

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

THIS INDENTURE made this 13th day of JANUARY, 2017, between Owner(s) City of Buffalo, having an office at 65 Niagara Square, 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 off-site to 249 West Genesee Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section N/A Block N/A Lot N/A, being a portion of that property dedicated by Common Council Proceeding Resolution No. 268 on July 27, 1982. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately .127 +/- acres, and is hereinafter more fully described in the Land Title Survey dated September 22, 2014, revised May 7, 2015, and revised again on June 10, 2016, prepared by John E. McIntosh, III, 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 remedial action at the Site has been undertaken at the site by National Fuel Gas Distribution Corporation having an office at 6363 Main Street, Williamsville, New York 14221 County of Erie, State of New York (“National Fuel”);

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 #B9-0695-05-06A, 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, to the extent that Engineering Controls exist on the Site, must be operated and maintained as specified in the Site Management Plan (SMP);

(i) Grantor and subsequent Site owners shall ensure that the Environmental Easement remains in place and effect.

(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 Erie 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;

- (i) Grantor shall adhere to the institutional controls required by the Environmental Easement, including but not limited to the prohibition of the use of groundwater underlying the property without treatment rendering it safe for intended use and the prohibition of vegetable gardens and
- (5) Grantor shall provide access to the Department and National Fuel in order to collect data and information pertinent to Site Management of the Controlled Property at the frequency and in a manner defined in the SMP;
- (6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;
 - (i) To the extent that Grantor is responsible for any controls in the SMP, Grantor and subsequent Site owners shall submit a written statement certifying that the controls at the property are unchanged from the previous certification;
 - (ii) Grantor and subsequent Site owners shall notify the Department of changes of Site use and/or ownership; and
 - (iii) Grantor and subsequent Site owners shall report emergencies to the Department and other appropriate authorities.
- (7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;
 - (i) National Fuel shall prepare periodic review reports evaluating institutional and engineering controls, as applicable; and
 - (ii) National Fuel shall prepare and implement a corrective measures plan, if necessary.
- (8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;
 - (i) physical components of the remedy; and
 - (ii) National Fuel shall decommission Site monitoring wells, if any, at an appropriate time to be determined by the Department.
- (9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for raising livestock or producing animal products for human consumption, 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 assumes the obligations identified in Paragraphs 2(A)(1), 2(A)(2), 2(A)(4)(i), 2(A)(5), 2(A)(6) and 2(A)(9) above. 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 as identified in Paragraphs 2(A)(1), 2(A)(2), 2(A)(4)(i), 2(A)(5), 2(A)(6) and 2(A)(9) above and obtaining an up-to-date version of the SMP from:

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

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

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall annually, or at such time as NYSDEC may require, submit to NYSDEC a written statement certifying under penalty of perjury, in such form and manner as the Department may require, that:

- (1) 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;

(2) the owner will continue to allow the Department and National Fuel access to such real property to evaluate such controls;

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

(4) 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: C915194A
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, New York 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.

City of Buffalo:

By: Byron W. Brown

Print Name: BYRON W. BROWN

Title: MAYOR Date: OCTOBER 19, 2016

Grantor's Acknowledgment

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

On the 19 day of OCTOBER, in the year 2016, before me, the undersigned, personally appeared BYRON W. BROWN, 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.

John Vincent Heffron
Notary Public - State of New York

JOHN VINCENT HEFFRON
Notary Public, State of New York
No. 02HE4860576
Qualified in Erie County
My Commission Expires May 5, ~~2010~~ 2018 g.H.

**APPROVED
AS TO FORM ONLY**

John Vincent Heffron
Corporation Counsel
By John Heffron 10.11.16

IN WITNESS WHEREOF, _____ hereby acknowledges this instrument and the terms and conditions hereof.

National Fuel Gas Distribution Corporation:

By: [Signature]

Print Name: LEE E. HARTZ

Title: Attorney-in-Fact Date: 6-28-14

National Fuel's Acknowledgment

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

On the 20th day of JUNE, in the year 20 14, before me, the undersigned, personally appeared LEE E. HARTZ, 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.

[Signature]
Notary Public - State of New York

MARK R. MESSINA
Notary Public, State of New York
Qualified in Erie County
My Commission Expires
June 22, 1994
2018

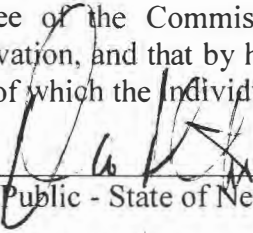
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

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

Grantee's Acknowledgment

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

On the 17th day of January, in the year 2017, 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

ENVIRONMENTAL EASEMENT AREA DESCRIPTION
NYSDEC SITE NO. C915194A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, and being part of Lot 2, South Village of Black Rock, bounded and described as follows:

BEGINNING AT A POINT on the northeast line of Parcel No. 192 as shown on Map No. 192 of lands acquired by the People of the State of New York for New York State Thruway, the Niagara Section, Subdivision N4, said point also being on the southwest line of Fourth Street as dedicated by the City of Buffalo Common Council Proceeding No. 268 dated July 27, 1982, said point being further identified as N 1,051,607.52, E 1,067,464.11 according to New York State Plane Coordinate System – West Zone;

RUNNING THENCE: N-54°-07'-09"-E, a distance of 46.34 feet to a point;

RUNNING THENCE: S-35°-51'-44"-E, a distance of 120.0 feet to a point;

RUNNING THENCE: S-54°-07'-09"-W, a distance of 46.30 feet to a point on the southwest line of said Fourth Street;

RUNNING THENCE: N-35°-52'-51"-W, along the southwest line of said Fourth Street, a distance of 120.0 feet to the POINT OF PLACE OF BEGINNING, containing 0.128 Acre, be the same, more or less.

SUBJECT to easements, rights-of-way and restrictions of record.

SUBJECT to the rights of the public in and to that portion of the above described land which lays within the bounds of Fourth Street.

Bearing System based on the New York State Plane Coordinate System – West Zone.