

95 FOURTH ST BURA  
J. Hoffer

CHRISTOPHER L. JACOBS, ERIE COUNTY CLERK

BUFFALO LAW DEPARTMENT

ACCOUNT #: 1673

RECEIPT: 13035415

DATE: 3/4/2013 TIME: 12:59:46 PM

DUPLICATE RECEIPT

ITEM - 01 774

RECD: 3/4/2013 12:59:46 PM

FILE: 2013050199 BK/PG D 11240/6713

CITY OF BUFFALO URBAN RENEWAL AGENCY

Recording Fees

Sub. Total 70.00

70.00

TOTAL DUE

\$70.00

PAID TOTAL

\$0.00

TOTAL CHARGED

\$70.00

REC BY: Danielle  
COUNTY RECORDER

**FILED**  
MAR 04 2013  
ERIE COUNTY  
CLERK'S OFFICE

**DECLARATION of COVENANTS and RESTRICTIONS**

**THIS COVENANT** is made the 1<sup>st</sup> day of MARCH 2013, by the City of Buffalo Urban Renewal Agency ("BURA"), a public benefit corporation organized and existing under the laws of the State of New York with offices for the transaction of business at City Hall, 65 Niagara Square, Buffalo, New York 14202.)

**WHEREAS**, BURA is the owner of property located at 43 Carolina Street in the City of Buffalo, which is part of lands conveyed to BURA by deed dated December 11, 1968 and recorded in the Erie County Clerk's Office in Book 8106 of Deeds at Page 63, and which is identified by tax parcel number 110.12-1-20.11, hereinafter referred to as the Property; and

**WHEREAS**, the Property is the location of a portion of an inactive hazardous waste disposal site known as the Fourth Street Site which is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 915167 (the "Site") and which is more particularly described in Appendix "A" and Appendix "B" attached to this declaration and made a part hereof; and

**WHEREAS**, Appendix "A" contains a legal description and Appendix "B" contains the survey with an outline of the Property and the Site, and identification of the tax map parcels comprising the Site; and

**WHEREAS**, the New York State Department of Environmental Conservation (the "Department") set forth a remedy to eliminate or mitigate all significant threats to the environment presented by hazardous waste disposal at the Fourth Street Site in a Record of Decision ("ROD") dated August 8, 2001 and the ROD also required that the Site be subject to restrictive covenants.

**NOW, THEREFORE**, the City of Buffalo, 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 Appendix "A" and 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, there shall be no activity at the Property that results in the disturbance or excavation of the Site which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall prohibit the Property from ever being used for purposes other than for commercial or industrial use without the express written waiver of such prohibition by the Department or the Relevant Agency.

Fourth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department or the Relevant Agency.

Fifth, the owner of the Property shall continue in full force and effect any institutional and engineering controls the Department required to be put into place and maintained as set forth in relevant site documentation including the Final Site Management Plan, September 2006, unless the owner first obtains permission to discontinue such controls from the Department or the Relevant Agency. The documents are available at New York State Department of Environmental Conservation, 625 Broadway, Albany, NY, 12233-7016, Phone: (518) 402-9522 or e-mail [foil@gw.dec.state.ny.us](mailto:foil@gw.dec.state.ny.us) , using "Fourth Street Site - DER Site Code 915167" in the subject heading.

Sixth, the owner of the Property shall provide an annual certification in accordance with 6 NYCRR 375-1.8(h)(3) that the required controls are unchanged since the previous certification, and that nothing has occurred that would impair the ability of such controls to protect the public health and environment, or constitute a violation or failure to comply with the Site Management Plan.

Seventh, the potential for vapor intrusion for any buildings developed on the Property must be evaluated and provision for mitigation must be implemented prior to occupancy if deemed necessary by the New York State Department of Health ("NYSDOH") and the Department.

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 the Relevant Agency of the prohibitions and restrictions required to be recorded, and hereby covenant not to contest the authority of the Department or the Relevant Agency to seek enforcement.

Ninth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Department or the 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.

APPROVED  
AS TO FORM ONLY

City of Buffalo Urban Renewal Agency

By: [Signature]

Print Name: BRENDAN MEHAFFY

Title: VICE CHAIRMAN

Date: MARCH 1, 2013

[Signature]  
Corporation Counsel

By [Signature] 2-21-13

Approved  
As To  
Form  
Scott Ball

STATE OF NEW YORK )

) s.s.:

COUNTY OF ERIE )

On the 1<sup>ST</sup> day of MARCH, in the year 2013, before me, the undersigned, personally appeared BRENDAN MEHAFFY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Notary Public State of New York

JOHN VINCENT HEFFRON  
Notary Public, State of New York  
No. 02HE4860576  
Qualified in Erie County  
My Commission Expires May 5, ~~2010~~ 2014 J.V.H.

## APPENDIX A

### City of Buffalo Urban Renewal Agency Parcel

Part of 43 Carolina Street, Buffalo, New York

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and state of New York, being part of Disposition lots 12, 24 and 25 bounded and described as follows:

COMMENCING at a point in the northerly line of former Court Street, being 99 feet in width, and being now abandoned, at the intersection of the said northerly line of former Court Street with a southeasterly line of lands conveyed to the City of Buffalo by deed recorded in the Erie County Clerk's Office in Liber 10833 of Deeds at page 7297, said point being distant 368.90 feet westerly of the intersection of the said northerly line of former Court Street with the westerly line of Seventh Street, being 66 feet in width;

Thence northwesterly at an angle of  $138^{\circ}04'21''$  as measured from the said northerly line of former Court Street for a distance of 25.45 feet;

Thence westerly, parallel with the northerly line of Court Street, a distance of 338.71 feet to the POINT OF BEGINNING;

Thence northwesterly at an angle to the right of  $138^{\circ}04'21''$  along the northeasterly line of lands conveyed to the City of Buffalo as recorded in the Erie County Clerk's Office in Liber 11109 of Deeds at page 2541, a distance of 381.29 feet;

Thence southwestery at an exterior angle of  $89^{\circ}53'06''$  along the northwesterly line of said of the City of Buffalo, a distance of 269.75 feet;

Thence northerly on a non-tangent curve to the right having a radius of 270.00 feet and whose chord forms and angle to the left of  $64^{\circ}54'51''$  as measured from the last described course, an arc length of 158.78 feet;

Thence southeasterly at an angle to the left of  $24^{\circ}58'15''$  as measured from the chord of the last described course, a distance of 136.06 feet;

Thence northeasterly at right angles a distance of 470.00 feet to the southwestery line of lands conveyed to the New York State Urban Development Corporation as recorded in Liber 8106 of Deeds at Page 89;

Thence southeasterly at right angles along the said southwestery line of said lands of the New York State Urban Development Corporation, a distance of 300.00 feet;

Thence southwestery at right angles along the northwesterly line of said lands conveyed to the New York State Urban Development Corporation, a distance of 40.00 feet;

Thence southeasterly at right angles along the southwestery line of said lands of the New York State Urban Development Corporation, a distance of 137.49 feet;

Thence southwestery at right angles a distance of 180.58 feet to a point in the northeasterly line of lands conveyed to the City of Buffalo as recorded in the Erie County Clerk's Office in Liber 11109 of Deeds at Page 2541;

Thence northwesterly along the northeasterly line of said lands of the City of Buffalo, a distance of 68.46 feet to the POINT OR PLACE OF BEGINNING, containing 2.68 acres of land, more or less.

