

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

THIS INDENTURE made this 22nd day of December, 2008, between Owner(s) Village of Cattaraugus, having an office at 14 Main Street, Cattaraugus, NY 14719 (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 1 North Main Street in the Village of Cattaraugus, Cattaraugus County, New York known and designated on the tax map of the County Clerk of Cattaraugus as tax map parcel number, Section 35.081 Block 1 Lot 16 located in Lot 23, Township 4, Range 8 of the Holland Land Company Survey, being the same as that property conveyed to Grantor by Deed on November 15, 1996, and recorded in the Land Records of the Cattaraugus County Clerk at Liber 960, Page 1062 of Deeds, comprised of approximately 2.78 acres, and hereinafter more fully described in Schedule "A" Property Description 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 or **State Assistance Contract Number C 302749**. 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 industrial use with the contingency remedies of commercial and restricted residential use as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to:

The Engineering Controls are as follows:

- 1) If the contingency remedy is commercial use, a one-foot thick soil cover of clean soil underlain by an indicator such as a geotextile liner or orange plastic snow fence will be placed to demarcate the cover soil from the subsurface soil for vegetated areas. The top six inches of soil would be of sufficient quality to support vegetation. Clean soil would constitute soil that meets the Division of Environmental Remediation's criteria for backfill (DER-10) or 6 NYCRR Part 375. Non-vegetated areas (buildings, roadways, parking lots, etc.) would be covered by a paving system or concrete at least 6 inches thick.
- 2) For restricted residential use, a two-foot thick cover will be required with the same details as for commercial use.
- 3) Adherence to the Soil Management Plan as provided in the Site Management Plan Section 2.1.3 and Appendix A.
- 4) Compliance with all elements of the Site Management Plan;

The Controlled property has a series of Institutional Controls in the form of Site restrictions. Adherence to these Institutional Controls is required under the Environmental Easement. Site restrictions that apply to the Controlled Property are:

- 1) Restricting the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by NYSDOH; and

- 2) The Grantor and its successors and assigns must provide a periodic certification of institutional and engineering controls, every three (3) years, prepared and submitted by a professional engineer or such other expert acceptable to the Department, until the Department notifies the property owner in writing that this certification is no longer needed. This submittal would: (a) contain certification that the institutional controls and engineering controls put in place are still in place and are either unchanged from the previous certification or are compliant with Department-approved modifications; (b) allow the Department access to the site; and (c) state that nothing has occurred that would impair the ability of the control to protect public health or the environment, or constitute a violation or failure to comply with the site management plan unless otherwise approved by the Department.

B. Grantor shall provide all persons who acquire any interest in the Controlled-Property a true and complete copy of the Site Management Plan that the Department has approved for the Controlled-Property and all Department-Approved amendments to that Site Management Plan.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated October 2008 (SMP). The SMP describes obligations that the 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. The 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: or
Region 9
NYS DEC
270 Michigan Avenue
Buffalo, NY 14203-2999

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

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

D. 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.

E. 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.

F. 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 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: Site # E905029 Contract # C302749
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

County: CATTARAUGUS Site No: E 905029 Contract/Order No: C 302749

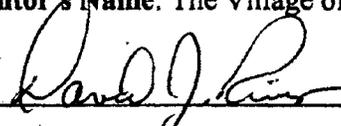
the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

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: The Village of Cattaraugus

By:  _____

Title: Mayor Date: 12/4/08

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

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF Cattaraugus

On the 4 day of Dec. in the year 2008, before me, the undersigned, personally appeared David J. Rivet, personally known to me who, being duly sworn, did depose and say that he/she/they reside at 20 N. Franklin St. (full mailing address) and that he/she/they is (are) the Mayor (President or other officer or director or attorney in fact duly appointed of the Village of Cattaraugus (full legal name of corporation) 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.

Jodie E. Miller
Notary Public - State of New York

JODIE MILLER
Notary Public, State of New York
No. 01149948430
Qualified in Cattaraugus County
Commission Expires May 11, 2010

Grantee's Acknowledgment

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

On the 22nd day of Dec. in the year 2008, before me, the undersigned, personally appeared Alexander B. Brant, 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/ 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.

Cindy Lou M. Frinks-Dixon
Notary Public - State of New York

CINDYLOU M. FRINKS-DIXON
Notary Public, State of New York
No. 4608855
Qualified in Albany County
Commission Expires August 24, 2009

SCHEDULE "A" PROPERTY DESCRIPTION

**DESCRIPTION OF
ENVIRONMENTAL EASEMENT AREA
FOR BUSH SITE NUMBER E905029
VILLAGE OF CATTARAUGUS**

APR 10 2008
NYSDEC REG 9
FOIL
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ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of New Albion, Village of Cattaraugus, and State of New York, distinguished as being part of Lot No. 23, Township 4, Range 8 of the Holland Land Company's Survey and being more particularly described as follows:

Beginning at the southeasterly corner of lands owned by the Village of Cattaraugus and described in Liber 960 at Page 1062, said point of beginning also described as being the intersection of the easterly right of way of Main Street (State Rte. 353) and the northerly right of way of a parcel of land owned by the County of Cattaraugus Industrial Development Agency as described in Liber 890 of Deeds, at Page 201;

Thence northerly, along the easterly right of way of Main Street, a distance of 264.00 feet to the southwest corner of lands appropriated by the State of New York and filed under Map 11 Parcel 12, and located in the Cattaraugus County Clerk's Office at Liber 488 of Deeds at Page 175,

Thence easterly, at a right angle to the aforementioned easterly right of way of Main Street, a distance of 6.00 feet to the southeast corner of said appropriation;

Thence northerly, along the easterly line of said appropriation, a distance of 71.00 feet to the northeast corner of said appropriation, and the northwesterly corner of said Village of Cattaraugus parcel, said corner also being on the property division line between said Village of Cattaraugus parcel on the south, and a parcel reputedly owned by the Bank of Cattaraugus, under Liber 1025 of Deeds at Page 1040, on the north;

Thence easterly, along the northerly property line of said Village of Cattaraugus parcel a distance of 148.67 feet to a point, said point also described as the southeasterly corner of said parcel of land owned by the Bank of Cattaraugus and described in Liber 1025 at Page 1040;

Thence northerly, along the westerly boundary line of said Village of Cattaraugus parcel a distance of approximately 27 feet to a point where the top slope intersects with said westerly property line;

Thence East-Southeasterly, through the lands of said Village of Cattaraugus parcel, along the said top of slope, a distance of approximately 475 feet to the westerly property line of lands owned by said County of Cattaraugus Industrial Development Agency, and the easterly property line of said Village of Cattaraugus parcel;

Thence southerly, along the aforesaid property division line, an approximate distance of 15 feet to a point;

Thence westerly, along the southerly property line of said Village of Cattaraugus parcel, and the northerly property line of said County of Cattaraugus Industrial Development Agency, a distance of 129.00 feet to a point;

Thence southerly, at a right angle to the aforementioned property line, and along said property division line, a distance of 15.49 feet to a point;

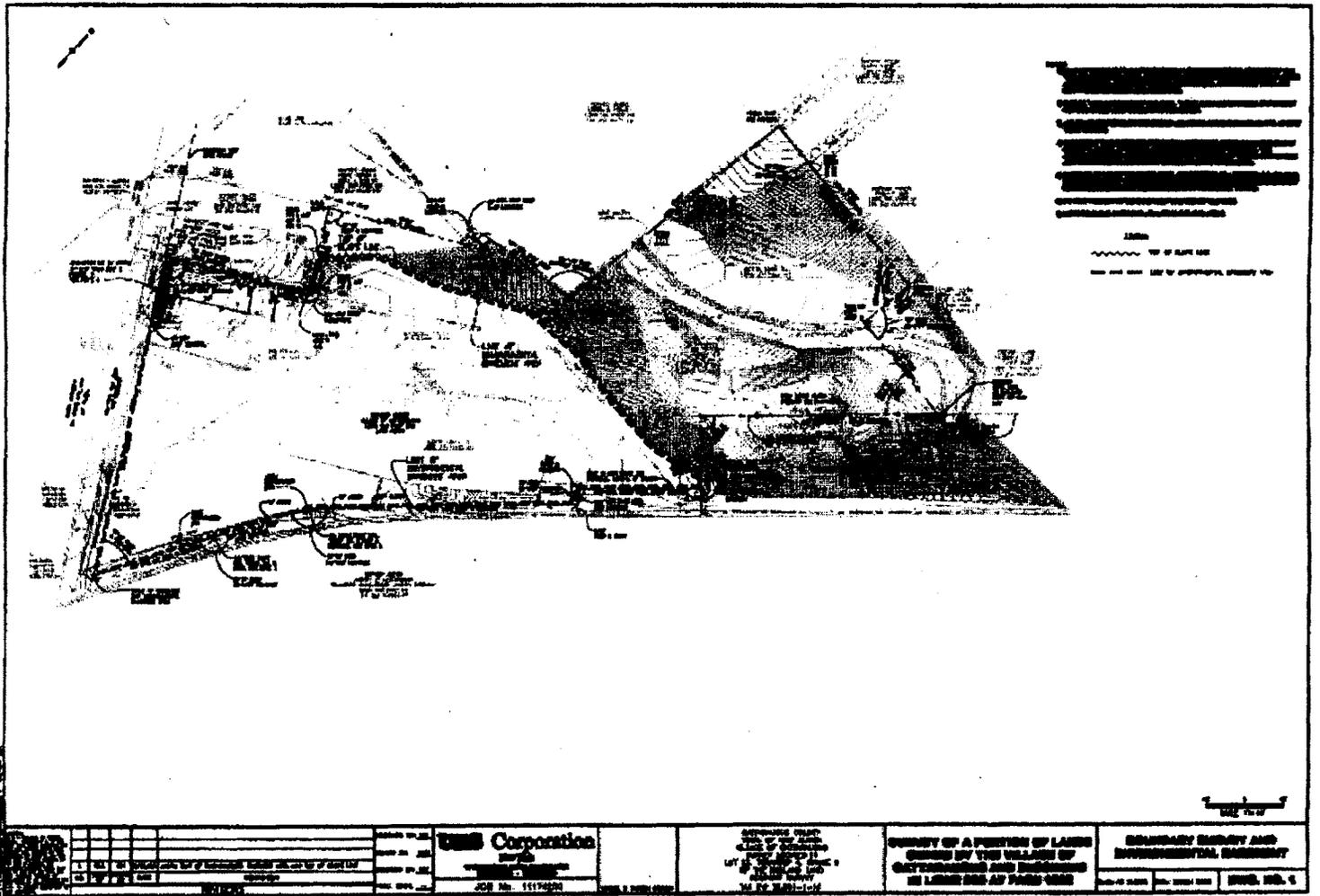
Thence westerly, along said property division line, at an interior angle of 90°-28'-16" with the aforementioned property line, a distance of 278.11 feet to an angle point thereon;

Thence southwesterly, along said property division line, a distance of 105.19 feet to an angle point thereon;

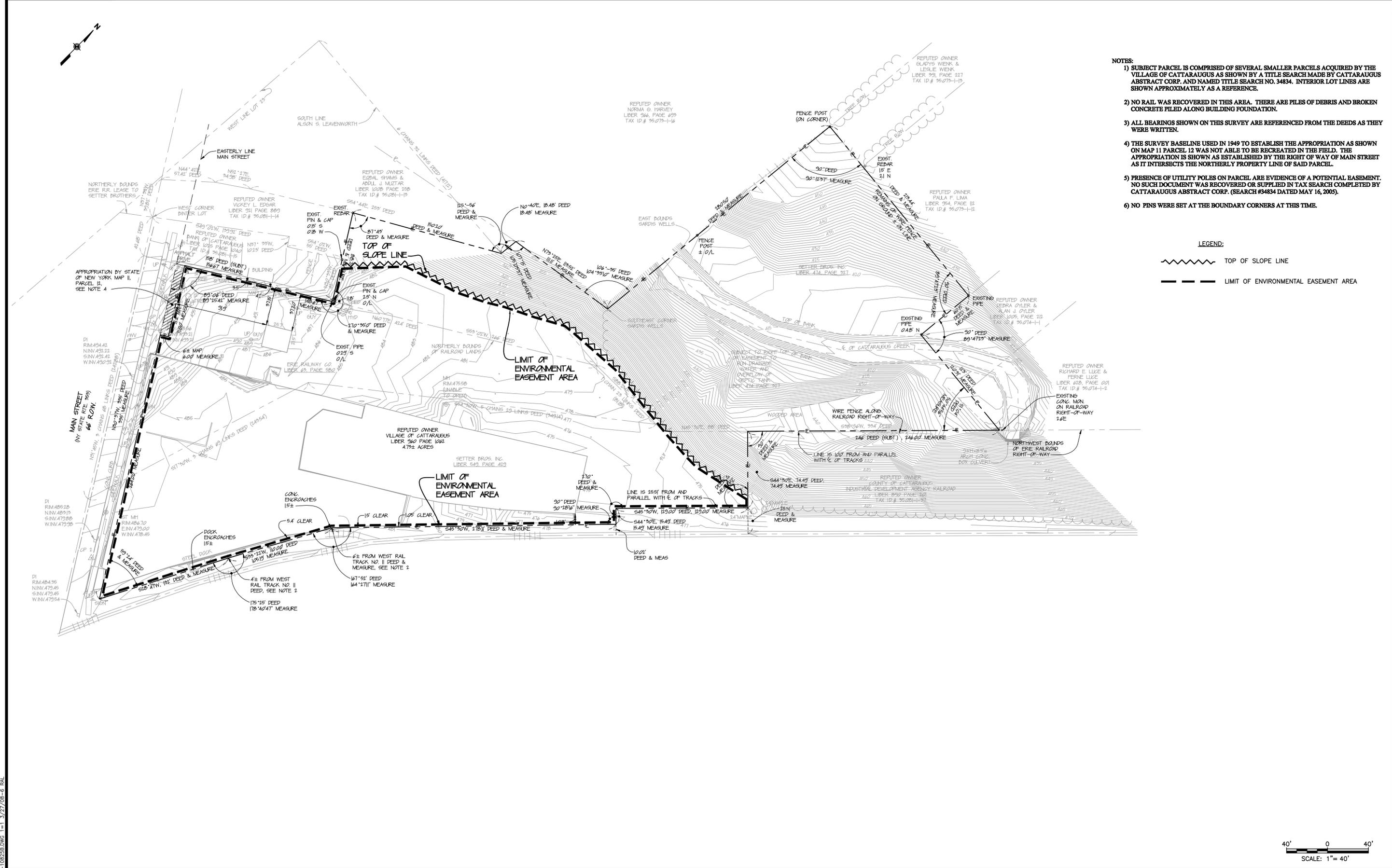
Thence continuing southwesterly, along said property division line, a distance of 132.00 feet to the point or place of beginning, said easement area to contain ± 2.78 acres of land.

Easement description is based upon a field survey completed by URS Corporation in August 2005 (Job # 11174250), and revised in March 2008 to show the location of the Easement Area.

SURVEY



EDMS # 296872



- NOTES:
- 1) SUBJECT PARCEL IS COMPRISED OF SEVERAL SMALLER PARCELS ACQUIRED BY THE VILLAGE OF CATTARAUGUS AS SHOWN BY A TITLE SEARCH MADE BY CATTARAUGUS ABSTRACT CORP. AND NAMED TITLE SEARCH NO. 34834. INTERIOR LOT LINES ARE SHOWN APPROXIMATELY AS A REFERENCE.
 - 2) NO RAIL WAS RECOVERED IN THIS AREA. THERE ARE PILES OF DEBRIS AND BROKEN CONCRETE PILED ALONG BUILDING FOUNDATION.
 - 3) ALL BEARINGS SHOWN ON THIS SURVEY ARE REFERENCED FROM THE DEEDS AS THEY WERE WRITTEN.
 - 4) THE SURVEY BASELINE USED IN 1949 TO ESTABLISH THE APPROPRIATION AS SHOWN ON MAP 11 PARCEL 12 WAS NOT ABLE TO BE RECREATED IN THE FIELD. THE APPROPRIATION IS SHOWN AS ESTABLISHED BY THE RIGHT OF WAY OF MAIN STREET AS IT INTERSECTS THE NORTHERLY PROPERTY LINE OF SAID PARCEL.
 - 5) PRESENCE OF UTILITY POLES ON PARCEL ARE EVIDENCE OF A POTENTIAL EASEMENT. NO SUCH DOCUMENT WAS RECOVERED OR SUPPLIED IN TAX SEARCH COMPLETED BY CATTARAUGUS ABSTRACT CORP. (SEARCH #34834 DATED MAY 16, 2005).
 - 6) NO PINS WERE SET AT THE BOUNDARY CORNERS AT THIS TIME.

LEGEND:

~~~~~ TOP OF SLOPE LINE

--- LIMIT OF ENVIRONMENTAL EASEMENT AREA

WARNING: IT IS A VIOLATION OF SECTION 7209, SUBDIVISION 2, OF THE NEW YORK STATE EDUCATION LAW FOR ANY PERSON OTHER THAN WHOSE SEAL APPEARS ON THIS DRAWING TO ALTER IN ANY WAY AN ITEM ON THIS DRAWING. IF AN ITEM IS ALTERED, THE ALTERING ENGINEER SHALL AFFIX TO THE ITEM HIS SEAL AND THE NOTATION "ALTERED BY" FOLLOWED BY HIS SIGNATURE AND THE DATE OF SUCH ALTERATION, AND A SPECIFIC DESCRIPTION OF THE ALTERATION.

| NO. | MADE BY | APPROVED BY | DATE    | DESCRIPTION                                                      |
|-----|---------|-------------|---------|------------------------------------------------------------------|
| 1   | RAL     | RH          | 3/26/08 | ADDED LIMIT OF ENVIRONMENTAL EASEMENT AREA AND TOP OF SLOPE LINE |

REVISIONS

DESIGNED BY: MR. **URS Corporation**  
 DRAWN BY: ELB  
 CHECKED BY: MR.  
 PROJ. ENGR. —

**URS Corporation**  
 New York  
 77 Goodell Street, Buffalo, New York 14203  
 (716)856-5636 - (716)856-2545

JOB No. 11174250

CATTARAUGUS COUNTY  
 TOWN OF NEW ALBION  
 VILLAGE OF CATTARAUGUS  
 SURVEY LOCATED IN  
 LOT 23, TOWNSHIP 4, RANGE 8  
 OF THE HOLLAND LAND  
 COMPANY SURVEY  
 TAX ID# 35.081-1-16

MICHAEL D. ROZESKI #050523

**SURVEY OF A PORTION OF LANDS OWNED BY THE VILLAGE OF CATTARAUGUS AND DESCRIBED IN LIBER 960 AT PAGE 1062**

**BOUNDARY SURVEY AND ENVIRONMENTAL EASEMENT**

Scale: AS SHOWN Date: MARCH 2008 **DWG. NO. 1**