



NIAGARA COUNTY - STATE OF NEW YORK
 WAYNE F. JAGOW - NIAGARA COUNTY CLERK
 P.O. BOX 461, LOCKPORT, NEW YORK 14095-0461

COUNTY CLERK'S RECORDING PAGE
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RECEIPT NO. : 200910967

Clerk: LJ
 Instr #: 2009-08129
 Rec Date: 05/12/2009 03:00:46 PM
 Doc Grp: DEED
 Descrip: EASEMENT
 Num Pgs: 10

Party1: CITY OF LOCKPORT
 Party2: PEOPLE OF THE STATE OF NEW YORK
 Town: CITY OF LOCKPORT

Recording:

Cover Page	8.00
Recording Fee	32.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584	5.00

Sub Total: 65.00

Transfer Tax
 Transfer Tax 0.00

Sub Total: 0.00

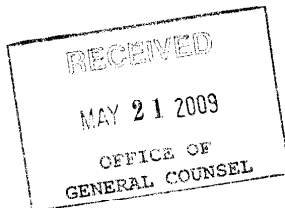
Total: 65.00

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

***** Transfer Tax *****

Transfer Tax# : 4251

Consideration: 0.00
 Transfer Tax: 0.00



Record and Return To:

JOHN J. OTTAVIANO
 172 EAST AVENUE
 P.O. BOX 1230
 LOCKPORT, NY 14095

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

THIS INDENTURE made this 18 day of March, 2009, between Owner(s) The City of Lockport having an office at One Locks Plaza, Lockport, New York 14094 (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at various addresses on Richmond Avenue, Niagara Street and Church Street in the City of Lockport, Niagara County, New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcels: Tax Map Number: 109.54 Block 2 Lots 14, 15,16,17,18,19, 21, 24 & 30 being the same as that property conveyed to Grantor by deeds on June 29, 2006 and recorded in the Land Records of the Niagara County Clerk in Liber 3364 at page 308 of Deeds, comprised of approximately 1.45 acres, and hereinafter more fully described in Schedule "A" property description and Land Title Survey Map prepared by McIntosh & McIntosh, P.C. dated February 5, 2009, attached hereto and made a part hereof (the "Controlled Property"); and

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of State Assistance Contract Number C 301765 Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

Please Record & Return to: Environmental Easement/Page 1 of 9
John J. Ottaviano, Esq.
Harris Beach PLLC
P.O. Box 1230
Lockport, NY 14095

Wayne F. Jagow, Niagara County Clerk

200910967

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10 Pages
EASEMENT

Clerk: LJ

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for commercial and industrial use, identified future uses in accordance with 6 NYCRR Part 375-1.8 (g)(2)(iii)(iv), as long as the following long-term engineering controls are employed:

- i) The Controlled Property shall not be used to grow crops or livestock for human consumption unless such use is specifically approved by NYSDEC;
- ii) The Soil Management Plan (SMP), dated June 2004, must be implemented for the Controlled Property;
- iii) Soils at the Controlled Property shall be managed in accordance with the SMP, dated June 2004; The SMP includes requirements for the characterization, handling, and disposal/re-use of residual contaminated media (e.g., soil, fill, groundwater) and requirements for soils imported to the site;
- iv) The existing surface and near surface soil, asphalt-paved surfaces, concrete-paved surfaces, and the building itself, act as a cover system at the Controlled Property. The cover system will consist of one of the following types of clean material:
 - Soil: A minimum of 12 inches of vegetated soil cover underlain by a demarcation layer, in outdoor vegetated areas.
 - Asphalt: A minimum of 6 inches of material (asphalt and subbase material) in areas that will become roads, sidewalks and parking lots. Actual cross sections will be determined based on the intended use of the area.
 - Concrete: a minimum of 6 inches of material (concrete and subbase material) in areas that will become slab-on-grade structures or for roads, sidewalks and parking lots in lieu of asphalt. Actual cross sections will be determined based on the intended use of the area.
 - Brick Pavers: A minimum of 6 inches of material (brick pavers and subbase material) in areas that will become walkways or landscaped areas. Actual cross sections will be determined based on the intended use of the area.

Disturbances and incidental damage to this cover system shall be repaired upon discovery with one or more of the components listed above or other cover materials approved by the NYSDEC and the NYSDOH;

v) Grantor shall provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Soil Management Plan dated June 2004, that the

Department has approved for the Controlled Property and all Department-approved amendments to the Soil Management Plan.

vi) The owner shall complete and submit to the NYSDEC an annual report by March 31st of each year. Submitting to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Soil Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

(vii) The Grantor and its successors and assigns must provide a periodic certification of institutional and engineering controls, prepared and submitted by a professional engineer or such other expert acceptable to the Department, until the Department notifies the property owner in writing that this certification is no longer needed. This submittal would: (a) contain certification that the institutional controls and engineering controls put in place are still in place and are either unchanged from the previous certification or are compliant with Department-approved modifications; (b) allow the Department access to the site; and (c) state that nothing has occurred that would impair the ability of the control to protect public health or the environment, or constitute a violation or failure to comply with the site management plan unless otherwise approved by the Department.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Soil Management Plan, dated June, 2004 ("SMP"). The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system on the Controlled Property, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Regional Remediation Engineer:	or	Site Control Section
Region 9		Division of Environmental Remediation
NYS Department of Environmental Conservation		NYS DEC
270 Michigan Avenue		625 Broadway
Buffalo, New York 14203		Albany, NY 12233

B. The Controlled Property may not be used for a higher level of use such as commercial or industrial use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

D. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Soil Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor's Name: The City of Lockport

Approved as to form
Corporation Counsel
City of Lockport

By: [Signature]

By: [Signature]
Date: 3-18-09

Title: mayor Date: 3-18-09

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation

by: [Signature]
Alexander B. Grannis, Commissioner

Dale A. Desnoyers, Director
Division of Environmental Remediation

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 18 day of march, in the year 2009, before me, the undersigned, personally appeared Michael W. Tucker, 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 J. OTTAVIANO, #4876211
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires Oct. 20, 2010

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

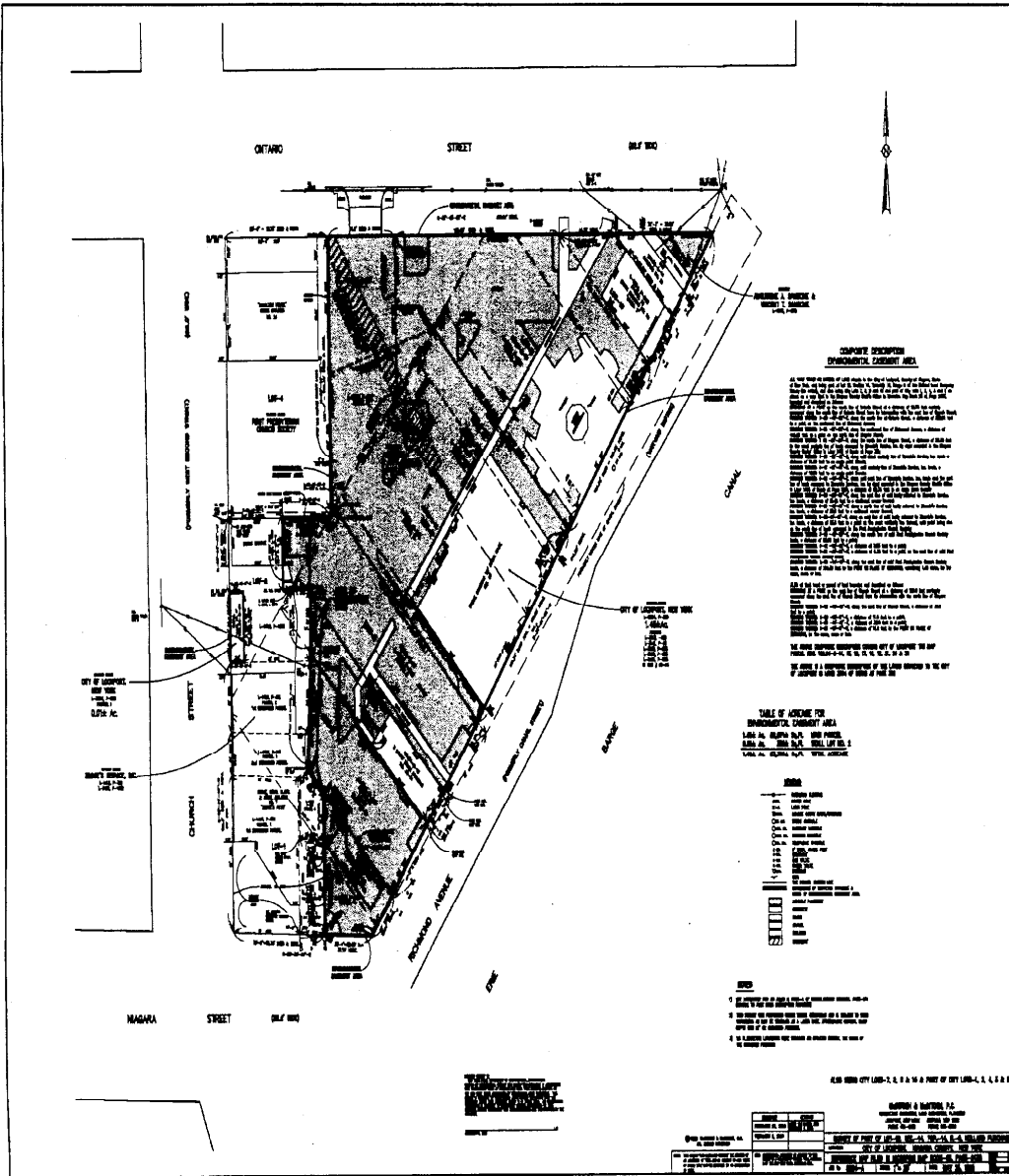
On the 6th day of April, in the year 2009, before me, the undersigned, personally appeared Alexander B. Grannis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2010

SURVEY



**SCHEDULE "A"
ENVIRONMENTAL EASEMENT
CONTROLLED PROPERTY DESCRIPTION**

Address: Richmond Avenue, City of Lockport, NY
Tax Id No: 109.54-2-14, 15, 16, 17, 18, 19, 21, 24 & 30

(Suggested Description)

1.45± Acres

Job No. 6084-A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lockport, County of Niagara, State of New York, and being part of Lot 12, Section 14, Township 14, Range 6 of the Holland Land Company Survey (so called), and also being City Lots 7, 8, 9 and 10 and part of City Lots 1, 2, 4, 5 and 6 as shown on a map filed in the Niagara County Clerk's Office in Microfilm Map Book 25 at Page 2433, bounded and described as follows:

BEGINNING AT A POINT on the south line of Ontario Street at a distance of 83.75 feet easterly measured along the south line of Ontario Street from its intersection with the east line of Church Street;
RUNNING THENCE N-89°-42'-53"-E, along the south line of Ontario Street, a distance of 309.91 feet to a point on the northwest line of Richmond Avenue;
RUNNING THENCE S-38°-21'-02"-W, along the northwest line of Richmond Avenue, a distance of 446.59 feet to a point on the north line of Niagara Street;
RUNNING THENCE N-38°-50'-04"-W, along the north line of Niagara Street, a distance of 38.33 feet to the most easterly line of lands conveyed to Zimmie's Service, Inc. By deed recorded in the Niagara County Clerk's Office in Liber 1416 of Deeds at Page 321;
RUNNING THENCE N-00°-22'-02"-E, along said most easterly line of Zimmie's Service, Inc. lands a distance of 71.80 feet to an angle point therein;
RUNNING THENCE N-47°-21'-44"-W, along said easterly line of Zimmie's Service, Inc. lands, a distance of 18.25 feet to an angle point therein;
RUNNING THENCE N-02°-43'-54"-E, along said east line of Zimmie's Service, Inc. lands and the east line of lands conveyed to Zimmie's Services, Inc. by deed recorded in the Niagara County Clerk's Office in Liber 1468 of Deeds at Page 1039, a distance of 58.34 feet to an angle point therein;
RUNNING THENCE N-00°-22'-37"-E, along the east line of said lastly referred to Zimmie's Service, Inc. lands, a distance of 31.43 feet to a northeast corner thereof;
RUNNING THENCE S-89°-42'-53"-W, along a north line of said lastly referred to Zimmie's Service, Inc. lands, a distance of 22.0 feet to a northeast corner thereof;
RUNNING THENCE N-00-44'-49"-W, along an east line of said lastly referred to Zimmie's Service, Inc. lands, a distance of 35.0 feet to a point on the most northerly line thereof, said point being also on the south line of lands conveyed to the First Presbyterian Church Society;
RUNNING THENCE N-89°-42'-53"-E, along the south line of said First Presbyterian Church Society lands, a distance of 38.08 feet to a point;



NIAGARA COUNTY - STATE OF NEW YORK
 WAYNE F. JAGOW - NIAGARA COUNTY CLERK
 P.O. BOX 461, LOCKPORT, NEW YORK 14095-0461

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Total: 47.00
 *** NOTICE: THIS IS NOT A BILL ***

Party1: CITY OF LOCKPORT
 Party2: GREAT LOCKPORT DEVELOPMENT CORP
 Town: CITY OF LOCKPORT

Record and Return To:

JOHN J. OTTAVIANO
 172 EAST AVENUE
 P.O. BOX 1230
 LOCKPORT, NY 14095

SUBORDINATION AGREEMENT

AGREEMENT made the 18 day of ~~January~~ ^{March} in the year Two Thousand Nine, between the CITY OF LOCKPORT, a New York Municipal Corporation with offices at One Locks Plaza, Lockport, New York 14094, hereinafter referred to as "City", and the GREATER LOCKPORT DEVELOPMENT CORPORATION, a Not-For-Profit Corporation duly organized and existing under the laws of the State of New York, with offices at One Locks Plaza, Lockport, New York 14094, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, the said City is the owner of premises as more fully described in Schedule A attached hereto; and

WHEREAS, the City and the Lessee entered into a Master Lease Agreement dated as of June 29, 2006, for the premises described in Schedule "A" attached hereto; and

WHEREAS, a Memorandum of said Master Lease Agreement dated June 29, 2006, was recorded in the Niagara County Clerk's Office on July 7, 2006, in Liber 3364 of Deeds at page 315.

NOW, THEREFORE, in consideration of the premises and One (1) and no more Dollars, the parties (City and Lessee) covenant and agree that said Master Lease Agreement dated June 29, 2006, is and shall be subject and subordinate to the Environmental Easement from the CITY OF LOCKPORT to the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION dated March 18, 2009, and recorded in the Niagara County Clerk's Office on 5-12-, 2009, Document No. 2009-08129

If the superior Environmental Easement is amended or assigned, it is still the intent that this Subordination Agreement be enforced.

This agreement shall be binding upon and enure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the City and Lessee have executed these presents the day and year first above written.

CITY OF LOCKPORT

By: [Signature]
Michael W. Tucker, Mayor

GREATER LOCKPORT DEVELOPMENT CORPORATION

By: [Signature]
Michael W. Tucker, President

Please Record & Return to:
John J. Ottaviano, Esq.
Harris Beach PLLC
P.O. Box 1230
Lockport, NY 14095

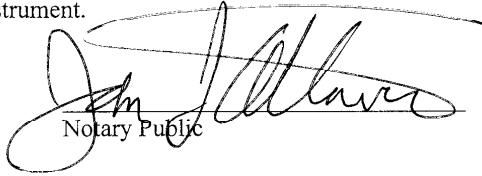
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4 Pages
AGREEMENT

200910967

Clerk: LJ
Wayne F. Jagow, Niagara County Clerk

STATE OF NEW YORK)
COUNTY OF NIAGARA) SS.:

On the 3 day of ~~January~~ ^{March} in the year Two Thousand Nine, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael W. Tucker, 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 executed the same in his capacities, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JOHN J. OTTAVIANO, #4876211
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires October 10, 2010

SCHEDULE A

A permanent Environmental Easement pursuant to Article 71, Title 36 of the Environmental Conservation Law in, on, over, under and upon the following described lands:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lockport, County of Niagara and State of New York, being part of Lot No. 12, Section 14, Township 14, Range 6 of the Holland Land Company's Survey, and also being City Lots 7,8,9 and 10 and part of City Lots 1,2,3,4,5 and 6 as shown on a map filed in the Niagara County Clerk's Office in Microfilm Map Book 25 at page 2433, bounded and described as follows:

Beginning at a point on the south line of Ontario Street at a distance of 83.75 feet easterly measured along the south line of Ontario Street from its intersection with the east line of Church Street; running thence N 89° 42' 53" E along the south line of Ontario Street a distance of 309.91 feet to the point on the northwest line of Richmond Avenue; running thence S 38° 21' 02" W along the northwest line of Richmond Avenue a distance of 446.59 feet to a point on the north line of Niagara Street; running thence N 88° 50' 04" W along the north line of Niagara Street a distance of 38.33 feet to the most easterly line of lands conveyed to Zimmie's Service, Inc. by deed recorded in the Niagara County Clerk's Office in Liber 1416 of Deeds at page 321; running thence N 00° 22' 02" E, along said most easterly line of Zimmie's Service, Inc. lands a distance of 71.80 feet to an angle point therein; running thence N 47° 21' 44" W, along said easterly line of Zimmie's Service, Inc. lands, a distance of 18.25 feet to an angle point therein; running thence N 02° 43' 54" E, along said east line of Zimmie's Service, Inc. lands and the east line of lands conveyed to Zimmie's Services, Inc. by deed recorded in the Niagara County Clerk's Office in Liber 1468 of Deeds at page 1039, a distance of 58.34 feet to an angle point therein; running thence N 00° 22' 37" E, along the east line of said lastly referred to Zimmie's Service, Inc. lands, a distance of 31.43 feet to a northeast corner thereof; running thence S 89° 42' 53" W, along a north line of said lastly referred to Zimmie's Service, Inc. lands, a distance of 22.0 feet to a northeast corner thereof; running thence N 00° 44' 49" W, along an east line of said lastly referred to Zimmie's Service, Inc. lands, a distance of 35.0 feet to a point on the most northerly line thereof, said point being also on the south line of lands conveyed to the First Presbyterian Church Society; running thence N 89° 42' 53" E, along the south line of said First Presbyterian Church Society lands, a distance of 38.08 feet to a point; running thence N 42° 05' 25" E a distance of 3.55 feet to a point; running thence S 89° 42' 53" W a distance of 0.75 feet to a point on the east line of said First Presbyterian Church Society lands; running thence N 00° 44' 49" W, along the east line of said First Presbyterian Church Society lands, a distance of 136.33 feet to the point or place of beginning, containing 1.45 acres, be the same, more or less.

ALSO all that tract or parcel of land bounded and described as follows:

Beginning at a point on the east line of Church Street at a distance of 136.00 feet northerly measured along the east line of Church Street from its intersection with the north line of Niagara Street; running thence N 00°44'49" W, along the east line of Church Street, a distance of 35.0 feet to a point; running thence N 89°15'11" E, a distance of 11.0 feet to a point; running thence S00°44'49" E, a distance of 35.0 feet to a point; running thence S 89°15'11" W, a distance of 11.0 feet to the point or place of beginning, be the same, more or less.