

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

**THIS INDENTURE** made this 14<sup>th</sup> day of August, 2012, between Owner(s) THE CITY OF TONAWANDA, having an office at 200 Niagara Street, Tonawanda, New York 14150, County of Erie, State of 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 the 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 Hinds Street , 310 Wheeler Street and 332 Wheeler Street in the City of Tonawanda, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section: 52.08 Block: 5 Lot 1 [Hinds Street]; Section: 52.08 Block: 5 Lot(s) 2, 3.1, 3.2 [310 Wheeler Street] and Section 52.08 Block: 5 Lot: 4 [332 Wheeler Street], being the same as that property conveyed to Grantor by Treasurer's deed dated October 6, 2009 recorded on October 7, 2009 in the Erie County Clerk's Office in Liber 11170 of deeds at page 8163 and Treasurer's deed dated February 18, 2011 recorded on February 23, 2011 in the Erie County Clerk's Office in Liber 11199 of Deeds at page 681. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 31.294 +/- acres, and is hereinafter more fully described in the Land Title Survey dated December 28, 2010 revised on January 30, 2012 and Survey dated June 23, 2011 revised on March 15, 2012 prepared by Wm. Schutt Associates , which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the 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 mutual covenants contained herein and the terms and conditions of State Assistance Contract Number: C 303379, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements 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. (1) The Controlled Property may be used for:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),  
Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial  
as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. 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, 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 SMP may be modified in accordance with the Department's statutory and regulatory authority. 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:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL 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.**

F. 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.

G. 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, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:  
(i) are in-place;  
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

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 Property, including:

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

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, 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

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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 violates this Environmental Easement, the Grantee may revoke the Certificate of Completion 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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee 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 Brownfield Cleanup Agreement, State Assistance 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 Number: E915050/915050  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to: Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the [6/11]

Commissioner's Designee, 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, or the Commissioner's Designee, 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: THE CITY OF TONAWANDA

By: Ronald J. Pilozzi

Print Name: RONALD J. PILOZZI

Title: MAYOR Date: May 11th, 2012

Grantor's Acknowledgment

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

On the 11th day of May, in the year 2012, before me, the undersigned, personally appeared RONALD J. PILOZZI, 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.

Ronald C. Trabucco  
Notary Public - State of New York

RONALD C. TRABUCCO, Esq.  
Notary Public State of New York  
Qualified in Erie County  
My Commission Expires Sept. 30, 2013

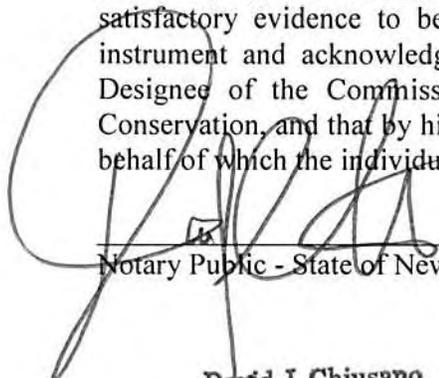
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.**

By:  \_\_\_\_\_  
Robert W. Schick, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 14<sup>th</sup> day of August, in the year 2012, before me, the undersigned, personally appeared Robert W. Schick, 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 Designee of the 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.

  
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Notary Public - State of New York

**David J. Chiusano**  
Notary Public, State of New York  
No. 01CH5032146  
Qualified in Schenectady County  
Commission Expires August 22, 2014

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**SCHEDULE "A"**  
**PROPERTY DESCRIPTION**

ENVIRONMENTAL EASEMENT DESCRIPTION  
SITE NOS. E915050/915050

BEGINNING AT A POINT IN THE WESTERLY LINE OF WHEELER STREET, DISTANT 38 FEET NORTH OF ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF LOT 87 OF THE MILE RESERVATION LINE, ALSO BEING THE NORTHEAST CORNER OF LANDS CONVEYED TO THE CITY OF TONAWANDA AS RECORDED UNDER LIBER 6182 OF DEEDS AT PAGE 240,; THENCE NORTHERLY ALONG THE WESTERLY LINE OF WHEELER STREET A DISTANCE OF 1493.38 FEET TO THE NORTHERLY LINE OF SUB LOT 66, IN BLOCK 6, MAP COVER 42; THENCE SOUTHWESTERLY ALONG THE NORTHERLY LINE OF SUB LOT(S) 66 AND 65, IN BLOCK 6, MAP COVER 42 A DISTANCE OF 599.00 FEET TO A POINT IN THE EASTERLY LINE OF GIBSON STREET (66' WIDE); THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF GIBSON STREET A DISTANCE OF 120.00 FEET, TO ITS INTERSECTION WITH THE SOUTHERLY LINE OF DODGE AVENUE (FORMERLY SEVENTH AVE.) ( 66' WIDE); THENCE SOUTHWESTERLY ALONG THE SOUTHERLY LINE OF DODGE AVENUE A DISTANCE OF 331.40 FEET TO ITS INTERSECTION WITH THE EASTERLY LINE OF A 50' WIDE EASEMENT TO NIAGARA MOHAWK POWER CORPORATION, RECORDED UNDER LIBER 6166 OF DEEDS AT PAGE 480; THENCE SOUTHEASTERLY ALONG THE EAST LINE OF SAID 50' WIDE EASEMENT A DISTANCE OF 1344.24 FEET TO A POINT ON THE THE SOUTHEASTERLY LINE OF LOT 88 OF THE MILE RESERVATION, ALSO BEING A POINT IN THE NORTHERLY LINE OF HACKETT DRIVE (65' WIDE); THENCE EASTERLY ALONG THE SOUTHEASTERLY LINE OF LOT 88 AND LOT 87 OF THE MILE RESERVATION AND THE NORTHERLY LINE OF HACKETT DRIVE A DISTANCE OF 878.14 FEET TO THE SOUTHWEST CORNER OF SAID LANDS CONVEYED TO THE CITY OF TONAWANDA AS RECORDED IN THE ERIE COUNTY CLERK'S OFFICE UNDER LIBER 6182 OF DEEDS AT PAGE 240; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID LANDS CONVEYED TO THE CITY OF TONAWANDA UNDER LIBER 6182 OF DEEDS AT PAGE 240 A DISTANCE OF 75.63 FEET TO THE POINT OF BEGINNING, CONTAINING 31.294 ACRES MORE OR LESS.

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**RESIDENTIAL PARCEL "A" DESCRIPTION**

BEGINNING AT A POINT IN THE EASTERLY LINE OF WHEELER STREET AT THE NORTHWESTERLY CORNER OF SUB LOT 137, IN BLOCK 5 OF MAP COVER 42, DISTANT 132.00 FEET SOUTHERLY FROM THE SOUTHERLY LINE OF JAMES STREET (66' WIDE); THENCE SOUTHERLY ALONG THE EASTERLY LINE OF WHEELER STREET A DISTANCE OF 868.44 FEET TO THE NORTHWESTERLY LINE OF LANDS FORMERLY CONVEYED TO THE BUFFALO AND NIAGARA FALLS RAILROAD ( NOW CONRAIL) (100' WIDE) ALSO BEING A POINT IN THE SOUTHEASTERLY LINE OF LANDS CONVEYED TO SPAULDING FIBRE CO., AS RECORDED UNDER LIBER 4917 OF DEEDS AT PAGE 421. AND THE SOUTHERLY CORNER OF SUB LOT 115, IN BLOCK 5, OF MAP COVER 42; THENCE NORTHERLY ALONG THE NORTHWESTERLY LINE OF SAID LANDS CONVEYED TO CONRAIL A DISTANCE OF 430.61 FEET TO A POINT IN THE EASTERLY LINE OF SUB LOT 121, IN BLOCK 5, MAP COVER 42; THENCE NORTHWESTERLY ALONG THE EASTERLY LINE OF SUB LOTS 121 THRU 137 IN BLOCK 5, MAP COVER 42 A DISTANCE OF 556.54 FEET TO THE NORTHEASTERLY CORNER OF SUB LOT 137, IN BLOCK 5, MAP COVER 42; THENCE SOUTHWESTERLY ALONG THE NORTHERLY LINE OF SAID SUB LOT 137 A DISTANCE OF 297.25 FEET TO THE POINT OF BEGINNING, CONTAINING 4.862 ACRES MORE OR LESS.

**RESIDENTIAL PARCEL "B" DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF TONAWANDA, COUNTY OF ERIE, AND STATE OF NEW YORK, BEING PART OF LOT 88, OF THE NEW YORK STATE MILE RESERVATION, BEING SUB LOTS 211 THRU 315, SUB LOTS 316 THRU 328, SUB LOTS 344 THRU 338 AND A PORTION OF SUB LOTS 329, 330, 333 THRU 337, OF MAP COVER 596 A PORTION OF EIGHT, NINTH TENTH AND ELEVENTH AVENUE (ALL UNDEVELOPED) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE INTERSECTION OF THE SOUTHERLY LINE OF DODGE AVENUE (FORMERLY SEVENTH AVENUE) WITH THE EASTERLY LINE OF HINDS STREET; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF HINDS STREET A DISTANCE OF 1141.20 FEET TO A POINT AT THE NORTHWEST CORNER OF LANDS CONVEYED TO THE CITY OF TONAWANDA AS RECORDED UNDER LIBER 6355 OF DEEDS AT PAGE 516; THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID LANDS CONVEYED TO THE CITY OF TONAWANDA AND THRU SUB LOTS 329, 330, 333 THRU 337 AT AN INTERIOR ANGLE OF 124°03'26" A DISTANCE OF 347.70 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF LOT 88, ALSO BEING A POINT IN THE NORTHERLY LINE OF HACKETT DRIVE; THENCE EASTERLY ALONG THE SOUTHEASTERLY LINE OF LOT 88 AND THE NORTHERLY LINE OF HACKETT DRIVE A DISTANCE OF 48.77 FEET TO A POINT IN THE EASTERLY LINE OF A 50 FOOT WIDE EASEMENT GRANTED TO NIAGARA MOHAWK POWER CORPORATION AS RECORDED UNDER LIBER 6166 OF DEEDS AT PAGE 480; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID EASEMENT GRANTED TO NIAGARA MOHAWK POWER CORPORATION A DISTANCE OF 1344.24 FEET TO A POINT IN THE SOUTHERLY LINE OF DODGE AVENUE; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF DODGE AVENUE A DISTANCE OF 336.79 FEET TO THE POINT OF BEGINNING, CONTAINING 9.706 ACRES MORE OR LESS.

**PARCEL 1 (OU 1, 2 & 3) STATESUPERFUND SITE NO. 915050**

COMMENCING at a point in the westerly line of Wheeler Avenue, distant 162.76 feet north of its intersection with the southeasterly line of Lot 87 of the Mile Reservation Line; Thence westerly along a line perpendicular to the aforementioned line a distance of 130.85 feet to the Point of Beginning; Thence southwesterly turning an angle to the right from the aforementioned line of  $170^{\circ}48'04''$  a distance of 125.3 feet more or less; Thence southwesterly along a line at an interior angle of  $207^{\circ}08'28''$  a distance of 64.3 feet more or less; Thence westerly along a line at an interior angle of  $138^{\circ}36'49''$  a distance of 86.1 feet more or less; Thence westerly along a line at an interior angle of  $189^{\circ}49'00''$  a distance of 127.6 feet more or less; Thence southwesterly along a line at an interior angle of  $187^{\circ}55'44''$  a distance of 92.4 feet more or less to a point in the easterly line of Gibson Street (undeveloped) as shown on said Map Cover 42, and discontinued by Common Council Resolution on March 5, 1956; Thence northerly along the easterly line of Gibson Street at an interior angle of  $76^{\circ}53'30''$  a distance of 142.5 feet more or less; Thence northeasterly along a line at an interior angle of  $92^{\circ}45'47''$  a distance of 189.7 feet more or less; Thence northeasterly along a line at an interior angle of  $185^{\circ}08'18''$  a distance of 303.8 feet more or less; Thence southwesterly along a line at an interior angle of  $75^{\circ}32'46''$  a distance of 109.2 feet more or less to the point of beginning, containing 59,722 square feet more or less.

**PARCEL 2 (OU 1, & 4) STATESUPERFUND SITE NO. 915050**

COMMENCING at a point in the easterly line of Hinds Street, distant 151.20 feet north of its intersection with the northwest corner of lands conveyed to the City of Tonawanda by deed recorded in the Erie County Clerk's Office under Liber 6355 of deeds at page 516, also being the southerly line of Tenth Avenue (undeveloped), as shown on said Map Cover 596; Thence easterly along the southerly line of Tenth Avenue a distance of 332.16 feet to the Point of Beginning, said point being the intersection of the northerly line of Tenth Avenue with the easterly line of a 50 foot wide easement granted to Niagara Mohawk Power Corporation as recorded in the Erie County Clerk's Office under Liber 6166 of deeds at page 486; Thence northerly along the easterly line of said easement granted to the Niagara Mohawk Power Corporation a

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distance of 163.7 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 83.3 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 163.7 feet to a point in the northerly line of Tenth Avenue; Thence westerly along a line perpendicular to the aforementioned line being the northerly line of Tenth Avenue a distance of 83.3 feet more or less to the Point of Beginning, containing 13,636 square feet more or less.

**PARCEL 3 (OU 4) STATESUPERFUND SITE NO. 915050**

COMMENCING at a point in the easterly line of Hinds Street, distant 151.20 feet north of its intersection with the northwest corner of lands conveyed to the City of Tonawanda by deed recorded in the Erie County Clerk's Office under Liber 6355 of deeds at page 516 also being the southerly line of Tenth Avenue (undeveloped), as shown on said Map Cover 596; Thence easterly along the southerly line of Tenth Avenue a distance of 578.77 feet to the Point of Beginning, said point being the intersection of the southerly line of Tenth Avenue with the easterly line of an existing blacktop driveway; Thence northerly along the easterly line of said blacktop driveway being a curved line to the left having a radius of 149.7 feet more or less said curve's chord having an angle to the right from the aforementioned line of  $64^{\circ}54'01''$ , a distance along the curve of 120.8 feet more or less to a point of reverse curvature; Thence northerly continuing along the easterly line of said blacktop driveway having a radius of 137.8 feet more or less, said curve's chord having an angle to the right from the previous curve's chord of  $166^{\circ}00'00''$  a distance along the curve of 72.9 feet more or less; Thence easterly along a line at an interior angle of  $50^{\circ}53'05''$  with the previous chord a distance of 28.8 feet more or less;; Thence northerly along a line perpendicular to the aforementioned line a distance of 1.8 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 29.9 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 22.0 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 29.0 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 22.0 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 88.6 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of

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4.5 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 13.5 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 107.75 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 22.5 feet more or less; Thence southerly along a line at an interior angle of  $91^{\circ}19'24''$  a distance of 49.1 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 118.1 feet more or less to the point of beginning, containing 21,953 square feet more or less.

**PARCEL 4 (OU 4) STATESUPERFUND SITE NO. 915050**

COMMENCING at a point in the easterly line of Hinds Street, being distant 281.73 feet south of its intersection with the southerly line of Dodge Avenue; Thence easterly along a line perpendicular to the aforementioned line a distance of 320.78 feet to the Point of Beginning; Thence easterly at an angle to the right of  $179^{\circ}04'53''$  with the aforementioned line a distance of 27.0 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 24.05 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 103.7 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 16.7 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 19.2 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 17.4 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 21.1 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 41.5 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 8.0 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 52.2 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 40.4 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 40.45 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 64.6 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 305.8 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 101.0 feet more or less;

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Thence northerly along a line perpendicular to the aforementioned line a distance of 203.0 feet more or less;  
Thence westerly along a line perpendicular to the aforementioned line a distance of 183.0 feet more or less;  
Thence northerly along a line perpendicular to the aforementioned line a distance of 164.0 feet more or less  
to the Point of Beginning, containing 64,975 square feet more or less.

**PARCEL 5 (OU 4) STATESUPERFUND SITE NO. 915050**

BEGINNING at the intersection of the southerly line of Dodge Avenue with the easterly line of Gibson Street; Thence northerly along the easterly line of Gibson Street a distance of 120.0 feet to the northerly line of lands now or formerly conveyed to Spaulding Fibre Co., as recorded in the Erie County Clerk's Office under Liber 5860 of deeds at page 635; Thence easterly along the northerly line of said lands conveyed to Spaulding Fibre Co., at an interior angle of 90°31'16" a distance of 226.7 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 150.9 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 53.7 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 18.0 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 171.8 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 417.6 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 18.2 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 264.1 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 190.1 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 77.0 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 103.3 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 33.0 feet more or less. Thence easterly along a line perpendicular to the aforementioned line a distance of 85.5 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 74.0 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 35.5 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 37.0 feet more or less; Thence westerly

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along a line perpendicular to the aforementioned line a distance of 77.0 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 81.8 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 58.9 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 24.5 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 64.0 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 10.8 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 16.9 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 17.7 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 20.0 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 40.3 feet more or less to a point in the southerly line of Dodge Avenue; Thence easterly along the southerly line of Dodge Avenue a distance of 45.1 feet more or less to the point of beginning, containing 99,632 square feet more or less.

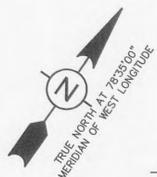
**PARCEL 6 (OU 4) STATESUPERFUND SITE NO. 915050**

COMMENCING at a point in the westerly line of Wheeler Street distant 551.38 feet southerly from its intersection with the northerly line of lands now or formerly conveyed to Spaulding Fibre Co., as recorded in the Erie County Clerk's Office under Liber 5860 of deeds at page 635; Thence westerly along a line perpendicular to the aforementioned line a distance of 308.16 feet to the Point of Beginning; Thence southerly along a line perpendicular to the aforementioned line a distance of 88.1 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 38.1 feet more or less; Thence southerly along a line perpendicular to the aforementioned line a distance of 36.0 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 10.4 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 84.0 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 15.0 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 40.1 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 63.5 feet more or less to the point

of beginning, containing 5,249 square feet more or less.

**PARCEL 7 (OU 4) STATESUPERFUND SITE NO. 915050**

COMMENCING at the intersection of the southerly line of Dodge Avenue with the easterly line of Gibson Street; Thence westerly along the northerly line of Dodge Avenue also being the northerly line of lands now or formerly conveyed to Spaulding Fibre Co., as recorded in the Erie County Clerk's Office under Liber 5860 of deeds at page 635; a distance of 206.39 feet; Thence southerly from the northerly line of said lands conveyed to Spaulding Fibre Co., at an interior angle of 90° a distance of 40.26 feet to the Point of Beginning; Thence continuing southerly along the aforementioned line a distance of 222.65 feet more or less; Thence westerly along a line perpendicular to the aforementioned line a distance of 132.4 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 41.4 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 18.0 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 51.05 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 59.7 feet more or less; Thence northerly along a line perpendicular to the aforementioned line a distance of 130.15 feet more or less; Thence easterly along a line perpendicular to the aforementioned line a distance of 54.7 feet more or less to the point of beginning, containing 18,442 square feet more or less.



LEGEND

- ANTENNA/DISH
- BENCHMARK
- BOLLARD
- CATCH BASIN
- CLEANOUT
- COMMUNICATIONS BOX
- COMMUNICATIONS MANHOLE
- COMMUNICATIONS MARKER
- COMMUNICATIONS VAULT
- CONIFEROUS SHRUB
- CONIFEROUS TREE
- CUT
- DECIDUOUS SHRUB
- DECIDUOUS TREE
- DRILL/AUGER HOLE
- ELECTRIC MANHOLE
- ELECTRIC METER
- END SECTION
- FILLER CAPS
- FLAG POLE
- FLOOD LIGHT
- GAS LINE MARKER
- GAS MANHOLE
- GAS METER
- GAS SERVICE VALVE
- GAS VALVE
- GUY WIRE
- HANDICAP PARKING
- HYDRANT
- PROPERTY MONUMENT (AS DESCRIBED)
- LIGHT POLE
- MAILBOX
- MONUMENT AS DESCRIBED
- OIL LINE MARKER
- PHONE BOOTH
- PIPE OUTLET
- POST
- POWER VAULT
- RAILROAD CONTROL BOX
- SANITARY SEWER MANHOLE
- SCUPPER
- SIGN (SINGLE POLE)
- SIGN (DOUBLE POLE)
- SIGN (TRIPLE POLE)
- SIGNAL POLE
- SIGNAL POLE (WITH TRAFFIC UTILITY BOX)
- STORM SEWER MANHOLE
- TRAFFIC CONTROL BOX
- TRAFFIC PULLBOX
- UNKNOWN MANHOLE
- UTILITY BOX
- UTILITY POLE
- UTILITY POLE WITH LIGHT
- WATER MANHOLE
- WATER METER
- WATER SERVICE VALVE
- WATER VALVE
- WELL
- WELL
- YARD DRAIN
- BERM
- CENTERLINE OF ROAD
- CENTERLINE OF DITCH
- FENCE (CHAINLINK)
- FENCE (WOOD)
- GAS MAIN
- GUIDE RAIL (BOX BEAM)
- GUIDE RAIL (W BEAM)
- OVERHEAD WIRES
- LOT LINE
- PARCEL LINE
- RIGHT OF WAY LINE
- SANITARY SEWER LINE
- STORM SEWER LINE
- TREE LINE
- UNDERGROUND CONDUIT
- UNDERGROUND ELECTRIC
- WATER MAIN

DRAWING REVISIONS

ITEM	DATE	DESCRIPTION
1	04/17/2011	REVISED EASEMENTS
2	08/04/2011	REVISED CERTIFICATION
3	07/20/2012	REVISED

DESIGNED BY: CUB  
 DRAWN BY: GCW  
 CHECKED BY: GCW  
 DATE: 12/28/2010

WARNING: THIS DOCUMENT IS IN VIOLATION OF ANY STATE OF FACTS THAT MAY BE REVEALED BY AN EXAMINATION OF SUCH.

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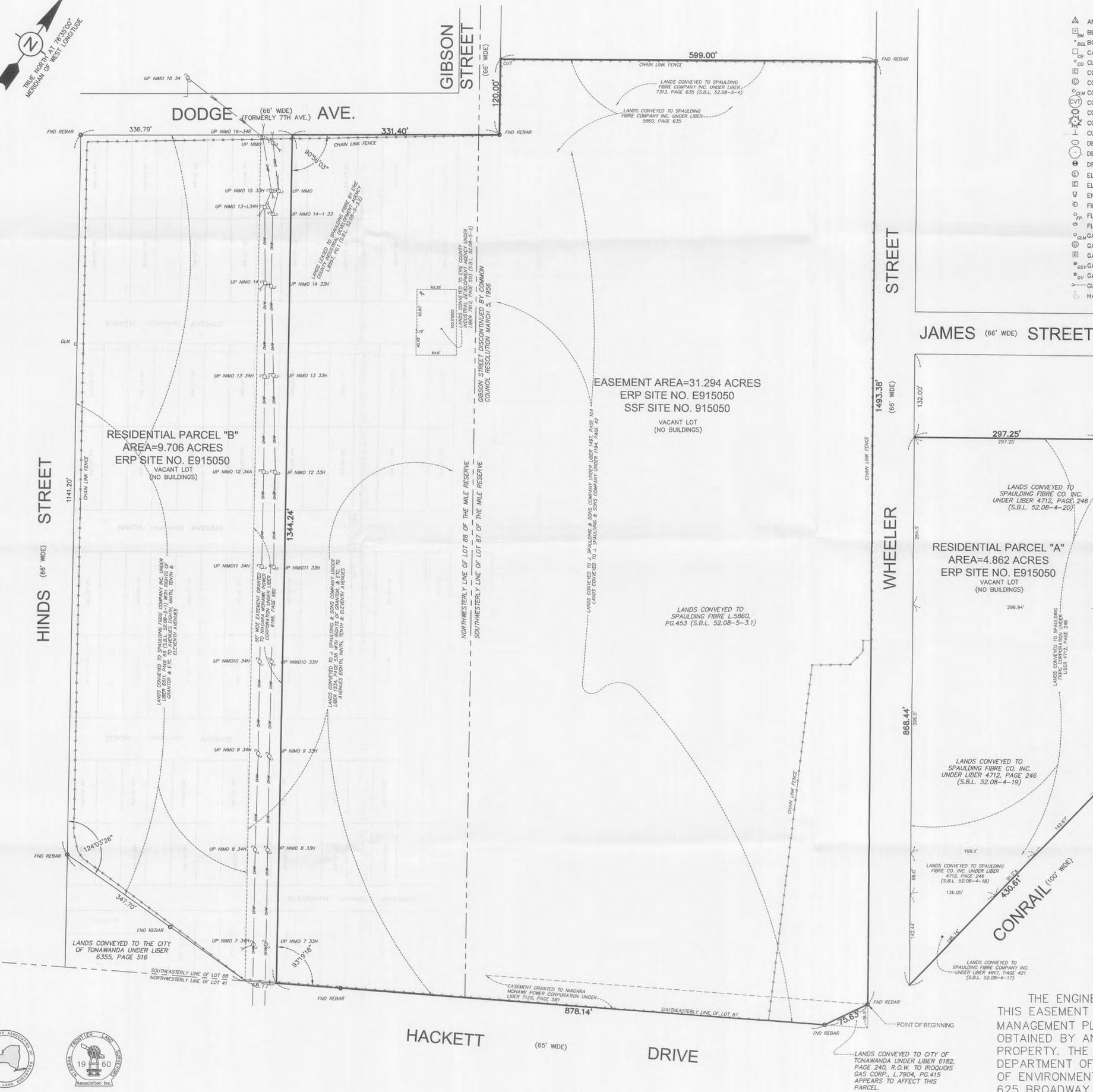


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**CITY OF TONAWANDA**  
**COUNTY OF ERIE, STATE OF NEW YORK**  
**PART OF LOT(S) 87 & 88, TOWNSHIP 12, RANGE 8**  
**NEW YORK STATE MILE RESERVE**

**310 WHEELER STREET**  
**N.Y.S.D.E.C. ENVIRONMENTAL EASEMENT MAP**

SHEET 1 OF 1  
**EASE-01**  
 DRAWING SCALE: 1" = 80'  
 D05382-07  
 WSA PROJECT NO. 05382



RESIDENTIAL PARCEL "A" DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF TONAWANDA, COUNTY OF ERIE, AND STATE OF NEW YORK, BEING PART OF LOTS 87 & 88, OF THE NEW YORK STATE MILE RESERVATION, BEING SUB LOTS 65 THRU 108, IN BLOCK 6, AND SUB LOTS 115 THRU 137, IN BLOCK 5, OF MAP COVER 42, ALSO SUB LOTS 211 THRU 328, SUB LOTS 337 THRU 344 & PART OF SUB LOT 329, 336, AND 333 THRU 336, AND EIGHT THRU ELEVENTH AVENUES, OF MAP COVER 596 AND THAT PART OF GIBSON AVENUE DISCONTINUED BY COMMON COUNCIL RESOLUTION DATED 03/05/56, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY LINE OF WHEELER STREET AT THE NORTHWESTERLY CORNER OF SUB LOT 137, IN BLOCK 5 OF MAP COVER 42, DISTANT 132.00 FEET SOUTHERLY FROM THE SOUTHERLY LINE OF JAMES STREET (66' WIDE); THENCE SOUTHERLY ALONG THE EASTERLY LINE OF WHEELER STREET A DISTANCE OF 868.44 FEET TO THE NORTHWESTERLY LINE OF LANDS FORMERLY CONVEYED TO THE BUFFALO AND NIAGARA FALLS RAILROAD (NOW CONRAIL) (100' WIDE) ALSO BEING A POINT IN THE SOUTHEASTERLY LINE OF LANDS CONVEYED TO SPAULDING FIBRE CO. AS RECORDED UNDER LIBER 4917 OF DEEDS AT PAGE 421, AND THE SOUTHERLY CORNER OF SUB LOT 115, IN BLOCK 5, OF MAP COVER 42; THENCE NORTHERLY ALONG THE NORTHWESTERLY LINE OF SAID LANDS CONVEYED TO CONRAIL A DISTANCE OF 430.61 FEET TO A POINT IN THE EASTERLY LINE OF SUB LOT 121, IN BLOCK 5, MAP COVER 42; THENCE NORTHWESTERLY ALONG THE EASTERLY LINE OF SUB LOTS 121 THRU 137 IN BLOCK 5, MAP COVER 42 A DISTANCE OF 556.54 FEET TO THE NORTHEASTERLY CORNER OF SUB LOT 137, IN BLOCK 5, MAP COVER 42; THENCE SOUTHERLY ALONG THE NORTHERLY LINE OF SAID SUB LOT 137 A DISTANCE OF 297.25 FEET TO THE POINT OF BEGINNING, CONTAINING 4.862 ACRES MORE OR LESS.

RESIDENTIAL PARCEL "B" DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF TONAWANDA, COUNTY OF ERIE, AND STATE OF NEW YORK, BEING PART OF LOTS 87 & 88, OF THE NEW YORK STATE MILE RESERVATION, BEING SUB LOTS 211 THRU 315, SUB LOTS 316 THRU 328, SUB LOTS 344 THRU 338 AND A PORTION OF SUB LOTS 329, 330, 333 THRU 337, OF MAP COVER 596 A PORTION OF EIGHT, NINTH TENTH AND ELEVENTH AVENUE (ALL UNDEVELOPED) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE INTERSECTION OF THE SOUTHERLY LINE OF DODGE AVENUE (FORMERLY SEVENTH AVENUE) WITH THE EASTERLY LINE OF HINDS STREET; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF HINDS STREET A DISTANCE OF 1141.20 FEET TO A POINT AT THE NORTHWEST CORNER OF LANDS CONVEYED TO THE CITY OF TONAWANDA AS RECORDED UNDER LIBER 6355 OF DEEDS AT PAGE 516; THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID LANDS CONVEYED TO THE CITY OF TONAWANDA AND THRU SUB LOTS 329, 330, 333 THRU 337 AT AN INTERIOR ANGLE OF 124°03'26" A DISTANCE OF 347.70 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF LOT 88, ALSO BEING A POINT IN THE NORTHERLY LINE OF HACKETT DRIVE; THENCE EASTERLY ALONG THE SOUTHEASTERLY LINE OF LOT 88 AND THE NORTHERLY LINE OF HACKETT DRIVE A DISTANCE OF 48.77 FEET TO A POINT IN THE WESTERLY LINE OF A 50 FOOT WIDE EASEMENT GRANTED TO NIAGARA MOHAWK POWER CORPORATION AS RECORDED UNDER LIBER 6166 OF DEEDS AT PAGE 480; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID EASEMENT GRANTED TO NIAGARA MOHAWK POWER CORPORATION A DISTANCE OF 1344.24 FEET TO A POINT IN THE SOUTHERLY LINE OF DODGE AVENUE; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF DODGE AVENUE A DISTANCE OF 336.79 FEET TO THE POINT OF BEGINNING, CONTAINING 9.706 ACRES MORE OR LESS.

ENVIRONMENTAL EASEMENT DESCRIPTION  
SITE NOS. E915050/915050

BEGINNING AT A POINT IN THE WESTERLY LINE OF WHEELER STREET, DISTANT 38 FEET NORTH OF ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF LOT 87 OF THE MILE RESERVATION, ALSO BEING THE NORTHEAST CORNER OF LANDS CONVEYED TO THE CITY OF TONAWANDA AS RECORDED UNDER LIBER 6182 OF DEEDS AT PAGE 240; THENCE NORTHERLY ALONG THE WESTERLY LINE OF WHEELER STREET A DISTANCE OF 1493.38 FEET TO THE NORTHERLY LINE OF SUB LOT 66, IN BLOCK 6, MAP COVER 42; THENCE SOUTHWESTERLY ALONG THE NORTHERLY LINE OF SUB LOTS 66 AND 65, IN BLOCK 6, MAP COVER 42 A DISTANCE OF 599.00 FEET TO A POINT IN THE EASTERLY LINE OF GIBSON STREET (66' WIDE); THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF GIBSON STREET A DISTANCE OF 120.00 FEET, TO ITS INTERSECTION WITH THE SOUTHERLY LINE OF DODGE AVENUE (FORMERLY SEVENTH AVE.) (66' WIDE); THENCE SOUTHWESTERLY ALONG THE SOUTHERLY LINE OF DODGE AVENUE A DISTANCE OF 331.40 FEET TO ITS INTERSECTION WITH THE EASTERLY LINE OF A 50' WIDE EASEMENT TO NIAGARA MOHAWK POWER CORPORATION, RECORDED UNDER LIBER 6166 OF DEEDS AT PAGE 480; THENCE SOUTHEASTERLY ALONG THE EAST LINE OF SAID 50' WIDE EASEMENT A DISTANCE OF 1344.24 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 88 OF THE MILE RESERVATION, ALSO BEING A POINT IN THE NORTHERLY LINE OF HACKETT DRIVE (65' WIDE); THENCE EASTERLY ALONG THE SOUTHEASTERLY LINE OF LOT 88 AND LOT 87 OF THE MILE RESERVATION AND THE NORTHERLY LINE OF HACKETT DRIVE A DISTANCE OF 878.14 FEET TO THE SOUTHWEST CORNER OF SAID LANDS CONVEYED TO THE CITY OF TONAWANDA AS RECORDED IN THE ERIE COUNTY CLERK'S OFFICE UNDER LIBER 6182 OF DEEDS AT PAGE 240; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID LANDS CONVEYED TO THE CITY OF TONAWANDA UNDER LIBER 6182 OF DEEDS AT PAGE 240 A DISTANCE OF 75.63 FEET TO THE POINT OF BEGINNING, CONTAINING 31.294 ACRES MORE OR LESS.

CERTIFICATION

I HEREBY CERTIFY TO: THE PEOPLE OF THE STATE OF NEW YORK ACTING THROUGH ITS COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND STEWAR TITLE INSURANCE COMPANY;

THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE CURRENT CODE OF PRACTICE FOR LAND SURVEYS ADOPTED BY THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND SURVEYORS AND AS AMENDED BY THE NIAGARA FRONTIER LAND SURVEYORS ASSOCIATION. THIS CERTIFICATION DOES NOT EXTEND TO SUBSEQUENT OWNERS, MORTGAGEES, OR TITLE INSURERS, UNLESS THIS SURVEY HAS BEEN RESERVED FOR THIS PURPOSE BY THE SURVEYOR.

GREGG G. MITTLIFF, PLS.  
 REGISTRATION NO. 050193

THE ENGINEERING AND INSTITUTIONAL CONTROLS FOR THIS EASEMENT ARE SET FORTH IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP CAN BE OBTAINED FROM THE NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 625 BROADWAY, ALBANY NY 12233 OR AT derweb@gw.dec.state.ny.us.

