

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL REMEDIATION**

**CERTIFICATE OF COMPLETION**

**Date of Issuance:** DECEMBER 9, 2005

**Certificate holder:** KROG USC ASSOCIATES I, LLC

Site Name: Buffalo Lakeside Commerce Park

Site Owner: Krog USC Associates-I, LLC

Site Location: Street Address: Ship Canal Parkway

Municipality: City of Buffalo

County: Erie

Site Description: A parcel of approximately 25 acres in the southeast corner of the Buffalo Lakeside Commerce Park, which is located off of Fuhrmann Boulevard in the southwest area of the City of Buffalo, near the Lackawanna city limit.

A metes and bounds description of the property subject to this Certificate is attached as Exhibit 'A'.

Tax Map Identification Number(s): 132.20-1-11

Is at least 50% of the Site located in an EnZone? \_\_\_\_\_ yes  no

Is 100% of the Site located in an EnZone ? \_\_\_\_\_ yes  no

Brownfield Site Cleanup Agreement Volunteer:

Krog USC Associates-I, LLC  
4 Centre Drive  
Orchard Park, New York  
Taxpayer ID number: 20-713595

Effective Date of Brownfield Site Cleanup Agreement : July 16, 2004

DER Site Tracking Number: C-915185

**Certificate Issuance**

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site

Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses:

Unrestricted  
 Restricted commercial/industrial

Track: 1  2  3  4

The Remedial Program includes use restriction or reliance on the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County at Book 11102 of Deeds at Page 8169.

### **Liability Limitation**

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

### **Certificate Transferability**

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5.

### **Certificate Modification/Revocation**

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 upon a finding that:

- (1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;
- (2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;
- (3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached; or
- (4) there is good cause for such modification or revocation.

The Certificate holder(s) (including successors or assigns) shall have thirty days after receipt of written notice (sent by certified mail) that the Commissioner intends to modify or revoke this Certificate to either request a hearing or to otherwise submit evidence that the facts and circumstances do not require revocation or modification.

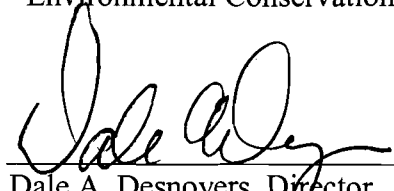
**Notice of Certificate Issuance**

A Notice of this Certificate must be recorded in the recording office for the County (or Counties) where any portion of the Site is located within 30 days of the issuance of this Certificate if the Certificate is issued to the Site owner or within 30 days of acquiring title to the Site if the Certificate is issued to a prospective purchaser of the Site. If institutional or engineering controls are required at the Site, a Notice of this Certificate and a fact sheet describing such controls must be provided to the Brownfield Site Contact List within 10 days of issuance of this Certificate.

Dated: Albany, New York  
December 9, 2005

DENISE M. SHEEHAN  
Commissioner  
New York State Department of  
Environmental Conservation

By:

  
\_\_\_\_\_  
Dale A. Desnoyers, Director  
Division of Environmental Remediation

edms 217407

SCHEDULE A

ALL THAT PIECE OR PARCEL OF PROPERTY, situate in Lot No. 18 in the Ogden Gore Tract and in Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York bounded and described as follows:

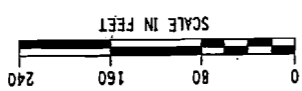
BEGINNING at a point on the southwesterly line of land conveyed to Sherland Incorporated by Liber 10022 of Deeds at page 218 at its intersection with the westerly right of way line of Consolidated Rail Corporation and the easterly line of land conveyed to Jordan & Foster Scrap Corporation by Liber 9240 of Deeds at page 523, in Parcel IX (Parcel No. 1); thence along the said westerly right of way line of Consolidated Rail Corporation and the said easterly line of lands conveyed in Liber 9240 of Deeds at page 523 the following three courses and distances: (1) southerly forming an interior angle of  $135^{\circ} 26' 18''$ , a distance of 290.89 feet to an angle point; thence (2) continuing southerly forming an interior angle of  $165^{\circ} 58' 34''$  as surveyed ( $166^{\circ} 44' 00''$  by deed), a distance of 250.32 feet to an angle point, said point being 79.00 feet distant northwesterly from, measured at right angles to, the center line of the track of the South Buffalo Railroad; thence (3) southwesterly forming an interior angle of  $115^{\circ} 15' 30''$  and parallel with the center line of the track of the South Buffalo Railway a distance of 187.74 feet to a point on the northwesterly right of way line of the South Buffalo Railway Company; thence along the said South Buffalo Railway Company's right of way the following four courses and distances: (1) continuing southwesterly, a distance of 198.00 feet to a point of curvature; (2) thence continuing southwesterly on a curve to the right, having a radius of 1,831.08 feet, an arc distance of 447.42 feet to the point of tangency; thence (3) southerly along a line radial to the last mentioned curve a distance of 35.00 feet to a point of curvature; thence (4) southwesterly and westerly on a curve to the right, having a radius of 1,866.08 feet, an arc distance of 562.41 feet to a point; thence through the property of Development Downtown Inc. by deed recorded in Liber 11026 of Deeds, at page 7626, the following six courses and distances: (1) northerly along a line radial to the last mentioned curve a distance of 691.11 feet to a point; thence (2) northwesterly forming an exterior angle of  $108^{\circ} 48' 17''$  a distance of 47.60 feet to a point on the southeasterly boundary of a proposed road, said point being 2,086.51 feet distant northeasterly from existing Commerce Street, 60.0 feet wide, as measured at right angles thereto; thence (3) northeasterly and northerly along the southeasterly boundary of the said proposed road and on a curve to the left, having a radius of 230.00 feet, an arc distance of 252.47 feet to a point of tangency; thence (4) continuing northerly and along the easterly boundary of the said proposed road a distance of 12.53 feet to a point; thence (5) southeasterly forming an exterior angle of  $120^{\circ} 07' 21''$  a distance of 113.54 feet to a point; thence (6) northeasterly forming an exterior angle of  $134^{\circ} 13' 46''$  a distance of 693.41 feet to a point on the said southwesterly line of land conveyed in Liber 10022 of Deeds at page 218; thence southeasterly and along the said southwesterly line of lands conveyed in Liber 10022 of Deeds at page 218 a distance of 424.51 feet to the point of beginning.

ALTERNATE ANY ITEM ON THIS MAP IS VIOLATION OF THE LAW, EXCEPT AS PROVIDED IN SECTION 2109, NEW YORK STATE EDUCATION LAW.

THIS MAP IS VOID UNLESS EMBOSSED WITH THE NEW YORK STATE LICENSED LAND SURVEYOR'S SEAL NO. 049590 THAT MAY BE REVEALED BY AN EXAMINATION OF SAME.

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT FULL ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATE OF FACTS COMPANY OF NEW YORK, DATED JANUARY 19, 2005.

NO INVESTIGATIONS MADE FOR SUBSURFACE DRAINS, SEWERS, AND UTILITY LINES.



FILE NAME: SCALE: 1" = 80'

DATE: FEB. 14, 2005

DRAWING NO. CPM-2

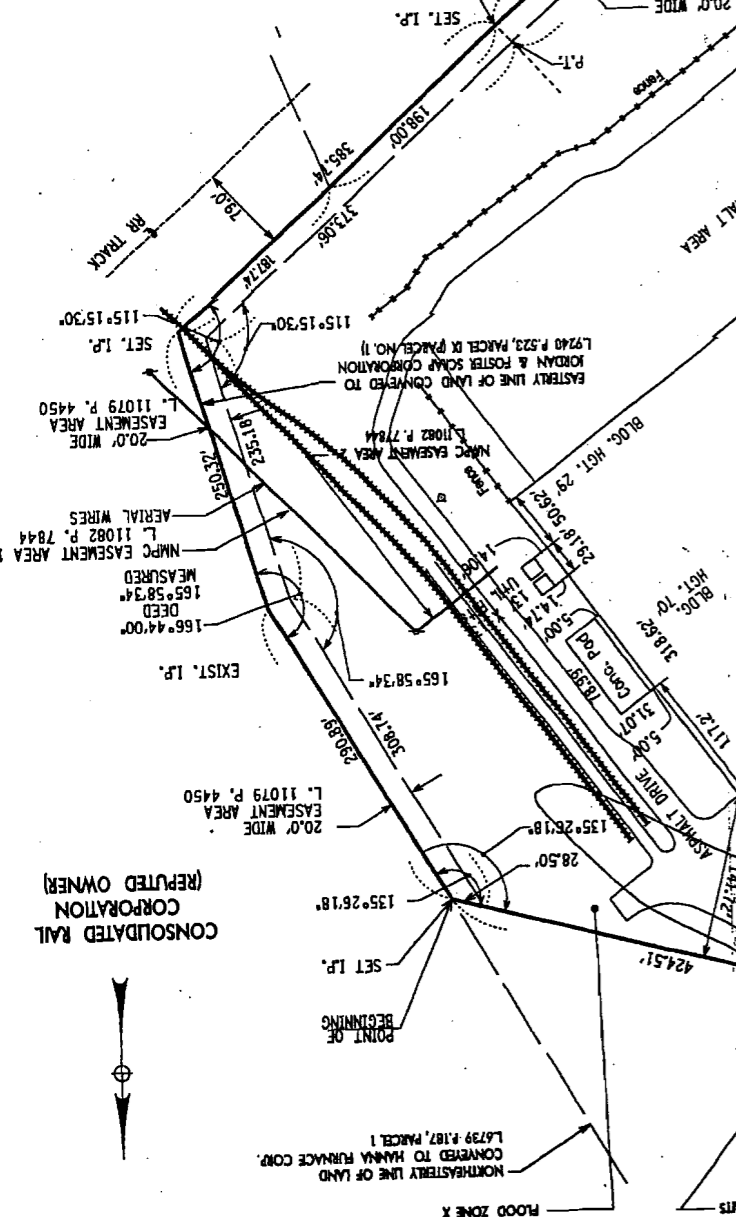


ALTA/ACSM LAND TITLE SURVEY URBAN CLASSIFICATION KROG USC ASSOCIATES-1, LLC

PREMISES IS CURRENTLY LOCATED IN A HEAVY INDUSTRIAL ZONING DISTRICT - M3. PREMISES IS LOCATED IN FLOOD ZONE X AND FLOOD ZONE Y AS SHOWN ON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 20 OF 20, COUNTY OF BUFFALO, N.Y., DATED AUGUST 23, 1999. BUFFALO, N.Y. FLOOD ZONE LEGEND: PREMISES IS WITHIN THE UNION SHIP CANAL REDEVELOPMENT AREA, URBAN INDUSTRIAL PARK (LAND USE AREA AND LIGHT INDUSTRIAL PARK LAND USE AREA). SETBACK REQUIREMENTS: 100 YEAR FLOOD WITH AVERAGE DEPTH LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREA PROTECTED LEVENS FROM 100 YEAR FLOOD.

- LEGEND: FIRE HYDRANT, LIGHT POLE, UTILITY POLE

SOUTH BUFFALO RAILWAY CO. (REPUTED OWNER)



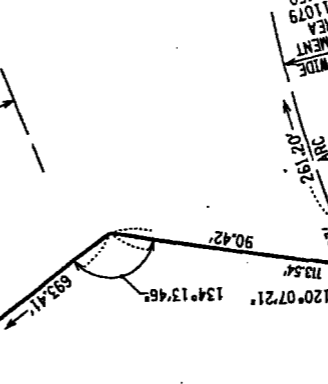
CONCRETE BLOCK BUILDING AREA = 277,062 +/- sq. ft. L 11079 P. 4450 (REPUTED OWNER) KROG USC ASSOCIATES-1, LLC

AREA = 25.105 +/- ACRES 1,093,574 +/- sq. ft. L 11079 P. 4450 (REPUTED OWNER) DOWNTOWN INC.

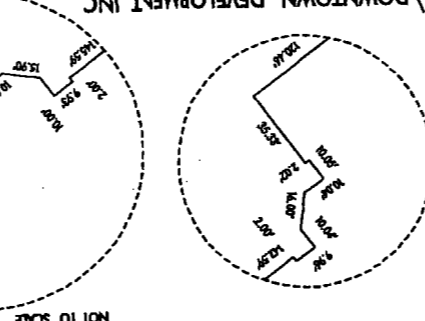
PROPOSED BUFFALO LAKE SIDE COMMERCIAL PARK PHASE I SUBDIVISION

PART OF LOT 18, T.10, R.8 ODGEN GORE TRACT CITY OF BUFFALO ERIE COUNTY NEW YORK

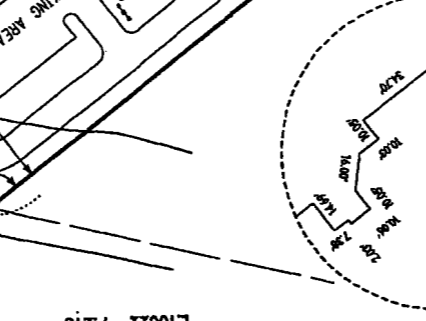
DETAIL 'A' NOT TO SCALE



DETAIL 'B' NOT TO SCALE

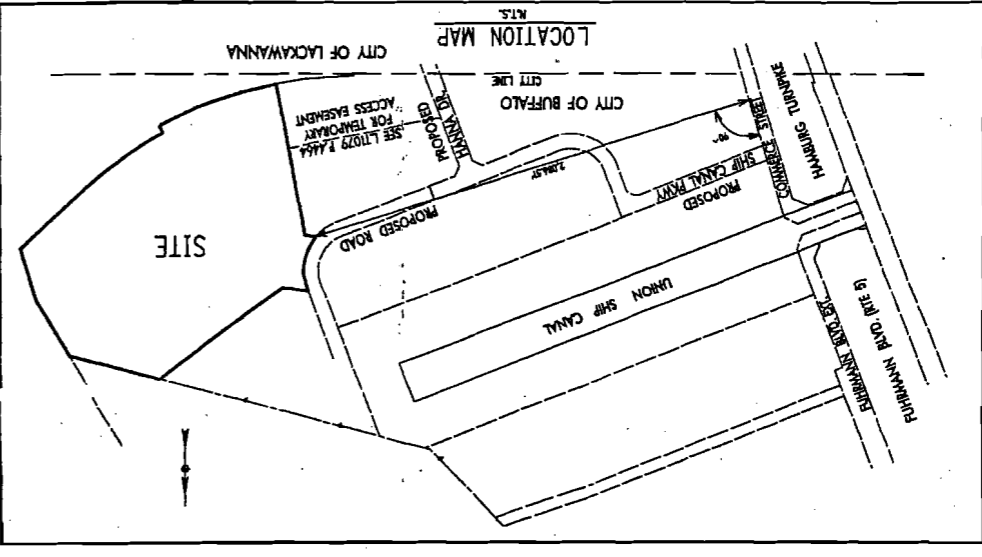
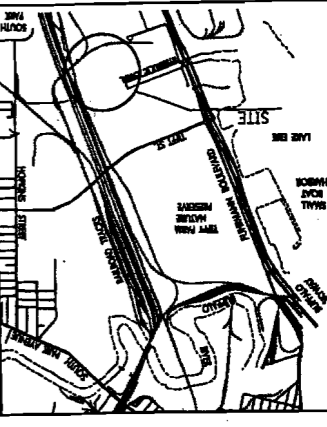


DETAIL 'C' NOT TO SCALE



I hereby certify: To Krog USC Associates-1, LLC, Eurohydo AG New York Branch, and First American The Insurance Company of New York. This is to certify that this map or part and the survey on which it is based were made in accordance with Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA, ACSM and NSPS in 1999, and includes items 1-4, 6-10, 11, 14, 15, 16 & 17 of Table A thereof. Pursuant to the accuracy standards as adopted by ALTA, NSPS, and ACSM and in effect on the date of this certification, undersigned further certifies that: the survey measurements were made in accordance with the Minimum Angle, Distance, and Closure Requirements for Survey Measurements with Control Land Boundaries for ALTA/ACSM Land Title Surveys.

Francis J. Gorman New York State License No. 049590





**ERIE COUNTY CLERKS OFFICE**  
**County Clerk's Recording Page**

Return To:

BOX 173

Party 1:  
 KROG USC ASSOCIATES I LLC

Party 2:

Book: 11102 Page: 8169

Page Count: 8

Doc Type: EASEMENT/RTWY &lt;500

Rec Date: 10/12/2005

Rec Time: 12:32:21 PM

Control #: 2005054758

User ID: lance

Trans Num: 28876

DEED SEQ: TT200506270

MTG SEQ:

UCC:

SCAR:

INDEX:

Recording Fees:

RECORDING	\$41.00
COE COUNTY	1.00
COE STATE GENERAL	\$14.25
COE STATE RM	\$4.75
TP584	\$10.00

Consideration Amount: \$1.00

BASIC	\$0.00
SONYMA	\$0.00
ADDL	\$0.00
NFTA MT	\$0.00
TRANSFER	\$0.00
NFTA TT	\$0.00

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Total: \$71.00

STATE OF NEW YORK  
 ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S  
 ENDORSEMENT, REQUIRED BY SECTIONS 319&316-a  
 (5) OF THE REAL PROPERTY LAW OF THE STATE OF  
 NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

David J. Swarts  
 County Clerk

Box 173

## ENVIRONMENTAL EASEMENT

THIS INDENTURE made this 1<sup>st</sup> day of July, 2005, between Krog USC Associates - I LLC, with offices at 4 Centre Drive, Orchard Park, New York 14127, (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 ("brownfield 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 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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

**WHEREAS**, Grantor, is the owner of real property located in the City of Buffalo, Erie County, New York, known and designated on the tax map of the City of Buffalo as tax parcel number 132.20-1-11, being the same as that property conveyed to Grantor by deed on July 14, 2004, and recorded in the Land Records of the Erie County Clerk at page 4450 Liber 11079 of Deeds, comprised of approximately 25 acres, and hereinafter more fully described in Schedule A 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 Brownfield Cleanup Agreement Number B9-0668-04-06, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to

61  
10758 78 JV-7

Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

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/industrial use as long as the following the long-term engineering controls are employed:

(I) any soil on the Controlled Property must be covered by a barrier layer approved by NYSDEC such as concrete, asphalt or structures or must be covered with a minimum 12 inch layer of clean soil and this barrier layer must be maintained; and

(ii) any proposed soil excavation on the Controlled Property below the barrier layer requires prior notification and prior approval of NYSDEC in accordance with the Site Management Plan approved by NYSDEC for this Controlled Property and the excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations, directives, and the Site Management Plan.

(iii) use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the regulatory Agency

(iv) use of the Controlled Property for day care, child care, or medical care is prohibited without the express written waiver of the prohibition by the regulatory Agency

B. The Controlled Property may not be used for a higher level of use such as residential 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 to Title 36 of 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 Site 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 but not limited to:

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;

3. The right to mortgage, lease, grant easements, licenses and other interests in the Controlled Property provided that same are subject to the terms of 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 Controlled Property, any lessees, and any person using the Controlled Property. 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 Controlled 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.

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.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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

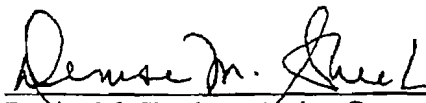
~~Krog USC Associates - I LLC~~

By:  \_\_\_\_\_

Title: Manager

Date: July 1, 2005

**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:  \_\_\_\_\_  
Denise M. Sheehan, Acting Commissioner

**Grantor's Acknowledgment**

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

On the 1<sup>st</sup> day of July, in the year 2005 before me, the undersigned, personally appeared PETER L. KROG, 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.

\_\_\_\_\_  
Notary Public - State of New York

Notary Public, State of New York  
Qualified in Erie County  
Commission Expires 2006

**Grantee's Acknowledgment**

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

On the 22<sup>nd</sup> day of September in the year 2005 before me, the undersigned, personally appeared Denise M. Sheehan, 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/ 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.

Anthony B. Quartararo  
Notary Public - State of New York

ANTHONY B. QUARTARARO  
NOTARY PUBLIC, State of New York  
Qualified in ~~Saratoga~~ County Albany  
Commission Expires Oct. 2, 2005

SCHEDULE A

ALL THAT PIECE OR PARCEL OF PROPERTY, situate in Lot No. 18 in the Ogden Gore Tract and in Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York bounded and described as follows:

BEGINNING at a point on the southwesterly line of land conveyed to Sherland Incorporated by Liber 10022 of Deeds at page 218 at its intersection with the westerly right of way line of Consolidated Rail Corporation and the easterly line of land conveyed to Jordan & Foster Scrap Corporation by Liber 9240 of Deeds at page 523, in Parcel IX (Parcel No. 1); thence along the said westerly right of way line of Consolidated Rail Corporation and the said easterly line of lands conveyed in Liber 9240 of Deeds at page 523 the following three courses and distances: (1) southerly forming an interior angle of  $135^{\circ} 26' 18''$ , a distance of 290.89 feet to an angle point; thence (2) continuing southerly forming an interior angle of  $165^{\circ} 58' 34''$  as surveyed ( $166^{\circ} 44' 00''$  by deed), a distance of 250.32 feet to an angle point, said point being 79.00 feet distant northwesterly from, measured at right angles to, the center line of the track of the South Buffalo Railroad; thence (3) southwesterly forming an interior angle of  $115^{\circ} 15' 30''$  and parallel with the center line of the track of the South Buffalo Railway a distance of 187.74 feet to a point on the northwesterly right of way line of the South Buffalo Railway Company; thence along the said South Buffalo Railway Company's right of way the following four courses and distances: (1) continuing southwesterly, a distance of 198.00 feet to a point of curvature; (2) thence continuing southwesterly on a curve to the right, having a radius of 1,831.08 feet, an arc distance of 447.42 feet to the point of tangency; thence (3) southerly along a line radial to the last mentioned curve a distance of 35.00 feet to a point of curvature; thence (4) southwesterly and westerly on a curve to the right, having a radius of 1,866.08 feet, an arc distance of 562.41 feet to a point; thence through the property of Development Downtown Inc. by deed recorded in Liber 11026 of Deeds, at page 7626, the following six courses and distances: (1) northerly along a line radial to the last mentioned curve a distance of 691.11 feet to a point; thence (2) northwesterly forming an exterior angle of  $108^{\circ} 48' 17''$  a distance of 47.60 feet to a point on the southeasterly boundary of a proposed road, said point being 2,086.51 feet distant northeasterly from existing Commerce Street, 60.0 feet wide, as measured at right angles thereto; thence (3) northeasterly and northerly along the southeasterly boundary of the said proposed road and on a curve to the left, having a radius of 230.00 feet, an arc distance of 252.47 feet to a point of tangency; thence (4) continuing northerly and along the easterly boundary of the said proposed road a distance of 12.53 feet to a point; thence (5) southeasterly forming an exterior angle of  $120^{\circ} 07' 21''$  a distance of 113.54 feet to a point; thence (6) northeasterly forming an exterior angle of  $134^{\circ} 13' 46''$  a distance of 693.41 feet to a point on the said southwesterly line of land conveyed in Liber 10022 of Deeds at page 218; thence southeasterly and along the said southwesterly line of lands conveyed in Liber 10022 of Deeds at page 218 a distance of 424.51 feet to the point of beginning.

# POLICY OF TITLE INSURANCE

Policy No. Y 3051-110278

## *First American Title Insurance Company of New York*

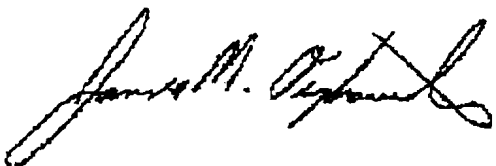
*SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK, a New York corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:*

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

~~*First American Title Insurance Company of New York*~~

**First American Title Insurance Company of New York**



*James M. Orphanides, President*

*Stuart B. Cooper, Esq., Vice President*

# First American Title Insurance Company of New York

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses, which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on: (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure (a) to timely record the instrument of transfer; or (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

### 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1 (a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to Title Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

# First American Title Insurance Company of New York

## 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the Insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the Insured in the defense of those causes of action, which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest, as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

## 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the Insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy, which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Insured claimant to provide the required proof of loss or damage, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the Insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

## 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following options:

### (a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the Insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

### (b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the Insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the Insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

## 7. DETERMINATION AND EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

### (a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the Insured estate or interest as insured and the value of the Insured estate or interest subject to the

defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the Insured estate or interest at Date of Policy; or (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.



# **First American Title Insurance Company of New York**

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

## **8. APPORTIONMENT.**

If the land described in Schedule (A) consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the Insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

## **9. LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

## **10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the Insurance pro tanto.

## **11. LIABILITY NONCUMULATIVE.**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is hereafter executed by an Insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the Insured owner.

## **12. PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

## **13. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

### **(a) The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid under this policy, all right of subrogation shall vest in the company unaffected by any act of the Insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion, which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the Insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured claimant of the Company's right of subrogation.

### **(b) The Company's Rights Against non-Insured Obligors .**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the Insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

## **14. ARBITRATION.**

Unless prohibited by applicable law, either the Company or the Insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

## **15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

## ***First American Title Insurance Company of New York***

### **16. SEVERABILITY.**

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

### **17. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at 633 Third Avenue, New York, NY 10017.

**First American Title Insurance Company of New York**

Policy No. **Y 3051-110278**

ALTA Owner's Policy  
(10/17/92)  
Schedule A

**SCHEDULE A**

Amount of Insurance: \$35,000.00

Date of Policy: Date of Closing

1. Name of Insured: *People of the State of New York acting through the Commissioner of The Department of Environmental Conservation*
2. Your interest in the Land, covered by this Policy is:

**EASEMENT**

3. *Title to the estate or interest in the land is vested in the Insured by means of a Environmental Easement between Krog USC Associates-I, LLC and The People of The State of New York acting through their Commissioner of the Department of Environment Conservation dated July 1, 2005 and being duly recorded in the Office of the Clerk, Erie County on October 12, 2005 in Liber 11102 of Deeds, page 8169.*
4. The land referred to in this policy is described as follows:  
(SEE SCHEDULE "C" ATTACHED)

**FOR INFORMATION ONLY:**

Premises: Commerce Drive,  
Buffalo, New York

County: Erie

City: Buffalo

Section: Block: Lot:

**First American Title Insurance Company of New York**

Policy No. **Y 3051-110278**

ALTA Owner's Policy  
(10/17/92)  
Schedule B

**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

1. Notice of Agreement made by and between Development Downtown, Inc. and Department of Environmental Conservation dated February 6, 2003 and recorded February 11, 2003 in Liber 11029 of Deeds at page 2489 and in Liber 11029 of Deeds at page 2496.
2. Easement to Niagara Mohawk Power Corporation by instrument recorded in Liber 11082 of Deeds, at page 7844 on September 14, 2004.
3. Restrictive covenants in deed recorded in Liber 11066 of Deeds, at page 3018 on January 8, 2004 and in Liber 11066 of Deeds at page 3024 on January 8, 2004.
4. Terms, covenants, conditions, restrictions and easements contained in a Deed with Covenants Restrictions/Reverter Provision/Easement REservation made by Development Downtown, Inc. to Kro USC Associates - I, LLC dated July 1, 2004 and recorded July 14, 2004 in Liber 11079 of Deeds at page 4450.
5. Terms, covneants and conditions contained in a contract for Sale of Land for Private Development made by and between Development Downtonw, Inc. and Krog USC Associates - I, LLC dated April 6, 2004 and recorded July 14, 2004 in Liber 11079 of Deeds at page 4402.
6. Terms and conditions contained in a lease made by and between Krog USC Associates - I, LLC and Erie County Industrial Development Agency dated July 1, 2004 and recorded July 14, 2004 in Liber 11079 of Deeds at page 4470, as amended by Amended and Restated by Amended and REstated Memorandum of Company Lease Agreement recorded in Liber 11086 of Deeds at page 2317 on November 16, 2004.
7. Terms and conditions contained in a lease made by and between Erie County Industrial Development Agency and Krog USC Associates - I, LLC dated July 1, 2004 and recorded July 14, 2004 in Liber 11079 of Deeds, at page 4476.
8. Mortgage made by Erie County Industrial Development Agency and Krog USC Associates - I, LLC to First Niagara Funding, Inc. for \$8,375,000.00 and interest, dated July 1, 2004 and recorded July 14, 2004 in Liber 13174 of Mortgages, at page 2223.
9. Building Loan Agreement dated July 8, 2004 and filed July 14, 2004 for \$8,375,000.00 between First Niagara Funding, Inc. (Lender) and Krog USC Associates - I, LLC (Borrower).
10. Notice of Lending No. Q133-7095 filed July 14, 2004 made by First Niagara Funding, Inc. (Lender) and Krog USC Associates - I, LLC (Borrower).
11. Assignment of Leases and REnts dated July 8, 2004 and recorded on July 14, 2004 made by Krog USC Associates - I, LLC to First Niagara Funding, Inc. recorded in Liber 11079 of Deeds at page 4638 and in Liber 13174 of Mortgages at page 2422.
12. UCC-1 Financing Statement filed July 14, 2004, File #Q133-2130 given by Krog USC Associates - I, LLC (Debtor) to First Niagara Bank (Creditor).

***First American Title Insurance Company of New York***

13. Mortgage made by Krog USC Associates - I, LLC to Development Downtown, Inc. for \$562,500.00 and interest, dated July 1, 2004 and recorded July 14, 2004 in Liber 13174 of Mortgages, at page 2434.

NOTE: This policy insures items (1) through (13) inclusive are subordinate to the Environmental Easement granted to The People of The State of New York acting through The Commissioner of The Department of Environmental Conservation.

**First American Title Insurance Company of New York**

Policy No. Y 3051-110278

**SCHEDULE C  
DESCRIPTION**

ALL THAT PIECE OR PARCEL OF PROPERTY, situate in Lot No. 18 in the Ogden Gore Tract and in Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly line of land conveyed to Sherland Incorporated by Liber 10022 of Deeds at page 218 at its intersection with the westerly right of way line of Consolidated Rail Corporation and the easterly line of land conveyed to Jordan & Foster Scrap Corporation by Liber 9240 of Deeds at page 523, in Parcel IX (Parcel No. 1); thence along the said westerly right of way line of Consolidated Rail Corporation and the said easterly line of lands conveyed in Liber 9240 of Deeds at page 523 the following three courses and distances:

- (1) southerly forming an interior angle of  $135^{\circ} 26' 18''$ , a distance of 290.89 feet to an angle point; thence
- (2) continuing southerly forming an interior angle of  $165^{\circ} 58' 34''$  as surveyed ( $166^{\circ} 44' 00''$  by deed), a distance of 250.32 feet to an angle point, said point being 79.00 feet distant northwesterly from, measured at right angles to, the center line of the track of the South Buffalo Railroad; thence
- (3) southwesterly forming an interior angle of  $115^{\circ} 15' 30''$  and parallel with the center line of the track of the South Buffalo Railway Company a distance of 187.74 feet to a point on the northwesterly right of way line of the South Buffalo Railway Company;

thence along the said South Buffalo Railway Company's right of way the following four courses and distances:

- (1) continuing southwesterly, a distance of 198.00 feet to a point of curvature;
- (2) thence continuing southwesterly on a curve to the right, having a radius of 1,831.08 feet, an arc distance of 447.42 feet to the point of tangency; thence
- (3) southerly along a line radial to the last mentioned curve a distance of 35.00 feet to a point of curvature; thence
- (4) southwesterly and westerly on a curve to the right, having a radius of 1,866.08 feet, an arc distance of 562.41 feet to a point;

thence through the property of Development Downtown, Inc. by deed recorded in Liber 11026 of Deeds, at page 7626, the following six courses and distances:

- (1) northerly along a line radial to the last mentioned curve a distance of 691.11 feet to a point; thence
- (2) northwesterly forming an exterior angle of  $108^{\circ} 48' 17''$  a distance of 47.60 feet to a point on the southeasterly boundary of a proposed road, said point being 2,086.51 feet distant northeasterly from existing Commerce Street, 60.0 feet wide, as measured at right angles thereto; thence
- (3) northeasterly and northerly along the southeasterly boundary of the said proposed road and on a curve to the left, having a radius of 230.00 feet, an arc distance of 252.47 feet to a point of tangency; thence
- (4) continuing northerly and along the easterly boundary of the said proposed road a distance of 12.53 feet to a point; thence
- (5) southeasterly forming an exterior angle of  $120^{\circ} 07' 21''$  a distance of 113.54 feet to a point; thence

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(6) northeasterly forming an exterior angle of  $134^{\circ} 13' 46''$  a distance of 693.41 feet to a point on the said southwesterly line of land conveyed in Liber 10022 of Deeds at page 218; thence southeasterly and along the said southwesterly line of lands conveyed in Liber 10022 of Deeds at page 218 a distance of 424.51 feet to the point of beginning.

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**STANDARD NEW YORK ENDORSEMENT  
(OWNER'S POLICY)**

Title No. **3051-110278**

Attached to and made part of First American Title Insurance Company of New York Policy No. **Y 3051-110278**

1. The following is added to the Insuring provisions on the face page of this policy:

"5. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

2. The following is added to Paragraph 7 of the Conditions and Stipulations of this policy:

"(d) If the recording date of the instruments creating the Insured interest is later than the policy date, such policy shall also cover intervening liens or encumbrances, except real estate taxes, assessments, water charges and sewer rents."

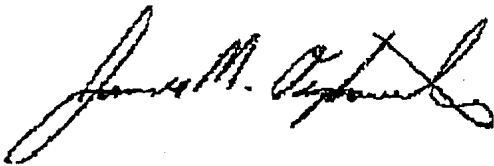
Nothing herein contained shall be construed as extending or changing the effective date of the policy, unless otherwise expressly stated.

This Endorsement, when countersigned below by a validating signatory, is made part of the policy and is subject to the Exclusions from Coverage, Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

**IN WITNESS WHEREOF**, First American Title Insurance Company of New York has caused this Endorsement to be signed and sealed on its date of issue set forth herein.

**Dated: Date of Closing**

**First American Title Insurance Company of New York**



*James M. Orphanides, President*

*Stuart B. Cooper, Esq., Vice President*