

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

THIS INDENTURE made this 4th day of December, 2011, between Owner(s) South Buffalo Development, LLC, having an office at 333 Ganson, Buffalo, New York 14203, (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 the 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 the address of 1337 South Park Avenue, 1002 South Park Avenue, 145 Prenatt Street and 5 Babcock Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 122.16 Block 1 Lot 9, and Section 122.12 Block 1 Lot(s) 33.11, 35 and 30, being the same as that property conveyed to Grantor by deed dated January 20, 2009 and recorded on January 23, 2009 in the Erie County Clerk's Office in Book 11154 Page 6352 [1337 South Park Avenue]; and by deed dated February 5, 2009 and recorded on February 17, 2009 in the Erie County Clerk's Office in Book 11155 Page 6571 [1002 South Park Avenue]; and by deed dated January 29, 2009 and recorded on February 9, 2009 in the Erie County Clerk's Office in Book 11155 Page 2785 [145 Prenatt Street] and by deed dated February 5, 2009 and recorded on February 17, 2009 in the Erie County Clerk's Office in Book 11155 Page 6538 [5 Babcock]. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 10.029 +/- acres [Area A] and 3.176 ± [Area B], and is hereinafter more fully described in the Land Title Survey dated August 25, 2011 prepared by Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the

protection of public health and the environment and to achieve the requirements for remediation established for the 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 mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: B9-0783-08-06, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements 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. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

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(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. 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, 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. The SMP may be modified in accordance with the Department's statutory and regulatory authority. 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:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL 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.

F. 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.

G. 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, in such form and manner as the Department may require, that:

- (1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).
- (2) the institutional controls and/or engineering controls employed at such site:
 - (i) are in-place;
 - (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
 - (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
- (3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;
- (4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
- (5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;
- (6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and
- (7) the information presented is accurate and complete.

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 Property, including:

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

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, 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

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privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion 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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: C915230
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the

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Commissioner's Designee, 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, or the Commissioner's Designee, 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.

Grantor: South Buffalo Development, LLC
By: SBD Holdings I, Inc. – Manager and Member of
South Buffalo Development, LLC

By: _____

Print Name: Jon M. Williams

Title: President – SBD Holdings I, Inc Date: _____

Grantor's Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF ERIE)

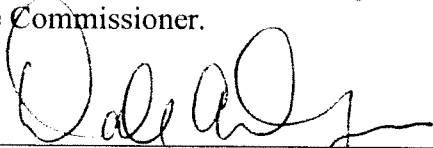
On the 14th day of December, in the year 20 11, before me, the undersigned, personally appeared Jon M. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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.

Nancy L. Mazur
Notary Public - State of New York

NANCY L. MAZUR
Notary Public, State of New York
Cust. No. 1765930
My Comm. Expires 12/31/12

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

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 9th day of December, in the year 2011, before me, the undersigned, personally appeared Dale A. Desnoyers, 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 Designee of the 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, 2014

SCHEDULE "A" ENVIRONMENTAL EASEMENT
PROPERTY DESCRIPTION

Address(es): 1337 and 1002 South Park Avenue, 145 Prenatt Street and 5 Babcock Street, Buffalo, NY , Erie County.

Tax Map: 122.16-1-9; 122.12 -1 -33.11, 35 and 30

BUFFALO COLOR SITE – AREA A
SITE NO. C915230
LEGAL DESCRIPTION

AREA A:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, State of New York, being part of Lot Nos. 177 and 178, Township 10, Range 8 of the Buffalo Creek Reservation and part of the bed of the Buffalo River, bounded and described as follows:

BEGINNING at the intersection of the southerly line of South Park Avenue with the easterly line of lands of Buffalo Creek Railroad;

Thence a record bearing of S51° 04' 00"E a measured bearing of S50° 49' 19"E along the southerly line of South Park Avenue, 693.64 feet to a point;

Thence a record bearing of S43° 22' 10"E, a measured bearing of S43° 07' 29"E a distance of 50.02 feet to the Buffalo River Improvement Channel;

Thence a record bearing of S58° 17' 30"W a measured bearing of S58° 32' 11"W along said Channel, a distance of 107.28 feet to a point;

Thence a record bearing of S49° 51' 37"W a measured bearing of S50° 06' 18"W still along said Channel, a distance of 653.75 feet to a point;

Thence a record bearing of S35° 01' 00"W a measured bearing of S35° 15' 38"W still along said Channel, a distance of 1.75 feet to the northerly line of lands of Erie Lackawanna Railroad;

Thence a record bearing of N54° 54' 48"W a measured bearing of N54° 40' 07"W along the northerly line of lands of Erie Lackawanna Railroad, a distance of 412.84 feet to the lands of Buffalo Creek Railroad;

Thence a record bearing of N26° 20' 52"E a measured bearing of N26° 35' 33"E along the lands of Buffalo Creek Railroad, a distance of 223.63 feet to a point on the south line of Lot 177;

Thence a record bearing of S51° 04' 00"E a measured bearing of S50° 49' 19"E along the south line of Lot 177 a distance of 2.05 feet to a point;

Thence a record bearing of N26° 20' 52"E a measured bearing of N26° 35' 33"E along the lands of Buffalo Creek Railroad, a distance of 574.81 feet to the Point or Place of Beginning.

BUFFALO COLOR SITE – AREA B
SITE NO. C915230
LEGAL DESCRIPTION

AREA B:

ALL THAT OTHER CERTAIN PIECE OR PARCEL OF LAND, situate, lying and being in the City of Buffalo, County of Erie, State of New York, being a part of Lot Nos. 135, 136 and 139, Township 10, Range 8 of Lovejoy and Emslie's survey of a part of the Buffalo Creek Indian Reservation, bounded and described as follows:

BEGINNING at south west corner of lands conveyed to Park-Lee, LLC by deed filed in the Erie County Clerk's Office in Liber 11109 of deeds at page 890;

Thence N50° 49' 19"W along the north line of South Park Avenue (formerly Abbott Road) a distance of 220.00 feet to a point on the east line of lands conveyed to The Buffalo Creek Railroad Company;

Thence N38° 43' 35"E along the east line of the Buffalo Creek Railroad Company a distance of 422.52 feet to a point on the south line of lands conveyed to Buffalo Color by deed recorded in the Erie County Clerk's Office in Liber 8524 of deeds at page 441, Tract B, Parcel 3;

Thence S76° 11' 25"W along the south line of Tract B, Parcel 3 a distance of 32.68 feet to a point on the easterly line of lands conveyed to The Buffalo Creek Railroad Company;

Thence N8° 40' 49"E along the east line of The Buffalo Creek Railroad Company a distance of 233.71 feet to the south line of the former Prenatt Street;

Thence S63° 37' 29"E along the south line of the former Prenatt Street a distance of 92.23 feet to a point on the west line of Lot 136;

Thence N38° 43' 35"E along the west line of Lot 136 a distance of 67.56 feet to the north line of the former Prenatt Street and the south west corner of Lot 137;

Thence N13° 36' 03"E along the west line of Lot 137 a distance of 95.84 feet to the north corner of lands conveyed to Buffalo Color by deed recorded in the Erie County Clerk's Office in Liber 8524 of deeds at page 441, Tract C, Parcel 3, said point also being the north west corner of lands conveyed to The Buffalo Creek Railroad Company by deed recorded in the Erie County Clerk's Office in Liber 1364 of deeds at page 538;

Thence southeasterly along the east line of lands conveyed to Buffalo Color, and the westerly line conveyed to The Buffalo Creek Railroad Company, on a curve having a radius of 350.00 feet, an Arc distance of 323.79 feet, a chord bearing of S37° 06' 16"E and Chord distance of 312.37 feet to a point on the south line of lands conveyed to The Buffalo Creek Railroad Company by deed recorded in the Erie County Clerk's Office in Liber 6040 of deeds at page 437, Tract B, Parcel 3;

Thence S63° 37' 29"E along the south line of lands conveyed to The Buffalo Creek Railroad Company a distance of 137.35 feet to the east line of the closing of Prenatt Street by deed recorded in the Erie County Clerk's Office in Liber 5836 of deeds at page 182, Parcel B;

Thence S42° 59' 38"W along the east line of the closing of Prenatt Street (the west line of Lee Street) a distance of 20.87 feet to the intersection of the west line of Lee Street with the south line of the former Prenatt Street;

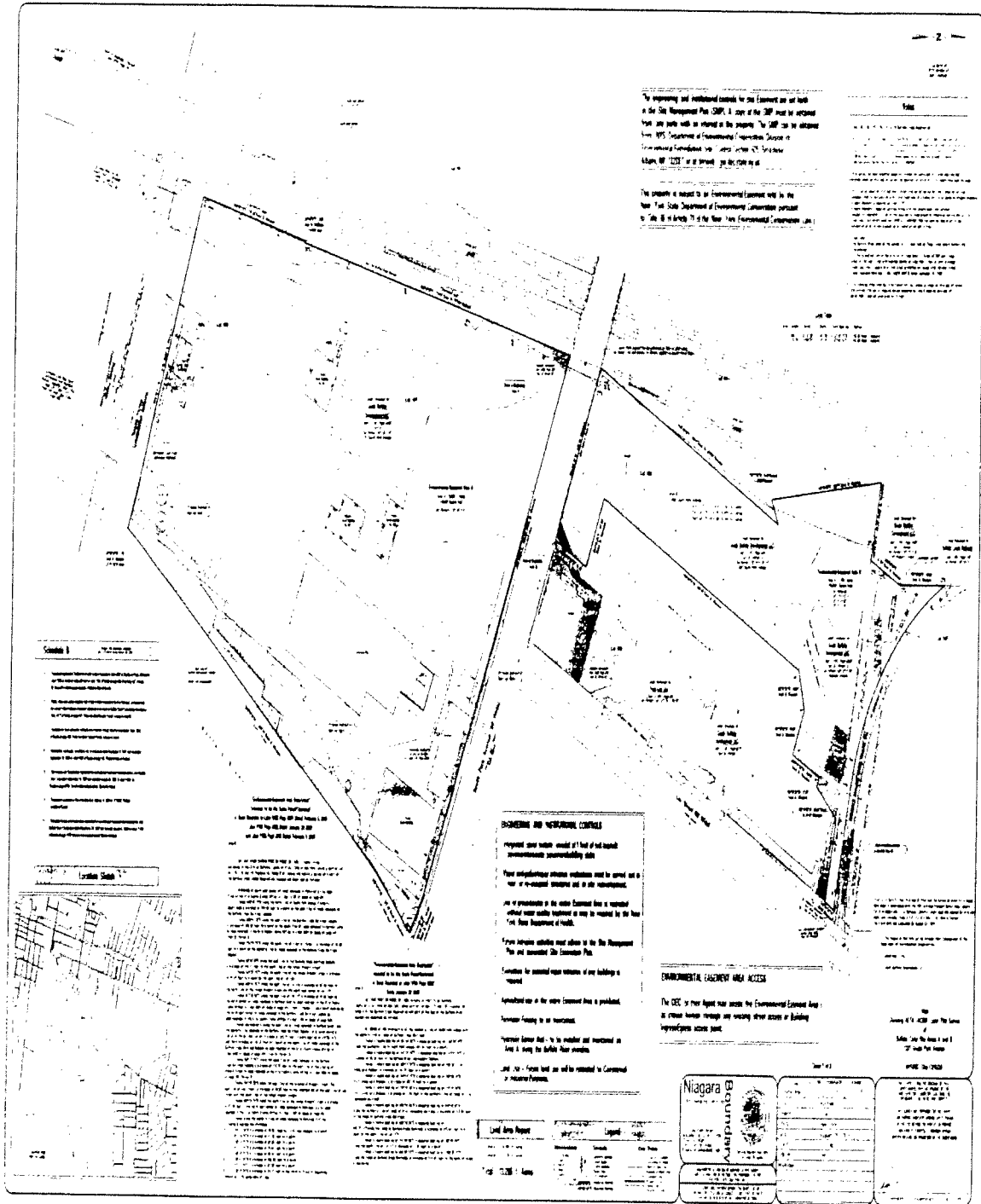
Thence N63° 37' 29"W along the south line of the former Prenatt Street a distance of 97.00 feet to the north west corner of lands conveyed to Park-Lee, LLC by deed recorded in the Erie County Clerk's Office in Liber 11109 of deeds at page 890;

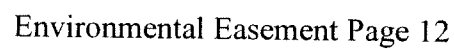
Thence along the westerly line of lands conveyed to Park-Lee, LLC the following 8 courses and distances:

1. S55° 13' 38"W a distance of 59.96 feet Deed Vs. 57.07 feet measured to a point

2. N51° 16' 25"W a distance of 11.76 feet to a point
3. S38° 43' 35"W a distance of 62.00 feet to a point
4. N51° 16' 25"W a distance of 55.61 feet to a point
5. S88° 43' 35"W a distance of 48.51 feet to a point
6. S38° 43' 35"W a distance of 465.00 feet to a point
7. S51° 16' 25"E a distance of 87.50 feet to a point
8. S38° 43' 35"W a distance of 73.15 feet to the Point or Place of Beginning.

SURVEY





CHRISTOPHER L. JACOBS, ERIE COUNTY CLERK

PHILLIPS LYTLE - ATT LINDA MORGAN
ACCOUNT #: 1732
RECEIPT: 11177482
DATE: 12/13/2011 TIME: 2:41:11 PM

ITEM - 01 CNT
RECD: 12/13/2011 2:41:11 PM
FILE: 2011251417 BK/PG D 11213/7167
Deed Sequence: TT2011007514
SOUTH BUFFALO DEVELOPMENT LLC
Recording Fees 65.50
TP584 0.00
Sub. Total 65.50

ITEM - 02 785
RECD: 12/13/2011 2:41:11 PM
FILE: 2011251418 BK/PG D 11213/7172
Deed Sequence: TT2011007515
SOUTH BUFFALO DEVELOPMENT LLC
Recording Fees 105.00
TP584 0.00
Sub. Total 105.00

ITEM - 03 785
RECD: 12/13/2011 2:41:11 PM
FILE: 2011251419 BK/PG D 11213/7185
Deed Sequence: TT2011007516
SOUTH BUFFALO DEVELOPMENT LLC
Recording Fees 105.00
TP584 0.00
Sub. Total 105.00

TOTAL DUE
PAID TOTAL \$275.50
PAID ESCROW \$275.50
275.50

REC BY: Christina
COUNTY RECORDER

AFFIDAVIT OF SERVICE BY MAIL

TX 2011 067516

Michael C. Murphy, being duly sworn, deposes and says: I am an attorney for Phillips Lytle, LLP. On the 15th day of December, 2011, I mailed a copy of the attached documents:

Notice of Environmental Easement, annexed hereto as "Exhibit A";
Environmental Easement, annexed hereto as "Exhibit B."

to:

1. Mayor Byron W. Brown
65 Niagara Square
201 City Hall
Buffalo, NY 14202-3392
2. David P. Comerford, General Manager
Buffalo Sewer Authority
65 Niagara Square
1038 City Hall
Buffalo, NY 14202-3378
3. Mr. Richard W. Galloway
Environmental Project Manager
Honeywell International, Inc.
101 Columbia Road
Morristown, NJ 07962
4. CSX Transportation, Inc.
Attn: Property Services, J-180
6737 Southpoint Drive South
Jacksonville, FL 32216
5. Norfolk Southern Corp.
Office of Corporate Counsel
3 Commercial Place
Norfolk, VA 23510
6. Consolidated Rail Corporation
Office of Corporate Counsel
1717 Arch Street
Suite 3210
Philadelphia, PA 19103

FILED
DEC 19 2011
ERIE COUNTY
CLERK'S OFFICE

7. Mr. David J. State
General Counsel
Niagara Frontier Transit Authority
181 Ellicott Street
Buffalo, NY 14203

By certified mail with return receipt requested and by regular first class mail, by depositing a copy in a postpaid addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


MICHAEL C. MURPHY, ESQ.

Sworn to before me on this
19th day of December 2011



Notary Public

BARBARA A. MORRIS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 8/30/12

EXHIBIT A

NOTICE OF ENVIRONMENTAL EASEMENT

The New York State Department of Environmental Conservation (the "Grantee"), has been granted an Environmental Easement pursuant to Article 71, Section 36 affecting real property located at the following addresses:

1337 South Park Avenue; 1002 South Park Avenue;
5 Babcock Street; and 145 Prenatt Street
City of Buffalo, County of Erie, State of New York

Property Owner/Grantor: South Buffalo Development, LLC

The Tax Map Identification Nos.: SBL# 122.16 – 1 – 9 (1337 South Park Ave.);
SBL#122.12 – 1 – 33.11 (1002 South Park Ave)
Part of SBL# 122.12 – 1 – 30 (5 Babcock St.);
Part of SBL# 122.12 – 1 – 35 (145 Prenatt St.)

NYS Department of Environmental Conservation Site No.: C915230

The Environmental Easement for the above referenced property has been filed in the Erie County Clerk's Office on December 13, 2011 in Liber 11213 of Deeds at Page 7185 (Instrument #2011251419).

The Environmental Easement contains institutional and/or engineering controls that run with the land. The Environmental Easement may restrict the use of the above referenced property to:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii), and
Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv).**

NOTICE IS HEREBY GIVEN that any activity on the land which might or will prevent or interfere with the ongoing or completed remedial program, including the controls as set forth in the Environmental Easement and the Site Management Plan, must be done in accordance with the Site Management Plan which is incorporated by reference into the Environmental Easement. A copy of the Site Management Plan can be obtained by contacting the Department at derweb@gw.dec.state.ny.us. Be further advised of the notice provisions of NYCRR 375-1.11(d) relative to contemplated significant changes in use.

EXHIBIT A

Failure to Comply with the terms and conditions of the Environmental Easement may subject violators to penalties of up to \$37,500 per day for violation of 6 NYCRR 375-1.11(b).

An electronic version of this environmental easement has been accepted by the New York State Department of Environmental Conservation and is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>.

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

BOX 374

Party 1:
SOUTH BUFFALO DEVELOPMENT LLC

Party 2:

Book Type: D Book: 11213 Page: 7185

Page Count: 13

Doc Type: EASEMENT/RTWY

Rec Date: 12/13/2011

Rec Tim: 02:41:11 PM

Control #: 2011251419

UserID: Christina

Receipt#: 11177482

Document Sequence Number

TT2011007516

Recording Fees:

| | |
|-----------------------|---------|
| Fee 1 | \$85.00 |
| Fee 2 | \$1.00 |
| COE STATE \$14.25 GEN | \$14.25 |
| COE STATE \$4.75 RM | \$4.75 |
| TP584 | \$0.00 |

Consideration Amount: 1.00

| | |
|----------|--------|
| BASIC | 0 |
| SONYMA | 0 |
| ADDL | 0 |
| NFTA MT | \$0.00 |
| TRANSFER | \$0.00 |
| NFTA TT | \$0.00 |

Total: \$105.00

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

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

Christopher L. Jacobs
COUNTY CLERK

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

THIS INDENTURE made this 9th day of December, 2011, between Owner(s) South Buffalo Development, LLC, having an office at 333 Ganson, Buffalo, New York 14203, (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 the 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 the address of 1337 South Park Avenue, 1002 South Park Avenue, 145 Prenatt Street and 5 Babcock Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 122.16 Block 1 Lot 9, and Section 122.12 Block 1 Lot(s) 33.11, 35 and 30, being the same as that property conveyed to Grantor by deed dated January 20, 2009 and recorded on January 23, 2009 in the Erie County Clerk's Office in Book 11154 Page 6352 [1337 South Park Avenue]; and by deed dated February 5, 2009 and recorded on February 17, 2009 in the Erie County Clerk's Office in Book 11155 Page 6571 [1002 South Park Avenue]; and by deed dated January 29, 2009 and recorded on February 9, 2009 in the Erie County Clerk's Office in Book 11155 Page 2785 [145 Prenatt Street] and by deed dated February 5, 2009 and recorded on February 17, 2009 in the Erie County Clerk's Office in Book 11155 Page 6538 [5 Babcock]. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 10.029 +/- acres [Area A] and 3.176 +/- [Area B], and is hereinafter more fully described in the Land Title Survey dated August 25, 2011 prepared by Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the

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protection of public health and the environment and to achieve the requirements for remediation established for the 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 mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: B9-0783-08-06, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Institutional and Engineering Controls.** The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements 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. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

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(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. 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, 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. The SMP may be modified in accordance with the Department's statutory and regulatory authority. 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:*

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL 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.

F. 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.

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G. 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, in such form and manner as the Department may require, that:

- (1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).
- (2) the institutional controls and/or engineering controls employed at such site:
 - (i) are in-place;
 - (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
 - (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
- (3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;
- (4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
- (5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;
- (6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and
- (7) the information presented is accurate and complete.

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 Property, including:

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

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, 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 [6/11]

privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion 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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: C915230
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the [6/11]

Commissioner's Designee, 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, or the Commissioner's Designee, 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.

Grantor: South Buffalo Development, LLC
By: SBD Holdings I, Inc. – Manager and Member of
South Buffalo Development, LLC

By: _____

Print Name: Jon M. Williams

Title: President – SBD Holdings I, Inc Date: _____

Grantor's Acknowledgment

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

On the 6th day of December, in the year 20 11, before me, the undersigned, personally appeared Jon M. Williams, 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.

Nancy L. Mazur
Notary Public - State of New York

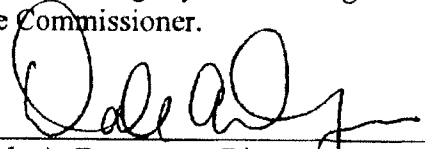
NANCY L. MAZUR
Notary Public, State of New York
Qualified in Erie County No. 1785930
My Commission Expires 11 30, 2013

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

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 9th day of December, in the year 2011, before me, the undersigned, personally appeared Dale A. Desnoyers, 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 Designee of the 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, 2014

SCHEDULE "A" ENVIRONMENTAL EASEMENT
PROPERTY DESCRIPTION

Address(es): 1337 and 1002 South Park Avenue, 145 Prenatt Street and 5 Babcock Street, Buffalo, NY, Erie County.

Tax Map: 122.16-1-9; 122.12 -1 -33.11, 35 and 30

BUFFALO COLOR SITE – AREA A
SITE NO. C915230
LEGAL DESCRIPTION

AREA A:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, State of New York, being part of Lot Nos. 177 and 178, Township 10, Range 8 of the Buffalo Creek Reservation and part of the bed of the Buffalo River, bounded and described as follows:

BEGINNING at the intersection of the southerly line of South Park Avenue with the easterly line of lands of Buffalo Creek Railroad;

Thence a record bearing of S51° 04' 00"E a measured bearing of S50° 49' 19"E along the southerly line of South Park Avenue, 693.64 feet to a point;

Thence a record bearing of S43° 22' 10"E, a measured bearing of S43° 07' 29"E a distance of 50.02 feet to the Buffalo River Improvement Channel;

Thence a record bearing of S58° 17' 30"W a measured bearing of S58° 32' 11"W along said Channel, a distance of 107.28 feet to a point;

Thence a record bearing of S49° 51' 37"W a measured bearing of S50° 06' 18"W still along said Channel, a distance of 653.75 feet to a point;

Thence a record bearing of S35° 01' 00"W a measured bearing of S35° 15' 38"W still along said Channel, a distance of 1.75 feet to the northerly line of lands of Erie Lackawanna Railroad;

Thence a record bearing of N54° 54' 48"W a measured bearing of N54° 40' 07"W along the northerly line of lands of Erie Lackawanna Railroad, a distance of 412.84 feet to the lands of Buffalo Creek Railroad;

Thence a record bearing of N26° 20' 52"E a measured bearing of N26° 35' 33"E along the lands of Buffalo Creek Railroad, a distance of 223.63 feet to a point on the south line of Lot 177;

Thence a record bearing of S51° 04' 00"E a measured bearing of S50° 49' 19"E along the south line of Lot 177 a distance of 2.05 feet to a point;

Thence a record bearing of N26° 20' 52"E a measured bearing of N26° 35' 33"E along the lands of Buffalo Creek Railroad, a distance of 574.81 feet to the Point or Place of Beginning.

BUFFALO COLOR SITE – AREA B
SITE NO. C915230
LEGAL DESCRIPTION

AREA B:

ALL THAT OTHER CERTAIN PIECE OR PARCEL OF LAND, situate, lying and being in the City of Buffalo, County of Erie, State of New York, being a part of Lot Nos. 135, 136 and 139, Township 10, Range 8 of Lovejoy and Emslie's survey of a part of the Buffalo Creek Indian Reservation, bounded and described as follows:

BEGINNING at south west corner of lands conveyed to Park-Lee, LLC by deed filed in the Erie County Clerk's Office in Liber 11109 of deeds at page 890;

Thence N50° 49' 19"W along the north line of South Park Avenue (formerly Abbott Road) a distance of 220.00 feet to a point on the east line of lands conveyed to The Buffalo Creek Railroad Company;

Thence N38° 43' 35"E along the east line of the Buffalo Creek Railroad Company a distance of 422.52 feet to a point on the south line of lands conveyed to Buffalo Color by deed recorded in the Erie County Clerk's Office in Liber 8524 of deeds at page 441, Tract B, Parcel 3;

Thence S76° 11' 25"W along the south line of Tract B, Parcel 3 a distance of 32.68 feet to a point on the easterly line of lands conveyed to The Buffalo Creek Railroad Company;

Thence N8° 40' 49"E along the east line of The Buffalo Creek Railroad Company a distance of 233.71 feet to the south line of the former Prenatt Street;

Thence S63° 37' 29"E along the south line of the former Prenatt Street a distance of 92.23 feet to a point on the west line of Lot 136;

Thence N38° 43' 35"E along the west line of Lot 136 a distance of 67.56 feet to the north line of the former Prenatt Street and the south west corner of Lot 137;

Thence N13° 36' 03"E along the west line of Lot 137 a distance of 95.84 feet to the north corner of lands conveyed to Buffalo Color by deed recorded in the Erie County Clerk's Office in Liber 8524 of deeds at page 441, Tract C, Parcel 3, said point also being the north west corner of lands conveyed to The Buffalo Creek Railroad Company by deed recorded in the Erie County Clerk's Office in Liber 1364 of deeds at page 538;

Thence southeasterly along the east line of lands conveyed to Buffalo Color, and the westerly line conveyed to The Buffalo Creek Railroad Company, on a curve having a radius of 350.00 feet, an Arc distance of 323.79 feet, a chord bearing of S37° 06' 16"E and Chord distance of 312.37 feet to a point on the south line of lands conveyed to The Buffalo Creek Railroad Company by deed recorded in the Erie County Clerk's Office in Liber 6040 of deeds at page 437, Tract B, Parcel 3;

Thence S63° 37' 29"E along the south line of lands conveyed to The Buffalo Creek Railroad Company a distance of 137.35 feet to the east line of the closing of Prenatt Street by deed recorded in the Erie County Clerk's Office in Liber 5836 of deeds at page 182, Parcel B;

Thence S42° 59' 38"W along the east line of the closing of Prenatt Street (the west line of Lee Street) a distance of 20.87 feet to the intersection of the west line of Lee Street with the south line of the former Prenatt Street;

Thence N63° 37' 29"W along the south line of the former Prenatt Street a distance of 97.00 feet to the north west corner of lands conveyed to Park-Lee, LLC by deed recorded in the Erie County Clerk's Office in Liber 11109 of deeds at page 890;

Thence along the westerly line of lands conveyed to Park-Lee, LLC the following 8 courses and distances:

1. S55° 13' 38"W a distance of 59.96 feet Deed Vs. 57.07 feet measured to a point

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2. N51° 16' 25"W a distance of 11.76 feet to a point
3. S38° 43' 35"W a distance of 62.00 feet to a point
4. N51° 16' 25"W a distance of 55.61 feet to a point
5. S88° 43' 35"W a distance of 48.51 feet to a point
6. S38° 43' 35"W a distance of 465.00 feet to a point
7. S51° 16' 25"E a distance of 87.50 feet to a point
8. S38° 43' 35"W a distance of 73.15 feet to the Point or Place of Beginning.

[illegible]

