

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS COVENANT, made the 19 day of November, 2010, by Buffalo Business Park, Inc. (formerly Buffalo Industrial Park, Inc.) (hereinafter Grantor), a New York Corporation, having an address for the transaction of business at 1800 Broadway, Buffalo, New York.

WHEREAS, Buffalo Business Park, Inc. is the owner of Property commonly known as 1800 Broadway in the City of Buffalo, County of Erie, which are lands conveyed by WNY Realty Funding, Inc. to Buffalo Industrial Park, Inc. (now known as Buffalo Business Park, Inc.) by deed dated August 7, 1990 and recorded in the Erie County Clerk's Office on August 8, 1990 in Book 10201 of Deeds at Page 501 and which is identified by tax parcel numbers SBL 101.19-1-5, and hereinafter referred to as the "Property"; and

WHEREAS, a portion of the Property (the Site) is the subject of Voluntary Cleanup Agreement (Agreement) No. V00663-9 dated October 20, 2003; and

WHEREAS, pursuant to the Agreement, Grantor is performing a remedial program at the Site to address environmental contamination at the Site; and

WHEREAS, certain restrictions and compliance with a Site Management Plan are required at the Property.

NOW, THEREFORE, Grantor, 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 A and made a part hereof ("Restricted Property") and consists of the premises described in Appendix B.

Second, unless prior written approval by the New York State Department of Environmental Conservation ("NYSDEC"), or, if that 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, no person shall engage in any activity that will, or that reasonably is anticipated to, prevent or interfere significantly with any proposed, ongoing or completed program at the Restricted Property or that will, or is reasonably foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage.

Third, a soil vapor investigation must be conducted and a vapor system must be installed, if deemed necessary by the New York State Department of Health ("NYSDOH") and NYSDEC, for any building developed on the Restricted Property, including provisions for mitigating any impacts identified.

Fourth, the owner of the Restricted Property shall prohibit the Restricted Property from being used for purposes other than for industrial or commercial use (commercial use shall not

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allow day care, child care or medical care uses) without the express written waiver of such prohibition by the Relevant Agency.

Fifth, any use of groundwater at the Restricted Property as a source of potable or process water without necessary water quality treatment as determined by the New York State Department of Health and prior notification and approval of the NYSDEC shall not be permitted.

Sixth, the owner of the Restricted Property shall continue in full force and effect any institutional and engineering controls the Department required to be put into place and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency. The controls include, but are not limited to, the requirements of the approved Site Management Plan ("SMP") of which the Cover Page and Table of Contents are attached to this Declaration as Appendix C, and which is incorporated and made enforceable hereto.

Seventh, the owner of the Restricted Property shall comply with the SMP and any NYSDEC approved amendments, and in accordance with the SMP the owner of the Restricted Property shall more particularly:

1. Conduct any future intrusive activities and soil/fill handling at the Restricted Property in a safe and environmentally responsible manner,
2. Conduct Operation, Maintenance and Monitoring of the Groundwater Recovery System,
3. Maintain and monitor the sub-slab depressurization system in the New York Frame Building,
4. Annually submit to the NYSDEC a written statement, by an expert that the NYSDEC finds acceptable, certifying that the required controls remain unchanged from the previous certification or that any changes to the controls were approved by the NYSDEC, and that nothing has occurred that would impair the ability of a control to protect public health and the environment or constitutes a violation or failure to comply with the SMP.

Eighth, the owner of the Restricted Property shall permit the NYSDEC, its agents, employees, or other representatives of the State to enter and inspect the Restricted Property in a reasonable manner and at reasonable times to assure compliance with this Declaration of Covenants and Restrictions.

Ninth, 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 Restricted Property and shall provide that the owner, and its successors and assigns, consents to the enforcement by the NYSDEC and NYSDOH or the Relevant Agency of the prohibitions and restrictions that are required to be recorded, and hereby covenants not to contest their authority to seek enforcement.

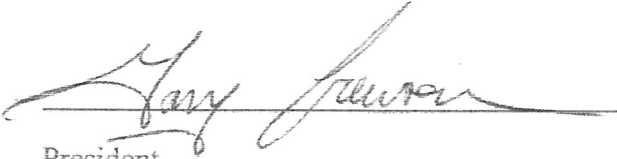
Tenth, any deed of conveyance of the Restricted Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions, and the owner of the Restricted Property shall provide a copy of the SMP and NYSDEC approved amendments to all persons who acquire an interest in the Restricted Property.

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

DATED: November 19, 2010

BUFFALO BUSINESS PARK, INC.

By:


President

STATE OF NEW YORK)

COUNTY OF ERIE) ss:

On the 19 day of November, in the year 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared GARY CREWSON, 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 President, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

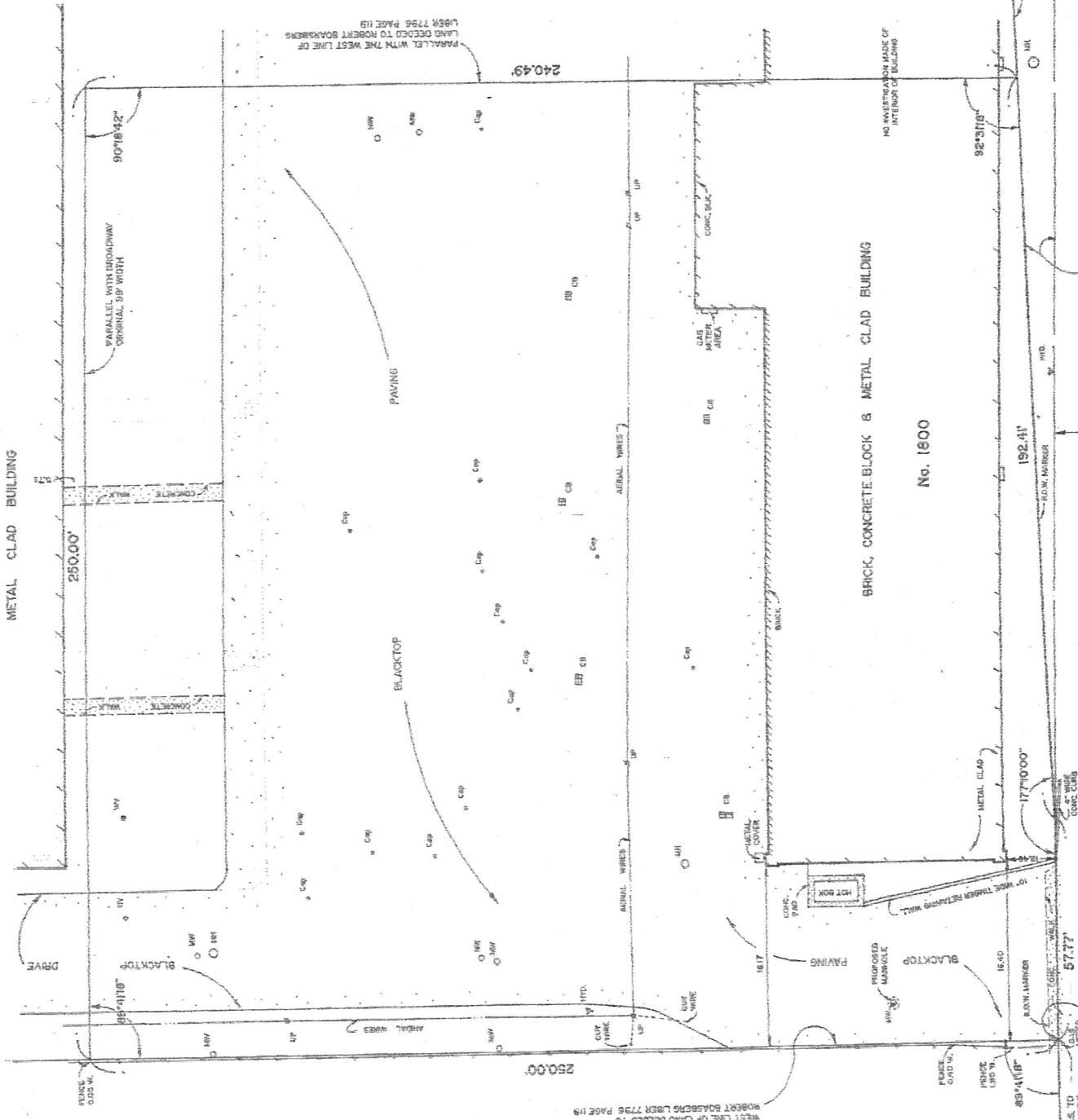


NOTARY PUBLIC

THOMAS WHISSEL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires August 9, 20 12

APPENDIX A
SURVEY MAP
(reduced in size)

METAL CLAD BUILDING



LEGEND

- MH MANHOLE
- MW MONITORING WELL
- ▽ HYD. HYDRANT
- ▢ CB CATCH BASIN
- GV GAS VALVE
- WV WATER VALVE
- UP UTILITY POLE
- Cap 1 1/2" DIA. PLASTIC CAP

PART OF LOT 42
TOWNSHIP II, RANGE 7
CITY OF BUFFALO
ERIE COUNTY, NEW YORK

BRICK, CONCRETE BLOCK & METAL CLAD BUILDING

No. 1800

BROADWAY

SOUTHWEST CORNER OF LAND
ACQUIRED BY THE STATE OF NEW YORK
FOR HIGHWAY PURPOSES AS SHOWN ON
MAP No. 3 PARCEL NO. 3 LIBER 7736 PAGE 113

LANDS ACQUIRED BY THE STATE OF NEW YORK
FOR HIGHWAY PURPOSES AS SHOWN ON
MAP No. 3 PARCEL NO. 3 LIBER 6400 PAGE 329

Ray L. Sonnenberger
Surveyor
N.Y.S. Lic. No. 036193
60 Niagara Street
Buffalo, New York 14202
Phone: 716-854-0159 Fax: 716-854-1462

AREA = 61,590 ± Sq. Ft.
or 1,4137 ± Acres

This survey was prepared without the benefit of a current
survey of the land shown on this map and may be provided by an independent survey.

Having this map in title, map in violation of
the provisions of the Real Property Law
Part 2 of the New York State Real Property Law.

This map and unless EXEMPTED
with New York State License and Surveyor's Seal No. 036193

Ray L. Sonnenberger

SCALE 1" = 20'
SHEET 3900B "A"
DATE JUNE 24, 2010
NO. 10-270

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APPENDIX B
PROPERTY DESCRIPTION

PARCEL DESCRIPTION
1800 BROADWAY

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. 42, Township 11, Range 7 of the Holland Land Company's Survey, bounded and described as follows;

Beginning at a point in the northerly line of Broadway (as a street 99 feet wide), a distance of 1380.94 feet easterly of the intersection of same with the easterly line of Bailey Avenue (as a street 66 feet wide), said point of beginning being the southwesterly corner of land deeded to Robert Boasberg by deed recorded in the Erie County Clerk's Office in Liber 7796 of Deeds at page 119;

Thence northerly and along the westerly line of said lands so deeded to Robert Boasberg, said line forming an exterior angle of $89^{\circ}41'18''$ as measured in the northwesterly quadrant with the northerly line of Broadway, a distance of 250.00 feet;

Thence easterly on a line parallel with the northerly line of Broadway and forming an interior angle of $89^{\circ}41'18''$ as measured in the southeasterly quadrant with the last described line, a distance of 250.00 feet;

Thence southerly on a line parallel with the westerly line of the aforementioned lands deeded to Robert Boasberg, forming an interior angle of $90^{\circ}18'42''$ as measured in the southwesterly quadrant with the last described line, a distance of 240.49 feet to a point in the northerly line of lands acquired by the State of New York for highway purposes, designated as Map No. 3, Parcel No. 3 on a map recorded in the Erie County Clerk's Office in Liber 6400 of Deeds at page 329;

Thence southwesterly and along the northerly line of the aforesaid lands, forming an interior angle of $92^{\circ}31'18''$ as measured in the northwesterly quadrant with the last described line, a distance of 192.41 feet to a point in the aforementioned northerly line of Broadway (as a street 99 feet wide);

Thence westerly and along said northerly line of Broadway, forming an interior angle of $177^{\circ}10'00''$ with the last described line, a distance of 57.77 feet to the point or place of beginning.

Containing an area of $61,580 \pm$ Sq. Ft. or $1.4137 \pm$ Acres

APPENDIX C
SITE MANAGEMENT PLAN,
COVER PAGE AND TABLE OF CONTENTS

Buffalo Business Park
ERIE COUNTY, NEW YORK

Site Management Plan

NYSDEC Site Number: V00663-9

Prepared for:

Buffalo Business Park

1800 Broadway Street

Buffalo, New York

Prepared by:

American Consulting Professional of New York, PLLC

70 Niagara Street, Suite 410

Buffalo, NY 14202

LTP Services, Inc.

P.O. Box 117

South Wales, NY 14139

Revisions to Final Approved Site Management Plan:

Revision #	Submitted Date	Summary of Revision	DEC Approval Date

SEPTEMBER 2010

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