

County: Erie

Site No: #915056

Order No: B9-0407-92-05

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

THIS INDENTURE made this 21st day of November, 2007, between Owner **NIAGARA RIVER WORLD, INC.**, or having an office at 4000 River Road, Town of Tonawanda, New York 14150 (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 of ensuring the potential 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 4000 River Road, Town of Tonawanda, Erie County, New York being part of Lots Nos. 96 and 97 of the Niagara River Reservation, known and designated on the tax map of the County of Erie as tax map parcels bearing SBL Nos. 64.08-1-1.1 and 64.08-1-1.2, containing 62.34 acres more or less, and being the same property conveyed to Grantor by deed dated April 3, 1989 and recorded May 17, 1989 and recorded in the Office of the Clerk of the County of Erie in Liber 10023 of Deeds at page 13, and by deed, dated November 10, 1998 and recorded November 19, 1998 in the Office of the Clerk of the County of Erie in Liber 10942 of Deeds at page 2189. The referenced property is hereinafter more fully described in Schedule A attached hereto and made a part hereof (the "Controlled Property"); and;

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this 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 covenants and mutual promises contained herein and the terms and conditions of Order on Consent Number B9-0407-92-05, Site #915056 Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL 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 potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls 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. The Controlled Property may be used for restricted commercial and industrial use as long as the following long-term engineering controls are employed:

- (I) restrict the use of site groundwater as a source of potable or process water without necessary water quality treatment as determined by the Erie County Department of Health;
- (ii) any proposed soil excavation on the property requires prior notification and prior approval of NYSDEC in accordance with the Site Management Plan approved by NYSDEC for this Controlled Property. The excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives; and
- (iii) evaluate the potential for vapor intrusion for any buildings developed on the site. Provision for mitigation, such as installation of a vapor barrier and sub-slab vapor system or other engineering controls shall be implemented on all structures, prior to occupancy.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated November 2007 ("SMP"). The SMP describes obligations that 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 on the Controlled Property, 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 Department may change the SMP for the Controlled Property from time to time on the basis of requests or information submitted by Grantor, and modifications in applicable statutes regulations, guidance or site conditions. The Department reserves a unilateral right to modify the SMP. The Grantor and all successors and

County: Erie

Site No: #915056

Order No: B9-0407-92-05

assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Regional Remediation Engineer:
Region 9
NYS Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203
or:

Site Control Section
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233

B. The Controlled Property may not be used for a higher level of use such as unrestricted residential use and the above-stated engineering controls *may not* be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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 of Title 36 to Article 71 of the Environmental Conservation Law.

D. 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.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 Controlled Property, including:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, 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 intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or Article 56, Title 5 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. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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 its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. **Notice.** Whenever notice to the State (other than the annual certification) or approval from the State 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 Order Number.

County: Erie

Site No: #915056

Order No: B9-0407-92-05

Parties shall address correspondence to: Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation 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 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.

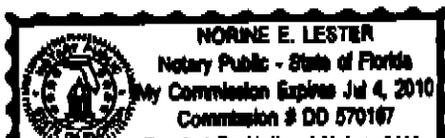
NIAGARA RIVER WORLD, INC.

By: Bonnie M. Leto
Title: Vice-President

STATE OF FLORIDA)
COUNTY OF BREVARD) ss

On the 15 day of November, in the year 2007 before me, the undersigned, personally appeared BONNIE M. LETO, personally known to me who, being duly sworn, did depose and say that he/she/they reside at 1981 HARVEY RD GRAND ISLAND NY (full mailing address) and that he/she/they is (are) the VICE PRESIDENT (President or other officer or director or attorney in fact duly appointed of the NIAGARA RIVER WORLD, INC., the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

NORINE E. LESTER
Notary Public - State of New York FLORIDA



Issued By:

TICOR TITLE INSURANCE COMPANY

Schedule A (Special)

OWNER'S POLICY OF TITLE INSURANCE
ALTA OWNER'S POLICY (6/17/06)

No: **5007-41667**

PARCEL "1"

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawanda, County of Erie and State of New York, being part of Lots Nos. 96 and 97 of the Niagara River Reservation, described as follows:

BEGINNING at the southwest corner of lands conveyed to Marathon Petroleum Company by deed filed in the Erie County Clerk's Office in Liber 9184 of Deeds at Page 346, said point being a point on the south line of lands conveyed to Wickwire Spencer Steel Corporation by deed filed in the Erie County Clerk's Office in Liber 1536 of Deeds at Page 196:

Thence northwesterly along the easterly line of lands conveyed to Marathon Petroleum Company bearing N 28° 42' 23" W, a distance of 907.38 feet to a point;

Thence continuing northwesterly along the north line of Marathon Petroleum Company, an exterior angle of 134° 06' 15" on a bearing of N 74° 36' 08" W, a distance of 379.08 feet to a point;

Thence continuing northwesterly along the north line of Marathon Petroleum Company, an exterior angle of 164° 02' 45" on a bearing of N 70° 33' 23" W, a distance of 99.01 feet to a point on the United States Harbor line, said point being northwest corner of lands conveyed to Marathon Petroleum Company;

Thence northerly along the United States Harbor line bearing N 02° 04' 54" E, a distance of 951.36 feet to the south line of "Pump House Parcel" Parcel 3 of lands conveyed to Allied Chemical Corporation by deed filed in the Erie County Clerk's Office in Liber 7271 of Deeds at page 65, said point being 271 feet south of the north line of Lot 97 as measured at right angles therefrom:

Thence easterly parallel with the north line of Lot 97, N 89° 57' 20" E, a distance of 57.54 feet to a point:

Thence northerly on a bearing of N 0° 02' 40" W a distance of 75.00 feet to a point, said point being 196.0 feet south of the north line of Lot 97 as measured at right angles therefrom:

Thence westerly parallel with the north line of Lot No. 97, S 89° 57' 20", a distance of 54.11 feet to a point on the United States Harbor line:

Thence northerly along the United States Harbor Line, N 02° 04' 54" E, a distance of 196.2 feet to an angle point on the United States Harbor Line, said point being on the north line of Lot 97.

Thence continuing northerly along the United States Harbor line on a bearing N 10° 57' 33" E, a distance of 396.21 feet to the southwest corner of lands conveyed to L. Matthew Duggan, Jr., by deed filed in the Erie County Clerk's Office in Liber 9011 of Deeds at page 277:

Thence easterly parallel with the south line of Lot 96 along the south line of lands conveyed to L. Matthew Duggan, Jr. on a bearing N 89° 57' 20" E, a distance of 524.36 feet to the northwest corner of lands conveyed to Clarence Materials Corporation by deed filed in the Erie County Clerk's Office in Liber 8882 of Deeds at page 389:

OWNER'S POLICY OF TITLE INSURANCE
ALTA OWNER'S POLICY (6/17/06)

No: **5007-41667**

Thence southerly at right angles to the south line of Lot 96, along the west line of Clarence Materials Corporation, bearing S 00° 02' 40" E, a distance of 454.91 feet to the southwest corner of lands conveyed to New York Central Railroad by deed filed in the Erie County Clerk's Office in Liber 1364 of Deeds at page 11:

Thence easterly parallel to the north line of Lot 97 along the south line of New York Central Railroad on a bearing N 89° 57' 20" E, a distance of 718.39 feet to a point on the west line of the Erie Barge Canal, said line also known as New York State Blue Line:

Thence southerly the following eight (8) courses and distances along the west line of the Erie Barge Canal, also known as New York State Blue line:

1. S 04° 55' 26" E, a distance of 475.24 feet to a point
2. S 04° 14' 06" E, a distance of 66.89 feet to a point
3. S 08° 03' 36" E, a distance of 66.94 feet to a point
4. S 09° 46' 56" E, a distance of 661.66 feet to a point
5. S 13° 37' 36" E, a distance of 67.53 feet to a point
6. S 15° 15' 36" E, a distance of 66.95 feet to a point
7. S 16° 43' 16" E, a distance of 66.84 feet to a point
8. S 17° 50' 47" E, a distance of 392.35 feet to a point on the South line of lands conveyed to Wickwire Spencer Steel Corporation.

Thence westerly along the South line of Wickwire Spencer Steel Corporation on a bearing of S 72° 11' 19" W, a distance of 851.82 feet to the point or place of beginning, containing 62.480 acres, more or less.

PARCEL "2"

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawanda, County of Erie and State of New York, being part of Lots Nos. 96 and 97 of the Niagara River Reservation, described as follows:

BEGINNING at the intersection of the west line of River Road (S.H. 129) and the south line of lands conveyed to New York Central Railroad by deed filed in the Erie County Clerk's Office in Liber 1364 of Deeds at Page 11:

Thence southerly along the west line of River Road S 04° 00' 10" E, a distance of 480.13 feet more or less to the east line of the Erie Barge Canal, also known as the New York State Blue Line:

Thence northerly along the east line of the Erie Barge Canal (also known as the New York State Blue Line) on a bearing N 06° 12' 26" W, a distance of 19.53 feet:

Thence continuing north along the east line of the Erie Barge Canal (also known as the New York State Blue Line) on a bearing N 04° 55' 53" W, a distance of 461.24 feet to a point on the south line of lands conveyed to the New York Central Railroad:

Thence easterly along the southerly line of New York Central Railroad on a bearing N 89° 57' 20" E, a distance of 8.25 feet to the point or place of beginning, containing 2.075 square feet or 0.048 acres, more or

Issued By:

TICOR TITLE INSURANCE COMPANY

Schedule A (cont'd)

OWNER'S POLICY OF TITLE INSURANCE
ALTA OWNER'S POLICY (6/17/06)

No: 5007-41667

less.

23-97-1

STATE OF NEW YORK COUNTY OF ERIE, SS.
I, KATHLEEN C. HOCHUL, Clerk of said County and also Clerk
of Supreme and County Courts of said County, do hereby
certify that I have compared the attached copy with the original

Exhibit
filed in my office and that the same do correctly transcript there-
from and of the whole of said original.

WITNESS my hand and seal of said County and Courts on

day of NOV 26 2007 20

Kathleen C. Hochul
Kathleen C. Hochul
COUNTY CLERK

