

FILED
MAY 21 2008
ERIE COUNTY
CLERK'S OFFICE

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS COVENANT, made the 20th day of May, 2008, by RiverBend LLC ("RiverBend"), a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business at 275 Oak Street, Buffalo, New York 14203.

WHEREAS, Steelfields LTD entered into a Voluntary Cleanup Agreement executed by its Corporation Secretary as part of the New York State Department of Environmental Conservation's (the "Department's") Voluntary Cleanup Program relative to real property located on South Park and Abby Street in the City of Buffalo, County of Erie, State of New York; and

WHEREAS, RiverBend LLC acquired certain real property from Steelfields LTD, a portion of which includes the real property subject to the Voluntary Cleanup Agreement, by Deed recorded in the Erie County Clerk's Office on May 8, 2008 in Liber D11144 of Deeds at page 7335; and

WHEREAS, for a parcel of the real property known as Area III (hereinafter referred to as "the Property") the Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property and such remedy requires that the Property be subject to restrictive covenants.

NOW, THEREFORE, RiverBend, for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions, is as shown on a legal description attached to this Declaration as Exhibit "A" and a map attached to this Declaration as Exhibit "B" and made a part hereof.

Second, unless prior written approval by the New York State Department of Environmental Conservation or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property, which threatens the integrity of the vegetated soil cover unless it is consistent with the Site Management Plan, or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall maintain over the unremediated areas of the Property, one foot of vegetated soil cover with a demarcation layer, buildings, or pavement in accordance with the Site Management Plan included in the Final Engineering Report for Areas II and III, or, after obtaining the written approval of the Relevant Agency, by covering these areas

with another material, unless the unremediated areas are first sampled in accordance with the Voluntary Cleanup Work Plan and accepted by the Relevant Agency.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for industrial and/or commercial use without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall complete a Department approved evaluation of sub-slab vapor potential before any buildings are constructed on the Property or, in the alternative, the owner will install a sub-slab vapor intrusion mitigation system in any newly constructed building on the Property..

Sixth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

Seventh, the owner of the Property shall comply with the requirements of the Site Management Plan and maintain in full force and effect any required institutional and engineering controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

Eighth, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner, and its successors and assigns, consent to enforcement by the Relevant Agency of the prohibitions and restrictions and hereby covenant not to contest the authority of the Relevant Agency to seek enforcement.

Ninth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

RIVERBEND LLC

By: 

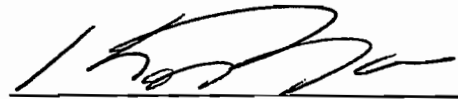
Peter M. Cammarata

Title: President

Date: May 20, 2008

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

On the 20th day of May in the year 2008, before me, the undersigned, a Notary Public in and for the State, personally appeared PETER M. CAMMARATA, 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, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KEVIN J. ZANNER
Notary Public in the State of New York
Qualified in Erie County No. 02ZA5076987
My Commission Expires April 28, 2011

Record and return to: Kevin J. Zanner, Esq.
Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, NY 14202

PROPOSED DESCRIPTION FOR AREA III

ALL THAT TRACT OR PACEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lots Numbers 16 and 17 of the Ogden Gore Tract, bounded and described as follows:

BEGINNING at the point of intersection of the southeast corner of Area II by deed dated October 15, 2002, and recorded in Erie County Clerk's Office on December 16, 2002 in Liber 11016 of Deeds at Page 1609, and the westerly line of Abby Street; thence southwardly along said westerly line of Abby Street 1050.45 feet to the southerly line of lands conveyed by Frederick Brown to Nicholas Newerf and William H. Newerf by deed dated April 19, 1887 and recorded in the Erie County Clerk's Office on April 22, 1887 in Liber 526 of Deeds at page 107; running thence westerly and along the southerly line of Newerf's lands, as above mentioned and the south line of lands conveyed by Krull to McClintic Marshall Construction Co., by deed recorded in the Erie County Clerk's Office in Liber 2070 of Deeds at page 130, a distance of 1737.13 feet to a point 77 feet easterly of the center line of the main track of the South Buffalo Railway; thence northerly along said easterly line of the South Buffalo Railway 690.88 feet to a point in the line of lands now or formerly of Donner-Union Coke Corporation; thence along said land the following three courses and distances:

1. Eastwardly and at right angles to said last mentioned easterly line of the right of way of South Buffalo Railway Company 47.22 feet to a point;
2. Thence northwardly by a curve to the right with a radius of 360.7 feet a distance of 480.73 feet to a point;
3. Northwardly at right angles to said center line of Bell Street 14.50 feet to a point in the center line of Bell Street, as formerly laid out;

Thence easterly along said center line and an extension thereof and also being the north line of Lot 17 of the Ogden Gore Tract 1711.08 feet to the place of beginning. Containing 42.41 acres of land, more or less.

SURVEY OF LANDS
CONVEYED TO
STEREFIELDS, LTD.

CITY OF BUFFALO
COUNTY OF ERIE
STATE OF NEW YORK

DATE OF SURVEY: 1907

BY: [Signature]

SCALE: AS SHOWN

VERIFICATION: [Signature]

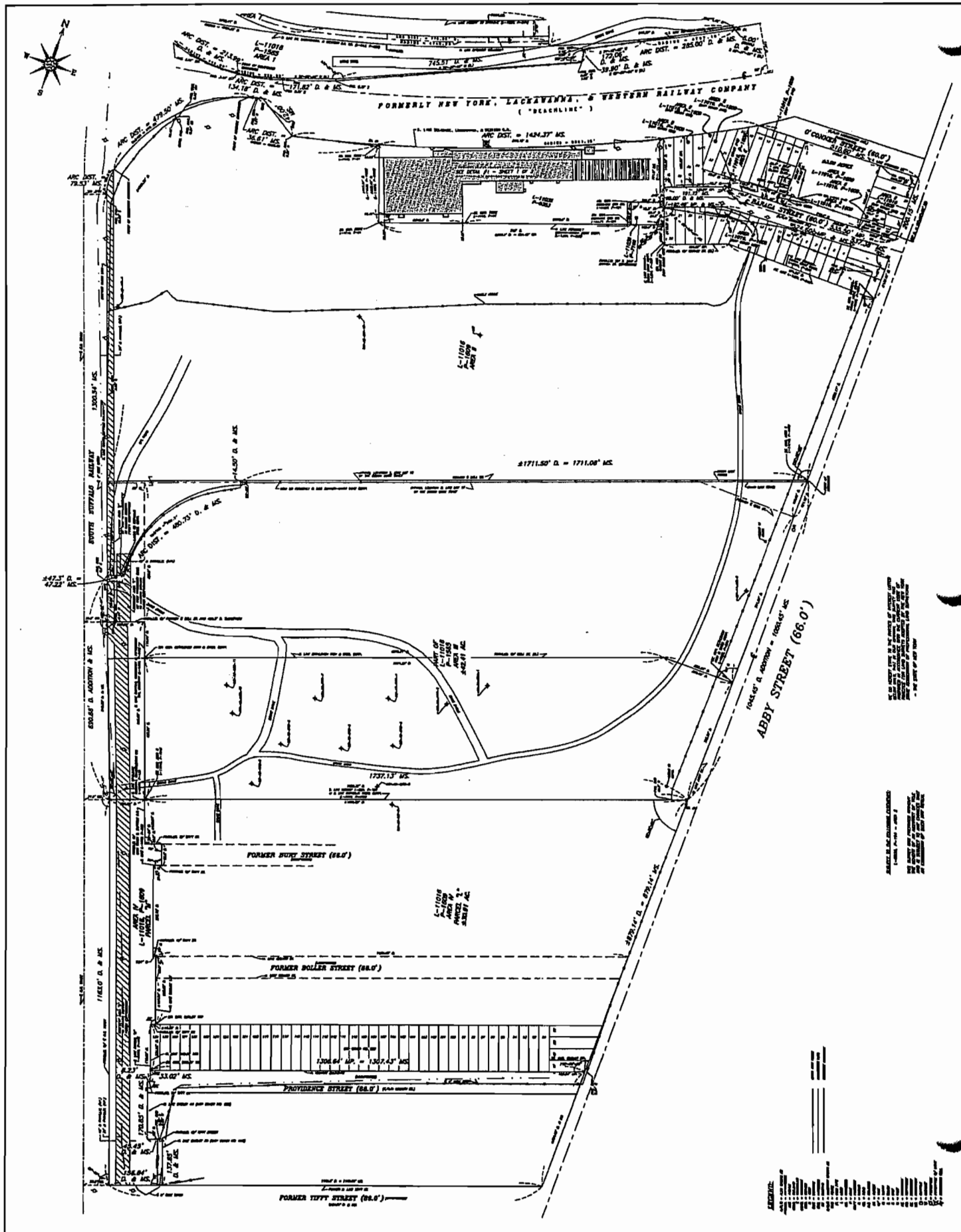
DATE OF VERIFICATION: 1907

Handwritten note: 1-11018 AREA I

1-11018 AREA I

AREA II
BOUNDARY SURVEY

1 of 1



ALL THE AREAS SHOWN ON THIS MAP ARE THE PROPERTY OF STEREFIELDS, LTD. AND ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE DEED OF CONVEYANCE DATED 1907.

THE SURVEY OF 1907 WAS MADE BY [Name] AND IS HEREBY VERIFIED BY [Name] ON [Date].

TABLE OF AREAS

| NO. | DESCRIPTION | AREA (ACRES) |
|-----|----------------------|--------------|
| 1 | 1-11018 AREA I | 1.23 |
| 2 | 1-11018 AREA II | 1.15 |
| 3 | 1-11018 AREA III | 1.08 |
| 4 | 1-11018 AREA IV | 1.01 |
| 5 | 1-11018 AREA V | 0.94 |
| 6 | 1-11018 AREA VI | 0.87 |
| 7 | 1-11018 AREA VII | 0.80 |
| 8 | 1-11018 AREA VIII | 0.73 |
| 9 | 1-11018 AREA IX | 0.66 |
| 10 | 1-11018 AREA X | 0.59 |
| 11 | 1-11018 AREA XI | 0.52 |
| 12 | 1-11018 AREA XII | 0.45 |
| 13 | 1-11018 AREA XIII | 0.38 |
| 14 | 1-11018 AREA XIV | 0.31 |
| 15 | 1-11018 AREA XV | 0.24 |
| 16 | 1-11018 AREA XVI | 0.17 |
| 17 | 1-11018 AREA XVII | 0.10 |
| 18 | 1-11018 AREA XVIII | 0.03 |
| 19 | 1-11018 AREA XIX | 0.06 |
| 20 | 1-11018 AREA XX | 0.09 |
| 21 | 1-11018 AREA XXI | 0.12 |
| 22 | 1-11018 AREA XXII | 0.15 |
| 23 | 1-11018 AREA XXIII | 0.18 |
| 24 | 1-11018 AREA XXIV | 0.21 |
| 25 | 1-11018 AREA XXV | 0.24 |
| 26 | 1-11018 AREA XXVI | 0.27 |
| 27 | 1-11018 AREA XXVII | 0.30 |
| 28 | 1-11018 AREA XXVIII | 0.33 |
| 29 | 1-11018 AREA XXIX | 0.36 |
| 30 | 1-11018 AREA XXX | 0.39 |
| 31 | 1-11018 AREA XXXI | 0.42 |
| 32 | 1-11018 AREA XXXII | 0.45 |
| 33 | 1-11018 AREA XXXIII | 0.48 |
| 34 | 1-11018 AREA XXXIV | 0.51 |
| 35 | 1-11018 AREA XXXV | 0.54 |
| 36 | 1-11018 AREA XXXVI | 0.57 |
| 37 | 1-11018 AREA XXXVII | 0.60 |
| 38 | 1-11018 AREA XXXVIII | 0.63 |
| 39 | 1-11018 AREA XXXIX | 0.66 |
| 40 | 1-11018 AREA XL | 0.69 |
| 41 | 1-11018 AREA XLI | 0.72 |
| 42 | 1-11018 AREA XLII | 0.75 |
| 43 | 1-11018 AREA XLIII | 0.78 |
| 44 | 1-11018 AREA XLIV | 0.81 |
| 45 | 1-11018 AREA XLV | 0.84 |
| 46 | 1-11018 AREA XLVI | 0.87 |
| 47 | 1-11018 AREA XLVII | 0.90 |
| 48 | 1-11018 AREA XLVIII | 0.93 |
| 49 | 1-11018 AREA XLIX | 0.96 |
| 50 | 1-11018 AREA L | 0.99 |

Exhibit B

Honorable Kathleen C. Hochul
County Clerk
Erie County
92 Franklin Street
Buffalo, NY 14202
(716) 858-8865

DATE:05/21/2008
TIME:02:29:19 PM
RECEIPT:533490

HURWITZ & FINE BOX 61

ITEM -01 779 02:29:19 PM BK/PG:D11145/2571
CTRL #:2008106178
RIVERBEND LLC 58.00
RECORDING FEE 0.50
MARKOFF FEE
Sub. Total 58.50

ITEM -02 779 02:29:19 PM BK/PG:D11145/2578
CTRL #:2008106179
RIVERBEND LLC 58.00
RECORDING FEE 0.50
MARKOFF FEE
Sub. Total 58.50

AMOUNT DUE: \$117.00
PAID CHECK: \$117.00
Check #:61795 \$117.00
TOTAL PAID: \$117.00

REC BY: JC
County Clerk
Have a nice day!