

## ENVIRONMENTAL EASEMENT

THIS INDENTURE made the 10<sup>th</sup> day of JULY, 2006, between The City of North Tonawanda, having offices at City Hall, 216 Payne Avenue, North Tonawanda, New York 14120, (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 ("brownfield 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 maintenance, monitoring or operation requirements and of ensuring the potential restriction of future uses of the land, when and 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 be effective, or which requires groundwater use 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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located in the City of North Tonawanda, Niagara County, New York known and designated on the tax map of the City of North Tonawanda as 181.12-1-14.11, being the same as that Property conveyed to Grantor by deed on December 18, 1997, and recorded in the Land Records of the Niagara County Clerk at Liber 2793 of Deeds at page 230, comprised of approximately 23.70 acres, and 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 State Assistance Contract Number C302568, 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. The Parties 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 maintenance, monitoring or operation 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, and lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for commercial/industrial purposes (excluding uses for day care, child care, and medical care, unless such a use is approved in writing by the DEC and NYSDOH) as long as the following long-term engineering controls are employed:

- (i) Soils and fill materials encountered during any construction or development activity below the crushed concrete cover layer must be handled in accordance with provisions of the Roblin Steel Site Soils Management Plan, dated February, 2006. Prior notification and prior approval of NYSDEC is required in accordance with the Site Management Plan for this Controlled Property. Excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives.
- (ii) Should subsequent construction or development activities require the decommissioning (removal) of existing groundwater monitoring wells, the wells will be decommissioned in accordance with DEC guidance. Replacement monitoring wells may be required by the DEC. A written work plan for well decommissioning and replacement (if required) must be submitted to and approved by the DEC for any proposed well decommissioning.
- (iii) A long term ground water monitoring program is required per the approved Roblin Steel Operation, Maintenance, and Monitoring Plan, which is contained in the approved Roblin Steel Site Management Plan, dated February, 2006 (also found in Appendix D of the approved June, 2003 Roblin Steel Remedial Design Site Work Plan). The City of

North Tonawanda is required to conduct the periodic sampling, analysis, and reporting for the groundwater monitoring program.

(iv) Future uses of site groundwater are prohibited unless authorized in writing by the DEC and NYSDOH.

B. The Controlled Property may not be used for a higher level of use such as 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 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.

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 in 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 the Satisfactory Completion of Project provided under ECL 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 secure such breach or suspected breach and give Grantor a reasonable amount of time from the date or 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 address its correspondence to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation  
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.

11. Costs and Liabilities. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage.

12. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority.

13. Successors. The term "Grantor", wherever used herein, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

14. Compliance with Law. This Environmental Easement shall not remove the necessity of Grantor to obtain any permit and/or approval from any governmental agency

having jurisdiction over any activity conducted or to be conducted on the Controlled Property.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

City of North Tonawanda

By: Lawrence V. Soos

Title: Mayor

Date: 7/10/2006

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

By: Alexander B. Grannis

Alexander B. Grannis, Commissioner

**Grantor's Acknowledgement**

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

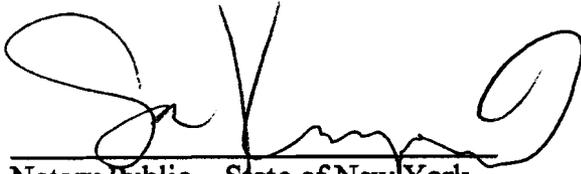
On the 10<sup>th</sup> day of <sup>JULY</sup> ~~June~~, in the year 2006, before me, the undersigned, personally appeared Lawrence V. Soos, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged 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.

Jeffrey N. Mis  
Notary Public - State of New York  
JEFFREY N. MIS  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN NIAGARA COUNTY  
MY COMMISSION EXPIRES 10/31/09.

**Grantee's Acknowledgement**

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

On the 25<sup>th</sup> day of June, in the year 2004, before me, the undersigned, personally appeared Alexander B. Greenes, 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/she executed the same in his/her capacity as 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

SONIA L. KRUPPENBACHER  
Notary Public, State of New York  
No. 02KR6054736  
Qualified in Columbia County  
Commission Expires Feb. 12, 2013

SCHEDULE A

All that tract or parcel of land, situate in the City of North Tonawanda, County of Niagara and State of New York, being part of Lots Nos. 74 and 75 of the Mile Reserve along the Niagara River, bounded and described as follows:

BEGINNING at the point of intersection of the north line of Tenth Avenue with the west line of Oliver Street, as a street 76 feet wide; running thence north along said line of Oliver Street 630 feet to the north line of Lot No. 6 in Block 25 as shown on map made for the North Tonawanda Land Company by Barrally and Snow and filed in the Niagara County Clerk's Office December 31, 1894; thence westerly along the north line of said Lot No. 6 and along a continuation westerly thereof 111 feet to the easterly line of the land conveyed by John J. Albright and Susan Fuller Albright, his wife, to Buffalo Bolt Company by deed recorded in said Clerk's Office in Liber 250 of Deeds at page 452; thence northerly along the easterly line of the land so conveyed to Buffalo Bolt Company, as aforesaid, 32.75 feet; thence westerly and parallel with East Avenue 62 feet; thence northerly on a line parallel with Oliver Street 17.25 feet; thence continuing northerly on a line parallel with said west line of Oliver Street 14 feet; thence westerly on a line parallel with the north line of Tenth Avenue 488 feet; thence northerly parallel with said west line of Oliver Street 211 feet to a point at the perpendicular distance of 30 feet southerly from the southerly bounds of lands deeded by Martin Riesterer to Granger A. Hollister and George C. Hollister by deed recorded in said Clerk's Office in Liber 192 of Deeds at page 556; thence southwesterly parallel with said southerly bounds of said lands so deeded to Hollister Brothers, as aforesaid,

to the point of intersection with an arc having a radius of 200 feet and an arc length of 55.09 feet running northeasterly from the northeast corner of lands conveyed by the City of North Tonawanda to Buffalo Bolt Company by deed recorded in said Clerk's Office in Liber 467 of Deeds at page 470, 355.5 feet record, 363.36 feet measured; thence along said arc southwesterly and southerly to a point in the southerly line of East Avenue (since abandoned), said point being the northeasterly corner of the lands so conveyed by the City of North Tonawanda to Buffalo Bolt Company; thence westerly along the northerly line of the land so conveyed by the City of North Tonawanda to Buffalo Bolt Company, as aforesaid, 3.80 feet to the northeasterly line of the land conveyed by Buffalo Bolt Company to Erie Railroad Company by deed recorded in said Clerk's Office in Liber 988 of Deeds at page 410; thence southerly making an interior angle of 127° 12' 3" with the preceding course, 27.82 feet; thence southeasterly along a curve to the left having a radius of 573.686 feet an arc distance of 140.96 feet to a point in the northeasterly right of way line of Erie Railroad Company; thence southerly along said right of way line 12.70 feet to the northeasterly corner of the land conveyed by Erie Railroad Company to Buffalo Bolt Company by deed recorded in said Clerk's Office in Liber 988 of Deeds at page 410; thence westerly along the northerly line of said land so conveyed by Erie Railroad Company to Buffalo Bolt Company, as aforesaid, 1 foot; thence southerly along the westerly line of the land so conveyed by Erie Railroad Company to Buffalo Bolt Company, as aforesaid, 1182.42 feet to its intersection with the northwesterly bounds of lands conveyed by Buffalo-Eclipse Corporation to J. C. Bevier, Inc. by deed recorded in said Clerk's Office in Liber 1255 of Deeds at page 337, being a point in said westerly line of the land so conveyed by Erie Railroad Company to Buffalo Bolt Company 222.68 feet northerly of a prolongation westerly of a line drawn parallel with and distant 3 feet southerly from the north line of Lot No. 17 in Block No. 14 as shown on a map of Ironton Addition made for George P. Smith and one by O. C. Gillett, C. E. and filed in said Clerk's Office on April 27, 1891; thence following the northwesterly, northerly and northeasterly bounds of said premises so conveyed to J. C. Bevier, Inc. the following courses and distances; (1) northeasterly along a curved line having a radius of 290.33 feet an arc distance of 311.50 feet; (2) easterly along a line which is 1 foot north of the north face of a building erected at the intersection of the south line of Ninth Avenue and the

east line of Ironton Street (as said avenue and street are shown on the aforesaid map of Ironton Addition) 250.99 feet to a point 1 foot east of the east face of the said building; (3) southerly along a line which is 1 foot east of the east face of the said building 26.55 feet; (4) easterly parallel with the south line of aforesaid Ninth Avenue 10 feet; and (5) southerly along a line which is 11 feet east of the east face of the said building, 75 feet to the northerly line of an alley shown on said map of Ironton Addition as running in an easterly and westerly direction through Block 16 shown thereon and lying equi-distant from Ninth and Eighth Avenues; thence easterly along the northerly line of said alley 451.61 feet to the southeasterly corner of Lot No. 3, Block 16, as shown on said map of Ironton Addition; thence northerly along the easterly line of said Lot No. 3, Block 16, and a continuation thereof northerly in a straight line crossing Ninth Avenue 166.04 feet to the southwesterly corner of Lot No. 51, Block 17, as shown on said map of Ironton Addition; thence easterly along the northerly line of Ninth Avenue 30 feet to the southeasterly corner of said Lot No. 51, Block 17; thence northerly along the easterly line of said Lot No. 51, Block 17, crossing an alley 16 feet wide, in a straight line to the southeasterly corner of Lot No. 2 in said Block 17, continuing along the easterly line of said Lot No. 2, Block 17, and continuing northerly in a straight line across Tenth Avenue 282 feet to the northerly line of Tenth Avenue; thence easterly along the northerly line of Tenth Avenue 139 feet more or less to the point or place of beginning.

EXCEPTING THEREFROM, ALL THAT TRACT OR PARCEL OF LAND, situate in the City of North Tonawanda, County of Niagara and State of New York, being part of Lots Nos. 74 and 75 of the Mile Reserve along the Niagara River, bounded and described as follows:

BEGINNING at a point in a line drawn parallel with the south line of East Avenue as originally laid out (50 feet wide) and 14.0 feet northerly therefrom as measured at right angles thereto, said beginning point being 411.0 feet westerly of the intersection of said parallel line with a continuation northerly of the westerly line of Oliver Street as presently laid out (76 feet wide) as measured along said parallel line; thence the following courses and distances:

1. Southeasterly and on a line drawn at right angles to East Avenue, 28.49 feet;
2. thence southwesterly, southerly and southeasterly on a line curving to the left, having a radius of 189.0 feet, the chord of same deflecting  $31^{\circ} 16' 00''$  to the right of a continuation southerly of the last described course, an arc length of 145.68 feet;
3. thence southeasterly on a line deflecting  $31^{\circ} 01' 45''$  to the left of a continuation southwesterly of the last described chord, 32.20 feet;
4. thence southeasterly on a line deflecting  $8^{\circ} 44' 15''$  to the right of a continuation southeasterly of the last described course 20.0 feet;
5. thence southeasterly on a line drawn at right angles to East Avenue and deflecting  $8^{\circ} 58' 30''$  to the left of a continuation southwesterly of the last described course, 203.60 feet;
6. thence southwesterly on a line forming an interior angle of  $89^{\circ} 56' 10''$  with the last described course, 375.70 feet;
7. thence northwesterly on a line drawn at right angles to a continuation southwesterly of said south line of East Avenue as originally laid out (50 feet wide) and forming an interior angle of  $90^{\circ} 03' 50''$  with the last described course, 139.29 feet;
8. thence northwesterly on a line deflecting  $45^{\circ}$  to the left of a continuation northwesterly of the last described course, 48.08 feet;
9. thence southwesterly on a line drawn parallel with said continuation southwesterly of said south line of East Avenue as originally laid out (50 feet wide) and deflecting  $45^{\circ}$  to the left of a continuation northwesterly of the last described course, 80.50 feet;
10. thence northwesterly on a line forming an interior angle of  $94^{\circ} 16' 55''$  with the last described course, 84.97 feet;

11. thence northwesterly on a line forming an interior angle of  $178^{\circ} 16' 25''$  with the last described course, 118.0 feet;

12. thence northeasterly on a curve to the right having a radius of 173.0 feet, concentric with the northwesterly line of lands conveyed to Roblin Industries, Inc. by deed recorded in the Niagara County Clerk's Office in Liber 1528 of Deeds, at page 567, and 27 feet southeasterly therefrom, the chord of said curve deflecting  $54^{\circ} 30'$  to the right of a continuation northwesterly of the last described course, an arc length of 47.50 feet to the intersection of said curved line with a continuation southwesterly of said line drawn parallel with the south line of East Avenue as originally laid out (50 feet wide) and 14.0 feet northerly therefrom as measured at right angles thereto;

13. thence northeasterly and along said continuation southwesterly of the aforementioned line drawn parallel with the south line of East Avenue as originally laid out (50 feet wide) and 14 feet northerly therefrom as measured at right angles thereto, 291.53 feet;

14. thence continuing northeasterly and along said line drawn parallel with the south line of East Avenue as originally laid out (50 feet wide) and 14 feet northerly therefrom as measured at right angles thereto, 250 feet to the point or place of beginning.

ALSO EXCEPTING THEREFROM, ALL THAT TRACT OR PARCEL OF LAND, situate in the City of North Tonawanda, County of Niagara and State of New York, being part of Lot No. 74 of the Mile Reserve along the Niagara River, bounded and described as follows:

BEGINNING at a point in the north line of East Avenue as originally laid out (50 feet wide) 661.0 feet westerly of the west line of Oliver Street as presently laid out (76 feet wide) as measured along said north line of East Avenue; thence the following courses and distances:

1. Northwestery parallel with the aforesaid westerly line of Oliver Street 175.0 feet to a point at the perpendicular distance of 30 feet southerly from the southerly bounds of lands

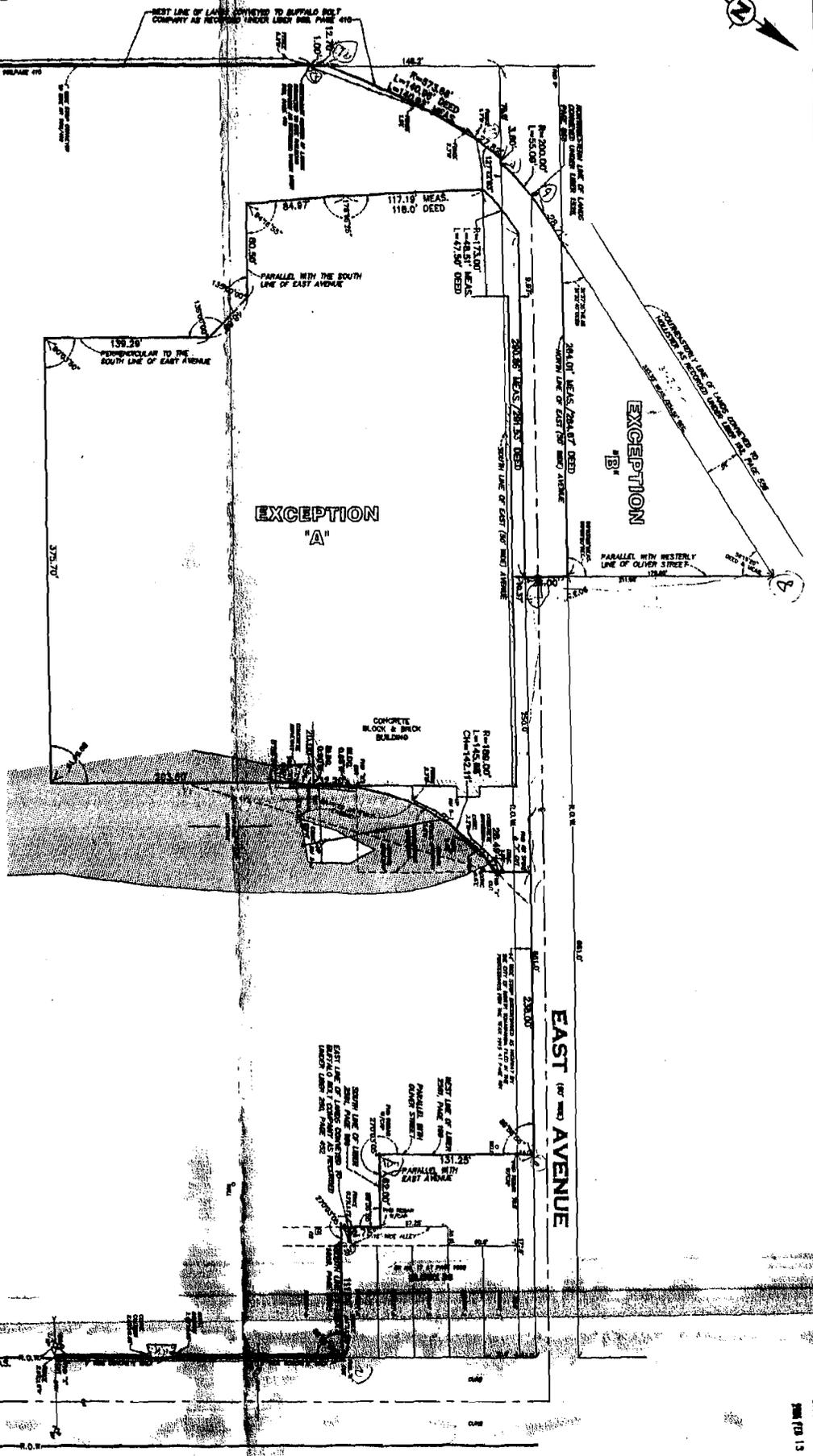
deeded by Martin Riesterer to Granger A. Hollister and George C. Hollister by deed recorded in the Niagara County Clerk's Office in Liber 192 of Deeds, at page 556;

2. thence southwesterly on a line forming an interior angle of  $58^{\circ} 19' 20''$  with the last described course, and parallel with said southerly bounds of said lands so deeded to Hollister Brothers, as aforesaid, 334.51 feet to a continuation southwesterly of said north line of East Avenue;

3. thence easterly on a line forming an interior angle of  $31^{\circ} 32' 40''$  with the last described course and along said continuation southwesterly of said north line of East Avenue, 284.67 feet to the point or place of beginning.



**ORK CENTRAL LLC**  
 (FKA CENTRAL EYE LASERVISION AMERICO COMPANY)



VACANT LOT  
24.129± ACRES

EXCEPTION  
"A"

EXCEPTION  
"B"

EAST AVENUE

OLIVER STREET

REVISIONS:  
 1. AS SHOWN

APPROVED BY: [Signature]  
 DRAWN BY: AJT  
 CHECKED BY: LPK  
 DATE: JANUARY 16, 2008

WARNING:  
 ALTERING THIS DOCUMENT IS IN VIOLATION OF THE LAW EXCEPTING AS PROVIDED IN SECTION 3005, PART 1 OF THE NEW YORK STATE EDUCATION LAW, EFFECTIVE MARCH 2005. WILL SCHUTT & ASSOCIATES P.C.

**PART OF LOT 74 & 75 OF THE MILE RESERVE**  
**CITY OF NORTH TONAWANDA**  
**COUNTY OF NIAGARA, STATE OF NEW YORK**

**101 EAST AVENUE**  
**BOUNDARY SURVEY**

**ENGINEERING**  
**LAND SURVEYING**  
**WILL SCHUTT & ASSOCIATES, P.C.**

37 CENTRAL AVE.  
 LANCASTER, NY 14090-2148  
 PH: 716-682-0181  
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 WWW.WILLSCHUTT.COM

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DRAWING SCALE: 1" = 50'

D/08278703

WSA PROJECT NO. 08278