

**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 Street, 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 339 Elk Street; 100 (f/k/a 85) Lee Street; 427 Elk Street; 5 Babcock Street; and 98 Maurice 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 122.12 Block 1 Lot(s) 9.13; 9.11; 12.1; 30 and 31, being the same as that property conveyed to Grantor by the following deed(s) dated February 5, 2009 and recorded in the Erie County Clerk's Office on February 17, 2009 in Liber 11155 page 6560 [339 Elk Street]; deed dated February 5, 2009 and recorded on February 17, 2009 in Liber 11155 page 6568 [100 (f/k/a 85) Lee Street]; deed dated February 9, 2009 and recorded on February 12, 2009 in Liber 11155 page 5028 [427 Elk Street]; deed dated February 5, 2009 and recorded on February 17, 2009 at Liber 11155 page 6538 [5 Babcock Street] and deed dated March 9, 2009 recorded on March 16, 2009 at Liber 11157 at page 3484 [98 Maurice Street], comprising approximately 15.798 ~~7~~ acres, and hereinafter more fully described in the Land Title Survey dated September 18, 2010 and revised October 28, 2010 prepared by Niagara Boundary and Mapping Services PC Land Surveyors, which will be attached to the Site Management Plan. The property description and survey (the "Controlled Property") 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 human 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: B9-0785-08-09, 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.

(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, 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:

Regional Remediation Engineer
NYSDEC – Region 9
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, NY 14203-2915
Phone: (716) 851 - 7220

or

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 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: C 915232
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 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.

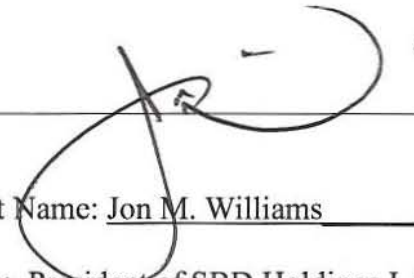
9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is 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.

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 of SBD Holdings I, Inc. Date: December 5, 2011

Grantor’s Acknowledgment

STATE OF NEW YORK)

) ss:

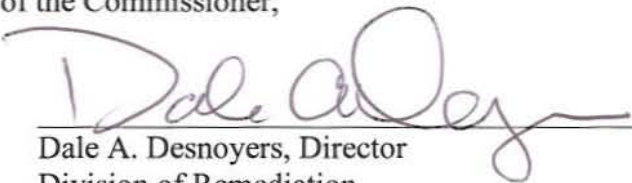
COUNTY OF ERIE)

On the 5th 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. 1766990
My Commission Expires 11 30, 2013

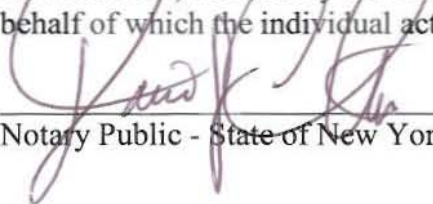
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: 
Dale A. Desnoyers, Director
Division of 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 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" AND ENVIRONMENTAL EASEMENT AREA DESCRIPTION

339 Elk Street – 122.12-1-9.13
100 Lee Street – 122.12-1-9.11
427 Elk Street – 122.12-1-12.1
5 Babcock Street – 122.12-1-30
98 Maurice Street- 122.12-1-31
City of Buffalo, Erie County, NY

Area E

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. 133, 193, 194195, 196 and 197 of the Buffalo Creek Reservation, and more particularly bounded and described as follows:

BEGINNING at the intersection of the easterly line of Lee Street with the northerly line of former Prenatt Street;

Thence along the easterly line of Lee Street a record bearing of N.13° 38' 00"E and measured bearing of N.13°45'01"E a distance of 525.93 feet to the southerly line of lands conveyed to Elk-Lee LLC by deed filed in the Erie County Clerks Office in Liber 11106 of deeds at page 9020;

Thence parallel with the south line of Elk Street S.76°10'39"E east and along the southerly line of Elk-Lee LLC, a distance of 831.47 feet to the westerly line of the former Maurice Street;

Thence N.13°45'01"E along the former west line of Maurice Street and along the east line of Elk-Lee, LLC a distance of 197.00 to the south line of Elk Street;

Thence N.13°45'01"E along the south line of Elk Street a distance of 260.00 feet to the westerly line of Orlando Street;

Thence S.13°45'01"W along the westerly line of Orlando street a distance of 757.00 feet to a point on the North line of the former Prenatt Street;

Thence S.76°10'39"E along the former north line of Prenatt Street a distance of 300.00 feet to the west line of Babcock Street;

Thence S.13°45'01"W along the west line of Babcock street a distance of 33.00 feet to the north east corner of lands conveyed to The Buffalo Creek Railroad Company by deed filed in the Erie County Clerks Office in Liber 6040 of deeds at page 437;

Thence N.71°48'22"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 170.56 feet to a point in the west line lot 197 distant 20 feet southerly, measured along the west line of Lot 197 from the north line of the former Prenatt Street;

Thence N.76°10'39"W parallel with the north line of the former Prenatt Street, along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 660.00 feet to a point in the west line lot 97 distant 20 feet southerly, measured along the west line of Lot 196 from the north line of the former Prenatt Street;

Thence N.75°10'16"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 398.50 feet to a point in the west line lot 195 distant 13 feet southerly, measured along the west line of Lot 195 from the north line of the former Prenatt Street;

Thence N.71°53'01"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 100.89 feet to a point in a line drawn parallel with and 25 feet southerly measured at right angles from the north line of the former Prenatt Street;

Thence N.63°37'29"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 77.02 feet to a point in the west line of the street closing (Prenatt Street) as described in deed filed in the Erie County Clerks Office in Liber 5836 of deeds at page 182, parcel A;

Thence N.43°02'06" along the west line of the street closing (Prenatt Street) as described in deed filed in the Erie County Clerks Office in Liber 5836 of deeds at page 182, parcel A a distance of 26.10 feet to the point or place of beginning.

EXCEPTING

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 133, according to a map and survey of a part of the Buffalo Creek Reservation adjoining the City of Buffalo, made by Lovejoy & Emslie, said lot being in Township 10, Range 8 of the Holland Land Company's Survey, more particularly described as follows:

Beginning at a point in the north line of Prenatt Street, said point being 30.47 feet, measured easterly from the point of intersection of the northerly line of Prenatt Street with the easterly line of Lee Street;

Thence northerly at right angles to the northerly line of Prenatt Street N.26°22'30"E a distance of 30 feet to a point;

Thence easterly in a strait line parallel with and distant 30 feet at right angles from the north line of Prenatt Street S.63°37'29"E a distance of 135 feet deed, 129.84 feet measure more or less to a point in the east line of Lot 133;

Thence southerly along the east line of Lot 133 S.13°45'01"W a distance of 28.50 feet to a point in the north line of Prenatt Street;

Thence westerly along the north line of Prenatt Street N.76°10'39"W a distance of 10.02 feet to an angle point in the north line of Prenatt Street;

Thence continuing along the north line of Prenatt street N.63°37'29"W a distance of 126.29 feet more or less to the Point or Place of Beginning.

Portion of Area E

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, State of New York, being part of Lot No. 133 of the Buffalo Creek Reservation, and more particularly bounded and described as follows:

BEGINNING at the intersection of the easterly line of Lee Street with the Southerly line of Elk street;

Thence easterly along the south line of Elk Street on a record deed bearing of S76° 17' 40"E and a measured bearing of S76°10'39"E a distance of 85.00 feet to a point;

Thence southerly on a record deed bearing of S13° 38' 00"W and measured bearing of S13°45'01"W a distance of 53.00 feet to a point;

Thence westerly on a record deed bearing N76° 17' 40"W and measured bearing of N76°10'39"W a distance of 85.00 feet to a point on the east line of Lee Street;

Thence northerly along the east line of Lee Street on a record bearing of N63° 44' 30"W and measured bearing of N13°45'01"E a distance of 53.00 feet to the Point or Place of Beginning, Containing 0.103 Acre more or less

SURVEY

