

County: Niagara Site No: C932126

Brownfield Cleanup Agreement No. B9-0714-06-04

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

THIS INDENTURE made this 18<sup>th</sup> day of December, 2007, between Owner GLR Holdings, LLC, a New York State limited liability company, having an office at 20 North Union Street, Rochester, New York (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 the address of 7503 Niagara Falls Boulevard, in the City of Niagara Falls, Niagara County, New York, known and designated on the tax map of the City of Niagara Falls as tax map parcel number 160.12-2-5 being the same as that property conveyed to Grantor by deed on January 13, 2006, and recorded in the Land Records of the Niagara County Clerk at Page 590, Liber 3345 of Deeds, comprised of approximately .89 acres, and hereinafter more fully described in Schedule A (legal description) and Schedule B (map) 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 B9-0714-06-04, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant

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

1. Site surfaces will be constructed and maintained appropriately to prevent contact with potentially contaminated soils or groundwater. Various site cover materials (stone, concrete, asphalt pavement, vegetated soil, landscaping, etc) may function as a barrier to prevent human contact with contaminated site soils or groundwater.

2. Excavations below site cover materials must be performed in accordance with applicable provisions of the Soil/Fill Management section(s) of the 7503 Niagara Falls Blvd. Site Management Plan, dated October 2007 ("SMP") (or subsequent revisions thereof). Soil and fill below the cover materials must be handled and disposed in accordance with the SMP. Soil and fill material from off-site sources which is proposed for use as backfill must meet applicable provisions of the SMP.

3. An active sub-slab depressurization (ASD) system under the building floor is one of the engineering controls to prevent potential releases of contaminated soil vapors into the building indoor air. This ASD system will be tested, and as long as the building is occupied (or as otherwise directed by the New York State Departments of Environmental Conservation and Health), will be continuously operated and maintained in accordance with the provisions of the SMP.

4. Site groundwater quality will be periodically monitored according to the provisions of the Groundwater Monitoring Program section(s) of the SMP. The groundwater monitoring well(s) will be maintained and sampled, and the data reported in accordance with the provisions of the SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved SMP dated

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*Rec'd & returned to*  
 Robert L. TAMMERTON 959  
 220 BASKET Rd.  
 WADSWORTH, NY 14580

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October 2007. 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. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. This notice shall be a final agency determination. The Grantor and all successors and 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  
NYSDEC  
270 Michigan Avenue  
Buffalo, NY 14203-2999

or

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

B. The Controlled Property may not be used for a higher level of use such as unrestricted, residential, or restricted 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

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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:

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County, NYSDEC Site Number, NYSDEC Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Environmental Easement Attorney  
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.

**Grantor's Name:** GLR Holdings LLC

By: Richard C. Foss

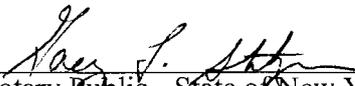
Title: MANAGING MEMBER Date: 12/17/07

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**Grantor's Acknowledgment**

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

On the 18<sup>th</sup> day of Dec., in the year 2002, before me, the undersigned, personally appeared Richard C. EIA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public - State of New York

GARY L. STUTZMAN  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires November 30, 2009

**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, Commissioner

**Grantee's Acknowledgment**

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

On the 20 day of December, in the year 2007, before me, the undersigned, personally appeared ALEXANDER B. GRANNIS, 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 Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



SCOTT OWENS  
Notary Public, State of New York  
No. 02OW6108092  
Qualified in Albany County  
Commission Expires April 12, 2008

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Notary Public - State of New York

EDMS # 287077

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SCHEDULE A

LEGAL DESCRIPTION OF PROPERTY

ALL THAT TRACT OR PARCEL OF LAND; situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 54 of the Mile Reserve, bounded and described as follows;

BEGINNING at a point in the south line of Pine Avenue (Niagara Falls Boulevard) 5.69 feet from the west line of Subdivision Map made by John H. Keller, filed September 18, 1941 in Book 36 of Maps at pages 927 and 928, now in Book 27 of Microfilmed Maps at pages 2653 and 2654;

THENCE easterly along the south line of Pine Avenue, a distance of 123.25 feet to the northwest corner of lands appropriated for the widening of Pine Avenue, (Parcel No. 74, Map No. 72), by Notice of Appropriation recorded July 13, 1966 in Liber 1453 of Deeds at page 462;

THENCE southerly at right angles and along the west line of lands so appropriated, a distance of 12 feet to the south line of lands so appropriated;

THENCE easterly at right angles and along the south line of lands so appropriated, a distance of 59.33 feet;

THENCE southerly at right angles, a distance of 41.50 feet;

THENCE easterly at right angles, a distance of 43 feet;

THENCE southerly at right angles, a distance of 121.50 feet;

THENCE westerly at right angles, a distance of 148.57 feet;

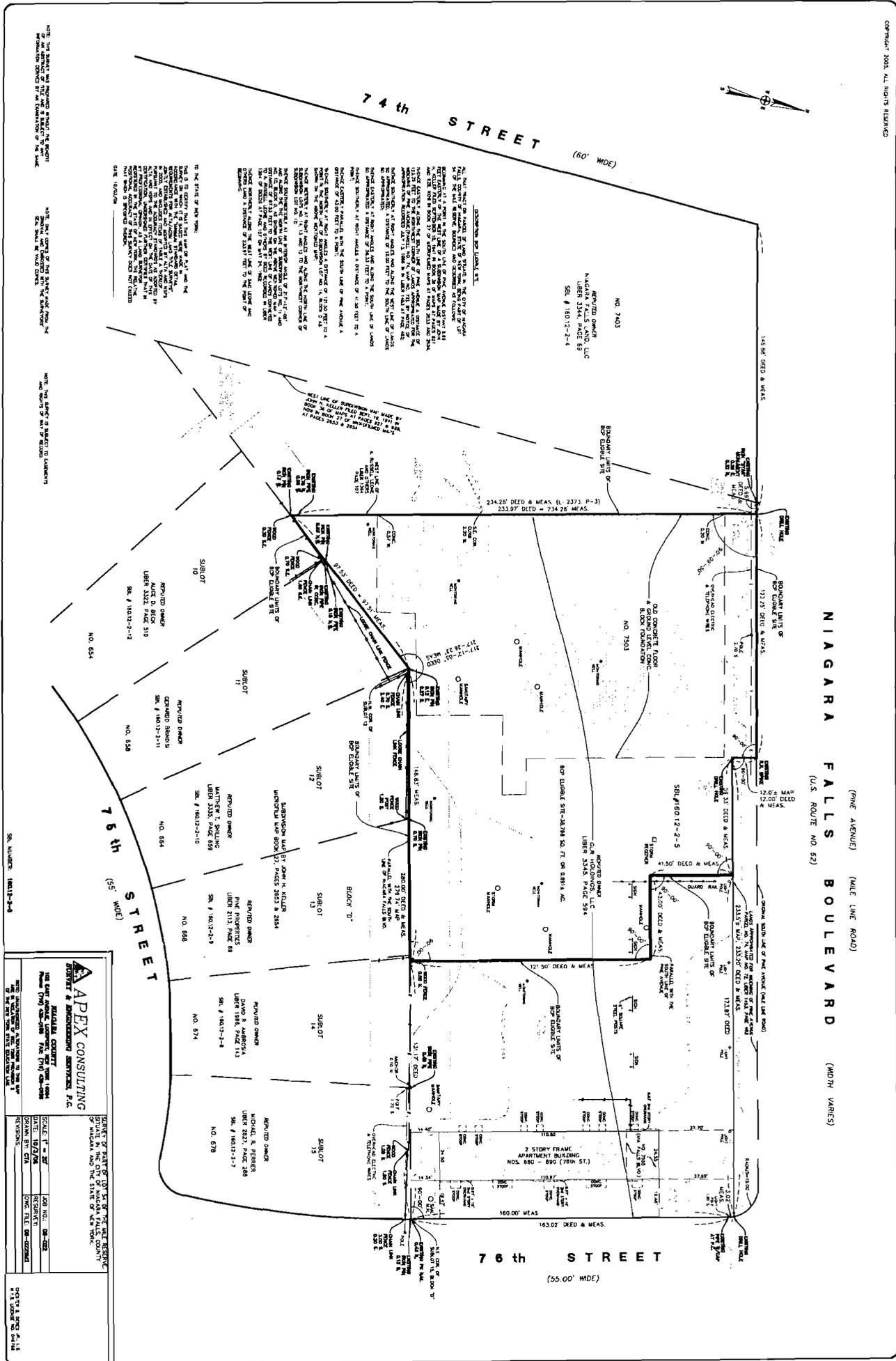
THENCE southwesterly at an interior angle of 217 degrees 12' 05" and along the north line of Lots Nos. 11 and 10, Block "D", as shown on the above mentioned map, a distance of 97.53 feet to the west line of land conveyed to A. Russell Leone and others by deed recorded in Liber 1394 of Deeds at page 107, on May 24, 1962;

THENCE northerly along the west line of said Leone and others land, a distance of 233.97 feet to the point or place of beginning.

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SCHEDULE B

MAP OF CONTROLLED PROPERTY



**APPEX CONSULTING**  
 ENGINEERS & ARCHITECTS  
 1000 WEST 10TH STREET, SUITE 100  
 NIAGARA FALLS, NY 14303  
 PHONE: (716) 282-1111 FAX: (716) 282-1112  
 WWW: WWW.APPEXCONSULTING.COM

DATE: 11/11/03  
 SCALE: 1" = 40'  
 DRAWN BY: JLD  
 CHECKED BY: JLD  
 REVISIONS:

APPEX CONSULTING  
 ENGINEERS & ARCHITECTS  
 1000 WEST 10TH STREET, SUITE 100  
 NIAGARA FALLS, NY 14303  
 PHONE: (716) 282-1111 FAX: (716) 282-1112  
 WWW: WWW.APPEXCONSULTING.COM

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