

FILED  
MAY 21 2008  
ERIE COUNTY  
CLERK'S OFFICE

## DECLARATION OF COVENANTS AND RESTRICTIONS

THIS COVENANT, made the 20th day of May, 2008, by RiverBend LLC ("RiverBend"), a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business at 275 Oak Street, Buffalo, New York 14203.

WHEREAS, Steelfields LTD entered into a Voluntary Cleanup Agreement executed by its Corporation Secretary as part of the New York State Department of Environmental Conservation's (the "Department's") Voluntary Cleanup Program relative to real property located on South Park and Abby Street in the City of Buffalo, County of Erie, State of New York; and

WHEREAS, RiverBend LLC acquired certain real property from Steelfields LTD, a portion of which includes real property subject to the Voluntary Cleanup Agreement, by Deed recorded in the Erie County Clerk's Office on May 8, 2008 in Liber D11144 of Deeds at page 7335; and

WHEREAS, for a parcel of the real property known as Area II (hereinafter referred to as "the Property") the Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property and such remedy requires that the Property be subject to restrictive covenants.

NOW, THEREFORE, RiverBend, for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions, is as shown on a legal description attached to this Declaration as Exhibit "A" and a map attached to this Declaration as Exhibit "B" and made a part hereof.

Second, unless prior written approval by the New York State Department of Environmental Conservation or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property, which threatens the integrity of the containment cell cap or the vegetated soil cover unless it is consistent with the Soil Management Plan, or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall maintain over the areas of the Property outside of the containment cell, one foot of vegetated soil cover with a demarcation layer, buildings, or pavement, in accordance with the Site Management Plan included in the Final Engineering Report for Areas II and III or, after obtaining the written approval of the Relevant Agency, by covering the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for industrial and/or commercial use without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall complete a Department approved evaluation of sub-slab vapor potential before any buildings are constructed on the Property or, in the alternative, the owner will install a sub-slab vapor intrusion mitigation system in any newly constructed building on the Property.

Sixth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

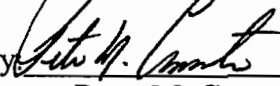
Seventh, the owner of the Property shall comply with the requirements of the Site Management Plan and maintain in full force and effect any required operational, institutional and engineering controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

Eighth, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner, and its successors and assigns, consent to enforcement by the Relevant Agency of the prohibitions and restrictions and hereby covenant not to contest the authority of the Relevant Agency to seek enforcement.

Ninth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

RIVERBEND LLC

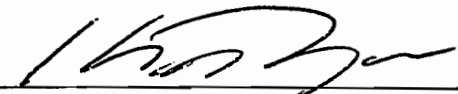
By   
Peter M. Cammarata

Title: President

Date: May 20, 2008

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

On the 20th day of May in the year 2008, before me, the undersigned, a Notary Public in and for the State, personally appeared PETER M. CAMMARATA personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same In his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

KEVIN J. ZANNER  
Notary Public in the State of New York  
Qualified in Onondaga County No. 02ZA5076987  
My Commission Expires April 28, 2011

Record and return to: Kevin J. Zanner, Esq.  
Hurwitz & Fine, P.C.  
1300 Liberty Building  
Buffalo, NY 14202

## PROPOSED DESCRIPTION FOR AREA II

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, begin part of Lot 16 and 17 of the Ogden Gore Tract, bounded and described as follows:

BEGINNING at the intersection of the westerly line of Abby Street and the southerly line of Baraga Street; thence southerly along the west boundary line of Abby Street 716.63 feet more or less to a point; thence westerly along the south line of lot 16 of the Ogden Gore Tract also being the former centerline of Bell Street 1711.08 feet; thence along the lands now or formerly of Donner-Union Coke Corporation the following three courses and distances:

1. Thence southerly and at right angles to the center line of Bell Street 14.5 feet to a point;
2. Thence southwardly by a curve to the left with a radius of 360.7 feet, a distance of 480.73 feet to a point;
3. Thence westerly and at right angles to the easterly line of the South Buffalo Railway Company 47.22 feet to a point in the easterly line of said Railway;

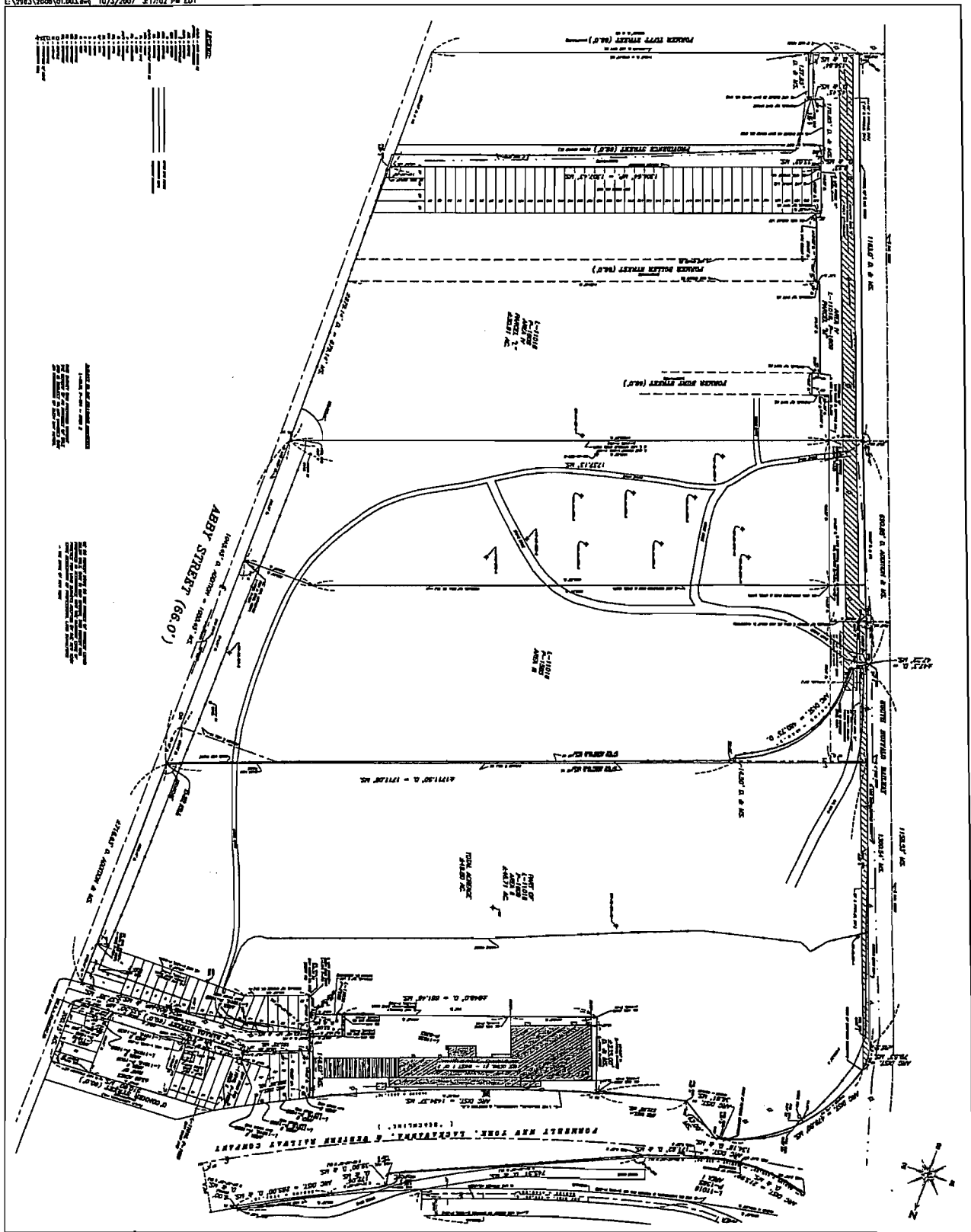
Thence northerly along said Railway 1158.53 feet to a point of curvature; thence northwardly by a curve to the right with a radius 136.01 feet, a distance of 79.53 feet to a point of compound curve; thence eastwardly by a curve to the right with a radius 478.49 feet, a distance of 479.50 feet to a point of reverse curve; thence eastwardly by a curve to the left with a radius 4960.65 feet, a distance of 36.61 feet to a point in the south line of lands conveyed to Delaware, Lackawanna and Western Railroad; thence southeasterly along the south line of said Railroad 142.00 feet to a point of curvature; thence eastwardly by a curve to the left with a radius 5061.15 feet, a distance of 272.50 feet to the northwest corner of lands conveyed by Donner-Union Coke Corporation to August Feine under deed dated June 26, 1918 and recorded in Liber 1415 at page 91; thence southerly 235.00 feet more or less to the southwest corner of said lands; thence easterly along the north line of a parcel of land acquired by Donner-Union Coke

Corporation under deed dated June 26, 1918 and recorded June 27, 1918 in Liber 1384 at page 303, a distance of 861.46 feet to a point in the west line of Subdivision Lot Number 22 in Block 18 as shown under Cover Number 638 in the Erie county Clerk's Office; thence northerly along the west line of said Subdivision Lot Number 22, 53.00 feet to the south line of Baraga Street; thence eastwardly along the south line of Baraga Street 182.40 feet to an angle point; thence continuing along the south line of Baraga Street 524.60 feet to the place of beginning. Containing 46.71 acres of land, more or less.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, begin part of Lot 16 of the Ogden Gore Tract, bounded and described as follows:

BEGINNING at the intersection of the westerly line of Abby Street and the north line of Baraga Street; thence northerly along the westerly line of Abby Street 200.15 feet to the south line of O'Conner Street; thence westerly along the south line of O'Conner Street 510.60 feet to the south line of said lands conveyed to Delaware, Lackawanna and Western Railroad; thence southwesterly along said Railway on a curve to the right with a radius 5061.15 feet, a distance of 292.26 feet to the westerly line of Subdivision Lot Number 15 in Block 22 as shown under Cover Number 487 in the Erie County Clerk's Office; thence southerly along the west line of said Subdivision Lot Number 15 146.02 feet to the north line of Baraga Street; thence eastwardly along the north line of Baraga Street 191.72 feet to an angle point; thence continuing along the north line of Baraga Street 537.38 feet to the place of beginning. Containing 3.09 acres of land, more or less.

Containing a total area of 49.80 acres of land, more or less.



**SURVEY OF LANDS**  
 GRANTED TO  
 STATE OF NEW YORK  
 CITY OF BUFFALO  
 COUNTY OF ERIE  
 STATE OF NEW YORK

NO. 1234-1-1

DATE OF SURVEY: 10/3/2007

BY: [Signature]

FOR: [Signature]

2 of 2

Exhibit B

Honorable Kathleen C. Hochul  
County Clerk  
Erie County  
: 92 Franklin Street  
Buffalo, NY 14202  
(716) 858-8865

DATE: 05/21/2008  
TIME: 02:29:19 PM  
RECEIPT: 535490

HURWITZ & FINE BOX 61

ITEM -01 779 02:29:19 PM BK/PG: D11145/2571  
CTRL #: 2008106178  
RIVERBEND LLC 58.00  
RECORDING FEE 0.50  
MARKOFF FEE  
Sub. Total 58.50

ITEM -02 779 02:29:19 PM BK/PG: D11145/2578  
CTRL #: 2008106179  
RIVERBEND LLC 58.00  
RECORDING FEE 0.50  
MARKOFF FEE  
Sub. Total 58.50

AMOUNT DUE: \$117.00  
PAID CHECK: \$117.00  
Check #: 61795  
TOTAL PAID: \$117.00

REC BY: JC  
County Clerk  
Have a nice day!