

AMENDMENT TO ENVIRONMENTAL EASEMENT

This Amendment to Environmental Easement is made as of this 23rd day of August 2023 by and between The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation (“NYSDEC” or the “Department”), with its headquarters located at 625 Broadway, Albany, New York 12233, and South Buffalo Development, LLC (the “Grantor”), having an office at 333 Ganson Street, Buffalo, New York 14203.

RECITALS

1. 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 County 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 +/- acres (collectively, the “Controlled Property”). The Controlled Property is identified by NYSDEC Site No. C915232; and
2. The Department and Grantor entered into that certain Environmental Easement (the “Environmental Easement”) dated as of December 9, 2011 and recorded in the Erie County Clerk’s Office on December 13, 2011 in Liber 11213, Page 7172. Capitalized terms used herein without definition have the meanings ascribed to them in the Environmental Easement.
3. Pursuant to the Environmental Easement, Grantor granted to the Department rights and interests that run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of the Controlled Property at a level that has been determined to be safe for certain uses while ensuring the performance of certain maintenance, monitoring and/or operation requirements, and to ensure the restriction of future uses of the land that are inconsistent with the stated purpose.
4. The Environmental Easement contains use restrictions that apply to the Controlled Property. This Amendment to Environmental Easement is made and recorded in order to modify the use restrictions applicable to the Controlled Property, because the Department has determined that, in addition to the uses currently allowed under the Environmental Easement, a portion of the Controlled Property as specified herein may now be used for Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii), while the allowed uses on the remainder of the Controlled Property will remain unchanged.

FILED

SEP 15 2023

ERIE COUNTY
CLERK'S OFFICE

5. Pursuant to Section 8 of the Environmental Easement, the Department is using this Amendment to Environmental Easement to amend the Environmental Easement in the manner prescribed by Article 9 of the Real Property Law.

AMENDMENT TO ENVIRONMENTAL EASEMENT

- A. The above recitals are hereby incorporated into this Amendment to Environmental Easement.
- B. The Department and Grantor agree that paragraph 2.A(1) of the Environmental Easement is hereby amended so that it reads as follows:

(1) The portion of the Controlled Property described in Schedule “B-1” and identified in said schedule as “Portion of Controlled Property Where Restricted Residential Use Is Allowed” may be used for:

Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii), 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)

The portion of the Controlled Property described in Schedule “B-2” and identified in said schedule as “Portion of Controlled Property Where Restricted Residential Use Is Not Allowed” 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)

The Department and Grantor further agree that paragraph 2.B of the Environmental Easement is hereby amended so that it reads as follows:

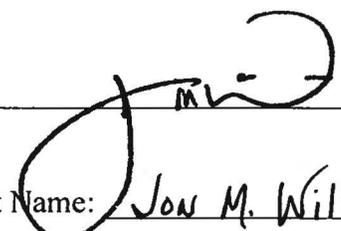
No portion of the Controlled Property shall be used for Residential purposes as described in 6 NYCRR Part 375-1.8(g)(2)(i), and in addition, no portion of the lands described in Schedule “B-2” (which lands comprise a portion of the Controlled Property) shall be used for Restricted Residential purposes as described in 6 NYCRR Part 375-1.8(g)(2)(ii). The engineering controls referenced in this Environmental Easement may not be discontinued without an amendment or extinguishment of this Environmental Easement.

The purpose of these amendments to paragraphs 2.A(1) and 2.B of the Environmental Easement is to add Restricted Residential as an allowed use category for the portion of the Controlled Property described in Schedule “B-1,” in addition to the already-allowed Commercial and Industrial use categories, while leaving the allowed use categories unchanged (i.e., limited to only Commercial and Industrial use) on the remainder of the Controlled Property.

- C. The Department and Grantor agree that Schedule "B-1" and Schedule "B-2" attached hereto are hereby incorporated into this Amendment to Environmental Easement and become part of the Environmental Easement.
- D. All other terms of the Environmental Easement shall remain in effect.
- E. This Amendment to Environmental Easement inures to and binds the parties hereto and their respective successors and assigns.
- F. This Amendment to Environmental Easement shall be governed by and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Grantor has caused this Amendment to Environmental Easement to be signed in its name.

South Buffalo Development, LLC:

By: 
 Print Name: Jon M. Williams
 Title: SBD Holdings I, Inc
Manager and member
of South Buffalo Date: 7/10/23
Development, LLC

Grantor's Acknowledgment

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

On the 10th day of July, in the year 2023, 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.


 Notary Public - State of New York

NANCY L. MAZUR
 Notary Public, State of New York
 Qualified in Erie County No. 1765930
 My Commission Expires 11 30, 2025

THIS AMENDMENT TO 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: Andrew Guglielmi
Andrew O. Guglielmi, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 23rd day of August, in the year 2023 before me, the undersigned, personally appeared Andrew O. Guglielmi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Cheryl A. Salem
Notary Public - State of New York

Cheryl A. Salem
Notary Public State of New York
Registration No. 01SA0002177
Qualified in Albany County
My Commission Expires March 3, 2027

SCHEDULE "B-1"
Portion of Controlled Property Where Restricted Residential Use Is Allowed

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, 195 and 196 of the Buffalo Creek Reservation, and more particularly bounded and described as follows:

Commencing at the intersection of the easterly line of Lee Street with then northerly line of former Prenatt Street; Thence along the easterly line of Lee Street a record bearing of N13°38'00"E and measured bearing of N13°45'01"E a distance of 30.74 feet to the POINT OR PLACE OF BEGINNING;

Thence along the easterly line of Lee Street a record bearing of N13°38'00"E and measured bearing of N13°45'01"E a distance of 495.19 feet to the southerly line of lands conveyed to Elk-Lee LLC by deed filed in the Erie County Clerk's Office in Liber 11106 of deeds at page 9019;

Thence parallel with the south line of Elk Street S76°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 N13°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 feet to the south line of Elk Street;

Thence S76°10'39"E along the south line of Elk Street a distance of 260.00 feet to the westerly line of Orlando Street;

Thence S13°45'01"W along the westerly line of Orlando Street a distance of 311.50 feet to a point;

Thence N76°10'39" W a distance of 278.62 feet to a point;

Thence S13°45'01"W a distance of 315.29 feet to a point;

Thence N76°10'39" W a distance of 247.22 feet to a point;

Thence S13°45'01" W a distance of 150.20 feet to a point on the north line of lands conveyed to the Buffalo Creek Railroad Company by deed filed in the Erie County Clerk's Office in Liber 6040 of Deeds at Page 437;

Thence along the north line of lands conveyed to the Buffalo Creek Railroad Company by deed filed in the Erie County Clerk's Office in Liber 6040 of Deeds at Page 437 N 76°10'39" W a distance of 4.21 feet to a point on the east line of Lot 195;

Thence N75°10'16"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 79.97 feet to a point on the west line of lands conveyed to South Buffalo Development, LLC in Deed filed in Erie County Clerk's Office in Liber 11155 at Page 6538;

Thence N 13°45'01" E a distance of 18.60 feet along said west line of South Buffalo Development, LLC to a point;

Thence N 78°02'05" W a distance of 318.63 feet to a point on the west line of Lot 195 and the east line of Lot 133;

Thence along the east line of Lot 133 N 13°45'01" E a distance of 38.84 feet to the north east corner of lands conveyed to Buffalo Niagara Electric Corporation by deed filed in the Erie County Clerk's Office in Liber 2686 of deeds at page 180;

Thence along the north line of lands conveyed to Buffalo Niagara Electric Corporation and its extension westerly, N 63°37'29" W a distance of 167.03 feet to the POINT OR PLACE OF BEGINNING. Containing 11.520 Acres (501,792 Sq. Ft.) more or less.

SCHEDULE "B-2"

Portion of Controlled Property Where Restricted Residential Use Is Not Allowed

339 Elk Street:

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 $76^{\circ}17'40''\text{E}$ and a measured bearing of $S76^{\circ}10'39''\text{E}$ a distance of 85.00 feet to a point;

Thence southerly on a record deed bearing of $S13^{\circ}38'00''\text{W}$ and measured bearing of $S13^{\circ}45'01''\text{W}$ a distance of 53.00 feet to a point;

Thence westerly on a record deed bearing $N76^{\circ}17'40''\text{W}$ and measured bearing of $N76^{\circ}10'39''\text{W}$ 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 $N13^{\circ}38'00''\text{E}$ and measured bearing of $N13^{\circ}45'01''\text{E}$ a distance of 53.00 feet to the Point or Place of Beginning, Containing 0.103 Acre (4,505 Sq. Ft.) more or less.

427 Elk Street:

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

Beginning at the north east corner of lands conveyed to The Buffalo Creek Railroad Company by deed filed in the Erie County Clerk's Office in Liber 6040 of deeds at page 4 said point being on the west line of Babcock Street;

Thence $N13^{\circ}45'01''\text{E}$ along the west line of Babcock Street a distance of 33.00 feet to a point on the former north line of the former Prenatt Street;

Thence $N76^{\circ}10'39''\text{W}$ along the former North line of the former Prenatt Street a distance of 300.00 feet to the west line of Orlando Street;

Thence $N13^{\circ}45'01''\text{E}$ along the west line of Orlando Street a distance of 445.50 feet to a point;

Thence $N76^{\circ}10'39''\text{W}$ a distance of 278.62 feet to a point;

Thence $S13^{\circ}45'01''\text{W}$ a distance of 315.29 feet to a point;

Thence $N76^{\circ}10'39''\text{W}$ a distance of 247.22 feet to a point;

Thence $S13^{\circ}45'01''\text{W}$ a distance of 150.20 feet to a point on the north line of lands conveyed to the Buffalo Creek Railroad Company by deed filed in the Erie County Clerk's Office in Liber 6040 of Deeds at Page 437;

Thence $S76^{\circ}10'39''\text{E}$ along the north line of lands conveyed to the Buffalo Creek Railroad Company by deed filed in the Erie County Clerk's Office in Liber 6040 of Deeds at Page 437 a distance of 655.79 feet to a point;

Thence continuing along the north line of lands conveyed to the Buffalo Creek Railroad Company by deed filed in the Erie County Clerk's Office in Liber 6040 of Deeds at Page 437 a distance of 170.56 feet to the Point or Place of Beginning, containing 3.993 Acres (173,935 Sq. Ft.) more or less.

Portion of 5 Babcock Street & 85 Lee Street:

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 then northerly line of former Prenatt Street;

Thence along the easterly line of Lee Street a record bearing of N13°38'00"E and measured bearing of N13°45'01"E a distance of 30.74 feet to a point;

Thence easterly in a straight line parallel with and distant 30 feet at right angles from the north line of Prenatt Street S63°37'29"E a distance of 37.19 feet to the north west corner of lands conveyed to Buffalo Niagara Electric Corporation by deed filed in the Erie County Clerk's Office in Liber 2686 of deeds at page 180;

Thence S 26°22'30"W along the westerly line of lands conveyed to Buffalo Niagara Electric Corporation by deed filed in the Erie County Clerk's Office in Liber 2686 of deeds at page 180 a distance of 30.00 feet to the northerly line of former Prenatt Street;

Thence S63°37'29"E along the northerly line of former Prenatt Street a distance of 126.29 feet to an angle point therein;

Thence continuing along the northerly line of former Prenatt Street S76°14'59"E a distance of 10.02 feet to the east Line of Lot 133;

Thence S13°45'01" W along the east line of Lot 133 a distance of 10.34 feet to a point;

Thence S 78°02'05" E a distance of 318.63 to the westerly line of lands conveyed to South Buffalo Development, LLC in Deed filed in Erie County Clerk's Office in Liber 11157 at Page 3484;

Thence S13°45'01" W a distance of 18.60 feet along said west line of South Buffalo Development, LLC to a point in the north line of lands conveyed to the Buffalo Creek Railroad Company;

Thence N75°10'16"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 318.53 feet to a point;

Thence N71°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 N63°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 Clerk's Office in Liber 5836 of deeds at page 182, parcel A;

Thence N43°02'06"E along the west line of the street closing (Prenatt Street) as described in deed filed in the Erie County Clerk's Office in Liber 5836 of deeds at page 182, parcel A, a distance of 26.10 feet to the point or place of beginning. Containing 0.184 Acre (8005 Sq. Ft.) more or less.

MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE: 9/15/2023
TIME: 1:51:25 PM
RECEIPT: 23126171

KNOER GROUP PLLC
ACCOUNT #: 8935

ITEM - 01 MTP
RECD: 9/15/2023 1:56:48 PM
FILE: 2023159396 BK/PG D 11421/9282
Deed Sequence: TT2023003261
SOUTH BUFFALO DEVELOPMENT LLC
Recording Fees 80.50
TP584 10.00
Subtotal 90.50

ITEM - 02 MTP
RECD: 9/15/2023 1:56:48 PM
FILE: 2023159397 BK/PG D 11421/9290
Deed Sequence: TT2023003262
SOUTH BUFFALO DEVELOPMENT LLC
Recording Fees 65.50
TP584 10.00
Subtotal 75.50

TOTAL DUE \$166.00
PAID TOTAL \$166.00
PAID CHECK \$166.00
***** 166.00