

**DUKE, HOLZMAN, YAEGER & PHOTIADIS LLP**

ATTORNEYS AT LAW

1800 MAIN PLACE TOWER  
BUFFALO, NEW YORK 14202

716-855-1111

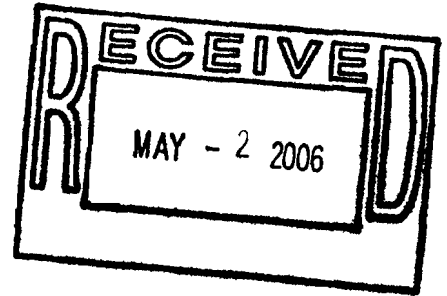
FACSIMILE 716-855-0327  
NOT FOR SERVICE OF PAPERS

DONALD J. HOLZMAN  
GREGORY P. PHOTIADIS  
PETER G. RUPPAR  
WILLIAM D. SCHULZ  
MICHAEL J. LOMBARDO\*  
HOWARD E. BERGER  
DENNIS P. CLEARY  
GARY M. KANALEY\*\*  
ROBERT L. BENCINI  
CHARLES C. RITTER, JR.  
SHARON ANGELINO  
MATTHEW J. BECK  
MATTHEW T. WEBER  
DARA B. BILTEKOFF

EMANUEL DUKE  
(1916-1999)  
EDWIN P. YAEGER  
(1934-1992)

\* Also Admitted in PA  
\*\* Also Admitted in FL

May 1, 2006



Joseph J. Hausbeck, Esq.  
New York State Department of  
Environmental Conservation  
270 Michigan Ave.  
Buffalo, New York 14203

Re: Estate of Anthony C. Ilardo  
1-15 Buffalo Street

Dear Mr. Hausbeck:

Enclosed is a copy of the Declarations of Covenants and Restrictions with respect to the above referenced property filed in Erie County Clerk's Office and date-stamped April 28, 2006.

Very truly yours,

DUKE, HOLZMAN, YAEGER & PHOTIADIS LLP

Peter G. Ruppar

PGR\mm  
Enclosure

cc: Robert F. Gaylord (w/encl.)  
James N. Carlo, Esq.  
Edwin R. Ilardo, Esq.  
Michael Ilardo

Memo

Invoice Date	Invoice No.	Original Amt	Discount	Payment
4/28/2006	Record Easement Illardo 03-01EN	\$97.00	\$0.00	\$97.00

**Total Amount Paid \$97.00**

Honorable David J Swarts  
County Clerk  
Erie County  
92 Franklin Street  
Buffalo, NY 14202  
(716) 858-8865

DATE:04/28/2006  
TIME:01:55:58 PM  
RECEIPT:142208

BOX 440 PGR

ITEM -01 779 01:55:58 PM  
FILE:2006096639 BK/PG:D11113/0153

ILARDO ANTHONY C EX  
HSBC BANK USA

RECORDING FEE 97.00  
MARKOFF FEE 0.50  
Sub. Total 97.50

-----  
AMOUNT DUE: \$97.50  
PAID CASH: \$.50  
PAID CHECK: \$97.00  
Check #:24997  
TOTAL PAID: \$97.50

REC BY: JACKIE  
County Clerk  
Have a nice day!

COPY

FILED

APR 28 2006

ERIE COUNTY  
CLERK'S OFFICE

**DECLARATION of COVENANTS and RESTRICTIONS**

**THIS COVENANT**, made the 24 day of APRIL 2006, by the Estate of Anthony C. Ilardo, acting by and through its co-executor, HSBC Bank USA, a corporation organized and existing in accordance with the laws of the State of Delaware with an address located at One HSBC Center, Buffalo, New York 14203:

**WHEREAS**, the Property is the subject of a Voluntary Agreement executed by Robert F. Gaylord on behalf of HSBC Bank USA, acting as co-executor of the Estate of Anthony C. Ilardo, as part of the New York State Department of Environmental Conservation's (the "Department's) Voluntary Cleanup Program, namely those parcels of real property located at 1 through 15 Buffalo Street, at East Main Street in the Village of Hamburg, County of Erie, State of New York, which is part of lands conveyed by Richard Barnhard, Harold Barnhard and Herbert Schulefand to Anthony C. Ilardo by deed dated October 1, 1974 and recorded in the Erie County Clerk's Office on October 18, 1974 in Book 8230 of Deeds at Page 137 and being more particularly described in Appendix "A," attached to this declaration and made a part hereof, and hereinafter referred to as "the Property"; and

**WHEREAS**, 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**, The Estate of Anthony C. Ilardo, 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 survey attached to this declaration as Appendix "B" and made a part hereof, and consists of the property described in Appendix A.

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, which threatens the integrity of the rear alleyway soil/fill cover system, or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall maintain the Property as provided in the February 22, 2006 Site Management Plan, 5 Buffalo Street, Hamburg, New York [Appendix C]:

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for restricted commercial use excluding day care, child care and medical care uses, without the express written waiver of such prohibition by the Relevant Agency.

Fifth, 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.

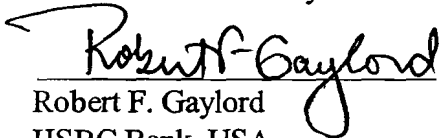
Sixth, the owner of the Property shall continue in full force and effect any institutional and engineering controls required under the Agreement and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

Seventh, 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, consents to enforcement by the Relevant Agency of the prohibitions and restrictions that Paragraph X of the Agreement requires to be recorded, and, hereby covenants not to contest the authority of the Relevant Agency to seek enforcement.

Eighth, 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.

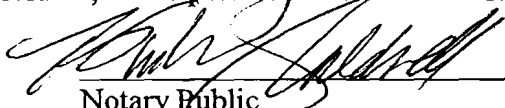
**IN WITNESS WHEREOF**, the undersigned has executed this instrument the day written below.

Dated:

The Estate of Anthony C. Ilardo  
By:   
Robert F. Gaylord  
HSBC Bank, USA  
Co-Executor

STATE OF NEW YORK     )  
COUNTY OF ERIE        ) SS:

On this 24 day of APRIL, in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert F. Gaylord, 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 on behalf of which the individual acted, executed the instrument.

  
Notary Public

BARBARA J. CALOWELL  
No. 478899  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires July 31, 2007

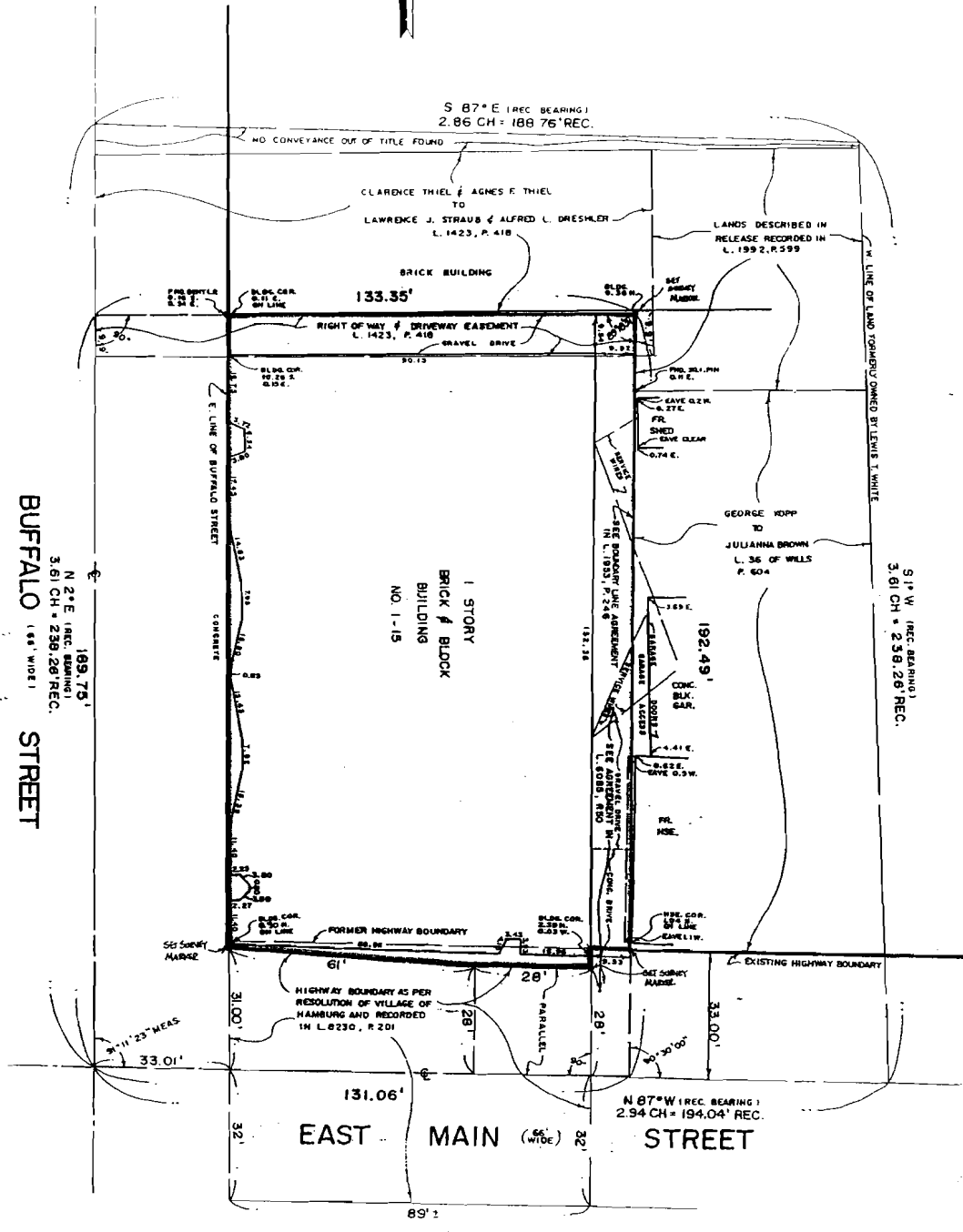
ALL THAT TRACT OR PARCEL OF LAND situate in the Village of Hamburg, Town of Hamburg, County of Erie and State of New York, being part of Lot No. 2, Township 9, Range 8 of the Holland Land Company's Survey, bounded and described as follows:

COMMENCING in the center of the highway at Whites Corners and running north 2° east along the center of said highway 3 chains 61 links; thence south 87° east 2 chains 86 links to land deeded to Lewis T. White; thence south 1° west along said White's land 3 chains 61 links to the center of the highway; thence north 87° west along the center of the highway 2 chains 94 links to the place of beginning, containing 1.04 acres be the same more or less.

EXCEPTING from the above described premises that part thereof being about 62 ½ feet front on East Main Street and running back about 141 feet, devised by George Kopp to his daughter Julianna Brown, as described in such Will recorded in Erie County Clerk's Office in Liber 36 of Wills at page 604.

ALSO EXCEPTING that part thereof in the northwest corner thereof conveyed by Clarence Thiel and wife to Lawrence J. Straub and Alfred L. Drechsler by deed recorded in Erie County Clerk's Office in Liber 1423 of Deeds at page 418.

EXCEPTING AND RESERVING THEREFROM all that tract or parcel of land described in release recorded in Erie County Clerk's Office in Liber 1992 of Deeds at page 599.



NOTE: This survey was prepared without the benefit of an Abstract of Title and is subject to any such as may be revealed by an examination of such.

NOTE: Unsubstantiated allegations or omissions to any of the provisions of Sections 7209, 7209a and 7209b of the New York State Education Law.

*James L. Shisler*

DATE	JOB	DESCRIPTION

PART OF L. 2, S. 1, T. 9, R. 8, E. 1, VILLAGE OF HAMBURG, COUNTY OF ERIE, NEW YORK

**JAMES L. SHISLER, L.S., P.C.**  
 PROFESSIONAL LAND SURVEYOR  
 50, 60th St.  
 East Aurora, New York 14045-0518  
 716-855-5048

DRAWN BY: **DMS** SCALE: 1" = 20'  
 CHECKED BY: **CLS** DATE: **AUGUST 5, 2004**  
 JOB: **04471** SHEET: **D-1718**

APPENDIX B