildings and improvements on the Property.
- (c) Together with all the Mortgagor's right, title and interest in the streets next to the property to their center lines.
- (d) Together with all fixtures and personal property which now is or which later may be attached to or used or useful in connection with the Property. This does not include household furniture.
- (e) Together with all condemnation awards for any taking by a government or agency of the whole or part of the real Property or any easement in connection with the Property. This includes awards for changes of grade of streets.
4. Mortgagor will pay the Debt as promised in the Bond or Note according to its terms. If any payment is overdue more than 15 days an additional charge will be due to Mortgagee to cover the cost of delay. This late charge shall be the sum of two cents (\$.02) for each One Dollar (\$1.00) of the principal and interest payment. If any payment by check is dishonored due to insufficient funds the bank charges if any, incurred by the Mortgagee, shall be an additional charge which shall be paid to the Mortgagee to cover such cost.
5. Mortgagor will keep the buildings on the Property insured against loss by fire and other risks included in the standard form of extended coverage insurance. The amount shall be approved by Mortgagee but shall not exceed full replacement value of the buildings. Mortgagor will assign and deliver the policies to Mortgagee. The policies shall contain the standard New York Mortgage clause in the name of Mortgagee. If Mortgagor fails to keep the buildings insured Mortgagee may obtain the insurance. Within 30 days after notice and demand Mortgagor must insure the Property against war risk and any other risk reasonably required by Mortgagee.
6. Mortgagor will keep the Property in reasonably good repair.
7. The Mortgagor may not, without the consent of Mortgagee, (a) alter, demolish or remove the buildings and improvements on the Property, or (b) sell the Property or any part of it.

Taxes, etc.	8. Mortgagor will pay all taxes, assessments, sewer rents or water rates within 30 days after they are due. Mortgagee must also receive for these payments within 10 days of Mortgagee's demand on book
Expenses of mortgagee	9. Mortgagor must pay all expenses of Mortgagee, including reasonable attorney's fees, if (a) Mortgagee is made a party in a suit relating to the Property, or (b) Mortgagee sues anyone to protect or enforce Mortgagee's rights under this Mortgage.
Mortgagee's right to cure	10. Mortgagor authorizes Mortgagee to make payments necessary to correct a default of Mortgagor under Paragraphs 5, 8 and 9 of this Mortgage. Payments made by Mortgagee together with interest at the rate provided in the Bond or Note from the date paid until the date of repayment shall be added to the Debt and secured by this Mortgage. Mortgagor shall make repayment with interest within 10 days after demand.
Statement of the amount due (estoppel)	11. Within five days after request in person or within ten days after request by mail, Mortgagor shall give to Mortgagee a signed statement of the amount due on this Mortgage and whether there are any offsets or defenses against the Debt.
Title	12. Mortgagor warrants the title to the Property. Mortgagor is responsible for any costs or losses of the Mortgagee if an interest in the Property is claimed by others.
Cure violations	13. Mortgagor shall comply with any law or governmental order or cure any legal violation concerning the Property. Mortgagor shall comply within 90 days after the order or violation is issued or the law takes effect.
Lien law section 13	14. Mortgagor will receive the advances secured by this Mortgage and will hold the right to receive the advances as a trust fund. The advances will be applied first for the purpose of paying the cost of improvement. Mortgagor will apply the advances first to the payment of the cost of improvement before using any part of the total of the advances for any other purpose.
Inspections	15. Mortgagee and any person authorized by the Mortgagee may enter and inspect the property at reasonable times.
Financing statements	16. Mortgagor authorizes Mortgagee to file without Mortgagor's signature one or more financing statements as permitted by law to perfect the security interest of this Mortgage.
Default, when full amount of debt due immediately	17. Mortgagee may declare the full amount of the Debt to be due and payable immediately for any default. The following are defaults: (a) Mortgagor fails to make any payment required by the Bond or Note or Mortgage within ³⁰ 35 days of the date it is due; (b) Mortgagor fails to keep any other promise or agreement in this Mortgage within the time stated, or if no time is stated, within a reasonable time after notice is given that Mortgagor is in Default; (c) On application of Mortgagee, two or more insurance companies licensed to do business in New York State refuse to issue policies insuring the buildings and improvements on the Property.
Sale	18. If Mortgagor defaults under this Mortgage and the Property is to be sold at a foreclosure sale, the Property may be sold in one parcel.
Receiver	19. If Mortgagee sues to foreclose the Mortgage, Mortgagee shall have the right to have a receiver appointed to take control of the Property, without notice to Mortgagor.
Payment of rent and eviction after default	20. If there is a Default under this Mortgage, Mortgagor must pay monthly in advance to Mortgagee, or to a receiver who may be appointed to take control of the Property, the fair rental for the use and occupancy of the part of the Property that is in the possession of the Mortgagor. If Mortgagor does not pay the rent when due, Mortgagor will vacate and surrender the Property to Mortgagee or to the receiver. Mortgagee may evict the Mortgagor by summary proceedings or other court proceedings.
Applicable law	21. Mortgagee shall have all the rights set forth in Section 254 of the New York Real Property Law in addition to Mortgagee's rights set forth in this Mortgage, even if the rights are different from each other.
No waiver	22. Delay or failure of Mortgagee to take any action will not prevent Mortgagee from taking action later. Mortgagee may enforce those rights Mortgagee chooses without giving up any other rights.
Notices	23. Notices, demands or requests may be in writing and may be delivered in person or sent by mail.
No oral changes Who is bound	24. This Mortgage may not be changed or ended orally. 25. If there are more than one Mortgagor each shall be separately liable. The words "Mortgagor" and "Mortgagee" shall include their heirs, executors, administrators, successors and assigns. If there are more than one Mortgagor or Mortgagee the words "Mortgagor" and "Mortgagee" used in this Mortgage includes them.
	26. See Rider attached for paragraphs <u>27</u> to <u>36</u> .

Signatures

The Mortgagor, states that the Mortgagor has read this Mortgage, received a completely filled in copy of it and has signed this Mortgage as of the date at the top of the first page.

WITNESS

MORTGAGOR

Robert D. Haskell II
Robert D. Haskell II

ACKNOWLEDGMENT IN NEW YORK STATE (RPL 309-a)

State of New York, County of Broome ss.:
On 1/14/01 before me, the undersigned,
personally appeared Robert D. Haskell II

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

PETER A. GORTON
Notary Public, State of New York (individual taking acknowledgment)
No. 23424

Residing in Broome County
My Commission expires Feb. 28, 2002
ACKNOWLEDGMENT OUTSIDE NEW YORK STATE (RPL 309-b)

State of County of ss.:
On before me, the undersigned,
personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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, and that such individual made such appearance before the undersigned in

(Insert city or political subdivision and state or county or other place acknowledgment taken)

(signature and office of individual taking acknowledgment)

ACKNOWLEDGMENT BY SUBSCRIBING WITNESS(ES)

State of } ss.:
County of }

On before me, the undersigned,
personally appeared

the subscribing witness(es) to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in (if the place of residence is in a city, include the street and street number, if any, thereof);

that he/she/they know(s)

to be the individual(s) described in and who executed the foregoing instrument; that said subscribing witness(es) was (were) present and saw said

execute the same; and that said witness(es) at the same time subscribed his/her/their name(s) as a witness(es) thereto.

(☐ If taken outside New York State insert city or political subdivision and state or county or other place acknowledgment taken. And that said subscribing witness(es) made such appearance before the undersigned in

(signature and office of individual taking acknowledgment)

Mortgage

Robert D. Haskell II

TO

Doreen M. Layton,
As Executrix of the
Last Will and Testament
of Helen J. Blinder

Dated, 1/14/01

STATE OF NEW YORK

County of

RECORDED ON THE

day of at o'clock M.
in Liber of Mortgages
at Page and examined

CLERK

PLEASE RECORD AND RETURN TO:

Levene, Gould & Thompson, LLP
Albert Kukul
450 Plaza Drive
Westbury, N.Y. 11591-5050

RIDER TO MORTGAGE BETWEEN
DOREEN M. LAYTON,
as Executrix of the Last Will and Testament of Helen J. Binder,
Mortgagee
and
ROBERT D. HASKELL II,
Mortgagor

27. THIS IS A PURCHASE MONEY MORTGAGE

28. NO SALE OR TRANSFER

Except as herein provided, in the event of a sale of the Property, by transfer of record, equitable title or land contract, or any other agreement whereby Mortgagor transfers any right or interest in the Property, or any lease agreement, and whether recorded or unrecorded (collectively "Sale"), while this Mortgage shall remain a lien thereon, this Mortgage and the obligation which it secures shall become immediately due and payable at the option of the Mortgagee.

Notwithstanding the foregoing, in the event of any Sale of a portion of the Property, the Mortgagee shall release the lien of the Mortgage for such portion provided that the:

(A) Mortgagor is not in default under any covenant in this Mortgage or the Note secured hereby; and

(B) Mortgagor is not in default under any covenant in any other Mortgage or Note, between the Mortgagor and the Mortgagee; and

(C) Mortgagor provides Thirty (30) days written notice of such Sale; and

(D) Portion of the Property which is the subject of such Sale

(I) leaves the remaining Property adequate access to Powers Road, in the sole discretion of the Mortgagee, and

(II) does not unduly devalue the remaining Property or render it in an unacceptable condition, all in the sole discretion of the Mortgagee; and

(E) Mortgagor pays Seventy-Five Percent (75%) of the net proceeds, after payment of necessarily incurred closing costs, from such Sale, which sum shall be applied to the then outstanding principal balance of the Note.

29. EXPENSES OF COLLECTION, REASONABLE ATTORNEYS' FEES AND EXPENSES

If this Mortgage is referred to any attorney for collection or if any action is commenced by the Mortgagee to foreclose this Mortgage or to collect any amounts secured hereby, the Mortgagor agrees to pay to the Mortgagee its reasonable attorneys' fees, costs and disbursements, together with the expense of collection which fees, costs and disbursements and expenses shall be secured by this Mortgage and may be collected in such foreclosure proceeding or other action or proceeding and shall be a lien on the Property prior to any right or title to, interest in, or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage. In the event of foreclosure, the interest rate stated in the Mortgage Note or the statutory rate of interest for judgments, whichever is higher, shall apply until the principal is fully paid.

30. TAXES AND INSURANCE

Proof of payment of Life Insurance and all real property taxes must be forwarded by Mortgagor to Mortgagee within thirty (30) days after due dates.

31. ASSIGNMENT OF TIMBER RIGHTS

The Mortgagor hereby assigns to the Mortgagee all present and future trees, timber and timber rights (collectively, "Timber Rights") to the Property, as further security for the payment of said indebtedness, and the Mortgagor grants to the Mortgagee, and Mortgagee's agents, the right to enter upon the Property for the purpose of exercising the Timber Rights and to sell the timber of Mortgagee's choice on the Property or any part thereof, and to apply the profits, after payment of all necessary charges and expenses, on account of said indebtedness. This assignment and grant shall continue in effect until this Mortgage is paid. The Mortgagee hereby waives the right to enter upon the Property for the purpose of exercising the Timber Rights, and the Mortgagor shall be entitled to exercise the Timber Rights until default under any of the covenants, conditions or agreements contained in this Mortgage or Note secured hereby and agrees to use 50% of such profits in payment of principal and interest becoming due on the Note, but such right of the Mortgagor may be revoked by the Mortgagee upon any default, on five (5) days' written notice.

32. CROSS DEFAULT AND ADDITIONAL DEFAULT FOR PUMP PARCEL

A default under any other Mortgage Note or Mortgage between the Mortgagor and Mortgagee (or Mortgagee's assignee) shall be deemed a default hereunder.

[Failure of the Mortgagor to comply with the terms of the Option Agreement between the Mortgagor and Mortgagee of even date herewith and intended to be recorded simultaneously herewith shall be deemed a default hereunder.]

33. FURTHER ENCUMBRANCE

Mortgagor shall not mortgage or otherwise further encumber the Property without the prior written consent of the Mortgagee.

34. LIFE INSURANCE

As of the date of this Mortgage, Mortgagor will purchase a life insurance policy insuring the life of the Mortgagor, Robert D. Haskell II, which may be a term insurance policy, in an amount at least equal to the amount of the debt secured hereby. Said policy shall be collaterally assigned to the Mortgagee. Renewal premiums for said policy shall be paid by the Mortgagor and said policy shall remain in force for the duration of this Mortgage. Mortgagor shall not change said assignment or borrow against said policy without the written consent of the Mortgagee.

35. CAPTIONS FOR CONVENIENCE ONLY

The captions herein are for convenience only and shall not be used to interpret the provisions hereof.

36. ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES

Mortgagor covenants that the Property shall be kept free of Hazardous Materials; as hereafter defined, and Mortgagor shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor, the installation or placement of Hazardous Materials in or on the Property or a release of Hazardous Materials onto the Property or onto any other property. Mortgagor shall comply with, and ensure compliance with, all applicable federal, state and local laws, ordinances, rules or regulations, with respect to Hazardous Materials, and shall keep the Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. Mortgagor shall defend, indemnify, and hold harmless the Mortgagee, its employees, agents, officers and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature known or unknown, contingent or otherwise, including reasonable attorneys' fees arising out of or in any way related to Hazardous Materials at or affecting the Property or the soil, water, vegetation, buildings, personal property, persons, animals or otherwise and any personal injury (including wrongful death) or property damage arising out of or related to such Hazardous Materials. The term

"Hazardous Materials" as used in this Mortgage shall include, without limitation, gasoline, petroleum products, wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any material containing asbestos, or any other substance or material as may be defined as a hazardous or toxic substance or by any federal, state or local environmental law, ordinance, rule or regulation.

Dated: JANUARY 12, 2001


ROBERT D. HASKELL II

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

On the ¹² day of *Jan* in the year 2001, before me, the undersigned, a notary public in and for said state, personally appeared ROBERT D. HASKELL II, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

PETER A. GORTON
Notary Public, State of New York
No. 4623424
Residing in Broome County
My Commission Expires Feb. 28, 2002

SCHEDULE "A"

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Binghamton, County of Broome, State of New York, bounded and described as follows:

BEGINNING at a point at a northwest corner of the premises, said point being located a distance of 507 feet southerly from the intersection of the City of Binghamton - Town of Binghamton line as measured along the easterly street line of Powers Road;

THENCE North 13 degrees 55 minutes 30 seconds East along land N/F Brant a distance of 324.58 feet to a point;

THENCE North 84 degrees 04 minutes 29 seconds East along land N/F Calloway and land N/F Kuryla a distance of 299.11 feet to a point;

THENCE North 84 degrees 04 minutes 29 seconds East along the southerly street line of Harding Street a distance of 13.20 feet to a point;

THENCE North 84 degrees 04 minutes 29 seconds East along land N/F Rifenburg and land N/F Smith a distance of 438.17 feet to a point;

THENCE North 84 degrees 04 minutes 29 seconds East along the southerly street line of Forest Hill Road a distance of 42.07 feet to a point;

THENCE North 84 degrees 04 minutes 29 seconds East along land N/F Strawn a distance of 267.00 feet to an iron found;

THENCE North 06 degrees 26 minutes 50 seconds West along land N/F Strawn, land N/F Crossley and land N/F Laviska a distance of 274.50 feet to an iron found;

THENCE North 84 degrees 50 minutes 26 seconds East along land N/F Sanford, land N/F Crossley and land N/F Reese a distance of 1385.23 feet to an iron found;

THENCE South 04 degrees 44 minutes 22 seconds East along land N/F Monsour a distance of 1719.95 feet to a cherry tree fence corner;

THENCE South 86 degrees 01 minutes 35 seconds West along land N/F Miller a distance of 893.38 feet to an iron found;

THENCE South 04 degrees 18 minutes 23 seconds East along land N/F Miller a distance of 273.82 feet to an iron found;

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THENCE North 36 degrees 49 minutes 36 seconds West along the easterly street line of Powers Road a distance of 355.66 feet to a point;

THENCE Northerly by a curve to the west having a radius of 541.73 feet along the easterly street line of Powers Road an arc distance of 121.69 feet to the point or place of beginning containing 3,709,742 square feet or 85.16 acres as surveyed by David Marnicki, NYLS 49903 on November 15, 2000.

Excepting and reserving the following:

1. Easement to Binghamton Light, Heat & Power Co. dated June 9, 1926 and recorded on June 10, 1926 in the Broome County Clerk's Office in Book 366 of Deeds at page 64.

2. An easement 25 feet wide centered on an existing water line for the purpose of maintaining an existing water line approximately located as shown on a portion of the Survey Map #S-00-244 by Purdy Surveying, David Marnicki, PE&LS, dated November 15, 2000 and attached hereto as Schedule "B" ("Water Line Easement"). The Grantor, or Grantor's successors or assigns, shall have the right to enter, excavate, construct, maintain, and do any and all work as may be necessary on the Water Line Easement.

BROOME COUNTY CLERK
RECORDING PAGE



Copied for ref

Return To:

LEVENE GOULDIN & THOMPSON
BOX F 1706
BINGHAMTON NY 13901

Index BOOK OF DEEDS

Book 01951 Page 0570

No. Pages 0010

Instrument AGREEMENT

Date : 1/12/2001

Time : 3:50:05

Control # 200101120102

FIL#1

FIL#2 TT 2001 003057

Employee ID PMD32748

HASKELL
ROBERT
LAYTON
DOREEN
BINDER
HELEN

D II
M-EXRX
J/EXRX

MORTGAGE TAX

RECORDING	\$	35.25	MTG AMT	\$	.00
TRANS TAX	\$	.00	BASIC	\$	.00
REC MGMT	\$	4.75	SPECIAL	\$	.00
TRANS TAX	\$	.00	ADDL	\$	.00
	\$	.00	Total	\$	.00
	\$	.00			
	\$	.00			
	\$	.00			
	\$	.00			
	\$	.00			
Total:	\$	40.00			

STATE OF NEW YORK
BROOME COUNTY CLERK

TRANSFER TAX

WARNING-THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 316-A(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH

TAXABLE AMT \$.00
TRANSFER TAX \$.00

BARBARA FIALA



0019510570

Comp *[Signature]*
Ver. 1
Bk.

Schedule "B"

OPTION AGREEMENT

This is an agreement between Robert D. Haskell II, (hereinafter Haskell) and Doreen M. Layton, as Executrix of the Last Will and Testament of Helen J. Binder, (hereinafter Layton).

WHEREAS, Layton has conveyed property to Haskell this day set forth herein as Schedule A herein and

WHEREAS, Layton has reserved therein a 25 foot water line Easement with the intent to convey the water line Easement to the Town of Binghamton (Town) as set forth as Schedule "B" and

WHEREAS, the parties have agreed that Haskell shall be required to convey to the Town a fee interest in a parcel fronting on Powers Road or somewhere within the boundaries of the premises conveyed by Layton to Haskell as set forth herein as Schedule "C" (pump parcel), it is agreed as follows:

1. That at some point on or before June 30, 2001, Haskell shall be required to convey a pump parcel to the Town of Binghamton either by the description set forth in Schedule C herein or by such other description agreeable to both the Town and Haskell.

It is anticipated that this conveyance will be at the same time the water line Easement is conveyed to the Town.

2. In the event that the pump parcel is not conveyed to the Town by June 30, 2001, Layton may demand that Haskell either reconvey to Layton or convey directly to the Town as long as acceptable to the Town, the premises described herein as Schedule C.

3. Any such premises reconveyed by Haskell to Layton shall be for the sole purpose of conveying to the Town of Binghamton for the pump parcel. Any such portion of the premises which is not conveyed to the Town of Binghamton shall be reconveyed to Haskell.

4. The option on behalf of Layton to demand conveyance of the premises as set forth as Schedule C shall be absolute and it shall be absolutely required that Haskell comply with said request when made by Layton.

This conveyance shall run with the land and is binding on the grantor, grantee and their respective heirs, personal representative, assigns or successors in interest.

Doreen M. Layton
as Executrix
Doreen Layton, as Executrix of the
Estate of Helen Binder

Robert D. Haskell II
Robert D. Haskell, II

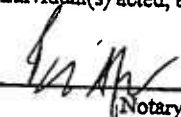
STATE OF NEW YORK)
:SS
COUNTY OF BROOME)

On the 12 Day of January In the year 2001, before me the undersigned, a Notary Public in and for said State, personally appeared Doreen Layton, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

Albert B. Kubol
Notary Public
ALBERT B. KUBOL
Notary Public, State of New York
No. 4656551
Qualified in Broome County
My Commission Expires August 31, 2001

STATE OF NEW YORK)
) :SS
COUNTY OF BROOME)

On the 27 Day of January In the year 2001, before me the undersigned, a Notary Public in and for said State, personally appeared Robert D. Haskell, II, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

PETER A. GORTON
Notary Public, State of New York
No. 4623424
Residing in Broome County
My Commission Expires Feb. 28, 2007

Records Return to:

*Levene Gouldin & Thompson LLP
PO Box F-1706
Binghamton, NY 13902
attn: Albert Kukul*

SCHEDULE "A"

Page 1 of 3

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Binghamton, County of Broome, State of New York, bounded and described as follows:

BEGINNING at a point at a northwest corner of the premises, said point being located a distance of 507 feet southerly from the intersection of the City of Binghamton - Town of Binghamton line as measured along the easterly street line of Powers Road;

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Excepting and reserving the following:

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2. An easement 25 feet wide centered on an existing water line for the purpose of maintaining an existing water line approximately located as shown on a portion of the Survey Map #S-00-244 by Purdy Surveying, David Marnicki, PE&LS, dated November 15, 2000 and attached hereto as Schedule "B" ("Water Line Easement"). The Grantor, or Grantor's successors or assigns, shall have the right to enter, excavate, construct, maintain, and do any and all work as may be necessary on the Water Line Easement.

TOWN OF BINGHAMTON

Map No. 1
Parcel No. 1Scale: 1" = 20'
Sheet No. 1 of 1HELEN BINDER
(Reputed Owner)

Map and description of lands to be acquired in FEE by the Town of Binghamton for the purpose of constructing a water pump station in the Town of Binghamton, Broome County, New York State, to be acquired from Helen Binder, Reputed Owner.

All that tract or parcel of land situate in the Town of Binghamton, County of Broome, State of New York, bounded and described as follows:

PARCEL NO. 1

Beginning at the point of intersection of the northeasterly highway boundary of Powers Road with the division line between Lot No. 161.13-1-43 on the west and Lot No. 161.14-1-6.111 on the east;

Thence northerly along the aforementioned division line a distance of 84± feet to a point;

Thence through the lands of the Grantor herein the following two courses and distances:

S 38° 17' 00" E a distance of 153.60 feet;

S 51° 43' 00" W a distance of 60.00 feet to a point on the northeasterly highway boundary of Powers Road;

Thence northwesterly along the aforementioned highway boundary a distance of 103± feet to the point or place of beginning.

Said parcel containing 8045± square feet equals 0.18± acres.

I hereby certify that this is an accurate description and map made, signed and sealed pursuant to Section 7208, Paragraph M, State Education Law, from an accurate survey.

DATE: _____

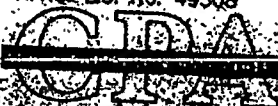
GEARY F. CHUMARD, P.E., L.S.



10/30/2000 TAX MAP NO. 161.14-1-6 CHANGED TO 161.14-1-6.111.

NOTE: LOT NUMBERS SHOWN ARE BROOME COUNTY
TAX MAP NUMBERS FOR THE TOWN OF BINGHAMTON

FILENAME: P10-TELOW

	BROOME COUNTY TOWN OF BINGHAMTON NEW YORK LILLIAN DRIVE WATER SYSTEM	
	HELEN BINDER (Reputed Owner) MAP NO. 1, PARCEL NO. 1	
	Geary F. Chumard, P.E.L.S. N.Y.S. L.S. No. 49308  CLARK PATTERSON ASSOCIATES DESIGN PROFESSIONALS BINGHAMTON, NEW YORK 13901	
		Scale: 1" = 20' Date: NOV. 1998 Sheet: 1 of 1

BROOME COUNTY CLERK
RECORDING PAGE



*copied for
ref for*

Return To:

ROBERT D HASKELL II
1908 ROUTE 26
VESTAL NY 13850

Index BOOK OF DEEDS

Book 01951 Page 0562

No. Pages 0008

Instrument DEED

Date : 1/12/2001

Time : 3:50:05

Control # 200101120098

LAYTON
DOREEN
HASKELL
ROBERT
BINDER
HELEN

M-EXRX
D II
J/EXRX

TT# TT 2001 003056
Employee ID PMD32748

MORTGAGE TAX

RECORDING	\$	29.25
REC MGMT	\$	4.75
COUNTY E&A	\$	3.00
STATE E&A	\$	22.00
COUNTY TP	\$	10.00
TRANS TAX	\$	200.00
TRANS TAX	\$	50.00
	\$	.00
	\$	.00
Total:	\$	319.00

MTG AMT	\$	.00
BASIC	\$	.00
SPECIAL	\$	.00
ADDL	\$	.00
Total	\$	.00

STATE OF NEW YORK
BROOME COUNTY CLERK

TRANSFER TAX

WARNING-THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 316-A(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH

TAXABLE AMT \$ 50,000.00
TRANSFER TAX \$ 250.00

BARBARA FIALA



0019510562

Comp *[Signature]*
Ver. 1
Bk.

Schedule "A"

This Indenture, made the 12 day of JANUARY, 2001

2001
98

Between

DOREEN M. LAYTON, of 409 Pinecrest Road, Vestal, New York 13850, as Executrix of the Last Will and Testament of Helen J. Binder, late of 60 Powers Road, Binghamton, New York, deceased, party of the first part, and

ROBERT D. HASKELL II, of 1908 Route 26, Vestal, New York 13850, party of the second part:

Witnesseth, that the party of the first part, by virtue of the power and authority to her given in and by the said Last Will and Testament, or by Estates, Powers and Trusts Law, and in consideration of Fifty Thousand Dollars (\$50,000.00), lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part the heirs, executors and assigns of the party of the second part forever.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Binghamton, County of Broome and State of New York being more particularly described on Schedule "A" & "B" attached hereto and made a part hereof.

Being a portion of the same premises conveyed to Helen J. Binder by three deeds as follows:

1. Administrator's Deed of Helen J. Binder, as surviving Administratrix of the Estate of Joseph M. Kaminsky to the following: a) Helen Binder as surviving Executrix of the Estate of Mary Kaminsky, b) Helen J. Binder, Individually, and c) Doreen M. Layton and Louis R. J. Binder, as co-Administrators of the Estate of Lillian J. Kaminsky; each as tenant in common in and to an undivided one-third interest; and dated January 13, 1995 recorded in the Broome County Clerk's Office on January 23, 1995 in Book 1847 of Deeds at page 941.
2. Executor's Deed of Helen Binder, as surviving Executrix of the Estate of Mary Kaminsky, as to an undivided one-third interest, to the following: a) Helen J. Binder individually, and b) Doreen M. Layton and Louis R.J. Binder, as co-Administrators of the Estate of Lillian J. Kaminsky; each as tenant in common in and to an undivided one-sixth interest; and dated January 13, 1995 and recorded in the Broome County Clerk's Office on January 23, 1995 in Book 1847 of Deeds at page 949.
3. Administrator's Deed of Doreen M. Layton and Louis R.J. Binder, as co-Administrators of the Estate of Lillian J. Kaminsky, as to an undivided one-half interest, to Helen J. Binder, as to an undivided one-half interest, dated January 13, 1995 and recorded January 23, 1995 in the Broome County Clerk's Office in Book 1847 of Deeds at page 958.

Helen J. Binder, Helen Binder and Helene J. Binder are one and the same person, namely, the daughter of Joseph M. Kaminsky and Mary Kaminsky, and the decedent herein.

The above described premises are situate on the northeasterly side of Powers Road and conveyed subject to all easements, covenants and restrictions of record, to the extent that they are presently in force and effect.

The said Helen J. Binder, died a resident of Broome County, New York on March 13, 1999, leaving a Last Will and Testament which was duly admitted to probate and Letters Testamentary were issued to Doreen M. Layton on March 30, 1999, which Letters have not been revoked and are still in full force and effect.

Together with the appurtenances, and also all the estate which the said testatrix had at the time of her decease in said premises, and also the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said Will or otherwise.

To have and to hold the premises herein granted unto the party of the second part, the heirs, executors and assigns of the party of the second part forever.

And the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises has been incumbered in any way whatever.

This conveyance is subject to the trust fund provisions of Section Thirteen of the Lien Law.

In Witness Whereof, the party of the first part has hereunto signed on the day and year first above written.

In Presence of:

Doreen M. Layton
as Executrix
DOREEN M. LAYTON, as Executrix of
the Last Will and Testament of Helen J.
Binder

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

On the 12 day of JANUARY in the year 2001, before me, the undersigned, a notary public in and for said state, personally appeared DOREEN M. LAYTON, as Executrix of the Last Will and Testament of Helen J. Binder, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Albert B. Kukol
Notary Public

ALBERT B. KUKOL
Notary Public, State of New York
No. 4656551
Qualified in Broome County
My Commission Expires August 31, 2001

RECORD AND RETURN TO:

Name: GRANTHE
Address: 1908 Rt 26
Vestal, NY.
13840

SCHEDULE "A"

Page 1 of 3

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Binghamton, County of Broome, State of New York, bounded and described as follows:

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Excepting and reserving the following:

1. Easement to Binghamton Light, Heat & Power Co. dated June 9, 1926 and recorded on June 10, 1926 in the Broome County Clerk's Office in Book 366 of Deeds at page 64.

2. An easement 25 feet wide centered on an existing water line for the purpose of maintaining an existing water line approximately located as shown on a portion of the Survey Map #S-00-244 by Purdy Surveying, David Marnicki, PE&LS, dated November 15, 2000 and attached hereto as Schedule "B" ("Water Line Easement"). The Grantor, or Grantor's successors or assigns, shall have the right to enter, excavate, construct, maintain, and do any and all work as may be necessary on the Water Line Easement.