



**Phillips Lytle** LLP

RECORDED  
DEC 22 2014  
L...

**VIA U.S.P.S**

December 19, 2014

Bradford D. Burns, Senior Attorney  
NYS Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14th Floor  
Albany, NY 12233-1500

Re: Recorded Environmental Easement for Parcels with the following Tax  
Map Nos. 144.06-2-25.1, 144.06-2-2.1 and 144.06-2-25.2 ("Site")  
New York State Department of Environmental Conservation ("NYSDEC")  
Site No: 932136

Dear Mr. Burns:

Please find enclosed the environmental easements ("EE") that were recorded in the  
Niagara County Clerk's office on December 15, 2014, and the notices that were sent to  
the relevant parties and recorded in the Niagara County Clerk's office today.

If you have any questions concerning this matter, please contact me at 716-504-5789 or  
jdougherty@phillipslytle.com.

Very truly yours,

Phillips Lytle LLP

By

Jennifer Dougherty

J-D/pjs

Enclosures

cc: Patrick Foster, Esq. (w/o enclosures)  
David P. Flynn, Esq. (w/o enclosures)

Doc #01-2826834.1

Jennifer Dougherty  
Direct 716 504 5789 [jdougherty@phillipslytle.com](mailto:jdougherty@phillipslytle.com)

ATTORNEYS AT LAW

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTL.COM



**NIAGARA COUNTY CLERK  
WAYNE F. JAGOW**

*RECEIPT*

Receipt Date: 12/19/2014 02:41:14 PM  
RECEIPT # 2014221494

Recording Clerk: TH  
Cash Drawer: CASH2  
Rec'd Frm: PHILLIPS LYTLE LLP  
Rec'd In Person

Instr#: 2014-21917  
DOC: MISCELLANEOUS  
OR Party: BRIGHTFIELDS II CORPORATION  
EE Party: NEW YORK STATE DEPARTMENT OF ENVORONMENTAL CONSERVATION

Recording Fees  
Cover Page \$8.00  
Recording Fee \$50.00  
Cultural Ed \$14.25  
Records Management - County \$1.00  
Records Management - State \$4.75  
  
DOCUMENT TOTAL: ----> \$78.00

Instr#: 2014-21918  
DOC: MISCELLANEOUS  
OR Party: BRIGHTFIELDS II CORPORATION  
EE Party: NEW YORK STATE DEPARTMENT OF ENVORONMENTAL CONSERVATION

Recording Fees  
Cover Page \$8.00  
Recording Fee \$50.00  
Cultural Ed \$14.25  
Records Management - County \$1.00  
Records Management - State \$4.75  
  
DOCUMENT TOTAL: ----> \$78.00

Instr#: 2014-21919  
DOC: MISCELLANEOUS  
OR Party: BRIGHTFIELDS II CORPORATION  
EE Party: NEW YORK STATE DEPARTMENT OF ENVORONMENTAL CONSERVATION

Recording Fees

Cover Page \$8.00  
Recording Fee \$50.00  
Cultural Ed \$14.25  
Records Management - County \$1.00  
Records Management - State \$4.75  
  
DOCUMENT TOTAL: ----> \$78.00

Receipt Summary  
TOTAL RECEIPT: ----> \$234.00  
TOTAL RECEIVED: ----> \$235.00  
  
CASH BACK: ----> \$1.00

PAYMENTS  
Cash -> \$235.00



**Phillips Lytle** LLP

ORIGINAL FILED

DEC 19 2014

WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

Certified Return Receipt Requested

December 19, 2014

Mr. Paul A. Dyster  
City of Niagara Falls Mayor's Office  
745 Main Street  
Niagara Falls, NY 14301

Re: Environmental Easement for Parcels with the following Tax  
Map No. 144.06-2-25.1 ("Site")  
New York State Department of Environmental Conservation ("NYSDEC")  
Site No: 932136

Dear Mayor Dyster:

Attached please find a copy of an environmental easement granted to the NYSDEC on December 1, 2014, by Brightfields II Corporation for the property located at 3001 Highland Avenue, Niagara Falls, New York; Tax Map No. 144.06-2-25.1, DEC Site No: 932136.

This Environmental Easement restricts future use of the above-referenced property to commercial and industrial uses. It also assures that in conformity with the NYSDEC Record of Decision Amendment for this Site, dated February 2012, following the completion of the on-site remedial treatment and consolidation of contaminated soil, a one-foot soil cover system will be constructed over the consolidated material including a demarcation layer to mitigate potential future exposure to the treated soil in areas designated for commercial development. Clean utility corridors will be constructed through consolidated material in order to accommodate any future development construction. Future on-site activities must be completed in accordance with the Site Management Plan, which is incorporated into the Environmental Easement. NYSDEC approval is also required prior to any groundwater use.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

JENNIFER DOUGHERTY

DIRECT 716 504 5789 JDOUGHERTY@PHILLIPSLYTL.COM

ATTORNEYS AT LAW

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTL.COM



Mr. Paul A. Dyster  
Page 2

December 19, 2014

1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.

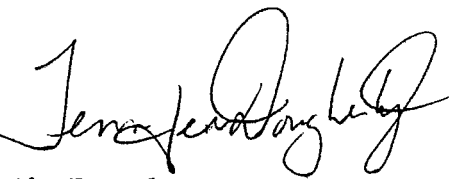
2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

An electronic version of every environmental easement that has been accepted by this NYSDEC is available to the public at:

<http://www.dec.ny.gov/cfmx/extapps/derfoil/index.cfm?pageid>. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

Phillips Lytle LLP

By 

Jennifer Dougherty

J-Dpjs

Enclosure

cc: David P. Flynn, Esq.

Doc #01-2826518.1



Recording Office Time Stamp

**Real Estate Transfer Tax Return  
For Public Utility Companies'  
and Governmental Agencies'  
Easements and Licenses**

This form may only be used by public utility companies regulated by the Public Service Commission and governmental agencies for the recording of easements and licenses where the consideration for the grant of such easement or license is \$500.00 or less.

Name of grantee (public utility company or governmental agency) <b>New York State Department of Environmental Conservation</b>	Federal employer identification number <i>(if applicable)</i>
Address of grantee <b>625 Broadway, Albany, New York 12233-1500</b>	Name and telephone number of person to contact

Name(s) of Grantor Of Easement or License	Address of Property	Consideration Given For Easement or License
1. Brightfields II Corporation	3001 Highland Avenue Niagara Falls, NY	0
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

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DEC 15 2014

WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

If more than fifteen conveyances are to be recorded, attach a schedule of such other conveyances.

**Signature of Grantee**

I certify that the grantee is a public utility regulated by the Public Service Commission or is a governmental agency and the grantee of the easements and/or licenses above; that it is true to the best knowledge of the grantee that the granting of each such easement and/or license is exempt from Real Estate Transfer Tax imposed by Article 31 of the Tax Law by reason that each such conveyance is for a consideration of five hundred dollars or less and/or the conveyance is being made to a governmental agency.

New York State Department of Environmental Conservation

Name of grantee

Signature of partner, officer of corporation, governmental official, etc.

Benjamin Conley, Esq.  
Title

3001

ORIGINAL FILED

DEC 15 2014

WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

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

THIS INDENTURE made this 1st day of December, 2014, between Owner(s) Brightfields II Corporation, having an office at 333 Ganson Street, 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 3001 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 2 Lot 25.1; being the same as that property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.989 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 prepared by Niagara Boundary and Mapping Services, 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 Order on Consent Index Number: B9-0777-08-03, 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:

**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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

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

(6) 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;

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

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

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

(10) 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 or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), 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, at such time as NYSDEC may require, 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 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: 932136  
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 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.

Brightfields II Corporation:

By:  \_\_\_\_\_

Print Name: Jon M. Williams

Title: President Date: 8/18/14

**Grantor's Acknowledgment**

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

On the 18<sup>th</sup> day of August, in the year 2014, before me, the undersigned, personally appeared John M. Williams, 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.

Nancy L. Mazur  
Notary Public - State of New York

**NANCY L. MAZUR**  
Notary Public, State of New York  
Qualified in Erie County No. 1765930  
My Commission Expires 11 30, 2016

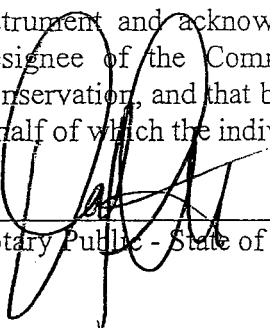
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

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

Grantee's Acknowledgment

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

On the 15<sup>th</sup> day of December, in the year 2014, 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.

  
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, 2018**

SCHEDULE "A" PROPERTY DESCRIPTION

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 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Beginning at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence S88°43'18"E along the northerly line of Beech Avenue a distance of 313.77 feet to a point;

Thence N°20'42'42"W a distance of 307.26 feet to a point on the northerly line of Carolina Avenue (not opened);

Thence N88°58'03"W along said northerly line of Carolina Avenue a distance of 178.31 feet to a point on the former centerline of a 16.5 foot wide alley;

Thence S20°42'42"W along the former centerline of a 16.5 foot wide alley a distance of 31.86 feet to the centerline of Carolina Avenue;

Thence N88°58'03"W along the centerline of Carolina Avenue a distance of 135.93 feet to the east line of Highland Avenue;

Thence S20°42' 42"W along the east line of Highland Avenue a distance of 273.97 feet to the Point or Place of Beginning, containing 1.989 acres of land more or less.

Total Acreage: 1.989 +/-acres

Doc. Id. #2797804

## NOTICE OF ENVIRONMENTAL EASEMENT

The New York State Department of Environmental Conservation (the "Grantee"), has been granted an Environmental Easement pursuant to Article 71, Section 36 affecting real property located at the following addresses:

3001 Highland Avenue, Niagara Falls, New York

Property Owner/Grantor: Brightfields II Corporation

The Tax Map Identification No.: 144.06-2-25.1

NYS Department of Environmental Conservation Site Nos.: 932136

The Environmental Easement for the above referenced property has been filed in the Niagara County Clerk's Office on December 15, 2014  
Instrument No.: 2014-21584.

The Environmental Easement contains institutional and/or engineering controls that run with the land. The Environmental Easement may restrict the use of the above referenced property to commercial and recreational.

NOTICE IS HEREBY GIVEN that any activity on the land which might or will prevent or interfere with the ongoing or completed remedial program, including the controls as set forth in the Environmental Easement and the Site Management Plan, must be done in accordance with the Site Management Plan which is incorporated by reference into the Environmental Easement. A copy of the Site Management Plan can be obtained by contacting the Department at [derweb@gw.dec.state.ny.us](mailto:derweb@gw.dec.state.ny.us). Be further advised of the notice provisions of NYCRR 375-1.11(d) relative to contemplated significant changes in use.

Failure to Comply with the terms and conditions of the Environmental Easement may subject violators to penalties of up to \$37,500 per day for violation of 6 NYCRR 375-1.11(b).

An electronic version of this environmental easement has been accepted by the New York State Department of Environmental Conservation and is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>.

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Paul A. Dyster  
 City of Niagara Falls Mayor's Office  
 745 Main Street  
 Niagara Falls, NY 14301

2. Article Number  
 (Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

7024 0510 0002 9092 4262

**U.S. Postal Service<sup>TM</sup>**  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: Mr. Paul A. Dyster  
 Street, or PO: City of Niagara Falls Mayor's Office  
 City, St: 745 Main Street  
 State, ZIP+4: Niagara Falls, NY 14301

Postmark Here

PS Form 3800, August 2006<sup>®</sup> See Reverse for Instructions

7024 0510 0002 9092 4262



**CERTIFIED MAIL<sup>TM</sup>**





**Phillips Lytle** LLP

ORIGINAL FILED

DEC 19 2014

WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

Certified Return Receipt Requested

December 19, 2014

Mr. Paul A. Dyster  
City of Niagara Falls Mayor's Office  
745 Main Street  
Niagara Falls, NY 14301

Re: Environmental Easement for Parcels with the following Tax  
Map No. 144.06-2-2.1 ("Site")  
New York State Department of Environmental Conservation ("NYSDEC")  
Site No: 932136

Dear Mayor Dyster:

Attached please find a copy of an environmental easement granted to the NYSDEC on December 1, 2014, by Brightfields II Corporation for the property located at 3079 Highland Avenue, Niagara Falls, New York; Tax Map No. 144.06-2-2.1, DEC Site No: 932136.

This Environmental Easement restricts future use of the above-referenced property to commercial and industrial uses. It also assures that in conformity with the NYSDEC Record of Decision Amendment for this Site, dated February 2012, following the completion of the on-site remedial treatment and consolidation of contaminated soil, a one-foot soil cover system will be constructed over the consolidated material including a demarcation layer to mitigate potential future exposure to the treated soil in areas designated for commercial development. Clean utility corridors will be constructed through consolidated material in order to accommodate any future development construction. Future on-site activities must be completed in accordance with the Site Management Plan, which is incorporated into the Environmental Easement. NYSDEC approval is also required prior to any groundwater use.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

JENNIFER DOUGHERTY

DIRECT 716 504 5789 JDOUGHERTY@PHILLIPSLYTLE.COM

ATTORNEYS AT LAW

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTLE.COM



Mr. Paul A. Dyster  
Page 2

December 19, 2014

1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.
2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

An electronic version of every environmental easement that has been accepted by this NYSDEC is available to the public at:

<http://www.dec.ny.gov/cfmx/extapps/derfoil/index.cfm?pageid>. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

Phillips Lytle LLP

By

Jennifer Dougherty

J-Dpjs

Enclosure

cc: David P. Flynn, Esq.

Doc #01-2826606.1

## NOTICE OF ENVIRONMENTAL EASEMENT

The New York State Department of Environmental Conservation (the "Grantee"), has been granted an Environmental Easement pursuant to Article 71, Section 36 affecting real property located at the following addresses:

3079 Highland Avenue, Niagara Falls, New York

Property Owner/Grantor: Brightfields II Corporation

The Tax Map Identification No.: 144.06-2-2.1

NYS Department of Environmental Conservation Site Nos.: 932136

The Environmental Easement for the above referenced property has been filed in the Niagara County Clerk's Office on December 15, 2014  
Instrument No.: 2014-21586.

The Environmental Easement contains institutional and/or engineering controls that run with the land. The Environmental Easement may restrict the use of the above referenced property to commercial and recreational.

NOTICE IS HEREBY GIVEN that any activity on the land which might or will prevent or interfere with the ongoing or completed remedial program, including the controls as set forth in the Environmental Easement and the Site Management Plan, must be done in accordance with the Site Management Plan which is incorporated by reference into the Environmental Easement. A copy of the Site Management Plan can be obtained by contacting the Department at [derweb@gw.dec.state.ny.us](mailto:derweb@gw.dec.state.ny.us). Be further advised of the notice provisions of NYCRR 375-1.11(d) relative to contemplated significant changes in use.

Failure to Comply with the terms and conditions of the Environmental Easement may subject violators to penalties of up to \$37,500 per day for violation of 6 NYCRR 375-1.11(b).

An electronic version of this environmental easement has been accepted by the New York State Department of Environmental Conservation and is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>.



Recording Office Time Stamp

Real Estate Transfer Tax Return
For Public Utility Companies'
and Governmental Agencies'
Easements and Licenses

This form may only be used by public utility companies regulated by the Public Service Commission and governmental agencies for the recording of easements and licenses where the consideration for the grant of such easement or license is \$500.00 or less.

Name of grantee (public utility company or governmental agency)
New York State Department of Environmental Conservation
Address of grantee
625 Broadway, Albany, New York 12233-1500
Federal employer identification number (if applicable)
Name and telephone number of person to contact

Table with 3 columns: Name(s) of Grantor Of Easement or License, Address of Property, Consideration Given For Easement or License. Row 1: Brightfields II Corporation, 3079 Highland Avenue, 0. Row 2: Niagara Falls, NY.

ORIGINAL FILED

DEC 15 2014

WAYNE F. JAGOW
NIAGARA COUNTY CLERK

If more than fifteen conveyances are to be recorded, attach a schedule of such other conveyances.

Signature of Grantee

I certify that the grantee is a public utility regulated by the Public Service Commission or is a governmental agency and the grantee of the easements and/or licenses above; that it is true to the best knowledge of the grantee that the granting of each such easement and/or license is exempt from Real Estate Transfer Tax imposed by Article 31 of the Tax Law by reason that each such conveyance is for a consideration of five hundred dollars or less and/or the conveyance is being made to a governmental agency.

New York State Department of Environmental Conservation

Name of grantee

Signature of partner, officer of corporation, governmental official, etc.

Benjamin Contino Esq.
Title

ORIGINAL FILED

DEC 15 2014

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

WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

THIS INDENTURE made this 1<sup>st</sup> day of December, 2014, between Owner(s) Brightfields II Corporation, having an office at 333 Ganson Street, 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 3079 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 2 Lot 2.1, being the same as that property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 11.067 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 prepared by Niagara Boundary and Mapping Services, 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 Order on Consent Index Number: B9-0777-08-03, 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:

**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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

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

(6) 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;

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

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

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

(10) 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 or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), 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, at such time as NYSDEC may require, 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 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: 932136  
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 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.

Brightfields II Corporation:

By:  \_\_\_\_\_

Print Name: Jon M. Williams

Title: President Date: 8/13/14

**Grantor's Acknowledgment**

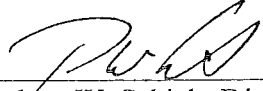
STATE OF NEW YORK    )  
                                                  ) ss:  
COUNTY OF ERIE            )

On the 18<sup>th</sup> day of AUGUST, in the year 2014, before me, the undersigned, personally appeared Jon M. Williams, 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.

Nancy L Mazur  
Notary Public - State of New York

**NANCY L. MAZUR**  
Notary Public, State of New York  
Qualified in Erie County No. 1765930  
My Commission Expires 11 30, 2016

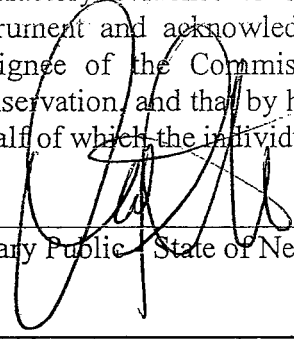
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK,** Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

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

**Grantee's Acknowledgment**

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

On the 15<sup>th</sup> day of December, in the year 2014 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.

  
 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, 2018**

**SCHEDULE "A" PROPERTY DESCRIPTION**

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 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Beginning at the intersection of the northerly line of Beech Avenue with the easterly line of the former Fifteenth Street;

Thence N00°54'11"E along the said easterly line of Fifteenth Street a distance of 862.28 feet to a point on the northerly line of Lot 34 of the New York State Mile Reserve;

Thence S89°40'00"E along the northerly line of Lot 34 of the New York State Mile Reserve a distance of 559.41 feet to the northwesterly corner of Lot 218 of the Re-subdivision of Lots on 17th Street, Niagara Falls, NY according to a Map made by Wallace P. Keller, P.E., L.S. and recorded in the Niagara County Clerk's Office on January 5, 1960 in Map Book 64 of Maps at Page 1595, now filed in Book 40 of Microfilmed Maps at page 4000;

Thence S00°28'15"W along the westerly line of Lots 218, 217, 216, 215, 214, 213 and part of Lot 212 of said Re-subdivision a distance of 299.61 feet to the northeasterly corner of a 10 foot wide alley;

Thence N89°04'07"W along the northerly line of said alley a distance of 10.00 feet to a point;

Thence S00°28'15"W along the westerly line of said Alley a distance of 571.90 feet to a point on the northerly line of Beech Avenue;

Thence N88°43'18"W along the northerly line of Beech Avenue a distance of 555.97 feet to the Point or Place of Beginning, containing 11.067 acres of land more or less.

Total Acreage: 11.067 +/- acres

Doc. Id. #2797808

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Paul A. Dyster  
 City of Niagara Falls Mayor's Office  
 745 Main Street  
 Niagara Falls, NY 14301

2. Article Number  
(Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$		Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees \$		

Sent To: Mr. Paul A. Dyster  
 City of Niagara Falls Mayor's Office  
 Street: 745 Main Street  
 City, State: Niagara Falls, NY 14301

PS Form 3800, August 2006. See Reverse for Instructions.

**CERTIFIED MAIL™**  
 PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

7204 0510 0002 9092 4267  
 7204 0510 0002 9092 4267

7204 0510 0002 9092 4267



**Phillips Lytle** LLP

ORIGINAL FILED

DEC 19 2014

WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

**Certified Return Receipt Requested**

December 19, 2014

Mr. Paul A. Dyster  
City of Niagara Falls Mayor's Office  
745 Main Street  
Niagara Falls, NY 14301

Re: Environmental Easement for Parcels with the following Tax  
Map No. 144.06-2-25.2 ("Site")  
New York State Department of Environmental Conservation ("NYSDEC")  
Site No: 932136

Dear Mayor Dyster:

Attached please find a copy of an environmental easement granted to the NYSDEC on December 1, 2014, by Brightfields II Corporation for the property located at 3201 Highland Avenue, Niagara Falls, New York; Tax Map No. 144.06-2-25.2, DEC Site No: 932136.

This Environmental Easement restricts future use of the above-referenced property to restricted residential, commercial or industrial uses. It also assures that in conformity with the NYSDEC Record of Decision Amendment for this Site, dated February 2012, following the completion of the on-site remedial treatment and consolidation of contaminated soil, a one-foot soil cover system will be constructed over the consolidated material including a demarcation layer to mitigate potential future exposure to the treated soil in areas designated for commercial development. A two foot soil cover system will be placed over areas designated for recreational use. Clean utility corridors will be constructed through consolidated material in order to accommodate any future development construction. Future on-site activities must be completed in accordance with the Site Management Plan, which is incorporated into the Environmental Easement. NYSDEC approval is also required prior to any groundwater use.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

JENNIFER DOUGHERTY

DIRECT 716 504 5789 JDOUGHERTY@PHILLIPSLYTLE.COM

ATTORNEYS AT LAW

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTLE.COM



Mr. Paul A. Dyster  
Page 2

December 19, 2014

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An electronic version of every environmental easement that has been accepted by this NYSDEC is available to the public at:  
<http://www.dec.ny.gov/cfmx/extapps/derfoil/index.cfm?pageid>. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

Phillips Lytle LLP

By

Jennifer Dougherty

J-Dpjs

Enclosure

cc: David P. Flynn, Esq.

Doc #01-2826620.1



## NOTICE OF ENVIRONMENTAL EASEMENT

The New York State Department of Environmental Conservation (the "Grantee"), has been granted an Environmental Easement pursuant to Article 71, Section 36 affecting real property located at the following addresses:

3201 Highland Avenue, Niagara Falls, New York;

Property Owner/Grantor: Brightfields II Corporation

The Tax Map Identification No.: 144.06-2-25.2

NYS Department of Environmental Conservation Site Nos.: 932136

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Instrument No.: 2014-21585.

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Failure to Comply with the terms and conditions of the Environmental Easement may subject violators to penalties of up to \$37,500 per day for violation of 6 NYCRR 375-1.11(b).

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Recording Office Time Stamp

**Real Estate Transfer Tax Return  
For Public Utility Companies'  
and Governmental Agencies'  
Easements and Licenses**

This form may only be used by public utility companies regulated by the Public Service Commission and governmental agencies for the recording of easements and licenses where the consideration for the grant of such easement or license is \$500.00 or less.

Name of grantee (public utility company or governmental agency)  
New York State Department of Environmental Conservation

Federal employer identification number  
(if applicable)

Address of grantee  
625 Broadway, Albany, New York 12233-1500

Name and telephone number of person to contact

Name(s) of Grantor Of Easement or License	Address of Property	Consideration Given For Easement or License
1. Brightfields II Corporation	3201 Highland Avenue	0
2.	Niagara Falls, NY	
3.		
4.		
5.		
6.		
7.		ORIGINAL FILED
8.		DEC 15 2014
9.		WAYNE F. JAGOW
10.		NIAGARA COUNTY CLERK
11.		
12.		
13.		
14.		
15.		

If more than fifteen conveyances are to be recorded, attach a schedule of such other conveyances.

**Signature of Grantee**

I certify that the grantee is a public utility regulated by the Public Service Commission or is a governmental agency and the grantee of the easements and/or licenses above; that it is true to the best knowledge of the grantee that the granting of each such easement and/or license is exempt from Real Estate Transfer Tax imposed by Article 31 of the Tax Law by reason that each such conveyance is for a consideration of five hundred dollars or less and/or the conveyance is being made to a governmental agency.

New York State Department of Environmental Conservation

Name of grantee

Signature of partner, officer of corporation, governmental official, etc.

Title

Benjamin Carlson, Esq.

DEC 15 2014

WAYNE F. JAGOW  
NIAGARA COUNTY CLERK

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

**THIS INDENTURE** made this 1st day of December, 2014 between Owner(s) Brightfields II Corporation, having an office at 333 Ganson Street, 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 3201 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 2 Lot 25.2, being the same as that property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458 . The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 5.001 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 prepared by Niagra Boundary and Mapping Service, 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 Order on Consent Index Number: B9-0777-08-03, 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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

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

(6) 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;

(7) All future activities on the property that will disturb remaining

contaminated material must be conducted in accordance with the SMP;

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

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

(10) 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, at such time as NYSDEC may require, 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 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: 932136  
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 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.

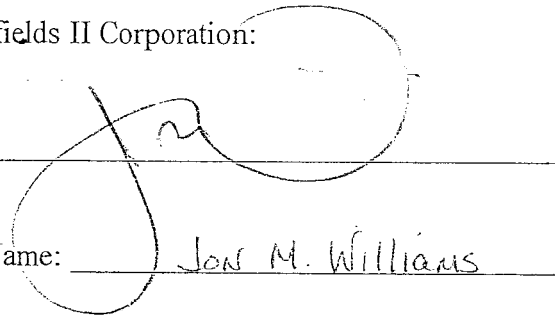
Brightfields II Corporation:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Jon M. Williams

President

8/18/14



**Grantor's Acknowledgment**

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

On the 18<sup>th</sup> day of AUGUST, in the year 2014, before me, the undersigned, personally appeared JOHN M WILLIAMS, 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.

Nancy L Mazur  
Notary Public - State of New York

NANCY L. MAZUR  
Notary Public, State of New York  
Qualified in Erie County No. 1765990  
My Commission Expires 11 30, 2016

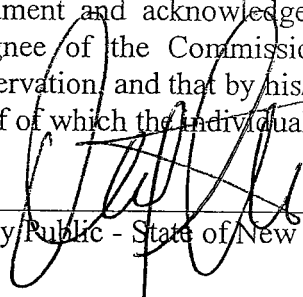
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

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

**Grantee's Acknowledgment**

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

On the 1<sup>st</sup> day of December, in the year 2014, 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.

  
\_\_\_\_\_  
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, 2016

**SCHEDULE "A" PROPERTY DESCRIPTION**

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 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Commencing at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence S88°43'18"E along the northerly line of Beech Avenue a distance of 313.77 feet to the POINT OR PLACE OF BEGINNING;

Thence S88.43'18"E along the northerly line of Beech Avenue a distance of 800.22 feet to the intersection of the north line of Beech Avenue with the west line of the former Fifteenth Street;

Thence N00°54'11"E a distance of 292.75 feet to a point on the northerly line of Carolina Avenue (not opened);

Thence N88°58'03"W along said northerly line of Carolina Avenue a distance of 696.08 feet to a point;

Thence S20°42'42"W a distance of 307.26 feet to the northerly line of Beech Avenue and the Beech Avenue and the Point or Place of Beginning, containing 5.001 acres of land more or less.

Total Acreage: 5.001 +/- acres

Doc. Id. #2797805

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Paul A. Dyster  
 City of Niagara Falls Mayor's Office  
 745 Main Street  
 Niagara Falls, NY 14301

2. Article Number  
*(Transfer from service label)*

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee

B. Received by (*Printed Name*) \_\_\_\_\_ C. Date of Delivery \_\_\_\_\_

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.  
 4. Restricted Delivery? (*Extra Fee*)  Yes



7024 0520 0002 9092 4262



7024 0520 0002 9092 4262

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Postage \$		Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees \$		

Sent to Mr. Paul A. Dyster  
 City of Niagara Falls Mayor's Office  
 745 Main Street  
 Niagara Falls, NY 14301

PS Form 3800, August 2003 See Reverse for Instructions