

Box 173

ENVIRONMENTAL EASEMENT

THIS INDENTURE made this 1st day of July, 2005, between Krog USC Associates - I LLC, with offices at 4 Centre Drive, Orchard Park, New York 14127, (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 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 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 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 Buffalo, Erie County, New York, known and designated on the tax map of the City of Buffalo as tax parcel number 132.20-1-11, being the same as that property conveyed to Grantor by deed on July 14, 2004, and recorded in the Land Records of the Erie County Clerk at page 4450 Liber 11079 of Deeds, comprised of approximately 25 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 Brownfield Cleanup Agreement Number B9-0668-04-06, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to

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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 commercial/industrial use as long as the following the long-term engineering controls are employed:

(I) any soil on the Controlled Property must be covered by a barrier layer approved by NYSDEC such as concrete, asphalt or structures or must be covered with a minimum 12 inch layer of clean soil and this barrier layer must be maintained; and

(ii) any proposed soil excavation on the Controlled Property below the barrier layer requires prior notification and prior approval of NYSDEC in accordance with the Site Management Plan approved by NYSDEC for this Controlled Property and the excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations, directives, and the Site Management Plan.

(iii) use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the regulatory Agency

(iv) use of the Controlled Property for day care, child care, or medical care is prohibited without the express written waiver of the prohibition by the regulatory Agency

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 to Title 36 of 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 but not limited to:

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;

3. The right to mortgage, lease, grant easements, licenses and other interests in the Controlled Property provided that same are subject to the terms of 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 Controlled Property, any lessees, and any person using the Controlled Property. 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 Controlled 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.

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 its County tax map number or the Liber and Page or computerized system tracking/ identification number and address 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.

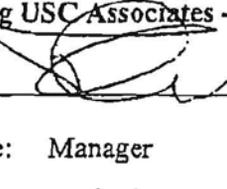
8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed 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.

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

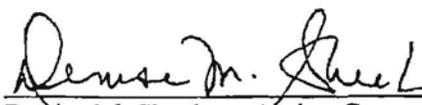
~~Krog USC Associates - I LLC~~

By:  _____

Title: Manager

Date: July 1, 2005

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:  _____
Denise M. Sheehan, Acting Commissioner

SCHEDULE A

ALL THAT PIECE OR PARCEL OF PROPERTY, situate in Lot No. 18 in the Ogden Gore Tract and in Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York bounded and described as follows:

BEGINNING at a point on the southwesterly line of land conveyed to Sherland Incorporated by Liber 10022 of Deeds at page 218, at its intersection with the westerly right of way line of Consolidated Rail Corporation and the easterly line of land conveyed to Jordan & Foster Scrap Corporation by Liber 9240 of Deeds at page 523, in Parcel IX (Parcel No. 1); thence along the said westerly right of way line of Consolidated Rail Corporation and the said easterly line of lands conveyed in Liber 9240 of Deeds at page 523 the following three courses and distances: (1) southerly forming an interior angle of $135^{\circ} 26' 18''$, a distance of 290.89 feet to an angle point; thence (2) continuing southerly forming an interior angle of $165^{\circ} 58' 34''$ as surveyed ($166^{\circ} 44' 00''$ by deed), a distance of 250.32 feet to an angle point, said point being 79.00 feet distant northwesterly from, measured at right angles to, the center line of the track of the South Buffalo Railroad; thence (3) southwesterly forming an interior angle of $115^{\circ} 15' 30''$ and parallel with the center line of the track of the South Buffalo Railway a distance of 187.74 feet to a point on the northwesterly right of way line of the South Buffalo Railway Company; thence along the said South Buffalo Railway Company's right of way the following four courses and distances: (1) continuing southwesterly, a distance of 198.00 feet to a point of curvature; (2) thence continuing southwesterly on a curve to the right, having a radius of 1,831.08 feet, an arc distance of 447.42 feet to the point of tangency; thence (3) southerly along a line radial to the last mentioned curve a distance of 35.00 feet to a point of curvature; thence (4) southwesterly and westerly on a curve to the right, having a radius of 1,866.08 feet, an arc distance of 562.41 feet to a point; thence through the property of Development Downtown Inc. by deed recorded in Liber 11026 of Deeds, at page 7626, the following six courses and distances: (1) northerly along a line radial to the last mentioned curve a distance of 691.11 feet to a point; thence (2) northwesterly forming an exterior angle of $108^{\circ} 48' 17''$ a distance of 47.60 feet to a point on the southeasterly boundary of a proposed road, said point being 2,086.51 feet distant northeasterly from existing Commerce Street, 60.0 feet wide, as measured at right angles thereto; thence (3) northeasterly and northerly along the southeasterly boundary of the said proposed road and on a curve to the left, having a radius of 230.00 feet, an arc distance of 252.47 feet to a point of tangency; thence (4) continuing northerly and along the easterly boundary of the said proposed road a distance of 12.53 feet to a point; thence (5) southeasterly forming an exterior angle of $120^{\circ} 07' 21''$ a distance of 113.54 feet to a point; thence (6) northeasterly forming an exterior angle of $134^{\circ} 13' 46''$ a distance of 693.41 feet to a point on the said southwesterly line of land conveyed in Liber 10022 of Deeds at page 218; thence southeasterly and along the said southwesterly line of lands conveyed in Liber 10022 of Deeds at page 218 a distance of 424.51 feet to the point of beginning.

