



**Phillips Lytle LLP**

**VIA U.S.P.S**

October 10, 2014

Bradford D. Burns, Senior Attorney  
NYS Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14th Floor  
Albany, NY 12233-1500

Re: Environmental Easement package for Site No: C932157  
3123 Highland Avenue, Niagara Falls, New York

Dear Mr. Burns:

Please find enclosed the environmental easement ("EE") notices that were sent to the relevant parties and recorded in the Niagara County Clerk's office today.

If you have any questions concerning this matter, please contact me at 716-504-5789 or [jdougherty@phillipslytle.com](mailto:jdougherty@phillipslytle.com).

Very truly yours,

Phillips Lytle LLP

By

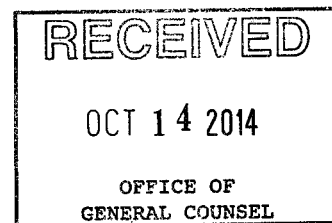
Jennifer Dougherty

J-D/pjs

Enclosures

cc: Patrick Foster, Esq. (w/o enclosures)  
David P. Flynn, Esq. (w/o enclosures)

Doc #01-2811843.1



Jennifer Dougherty  
Direct 716 504 5789 [jdougherty@phillipslytle.com](mailto:jdougherty@phillipslytle.com)

ATTORNEYS AT LAW

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | [PHILLIPSLYTL.COM](http://PHILLIPSLYTL.COM)



NIAGARA COUNTY CLERK  
WAYNE F. JAGOW

RECEIPT

\*\* Reprint \*\*

Receipt Date: 10/10/2014 03:15:37 PM  
RECEIPT # 2014214597

Recording Clerk: BH  
Cash Drawer: CASH3  
Rec'd Frm: PHILLIPS LYTLE LLP  
Rec'd In Person

Instr#: 2014-17381  
DOC: MISCELLANEOUS  
OR Party: NEW YORK STATE DEPT OF  
ENVIRONMENTAL CONSERVATION  
EE Party: BRIGHTFIELDS CORPORATION

Recording Fees  
Cover Page \$8.00  
Recording Fee \$44.00  
Cultural Ed \$14.25  
Records Management - County \$1.00  
Records Management - State \$4.75  
DOCUMENT TOTAL: ----> \$72.00

Instr#: 2014-17382  
DOC: MISCELLANEOUS  
OR Party: NEW YORK STATE DEPT OF  
ENVIRONMENTAL CONSERVATION  
EE Party: BRIGHTFIELDS CORPORATION

Recording Fees  
Cover Page \$8.00  
Recording Fee \$44.00  
Cultural Ed \$14.25  
Records Management - County \$1.00  
Records Management - State \$4.75  
DOCUMENT TOTAL: ----> \$72.00

Receipt Summary  
TOTAL RECEIPT: ----> \$144.00  
TOTAL RECEIVED: ----> \$160.00  
CASH BACK: ----> \$16.00

PAYMENTS

Cash -> \$160.00

## 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:

Portion of the lot with the address  
3123 Highland Avenue, Niagara Falls, New York

ORIGINAL FILED

OCT 10 2014

Property Owner/Grantor: Brightfields Corporation

WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

The Tax Map Identification No.: 144.06-2-27.1

NYS Department of Environmental Conservation Site Nos.: C932157

The Environmental Easement for the above referenced property was recorded in the Niagara County Clerk's Office on September 12, 2014 in Instrument No. 2014-15342.

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 and industrial.

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](mailto: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.

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>.



**Phillips Lytle LLP**

Via Certified Mail - Return Receipt Requested 7010 0780 0000 8336 4896

Hon. Paul A. Dyster  
City of Niagara Falls Mayor's Office  
745 Main St.  
Niagara Falls, NY 14301

October 10, 2014

Re: Environmental Easement for the Parcel with the Tax Map No: 144.06-2-27.1  
New York State Department of Environmental Conservation ("NYSDEC")  
Site No: C932157

Dear Mayor Dyster:

Attached please find a copy of an environmental easement granted to the NYSDEC, on September 8, 2014, by Brightfields Corporation for a portion of the property at 3123 Highland Avenue, Niagara Falls, New York ("Site"), with the Tax Map No. 144.06-2-27.1; NYSDEC Site No: C932157.

This Environmental Easement restricts future use of the above-referenced property to commercial and industrial uses and conformity with the Soil Management Plan, which is attached.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.
2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

ATTORNEYS AT LAW

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTLE.COM



An electronic version of every environmental easement that has been accepted by NYSDEC is available to the public at:  
<http://www.dec.ny.gov/cfm/EXTAPPS/derfoil/index.cfm?pageid>. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

Phillips Lytle LLP

A handwritten signature in cursive script, appearing to read "Jennifer A. Dougherty".

By  
Jennifer Dougherty

cc: David Flynn, Esq.



NIAGARA COUNTY CLERK  
WAYNE F. JAGOW

RECEIPT

Receipt Date: 09/12/2014 02:58:33 PM

RECEIPT # 2014211454

Recording Clerk: MKS

Cash Drawer: CASH4

Rec'd Frm: PHILLIPS LYTLE LLP

Rec'd In Person

Instr#: 2014-15342

DOC: EASEMENT

DEED STAMP: 815

OR Party: BRIGHTFIELDS CORP

EE Party: PEOPLE OF THE STATE OF NEW  
YORK

Recording Fees

Cover Page	\$8.00
Recording Fee	\$32.00
Cultural Ed	\$14.25
Records Management - County	\$1.00
Records Management - State	\$4.75
TP584	\$5.00

Transfer Tax

Transfer Tax	\$0.00
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DOCUMENT TOTAL: ----> \$65.00

Receipt Summary

TOTAL RECEIPT: ----> \$65.00

TOTAL RECEIVED: ----> \$80.00

CASH BACK: ---->	\$15.00
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PAYMENTS

Cash ->	\$80.00
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ORIGINAL FILED

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36, 2014

OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW, WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

THIS INDENTURE made this 8th day of September, 2014, between Owner(s) Brightfields Corporation, having an office at 333 Ganson Street Buffalo, County of Erie, State of New York (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 portion of 3123 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 02 Lot 27.1, being the same as that property conveyed to Grantor by deed dated October 1, 2012 and recorded in the Niagara County Clerk's Office in Liber and Page Instrument No. 2012-20725. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 5.90 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 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: C932157-03-12, 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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

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

(6) 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;

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



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

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

(10) 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, at such time as NYSDEC may require, 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: C932157  
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.

Brightfields Corporation:

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: 5/30/2014

## Grantor's Acknowledgment


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

On the 30<sup>th</sup> day of MAY, in the year 2014, before me, the undersigned, personally appeared by 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. Meyer  
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, 2016

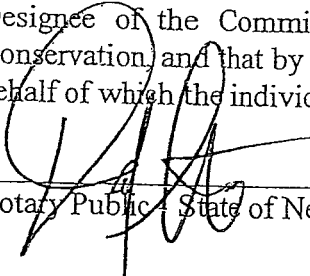
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:   
Robert W. Schick, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 04 day of Septmber, in the year 2014, before me, the undersigned, personally appeared Robert W. Schick, 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, 2018

**SCHEDULE "A" PROPERTY DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Commencing at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence N20°42' 42"E along the easterly line of Highland Avenue a distance of 273.97 feet to the Point or Place of Beginning;

Thence N88°58'03"W a distance of 135.93 feet to a point;

Thence N20°42' 42"E a distance of 31.86 feet to a point on the northerly line of Carolina Avenue (not opened);

Thence S88°58'03"E along said northerly line of Carolina Avenue a distance of 874.39 feet to a point on the westerly line of Fifteenth Street (not opened);

Thence N00°54'11"E along the westerly line of Fifteenth Street a distance of 277.38 feet a point;

Thence N88°58'03"W a distance of 774.56 feet to the center line of a former 16.5 foot wide alley;

Thence S20°42'42"W along the center line of the former alley a distance of 124.29 feet to a point;

Thence N88°58'03"W a distance of 135.93 feet to a point on the easterly line of Highland Avenue;

Thence S20°42'42"W along the easterly line of Highland Avenue a distance of 202.16 feet to the Point or Place of Beginning, containing 5.844 acres of land more or less.

Doc Id. 2775298