

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

THIS INDENTURE made this 9th day of November, 2016, between Owner(s) Fort Schuyler Management Corporation, having an office at SUNYIT, 100 Seymour Road, Utica, New York 13502, County of Oneida, 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 304 – 310 Abbey 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 122.16 Block 1 Lot 8.1; Section 122.20 Block 1 Lot 3.1; Section 122.20 Block 1 Lot 5.1; Section 122.20 Block 1 Lot 21; Section 132.08 Block 1 Lot 6; Section 132.08 Block 1 Lot 7; and Section 132.12 Block 1 Lot 9.11, being the same as that property conveyed to Grantor by deeds dated July 14, 2014 and October 10, 2014 and recorded in the Erie County Clerk's Office in Liber and Page 11266/8232 and 11272/3307, respectively. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 182.766 +/- acres, and is hereinafter more fully described in the Land Title Survey dated April 22, 2016 and last revised August 2, 2016 prepared by Michael Joseph Pohl, L.L.S., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A and are identified as Parcels A, B1 and B2; 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 Voluntary Cleanup Agreement Index Number: B9-0525-97-11, 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)

In addition, that part of the Controlled Property identified as the "Exception TENORM Reuse Area", set forth in and attached hereto as Schedule B, shall not be developed with any enclosed structure or building that could provide temporary or permanent human occupancy.

(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 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;

(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: V00619
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.

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SCHEDULE "A" PROPERTY DESCRIPTION

**Parcel A
Environmental Easement**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York being part of Lot 16, Township 10, Range 8 of the Ogden Gore Tract and Lots 57, 58 and 60, Township 10, Range 8 of the Buffalo Creek Indian Reservation, bounded and described as follows:

BEGINNING at a point in the southwest bounds of South Park Avenue (also known as Abbott Road), being 66 feet wide, at a distance of 124.53 feet northwesterly from the northwest bounds of New Abby Street, measured along said southwest bounds;

Thence southwesterly, at an angle of $57^{\circ} 09' 00''$ measured in the westerly quadrant from the said southwest bounds, a distance of 160.56 feet to the southwest corner of said Republic Steel Corporation lands, being a point of curvature in the former north line of lands owned by the Delaware, Lackawanna and Western Railway company;

Thence westerly, curving to the right along the arc of a circular curve with a radius of 987.81 feet, a distance of 275.12 feet to a point;

Thence southerly, radially to the last described course and along the easterly line of lands conveyed to Republic Steel Corporation by deed recorded in Liber 8777 at page 519, a distance of 99.0 feet to the southeast corner of the last described lands;

Thence southwesterly, at an interior angle of $109^{\circ} 50' 47''$ and along the south line of the last described lands, a distance of 387.67 feet to angle point in said south line;

Thence southwesterly, at an exterior angle of $174^{\circ} 54' 45''$ and continuing along the south line of the last described lands, a distance of 520.38 feet to a point;

Thence southwesterly, at an exterior angle of $156^{\circ} 42' 46''$, a distance of 40.00 feet to a point in the north line of lands formerly owned by the New York, Lackawanna and Western Railway Company;

Thence westerly, curving to the right along the arc of a circular curve with a radius of 4,911.15 feet, being along the north line of the last described railway, a distance of 79.58 feet to the northeast corner of lands conveyed to Republic Steel Corporation by deed recorded in Liber 7622 at page 649;

Thence southerly, along the east line of the last described lands, a distance of 6.00 feet to the southeast corner of said last described lands;

Thence westerly and northerly along the south and west lines of the last described parcel, the following courses and distances:

Westerly, curving to the right along the arc of a circular curve with a radius of 4,767.15 feet, a distance of 285.00 feet to a point of tangency;

Westerly, tangent to the last described curve, a distance of 172.06 feet to a point;

Southerly, at an exterior angle of $107^{\circ} 45' 45''$, a distance of 39.90 feet to a point;

Westerly, at an interior angle of $105^{\circ} 24' 00''$, a distance of 745.51 feet to a point;

Westerly, at an interior angle of $175^{\circ} 27' 34''$, a distance of 171.82 feet to a point of curvature;

Westerly, curving to the right along the arc of a circular curve with a radius of 625.50 feet, a distance of 134.18 feet to a point of compound curvature;

Westerly, curving to the right along the arc of a circular curve with a radius of 445.85, a distance of 213.99 feet to point of tangency;

Northwesterly, tangent to the last described curve, a distance of 23.46 feet to a point of curvature;

Northwesterly, curving to the right along the arc of a circular curve with a radius of 424.68 feet, a distance of 192.00 feet to a point of compound curvature;

Northwesterly, curving to the right along the arc of a circular curve with a radius of 293.82 feet, a distance of 74.16 feet to a point in the east bounds of the South Buffalo Railway;

Thence northerly, along the east bounds of the South Buffalo Railway, a distance of 88.52 feet to a point;

Thence northerly, at an exterior angle of $171^{\circ} 51' 28''$ and continuing along the east bounds of the last mentioned railway, a distance of 566.34 feet to a point;

Thence northerly, at an interior angle of $167^{\circ} 44' 11''$ and continuing along the east bounds of the last mentioned railway, a distance of 130.12 feet to the intersection of said east bounds with the south edge of water of the Buffalo River;

Thence easterly and northerly, along the south edge of water of the Buffalo River a distance of 3,911.9 feet to its intersection with the southwest bounds of South Park Avenue;

Thence southeasterly, along the southwest bounds of South Park Avenue, a distance of 1,391.19 feet to an angle point in said southwest bounds;

Thence southeasterly, continuing along the southwest bounds of South Park Avenue, at an exterior angle of $161^{\circ} 28' 32''$ a distance of 953.66 feet to the point or place of beginning, containing 3,926,220 square feet or 90.134 acres of land, more or less.

Parcel B1
Environmental Easement

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

BEGINNING at the intersection of the west line of Abby Street (66' wide) and the south line of Baraga Street (60' wide); thence southerly along the west line of Abby Street, a distance of 1767.08 feet to the south line of lands conveyed by Frederick Brown to Nicholas Newerf and William H. Newerf by deed dated April 19, 1887 and recorded in the Erie County Clerk's Office on April 22, 1887 in Liber 526 of Deeds at page 107; thence westerly and along the south line of Newerf's lands, as above mentioned, a distance of 1737.13 feet to a point 77 feet easterly of the centerline of the main track of the South Buffalo Railway as measured along said south line of lands conveyed by Krull to McClintic Marshall Construction Co.; thence northerly along said Railway, a distance of 1849.42 feet to a point of curvature; thence northerly on a curve to the right having a radius 136.01 feet, a distance of 79.53 feet to a point of compound curve; thence easterly on a curve to the right having a radius 478.49 feet, a distance of 479.50 feet to a point of reverse curve; thence easterly on a curve to the left having a radius 4,960.65 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 easterly on a curve to the left having a radius 5061.15 feet, a distance of 272.67 feet to the northwest corner of lands conveyed by Feine Realty Co., Inc. to Steelfields LTD. by deed recorded in the Erie County Clerks Office in Liber 11035 of Deeds at page 9353; thence southerly along the west line of said lands conveyed to Steelfields LTD., a distance of 235.00 feet to the southwest corner of said lands conveyed to Steelfields LTD.; thence easterly along the south line of said lands conveyed to Steelfields LTD., a distance of 761.46 feet to the southwest corner of lands conveyed to Iroquois Gas Co. by deed recorded in the Erie County Clerks Office in Liber 5127 at Page 191; thence northerly along the west line of said lands conveyed to Iroquois Gas Co., a distance of 68.00 feet to the northwest corner of said lands conveyed to Iroquois Gas Co.; thence easterly along the north line of said lands conveyed to Iroquois Gas Co., a distance of 100.00 feet to a point in the west line of Baraga Street (60' wide); thence southerly along the west line of Baraga Street, a distance of 15.00 feet to the southwest corner of Baraga Street; thence easterly 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 3,886,878 square feet or 89.320 acres of land, more or less.

Parcel B2
Environmental Easement

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

BEGINNING at the intersection of the west line of Abby Street (66' wide) and the north line of Baraga Street; thence westerly along the north line of Baraga Street (60' wide), a distance of 537.38 feet to an angle point; thence continuing westerly along the north line of Baraga Street, a distance of 191.41 feet to a point in the west line of Subdivision Lot Number 15 in Block 22 as shown on map filed in the Erie County Clerk's Office under Cover Number 487; thence northerly along the said west line of Subdivision Lot Number 15, a distance of 146.54 feet to a point in the south line of lands conveyed to Delaware, Lackawanna and Western Railroad; thence northeasterly along the south line of said Railroad on a curve to the left having a radius 5061.15 feet, a distance of 291.57 feet to the south line of O'Conner Street (60' wide); thence easterly along the south line of O'Conner Street, a distance of 510.60 feet to the west line of Abby Street; thence southerly along the west line of Abby Street, a distance of 200.15 feet to the place of beginning, containing 144,286 square feet or 3.312 acres of land, more or less

SCHEDULE "B" PROPERTY DESCRIPTION

**Exception
TENORM Reuse Area**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York being part of Lot 16, Township 10, Range 8 of the Ogden Gore Tract, bounded and described as follows:

COMMENCING at a point in the southwest bounds of South Park Avenue (also known as Abbott Road), being 66 feet wide, at a distance of 124.53 feet northwesterly from the northwest bounds of New Abby Street, measured along said southwest bounds;

Thence southwesterly, at an angle of $57^{\circ} 09' 00''$ measured in the westerly quadrant from the said southwest bounds, a distance of 160.56 feet to the southwest corner of said Republic Steel Corporation lands, being a point of curvature in the former north line of lands owned by the Delaware, Lackawanna and Western Railway company;

Thence westerly, curving to the right along the arc of a circular curve with a radius of 987.81 feet, a distance of 275.12 feet to a point;

Thence southerly, radially to the last described course and along the easterly line of lands conveyed to Republic Steel Corporation by deed recorded in Liber 8777 at page 519, a distance of 99.0 feet to the southeast corner of the last described lands;

Thence southwesterly, at an interior angle of $109^{\circ} 50' 47''$ and along the south line of the last described lands, a distance of 387.67 feet to angle point in said south line;

Thence southwesterly, at an exterior angle of $174^{\circ} 54' 45''$ and continuing along the south line of the last described lands, a distance of 520.38 feet to a point;

Thence southwesterly, at an exterior angle of $156^{\circ} 42' 46''$, a distance of 40.00 feet to a point in the north line of lands formerly owned by the New York, Lackawanna and Western Railway Company;

Thence westerly, curving to the right along the arc of a circular curve with a radius of 4,911.15 feet, being along the north line of the last described railway, a distance of 79.58 feet to the northeast corner of lands conveyed to Republic Steel Corporation by deed recorded in Liber 7622 at page 649;

Thence southerly, along the east line of the last described lands, a distance of 6.00 feet to the southeast corner of said last described lands;

Thence westerly and northerly along the south and west lines of the last described parcel, the following courses and distances:

Westerly, curving to the right along the arc of a circular curve with a radius of 4,767.15 feet, a distance of 285.00 feet to a point of tangency;

Westerly, tangent to the last described curve, a distance of 172.06 feet to a point;

Southerly, at an exterior angle of $107^{\circ} 45' 45''$, a distance of 39.90 feet to a point;

Westerly, at an interior angle of $105^{\circ} 24' 00''$, a distance of 177.34 feet to a point;

Thence northerly at right angles to the last described line, and through the lands conveyed to Fort Schuyler Management Corporation by deed recorded in the Erie County Clerks Office in Liber 11266 of Deeds at Page 8232, a distance of 10.34 feet to the **POINT OF BEGINNING**;

Thence continuing through the said lands conveyed to Fort Schuyler Management Corporation the following seven courses and distances:

- (1) S $65^{\circ} 23' 55''$ W, a distance of 638.30 feet to a point of curvature;
- (2) Westerly on a curve to the right having radius of 669.50 feet, an arc length of 322.43 feet, a chord bearing of S $79^{\circ} 11' 44''$ W, and a chord distance of 319.32 feet to a point of compound curvature;
- (3) Northwesterly on a curve to the right having radius of 417.35 feet, an arc length of 528.23 feet, a chord bearing of N $50^{\circ} 44' 54''$ W, and a chord distance of 493.67 feet to a point of tangency;
- (4) N $16^{\circ} 24' 51''$ W, a distance of 451.73 feet to a point;
- (5) S $65^{\circ} 35' 08''$ E, a distance of 885.66 feet to a point of curvature;
- (6) Northeasterly on a curve to the left having radius of 246.51 feet, an arc length of 432.59 feet, a chord bearing of N $64^{\circ} 08' 28''$ E, and a chord distance of 379.18 feet to a point of curvature of a non-tangential curve;
- and (7) Southeasterly on a non-tangential curve to the left having radius of 415.97 feet, an arc length of 347.38 feet, a chord bearing of S $49^{\circ} 26' 02''$ E, and a chord distance of 337.37 feet to the point or place of beginning, containing 474,299 square feet or 10.888 acres of land, more or less.