



Niagara Frontier Transportation Authority  
*Serving the Niagara Region*

181 Ellicott Street  
Buffalo, New York 14203  
716-855-7300  
Fax: 716-855-6676  
TDD: 855-7650  
www.nfta.com

August 5, 2014

NYS Department of Environmental Conservation  
Attn: Mr. David Szymanski  
Project Manager  
270 Michigan Ave.  
Buffalo, NY 14203-2915

Re: NFTA Greenbelt Site Management Periodic Review and IC/EC Certification Submittal; Site #B00149

Dear Mr. Szymanski,

Attached is a copy of Periodic Review Report for the Port-Greenbelt Shoreline Improvement Project. It was determined that the project is in compliance with all major elements of the Site Management Plan, therefore no changes to the Site Management Plan are needed or recommended at this time.

Should you have any further questions, do not hesitate to contact me.

Respectfully

A handwritten signature in black ink, appearing to read "Timothy P. Carvana", written over a horizontal line.

Timothy P. Carvana  
Director Health, Safety, Environmental Quality  
(716) 855-7388

Cc:

Mike Bykowski  
Ruth Keating

**PERIODIC REVIEW REPORT**

**FOR**

**PORT-GREENBELT  
SHORELINE IMPROVEMENT PROJECT  
CITY OF BUFFALO, ERIE COUNTY, NEW YORK**

**SITE NO. B-00149-9**

*Prepared by:*



**C&S ENGINEERS, INC.**  
90 BROADWAY  
BUFFALO, NEW YORK 14203

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*Prepared on Behalf of:*

**NIAGARA FRONTIER TRANSPORTATION AUTHORITY**  
181 ELLICOTT STREET  
BUFFALO, NEW YORK 14203

**JULY 2014**

## **EXECUTIVE SUMMARY**

The Port-Greenbelt Project (Site) is 15.83 acres within a 164.48 acre parcel on Buffalo's Outer Harbor Area adjacent to Fuhrmann Boulevard. The Site runs parallel to the shoreline from the Buffalo Harbor Slip to the Terminal B building.

Previous Remedial Site Investigations determined that both surface and subsurface soils exceeded Part 375 Soil Cleanup Objectives for Commercial Use. The remedial program was designed to keep contaminated soil/fill from washing into Lake Erie and prevent direct human contact. The removal of contaminated soil along the shoreline, shoreline stabilization, installation of a soil cover, and the institutional controls that were put in place are meeting this goal.

This is the second annual review of the Site Management Plan.

The Port Greenbelt project is in compliance with all major elements of the Site Management Plan.

No changes to the Site Management Plan are needed or recommended at this time.

## **1 INTRODUCTION**

On November 18, 2011 the Niagara Frontier Transportation Authority (NFTA) received a Certificate of Completion for the remedial program at the Port-Greenbelt Shoreline Improvement Program. The Port-Greenbelt Project (Site) is 15.83 acres within a 164.48 acre parcel on Buffalo's Outer Harbor Area adjacent to Fuhrmann Boulevard. The Site runs parallel to the shoreline from the Buffalo Harbor Slip to the Terminal B building.

This is the first Periodic Review Report required as part of the Site Management Plan prepared on behalf of the NFTA and submitted to the New York State Department of Environmental Conservation (NYSDEC). This report was prepared in accordance with the requirements in the NYSDEC DER-10 Technical Guidance for Site Investigation and Remediation.

## **2 SITE OVERVIEW**

The Site is located adjacent to Lake Erie and parallel to Fuhrmann Boulevard, in the City of Buffalo, Erie County (Figure 1). The adjoining property is generally undeveloped.

The Site and the majority of the land surrounding it was created as a result of land reclamation and filling starting in 1874 and continuing for nearly 100 years. The land is generally composed of heterogeneous fill including dredged materials from the shipping channel, construction fill, concrete, stone, slag and other materials.

Most of the 164 acre Buffalo Outer Harbor was listed as a Class 2 Inactive Hazardous Waste Disposal Site based on preliminary site assessments. Following further investigation most of the site was delisted with only the area named the "Radio Tower Area", remaining classified as a Hazardous Waste Site. Previous Remedial Site Investigations determined that both surface and subsurface soils exceeded Part 375 Soil Cleanup Objectives for Commercial Use.

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The NFTA subsequently submitted a Remedial Alternatives Report in support of a Brownfield Remediation Application for the redevelopment of the Site.

In 2002, an Environmental Record of Decision was issued by the New York State Department of Environmental Conservation which identified the following remedial activities for the Site:

- Placement of a twelve inch thick soil cover on top of a geotextile fabric across the Site, above the top of the revetment slope.
- Stabilization of the shoreline including bulkhead renovation to prevent erosion of fill material and protection of the soil cover.
- Implementation of the remedial measures to address potential exposures to site contaminants for possible future land uses.
- Deed restrictions.

Following the completion of the remedial action detailed in the 2002 Record of Decision and the associated 2006 Project Manual, some contamination was left at the Site.

Specific actions that were taken to implement the remedy were:

- Along the shoreline concrete, marble, and other stone rubble was removed.
- Contaminated fill and soil was excavated and the slopes were re-graded.
- For the shoreline, excluding portions of the Bell Slip, a geotextile fabric was installed and a heavy, armor stone revetment was constructed.
- Within the Bell Slip, not stabilized by heavy stone, two lengths of approximately 150 feet in length were partially stabilized using jute fiber matting, a toe sock, plantings and soil/stone mix.
- The upland area was re-graded with soil excavated from the shoreline and a geotextile fabric was installed.
- A soil cover system was constructed consisting of a minimum of 12 inches of clean soil and/or an asphalt bicycle/pedestrian trail along the entire upland area of the Site.

### **3 REMEDY PERFORMANCE, EFFECTIVENESS AND PROTECTIVENESS EVALUATION**

The remedy selected for the Site, shoreline stabilization and a soil cover system, are effective in ensuring site soil/fill does not enter Lake Erie and limiting human contact with soil/fill. The institutional controls will limit future impacts.

No further remedial goals were established for the Site.

### **4 EVALUATION OF ENGINEERING AND INSTITUTIONAL CONTROLS**

#### *Engineering Controls*

The specific engineering controls for the Site are:

- The stone revetment along the shoreline and underlying geotextile fabric
- The stone berm in the Bell Slip and topsoil/soil cover
- The asphalt pathway
- The soil cover system and underlying geotextile fabric

No long-term treatment systems were installed.

#### *Institutional Controls*

To ensure ongoing effectiveness of the remedy the NFTA had to execute an Environmental Easement to restrict land use and prevent future exposure to any remaining contamination at the Site. Development of a Site Management Plan (SMP)

which included plans for Institutional and Engineering Controls, Monitoring, and Reporting was required to evaluate and monitor the remedy.

Specific institutional controls were required to ensure the remedial program continues to prohibit the remaining contamination from entering Lake Erie or coming into contact with humans, including:

- Compliance with the Environmental Easement and the SMP by the NFTA and any successors;
- All Engineering Controls must be maintained as specified by the SMP;
- All Engineering Controls must be inspected as required by the SMP;
- Reporting to the NYSDEC must be done annually for the first three years.

#### Site Restrictions

There are also a number of Institutional Controls in the form of site restrictions which are:

- The property may only be used for public passive recreation use provided that the long-term engineering and institutional controls are employed
- A higher level of use, such as unrestricted or restricted residential, may not occur on the site without additional remediation and amendment of the Environmental Easement, as approved by the NYSDEC.
- Future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the Site Management Plan
- The use of groundwater is prohibited without treatment rendering it safe for the intended use
- Vegetable gardens and farming on the property are prohibited
- The site owner or remedial party will submit to NYSDEC a written statement that certifies, under penalty of perjury, that (1) controls employed at the Site are unchanged from the previous certification or that any changes to the controls were approved by the NYSDEC; and, (2) nothing has occurred that impairs the ability of the controls to protect public health and environment or that constitute a violation or failure to comply with the SMP. NYSDEC retains the right to access the Site at any time in order to evaluate the continued maintenance or any and all controls. This certification shall be submitted annually, or an alternate period of time that NYSDEC may allow and will be made by an expert that the NYSDEC finds acceptable.

#### *Site Visit*

The annual Site visit was conducted June 20, 2014.

In general, the site was in good condition, Site Visit Notes are included as Appendix A, selected photos are included as Appendix B.

### Soil Cover

The soil cover is still in good condition. There were no indications of additional erosion, animal burrows or depressions.

### Revetment and Armor Stones

The armor stone revetment was in very good condition and showed no signs of failure or slipping. No stones were displaced or showed any signs of disintegration.

There were a few sites along the edge of the revetment where geotextile fabric is visible; this is similar to the as built condition and is not considered to have an impact of the effectiveness of the controls. This is unchanged from the 2013 inspection.

### Asphalt Pathway

The asphalt path is in good condition and is not showing any signs of wear.

### Bell Slip – Stone Berm and Soil/Topsoil

Generally the slip looked to be in good condition with significant portions of the area covered with stones and grass cover.

No geotextile fabric was exposed at the Bell Slip.

Some of the slopes show minor signs of erosion; portions of the slope have a short drop where there is no soil or vegetation and before the area where stone was used to stabilize the slope. This looks to be unchanged since the 2013 inspection.

The geotextile sock along the water's edge showed some signs of damage. However, the contents of the sock were still in place and no erosion was observed adjacent to the sock. Therefore, the sock is considered to be acting as designed. This is unchanged from the 2013 inspection.

## **5 MONITORING PLAN COMPLIANCE**

Annual monitoring of the Site is required to evaluate:

- Whether engineering controls continue to perform as designed;
- If these controls continue to be protective of human health and the environment;
- Compliance with requirements of the Site Management Plan and the Environmental Easement;
- Are site records complete and up to date; and
- Changes to the remedy or monitoring system

A visual inspection of the soil cover system must be conducted annually in late spring it must be monitored for signs of erosion, settlement, denuded areas, subsidence along the edges of the stone revetment and any other signs of damage. The form to be completed during this inspection was included in the SMP and is included in Appendix A.

Site-wide Inspections must also be performed at least once a year and after all severe weather conditions that may affect the Engineering Controls. The inspections must assess:

- Compliance with all Institutional Controls, including site usage;
- The condition and continued effectiveness of Engineering Controls;
- General site conditions;
- Site management activities being conducted; and
- Confirm site records are up to date.

The Site Monitoring Plan was undertaken as required in the Site Management Plan, specifically:

- A visual inspection of the soil cover system was undertaken in June of 2014;
- A site-wide inspection was completed at the same time; and
- The approved site inspection forms were used.

There were no deficiencies in the monitoring plan.

## **6     OPERATIONS AND MAINTENANCE PLAN**

Not Applicable

## **7     CONCLUSION AND RECOMMENDATIONS**

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### *Compliance with Site Management Plan*

#### Institutional/Engineering Controls

The Site is in compliance with all items with all requirements of the SMP.

#### Monitoring Plan

Site is in compliance will all aspects of the monitoring plan.

#### *Performance and Effectiveness of Remedy*

The remedy is acting as designed and effectively limiting human exposure to buried contaminates and preventing contaminated soil from entering Lake Erie.



*Future Periodic Review Report Submittals*

No changes are proposed to the submission of review reports, they will continue to be submitted annually.

**8      CERTIFICATION**

The certification forms are included as Appendix B.

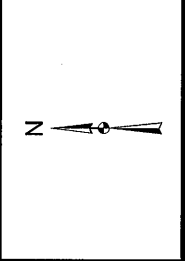


FIGURES

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**C&S Engineers, Inc.**  
 90 Broadway Street,  
 Buffalo, New York 14203  
 Phone: 716-847-1600  
 Fax: 716-847-1454  
 www.cscos.com



SITE MANAGEMENT NFTA  
 GREENBELT REPORT

BUFFALO, NEW YORK

PROJECT NO:	136.032.001
DATE:	5.03.13
DRAWN BY:	C. MARKIN
DESIGNED BY:	C. MARKIN
CHECKED BY:	N. PARRERO

PROJECT  
 LOCATION

FIGURE 1

# APPENDICES

APPENDIX A  
SITE INSPECTION FORMS

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**NFTA PORT-GREENBELT SHORELINE IMPROVEMENT PROJECT  
SITE MANAGEMENT PLAN**

**NYSDEC SITE NO. B-00149-9**

**SITE-WIDE INSPECTION FORM**

Date: 6-20-14 Inspector: Nadine Marrero  
 Weather: Sunny + Clear Signature: Nadine Marrero  
 Temperature: 75° Company: C+S Engineers

Quarter: First  Second Third Fourth  
 (Circle One)

Item Inspected	Maintenance Needed (Y/N)	Comments
General Site Access	N	Very Good
Soil Cover/Grass Cover	N	Good. Very limited exposed soil
Asphalt Pedestrian/Bicycle Pathway	N	Very Good
Stone Revetment	N	Very Good
Drainage Swales/Channels	N	Good
Bell Slip Slopes	N	Good
Trees, Bushes, Other Vegetation	N	Good

NFTA PORT-GREENBELT SHORELINE IMPROVEMENT PROJECT  
SITE MANAGEMENT PLAN

NYSDEC SITE NO. B-00149-9

ENGINEERING CONTROL SYSTEMS INSPECTION FORM

Page 1 of 2

Component	Item	Comments
Soil Cover	<ul style="list-style-type: none"> <li>Obvious subsidence, depressions or cracks</li> <li>Evidence of ponded water</li> <li>Stressed or missing vegetation</li> <li>Soil erosion due to surface runoff</li> <li>Animal burrows</li> <li>Debris or Illegal Dumping</li> <li>Other:</li> </ul>	<p>No depressions or cracks</p> <p>No ponded water</p> <p>Some (very limited) exposed soil</p> <p>No new erosion in Bell Slip, no erosion in other areas.</p> <p>No burrows</p> <p>No Dumping</p>
Stone Revetment	<ul style="list-style-type: none"> <li>Obvious subsidence or depressions</li> <li>Displaced armor stones</li> <li>Disintegration, cracking or spalling of armor stones</li> <li>Sloughing or slippage of revetment</li> <li>Animal burrows</li> <li>Washout of adjacent soil into stone revetment</li> </ul>	<p>No subsidence or depressions</p> <p>No displaced stones</p> <p>No disintegration or spalling</p> <p>No slippage</p> <p>No burrows</p> <p>No soil washout</p>

NFTA PORT-GREENBELT SHORELINE IMPROVEMENT PROJECT  
SITE MANAGEMENT PLAN

NYSDEC SITE NO. B-00149-9

ENGINEERING CONTROL SYSTEMS INSPECTION FORM

Page 2 of 2

Component	Item	Comments
Asphalt Pedestrian/Bicycle Pathway	Obvious subsidence, depressions or cracks Evidence of ponded water Evidence of sloughing/raveling along edges Other:	Path is in very good condition. No evidence of cracks, water, etc.
Bell Slip	Obvious subsidence, depressions or cracks Soil erosion due to surface runoff Sloughing of slopes Exposed geotextile fabric Damage to geotextile 'sock' along water's edge Damage/displacement of seagull perch poles Scarp formation in soil slopes Displaced armor stones Dead or stressed vegetation	No new evidence of erosion or sloughing of slopes Sock in place, minor deterioration, may need continued monitoring. Still working as designed No displaced stones or poles No vegetation concerns.

Date: 6-20-14

Inspector: Andrew Mammes



**APPENDIX B**  
**SITE VISIT PHOTOS**

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# PHOTOGRAPHIC LOG

# APPENDIX B

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<b>Exhibit:</b> 1	<b>Date:</b> 6/20/2014	<b>Port Greenbelt Periodic Review Report</b>
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**Description:**

Bell Slip

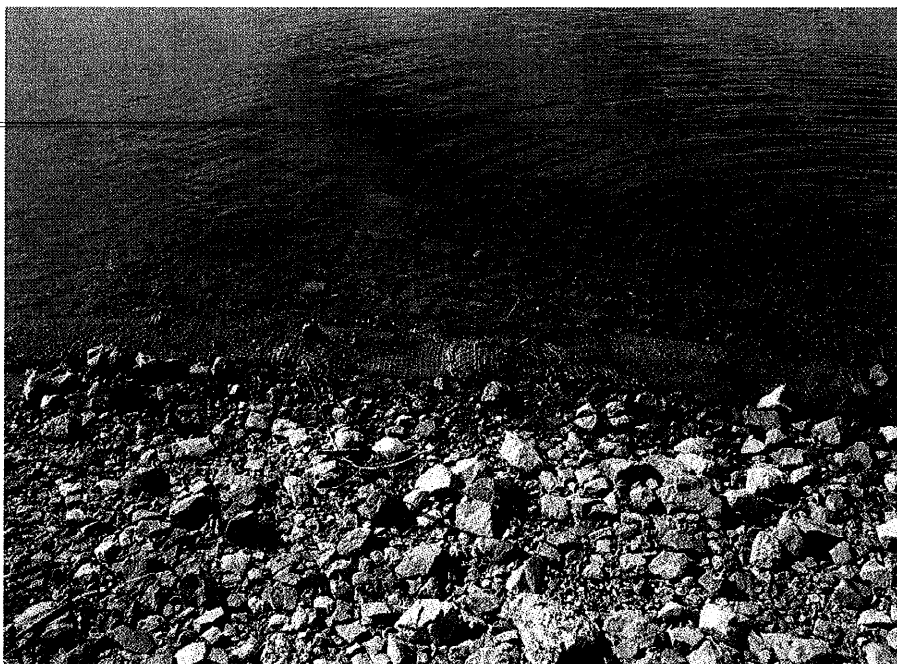


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<b>Exhibit:</b> 2	<b>Date:</b> 6/20/2014	<b>Port Greenbelt Periodic Review Report</b>
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**Description:**

Exposed sock in Bell Slip.



<b>Exhibit:</b> 3	<b>Date:</b> 6/20/2014
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**Port Greenbelt Periodic Review Report**

**Description:**  
South side of Bell Slip.



<b>Exhibit:</b> 4	<b>Date:</b> 6/20/2014
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**Port Greenbelt Periodic Review Report**

**Description:**  
Revetment.



**Exhibit:**

**Date:**

**Port Greenbelt Periodic Review Report**

5

6/20/2014

**Description:**

Exposed fabric at to of  
revetment.



**Exhibit:**

**Date:**

**Port Greenbelt Periodic Review Report**

6

6/20/2014

**Description:**

Asphalt path



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<b>Exhibit:</b> 7	<b>Date:</b> 6/20/2014	<b>Port Greenbelt Periodic Review Report</b>
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**Description:**  
Revetment near north end of the trail.

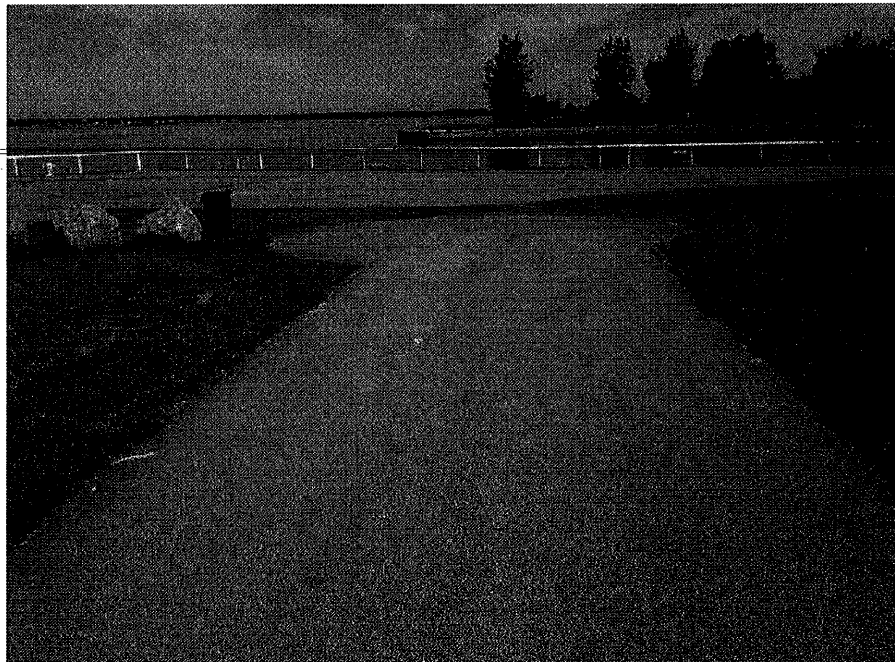


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<b>Exhibit:</b> 8	<b>Date:</b> 6/20/2014	<b>Port Greenbelt Periodic Review Report</b>
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**Description:**  
North trail end point.



APPENDIX C  
CERTIFICATION FORMS

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Enclosure 2  
**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
**Site Management Periodic Review Report Notice**  
**Institutional and Engineering Controls Certification Form**



	Site Details	Box 1	
<b>Site No.</b>	<b>B00149</b>		
<b>Site Name</b> NFTA Outer Harbor Greenbelt			
Site Address: Outer Lots 44-50 and Ogden Gore Tracts 1-2		Zip Code: 14203-	
City/Town: Buffalo (C)			
County: Erie			
Site Acreage: 15.8			
Reporting Period: July 10, 2013 to July 10, 2014			
		YES	NO
1. Is the information above correct?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
If NO, include handwritten above or on a separate sheet.			
2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment during this Reporting Period?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Has there been any change of use at the site during this Reporting Period (see 6NYCRR 375-1.11(d))?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>If you answered YES to questions 2 thru 4, include documentation or evidence that documentation has been previously submitted with this certification form.</b>			
5. Is the site currently undergoing development?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
		<b>Box 2</b>	
		YES	NO
6. Is the current site use consistent with the use(s) listed below? Commercial and Industrial		<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Are all ICs/ECs in place and functioning as designed?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>IF THE ANSWER TO EITHER QUESTION 6 OR 7 IS NO, sign and date below and DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.</b>			
<b>A Corrective Measures Work Plan must be submitted along with this form to address these issues.</b>			
_____ Signature of Owner, Remedial Party or Designated Representative		_____ Date	

**Description of Institutional Controls**

<u>Parcel</u>	<u>Owner</u>	<u>Institutional Control</u>
121.12-1-3	NFTA	Ground Water Use Restriction Soil Management Plan Landuse Restriction Monitoring Plan Site Management Plan IC/EC Plan

See Parcel 122.09-1-1 (461 Fuhrmann Boulevard) for description.

122.09-1-1	NFTA	Ground Water Use Restriction Landuse Restriction Site Management Plan Soil Management Plan Monitoring Plan IC/EC Plan
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Exposure to remaining contamination in soil/fill at the site is prevented by a composite cover system placed over the site. This cover system consists of three elements. These include a soil cover comprised of a minimum of 12 inches of clean soil; an asphalt bicycle/pedestrian trail; and/or a heavy armor stone revetment.

A visual inspection of the soil cover system will be conducted at least annually, in the late spring. The soil cover will be monitored for signs of erosion, settlement, denuded areas, subsidence along the edge of the stone revetment and any other signs of damage.

Site restrictions that apply to the Controlled Property are:

- The property may only be used for public passive recreation use provided that the long-term Engineering and Institutional Controls included in this SMP are employed. (Note that "commercial use" as defined in Part 375 includes passive recreational uses, which are public uses with limited potential for soil contact.)
- The property may not be used for a higher level of use, such as unrestricted or restricted residential, use without additional remediation and amendment of the Environmental Easement, as approved by the NYSDEC;
- Future activities on the property that will disturb remaining contaminated material must be conducted in accordance with this SMP;
- The use of the groundwater underlying the property is prohibited without treatment rendering it safe for intended use;
- Vegetable gardens and farming on the property are prohibited;
- The site owner or remedial party will submit to NYSDEC a written statement that certifies, under penalty of perjury, that: (1) controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls were approved by the NYSDEC; and, (2) nothing has occurred that impairs the ability of the controls to protect public health and environment or that constitute a violation or failure to comply with the SMP. NYSDEC retains the right to access such Controlled Property at any time in order to evaluate the continued maintenance of any and all controls. This certification shall be submitted annually, or an alternate period of time that NYSDEC may allow and will be made by an expert that the NYSDEC finds acceptable.

The site has been remediated for public passive recreation use. Any future intrusive work that will encounter or disturb the remaining contamination will be performed in compliance with the Excavation Work Plan (EWP) that is attached as Appendix C to the Site Management Plan.

122.13-1-1	NFTA	Ground Water Use Restriction Soil Management Plan Landuse Restriction Monitoring Plan Site Management Plan IC/EC Plan
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See Parcel 122.09-1-1 (461 Fuhrmann Boulevard) for description.



122.13-1-2

NFTA

Ground Water Use Restriction  
Soil Management Plan  
Landuse Restriction  
Monitoring Plan  
Site Management Plan  
IC/EC Plan

See Parcel 122.09-1-1 (461 Fuhrmann Boulevard) for description.

122.17-1-1

NFTA

Ground Water Use Restriction  
Soil Management Plan  
Landuse Restriction  
Monitoring Plan  
Site Management Plan  
IC/EC Plan

See Parcel 122.09-1-1 (461 Fuhrmann Boulevard) for description.

**Description of Engineering Controls**

**Box 4**

Parcel

Engineering Control

121.12-1-3

Cover System

122.09-1-1

Cover System

122.13-1-1

Cover System

122.13-1-2

Cover System

122.17-1-1

Cover System

**Periodic Review Report (PRR) Certification Statements**

1. I certify by checking "YES" below that:

a) the Periodic Review report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

b) to the best of my 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 the information presented is accurate and complete.

YES NO

2. If this site has an IC/EC Plan (or equivalent as required in the Decision Document), for each Institutional or Engineering control listed in Boxes 3 and/or 4, I certify by checking "YES" below that all of the following statements are true:

(a) the Institutional Control and/or Engineering Control(s) employed at this site is unchanged since the date that the Control was put in-place, or was last approved by the Department;

(b) nothing has occurred that would impair the ability of such Control, to protect public health and the environment;

(c) access to the site will continue to be provided to the Department, to evaluate the remedy, including access to evaluate the continued maintenance of this Control;

(d) nothing has occurred that would constitute a violation or failure to comply with the Site Management Plan for this Control; and

(e) if a financial assurance mechanism is required by the oversight document for the site, the mechanism remains valid and sufficient for its intended purpose established in the document.

YES NO

**IF THE ANSWER TO QUESTION 2 IS NO, sign and date below and  
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

**A Corrective Measures Work Plan must be submitted along with this form to address these issues.**

\_\_\_\_\_  
Signature of Owner, Remedial Party or Designated Representative

\_\_\_\_\_  
Date

IC CERTIFICATIONS  
SITE NO. B00149

Box 6

**SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE**

I certify that all information and statements in Boxes 1, 2, and 3 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

Timothy P. Carvane at 181 Ellicott St. Buffalo NY 14203  
print name print business address

am certifying as owner (Owner or Remedial Party)

for the Site named in the Site Details Section of this form.

  
Signature of Owner, Remedial Party, or Designated Representative  
Rendering Certification

8-6-14  
Date

IC/EC CERTIFICATIONS

Box 7

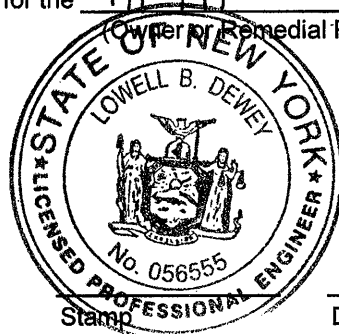
Qualified Environmental Professional Signature

I certify that all information in Boxes 4 and 5 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Lowell Dewey at 141 Elm St. Buffalo, NY 14203  
print name print business address

am certifying as a Qualified Environmental Professional for the DETA  
Owner or Remedial Party)

Lowell Dewey  
Signature of Qualified Environmental Professional, for  
the Owner or Remedial Party, Rendering Certification



7/31/14  
Stamp (Required for PE) Date

CHRISTOPHER L. JACOBS, ERIE COUNTY CLERK  
REF:

DATE: 5/12/2014  
TIME: 11:56:00 AM  
RECEIPT: 14072879 - DUPLICATE -

DAMON & MOREY LLP-CPY BOX 104  
ACCOUNT #: 1800

DUPLICATE RECEIPT

ITEM - 01 DEED  
RECD: 5/12/2014 12:05:00 PM  
FILE: 2014092343 BK/PG D 11263/8987  
Deed Sequence: TT2013017724  
NIAGARA FRONTIER TRANSPORTATION AUTHORITY  
ERIE CANAL HARBOR DEVELOPMENT CORPORATION  
Subtotal 0.00

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TOTAL DUE	\$0.00
PAID TOTAL	\$0.00

-----  
REC BY: Diane  
COUNTY RECORDER

**FILED**  
MAY 12 2014  
ERIE COUNTY  
CLERK'S OFFICE

N.Y. Quit Claim Deed (From a Corporation)

THIS INDENTURE made the 14<sup>th</sup> day of April, 2014

BETWEEN NIAGARA FRONTIER TRANSPORTATION AUTHORITY, a public benefit corporation of the State of New York created by Article 5, Title 11-A of the Public Authorities Law of the State of New York with offices at 181 Ellicott Street, Buffalo, New York 14203, party of the first part, and ERIE CANAL HARBOR DEVELOPMENT CORPORATION, a New York corporation and subsidiary of New York State Urban Development Corporation with offices at 95 Perry Street, 5<sup>th</sup> Floor, Buffalo, New York 14203-3030, party of the second part.

WITNESSETH that the party of the first part, in consideration of Two and No More (\$2.00 and No More) Dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part,

SEE ATTACHED SCHEDULE A

SUBJECT to easements, restrictions and rights of way of record, if any, and all other matters affecting title to said premises.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, its successors and assigns forever.

~~THIS conveyance does not constitute a conveyance of all or substantially all of the assets of the party of the first part.~~

THE DEED ATTACHMENT attached hereto is hereby incorporated herein by reference and made a part of this Deed as if set forth herein at length.

IN WITNESS WHEREOF, the party of the first part has caused this instrument to be executed by its duly authorized officer on the day and year first above written.

NIAGARA FRONTIER TRANSPORTATION  
AUTHORITY

By   
\_\_\_\_\_  
Kimberley A. Minkel, Executive Director

STATE OF NEW YORK    )  
COUNTY OF ERIE       ) SS:

On the 14<sup>th</sup> day of April in the year 2014 before me, the undersigned, a notary public in and for said state, personally appeared **Kimberley A. Minkel**, 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 he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acts, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**DARLEEN M. JAEGER**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 3-19-15

**SCHEDULE A**

**Parcel 1 (Northerly Portion)**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lots Nos. 1, 2 and 3 of the Ogden Gore Tract, part of Outer Lots Nos. 42 to 50 and part of the lands formerly under the waters of Lake Erie, bounded and described as follows:

Beginning at a point on the westerly right-of-way of Fuhrmann Boulevard, said point being the intersection formed by the said westerly right-of-way and the north line of lands conveyed to Queen City Landing LLC, recorded in the Erie County Clerk's Office in Book 11137 of Deeds, page 7323, thence

S 69-54-23 W along said northerly line, a distance of 43.27 feet to a point thence,

S 69-27-49 W continuing along said northerly line, a distance of 1649.20 feet to a point on the Harbor line established by the United States Government and approved March 27, 1899, thence

N 26-53-50 W along the said Harbor line, a distance of 1584.26 feet to a point, thence

N 20-46-00 W continuing along the Harbor line, a distance of 2316.67 feet to a point, thence

N 32-56-18 W continuing along the Harbor line a distance of 3038.18 feet to a point on the southerly property line of lands conveyed to the Erie Canal Harbor Development recorded in the Erie County Clerk's Office, Book 11154 of Deeds, page 4960, thence

N 66-56-20 E along said southerly property line, a distance of 1358.50 feet to a point on the westerly right-of-way of Fuhrmann Boulevard, thence

S 33-50-47 E along said westerly right-of-way, a distance of 112.24 feet to a point, thence

S 20-38-01 E continuing along said westerly right-of-way, a distance of 237.95 feet to a point, said point being further described as the northeast corner of lands appropriated by the State of New York and shown on Map No. 348 Parcel No. 391, thence

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S 69-24-53 W along the northerly line of aforesaid lands appropriated by the State of New York, a distance of 19.03 feet to the northwest corner of lands appropriated by the State of New York, said point being further described also as the westerly right-of-way of Fuhrmann Boulevard, thence

S 20-45-48 E along the westerly right-of-way of Fuhrmann Boulevard a distance of 852.82 feet to a point, thence

Continuing along the westerly right-of-way of Fuhrmann Boulevard on a non-tangent curve to the left having a radius of 5789.65 feet and a delta angle of 07° 09' 02", an arc length of 722.55 feet, the course and distance of the chord being S 24-31-50 E a distance of 722.08 to a point, thence

S 28-20-32 E continuing along said westerly right-of-way, a distance of 217.69 feet to a point in the northerly line of lands appropriated to the State of New York and shown on Map No. 8 Parcel No. 8, thence



S 67-01-28 W continuing along said westerly right-of-way, a distance of 14.01 feet to a point, said point also being the northwest corner of aforesaid appropriated lands, thence

S 29-35-28 E continuing along said westerly right-of-way, a distance of 783.91 feet to a point in the northerly line of lands appropriated to the State of New York and shown on Map No. 343 Parcel No. 386, thence

S 61-03-33 W continuing along said westerly right-of-way, a distance of 22.64 feet to a point, said point also being the northwest corner of aforesaid appropriated lands, thence

S 29-36-38 E continuing along said westerly right-of-way, a distance of 523.77 feet to a point, thence

S 11-10-00 W continuing along said westerly right-of-way, a distance of 184.37 feet to a point, thence

S 35-59-03 E continuing along said westerly right-of-way, a distance of 125.93 feet to a point, thence

S 78-51-09 E continuing along said westerly right-of-way, a distance of 264.01 feet to a point, thence

S 50-56-32 E continuing along said westerly right-of-way, a distance of 205.61 feet to a point, thence

S 38-14-02 E continuing along said westerly right-of-way, a distance of 286.86 feet to a point, thence

S 28-25-31 E continuing along said westerly right-of-way, a distance of 866.04 feet to a point, said point being the southwest corner of lands appropriated to the State of New York and shown on Map No. 321R1 Parcel No. 331, thence

N 69-27-50 E continuing along said westerly right-of-way, a distance of 41.73 feet to the northwest corner of lands appropriated to the State of New York and shown on Map No. 311R1 Parcel No. 322, thence

S 30-21-43 E continuing along said westerly right-of-way, a distance of 279.60 feet to a point, thence,

S 28-30-47 E continuing along said westerly right-of-way, a distance of 624.80 feet to a point, thence

~~S 37-46-16 E continuing along said westerly right-of-way, a distance of 514.23 feet to the northwest corner of lands appropriated to the State of New York and shown on Map No. 349 Parcel No. 392, thence~~

S 37-11-06 E continuing along said westerly right-of-way, a distance of 393.08 feet to the point and place of beginning.

Intending to describe a parcel of land being 195.641 acres, City of Buffalo, State of New York.

EXCEPTING THEREFROM that portion of the above described lands comprising the Port of Buffalo Site, being further described as:

Beginning at a point on the westerly right-of-way of Fuhrmann Boulevard, said point being the intersection formed by the said westerly right-of-way and the north line of lands conveyed to Queen City Landing LLC, recorded in the Erie County Clerk's Office in Book 11137 of Deeds, page 7323, thence

S 69-54-23 W along said northerly line, a distance of 43.27 feet to a point thence,  
S 69-27-49 W continuing along said northerly line, a distance of 1649.20 feet to a point on the Harbor line established by the United States Government and approved March 27, 1899, thence  
N 26-53-50 W along the said Harbor line, a distance of 1584.26 feet to a point, thence  
N 20-46-00 W continuing along the Harbor line, a distance of 5.53 feet to a point, thence  
N 64-40-53 E intending to be coincident with the south line of an Environmental easement to the New York State Department of Environmental Conservation, recorded in the Erie County Clerk's Office in Book 11212 of Deeds, page 9031, a distance of 399.56 feet to a point, thence  
S 26-53-50 E, a distance of 606.50 feet to a point, thence  
N 69-20-00 E, a distance of 221.00 feet to a point, thence  
N 38-13-00 E, a distance of 107.00 feet to a point, thence  
N 69-20-00 E, a distance of 132.00 feet to a point, thence  
N 24-45-00 E, a distance of 106.00 feet to a point, thence  
N 20-22-00 W, a distance of 96.00 feet to a point, thence  
N 25-34-30 E, a distance of 205.00 feet to a point, thence  
N 69-20-00 E, a distance of 95.00 feet to a point, thence  
N 22-00-00 W, a distance of 122.00 feet to a point, thence  
N 05-37-30 E, a distance of 70.00 feet to a point, thence  
N 22-30-00 W, a distance of 372.00 feet to a point, thence  
N 60-06-00 E, a distance of 158.03 feet to a point on the westerly right-of-way of Fuhrmann Boulevard, thence  
S 28-25-31 E along said westerly right-of-way, a distance of 202.34 feet to a point, said point being the southwest corner of lands appropriated to the State of New York and shown on Map No. 321R1 Parcel No. 331, thence  
N 69-27-50 E continuing along said westerly right-of-way, a distance of 41.73 feet to the northwest corner of lands appropriated to the State of New York and shown on Map No. 311R1 Parcel No. 322, thence  
S 30-21-43 E continuing along said westerly right-of-way, a distance of 279.60 feet to a point, thence,  
S 28-30-47 E continuing along said westerly right-of-way, a distance of 624.80 feet to a point, thence

S 37-46-16 E continuing along said westerly right-of-way, a distance of 514.23 feet to the northwest corner of lands appropriated to the State of New York and shown on Map No. 349 Parcel No. 392, thence

S 37-11-06 E continuing along said westerly right-of-way, a distance of 393.08 feet to the point and place of beginning.

Intending to describe a parcel of land to be excepted from Parcel #1, containing 50.458 acres, City of Buffalo, State of New York.

**Parcel 2 (Southerly Portion)**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lots Nos. 4 to 9 of the Ogden Gore Tract and part of the lands formerly under the waters of Lake Erie, bounded and described as follows:

Beginning at a point in the westerly right-of-way of Fuhrmann Boulevard, said point being the intersection formed by the aforesaid westerly right-of-way and the north line of lands conveyed to the Niagara Port Authority as recorded in Book 7494 of Deeds, page 56, said point being further described as the northwest corner of lands appropriated to the State of New York and shown on Map No. 350 Parcel No. 393, thence

S 37-30-18 E along said westerly right-of-way of Fuhrmann Boulevard, a distance of 88.46 feet to a point, thence

N 52-29-42 E continuing along said westerly right-of-way, a distance of 11.24 feet to a point, thence

S 37-30-18 E continuing along said westerly right-of-way, a distance of 173.18 feet to a point, thence

S 32-43-12 E continuing along said westerly right-of-way, a distance of 494.12 feet to a point, thence

S 20-21-10 E continuing along said westerly right-of-way, a distance of 1802.51 feet to a point, thence

~~S 18-38-35 E continuing along said westerly right-of-way, a distance of 400.19 feet to a point, thence~~

S 16-44-05 E continuing along said westerly right-of-way, a distance of 251.51 feet to a point, thence

S 14-53-45 E continuing along said westerly right-of-way, a distance of 655.62 feet to a point, thence

S 20-37-32 E continuing along said westerly right-of-way, a distance of 1080.88 feet to a point in the north line of lands conveyed to the South End Marina Corporation recorded in the Erie county Clerk's Office in Book 9232 of Deeds, page 529, thence

S 69-30-21 W along the northerly line of aforesaid lands of South End Marina Corporation, a distance of 1358.00 feet to a point in the Harbor line established by the United States Government and approved March 27, 1899, thence

N 26-53-50 W along said Harbor line, a distance of 4952.00 feet to a point in the south line of lands conveyed to Queen City Landing LLC, recorded in the Erie County Clerk's Office in Book 11137 of Deeds,

page 7323, thence N 69-38-50 E along the southerly line of aforesaid lands of Queen City Landing LLC, a distance of 1813.68 feet to the point and place of beginning.

Intending to describe a parcel of land being 190.139 acres, City of Buffalo, State of New York.

## DEED ATTACHMENT

### THE FOLLOWING RELEASES OF CLAIMS, COVENANTS, AND EASEMENTS ARE HEREBY INCORPORATED INTO THE FOREGOING DEED:

WHEREAS, the foregoing deed conveying the real property described therein (the "Property") was executed and delivered by the Niagara Frontier Transportation Authority (the "Grantor") to Erie Canal Harbor Development Corporation (the "Grantee") pursuant to a certain Property Disposition and Development Agreement dated as of the 8th day of April 2014 (the "Agreement"), a copy of the which is on file with the Grantor (capitalized terms not otherwise defined herein shall have the meaning as prescribed to them in the Agreement); and

WHEREAS, this deed attachment shall be deemed to be incorporated into and made part of the foregoing deed (the foregoing deed, including this deed attachment, being hereinafter referred to collectively as this "Deed"); and

WHEREAS, Grantee's agreement to accept this Deed subject to certain express releases, covenants, and easements was a material inducement to the Grantor in agreeing to convey the Property to Grantee, and the Grantor would not have agreed to convey the Property to Grantee absent the Grantee's agreement to include in this Deed the releases, covenants, easements, and other terms and provisions contained herein.

NOW, THEREFORE, in consideration of the mutual agreements of the parties contained in the Agreement, the conveyance by the Grantor to the Grantee of the Property pursuant to the Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the Grantor and Grantee hereby agree, that the Property described in this Deed is hereby conveyed by the Grantor to the Grantee subject to the following release of claims, covenants, easements, and other provisions, all of which shall: (a) cover and affect the Property and any tracts or lots which may hereafter be separated from the Property and conveyed to others; (b) subject any future deed or deeds of conveyance of the Property or any portion(s) thereof to the provisions of this Deed; (c) constitute covenants running with the land which shall be binding upon Grantee and all parties hereafter acquiring any right, title or interest in the Property or any portion(s) thereof, and their respective heirs, legal representatives, successors and assigns; and (d) constitute covenants which shall be binding on Grantee and its successors and assigns:

1. **Defined Terms.** The following terms pertaining to the condition of the Property shall have the meanings set forth below:

(i) **Costs and Expenses.** "Costs and Expenses" shall mean: (1) all costs of prosecution, defense, settlement and investigation of any and all claims, Liabilities (as hereinafter defined) causes of action, proceedings, and/or investigations whatsoever, including, without limitation, Environmental Claims (as hereinafter defined) which are related to or

caused in whole or in part, directly or indirectly, by any Environmental Conditions (as hereinafter defined) and/or any Hazardous Substances (as hereinafter defined); (2) all costs incurred in the removal of Hazardous Substances, costs incurred in any investigation, monitoring, cleanup, and containment of any Hazardous Substances and/or other Environmental Conditions, costs and expenses of environmental consultants, sampling, analysis and monitoring of soil, groundwater and surface water, and costs incurred for remediation and restoration; (3) costs incurred to cure any violation of any Environmental Law; (4) all civil and criminal penalties, fines, damages, settlements, compliance costs, response costs, and remedial clean-up costs, whether directly or by way of contribution; (5) costs incurred to remove any liens imposed by law in favor of the federal, state, or any local government or governmental agency or authority having jurisdiction over any Environmental Condition, Environmental Claim, Hazardous Substance, or violation of any Environmental Law; (6) diminution in the market value of the Property and/or any adjacent or affected properties; (7) damages or injury to, destruction of, or loss of natural resources; (8) damages awarded, paid, or payable for injury to, destruction of, or loss of real or personal property; (9) damages awarded, paid, or payable for personal injuries or death caused by or alleged to have been caused by exposure to Environmental Conditions and/or Hazardous Substances; (10) the fees and disbursements of attorneys, consultants, and experts of any kind incurred or arising directly or indirectly out of or in connection with any of the foregoing matters described in subdivisions "1" through "10" of this section; and (11) all other costs and expenses of any kind or nature whatsoever.

(ii) Environmental Claim. "Environmental Claim" or, in the plural, "Environmental Claims" means any summons, complaint, demand, order, accusatory instrument, judicial decree, consent order, hearing notice, administrative order, notice of violation, subpoena, discovery requests, cost recovery action, proceeding, or investigation, whether administrative, civil or criminal, including any statutory claims, common law claims, and other claims brought by any governmental authority or by any individual, company, corporation, or other entity, private organization, or group of any kind in connection with any Environmental Condition (as hereinafter defined), Environmental Law (as hereinafter defined), Hazardous Substance (as hereinafter defined), and/or Costs and Expenses.

(iii) Environmental Condition. "Environmental Condition" or, in the plural, "Environmental Conditions" means the (1) Release or threatened release of a Hazardous Substance at, in, under or otherwise affecting the Property or any portion thereof; (2) any actual, potential, alleged, or threatened violation of any Environmental Law (as hereinafter defined); (3) the commencement or threatened commencement of an Environmental Claim; and/or (4) the presence of or exposure to any other condition or event which could give rise to or serve as the basis for any Environmental Claim, Liability, and/or Costs and Expenses.

(iv) Environmental Law. "Environmental Law" or, in the plural, "Environmental Laws" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, decisions, orders, directives and the like, as well as common law, relating to: (i) protection of human health or the environment, (ii) Hazardous Substances

(as hereinafter defined), (iii) nuisance and trespass or other causes of action arising out of an Environmental Condition related to the Property, (iv) liability for or costs of remediation or prevention of releases of Hazardous Substances, or (v) liability for or costs of other actual or threatened danger to human health or the environment, including, without limitation, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations, ordinances, by-laws, policies, guidance, procedures, interpretations, decisions, orders, or directives and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act, the Clean Water Act; the Clean Air Act, the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; the River and Harbors Appropriation Act; the New York Environmental Conservation Law; and New York Navigation Law, and any other federal, state, or local law, regulation, rule, ordinance, by-law, policy, guidance, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.

(vi) Hazardous Substance. "Hazardous Substance" or, in the plural, "Hazardous Substances" means any (i) chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "biohazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substances" or any other term or expression intended to define, list, regulate or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import) as defined in, the subject of, or that could give rise to Liability under, any Environmental Law (as hereinafter defined), (ii) oil, petroleum, petroleum fraction, petroleum additive (including methyl tertiary butyl ether) or petroleum derived substance, (iii) flammable substances or explosives, (iv) radioactive materials, (v) asbestos or asbestos-containing materials, (vi) urea formaldehyde foam insulation, (vii) polychlorinated biphenyls, and (viii) lead, lead-containing substances or materials, lead-based paint, including, in each case, any mixture or solution thereof; (ix) any chemical, material, or substance the exposure to which could cause personal injury or death, and (x) and any other chemical, material or substance subject to regulation under any Environmental Law.

(vii) Liabilities. "Liability" or, in the plural, "Liabilities" shall mean all damages (including direct, indirect, consequential, and punitive), losses (foreseen and unforeseen) liabilities (including tort, contract, statutory, strict, and otherwise), obligations, penalties, claims (matured and contingent), litigation, demands, defenses, judgments, suits, and proceedings, costs, disbursements, and sums paid or required to be paid in settlement of all

Costs and Expenses for Environmental Claims asserted and/or awarded under any Environmental Laws.

2. **Release.** Grantee, for itself and for its predecessors, successors, assignees, subsidiaries, and affiliates, and each of their respective officers, members, shareholders, partners, directors, trustees, employees, agents, and contractors (collectively, "Grantee Related Parties") and for and on behalf of all future grantees or holders of any interest whatsoever in the Property or any portion thereof, hereby forever waives, releases, discharges the Grantor, the Grantor's predecessor, Niagara Frontier Port Authority, and all of the Grantor's successors, assignees, subsidiaries, and affiliates, and the respective officers, members, shareholders, partners, directors, trustees, employees, and agents of the Grantor and of all such predecessors, successors, assignees, subsidiaries, and affiliates, jointly and severally (collectively, "Grantor Related Parties"), from any and all Environmental Claims, Liabilities, and all Costs and Expenses, including, without limitation, claims for personal injury, death, and/or property damage, and agrees not to make any Environmental Claims, or to assert or seek, directly or indirectly, to impose or enforce upon or against the Grantor or against any Grantor Related Party any Liabilities or any Costs and Expenses which are related to or arise in whole or in part directly or indirectly from the condition of the Property or any portion thereof, including, without limitation, any Environmental Condition. Notwithstanding anything to the contrary contained herein, the Grantor Related Parties shall include Grantor's predecessor, the Niagara Frontier Port Authority, but otherwise shall not include any current or former owner, tenant, occupant or user of, or any other person or entity that had or has rights in, the Property (or any portion thereof) which is not the Grantor. The release provisions contained in this section shall survive the conveyance of the Property by the Grantor to the Grantee and shall be deemed to be covenants running with the Property which shall be binding upon all future grantees or holders of any interest whatsoever in the Property at any time and from time to time, and shall be deemed to be newly made upon each subsequent conveyance or encumbrance of the Property. Notwithstanding anything to the contrary contained in this Section "2", Grantee shall not be precluded from impleading the Grantor as a third-party defendant nor shall it be precluded from asserting and pursuing a third-party claim against the Grantor in any action which is brought against Grantee by a party other than Grantee or any Grantee Related Party or Parties which arises out of and is based upon a claim of personal injury or death which: (i) is alleged to have occurred upon a portion of the Property during the period of the Grantor's ownership of the Property; (ii) is alleged to have been caused by a condition of or occurrence upon the Property which is entirely unrelated to any Costs and Expenses, Environmental Claim, Environmental Condition, Environmental Law, Hazardous Substance, and/or Liabilities; and (iii) is alleged to have resulted from the negligence and/or willful misconduct of the owner of the Property at the time of the alleged personal injury or death.

3. **Covenant Not to Sue.** Grantee, for itself and all Grantee Related Parties, and for and on behalf of all future grantees or holders of any interest whatsoever in the Property or any portion thereof, hereby covenants and agrees not to make any claim or commence or maintain any action or proceeding against the Grantor, any Grantor Related Party, or against any person or entity which may give rise to claims against the Grantor or any Grantor



Related Party for payment, contribution or indemnity with respect to any Hazardous Substances, Environmental Conditions, Environmental Claims, Liabilities, Costs and Expenses, and/or any other claim or cause of action whatsoever related to the condition of the Property. Without limiting the foregoing, Grantee, for itself and all Grantee Related Parties, and for and on behalf of all future grantees or holders of any interest whatsoever in the Property or any portion thereof, hereby covenants and agrees not to take any step or action or otherwise approach regulatory authorities for purposes of pursuing regulatory enforcement steps or actions against the Grantor or any Grantor Related Party, or that would otherwise directly or indirectly result in such enforcement steps or actions being taken against the Grantor and/or any Grantor Related Party. Notwithstanding anything to the contrary contained in this Section "3", Grantee shall not be precluded from impleading the Grantor as a third-party defendant nor shall it be precluded from asserting and pursuing a third-party claim against the Grantor in any action which is brought against Grantee by a party other than Grantee or any Grantee Related Party or Parties which arises out of and is based upon a claim of personal injury or death which: (i) is alleged to have occurred upon a portion of the Property during the period of the Grantor's ownership of the Property; (ii) is alleged to have been caused by a condition of or occurrence upon the Property which is entirely unrelated to any Costs and Expenses, Environmental Claim, Environmental Condition, Environmental Law, Hazardous Substance, and/or Liabilities; and (iii) is alleged to have resulted from the negligence and/or willful misconduct of the owner of the Property at the time of the alleged personal injury or death.

#### 4. Public Access Covenants, Restrictions, and Easements.

(a) NFTA Boat Harbor and Gallagher Beach Public Access Requirements. The Grantor hereby declares the following covenants and restrictions which shall govern the ownership, development, and use of those portions of the Property described in Exhibit "A" attached hereto (collectively, the "NFTA Boat Harbor and Gallagher Beach Portions of the Property"):

(i) The ownership and use of the NFTA Boat Harbor and Gallagher Beach Portions of the Property shall at all times remain with the government or any other public entity, in accordance with Section 2897(7)(i) of the New York Public Authorities Law;

(ii) the NFTA Boat Harbor and Gallagher Beach Portions of the Property shall at all times be used and operated as a New York State park and shall be dedicated in perpetuity for such purpose;

(iii) the NFTA Boat Harbor and Gallagher Beach Portions of the Property will be listed as a New York State park under the regulations governing the Office of Parks, Recreation, and Historic Preservation pursuant to Title 9, Part 384 of the New York Codes, Rules and Regulations, and will, therefore, be subject to the public trust doctrine; and

(iv) the Grantee, for itself and any future owners of the NFTA Boat Harbor and Gallagher Beach Portions of the Property agrees that, upon request by the New York State

Attorney General or the New York State Office of Parks, Recreation and Historic Preservation, Grantee shall execute such other and further documents and/or instruments as may be required to effectively and formally establish the NFTA Boat Harbor and Gallagher Beach Portions of the Property as a New York State park.

(b) Outer Harbor Greenbelt Area Easements. The Grantor hereby declares that portion of the balance of the Property that is described in **Exhibit "B"** attached hereto (the "Greenbelt Area") shall be subject to perpetual and irrevocable easements for the benefit of all members of the general public allowing free and unrestricted public access to, ingress and egress to and from, and public rights to use and enjoy the Greenbelt Area for recreational purposes, including, without limitation, the walking and bike paths that are currently located thereon, and any replacements, modifications, and additions to such walking and bike paths.

(c) Easement for Additional Access to Greenbelt Area. In addition, the Grantor hereby declares that the area described in **Exhibit "C"** attached hereto (the "Additional Access to Greenbelt Area") shall be incorporated into the Greenbelt Area, and shall also be subject to perpetual and irrevocable easements for the benefit of all members of the general public allowing free and unrestricted public access to, ingress and egress to and from, and public rights to use and enjoy the Additional Access to Greenbelt Area for recreational purposes, including, without limitation, any walking and bike paths that are constructed and installed thereon, and any replacements, modifications, and additions to such walking and bike paths.

(d) Additional Terms and Conditions of Public Access Easements. The easements for public access to and recreational use of the Greenbelt Area and Additional Access to Greenbelt Area established pursuant to **Sections "4 (b)" and "4 (c)"** above shall also be subject to the easement terms, covenants, and provisions that are set forth in **Exhibit "D"** attached hereto.

## 5. Miscellaneous.

(a) Survival. All of the provisions contained in this attachment to this Deed shall survive the conveyance of title to the Property by the Grantor to the Grantee pursuant to the ~~Agreement and shall be deemed to be covenants running with the Property, which shall be~~ deemed to be newly made upon each subsequent conveyance or encumbrance of the Property, the duration of which shall be perpetual, except to the extent the duration is limited by applicable law, in which case, the duration shall be equal to the longest term then available under applicable law.

(b) Covenants and Provisions Run with the Land. All of the covenants and other provisions contained in this Deed, including, without limitation, the release and covenant not to sue provisions, and easement provisions set forth above, shall run with the land and shall be binding upon all persons or entities having any right, title or interest in the Property, or any portion thereof, and all persons hereafter acquiring any such right, title, or interest in the Property agree to be bound by all of the covenants and other provisions of this Deed.

(c) No Waiver. Failure by any party to enforce any covenant, restriction, or provision contained herein shall in no event be deemed a waiver of the right of any such party or parties to do so thereafter. All remedies provided herein or at law or in equity shall be cumulative and not exclusive. None of the covenants or other provisions of this Deed are intended to benefit or be enforceable by persons or entities other than the Enforcing Parties.

(d) Captions. The captions contained in this Deed attachment are for convenience only and are not intended to limit or amplify the terms hereof in any way.

(e) Invalidity. A determination by any court that any provision hereof is unenforceable, invalid, or void shall not affect the enforceability or validity of any other provisions hereof.

**Parcel 1 (Northerly Portion) on Schedule A of this Deed is subject to a Declaration of Covenants and Restrictions recorded in the Erie County Clerk's office on December 27, 2005 in Liber 11107 of Deeds at page 1438.**

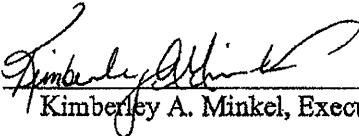
**Parcel 1 (Northerly Portion) on Schedule A of this Deed is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law recorded in the Erie County Clerk's office on December 1, 2011 in Liber 11212 of Deeds at page 9031.**

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[SIGNATURE PAGES FOLLOW]

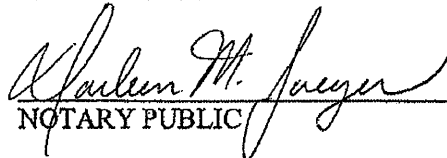
GRANTOR:

Niagara Frontier Transportation Authority

By:   
Kimberley A. Minkel, Executive Director

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

On the 14<sup>th</sup> day of April in the year 2014 before me, the undersigned a Notary Public in and for said State, personally appeared **Kimberley A. Minkel**, 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 this instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

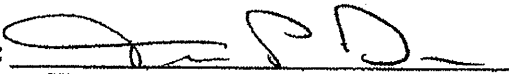
  
NOTARY PUBLIC

**DARLEEN M. JAEGER**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 3-19-15

[Signature Page – Deed Attachment]

GRANTEE:

**Erie Canal Harbor Development Corporation**

By:   
Thomas P. Dee  
Its: President

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

On the 9 day of April in the year 2014 before me, the undersigned a Notary Public in and for said State, personally appeared **Thomas P. Dee**, 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 this instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC

**STEPHEN F. GAWLIK**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 9, 2016

[Signature Page -- Deed Attachment]

1093765

**Exhibit A**

(Legal Description of NFTA Boat Harbor and Gallagher Beach Portions of the Property)

**Parcel 2 (Southerly Portion)**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lots Nos. 4 to 9 of the Ogden Gore Tract and part of the lands formerly under the waters of Lake Erie, bounded and described as follows:

Beginning at a point in the westerly right-of-way of Fuhrmann Boulevard, said point being the intersection formed by the aforesaid westerly right-of-way and the north line of lands conveyed to the Niagara Port Authority as recorded in Book 7494 of Deeds, page 56, said point being further described as the northwest corner of lands appropriated to the State of New York and shown on Map No. 350 Parcel No. 393, thence

S 37-30-18 E along said westerly right-of-way of Fuhrmann Boulevard, a distance of 88.46 feet to a point, thence

N 52-29-42 E continuing along said westerly right-of-way, a distance of 11.24 feet to a point, thence

S 37-30-18 E continuing along said westerly right-of-way, a distance of 173.18 feet to a point, thence

S 32-43-12 E continuing along said westerly right-of-way, a distance of 494.12 feet to a point, thence

S 20-21-10 E continuing along said westerly right-of-way, a distance of 1802.51 feet to a point, thence

S 18-38-35 E continuing along said westerly right-of-way, a distance of 400.19 feet to a point, thence

S 16-44-05 E continuing along said westerly right-of-way, a distance of 251.51 feet to a point, thence

S 14-53-45 E continuing along said westerly right-of-way, a distance of 655.62 feet to a point, thence

S 20-37-32 E continuing along said westerly right-of-way, a distance of 1080.88 feet to a point in the north line of lands conveyed to the South End Marina Corporation recorded in the Erie county Clerk's Office in Book 9232 of Deeds, page 529, thence

S 69-30-21 W along the northerly line of aforesaid lands of South End Marina Corporation, a distance of 1358.00 feet to a point in the Harbor line established by the United States Government and approved March 27, 1899, thence

N 26-53-50 W along said Harbor line, a distance of 4952.00 feet to a point in the south line of lands conveyed to Queen City Landing LLC, recorded in the Erie County Clerk's Office in Book 11137 of Deeds, page 7323, thence

N 69-38-50 E along the southerly line of aforesaid lands of Queen City Landing LLC, a distance of 1813.68 feet to the point and place of beginning.

Intending to describe a parcel of land being 190.139 acres, City of Buffalo, State of New York.

**Exhibit B**  
(Legal Description of Existing Greenbelt Area)

**(Existing Greenbelt Area)**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lots Nos. 1 and 2 of the Ogden Gore Tract, part of Outer Lots Nos. 44 to 50 and part of lands formerly lying under the waters of Lake Erie, bounded and described as follows:

COMMENCING at a point in the westerly line of Fuhrmann Boulevard (aka Seawall Highway, Harbor Turnpike, Hamburg Turnpike or New York State Route 5), said point being the southeasterly corner of Parcel Two of lands conveyed to the Niagara Frontier Port Authority(NFPA), predecessor in title to the Niagara Frontier Transportation Authority (NFTA) by deed recorded in the Office of the Clerk of Erie County in Liber 6434 at Page 84, said point also being the northeasterly corner of lands now belonging to NFTA as described in a deed to the Ford Motor Company recorded in said Clerk's Office in Liber 2100 at Page 566;

thence along the most easterly line of said Parcel Two, which line is also the westerly line of Fuhrmann Boulevard, so called, N 28°-24'-25" W, 861.30 feet to a point, said point being the most southerly point of lands conveyed by NFTA to the People of the State of New York for the improvement of Fuhrmann Boulevard by Appropriation Map Number 343 Parcel 386;

thence along a westerly line of lands conveyed to the People of the State of New York by said Map 343 Parcel 386, N 38°-12'-40" W, 216.58 feet to the POINT OF BEGINNING of this easement; said point having the coordinates of North 1,042,653.63 feet, East 1,070,809.47 feet based on the coordinates of National Geodetic Survey Monument "LEHR" PID No. AE2177 which coordinates are based upon the New York State Plan Coordinate System, West Zone, North American Datum of 1983;

thence along the last mentioned line, (L1) S 38°-12'-40" E, 15.22 feet to a point;

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thence through the lands conveyed to NFTA by deeds recorded in said Clerk's Office in Liber 6434 at Page 84, Liber 6434 at Page 43, Liber 6746 at Page 57, Liber 6742 at Page 235 and Liber 6776 at Page 83, the following courses and distances:

(L2) S 61°-32'-00" W, 290.45 feet;  
(L3) S 21°-15'-03" E, 130.49 feet;  
(L4) S 07°-15'-48" W, 167.74 feet;  
(L5) S 54°-22'-55" W, 149.98 feet;  
(L6) S 77°-26'-54" W, 184.98 feet;  
(L7) S 62°-50'-48" W, 305.63 feet;  
(L8) S 21°-19'-22" W, 147.32 feet;  
(L9) S 20°-46'-13" E, 735.87 feet;



(L10) S 64°-40'-53" W, 120.11 feet to a point at the ground elevation of 573.56 feet on the shoreline revetment mats along the Lake Erie shoreline as said mats existed at the time of this survey; said 573.56 feet elevation being the historical Lake Erie ordinary high water mark as determined by the United States Army Corp of Engineers (USACE); said elevation is referenced to North American Vertical Datum of 1988 (NAVD 88) as converted from (573.4 feet) international Great Lakes Datum of 1985 (IGLD 85);

thence along the said USACE 573.56 feet ground elevation of said revetment mats the following courses and distances:

- (L11) N 26°-22'-58" W, 71.63 feet;
- (L12) N 17°-23'-25" W, 73.77 feet;
- (L13) N 19°-50'-50" W, 126.26 feet;
- (L14) N 16°-25'-22" W, 150.44 feet;
- (L15) N 25°-24'-56" W, 200.72 feet;
- (L16) N 12°-51'-54" W, 130.38 feet;
- (L17) N 21°-07'-11" W, 50.56 feet;
- (L18) N 03°-05'-42" W, 89.98 feet
- (L19) N 38°-38'-46" E, 128.76 feet;
- (L20) N 60°-40'-42" E, 88.50 feet;
- (L21) N 65°-01'-25" E, 100.01 feet;
- (L22) N 61°-03'-58" E, 58.83 feet;
- (L23) N 61°-22'-23" E, 136.10 feet;
- (L24) N 77°-23'-51" E, 88.96 feet;
- (L25) N 85°-47'-09" E, 59.60 feet;
- (L26) N 69°-10'-33" E, 48.61 feet;
- (L27) N 55°-47'-51" E, 23.69 feet;
- (L28) N 33°-55'-22" E, 50.27 feet;
- (L29) N 05°-40'-13" E, 37.64 feet;
- (L30) N 21°-44'-03" W, 24.72 feet;
- (L31) N 03°-43'-32" W, 25.50 feet;
- (L32) N 20°-53'-18" E, 27.88 feet;
- (L33) N 48°-35'-48" E, 35.45 feet;
- (L34) N 26°-53'-36" E, 11.86 feet;
- (L35) N 01°-58'-32" E, 17.30 feet;
- (L36) N 23°-04'-42" W, 58.09 feet;
- (L37) N 44°-07'-51" W, 27.73 feet;
- (L38) N 89°-14'-12" W, 54.82 feet;
- (L39) N 71°-35'-26" W, 53.90 feet;
- (L40) N 59°-12'-17" W, 58.40 feet;
- (L41) N 49°-59'-22" W, 30.33 feet;
- (L42) N 09°-07'-32" W, 31.70 feet;
- (L43) N 05°-54'-47" E, 36.31 feet;
- (L44) N 00°-21'-37" W, 42.00 feet;

(L45) N 02°-16'-13" W, 29.80 feet;  
(L46) N 69°-59'-08" W, 13.35 feet;  
(L47) S 70°-29'-49" W, 19.04 feet;;  
(L48) S 89°-18'-06" W, 16.82 feet;  
(L49) S 84°-25'-18" W, 17.93 feet;  
(L50) S 49°-01'-00" W, 19.65 feet;  
(L51) S 20°-29'-22" W, 40.01 feet;  
(L52) S 15°-49'-32" W, 49.58 feet;  
(L53) S 04°-45'-17" W, 40.67 feet;  
(L54) S 10°-35'-52" E, 66.31 feet;  
(L55) S 10°-36'-42" W, 59.60 feet;  
(L56) S 50°-19'-44" W, 42.55 feet;  
(L57) S 57°-47'-47" W, 51.93 feet;  
(L58) S 48°-59'-36" W, 21.44 feet;  
(L59) S 52°-45'-02" W, 83.34 feet;  
(L60) S 56°-55'-16" W, 89.77 feet;  
(L61) S 72°-33'-31" W, 11.45 feet;  
(L62) N 83°-07'-40" W, 13.78 feet;  
(L63) S 72°-25'-43" W, 81.95 feet;  
(L64) S 74°-05'-52" W, 41.83 feet;  
(L65) N 84°-54'-16" W, 88.38 feet;  
(L66) N 64°-04'-19" W, 84.10 feet;  
(L67) N 33°-41'-51" W, 84.40 feet;  
(L68) N 21°-25'-44" W, 72.42 feet;  
(L69) N 22°-06'-04" W, 49.81 feet;  
(L70) N 09°-41'-32" W, 50.99 feet;  
(L71) N 21°-51'-47" W, 150.12 feet;  
(L72) N 12°-42'-48" W, 100.93 feet;  
(L73) N 18°-56'-41" W, 100.16 feet;  
(L74) N 26°-06'-45" W, 77.12 feet;  
(L75) N 19°-59'-55" W, 123.23 feet;  
(L76) N 25°-23'-30" W, 50.23 feet;  
(L77) N 17°-37'-13" W, 73.99 feet;  
(L78) N 21°-08'-42" W, 75.30 feet;  
(L79) N 36°-13'-51" W, 77.83 feet;  
(L80) N 29°-38'-15" W, 73.26 feet;  
(L81) N 33°-51'-26" W, 226.80 feet;  
(L82) N 24°-15'-24" W, 100.98 feet;  
(L83) N 33°-55'-40" W, 100.27 feet;  
(L84) N 33°-56'-26" W, 100.06 feet;  
(L85) N 38°-20'-15" W, 100.44 feet;  
(L86) N 32°-13'-30" W, 177.43 feet;  
(L87) N 33°-01'-29" W, 150.88 feet;  
(L88) N 28°-13'-30" W, 122.03 feet;

(L89) N 39°-42'-07" W, 81.36 feet;  
(L90) N 64°-40'-24" W, 23.19 feet;  
(L91) N 24°-52'-32" W, 49.66 feet;  
(L92) N 32°-15'-59" W, 50.30 feet;  
(L93) N 35°-27'-19" W, 100.03 feet;  
(L94) N 27°-59'-40" W, 100.35 feet;  
(L95) N 35°-52'-04" W, 49.98 feet;  
(L96) N 26°-11'-40" W, 50.57 feet;  
(L97) N 42°-09'-55" W, 50.72 feet;  
(L98) N 32°-24'-53" W, 220.81 feet;  
(L99) N 30°-42'-28" W, 106.00 feet;

thence leaving the said revetment mats at the said USACE ground elevation of 573.56 feet and continuing through the lands conveyed to NFTA by said deeds recorded in said Clerk's Office the following courses and distances:

(L100) N 63°-01'-46" E, 110.25 feet;  
(L101) S 32°-53'-12" E, 2122.77 feet;  
(L102) S 20°-46'-13" E, 976.59 feet;  
(L103) N 74°-51'-01" E, 227.52 feet;  
(L104) N 49°-34'-57" E, 168.13 feet;  
(L105) N 01°-31'-52" E, 143.02 feet;  
(L106) N 16°-20'-28" E, 178.93 feet;  
(L107) S 84°-45'-39" E, 224.85 feet;  
(L108) S 00°-19'-06" W, 197.83 feet;  
(L109) S 59°-39'-49" E, 39.51 feet;  
(L110) S 75°-49'-09" E, 127.99 feet;  
(L111) S 21°-15'-03" E, 65.37 feet;  
(L112) N 61°-32'-00" E, 285.97 feet to the POINT OF BEGINNING.

Containing 15.83 acres, more or less.

**Exhibit C**  
(Legal Description of Additional Access to Greenbelt Area)

**(Extension of Greenbelt Area)**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lots Nos. 1, 2 and 3 of the Ogden Gore Tract, part of Outer Lots Nos. 42 to 50 and part of the lands formerly under the waters of Lake Erie, bounded and described as follows:

Beginning at a point being the northwest corner of an Environmental Easement to the New York Department of Environmental Conservation filed in Liber 11212 of Deeds, Page 9031 in the Erie County Clerk's Office thence,

S 30-42-28 E along the north line of aforesaid Environmental Easement, a distance of 39.05 feet to a point thence,

S 67-04-00 W , a distance of 46.76 feet to a point on the United States Great Harbor Line as Established March 27, 1899 thence,

N 32-56-18 W along the United States Great Harbor Line a distance of 121.85 feet to a point being on the water's edge as located on December 19, 2013 thence,

N 67-04-00 E along the water's edge, a distance of 1186.92 feet to a point in the westerly right-of-way of Fuhrmann Boulevard thence,

S 20-45-48 E along the westerly right-of-way of Fuhrmann Boulevard, a distance of 120.09 feet to a point thence,

S 67-04-00 W a distance of 1001.60 feet to a point in the south line of the aforesaid Environmental Easement thence,

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N 32-53-12 W along said easement, a distance of 47.17 feet to a point thence,

S 63-01-46 W continuing along said easement, a distance of 110.25 feet to the point and place of beginning.

Containing 3.125 acres, more or less.

### **Exhibit D**

#### (Additional Terms, Covenants, and Provisions of Public Access easements)

The easements for public access, recreational use, and enjoyment of the Greenbelt Area and Additional Access to Greenbelt Area, as established pursuant to "Sections "4 (b)" and "4 (c)" of this deed attachment (collectively, the "Public Access Easements"), shall also be subject to the following terms, covenants and provisions:

1. Improvements, Maintenance, Repairs, and Replacements. The Grantee, the State of New York, and any agency or political subdivision thereof including, without limitation, the City of Buffalo (each being hereinafter referred to as a "Public Entity") shall each have the unilateral right, but none shall have the obligation to install, maintain, repair, and replace improvements upon all or any portion of the Greenbelt Area and Additional Access to Greenbelt Area (collectively, the "Public Access Areas") which are appropriate for and compatible with the Public Access Easements established by this Deed, including, without limitation, the right to maintain, repair, and replace existing walking and bike paths on the Public Access Areas, the right to construct and install walking and bike paths and related improvements on portions of the Public Access Areas where none currently exist, the right to install benches, landscaping, lighting, signage, and other improvements, and the right to maintain, repair, and replace the same from time to time, subject, however, to the following:

(a) Any party who elects to make such improvements and/or carry out any such maintenance, repair, or replacement work in connection with the Public Access Areas (collectively, "Work") shall carry out such Work in a good and workmanlike manner and in accordance with all applicable statutes, rules, regulations, ordinances, permits, approvals, orders, and directives of governmental authorities having jurisdiction.

(b) Any party who elects to undertake any such Work shall take such steps as are reasonably necessary to minimize any interference with the Grantee's rights and the rights of the public in and to the Public Access Areas.

(c) Any contractor retained by a Public Entity to perform any such Work shall be required to carry comprehensive general liability insurance with limits of at least \$1,000,000 (or such higher limits of liability coverage as the Grantee may reasonably require by written notice to such Public Entity at any time after the expiration of five (5) years from the recording of this Deed to which this **Exhibit D** pertains), naming the Grantee as an additional named insured, and to furnish the Grantee with evidence of such insurance before any such Work is commenced.

(d) Prior to commencing any such Work, any Public Entity undertaking the Work shall notify the Grantee in writing, at least sixty (60) days in advance of commencing the Work, and shall provide the Grantee with a description of the Work, a projected timetable for commencement and completion of the Work, and contact information for the individual(s) who will be overseeing the Work.

(e) As soon as reasonably practicable following the completion of any such Work, the party who undertook the Work shall repair and restore any damage caused to the Public Access Areas, adjacent lawn areas, landscaping, and any other improvements thereon which have been damaged or disturbed during the Work to the condition which existed prior to the commencement of the Work.

(f) Any party performing Work with respect to the Public Access Areas shall promptly pay its contractors and material suppliers in full for the Work performed, and shall ensure that no mechanics lien or other lien or encumbrance is filed or recorded against the Public Access Areas, the premises conveyed by this Deed to which this **Exhibit D** pertains, or any portion thereof, by reason of the performance of the Work.

(g) Nothing contained herein shall authorize or permit the Grantee or any Public Entity to close off or obstruct the Public Access Areas, nor shall anything contained herein authorize or permit the Grantee or any Public Entity to construct or install improvements upon any portion of the Public Access Areas that would materially interfere with the Public Access Easements created by this Deed to which this **Exhibit D** pertains.

2. Indemnification. To the extent permitted by applicable law, any Public Entity performing Work in connection with the Public Access Areas shall, upon commencement of any such Work, automatically be deemed to have agreed to indemnify, defend, and hold harmless the Grantee, its successors in interest, and each of their respective officers, members, managers, employees, consultants, agents, successors, and assigns, harmless from and against any and all losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees) for bodily injury or death, or damage or destruction of property occurring, accruing, or arising during, in connection with, or with respect to the Work, whether such claims are asserted by the Grantee, the Public Entity performing the Work, any of their respective officers, employees, contractors, consultants, agents, or invitees, or by unrelated third parties.

3. Invalidity. If any term or provision hereof shall, to any extent, be held to be invalid or unenforceable, the remainder of this **Exhibit D** shall not be affected thereby, and each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.