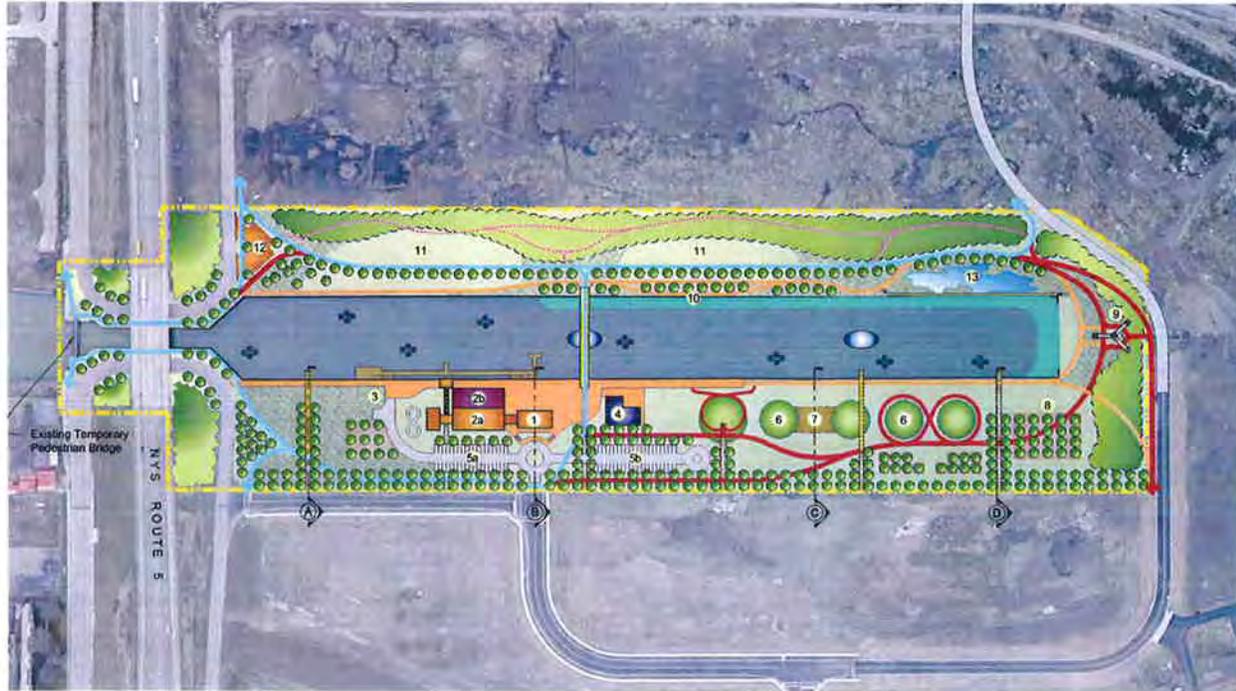


Union Ship Canal Public Open Space

Application to the
Greenway Ecological Fund Standing Committee



City of Buffalo, New York



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Buffalo Urban Development Corporation

275 Oak Street, Suite 150
Buffalo, New York 14203

phone: 716-856-6525
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July 20, 2009

Mr. Edward Alkiewicz
New York Power Authority
123 Main Street
White Plains, NY 10601

Dear Mr. Alkiewicz:

We are please to submit the planned Union Ship Canal Open Space Project to the Ecological Greenway Fund Standing Committee for funding determination and allocation. We are seeking \$649,000 in Greenway funding to cover the cost of site amenities, a floating dock system, a timber boardwalk over an embayment area, and additional habitat improvements. This unique waterfront park project is a joint proposal between the City of Buffalo, County of Erie, and the Buffalo Urban Development Corporation to execute extensive environmental remediation and the eco-restoration of the historic Union Ship Canal at the former Hannah Furnace Site within the City of Buffalo. The overall goal is to create a new urban public open space, with waterfront access for recreation and the enjoyment of fish and wildlife in a naturalized setting. Placed at the core of the newly developed Buffalo Lakeside Commerce Park, the Union Ship Canal Public Open Space will help to implement strategic efforts that the State of New York, City of Buffalo, and Erie County have been working on for many years, as well as put into practice the vision and principles of the Niagara River Greenway Plan.

The Union Ship Canal Public Open Space is a critical element to the revitalization of the region's urban core. This project will bring life and opportunity back to an abandoned industrial site, while enhancing the beauty of our waterfront along the Outer Harbor. As a public waterfront access point and trail head, the Union Ship Canal Public Open Space will give residents and visitors to our region the opportunity to enjoy the benefits of water and nature, while appreciating the historical significance of the steel industry in the Buffalo region. As the Buffalo Lakeside Commerce Park progresses into Phase 4 infrastructure development, the Public Open Space will be an essential asset in attracting additional businesses and creating a balanced atmosphere of business, recreation, and nature. The park and adjacent business development is returning vibrancy to an industrial heritage site, as well as the entire Western New York region.

Officers & Board of Directors

- Hon. Byron W. Brown, Chairman of the Board • Dennis Penman, Vice Chairman • Peter M. Cammarata, President • David A. Stebbins, Vice President
- Andrew Schoepich, Treasurer • Kevin J. Zanner, Secretary • Catherine M. Braniecki • Thomas P. Dee • Dennis W. Elsenbeck • Hon. David A. Franczyk
- Thomas Kucharski • Woodrow Maggard • Lawrence Meckler • William Murray • Benjamin N. Oblatz • Christina P. Orsi • Brian A. Reilly
- Andrew Rudnick • Sundra Ryce • Holly Sinnott • Craig Slater



Buffalo Urban Development Corporation is an affiliated organization of the Erie County Industrial Development Agency

Mr. Edward Alkiewicz, New York Power Authority

July 20, 2009

Page 2

We look forward to continuing our partnership with respect to the Union Ship Canal Public Open Space project as work commences over the next few months. We have already secured approximately \$8.5 million in funding for the first phase of this project from the new York State Department of Environmental Conservation, New York State Department of Transportation, and Erie County. The project design is completed and construction is expected to begin in the early fall of this year. The Greenway funding is being sought to complete the open space amenities for the park, especially public access features such as a car-top launch that will enable human interaction with the renewed ecological system in the canal and surrounding area.

We look forward to your final determination and funding allocation. Please do not hesitate to contact us if there are any questions or additional information desired for this application.

Sincerely,



PETER M. CAMMARATA
PRESIDENT



DAVID A. STEBBINS
VICE PRESIDENT

Purpose

The proposed Union Ship Canal Public Open Space (Park) is a brand new waterfront park development that encompasses the Union Ship Canal and 22 acres that is delineated by a 200-foot setback from the canal bulkheads. In an effort to restore public access to what was once a privately owned heavy industrial site, the Park will create an atmosphere conducive to picnicking, fishing, hiking, and sun bathing, and will include a multi-use trail that will connect people to the outer harbor, Tifft Nature Preserve, Seaway trail, and the future Southtown's Connector. The Park will be constructed in phases, as funding allows, beginning with the environmental remediation of existing pollutants, establishment of landscaping using native plants, and the construction of trails that accommodate pedestrian and bicycle traffic.

The re-creation of this historical industrial site as a public park will also aid in the eco-restoration of the land and canal, thus providing a habitat for fish and other aquatic and wild-life to thrive and enhance spawning throughout the entire River basin. Sought funds will amplify the ecological stability of the park, while increasing the accessibility of visitors to experience nature, by providing a floating dock to launch non-motorized boats, a timber deck over a lagoon embayment, as well as additional habitat improvements.

The redevelopment of this site is very important to the restoration of the existing wetlands habitats, as well as increasing the total area of these natural habitats. A timber deck that will extend across a wetland embayment area at the level of the canal water will bring visitors and naturalists closer to the water, while creating a better observation point for the natural beauty of the park. The floating dock system will allow water enthusiasts to launch a non-motorized boat into the water, accessible by a paved car-top launch. Besides use as a boat launch, the floating docks will also be available for fishing access by bringing visitors' to the water level and provides a great vantage spot for not only fishing, but also enjoying the benefits of water access.

While a beneficial asset to the public, the Park is vital in the redevelopment of South Buffalo and the continued development of the Buffalo Lakeside Commerce Park (BLCP). Located within a NYS Brownfield Opportunity Area, which has been designated as one of Governor Paterson's Smart Growth Spotlight Communities, the addition of BLCP to the City of Buffalo has been an important step in the revitalization of South Buffalo and the local economy. The transformational development of this site will add a great amenity for the area by providing residents' and visitors' waterfront access and an environmentally friendly homage to the industrial heritage of the past.

At its maturity, the park will provide the public with approximately 22 acres of urban waterfront green space with over one mile of bike/pedestrian trails along the canal front, an additional mile of pedestrian pathways, parking for approximately 100 vehicles, and the eco-restoration of a 10-acre canal, promoting the growth of native aquatic fauna and fish life and the use of non-motorized water-craft. With the park serving as the southern anchor to the Niagara River Greenway, a floating dock in the canal will be an important amenity, allowing kayak and small boat user's access to Lake Erie and the Niagara River basin. The overall goal of this project is to bring much needed accessibility to the waterfront by allowing visitors of the park to experience the ecological aspects of nature, hands-on.

1. Project Sponsor Information

Organization

Buffalo Urban Development Corporation
275 Oak Street
Suite 150
Buffalo, New York 14203

Federal ID Number

22-2324226

Points of Contact

Mr. David A. Stebbins
Vice-President
Buffalo Urban Development Corporation
275 Oak Street, Suite 150
Buffalo, NY 14203
Phone: 716-856-6525 ext.114
Email: dstebbins@ecidany.com
Fax: 716-856-6754

Mr. Peter M. Cammarata
President
Buffalo Urban Development Corporation
275 Oak Street, Suite 150
Buffalo, NY 14203
Phone: 716-856-6525 ext. 130
Email: pcammarata@ecidany.com
Fax: 716-856-6754

2. Evidence of Consultation

Niagara River Greenway Commission

A completed Niagara River Greenway Commission Project Consultation and Review form was submitted to the Niagara River Greenway Commission on March 16, 2009 for determination of consistency with the official Greenway Plan. After a public comment period, an affirmative consistency was determined by the Niagara River Greenway Commission on May 19, 2009. A copy of the letter of consistency and the original Project Consultation and Review application can be found in appendices A and B, respectively.

Affected Municipalities, Counties, or Indian Nations

As the Union Ship Canal Public Open Space project is a joint proposal between the City of Buffalo, Erie County, and Buffalo Urban Development Corporation (BUDC), municipal and county governmental agencies and personnel have been involved in the planning and implementation process. The City of Buffalo is the owner of the property and a construction, operation, and maintenance agreement is in the process of being completed between all three parties. The BUDC Board of Directors, chaired by the Mayor of the City of Buffalo, considered and authorized the application for NYPA Greenway funding through the Ecological Sub-Committee on July 7, 2009. The final plan was presented to the City of Buffalo Planning Board on June 2, 2009 and the Board determined that the design and site plan meets the criteria for site plan approval, and is valid until June 2, 2010. The partnership of the City of Buffalo, County of Erie, and Buffalo Urban Development Corporation are working together to ensure the Union Ship Canal Open Space is a first-class asset ready for public launch at the beginning of summer 2010. A letter of consultation and support from the Erie County Executive, the BUDC Board Action Item, and the City of Buffalo Planning Board site plan and design approval can be found in appendix C.

A series of public meetings were conducted by New York State Department of Environmental Conservation (NYSDEC) and BUDC regarding environmental restoration and park development activities for the park site. Representatives from BUDC, NYSDEC, Erie County Department of Environmental Protection, the City of Buffalo, New York State Department of Transportation (NYSDOT), League of Women Voters, County Preservation Board, Valley Community Association, and U.S. Army Corps of Engineers were present to give a brief presentation and answer questions from citizens present. The first public meeting was held on August 3, 2005, and a second was held on February 17, 2009, both at the Valley Community Center in Buffalo, NY. After this presentation session, the meeting was opened to the public as an opportunity to offer comments on the proposed design. Please see appendix D for Public Meeting Agenda, Notices, and Minutes.

State and Federal Agencies

In November of 2008, Governor David Patterson announced that the South Buffalo Brownfield Opportunity Area, the area encompassing BLCP, is included in the new Brownfield's Smart Growth Spotlight Communities Initiative. This is an important designation as the local efforts to redevelop brownfield's will be matched with state support to aid the revitalization of area neighborhoods, while utilizing smart growth principles.

The U.S. Army Corps of Engineers notified the New York Department of State on May 21, 2009 that activity and construction may be authorized under several existing Corps of Engineers Nationwide Permits. The NYS Department of State determined that the activity would not be undertaken within a State designated Significant Coastal Fish and Wildlife Habitat area or an area covered by an approved Local Waterfront Revitalization Program, and therefore no further review of the project is necessary. A copy of this letter can be found in appendix E.

New York State Office of Parks, Recreation, and Historic Preservation (SHPO) completed a review of the proposed park development in 2006 including landscaping, installation of a pedestrian bridge, trails, parking, canal wall repair, terrestrial habitats and associated structures, and concluded that the project will have no adverse impact upon properties in or eligible for inclusion in the State and National Registers of Historic Places. Please see appendix F for a copy of the original letter from SHPO.

A final design report was submitted in February of 2007 to NYSDOT for official approval. With this approval, NYSDOT authorized the project team to begin final design of the project. At the beginning of July 2009, NYSDOT and NYSDEC will complete a review process of the final design and construction plan. It is anticipated that these reviews will result in a positive outcome for the project as representatives of both parties have been involved in the funding, planning, and design processes.

3. Operation and Maintenance Plan

The development of a proper operation and maintenance plan is essential for the future success of the park. This project has a very unique approach to operation and maintenance expenditures. Neither the City nor County will be asked to pay for regular maintenance of the park, meaning that money from taxpayers will not go towards general upkeep. Instead, property owners within BLCF will pay an assessment fee to a general operation account that will fund the regular operation and maintenance of the park.

An agreement has been prepared between the City of Buffalo and the BLCF Property Owners Association. Under this agreement, the Property Owners Association will be obligated to perform property maintenance, while the City of Buffalo will be responsible for major capital repairs and replacements. An operation and repair fund shall be established based on a pro-rata share of common expenses. The purpose of this fund is to pay the common expenses incurred by the Property Owners Association in fulfilling its responsibilities as outlined in the Project Management and Maintenance Agreement.

The total estimated Common Expenses for a future year will be divided among, assessed, and charged to the individual property owners. Eighty percent of the total estimated common expenses will be denoted as the regular assessment paid through its pro rata share. The remaining twenty percent of the total estimated common expenses will be the total 'Parkside' assessment, which is an extra assessment charged to the owner of a Parkside lot based on the Parkside lot owner's Parkside linear boundary line measurement compared to the total Parkside boundary line measurement.

Please see appendix G for the declaration of covenants, conditions, restrictions, and easements for BLCF, as well as appendix H for the Canal Park Maintenance Agreement.

4. Project Consistency with the Niagara River Greenway Plan

Located on the City of Buffalo's Lake Erie Shoreline, the Union Ship Canal Public Open Space is a unique development opportunity. It converts a brownfield into a multi-use public space that promotes passive recreation, transportation, wellness, and the restoration of the ecosystem. After discussions with SHPO, it has been agreed to keep the linear lines of the Canal's bulkheads intact and to develop an industrial heritage environment through landscaping and amenity designs. The ability to launch car-top watercraft will give non-motorized boaters a protected area to enjoy the water away from the rough waters of Lake Erie. The eco-restoration of the canal will encourage native fish to spawn and gather in the canal while a separate walking trail through natural fauna will be established on the north side of the canal enabling people to leisurely walk while being separated from bicycle users. Following the goals, principles and vision of the Niagara River Greenway Commission, the Park will become a destination for residents and visitors to Buffalo's Outer Harbor area.

Excellence

The Union Ship Canal area redevelopment has been an ongoing project since 2001, creating a world-class park that can be appreciated by all. Funding will help provide high quality, ecologically sensitive, and sustainable development. These assets can be featured as an example for other projects around the country.

Sustainability

The use of native plantings and environmentally friendly materials will be attractive for new habitats of wildlife and fish. All construction and renovations will be aimed at promoting ecological and economic sustainability. While parking is essential to the reconnecting of people to the trails and water, the lots are set back and graded away from the canal to avoid excess run-off.

Accessibility

Serving as a multi-use trail head to the Outer Harbor Trail, the Park and its amenities are providing public access by connecting people to other portions of the region. Access to the park site is improved with the completion of the multiple phases of road and infrastructure construction, connecting parcels in the northern and southern portions of BLCF, as well as the elements of the Southtown's Connector project. With the addition of parking at the north-eastern end, the park will serve as a trail head for the completed trail system in South Buffalo. The multi-use trails for pedestrians and bicycles will also be wide enough to accommodate wheel chair access.

Ecological Integrity

The installation of a geotextile layer and canal sediment cover, in addition to the land cover system, will protect the future inhabitants of the Park from the environmental contaminants that may exist from the historical use of the site as a disposal area for fill materials. The stabilization of portions of the north and eastern canal wall with a berm will not only protect it from future collapse, but will also provide a shallow water fish habitat. Underwater artificial reefs will be placed on the bottom of the canal to attract more fish species and allow for the spawning of the aquatic life.

Public Well-Being

The Park will provide an outlet for exercise and outdoor activities that promote an overall sense of wellness, with the completion of the first phase including trails and plantings. Once construction is completed in the future phases, the Park will incorporate an education and entertainment venue, a park building and promenade that will include restrooms, concessions, maintenance equipment, and a hobby center, and a car-top launch and dock for non-motorized boats.

Connectivity

While the Park is going to be a world class park and trail system in itself, the integral part of the trails is the future connection to the other local and regional systems including the outer harbor, the Southtown's Connector trails, Tift Nature Preserve, and the Seaway Trail. A pedestrian bridge crossing the canal at its mid-point is also important to create a connection to the north and south sides of the park and allowing pedestrians to shorten their trip by over one-half of a mile.

Restoration

The site of the Union Ship Canal and the surrounding reclaimed brownfield sites were a part of the Hanna Furnace Complex, a past use that has taken a toll on the ecology and environment of the area. The Park will serve as a model for adaptive re-use of industrial brownfield's along our regional waterfront by remediating the environmental hazards and creating a natural habitat and haven for wildlife that were once displaced. The goal is to create a positive ecological impact on the area by bring new plantings, aquatic, and wild-life into the area to be enjoyed by these animals and the public who wishes to interact with nature.

Authenticity

Through the input of community stakeholders and SHPO, it has been decided to preserve the canal in its historical form and to provide restoration to the ecosystem to attract new aquatic and wild life. The park was designed to accentuate the historical uses and cultural heritage of the site as a producer of pig iron. Architectural land forms, simulating iron ore piles, will be placed on the south side of the canal, along with a collection of industrial artifacts and icons. Plantings and pathways, in conjunction with site grading, are designed to mimic gantry cranes that once loaded and unloaded ships in the canal.

Celebration

The Park will celebrate the dedicated workers who spent their lives improving the city and region. Visitors will be able to celebrate these workers and their history through interpretive signage and historical icons and artifacts. The entertainment/educational venue being considered for a later phase, will provide space for people to gather and celebrate their own lives and accomplishments. Upon completion, however, the first celebration will be that of renewal; renewal of a culture, an unused brownfield, and the community.

Partnerships

As a partnership between the City of Buffalo, County of Erie, and BUDC, the project will provide an open space for the public to utilize as a land and water park. Funding is provided by NYSDEC through the Environmental Restoration Program, as well as NYSDOT through the Transportation Enhancement Program. Required local matching funds are being provided by the County of Erie. Through a fee assessed on the property owners at BLCP, a fund will be established for the maintenance of the park.

Community Based

The redevelopment of the Union Ship Canal has been designed within the parameters of local planning documents, such as the draft of the Local Waterfront Revitalization Plan for the City of Buffalo and the South Buffalo Brownfield Opportunity Area. The Park is a sizeable piece of the overall development of the Inner and Outer Harbor of Buffalo as a regional asset and a catapult for the revitalization of the region. Community partners have held an influential role in the development and planning process of the Park and the property owners in BLCP have a financial stake in the redevelopment of the Union Ship Canal.

Described as 'consistent' through the above outlined principles of the Niagara River Greenway Commission, the Union Ship Canal Public Open Space will provide improved access to the many existing waterfront resources through trails and the use of non-motor watercraft. This development of a brownfield into a new urban park should also be considered a 'priority status' because of the restoration to the local waterfront ecosystem and the implementation of educational and interpretive resources about the cultural, natural, and historic environment of the Union Ship Canal site. This project strives to continue the efforts of the Tifft Nature Preserve and Times Beach improvement projects by enhancing the environmental quality of the region, and more specifically the Union Ship Canal and surrounding land. The Union Ship Canal Public Open Space will join these two projects by restoring wastelands into wild-life habitats that help to restore the ecosystem.

Located in the highest geographic preference area and consistent with the criteria of the Niagara River Greenway, the project is implementable and economically viable. Upon completion and approval of final designs, construction is scheduled to begin early fall of 2009, with an anticipated completion of early summer 2010. Roughly \$8.5 million in initial phase funding has been allocated

to this project with local matching funds, and subsequent phases will begin as additional funding becomes available.

The Union Ship Canal Public Open Space will have a major impact on Buffalo and Erie County's urban waterfront development and on the region's largest brownfield project of the past ten years. The park greatly enhances the natural environment by converting over 22 acres of heavy industrial waterfront brownfield's into a user friendly park for the general public, as well as reclaiming a contaminated abandoned deep water port into a clean water access point that promotes passive water uses such as fishing and canoeing.

In an effort to reuse and reclaim a brownfield area to its natural state, the full build-out of the Union Ship Canal Public Open Space will provide access to the waterfront and is part of a larger effort to restore the ecosystem in the South Buffalo area. The diverse features of the park create exceptional opportunities for environmental enhancement and restoration of the park facilities and the site of the anticipated place.

5. Project Consistency with State and Federal Laws

A Generic Environmental Impact Statement for this project was completed and approved in January 2002 for the Park and BLCP area, and a Negative Declaration was filed in March 2007 for Parcel 3, the area that constitutes the Public Open Space. Pursuant to the 1996 Clean Air/Clean Water Bond Act, the City of Buffalo completed an Environmental Restoration Program investigation of the Union Ship Canal site in 2003.

Based on the ROD for Parcel 3, components of the remedy include removing of surface debris and installation of a surface cover with clean soil of a minimum of two feet, including in the canal bed. All remedial tasks will be done in accordance with the ROD and under the auspices of the proposed soil management plans. Please see the attached Environmental Restoration Record of Decision and Declaration of Negative Impact in appendices I and J, respectively, for further details.

6. Efforts and Opportunities to Obtain Matching Funds

The New York State Department of Environmental Conservation allocated \$6,030,000 from the Environmental Restoration Program to be used for environmental remediation and the restoration of the existing eco-system. The New York State Department of Transportation allocated \$1,400,000 from the Transportation Enhancement Program for the construction of trails around the park that will serve as a trail head to the Outer Harbor Recreation Trail. Erie County is providing \$995,000 in matching funds to the project. The award letter from GBNRTC for the TEP grant is in appendix K.

7. Statement of Use of Greenway Funds

The Greenway funds requested will not be used to defray: (1) any obligation existing as of August 31, 2007 or (2) operation and maintenance costs associated with any project existing as of August 31, 2007.

8. Current and Proposed Land Ownership

The City of Buffalo is the owner of the property upon which the Public Open space will be built. The City will maintain ownership of the property and be required to perform site repairs as stated in the Canal Park Maintenance Agreement with BUDC.

9. Project Budget

The total estimated cost for Park development and site remediation is approximately \$14 million, based on earlier master planning of the proposed project. Portions of the Park development costs are included in the Land Cover System breakdown, because they serve the dual purpose of remediation and park development. Parts of the land Cover System costs are being funded under the New York State Department of Environmental Conservation through the Environmental Restoration Program (ERP) at a 90/10 percent state/local funding arrangement. Funding from the New York State Department of Transportation through the Transportation Enhancements Program will be used for design and installation of Phase I park elements. At the time of application, the project has approximately \$8,425,000 in grants and matching funds. An additional \$1,902,200 is sought from New York Power Authority for additional site amenities, including a request for \$649,000 from the Greenway Ecological Fund Standing Committee, and \$1,253,200 from the Buffalo and Erie County Standing Committee. A detailed project budget follows, and cost estimates for construction and materials can be found in appendix L.

Union Ship Canal Public Open Space - Secured Funding

NYSDEC - ERP	\$6,030,000	Phase I - Fall 2009 - Summer 2010
NYS DOT - TEP	\$1,400,000	Phase I - Fall 2009 - Summer 2010
City/County	\$995,000	Phase I - Fall 2009 - Summer 2010
Total Funding	\$8,425,000	

NYPA Greenway Fund Request Breakdown

Ecological Fund Standing Committee

Requested Amount	\$649,000	Phase II Spring 2010 - Summer 2010
Estimated Costs		
Planning/Design	\$103,950	
	Design and Const. Documents	\$49,550
	Const. Administration & Inspection	\$54,400
Floating Dock	\$297,500	
Timber Deck over Lagoon	\$106,000	
Habitat Improvements	\$92,000	
Sub-Total	\$599,450	
Contingency	\$49,550	
Total Estimated Cost	\$649,000	Ecological Fund

Buffalo and Erie County Fund Standing Committee

Requested Amount	\$1,253,200	Phase II Spring 2010 - Summer 2010
Estimated Costs		
Planning /Design	\$154,300	
	Design and Const. Documents	\$99,900
	Const. Administration & Inspection	\$54,400
Promenade	\$155,000	
Industrial Icon	\$90,000	
Industrial Relic	\$36,000	
Industrial Playground	\$72,000	
Maintenance Shed	\$15,000	
Signage	\$44,000	
Safety Rails	\$195,500	
Lights and Associated Costs	\$345,000	
WiFi Feed to Shed	\$46,500	
Sub-Total	\$1,153,300	
Contingency	\$99,900	

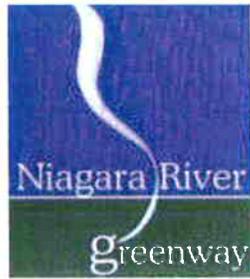
Total Estimated Cost	\$1,253,200	<i>Buffalo & Erie County Fund</i>
<hr/>		
Ecological Fund Sub-Total	\$649,000	
Buffalo & Erie County Fund Sub-Total	\$1,253,200	
<i>Grand Total</i>	\$1,902,200	<i>Requested Amount from NYPA Greenway Fund</i>
<hr/>		
Funding Secured	\$8,425,000	
Requested Amount from NYPA Greenway Fund	\$1,902,200	
Total	\$10,327,200	

Attachments

- A. Notification of Greenway Consistency
- B. NRG Project Consultation Review Packet
- C. Letters of Support from City and County
- D. Public Meeting Information
- E. Letter from U.S. Army Corp of Engineers
- F. Letter from NYSHPO
- G. Declaration of Covenants
- H. Park Maintenance Agreement
- I. Environmental Restoration ROD
- J. Declaration of Negative Impact
- K. NYSDOT TEP Award Letter from GBNRTC
- L. Cost Estimates
- M. Site Plans and Renderings

Appendix A

Notification of Greenway Consistency



May 20, 2009

Peter M. Cammarata, President
Buffalo Urban Development Corporation
275 Oak Street
Suite 150
Buffalo, New York 14203

Dear Mr. Cammarata:

The Niagara River Greenway Commission is pleased to support the Buffalo Urban Development Corporation's "Project Consultation and Review" package for the "Union Ship Canal Public Open Space".

This project is consistent with the Niagara River Greenway Plan as determined by the Niagara River Greenway Commission. The subjective evaluation has been based on the principals, goals and criteria that define the Niagara River Greenway Plan. I have attached the public comments received on the "Union Ship Canal Public Open Space" during the deliberation timeframe for your use. The Commission is pleased to support the Buffalo Urban Development Corporation project proposal and wish you great success.

Respectfully,

Rob Belue

R.A. Belue
Executive Director

Cc: Erie-Buffalo-Olmsted Standing Committee
David A. Stebbins

Attachments:

Appendix B

NRGC Project Consultation Review Packet



Niagara River Greenway Commission
Project Consultation and Review



Union Ship Canal Public Open Space

Monday, March 16, 2009

Project Registration Number _____

*Niagara River Greenway Commission
Consultation and Review Form*

Type of Review Required: _____ Mandatory Consultation
_____ Voluntary Review and/or Endorsement

PROJECT CO-SPONSOR INFORMATION

Name: Buffalo Urban Development Corporation
Mailing Address: 275 Oak Street, Suite 150 City: Buffalo
State: New York Zip Code: 14203
Federal Id# 22-2324226 Charities Registration # _____

PROJECT TYPE

Check all that apply: Environmental Cultural/Heritage Land or Water Public
Access
 Cultural Trail Educational/Interpretive
 Waterfront or Land Based Development Signage
 Recreational Other

Project Name: Union Ship Canal Public Open Space

Location: Buffalo Lakeside Commerce Park, South Buffalo

Site Address: Ship Canal Parkway

State: New York Zip Code: 14218

Minor Civil Division(s): _____

County: Erie

Project Proponent Property Interest (own, lease, easement or other): BUDC is the project manager
under agreement with the City of Buffalo (Land Owner).

Union Ship Canal Public Open Space

AUTHORIZED OFFICIAL

Name: Mr. Peter M. Cammarata Title: President

Organization/Firm: Buffalo Urban Development Corporation

Business Address: 275 Oak Street, Suite 150 City: Buffalo

State: New York Zip Code: 14203

Telephone Number: 716-856-6525 ext. 130 Cell Number: _____

Fax Number: 716-856-6754

E-Mail Address: pcammarata@ecidany.com

PROJECT POINT OF CONTACT

Name: Mr. David A. Stebbins Title: Vice-President

Organization/Firm: Buffalo Urban Development Corporation

Business Address: 275 Oak Street, Suite 150 City: Buffalo

State: New York Zip Code: 14203

Telephone Number: 716-856-6525 ext.114 Cell Number: _____

Fax Number: 716-856-6754

E-Mail Address: dstebbins@ecidany.com

Project Narrative

1. Purpose:

The proposed Union Ship Canal Public Open Space ('Park') is a brand new waterfront park development that encompasses the Union Ship Canal and 22 acres that is delineated by a 200-foot setback from the canal bulkheads. In an effort to restore public access to what was once a privately owned heavy industrial site, the Park will create an atmosphere conducive to picnicking, fishing, hiking, and sun bathing, and will include a multi-use trail that will connect people to the outer harbor, Seaway trail, and the future Southtown's Connector. The Park will be constructed in phases, as funding allows, beginning with the environmental remediation of existing pollutants, establishment of landscaping using native plants, and the construction of trails that accommodate pedestrian and bicycle traffic. The re-creation of this historical industrial site as a public park will also aid in the eco-restoration of the land and canal, thus providing a habitat for fish and other aquatic and wild life to thrive. While a beneficial asset to the public, the Park is vital in the redevelopment of South Buffalo and the continued development of the Buffalo Lakeside Commerce Park ('BLCP'). The transformational development of this park will add a great amenity for the area by providing residents' and visitors' waterfront access and an environmentally friendly homage to the industrial heritage of the past. At its maturity, the Park will provide the public with approximately 22 acres of urban waterfront green space with over one mile of bike/pedestrian trails along the canal front, an additional mile of pedestrian pathways, parking for approximately 100 vehicles, and the eco-restoration of a 10-acre canal, promoting the growth of native aquatic fauna and fish life and the use of non-motorized water-craft.

2. Advancing Vision of NRGCC:

The Union Ship Canal Park is unique in that it converts a Brownfield into a multi-use public space that promotes passive recreation, transportation, wellness, and the restoration of the ecosystem. After discussions with the New York State Historic Preservation office, it has been agreed to keep the linear lines of the Canal's bulkheads intact and to develop an industrial heritage environment through landscaping and amenity designs. The ability to launch car-top watercraft will give non-motorized boaters a protected area to enjoy the water away from the rough waters of Lake Erie. The eco-restoration of the canal will encourage native fish to spawn and gather in the canal while a separate walking trail through natural fauna will be established on the north side of the canal enabling people to leisurely walk while being separated from bicycle users. Following the goals, principles and vision of the Niagara River Greenway Commission, the Park will become a destination for residents and visitors to Buffalo's Outer Harbor area.

Excellence

The Union Ship Canal project has been an ongoing plan since 2001 to create a world class park that can be appreciated by all. Funding will help provide high quality, ecologically sensitive, and sustainable development, all assets that can be utilized as an example for other projects around the country.

Sustainability

The use of native plantings and environmentally friendly materials will be attractive for new habitats of wildlife and fish. All construction and renovations will be aimed at promoting ecological and economic sustainability. While parking is essential to the reconnecting of people to the trails and water, the lots are set back from and graded away from the canal to avoid runoff.

Accessibility

The Park and its amenities are providing public access by connecting people to trails and through the trails to other portions of the region. Access to the park site is improved with the completion of the roads connecting parcels in the northern and southern part of the Buffalo Lakeside Commerce Park, as well as the elements of the Southtown's Connector project. With the addition of parking at the north eastern end, the park will serve as a trail head for the completed trail system in South Buffalo. The multi-use trails for pedestrians and bicycles will also be wide enough to accommodate wheel chair access.

Ecological Integrity

The installation of the geotextile layer and canal sediment cover, in addition to the land cover system will protect the future inhabitants of the Park from the environmental contaminants that may exist from the historical use of the site as a disposal place for fill materials. The stabilization of portions of the north and eastern canal wall with a berm will not only protect it from future collapse, but will also provide a shallow water fish habitat. Underwater artificial reefs will be placed on the bottom of the canal to attract more fish species and allow for the spawning of the aquatic life.

Public Well-Being

The Park will provide an outlet for exercise and outdoor activities that promote an overall sense of wellness, with the completion of the first phase including trails and plantings. Once construction is completed in the future phases, the Park will incorporate an education and entertainment venue, a park building and promenade that will include restrooms, concessions, maintenance equipment, and a hobby center, and a car-top launch and dock for non-motorized boats.

Connectivity

While the Park is going to be a world class park and trail system in itself, the integral part of the trails is the future connection to the other local and regional systems including the outer harbor, the Southtown's Connector trails, Tift Nature Preserve, and the Seaway Trails. A pedestrian bridge crossing the canal at its mid-point is also important to create a connection to the north and south sides of the park and allowing pedestrians to shorten their trip by over one-half of a mile.

Restoration

The site of the Union Ship Canal and the surrounding reclaimed Brownfield sites were a part of the Hanna Furnace Complex, a past use that has taken a toll on the ecology and

environment of the area. The Park will serve as a model for adaptive re-use of industrial Brownfield's along our regional waterfront by remediating the environmental hazards and creating a natural habitat and haven for wildlife that were once displaced. It is the goal to bring new plantings, aquatic, and wildlife into the area to be enjoyed by these animals and the public who wishes to interact with nature.

Authenticity

Through the input of community stakeholders and the State Office of Historic Preservation, it has been decided to preserve the canal in its historical form and to provide restoration to the ecosystem to attract new aquatic and wild life. In keeping with the heritage of the site, industrial artifacts and icons such as architectural land forms simulating iron ore piles and a collection featuring artifacts from the site will be placed in the Park as a reminder of its previous uses. Plantings and pathways, in conjunction with the site grading are designed to mimic the gantry cranes that once loaded and unloaded the ships in the canal.

Celebration

The Park will celebrate the dedicated workers who spent their lives improving the city and region. Visitors will be able to celebrate these workers and their history through interpretive signage and historical icons and artifacts. The entertainment/educational venue being considered for a later phase, will provide space for people to gather and celebrate their own lives and accomplishments. Upon completion, however, the first celebration will be that of renewal; renewal of a culture, an unused Brownfield, and the community.

Partnerships

As a partnership between the City of Buffalo, County of Erie, and Buffalo Urban Development Corporation (BUDC), the project will provide an open space for the public to utilize as a land and water park. Funding is provided by the New York State Department of Environmental Conservation through the Environmental Restoration Program, as well as the New York State Department of Transportation through the Transportation Enhancement Program. Required local matching funds are being provided by the County of Erie. Through a fee assessed on the property owners of the BLCP, a fund will be established for the maintenance of the park.

Community Based

The redevelopment of the Union Ship Canal has been designed within the parameters of local planning documents such as the draft of the Local Waterfront Revitalization Plan for the City of Buffalo and the South Buffalo Brownfield Opportunity Area. The Park is a sizeable piece of the overall development of the Inner and Outer Harbor of Buffalo as a regional asset and catapult for the revitalization of the region. Community partners have held an influential role in the development and planning process of the Park and the property owners in BLCP have a financial stake in the redevelopment of the Union Ship Canal.

Along with the goal of advancing, protecting, and restoring regional ecological systems, the Park meets the following criteria of the Niagara River Greenway:

- I. **Consistency** with NREG Principles as outlined above.
- II. **Priority Status:**
The Park will provide improved access to waterfront resources, the development of an integrated trail and park system, the restoration of the local waterfront ecosystem, interpretation and education about the cultural, natural, and historic resources of the Union Ship Canal, and the revitalization of a Brownfield into a brand new urban park that fits with the features of the Olmsted Park System.
- III. **Focus Area:**
Located on the City of Buffalo's Lake Erie Shoreline, the Union Ship canal is within the NREG's municipal boundary.
- IV. **Environmental Soundness:**
This project strives to enhance the environmental quality of the region, and specifically the Union Ship Canal and surrounding land.
- V. **Implementable:**
Upon completion and approval of final designs, construction is scheduled to begin late spring/early summer of 2009. Pursuant to securing necessary funding, the first phase of the Union Ship Canal Park will be completed by the Fall of 2009. Subsequent phases will begin as funding becomes available.
- VI. **Economic Viability:**
Roughly \$8.5 million in initial phase funding has been allocated to this project. A maintenance fund will be established through a fee assessed to property owners within the Buffalo Lakeside Commerce Park.
- VII. **Local Sponsor or Partner:**
The partnership of the City of Buffalo, County of Erie, and Buffalo Urban Development Corporation (BUDC) are working together to ensure the Union Ship Canal Park is an first-class asset for the public.
- VIII. **Matching Funds/Leveraging:**
The New York State Department of Environmental Conservation approved use of \$6,030,000 from the Environmental Restoration Program and the New York State Department of Transportation allocated \$1,400,000 from the Transportation Enhancement Program to aid in project costs. Total estimated matching funds provided by the County of Erie are \$995,000.
- IX. **Consideration of other Planning Efforts:**

The establishment of this waterfront park takes into consideration the overarching vision of Buffalo's Local Waterfront Redevelopment Plan, fits into the scope of the South Buffalo Brownfield Opportunity Area Plan and design, and is a key part of the South Towns Connector Trail System.

X. **Clear Benefits:**

The Union Ship Canal Park will have a major impact on Buffalo and Erie County's urban waterfront development and on the region's urban economic development resurgence of any other Brownfield project in the past ten years. The Park enhances the local and regional environment by converting 22 acres of heavy industrial Brownfield's into a park that is user friendly for the general public. The project will also convert a contaminated abandoned deep water port into a clean water feature that promotes passive water uses such as fishing and canoeing.

3. **Defined Budget:**

Activity	Master Plan	Phase 1	Phase 2 Greenway
Planning	\$650,000	\$500,000	\$142,000
Construction			
Site Stabilization	\$5,323,000	\$5,323,000	N/A
Eco-Restoration	\$389,000	\$389,000	N/A
Park	\$7,613,000	\$2,288,000	\$1,508,000
Cartop/Docks			297,500
Promenade			155,000
Site Amenities			663,500
Additional Utilities			392,000
Total Construction	\$13,325,000	\$8,000,000	\$1,508,000
Acquisition	N/A	N/A	N/A
Administration	N/A	N/A	N/A
Operation and Maintenance/Year	\$25,000	-----	-----
Total Project Cost	\$14,000,000	\$8,500,000	\$1,650,000 <i>(requested)</i>

The total estimated cost for Park development and site remediation is approximately \$14 million based on earlier master planning of the proposed project. Approximately \$8.5 million of funding is in place for phase 1 as denoted above in the second column. Breakdowns with current estimated costs of the site stabilization and Park development are included in Attachment 4, along with a cost estimate for the original master plan. Portions of the Park development costs are included in the Land Cover System breakdown as they serve the dual purpose of remediation and

park development. The Land Cover System is being funded under the New York State Department of Environmental Conservation through the Environmental Restoration Program (ERP) at a 90/10 percent state/local funding arrangement. Funding from the New York State Department of Transportation through the Transportation Enhancements Program will be used for design and installation of Phase I Park elements. The request for an additional \$1.65 million in Greenway funding is for additional site amenities such as interpretive signage, the industrial playground, icon, and relics, an asphalt extension to the proposed cartop launch for non-motorized boats, an expanded promenade overlooking the canal, and other additional park enhancements. The requests for this unique waterfront park and eco-system restoration project are denoted as Phase 2 Greenway in the last column of the defined budget chart above.

4. *Community and Government Support:*

As a joint venture between the City of Buffalo, County of Erie, and Buffalo Urban Development Corporation (BUDC), the Union Ship Canal Park is being developed as a public waterfront park accenting the historical heritage of the area's industrial past. Access to the Park by bicyclists and pedestrians may be made by means of the existing Outer Harbor Trail while vehicle transportation can be made via the Seaway Trail and existing local road networks with public parking on both sides of the Canal. Small non-motorized watercraft will be able to access the Park from Lake Erie directly into the Canal.

The Park is a part of the City of Buffalo's Local Waterfront Revitalization Program (LWRP). Attachment 8 shows the placement of the Park within the LWRP boundaries. A Generic Environmental Impact Statement has been completed for the entire Buffalo Lakeside Commerce Park which highlights the Park as its centerpiece and amenity.

The first public meeting was held on August 3, 2005 at the Valley Community Center in Buffalo, NY. Representatives were on hand from local, regional, and state-wide agencies and citizens were present that raised questions and concerns. A second public meeting was held on February 17, 2009 at the Valley Community Center in Buffalo, NY where the DEC discussed and answered questions relating to the proposed cleanup plan for the Park. After this session, the meeting was opened as an opportunity to offer comments on the proposed design. The final plan will be approved by the City of Buffalo Planning Board as well as the BUDC Board of Directors once the final design aspects are selected.

The Park will serve as a model for adaptive re-use of industrial Brownfield's along our regional waterfront. No other industrial site in the Buffalo-Niagara Region has such a diverse redevelopment plan as the Park and surrounding Buffalo Lakeside Commerce Park. In a region that has some of the largest tracts of industrial Brownfield's, this project will be the model for converting decaying abandoned property into a vibrant public use.

5. *Environmental Setting:*

The Union Ship Canal Park is delineated by a 200 foot set back from the canal bulkheads on the southern, eastern and northern sides, extending to Fuhrmann Boulevard on the western side, all located within a "smart growth" commerce park. The site was historically used as a

place of disposal for 'slag' materials from the steel mills and the soil and groundwater at the project site have been contaminated.

A Generic Environmental Impact Statement for this project was completed and approved in January 2002 for the Park and BLCF area and a Negative Declaration was filed in March 2007. Pursuant to the 1996 Clean Air/Clean Water Bond Act, the City of Buffalo completed an environmental investigation on the Union Ship Canal site in 2003. As a result of the investigation, the NYS Department of Environmental Conservation released a proposed Remedial Action Plan that consists of the following proposed remediation components:

- Implementing a Land Cover System to include removal of surface debris and a requirement of two feet of clean "fill" material over designated areas. The land cover system will consist of eighteen inches of clean fill material and six inches of top soil. A small berm will be constructed at the perimeter of the property to prevent run-off from adjacent properties as well as development of a Soil Management Plan.
- Stabilization of canal walls and construction of an underwater berm. The stabilization of the canal walls will act as a way to contain contaminated soil if there happens to be structural failure to the wall. This system will protect the potential release of contaminated soil in the canal and also the investment in the land side cover system.
- Creation of a shallow water fish habitat including a sediment cover over the canal bottom. The cover system will be designed to ensure that no contaminate can migrate through the new cover. The cover system will be applied through the water making it not necessary to dewater the canal. A small underwater berm will be placed in the newly remediated canal to restrict potential spread of contaminated sediments.

Copies of the Negative Declaration and Generic Environment Impact Statement can be found in Attachments 5 and 6, respectively.

The use of native plantings will be beneficial in attracting native aquatic and wild life into the new park. At completion, the redevelopment of the Union Ship Canal Park will result in significant beneficial environmental impacts for the region given the measures taken for mitigation measures and soil remediation work. The partnership is devoted to create this park for public enjoyment for years to come.

Attachments

1. Renderings of Union Ship Canal Public Open Space – Phases 1, 3, and various elements
2. Aerial Images of Site
3. Photographs of Existing Conditions
4. Cost Estimates
5. Negative Declaration
6. Environmental Review of Union Ship Canal District
7. Public Meeting Information
8. Local Waterfront Revitalization Plan
9. Letters of Support
10. Tax Exemption Certification

Appendix C

Erie County Letter of Consultation
BUDC Board Authorization
City of Buffalo Planning Board Approval



COUNTY OF ERIE

CHRIS COLLINS

COUNTY EXECUTIVE

July 14, 2009

Mr. Edward Alkiewicz
New York Power Authority
123 Main Street
White Plains, New York 10601

Dear Mr. Alkiewicz:

I am pleased to issue my support for the grant application to the Greenway Commission's Ecological Fund Standing Committee submitted by the Buffalo Urban Development Corporation. The County of Erie, City of Buffalo and the Buffalo Urban Development Corporation have been working cohesively to execute environmental remediation and eco-restoration of the historic Union Ship Canal. Upon its completion, the Union Ship Canal will create a new urban public 20 acre open space with waterfront access. The Union Ship Canal Public Open Space project will help implement strategic efforts that the City, County and State of New York have been working on for many years.

The Union Ship Canal Public Open Space is a critical element to the revitalization of the region's urban core. This project will bring life and opportunity back to an abandoned brownfield, while enhancing the beauty of Buffalo's waterfront along the Outer Harbor. Funds requested will go to specific habitat improvements and attractions that will lure wild and aquatic life back into this industrial heritage site. As a public waterfront access point and trail head, the Union Ship Canal Public Open Space will give County residents, as well as visitor's to our region, the opportunity to enjoy the benefits of water and nature, while assisting in the appreciation of the historical significance of the steel industry in our region. The project has been successful in obtaining almost \$8.5 million in grants and local matching funds and in gaining support from community members and agencies.

As the Buffalo Lakeside Commerce Park progresses into Phase IV development, the Public Open Space will be an essential asset in attracting new businesses and creating a balanced atmosphere between business, recreation and nature. The park and adjacent private investment in business development is bringing new life and opportunity to the entire Western New York region.

As the provider of the required local matching funds, Erie County looks forward to continuing our role in the partnership with respect to the Union Ship Canal Public Open Space project as the work commences over the next few months. I respectfully request your approval of the Buffalo Urban Development Corporation's request for funding. I am certain you will agree how vital this project is to tourism in Erie County

Sincerely,

CHRIS COLLINS
Erie County Executive

CC:ckc

Minutes of the Board of Directors Meeting
Buffalo Urban Development Corporation
275 Oak Street
July 7, 2009
8:30 a.m.

1.0 Call to Order

Directors Present

Catherine M. Braniecki
Hon. Byron W. Brown, Chair
Dennis W. Elsenbeck
Hon. David A. Franczyk
Thomas A. Kucharski
Woodrow W. Maggard
William M. Murray
Benjamin N. Obletz
Dennis M. Penman, Vice Chair
Brian A. Reilly
Dr. Andrew J. Rudnick
Craig A. Slater

Directors Absent

Thomas P. Dee
Lawrence M. Meckler
Christina P. Orsi
Sundra L. Ryce
Holly A. Sinnott

Officers Present

Peter M. Cammarata, President
Andrew Schoeppich, Treasurer
Kevin J. Zanner, Esq., Secretary

ECIDA Staff present: John Cappellino; Alfred D. Culliton; Brian Kurtz; and Phillip Riggs.

Guests present: James Fink, *Buffalo Business First*; and Christopher Pawenski, County of Erie Department of Environment and Planning.

Roll Call: The roll of directors was called by the Secretary at 8:39 a.m. and a quorum was determined to be present. Mayor Brown joined the meeting during the presentation of the monthly financial report.

2.0 Reading of the Minutes – The minutes of the June 2, 2009 meeting of the Board of Directors were presented. Upon motion made by Mr. Obletz, seconded by Mr. Maggard, and unanimously carried, the minutes of the meeting of June 2, 2009 were approved.

3.0 Monthly Financial Report – Mr. Schoeppich presented the monthly financial report for the Corporation for the period ending June 30, 2009. The cash balance at the end of the June 30, 2009 period was \$372,514 and unrestricted net assets at the end of the period were \$10,414,344. Year-to-date revenue for the period ending June 30, 2009 was \$307,646 and year-to-date expenses were \$338,911, resulting in a year-to-date net loss of (\$31,265). Upon motion made by Dr. Rudnick, seconded by Mr. Elsenbeck, and unanimously carried, it was resolved, that the Board accept the financial report for the period ending June 30, 2009.

4.0 New Business

4.1 Procurement Policy Amendments – Messrs. Schoeppich and Cammarata presented the proposed procurement policy to the Board. Mr. Cammarata noted that staff

decided to present the policy directly to the Board after consulting with the Governance Committee members to determine that a separate meeting of the Governance Committee to review the policy was unnecessary. Mr. Schoeppich commented that the policy is substantially the same policy that was recently adopted by ECIDA. He then reviewed the specific changes to the procurement policy. In response to a question from Mr. Oblatz, Mr. Zanner noted that the principal change from the current policy is to increase the dollar amounts for purchases that do not require the solicitation of multiple quotes. All purchases of up to \$5,000 would be exempt from quoting requirements under the new policy. Mayor Brown commented that the M/WBE provision of the policy should be strengthened to identify specific requirements for meeting the goal of providing contracting opportunities to M/WBE businesses. Mayor Brown then made a motion to approve the procurement policy, subject to the policy being modified to include specific requirements for meeting the goal of providing contracting opportunities to M/WBE businesses. Mr. Slater seconded the motion, and the motion carried by unanimous vote of the Board.

4.2 Assignment of PB Americas Contract to ECHDC – Mr. Cammarata stated that Mr. Dee was unable to attend today's meeting and has requested that consideration of this item be deferred until the next meeting of the Board of Directors. Mr. Eisenbeck made a motion to table the item. Ms. Braniecki seconded the motion, and the motion carried by unanimous vote of the Board.

4.3 Approval of BLCP Entrance & Signage Design Contract – Mr. Cammarata presented the July 7, 2009 memorandum to the Board regarding a proposal to retain Dean W. Gowen, Landscape Architect, P.C. to design the BLCP Tiff Street signage and entrance features at Buffalo Lakeside Commerce Park. The cost of the consultant's services is a lump sum of \$4,250, plus a rate of \$85.00 per hour for construction administration and inspection services. Mr. Cammarata noted that Buffalo Brownfields Redevelopment Fund monies will be used to pay for the work.

Upon motion made by Dr. Rudnick, seconded by Mr. Oblatz, and unanimously carried, it was resolved that the Corporation is authorized to enter into a contract with Dean W. Gowen, Landscape Architect, P.C. to design the BLCP Tiff Street signage and entrance features at Buffalo Lakeside Commerce Park for a lump sum cost of \$4,250, plus a rate of \$85.00 per hour for construction administration and inspection services, with such costs to be paid from the Buffalo Brownfields Redevelopment Fund.

4.4 Beneficial Use Agreement with Erie County Water Authority – Mr. Cammarata presented the July 7, 2009 memorandum to the Board regarding a proposed Beneficial Use Agreement with the Erie County Water Authority ("ECWA"). Mr. Cammarata explained that ECWA has agreed to provide and transport residual fill material for the Parcel 3 Open Space project at no cost to BUDC. The residuals are subject to NYSDEC testing and oversight. Malcolm Pirnie recently submitted to NYSDEC a petition to amend the current Beneficial Use Determination (BUD) to permit the residual materials to be used for the Parcel 3 Open Space project. The potential savings for the Parcel 3 Open Space Project may be up to \$100,000. In response to a question from Mayor Brown, Mr. Cammarata indicated that a similar arrangement for residual materials is not available through the Buffalo Water Authority.

Upon motion made by Mr. Maggard, seconded by Ms. Braniecki, and unanimously carried, it was resolved, that the Corporation is authorized to enter into an agreement with ECWA for the beneficial reuse of water treatment residuals for the Parcel 3 Open Space Project.

4.5 Authorization to Apply for Greenway Ecological Funds for BLCP Parcel 3 –

Mr. Cammarata presented the July 7, 2009 memorandum to the Board regarding a proposal to submit an application to the NYPA Greenway Ecological Standing Committee for \$650,000 in grant funding to pay for additional amenities for the Parcel 3 Open Space Project. Messrs. Murray and Reilly disclosed that they serve as voting members of the committee and therefore would abstain from voting on this matter.

Upon motion made by Dr. Rudnick, seconded by Mr. Elsenbeck, and (with Messrs. Murray and Reilly abstaining) carried with ten affirmative votes, (10-0-2), it was resolved, that the Corporation is authorized to submit an application to the NYPA Greenway Ecological Standing Committee for \$650,000 in grant funding to pay for additional amenities for the Parcel 3 Open Space Project.

4.6 Authorization – Co-Applicant for South Buffalo BOA Implementation

Funding – Mr. Cammarata presented the July 7, 2009 memorandum to the Board and a proposed resolution for the Corporation to serve as a co-applicant with the City of Buffalo in connection with a Step 3 Brownfield Opportunity Area (BOA) grant for the South Buffalo BOA. The City of Buffalo will serve as lead applicant for the grant. BUDC will provide staff time as its in-kind contribution to the 10% local match requirement. In response to a question from Mr. Slater, Mr. Cammarata indicated that BUDC will not be required to provide any out-of-pocket funds as part of the local match component.

Upon motion made by Mayor Brown, seconded by Mr. Kucharski, and unanimously carried, it was resolved, that the Board approve the resolution authorizing BUDC to serve as co-applicant with the City of Buffalo for a Step 3 BOA grant relating to the South Buffalo Brownfield Opportunity Area.

4.7 Authorization – Request for Proposal for Insurance Services – Mr.

Schoeppich presented his July 7, 2009 memorandum regarding a proposed request for proposals for insurance brokerage services to be jointly issued with ECIDA. Mr. Schoeppich outlined the benefits of jointly issuing the request for proposals. He noted that the BUDC Board will make the final determination regarding the retention of an insurance broker for BUDC.

Upon motion made by Dr. Rudnick, seconded by Mr. Murray, and unanimously carried, it was resolved that staff be authorized to participate in the development and issuance of a joint ECIDA/BUDC request for proposal for insurance brokerage services.

4.8 RiverBend Commerce Park Status Report – Mr. Cammarata updated the Board

regarding RiverBend Commerce Park matters. He reported first on the Feine building fire that occurred on June 12th. The building was condemned by the City, and the tenant, Modern Recycling, is in the process of demolishing the building and clearing the site. The tenant will continue to pay rent under the lease until it completes clearance of the site. Mr. Cammarata noted that the tenant may sell the scrap metal from the building, but that scrap metal prices are down considerably and the condition of the scrap is poor due to the fire. Mr. Zanner noted that the tenant was required to provide property insurance coverage under the terms of the lease, and that staff recently submitted an insurance claim for the fire loss. The insurance company has not yet responded to the claim notice. Mr. Slater suggested that the tenant should undertake environmental testing of the property to determine if there is any impact from the fire.

Mr. Cammarata then reported that preliminary discussions have commenced with a prospective tenant that is interested in leasing up to twenty acres at RiverBend Commerce Park for windmill turbine storage. He noted that a new tenant would help

replace the rental income that was lost when Noble Environmental Power terminated its lease earlier this year. Mr. Cammarata also informed the Board that the Step 3 BOA assessment process is intended to include the Norfolk Southern property that currently bisects Areas I and II at RiverBend Commerce Park.

4.9 BLCP Parcel 3 Open Space Update –Mr. Cammarata reported that the Parcel 3 Open Space Project is nearly ready to be bid out. 100% drawings and the “spec” book for the project have been completed. Mr. Pawenski commented that certain portions of the original Parcel 3 boundary extending under Route 5 will be paid for with funding through the Union Ship Canal Promenade Project, which is being funded with federal economic stimulus funds.

4.10 BLCP Parcel 4 Update – Mr. Cammarata reported that staff recently received notification from the NYSDEC that the Environmental Restoration Program will not be funded. The focus now is on placing a portion of Parcel 4 in the NYS Superfund program. Mr. Cammarata commented on the recent Blueprint Fund application submission, and thanked those who provided letters of support.

With respect to other BLCP matters, Mr. Cammarata reported that Savarino recently signed a Land Disposition Agreement (LDA) with BUDC for a six acre site. Savarino provided a \$10,000 non-refundable deposit. The balance of the deposit (\$13,000) will become non-refundable once the due diligence period expires under the LDA.

Mr. Cammarata also reported that the NYSDEC is moving toward adopting a policy to “pre-qualify” certain parcels as eligible under the Brownfield Cleanup Program. Staff had suggested this approach to NYSDEC Deputy Commissioner Stuart Gruskin at a recent meeting. An announcement on the new policy is expected to be made at Buffalo Lakeside Commerce Park. Mr. Cammarata commented that this new policy will become an important marketing tool for BLCP. Mr. Cammarata then reviewed with the Board some recent press articles regarding BUDC activities, copies of which were provided to the directors.

5.0 Late Files – None.

6.0 Tabled Items – None.

7.0 Executive Session – Mr. Kucharski made a motion for the Board to enter executive session to discuss a potential real property acquisition on the basis that publicity regarding the proposed acquisition could substantially affect the value of the property. The motion was seconded by Mr. Slater, and was unanimously carried. At the conclusion of executive session, Ms. Braniecki made a motion to exit session, which motion was seconded by Mr. Elsenbeck and was unanimously carried. No votes were taken during executive session.

8.0 Adjournment – There being no further business to come before the Board, upon motion made by Ms. Braniecki, seconded by Mr. Elsenbeck, and unanimously carried, the Board of Directors meeting of July 7, 2009 was adjourned at 9:40 a.m.

Respectfully submitted by:


Kevin J. Zanner, Secretary



CITY OF BUFFALO

CITY PLANNING BOARD

901 CITY HALL
BUFFALO, NEW YORK 14202

BYRON W. BROWN
MAYOR

RECEIVED

JUN 11 2009

WENDEL

June 5, 2009

David Kenyon
Wendel Duchcherer
140 John James Audubon Parkway, Suite 201
Amherst New York 14228

Re: Union Ship Canal Open Space Project, 1744-1788 Fuhrmann Boulevard

Dear Mr. Kenyon:

The City of Buffalo Planning Board, at a meeting held on Tuesday, June 2, 2009, considered the matter captioned above pursuant to Section 511-137 of the Buffalo Code-City Wide Site Plan Review. The Planning Board has determined that the design and site plan meets the criteria for site plan approval contained in section 511-145 and 511-146 of the Buffalo Code. The New York State Quality Review Act process has been completed.

The City of Buffalo Planning Board voted to approve as presented the site plan and design dated April, 2009 for the construction of the Union Ship Canal Park located at 1744 – 1788 Fuhrmann Blvd., Buffalo New York. This approval is valid until June 2, 2010.

This letter is not a building permit. It is the responsibility of the owner to see that all required permits are issued prior to the commencement of the actual work.

If you should have any further questions regarding the above, please feel free to contact me anytime at (716) 851-5086.

Sincerely,

William Grillo
Principal Planner

WPG:MG

c.c. Gerald Chwalinski
David Krug, Permit Office
Building Code Review
Planning Board File

Appendix D

Public Meeting Information



FACT SHEET

February 2009



Public Meeting to Be Held on Proposed Public Park at Union Ship Canal

Environmental Restoration Program

Project No. B00164

INTRODUCTION

The New York State Department of Environmental Conservation (NYSDEC) and the Buffalo Urban Development Corporation (BUDC) invite you to attend a public meeting regarding environmental restoration and park development activities for the planned Union Ship Canal Public Open Space (Park Site), which is part of the Buffalo Lakeside Commerce Park (Commerce Park) located in the City of Buffalo adjacent to the City of Lackawanna municipal boundary line. The Commerce Park is an industrial park currently being developed by BUDC and the Erie County Industrial Development Agency (ECIDA).

At the meeting, representatives from NYSDEC, Erie County, BUDC, the City of Buffalo, and the design



consultants will discuss restoration, development and design activities conducted to date, as well as future plans for the Park Site. The representatives will be available to answer questions from the public. The draft design documents for the proposed Park Site will be available for your review at the locations listed at the end of this fact sheet, as well as the DEC website. The final design is expected to be completed by Spring 2009.

Environmental restoration work at the Park Site will be performed under the Environmental Restoration Program (ERP) authorized by New York State's 1996 Clean Water/Clean Air Bond Act. The ERP provides financial assistance to local governments for the cleanup of brownfield sites. A brownfield is currently unused or under-used property that may have been used for industrial purposes in the past and no longer contributes to the tax base of a municipality. Brownfields may be, but are not necessarily, environmentally contaminated.

Park design aspects of the project are being partially funded by the federal government's Transportation Enhancement Program (TEP) that is managed through the NYSDOT. The County of Erie is providing the local matching funds required by the NYS ERP and federal TEP programs.

This fact sheet is being provided to explain previous and proposed activities at the Park Site and to provide ways you may obtain more information regarding the project.

You are invited to attend a

PUBLIC INFORMATION MEETING

**Regarding the
UNION SHIP CANAL PUBLIC
OPEN SPACE
to be held**

February 17, 2009

**Open House 6:00 – 7:00PM
Parcel 4 Presentation 7:00 – 8:00PM
Parcel 3 Presentation 8:00 – 9:00PM
at**

**Valley Community Center
93 Leddy Street
Buffalo, NY 14210**

At the meeting, DEC will discuss and answer questions regarding the proposed cleanup plan for the Union Ship Canal Public Open Space. The meeting is also an opportunity to offer your comments on the proposed design.

SITE BACKGROUND

The proposed Park Site is referred to as Parcel 3 of the Commerce Park. It is a 200 foot-wide strip of land surrounding the eastern end of the Union Ship Canal, covering approximately 22 acres. Prior to industrialization, the area was predominantly marsh land. The historical disposal of fill materials (e.g., slag, cinders, demolition debris, and dredged sediments) and the subsequent operations of an iron smelting facility contaminated site soil and groundwater with hazardous substances, including heavy metals and semi-volatile organic compounds.

NYSDEC issued a Record of Decision (ROD) for the Park Site that authorized cleanup measures including a soil cover system, canal sediment cover system, canal wall stabilization, eco-restoration, and park development. The ROD is based on the results of the Site Investigation conducted between June 2001 and March 2003 and recommendations presented in the June 2003 Site Investigation and Remedial Alternatives Report.

DESCRIPTION OF PROPOSED REMEDIAL SITE WORK AND PARK CONSTRUCTION

The proposed remedial and park development work, which will allow for passive recreational use of the Park, includes five major elements as outlined in the ROD and is summarized below. The work will involve:

Land Cover System:

- Removing surface debris;
- Regrading the Park Site landscape;
- Installing a soil cover consisting of 18-inches of imported clean fill and 6-inches of topsoil, which will be seeded and mulched; and
- Constructing a concrete promenade and various trails (e.g., asphalt, crushed concrete, crushed stone).

Canal Wall Stabilization:

- Stabilizing portions of the northern and eastern canal walls by constructing an underwater berm along the base of those sections at potential risk of collapse.

Canal Sediment Cover System:

- Covering sediments east of the Route 5 bridge with geotextile filter fabric and a 1-foot thick stone/gravel cap;
- Removing large debris, such as submerged automobiles, from the bottom of the canal prior to construction of the underwater berm and canal cover system;
- Placing a temporary concrete structure at the west end of the canal to reduce potential for migration of contaminated sediments from the western portions of the canal into the remediated portion of the canal.

Ecological Restoration:

- Restoring ecological areas and features, such as reef groupings, benthic substrates (water bed sediments that support organisms that live on or in the sediments), submerged and emergent wetland plantings, and an inland embayment area.

Park Development:

- Constructing the park in phases with the first phase focusing on utilities, Park Site drainage, landscaping, parking, and trail aspects of the Park design.

Since there is a limited amount of funding available, certain components of the project will be bid for construction as potential alternate items, in order to maximize the use of available funds.

PUBLIC INFORMATION MEETING

A public meeting will be held from 6:00 – 9:00 PM on February 17, 2009 at Valley Community Center, where the Project Team will discuss restoration/park development and design activities conducted to date and future plans for the Park Site. They will be available to answer questions from the public. The format for the meeting will consist of an open house from 6:00 – 7:00 PM. Formal presentations will begin at 7:00 PM, followed by a question and answer period.

WHO SHOULD I CALL IF I HAVE QUESTIONS ABOUT THE SITE?

Should you have any question about this project, please feel welcome to contact these representatives:

Site Related Project Questions

Mr. Peter M. Cammarata or
Mr. David A. Stebbins
BUDC
275 Oak St
Buffalo, NY 14203
(716) 856-6525

Site Related Environmental Questions

Mr. David P. Locey
Project Manager
NYSDEC
270 Michigan Avenue
Buffalo, NY 14203
(716) 851-7220

Site Related Health Questions

Mr. Matt Forcucci
Public Health Specialist
NYS Department of Health
584 Delaware Avenue
Buffalo, NY 14202
(716) 847-4385

LOCATIONS TO VIEW PROJECT RELATED DOCUMENTS

Public interest and input in this project is valued and appreciated. To keep you informed, BUDC and NYSDEC have set up three locations at which you may view site-related project documents. These locations include:

Offices of BUDC and ECIDA
275 Oak St
Buffalo, NY 14203
(716) 856-6525
(Please call for appointment)

Buffalo and Erie County Public Library
JP Dudley Branch
2010 South Park Avenue
Buffalo, NY 14220
(716) 257-9500

DEC Region 9 Office
270 Michigan Avenue
Buffalo, NY 14203
(716) 851-7220
(Please call for appointment)

You may also view documents on the DEC website. Go to the Region 9 – Environmental Remediation Project Information page at <http://www.dec.ny.gov/chemical/37554.html> and look for the Union Ship Canal entry under the Erie County heading.

SITE LOCATION MAP



MINUTES

Union Ship Canal Open Space
Public Information Session

August 3, 2005

Location: Valley Community Center
Buffalo, New York

Participants: The following participants were in attendance:
ECDEP – Chris Pawenski, Paul Kranz
NYSDEC – Dave Locey, Martin Doster
BUDC/ECIDA – Peter Commarata, Dave Stebbins
City of Buffalo – Dennis Sutton
NYSDOT – Greg Szewczyk
USACE- Buffalo – Laura Ortiz
Wendel Duchscherer – Mark Mistretta, Dave Kenyon
Malcolm Pirmie – Kent McManus
League of Women Voters – Sally Metzger
County Preservation Board – Bil Koch
Valley Community Association – Peg Overdorf
Citizens – Lois Koch, E. Reenhardt, Conrad Dougherty,
Maureen Dougherty

Items Discussed:

1. The meeting agenda is attached.
2. The sign-in sheet is attached.
3. C. Pawenski provided a general introduction of the project and the stakeholders.
4. Wendel and Malcolm Pirmie presented a PowerPoint presentation which included:
 - Goals of the project
 - Description of the existing conditions of the site using photographs taken of various areas of the site.
 - Brief description of the historical industrial activities performed on-site and the goal of developing a park-like setting that preserves this industrial feel
 - Desirable park program elements identified through input from previous meetings
 - General State Historical Preservation Office (SHPO) Input
 - Preliminary upland concepts depicted on bubble diagrams, sketches and computer generated drawings. In addition, photos of visionary ideas from other similar parks.
 - Preliminary in-water eco-restoration concepts including the creation of a shallow water fish habitat, deep water “artificial reef” habitat, submerged vegetative berms and bottom material enhancements.
 - Three phase construction approach
 - Project schedule
5. Following the presentation, the floor was opened for comments from those in attendance. The following comments/questions were received:

- Can signs with interpretive material be placed on the north-side of the site for people not visiting the south-side of the site?
 - Can a written description of the historical uses of the site, along with pictures and/or a scaled model, be incorporated into one of the proposed buildings?
 - The preliminary design does not call for much fencing (safety barriers) around the canal. Is there a safety issue?
 - Can the proposed trails around the site tie-into Tift Nature Preserve?
 - There is a great industrial building north of the site near the railroad tracks. Can this be incorporated into the open space design?
 - Questions were asked about the remediation of the site and the type of cover proposed. Is it a cap? What does it consist of? Is it different in the water versus on land?
 - What will the material of construction be for the proposed paths through the site?
6. A copy of the PowerPoint presentation can be either emailed or sent on CD to attendees. Requests should be made to Tim Wolf of Malcolm Pirnie (twolf@pirnie.com) 716-667-6617.
7. The possibility was discussed of posting the Powerpoint presentation on the Erie County website. Malcolm Pirnie/Wendel will coordinate this with the County.

Appendix E

Letter from U.S. Army Corp of Engineers



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

May 21, 2009

Ben Girard
Malcolm Pirnie, Inc.
50 Fountain Plaza, Suite 600
Buffalo, NY 14202

Re: F-2009-0048
U.S. Army Corps of Engineers/Buffalo District Permit
Application
City of Buffalo - Redevelopment of Union Ship Canal
Union Ship Canal (Lake Erie), City of Buffalo, Erie
County
No Review Necessary

Dear Mr. Girard:

The Department of State received your Federal Consistency Assessment Form and supporting information on January 22, 2009. The Department was notified by the U.S. Army Corps of Engineers on May 18, 2009, that the proposed activity may be authorized under several existing Corps of Engineers Nationwide Permits.

We have determined that the activity would not be undertaken within a State designated Significant Coastal Fish and Wildlife Habitat area or an area covered by an approved Local Waterfront Revitalization Program. Therefore, further review of this project by the Department of State, and concurrence with your consistency certification, is not necessary.

If you have any questions regarding this matter, please contact Bridget Sasko at (518) 486-7670 (email: Bridget.Sasko@dos.state.ny.us) and refer to our file number F-2009-0048.

Sincerely,

Jeffrey Zappieri
Supervisor of Consistency Review
Office of Coastal, Local Government
and Community Sustainability

c: COE/Buffalo District - Joseph Krawcayk
DEC/Region 9 - Steve Doleski

Appendix F
Letter from NYSHPO



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Pebbles Island, PO Box 189, Waterford, New York 12188-0189

FILE COPY	
PROJECT NO.	3137.09
FOLDER NO.	04

518-237-8643

February 24, 2006

RECEIVED

MAR - 8 2006

WENDEL

Mark Mistretta
Wendel Duchscherer
140 John James Audubon Parkway-Suite 201
Amherst, NY 14228

Re: **DEC (E915183)**
**Union Shlp Canal (Brownfield
remediation/redevelopment)**
Buffalo, Erie County
05PR00363

Dear Mr. Mistretta:

Thank you for requesting the comment of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have had an opportunity to review the proposed redevelopment of the Brownfield Site B-00083-9 in accordance with the New York State Parks, Recreation and Historic Preservation Law of 1980.

Based upon our review of the proposed park development, including landscaping, pedestrian bridge, trails, parking, canal wall repair, terrestrial habitats and associated structures, it is the OPRHP's opinion that the project will have **No Adverse Impact** upon properties in or eligible for inclusion in the State and National Registers of Historic Places.

If you have any questions regarding this letter or any aspect of your project, please feel free to contact me at your convenience. Ext. 3273.

Sincerely,

Kenneth Markunas
Historic Sites
Restoration Coordinator

Cc: Martin L. Doster, P.E., DEC Region 9

FAXED: 2/24/06

Appendix G

Declaration of Covenants

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

BUFFALO LAKESIDE COMMERCE PARK

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is executed this _____ day of April, 2008, by BUFFALO URBAN DEVELOPMENT CORPORATION, a New York not for profit corporation having an office at 275 Oak Street, Suite 150, Buffalo, New York 14203 ("Declarant"). 9505 MAIN ST. LLC, a New York limited liability company having its principal office at 9505 Main St., Clarence, New York 14031 (the "Cobey Owner"), ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized under the laws of the State of New York, having an office at 275 Oak Street, Buffalo, New York 14203 (the "Parcel 4 Owner") and SHIP CERTAIN LLC, a California limited liability company with an office at 15260 Ventura Blvd., Suite 1120, Sherman Oaks, California 91403 (the "Certainteed Owner") are executing this Declaration for the purpose set forth in Section 3.3 herein. Notwithstanding the execution and acknowledgement of this Declaration on an earlier date, This Declaration shall BE DEEMED DATED AND SHALL BECOME EFFECTIVE UPON THE DATE OF ITS RECORDING IN THE ERIE COUNTY CLERK'S OFFICE ("Effective Date").

ARTICLE I
RECITALS

1.1 **Reference.** This Declaration is made with reference to the facts set forth in this Article I.

1.2 **Property.** The Declarant is the Owner of that certain real property situated in the City of Buffalo, County of Erie and State of New York and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Declarant Parcel"). The Declarant Parcel is a portion of a larger planned commercial development commonly known as Buffalo Lakeside Commerce Park, a redevelopment project formally known as "The Union Ship Canal Redevelopment Project at Buffalo Lakeside Commerce Park" (the "Commerce Park"). The Commerce Park is an assemblage of lands obtained by the Declarant pursuant to the following deeds:

Commerce Park

- A. Quit Claim Deed from the City of Buffalo to Development Downtown, Inc. which deed was dated December 16, 2002 and was recorded in the Erie County Clerk's Office on January 21, 2003 in Liber 11026 of Deeds at Page 7626.
- B. Bargain & Sale Deed from Friends of Tiff Nature Preserve, Inc. to Buffalo Urban Development Corporation which deed was dated November 28, 2006 and was recorded in the Erie County Clerk's Office on November 29, 2006 in Liber 11122 of Deeds at Page 3412.

- C. Bargain & Sale Deed from Herbert F. Darling, Jr. to Buffalo Urban Development Corporation which deed was dated November 28, 2006 and was recorded in the Erie County Clerk's Office on November 29, 2006 in Liber 11122 of Deeds at Page 3416.
- D. Bargain & Sale Deed from CSX Transportation, Inc. to Buffalo Urban Development Corporation which deed was dated February 8, 2007 and was recorded in the Erie County Clerk's Office on February 21, 2007 in Liber 11125 of Deeds at Page 6721
- E. Referee's Deed from Sebastian P. Graffeo, Esq. as Referee in a certain Tax Lien foreclosure action against Sherland Incorporated, et al, which deed was dated April 20, 2007 and was recorded in the Erie County Clerk's Office on May 1, 2007 in Liber 11128 of Deeds at Page 6706.

Pre-Conveyed Parcels

- F. Quit Claim Deed from Development Downtown, Inc. to Krog USC Associates-I LLC which deed was dated July 1, 2004 and was recorded in the Erie County Clerk's Office on July 14, 2004 in Liber 11079 at Page 4450. NOTE: The parcel described in the immediately foregoing deed was further conveyed by a Warranty Deed from Krog USC Associates-I LLC to Ship Certain LLC which deed was dated May 12, 2006 and was recorded in the Erie County Clerk's Office on May 17, 2007 in Liber 11113 of Deeds at Page 8470.
- G. Bargain & Sale Deed from Buffalo Urban Development Corporation, formerly known as Development Downtown, Inc. to the Erie County Industrial Development Agency which deed was dated January 26, 2006 and was recorded in the Erie County Clerk's Office on January 27, 2006 in Liber 11108 of Deeds at Page 6773.
- H. Quit Claim Deed from Buffalo Urban Development Corporation to 9505 Main St., LLC, which deed was dated as of May 18, 2006 and recorded on May 18, 2006 in the Erie County Clerk's Office in Liber 11113 at Page 9264.
- I. Buffalo Lakeside Commerce Park Phase I Road Dedication offered by the Declarant for dedication to the City of Buffalo.
- J. Buffalo Lakeside Commerce Park Phase II Road Dedication offered by the Declarant for dedication to the City of Buffalo.

HURWITZ & FINE, P.C.

HURWITZ & FINE, P.C.

DEVELOPMENT DOWNTOWN, INC. changed its name to BUFFALO URBAN DEVELOPMENT CORPORATION pursuant to a Certificate of Amendment which was filed with the New York Department of State on August 27, 2004.

The "Property" consists of the aggregation of the Declarant Parcel (i.e. the Commerce Park minus the Pre-Conveyed Parcels), the Certainteed Parcel, Parcel 4 and the Cobey Parcel.

1.2.1 The Property subject to this Declaration may be expanded to cover some or all of the Pre-Conveyed Parcels, in the event the owner(s) of some or all of such Pre-Conveyed Parcels should consent to have their parcels be subject to this Declaration. In such event, (an) Addend(um)(a) and Consent(s) shall be duly executed by the appropriate parties and shall be recorded in the Erie County Clerk's Office.

1.3 **Union Canal Parcel.** The Declarant acknowledges that the Commerce Park is adjacent to and surrounds an approximately 20 acre parcel owned by the City of Buffalo known as the Union Ship Canal and more particularly described in Exhibit "B" attached hereto and incorporated herein (the "Canal Park"). The City of Buffalo and the County of Erie will be developing the Canal Park into a public park in 2008 with funding from the New York State Department of Environmental Conservation and the New York State Department of Transportation. The Canal Park will be constructed in accordance with plans and specifications developed between said municipalities and their funding sources. The park is expected to be open for use in 2009.

Although the Canal Park will be a public park and a regional waterfront asset, the park's development and its proximity to the Commerce Park is a desired amenity and an enhancement to the Lots within the Commerce Park. The City has asked and the Declarant is willing, for itself and the Owners who are the grantees, lessees, assignees, successors and/or assigns of the Declarant after the Effective Date of this Declaration to agree to pay certain maintenance expenses for the Canal Park, as further described herein.

1.4 **Intent.** Declarant desires that the Property be developed under a general plan of development consistent and in accordance with the Urban Renewal Plan hereinafter defined and with mutually beneficial restrictions as more particularly set forth herein, notwithstanding that the Property has been and/or will be divided into multiple Lots, the title to which is and/or shall be held by different Owners. The design and development of the Property shall be subject to the Urban Renewal Plan (hereinafter defined) and to this Declaration which is for the purpose of enhancing, maintaining, protecting and improving the values and amenities of the Property. The Declarant also desires to provide a mechanism to fund its obligation to pay certain expenses for the maintenance of the Canal Park as provided for herein as well as the operation and maintenance of any landscaping, signage, sidewalks, and any other component of the Property which the Declarant has determined to undertake for the benefit all of the Owners. In addition, the Declarant desires to subject the Property to certain conditions, covenants and restrictions, upon and subject to which all the Property shall now and hereafter be held, improved and conveyed, in order to establish a general plan for the improvement and development of the Property for the benefit of the Property and all of the Owners of any Lots within the Property.

HURWITZ & FINE, P.C.

ARTICLE II DEFINITIONS

Unless the context requires otherwise, each term defined in this Article II shall, for all purposes of this Declaration, have the meaning specified herein.

2.1 **Assessment.** The term "Assessment" shall mean and refer to the obligation of an Owner to pay its Pro-Rata Share of Common Expenses as more particularly described in Article VII and as said terms are more particularly described in this Article II.

2.2 **Association.** The term "Association" shall mean and refer to the not-for-profit corporation known as the Buffalo Lakeside Commerce Park Property Owners Association, Inc. as formed under and more particularly described in Article V set forth below.

2.3 **Association Board.** The term "Association Board" shall mean and refer to those persons elected by the Owners to serve as directors on the board which will govern the Association pursuant to this Declaration, By-Laws and the Certificate of Incorporation.

2.4 **Association Property.** The term "Association Property" shall mean and refer to those portions of the Lots over, under and upon which the Association has easement rights on the Lots pursuant to the General Easement as more particularly described in this Article II and established under Article IV of this Declaration.

2.5 **Association Tasks.** The term "Association Tasks" shall mean and refer to all the services and functions more particularly set forth and described in Article VI herein for which the Association may expend Common Funds.

2.6 **Building Area.** The term "Building Area" shall mean the gross square footage of floor area within any completed building(s) erected on a Lot. If the improvements on a Lot have been commenced but have not yet been completed as of the date of a "Regular Assessment", the term "Building Area" shall mean the projected gross square footage of floor area within the building(s) being erected pursuant to the approved plans therefor. In the case of a Lot on which there is no completed or partially completed building(s) erected on a Lot or a Lot for which no building plans have been submitted and approved at the time a Regular Assessment is made (an "Unimproved Lot"), the Building Area shall equal 40% of the Net Usable Acreage of a Lot. The Building Area of any Unimproved Lot shall be adjusted to the gross square footage of floor area of a planned building upon the approval of construction plans submitted therefor.

2.7 **Canal Amenities.** The term "Canal Amenities" shall mean and refer to the walkways, driveways, parking areas, restrooms (if any), lighting standards, lighting fixtures and associated wiring, tables, benches and any other improvements, fixtures or personal property owned by the City and used in connection with the Canal Park, other than the Canal Landscaping.

2.8 **Canal Landscaping.** The term "Canal Landscaping" shall mean and refer to any lawns, plantings, ground cover, trees and shrubbery now existing or to be planted in the future

HURWITZ & FINE, P.C.

within the Canal Park together with any alterations, systems and equipment installed in order to maintain such planting, ground cover, trees and shrubbery.

2.9 **Canal Maintenance.** The term “Canal Maintenance” shall mean and refer to, arrangements for maintaining the Canal Landscaping and performing Minor Canal Maintenance in accordance with the further provisions of this Declaration, but shall not refer to Major Canal Maintenance, hereinafter defined.

2.10 **Canal Park.** The term “Canal Park” shall mean and refer to the approximately 20 acre parcel of land surrounding the Union Ship Canal owned by the City and as developed and constructed as more particularly described in Section 1.3 above.

2.11 **Certainteed Owner.** The term “Certainteed Owner” shall mean Ship Certain LLC, its successors and/or assigns.

2.12 **Certainteed Parcel.** The term “Certainteed Parcel” shall mean that parcel of land described in a certain deed from the Declarant to Krog USC Associates – 1 LLC (“Krog”) which deed was dated July 1, 2004 and was recorded in the Erie County Clerk’s Office on July 14, 2004 in Liber 11079 of Deeds at Page 4450 and which parcel was subsequently conveyed by Krog to Ship Certain LLC, which deed was dated May 12, 2006 and was recorded in the Erie County Clerk’s Office on May 17, 2006 at Liber 11193 of Deeds at Page 8470.

2.13 **Certificate of Incorporation.** The term “Certificate of Incorporation” shall mean and refer to the Certificate of Incorporation for the Buffalo Lakeside Commerce Park Property Owners Association, Inc., filed with the New York Secretary of State on _____ which created the Association as a corporation pursuant to Section 402 of the New York Not-For-Profit Corporation Law.

2.14 **City.** The term “City” shall mean and refer to the City of Buffalo, New York, a municipal corporation of the State of New York.

2.15 **Cobey Owner.** The term “Cobey Owner” shall mean 9505 Main St., LLC, its successors and/or assigns.

2.16 **Cobey Parcel.** The term “Cobey Parcel” shall mean that parcel of land described in a certain deed from Declarant to 9505 Main St. LLC, which deed was dated as of May 18, 2006 and was recorded in the Erie County Clerk’s Office on May 18, 2006 at Liber 11113 of Deeds at Page 9264.

2.17 **Common Landscaping.** The term “Common Landscaping” shall mean and refer to any plantings, ground cover, trees and shrubbery, if any, planted by the Association on the General Easement area on the Lots.

2.18 **Common Maintenance.** The term “Common Maintenance” shall mean and refer to the arrangements for maintaining, repairing, reconstructing and replacing all or any portion of

the Common Landscaping, the Monument Signage and other signs and/or sidewalks, if any, as may be installed by the Association.

2.19 **Commerce Park.** The term “Commerce Park” shall mean and refer to Buffalo Lakeside Commerce Park as more particularly described in Section 1.2 of Article I above.

2.20 **Common Expenses.** The term “Common Expenses” shall mean and refer to all costs incurred by the Association to discharge its responsibilities as set forth in Article VI of this Declaration including, without limitation, Canal Maintenance, Minor Canal Maintenance, Common Maintenance, the payment of all reasonable costs of liability insurance for the benefit of the Association with respect to the Canal Park and the Commerce Park and the payment of all expenses related to providing security services for the Canal Park and the Commerce Park and any and all incidental expenses reasonably related to any of the above.

2.21 **Common Funds.** The term “Common Funds” shall mean and refer to aggregate Assessments collected, received and held by the Association to be used for the payment of Common Expenses.

2.22 **Declarant.** The term “Declarant” shall mean and refer to BUFFALO URBAN DEVELOPMENT CORPORATION, a New York not-for-profit corporation.

2.23 **Declarant Parcel.** The term “Declarant Parcel” shall mean that parcel of land more particularly described in Section 1.2 herein and consisting of the Commerce Park minus the Pre-Conveyed Parcels.

2.24 **Declaration.** The term “Declaration” shall mean and refer to this document entitled “Declaration of Covenants, Conditions, Restrictions and Easements – Buffalo Lakeside Commerce Park”, as it may from time to time be supplemented, extended or amended in the manner provided for herein.

2.25 **Dedicated Roads.** The term “Dedicated Roads” shall mean and refer to those streets, lanes, driveways, and/or roads heretofore conveyed to the City of Buffalo and dedicated to public use and owned and maintained by the City.

2.26 **Easement Area.** The term “Easement Area” shall mean and refer to the areas of land covered by the General Easement pursuant to Sections 4.1 and 4.3 below.

2.27 **General Easement.** The term “General Easement” shall mean and refer to the non-exclusive easement reserved by the Declarant in Section 4.1 below.

2.28 **Government Regulations.** The term “Government Regulations” shall mean and refer to all present and future governmental laws, statutes, codes, ordinances, rules, regulations, limitations, restrictions, orders, judgments and other governmental requirements applicable to the Property.

2.29 **Hazardous Materials.** The term "Hazardous Materials" shall mean or refer to those materials, substances, gases or vapors identified as hazardous, toxic or radioactive by any and all applicable federal, state and local laws, regulations or ordinances.

2.30 **Improvements.** The term "Improvements" shall mean and refer to all structures and appurtenances thereto of every type and nature including, but not limited to, buildings, garages, irrigation and drainage devices or systems, fences, screening walls, retaining walls, parking areas, loading areas, driveways, stairs, poles, light standards, signs and perimeter landscaping.

2.31 **Lot.** The term "Lot" shall mean and refer to each Lot within the Property which is now or at any time in the future a legally described parcel of land to be sold by the Declarant and developed by a Owner as a single unified defined parcel pursuant to the filed subdivision map known and denominated as a certain Phase of the Buffalo Lakeside Commerce Park and recorded in the Erie County Clerk's Office.

2.32 **Major Canal Maintenance.** The term "Major Canal Maintenance" shall mean the maintenance, repair and/or replacement of the Canal Amenities to be performed by a municipal entity or department not yet determined on the Effective Date.

2.33 **Minor Canal Maintenance.** The term "Minor Canal Maintenance" shall mean the replacement of bulbs in the decorative lighting adjacent to foot paths and walkways within the Canal Park as well as the sealing and striping of the parking areas within the Canal Park as more fully described in Section 6.1.1 below.

2.34 **Members.** The term "Members" shall mean and refer to Lot Owners in the context of their membership in the Association as more particularly described in Article V of this Declaration.

2.35 **Monument Signage and Monument Signage Easement.** The terms "Monument Signage" and "Monument Signage Easement" shall have the meanings given to them in Section 4.2 below.

2.36 **Mortgage and Mortgagee.** The term "Mortgage" shall mean and refer to any duly recorded mortgage encumbering a Lot. The term "Mortgagee" shall mean and refer to a beneficiary under or the holder of a Mortgage.

2.37 **Net Usable Acreage.** The term "Net Usable Acreage" shall mean the gross land surface area of a Lot minus the gross land surface area of Wetlands, if any, contained within the Lot.

2.38 **Owner.** The term "Owner" shall mean and refer to that individual, entity or aggregation of persons and/or entities that owns the legal and beneficial interest in and to any of the Lots within the Property, but excluding those having any interest in a Lot merely as security for the performance of an obligation.

2.39 **Parcel 4.** The term "Parcel 4" shall mean that parcel of land described in a certain deed from the Declarant to the Erie County Industrial Development Agency, which deed was dated January 26, 2006 and was recorded in the Erie County Clerk's Office on January 27, 2006 in Liber 11108 at Page 6773.

2.40 **Parkside Assessment.** The term "Parkside Assessment" shall mean the extra assessment assessed against the Parkside Lots and the Parkside Lot Owners as more particularly described in Section 7.4 below.

2.41 **Parkside Boundary Line.** The term "Parkside Boundary Line" shall mean the boundary line of a Parkside Lot which is in common with a boundary line of the Canal Park.

2.42 **Parkside Boundary Line Measurement.** The term "Parkside Boundary Line Measurement" shall mean the measurement in linear feet of a particular Parkside Lot Owner's Parkside Boundary Line.

2.43 **Parkside Lot.** The term "Parkside Lot" shall mean a lot within the Property which is immediately adjacent to and shares a common boundary with the Canal Park.

2.44 **Perimeter Landscaping.** The term "Perimeter Landscaping" shall mean and refer to any plantings, ground cover, trees and shrubbery planted near or around any Improvements on the Lots.

2.45 **Pre-Conveyed Parcels.** The term "Pre-Conveyed Parcels" shall mean and refer to those parcels of land within the Commerce Park which have been conveyed out by Declarant to third parties prior to the Effective Date of this Declaration.

2.46 **Property.** The term "Property" shall mean and refer to all of the real property as described in Section 1.2 of Article I above and more particularly described in Exhibit "A" attached hereto and incorporated herein.

2.47 **Pro-Rata Share.** The term "Pro-Rata Share" shall mean and refer to a fraction, the numerator of which shall be the Building Area and the denominator of which shall be the Total Building Area within the Property.

2.48 **Restrictions.** The term "Restrictions" shall mean and refer to the covenants, conditions, restrictions, liens, charges, rules and regulations now or hereafter established, or imposed by or pursuant to this Declaration.

2.49 **Rules.** The term "Rules" shall be any such rules enacted by the Association Board pursuant to Section 5.10 of this Declaration.

2.50 **Total Building Area.** The term "Total Building Area" shall mean and refer to the aggregate building area or projected building area of all the lots within the Property.

2.51 **Total Parkside Assessment.** The term "Total Parkside Assessment" shall have the meaning given to that term in Section 7.4 of this Declaration.

2.52 **Total Parkside Boundary Measurement.** The term "Total Parkside Boundary Line Measurement" shall mean the sum of the measurements of all Parkside boundary lines within the Property.

2.53 **Unimproved Lot.** The term "Unimproved Lot" shall mean a Lot upon which there is no completed or partially completed building(s) or a Lot for which no building plans have been submitted and approved as of the date of a Regular Assessment.

2.54 **Urban Renewal Plan.** The term "Urban Renewal Plan" shall mean the City of Buffalo Urban Renewal Agency's Union Ship Canal Redevelopment Area Urban Renewal Plan dated October 2003.

2.55 **Wetlands.** The term "Wetlands" shall mean those areas and/or that portion of the Property which are designated as fresh water wetlands by the New York State Department of Environmental Conservation ("NYSDEC") upon which no development or improvements are or shall be permitted.

ARTICLE III PROPERTY SUBJECT TO DECLARATION

3.1 **Establishment of Restrictions.** Declarant hereby declares that the Property and every part thereof (except for Dedicated Roads) is and shall be owned (legally and beneficially), hypothecated, encumbered, leased, transferred, developed, improved, built upon or otherwise used, subject to this Declaration. This Declaration is declared and agreed to be in furtherance of an overall plan by Declarant for the maintenance of certain areas within the Property and for the development, improvement, sale and use of the Property. This Declaration is also declared and agreed to be a means to fulfill the Declarant's obligation to pay for certain maintenance in the Canal Park as further described herein and it is further declared and agreed to be established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof.

3.2 **Covenants Running with the Land.** Declarant hereby declares that the Property is now held, and shall hereafter be held, conveyed, leased, occupied, operated by and used, subject to the easements, restrictions, conditions, covenants, agreements and charges set forth herein, each and all of which are for and shall inure to the benefit of and pass with each and every part of the Property and shall apply to bind the heirs, successors and assigns of any Owner or lessee of a Lot or part thereof and each of which shall constitute covenants running with the land between the respective Owners and creates privity of contract and of estate between all the grantees of the Property, and the heirs, successors and assigns of each and all of them.

3.3 **Consent to Inclusion.** By their signatures to this Declaration, the Certainteed Owner, the Parcel 4 Owner and the Cobey Owner hereby consent to the inclusion of the Certainteed Parcel, the Cobey Parcel and Parcel 4, respectively, in the description of the

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"Property" subject to this Declaration. The Certainteed Owner, the Parcel 4 Owner and the Cobey Owner hereby agree that their ownership of their respective parcels is in all respect subject to the provisions of Section 3.1 herein and each and every other provision, restriction, obligation, benefit and burden of this Declaration as fully and to the same extent as if the Certainteed Parcel, Parcel 4 and the Cobey Parcel were part of the "Declarant Parcel" on the Effective Date of this Declaration. The Certainteed Owner, the Parcel 4 Owner and the Cobey Owner hereby acknowledge and agree that each of their respective parcels is a "Lot" and each of them is an "Owner" respectively and hereby agree that this consent to inclusion and thereby this Declaration shall inure to the benefit of and shall be binding upon each of their respective successors and/or assigns.

ARTICLE IV ESTABLISHMENT OF EASEMENTS

4.1 **General Easement.** Declarant hereby reserves for its own benefit and for the benefit of the Association an easement for the benefit of the Association and all future Owners to which the easement is appurtenant, a non-exclusive easement, on, over, under, through and across those portions of each Lot described as the "General Easement Area", as that term is more particularly described in Section 4.3 below:

4.1.1 For the purpose of placing and maintaining any plantings, ground cover, lawns, trees and shrubbery in such amounts, of such kind and character and in such places as shall be determined by the Board of Directors of the Association, in its sole discretion. Nothing in this Declaration shall be interpreted to require the Declarant and/or the Association to place any landscaping whatsoever within the Easement Area.

4.1.2 For the purpose of erecting or placing directional signs or other types of signage permitted and/or required by Government Regulations and not otherwise provided by the City of Buffalo.

4.1.3 For the purpose of installing and maintaining sidewalks, paved walkways and/or paved pathways for the passage of pedestrians within the Commerce Park in such quantity, of such style and in such locations as shall be determined by the Board of Directors of the Association, in its sole discretion. Nothing in this Declaration shall be interpreted to require the Declarant and/or the Association to install any sidewalks, paved walkways and/or paved pathways within the Easement Area.

4.2 **Monument Signage Easement.** Declarant hereby reserves for its own benefit and for the benefit of the Association and all future Owners of the Lots to which the easement is appurtenant, a non-exclusive easement on, over, under, through and across those areas delineated on the map attached hereto as "Monument Sign Areas" for the construction, erection and maintenance of such monument signs as the Declarant, and/or Board of Directors of the Association shall determine in their sole discretion to be necessary and/or desirable to mark the entrances to Buffalo Lakeside Commerce Park (the "Monument Signage Easement").

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4.3 **Easement Area.** The areas of land covered by the General Easement, as that term is defined and delineated herein shall be referred to as the "Easement Area". For purposes of this Declaration, and throughout the Commerce Park, the "Easement Area" shall be located within a 20 foot strip of land covering the entire width of each Lot running along the Dedicated Road upon which each Lot fronts from the Lot's boundary line along the dedicated road to a line parallel with the front line of each Lot and 20 feet away from the right away of the Dedicated Roads.

4.4 **Character of Easements.** The easements reserved hereby shall be perpetual. The General Easement shall be appurtenant to each of the Lots and shall exist for the mutual benefit of all of the Owners subject to the Association's obligation to maintain the easements. The Monument Signage Easement shall be exclusive and shall be for the use and benefit of the Declarant and/or the Association and, except as otherwise specifically provided for herein shall be superior to all other encumbrances applied against or in favor of any portion of the Commerce Park.

4.5 **Restriction on Construction Easement Areas.** No building or other structure shall be erected or maintained over or upon any portion of the Easement Area except for the installation of driveways running from the Dedicated Roads over the Easement Area to the particular Lots.

4.6 **Location of Easement Areas.** The location of the Easement Area is established as of the date of recording of this Declaration and the location of said easement area shall not be varied without the prior written consent of each of the then current Owners (including the Declarant, if applicable) of a the Lot to which the easement is appurtenant.

4.7 **Compliance with Laws and Regulations.** Each Owner shall comply with all laws, ordinances, rules, regulations and requirements of all utility companies and/or public authorities regulating or affecting the easement areas.

4.8 **Rights and Duties of Owners.** The rights and duties of the Owners of the Lots with respect to storm sewer, sanitary sewer and water, electricity, gas, telephone, telegraph, data transmission and fiber optic cable lines and other utility lines and services shall be governed by this Section 4.12.

4.8.1 **Access to Utilities.** Whenever storm sewer connections, sanitary sewer connections and/or water connections or electricity, gas or communication lines are installed within the Property, which connections, lines or facilities or any portion thereof, lie in or upon the Lots owned by others, other than the Owner of the Lot served by said connections, the Owners of any Lots served by said connections, lines or facilities shall have the right and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots of others or to have utility companies enter upon the Lots of others within the Property in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and maintain such connections. In no event may the easements or the use of any of the easements unreasonably interfere with the operation of the business on any affected Lot.

4.8.2 **Utility Connections.** Whenever storm sewer connections, sanitary sewer connections and/or water connections or electricity, gas or communication lines are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of said portions of said connections as service his Lot.

ARTICLE V THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

5.1 **Formation of Association.** Pursuant to the not-for-profit corporation law of the State of New York, the Declarant has formed a not-for-profit corporation named "Buffalo Lakeside Commerce Park Association, Inc." (the "Association") to own, operate and maintain the Association Property (easement rights) enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

5.2 **Membership.** The Association shall have as Members only the Owners and the Declarant. All Owners (other than the Declarant and except for the case of joint ownership as set forth in Section 5.4 of this Declaration) shall, upon becoming such, be deemed automatically to have become Members and there shall be no other qualification for Membership. Except as Section 5.4 of this Declaration may be applicable and except for the rights applicable to the Declarant, Membership shall be appurtenant to and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Declarant" as found in Article I of this Declaration.

5.3 **Voting.** On any issue for which votes of the Members are required or permitted under this Declaration, the Certificate of Incorporation and/or the By-Laws of the Association, there shall be a total of one-hundred (100) eligible votes at all times. Each Owner, including the Declarant, shall be entitled to such number of votes as is equal to their Pro-Rata Share as hereinafter defined and calculated. For example, an Owner whose Pro-Rata Share for Assessment purposes is 6.97% shall be deemed to have 6.97 votes. Similarly, at a time when the Declarant still owns multiple Lots having, for example, an aggregate Pro-Rata Share of 34% for all of the Lots in the Property, the Declarant shall have 34 votes. Notwithstanding any such right to vote, the Declarant shall have the exclusive right to elect the three member Board of Directors of the Association until the earlier of the following two events: (i) the transfer of title to individual purchasers of Lots comprising an aggregate Pro Rata Interest of 60%; or (ii) five years after the date of recording of the Declaration in the Erie County Clerk's Office. Upon the occurrence of either of the above events, the Owners shall have the right to elect all Members of the Board of Directors. The Declarant shall have the right to transfer control of the Board of Directors to the Owners at an earlier date, in its discretion. At any meeting of the Members,

issues shall be decided either by a majority or supermajority of the eligible votes, depending on the issue, all in accordance with the provisions of the By-Laws of the Association.

5.4 **Lots Owned or Held By More Than One Person or By an Entity.** When any Lot is owned or held by more than one person or entity as joint tenants, or tenants in common, such co-Owner shall agree among themselves as to which one of such co-Owners shall be a "Member" of the Association. The Association shall require a written statement in such form as the Association may prescribe to be signed by all of the Owners and which the Association may rely upon as conclusive evidence of such agreement. There shall be no Membership in the Association with respect to a jointly owned Lot unless such written statement designating the Member from among the co-Owners with respect to such Lot has been submitted to the Association. In the case of an entity member, an authorized officer, manager member, partner or other representative of the entity shall cast the votes of such entity.

5.5 **Holder of a Security Interest Not a Member.** Any person, entity or institution which holds an interest in a Lot merely as security for the performance of an obligation shall not be a Member.

5.6 **Assigning Right to Vote.** The Declarant may assign its Membership in the Association to any person, corporation, association or other entity and such assignee and any further assignee of such membership interest may make successive like assignments. Any Member shall be entitled to assign its right to vote by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment or proxy shall apply.

5.7 **Meeting and Voting Procedures.** The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of its Members or to the Board of Directors of the Association. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

5.8 **Powers and Duties of Directors.** The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

5.9 **Indemnification of Officers and Directors.** Every Director and Officer of the Association shall be, and is hereby indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties, provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approve such settlement as being in the best interest of the

Association. The forgoing right of indemnification shall be an addition to, and not be exclusive of, all rights to which such Director or each such officer may otherwise be entitled.

5.10 **Enactment of Rules.** The Board of Directors may establish such reasonable Rules concerning the use of the individual Lots which rules must be consistent with the rights and duties established by this Declaration. Copies of such Rules and Amendments thereto shall be furnished by the Board of Directors prior to the Rule's effective date. Such Rules shall be binding upon the Owners, their tenants, guests, invitees and agents until such Rule(s) shall be specifically cancelled or modified by the Board. Rules may also be cancelled or modified by a vote of the majority of the Membership Interests of the Members (not just the majority of Members present) in the case of a special meeting. The Board shall have the authority to impose reasonable monetary fines or other sanctions to enforce the Rules, and such monetary fines may become a lien on the respective Lot as provided in Sections 7.2 and 7.9 hereof and enforced pursuant to Article VII hereof. So long as the Declarant holds title to any portion of the Property, the Declarant shall have the right to veto any Rule or Regulation so made by the Board.

ARTICLE VI ASSOCIATION OBLIGATIONS

The Declarant and/or the Association shall have the responsibility and obligation to perform the following tasks or to arrange that the following tasks are performed by others (the "Associations Tasks"). NOTE: The Association is not assuming any responsibility and shall have no obligation to maintain, repair and/or replace the Canal Amenities except for Minor Canal Maintenance described in Section 6.1.1 below.

The Association shall provide, perform, cause to be performed, enter into contracts for and/or pay for out of Common Funds for all or any of the following:

6.1 **Gardening and Landscaping.** Engage the services of a gardening and/or landscaping service company to maintain, renew and replace all or any portion of the landscaping, gardens, lawns and other green areas constituting the Canal Landscaping and the Common Landscaping, if any. The forgoing services shall include, without limitation, lawn cutting in the Canal Park to such a standard which is no less than that required by Government Regulations and shall achieve and maintain a level of aesthetic and attractiveness as is customary for well maintained park land. The foregoing services shall be deemed to include any tools, supplies, plants and/or equipment reasonably necessary to carry out the landscaping maintenance function.

6.1.1 **Minor Canal Maintenance.** – The replacement of light bulbs and/or LED's in the decorative lighting adjacent to the foot paths and walkways within the Canal Park. The foregoing shall specifically not include bulbs or LED's for the lighting standards and any parking area lighting to be performed by the City of Buffalo. In addition, the Association shall be responsible for periodic sealing and striping of the blacktop surfaces in the parking areas within the Canal Park as often as it is commercially reasonable to perform such services.

6.2 **Trash Removal.** To the extent the following services are not provided by the City and/or private waste haulers engaged by the Owners of the Lots:

6.2.1 To engage the services of a trash, rubbish and garbage collection company or agency;

6.2.2 To remove all papers, debris and refuse and thoroughly sweep all walkways in the Canal Park and Commerce Park and the driveways and parking areas within the Canal Park to the extent reasonably necessary to keep all of the above described areas in a neat, clean and orderly condition; and

6.2.3 To promptly, regularly and efficiently collect from designated areas within the Commerce Park and the Canal Park and to remove from the Canal Park and the Commerce Park all trash, rubbish, garbage and refuse.

6.3 **Public Liability and Property Damage.** The Association shall, if economically practical and available, purchase, obtain, carry and maintain one or more comprehensive public liability and property damage policies naming as insureds the Association, its Board (and each Member thereof), its officers (and each of them) and the Declarant. Said policies or the endorsements made a part thereof shall provide immediate protection with minimum liability limits of \$2 million for injury or death to one or more person or persons in any one accident or occurrence and for \$500,000 for property damage and shall also (i) insure against bodily injury, death or property damage occurring in, on or about any portion of the Canal Park and within the Easement Area in the Commerce Park; (ii) contain a cross liability endorsement so as not to prejudice the rights of a named insured against another named insured; and (iii) contain such other provisions, protections, waivers, and clauses as is prudent for the Association to maintain.

The liability limits set forth in the preceding paragraph may be modified from time to time in the sole discretion of the Board of Directors using sound and prudent judgment.

Notwithstanding any implication to the contrary contained herein, the liability insurance maintained by the Association shall not name the City of Buffalo as an additional insured, all as more particularly provided in the Definitive Agreement and summarized in the Memorandum.

6.4 **Security.** To the extent not provided by the Buffalo Police Department or other municipal police department or agency, to provide such security services for the Canal Park and the Commerce Park outside of the Lots owned by the Owners as is reasonably prudent in an effort to maintain public order and enhance public safety.

6.5 **Budgets and Financial Statements.** The Association shall prepare budgets, balance sheets, financial statements all as more particularly described in Article VII below and shall levy Assessments against the Lots for the purpose of establishing a pool of "Common Funds" to pay and discharge the responsibilities and obligations of the Association as set forth in this Article, all as more particularly described in Article VII below concerning Assessments.

6.6 **Dealing with the City of Buffalo.** The Declarant and/or the Association through its Board of Directors shall deal with the City of Buffalo in connection with the performance of all of the Association Tasks with respect to the Canal Park such that the Association may discharge its responsibilities and obligations hereunder by reimbursing the City out of the Association's Common Funds for the cost of the performance of any of the foregoing services which the City may agree to provide and perform.

6.7 **Professional Services.** To engage the services of such attorneys, accountants, insurance advisors and/or any other professional consultants reasonably required by the Board of Directors to carry out the Association's responsibilities and obligations under this Article.

ARTICLE VI-A DISCRETIONARY TASKS

In addition to the Association Tasks which the Association is required to perform under Article VI of this Declaration, the Association may, in its sole discretion, perform, cause to be performed or enter into contracts and/or pay for out of Common Funds for all or any of the following:

(a) Pursuant to Subsection 4.1.1, to place and maintain any plantings, ground cover, lawns, trees and shrubbery in such amounts, of such kind and character and in such places as shall be determined by the Board of Directors of the Association, in its sole discretion.

(b) In accordance with Subsection 4.1.2, to erect or place directional signs or other types of signage permitted and/or required by Government Regulations.

(c) In accordance with Subsection 4.1.3, to install and maintain sidewalks, paved walkways and/or paved pathways for the passage of pedestrians within the Easement Area, within the Commerce Park in such quantity, of such style and in such locations as shall be determined by the Board of Directors of the Association, in its sole discretion.

In the event the Board of Directors of the Association should undertake the installation of sidewalks, signs and/or landscaping in accordance with this Article VI-A, the maintenance of such installations shall be the responsibility and the obligation of the Association and shall thereafter be deemed to be included in the definition of "Association Task" as defined in Article VI above.

VII BUDGETS, ASSESSMENTS AND FINANCIAL REPORTING

7.1 **Budgets and Financial Statements.** The following information shall be regularly prepared and distributed by the Board of Directors to all of the Owners/Members in the Association regardless of the number of Owners or the amount of assets of the Association:

1. A budget for each fiscal year (the calendar year shall be the fiscal year of the Association) consisting of at least the following information shall be distributed not less than thirty (30) days prior to the beginning of each fiscal year:

- (a) estimated revenue and expenses of the Association, prepared on an accrued basis;
- (b) the amount of total cash reserves of the Association currently available for the replacement or major repair of an item requiring such and for material contingencies, if any;
- (c) an itemized estimate of the remaining life of and the methods of funding to defray the cost of repair, replacement or additions to any major components of items for which the Association has maintenance responsibilities under this Declaration, including, a general statement of the Association's method for determining the necessity of any reserves.

2. A balance sheet as of an accounting date which is the last day of the month closest in time to six months after the date of closing of the first Lot in the Property sold to an Owner and an operating statement for the period from the date of such closing to the said accounting date shall be distributed within sixty days after the accounting date. This operating statement shall include a schedule of any Assessments received and receivable by the Lot number or other designation of the Lot and the name of the Owner who was assessed, including those Assessments paid by the Declarant.

3. A report consisting of the following shall be distributed to each Owner within the Property within sixty (60) days after the close of the fiscal year of the Association:

- (a) a balance sheet, as of the end of the fiscal year;
- (b) an operating (income) statement for the fiscal year; and
- (c) a statement of changes in financial position for the fiscal year.

4. The report referred to in Section 7.1.3 above shall be prepared to the same standard of review as is required for the completion for Federal Income Tax form 990 or its equivalent. If not prepared by an independent accountant, the report shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

5. In addition to the financial statements described herein above, the Board of Directors shall also distribute within 30 days prior to the beginning of the Association's fiscal year a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments (including the recording and foreclosing of liens against the Owners).

7.2 **Assessments.** Each Owner of a Lot including the Declarant, by becoming an Owner and acceptance of a Deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association the following:

7.2.1 Each Owner of a Parkside Lot shall pay the "Parkside Assessment", as described in Section 7.6.1 below.

7.2.2 Each Owner of a Lot including an Owner of a Parkside Lot and also including the Declarant shall pay "Regular Assessments" as described in Section 7.6.2 below.

7.2.3 Each Owner of a Lot including an Owner of a Parkside Lot and also including the Declarant shall pay "Special Assessments", if any, as described in Section 7.8 below.

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with any such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and a continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

7.3 **Purpose of Assessment.** The purpose of the Assessments shall be to fund a "Common Fund" to pay the Common Expenses incurred by the Association in fulfilling its responsibilities and obligations under Article VI above.

7.4 **Commencement of Parkside Assessment and Regular Assessment.** The Parkside Assessment and Regular Assessment shall commence as to all Lots on the first day of the second month following the Effective Date of this Declaration. Notice of any changes to the amount of a Parkside Assessment and/or a Regular Assessment shall be mailed by certified mail, return receipt requested to the address of the Owner no later than December 1st of the year preceding the January 1st of the succeeding year upon which date an installment of the changed Parkside Assessment and/or Regular Assessment amount shall be due and payable.

7.5 **Initial Regular Assessment.** The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessment shall thereafter be on a full year basis. The first Regular Assessment shall be based on a budget for the anticipated Common Expenses for the first fiscal year of the Association prepared by the Declarant.

7.6 **Computation of Parkside Assessment and Regular Assessment.** The total estimated Common Expenses for the next fiscal year shall be divided among, assessed and charged to and against the individual Owners and their Lots (including the Declarant with respect to any retained or unsold Lots) in accordance with the following:

7.6.1 Twenty percent (20%) of the total estimated Common Expenses for the next fiscal year shall be the Total Parkside Assessment. An Owner of a Parkside Lot shall pay a Parkside Assessment equal to the ratio as the particular Parkside Lot Owner's Parkside Boundary Line Measurement bears to the total Parkside Boundary Line Measurement, as those terms are defined herein. The Parkside Assessment shall be payable in accordance with the procedures set forth in Section 7.7 below.

7.6.2 Eighty percent (80%) of the total estimated Common Expenses shall be the total "Regular Assessment". Each Owner of a Lot shall pay its Pro Rata Share of the total Regular Assessment. A Lot Owner's "Pro Rata Share" shall be determined by dividing the "Total Building Area" of a particular Owner's Lot.

7.6.3 The Parkside Assessment for Owners of Parkside Lots shall be in addition to and not in replacement of the Parkside Lot Owner's "Regular Assessment" as computed below.

7.6.4 If an annual Parkside Assessment and Regular Assessment is not made as required for a new fiscal year, the Parkside Assessment and the Regular Assessment for the prior fiscal year shall apply and govern the respective Owners' payments until changed by a new Parkside Assessment and/or a new Regular Assessment.

7.6.5 Until January 1 of the year immediately following the conveyance of the first Lot in the Property to an Owner after the Effective Date of this Declaration, the maximum annual Parkside Assessment shall be \$1,000.00 per Parkside Lot and the maximum annual Regular Assessment shall be \$3,000.00 per Lot. The Board of Directors of the Association shall not, without the vote or written assent of the Owners of a majority of the voting power (excluding the Declarant) impose a Parkside Assessment per Parkside Lot and/or a Regular Assessment per Lot which is more than 10% greater than the Parkside Assessment and/or the Regular Assessment for the immediately preceding fiscal year. The maximum annual Parkside Assessment and Regular Assessment may be increased above the amount not in excess of such maximum. Notwithstanding the foregoing, from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner after the Effective Date of this Declaration, the maximum annual Parkside Assessment and/or Regular Assessment may be increased above the amount set forth in the preceding sentence by the vote or written assent of the Owners of 51% of the total voting power of the Members other than the Declarant. The Board of Directors may fix the annual Parkside Assessment and the annual Regular Assessment in an amount not in excess of such maximum. Not less than 60 days prior to the beginning of each fiscal year (excluding the first full fiscal year, i.e. the year immediately following the conveyance of the first Lot in the Property to an Owner after the Effective Date of this Declaration) the Board of Directors shall provide notice of the upcoming fiscal year's Parkside Assessment to Owners of Parkside Lots as well as the upcoming fiscal year's Regular Assessment for a Lot to each Owner.

7.7 **Payable in monthly installments.** The Parkside Assessment shall be payable by each Owner of a Parkside Lot and the Regular Assessment shall be payable by each Owner of a

Lot in 12 equal monthly installments on the first day of each calendar month (commencing on the date on which it becomes a Parkside Owner and/or an Owner, as the case may be and prorated to that date) or at such other date and times and in such other installments as the Board of Directors of the Association shall determine. A delinquent installment payment shall be an installment payment received more than 10 days after its due date. Delinquent installments shall bear interest at the rate of 1.5% per annum.

7.8 **Special Assessments.** In addition to the annual Regular Assessment, the Association may levy in any Assessment year one or more Special Assessments, payable in that year and/or the following year only. So long as the total amount of Special Assessments do not exceed in one (1) fiscal year an amount equal twenty percent (20%) of the total Regular Assessment for that fiscal year, the Board may impose a Special Assessment without holding a Hearing pursuant to the further provisions of this subsection obtaining the approval of the Members/Owners. Any Special Assessment that would exceed this limitation, either of itself or when added to other Special Assessments imposed within that fiscal year, shall be effective only if the Board of Directors shall have held a Hearing on said Special Assessment in accordance with the Hearing procedures set forth below have obtained the approval of a majority in interest of the Members present at a special meeting called pursuant to the By-Laws at which a quorum is present as required by the quorum requirements set forth in the By-Laws. The Board of Directors shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first due date.

Where the Board of Directors is required to hold a Hearing in accordance with the above, the Hearing on the proposed Special Assessment (the "Proposal") shall be held not less than twenty (20) nor more than sixty (60) days after the Board has initiated the Proposal. Notices of the Hearing (the "Notice") shall be mailed to all Lot Owners at their business address in the Commerce Park or such other address as a Lot Owner may advise the Association in writing. The Notice shall describe the Proposal in detail, the Hearing procedure set forth in this subsection as well as any other procedures the Board of Directors may seek to impose and shall specify the date, time and place of the Hearing all Lot Owners and other interested persons shall be entitled, subject only to reasonable Rules and Regulations established by the Board of Directors for the conduct of such hearing to attend the Hearing, to express their views on the Proposal, to ask questions or to submit written comments with regard to the Proposal. At the conclusion of such discussion, the Members present shall be asked to vote their percentage interest either in favor or against the Proposal. If the Proposal is approved, the Board shall levy the Special Assessment as set forth above.

7.9 **Non Payment of Assessment.** For purposes of this Declaration, the Parkside Assessment, Regular Assessment and Special Assessment shall be collectively referred to herein as an "Assessment" or Assessments" as the context requires. If an Assessment or an installment thereof is not paid on the due date established pursuant to Sections 7.6, 7.7 or 7.8 hereof, then such an Assessment payment shall be deemed delinquent. Any delinquent Assessment payment, together with such interest thereon, accelerated installments, if any, and the cost of collection thereof as herein provided, shall thereupon become a continuing lien on the respective Lot which shall bind such Lot in the hands of the then Owner and such Owners' heirs, devisees, personal

representatives, successors, and/or assigns. The lien for unpaid Assessments is automatic and perfected without any requirement of the filing of a further instrument in the Erie County Clerk's Office. The Board of Directors may file (or direct the Association's attorney to file) a Notice of Lien in the Erie County Clerk's Office to provide further notice but such filing is not required to create or perfect the lien.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount as the Board of Directors deems reasonable, not to exceed ten (10) percent of the amount of such overdue Assessment or installment thereof, provided such late charges are equitable and uniformly applied. The Board of Directors, or its attorney, may send notice to the delinquent Lot Owner that the actions described in the next paragraph below will be taken (including acceleration of the remaining installments of Assessments for the relevant fiscal year), will automatically occur if the overdue Assessments and applicable late charges are not paid within thirty (30) days of such notice (this notice will be referred to below as the "Acceleration Notice"). If the Assessment or any installment thereof is not paid within thirty (30) days after the due date: (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon sending an Acceleration Notice thereof to the Owner described above; and (iii) the Association may retain attorneys to take appropriate enforcement or collection action, including, but not limited to the commencement of a lawsuit against the Owner personally obligated to pay the same and foreclosure of the lien against the Lot of such Owner. If the Association retains attorneys pursuant to subparagraph (iii), the Owner shall pay all of the Association's costs, including attorneys' fees, regardless as to whether a suit at law or a foreclosure action is actually commenced. IT IS SPECIFICALLY UNDERSTOOD AND ACCEPTED BY ALL OWNERS THAT THE ASSOCIATION SHALL NOT BE LIMITED IN RECOVERING SAID COSTS BY THE AMOUNT IN CONTROVERSY AND THAT ALL COSTS SHALL BE PAID BY THE OWNER, PROVIDED THAT THE COSTS WERE REASONABLE AS DETERMINED SOLELY BY REFERENCE TO THE AMOUNT OF WORK AND COST REQUIRED TO RESOLVE THE MATTER.

Once an Assessment deemed delinquent as described above, any payments received from the Owners shall be applied in the following order: attorneys fees, other costs of collection, late charges, interest and then the delinquent Assessment or installments thereof, beginning with the amounts past due for the longest period.

7.10 **Notice of Default to Eligible Holder(s)**. The Board of Directors when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or shall at the request of mortgage holders who have provided notice of their interest in the Lot, to send a copy of such notice to each such mortgage holder whose name and address appears on the Association's records. The mortgagee shall have the right to cure the Owners' default with respect to the payment of said Assessment.

7.11 **Right to Maintain Surplus**. The Association shall not be obligated at any calendar year to spend all of the sums collected in such year by way of Regular Assessments or

otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Regular Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the carrying out of the purposes of the Association.

7.12 **Assessment Certificates**. Upon written demand of an Owner or Lessee with respect to a Lot owned or leased by such Owner or Lessee (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot) the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate; (i) whether the Assessments, if any, have been paid, (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, i.e. for the cost of extinguishing a violation of this Declaration. A reasonable charge as determined by the Board of Directors may be made for the issuance of such certificates. Any such certificate when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee, mortgagee or title insurer of the Lot on which such certificate has been furnished.

ARTICLE VIII MAINTENANCE OF INDIVIDUAL LOTS

8.1 **Personal Obligation**. Notwithstanding the existence of any insurance covering an Owner against loss, damage and destruction, each Owner shall have the affirmative obligation for maintenance, repair and restoration of the Owner's Lot and all Improvements and Perimeter Landscaping located thereon, as set forth in this Article VIII. Declarant, for each Lot owned within the Property hereby covenants, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to comply with all the terms and provisions of this Declaration, including, but not limited to, the maintenance obligations set forth herein.

8.2 **Owners' Obligation for Property Maintenance and Repair of Improvements**. All Lots and Improvements, whether occupied or unoccupied, shall at all times be maintained in such a manner as to prevent there becoming unsightly by reason of unattractive growth or accumulation of rubbish or debris thereon. No Lot or Improvement located within the Property shall be permitted by its Owner, or any lessee, licensee or occupant thereof to fall into disrepair. Each such Lot and Improvement situated thereon shall at all times be kept in good condition and repair and all Improvements shall be adequately painted or otherwise finished. In performing the maintenance obligations required hereunder, the Owner shall perform such maintenance activities in conformance with any covenants, conditions and restrictions of record and other Government Regulations.

8.3 **Lateral Support**. Each Owner shall maintain its Lot with sufficient perimeter landscaping so as to prevent erosion that will result in damage to that Lot or any adjacent Lot.

No Owner shall perform any excavation upon its Lot that will result in damage to any adjacent Lot due to lack of lateral support.

8.4 **Damage and Destruction Affecting Lots – Duty to Rebuild.** If all or any portion of any Improvement thereon is damaged or destroyed by fire or other casualty covered by insurance carried by the Owner, subject to the rights of any Mortgagee as contained in a recorded Mortgage encumbering such Lot, it shall be the duty of the Owner of such Lot to rebuild, repair or reconstruct the Improvements thereon in a manner which will restore them to a condition and appearance approximating their appearance prior to the damage or destruction or as may be approved by the Association and in accordance with Government Regulations. If the casualty is not so covered by insurance, it shall be the duty of the Owner to (i) raise and remove damage improvements, restoring the Lot to substantially its original unimproved condition or (ii) rebuild, replace and repair all in a manner satisfactory to the Association. The Owner of any Lot upon which damaged improvements are located shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause cleanup and/or reconstruction to commence within ninety (90) days after the damage occurs and to be completed within one (1) year after the damage occurs, unless prevented by causes beyond the Owners' reasonable control.

8.5 **Insurance Obligation of Owners.** Each Owner shall insure the improvements on the Owners' Lot against loss or damage by fire or by any other casualty, under the standard form of extended endorsement now in use within the State of New York. All such insurance shall be in an amount as near as practicable to the full replacement value of the building and appurtenant improvements, without deduction for depreciation or coinsurance.

IX PERMITTED USES AND RESTRICTIONS

9.1 **Permitted Operations and Uses.** The Property shall be used exclusively for commercial purposes, including, without limitation, light industrial use, including manufacturing and warehouse facilities, shipping and receiving and related office uses and/or other similar or accessory or ancillary uses incidental thereto. Under no circumstances shall the Property be used for residential purposes or other use inconsistent with the expressed and implied intent of this Subsection.

9.2 **Noxious Activities.** No Noxious or offensive trade or activity shall be carried on upon the Property or any portion thereof, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the Property or which shall in any way interfere with the quiet enjoyment of the Owners of any Lot within the Property.

9.3 **Limitation on Noise.** Loud speakers or devices for the production or projection of sound or noise are not permitted. Normal noises, commensurate with permitted uses of the premises that do not exceed local or state ordinances or laws shall not be deemed objectionable.

9.4 **Temporary Structures.** No structure of a temporary character, trailer, moveable shed or similar equipment shall be permitted to remain on the Property or any part thereof without the prior written approval of the Association.

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9.5 **Limitations on Improvements.** All limitations contained herein are supplemental to controls established by zoning, building, fire or other jurisdictional codes and regulations or other Government Regulations and the more restrictive provisions shall apply. Except for signs which shall be permitted to be installed by the Declarant, no sign, billboard or other advertising shall be erected, placed or maintained within the Property without the specific written approval of the Association. The approval by the Association shall be denied for any proposed sign which (i) is not in accordance with applicable Government Regulations; or (ii) makes identifications other than the name, business and logo of a person or firm occupying the premises or those offering the premises for sale and/or lease.

9.6 **Landscaping.** Every Lot upon which a building is constructed shall be landscaped or caused to be landscaped by the Owner thereof in accordance with the reasonable Rules and Regulations established by the Declarant and/or the Association or required by Government Regulations, if any.

9.7 **Exterior Lighting.** Exterior lighting shall conform to any applicable Government Regulations and shall not over wash property lines unless approved by the Association, nor shall it be of such intensity, size, color or location as to be a nuisance to other Owners.

9.8 **Refuse Collection Areas.** All rubbish, trash and garbage shall be regularly removed from the Property only during normal business hours and shall not be allowed to accumulate thereon. All outdoor refuse collection areas shall be appropriately located on each Lot and shall be completely enclosed and screened.

9.9 **Storage and Loading Areas.** Loading doors, docks, facilities or other service areas shall be adequately screened with landscaping, fencing or concrete walls to minimize the effect of their appearance from any street, roadway or neighboring Lot.

9.10 **Negligent Construction.** All construction work on the Property shall be in accordance with approved building elevations and building permits based thereon and shall, following commencement of such construction, be prosecuted diligently to completion in accordance with applicable Government Regulations.

9.11 **Hazardous Material.** No Owner shall use, generate, store or dispose of any Hazardous Materials on the Property or discharge or release any Hazardous Material on, above, or under the Property except in full and complete compliance with all applicable federal, state and local laws and regulations, ordinances and permits.

ARTICLE X DURATION, MODIFICATION AND REPEAL

10.1 **Duration.** This Declaration shall continue and remain in full force and effect at all times with respect to the Property and each part thereof, now or hereafter made subject hereto, for a period commencing on the date of the recordation of the Declaration and continuing for a

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term of fifty (50) years thereafter, after which it shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then Owners of not less than seventy-five percent (75%) of the gross acreage of the Lots has been recorded agreeing to terminate or modify in whole or in part this Declaration of Covenants, Restrictions and Easements.

10.2 **Enforcement.** In addition to the remedies for a monetary default as described in Article VII above, the Declarant or the Association, may, at any time that they may deem a non monetary breach of these conditions and restrictions to have occurred, delivery written notice thereof on the defaulting Owner setting forth the nature of the breach. If, within thirty (30) days after delivery of such notice, the defaulting Owner fails to cure the breach or if such breach may not be reasonably cured within thirty (30) days, if the defaulting Owner fails to commence secure thereafter diligently pursue it, then the party sending the notice may execute, acknowledge and record in the Erie County Clerk's Office, a Notice of Claim of Breach setting forth the facts of such breach, describing the Lot or Lots upon which such breach has occurred and setting forth the name of the Owner or Owners thereof. Such Notice of Claim of Breach upon being recorded shall constitute notice to all persons of such breach, provided an action has been commenced within one-hundred twenty (120) days after the recording of such notice of claim of breach to establish such breach; and if such action has not commenced within said 120 period, then such Notice of Claim of Breach shall be of no force and effect whatsoever and the breach set forth in said Notice of Claim of Breach shall be presumed to have been remedied.

10.3 **Other Parties' Rights.** After any request made to the Declarant and/or the Association to prevent any violation of this Declaration and failure to act by the Declarant and/or the Association within fourteen (14) days after such request, any Owner or any other party for whose benefit this Declaration inures, shall have the right in the event of violation or breach of this Declaration, to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate this Declaration, to enjoin or prevent them from doing so, to cause said violation to be remedied and to recover damages for said violation.

10.4 **Cumulative Remedies.** The remedies herein specified are cumulative, and this specification shall not be deemed to preclude any aggrieved person's resort to any other remedy at law, in equity or under any statute.

10.5 **Deemed to Constitute a Nuisance.** The result of every action or omission whereby the provisions of this Declaration are violated in whole or in part is hereby declared to constitute a nuisance, and every remedy allowed by law or equity against any Owner, or lessee, licensee or occupant of a Lot shall be applicable in respect to every such result and may be exercised by the Declarant or any Owner or lessee for whose benefit this Declaration inures.

10.6 **Attorneys Fees.** In any legal or equitable proceeding to determine the rights of the parties to enforce or restrain the violation of this Declaration, the losing party or parties as determined by the judge, hearing officer or other official presiding over a tribunal for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing party or parties.

10.7 **Failure to Enforce Not a Waiver of Rights.** No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any of this Declaration shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to it upon the recurrence or continuance said violation or the occurrence of a different violation, nor shall there be construed upon Declarant a duty to take any action to enforce the provisions of this Declaration.

ARTICLE XI CONSTRUCTIVE NOTICE AND ACCEPTANCE

11.1 **Own Subject to Declaration.** The Owners or any lessee, licensee or occupant of a Lot, by acceptance of a deed conveying title to any part of the Property, or the execution of a contract for the purchase thereof or the acceptance of a lease or license therefore, or the taking possession thereof, whether from Declarant or a subsequent Owner or lessee of a Lot, shall accept such deed, contract, lease, license or possession upon and subject to each and all of the provisions of this Declaration and the rights and powers of Declarant and/or the Association, its successors and assigns, and by such acceptance shall for itself, its heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant and/or the Association and/or its successors and assigns and to and with the other Owners and lessees to keep, observe, comply with and perform the provisions of this Declaration whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in said real property. Every person or entity who now or hereafter owns or acquires any right, title or interest in and to any portion of the Property is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired said real property.

11.2 **Waiver.** Neither Declarant, the Association nor any Owner or lessee of a Lot shall be liable to any other Owner, lessee, licensee or occupant of any real property subject to this Declaration by reason of any mistake in judgment, negligence, non-feasance, action or inaction in regard to the enforcement or failure to enforce the provisions of this Declaration or any part thereof. Every Owner, lessee, licensee or occupant of a Lot, by requiring an interest in the Property agrees that he will not bring any action or suit against the Declarant, the Association, its successors and/or assigns or any Member thereof, from time to time, to recover any such damages or to seek equitable relief. This Section 10.2 shall not prevent the enforcement of any legal or equitable right of one Owner against the other.

11.3 **Mutuality, Reciprocity Runs with Land.** This Declaration is made for the direct, mutual and reciprocal benefit of each and every Lot of the Property, shall create mutual, equitable servitudes upon each Lot of the Property in favor of every other Lot of the Property; shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between all grantees of real property in the Property, their heirs, successors and assigns; and shall, as to the Owner of each Lot of the Property, his heirs, successors and assigns, operate as covenants running with the land for the benefit of all other Lots in the Property.

11.4 **Leases.** Except as set forth below, any agreement for the leasing of a Lot or building shall provide that the terms of such lease shall be subject to in all respects the provisions of this Declaration, and any amendment hereto, and any Government Regulations. Any Owner who shall lease its Lot and/or building shall be responsible for assuring compliance by such Owners' lessee with this Declaration. In addition, any Owner leasing its Lot and/or building (i) shall be liable for all obligations contained in this Declaration, and (ii) shall be deemed to have agreed, in connection with such leasing, that upon being requested to do so by the Declarant or the Association, it will immediately take such action or actions in respect to its lessee as may be necessary or required to cause such lessee to fully comply with each and all of the terms and provisions of this Declaration.

11.5 **Rights of Mortgagees.** No provision of this Declaration shall in any way defeat or render invalid the lien of any mortgage or other security instrument entered into in good faith and for valuable consideration, whether presently in existence or hereafter executed upon any part of the Property; provided, however, that if any portion of the Property is purchased in connection with a foreclosure of such mortgage or security instrument, or is conveyed to the party so secured in lieu of foreclosure, any person so acquiring or purchasing a Lot within the Property and its successors and assigns shall hold any and all real property so purchased or acquired subject to the provisions of this Declaration.

11.6 **Headings.** Any article, section, subsection or paragraph headings where used herein are inserted for convenience only and are not intended to be part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which the refer.

11.7 **Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired, in full force effect.

11.8 **Notices.** Any and all notices or other communication made pursuant to this Declaration shall be in writing.

11.9 **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Declarant has executed this Declaration, as of the day and year first above written.

BUFFALO URBAN DEVELOPMENT CORPORATION

By: David A. Stebbins
Title: Vice-President

9505 MAIN ST., LLC

By:
Title:

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By:
Title:

SHIP CERTAIN LLC

By:
Title:

ACKNOWLEDGMENTS

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

On the _____ day of April in the year 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared DAVID A. STEBBINS 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 this instrument.

Notary Public

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

On the _____ day of April in the year 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared _____ 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 this instrument.

Notary Public

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

On the _____ day of April in the year 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared _____ 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 this instrument.

Notary Public

STATE OF _____)
) ss.:
COUNTY OF _____)

On the _____ day of April in the year 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared _____ 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 this instrument.

Notary Public

Appendix H

Park Maintenance Agreement

CANAL PARK MAINTENANCE AGREEMENT

THIS CANAL PARK MAINTENANCE AGREEMENT (“Agreement”), entered into as of the _____ day of _____, 2009 (the “Effective Date”), is by and between BUFFALO URBAN DEVELOPMENT CORPORATION, a New York local development corporation with offices located at 275 Oak Street, Suite 150, Buffalo, New York 14203 (“BUDC”); and the CITY OF BUFFALO, a municipal corporation of the State of New York with offices at City Hall, Niagara Square, Buffalo, New York 14202 (the “City”).

RECITALS:

A. BUDC is the principal local development corporation undertaking the redevelopment, marketing and sale of properties at Buffalo Lakeside Commerce Park, located in the City of Buffalo, New York, near Union Ship Canal.

B. The City of Buffalo is the owner of Union Ship Canal, and also owns the real property surrounding Union Ship Canal which is referred to as “Parcel 3” and consists of approximately twenty-two (22) acres, as more particularly described on Schedule A, attached hereto and made a part hereof.

C. The City, the County and BUDC have undertaken a project for the redevelopment of Union Ship Canal and Parcel 3 into public open space with park-like amenities (the “Ship Canal Park”), for the use and benefit of the general public and the employees of businesses located in Buffalo Lakeside Commerce Park (the “Ship Canal Park Project”). In connection therewith, the City and the County have secured funding through the NYSDEC Environmental Restoration Program, and the County has secured funding through the New York State Transportation Enhancements Program and committed certain of its own bond funding to be used for the final design and construction of the Ship Canal Park Project.

D. The City has requested that BUDC undertake the performance of certain obligations in connection with the operation and maintenance of Union Ship Canal and Ship Canal Park following completion of the final design and construction of Ship Canal Park, and BUDC is willing to undertake the performance of such obligations upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals.

The foregoing Recitals are hereby incorporated into this Agreement and made a part hereof as if fully set forth herein.

2. Definitions.

As used in this Agreement, all terms with initial capital letters shall have the

meanings set forth below:

“Agreement” shall mean this Canal Park Maintenance Agreement dated as of _____, 2009, between BUDC and the City, and all amendments, modifications and supplements hereto.

“Canal Park Maintenance” shall mean and refer to the performance of Property Maintenance and ERP ROD Maintenance at Ship Canal Park.

“Canal Park Repairs” shall mean and refer to the performance of Property Repairs and ERP ROD Repairs at Ship Canal Park.

“City” shall mean the City of Buffalo, New York, a municipal corporation of the State of New York.

“County” shall mean the County of Erie, New York, a municipal corporation of the State of New York.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

“ERP ROD” shall refer to the NYSDEC Environmental Restoration Record of Decision for the Hanna Furnace-Subparcel 3 Site, City of Buffalo, Erie County, New York, Site Number B-001164-9, dated February 2005.

“ERP ROD Maintenance” shall mean those tasks identified on Schedule B to be performed by BUDC as provided under Section 3 of this Agreement and in accordance with the ERP ROD.

“ERP ROD Repairs” shall mean those tasks identified on Schedule B to be performed by the City as provided in Section 4 of this Agreement and in accordance with the ERP ROD.

“Governmental Authority” shall mean the United States, the State of New York, any political subdivisions of the United States or the State of New York, and any agency, department, commission, board, bureau or instrumentality of any of them, now existing or hereafter created.

“Maintenance Contract” shall have the meaning set forth in Section 3(b) of this Agreement.

“Maintenance Contractor” shall mean, individually or collectively, as the context may require, the company or companies engaged by BUDC to perform Canal Park Maintenance.

“NYSDEC” shall mean the New York State Department of Environmental Conservation.

“Property Maintenance” shall mean those tasks identified on Schedule B to be performed by BUDC as provided under Section 3 of this Agreement.

“Property Repairs” shall mean those tasks identified on Schedule B to be performed by the City as provided in Section 4 of this Agreement.

“Requirements” shall mean any and all present and future laws, rules, orders, ordinances, regulations, statutes, requirements and executive orders of any Governmental Authority, with respect to the performance of Canal Park Maintenance.

“Ship Canal Park” shall have the meaning set forth in the Recitals to this Agreement.

“Ship Canal Park Project” shall have the meaning set forth in the Recitals to this Agreement.

“State” shall mean the State of New York.

“Term” shall have the meaning set forth in Section 8(a) of this Agreement.

3. Canal Park Maintenance.

During the Term of this Agreement, BUDC agrees to arrange for the performance of Canal Park Maintenance as follows:

(a) BUDC shall engage the services of one or more Maintenance Contractors to perform the Canal Park Maintenance tasks identified on Schedule B, attached hereto and made a part hereof.

(b) The services to be provided by the Maintenance Contractor shall be set forth in a Maintenance Contract between BUDC and the Maintenance Contractor. BUDC will include provisions in the Maintenance Contract with the Maintenance Contractor that all work must be completed in accordance with all Requirements, including all applicable City laws, rules and regulations. The Maintenance Contract shall require the Maintenance Contractor and its subcontractors (if any) to maintain liability insurance required by the City as described on Schedule C attached hereto and made a part hereof, as such insurance requirements may be modified by the City from time to time. Such insurance shall name the City and BUDC as additional insureds and shall be primary and non-contributory. The Maintenance Contractor shall provide insurance certificates to the City and BUDC prior to commencing any work under the Maintenance Contract. The Maintenance Contract shall also require the Maintenance Contractor to defend, indemnify and hold harmless the City, BUDC, and their respective directors, members, officers, employees, agents and representatives (the “Indemnified Parties”) from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against any of the Indemnified Parties by reason of any acts or omissions of the Maintenance Contractor, its agents, employees or subcontractors in connection with the performance of and/or compliance with the terms and conditions of the Maintenance Contract.

4. Canal Park Repairs.

During the Term of this Agreement, the City agrees to perform, or arrange for the performance of, the Canal Park Repairs identified on Schedule B.

5. Access to Parcel 3.

The City hereby grants to BUDC, the Maintenance Contractor, and their respective officers, employees and subcontractors, a non-exclusive license to enter Parcel 3 during the Term for the purpose of performing Canal Park Maintenance and for such other purposes that are reasonably related to or in furtherance of this Agreement.

6. Insurance Requirements.

During the Term of this Agreement, BUDC agrees to maintain liability insurance as required by the City and described on Schedule C, as such insurance requirements may be modified by the City from time to time.

7. Assignment of Canal Park Maintenance Obligations.

BUDC has formed the Buffalo Lakeside Commerce Park Property Owners Association, Inc. (the "Association"), a not-for-profit corporation whose membership is comprised of the owners of real property located in Buffalo Lakeside Commerce Park. The Association was specifically formed for the purpose of maintaining Ship Canal Park, and funding the performance of Canal Park Maintenance through assessments paid by the property owners within Buffalo Lakeside Commerce Park. BUDC is presently the largest property owner at Buffalo Lakeside Commerce Park. The City hereby consents to the assignment of this Agreement by BUDC to the Association and the assumption by the Association of all of BUDC's rights and obligations hereunder upon the filing of the Declaration of Covenants, Conditions, Restrictions, and Easements for Buffalo Lakeside Commerce Park with the Erie County Clerk's Office.

8. Term.

(a) Subject to earlier termination pursuant to Section 8(b) hereof, the term of this Agreement ("Term") shall be for a period of ten (10) years commencing on the Effective Date. The Agreement may be renewed for two (2) additional five (5) year periods at the discretion of the City upon notice to BUDC or the Association, if the Association is a party to this Agreement at such time.

(b) Upon at least one (1) year prior written notice, either party may terminate this Agreement effective at the end of any calendar year after the initial ten-year term. Either party may terminate this Agreement for failure to remedy a material breach of this Agreement within thirty (30) days after receipt of written notice of such breach.

9. Independent Contractor.

BUDC shall perform the services hereunder as an independent contractor and neither the BUDC nor any of its respective employees, agents or representatives shall be or hold themselves out to be employees of the City. The City and BUDC and their respective employees are not and shall not be considered as joint venturers, employees, partners or agents of one other and no party shall have the power to bind or obligate another party to this Agreement except as set forth in this Agreement.

10. Exculpation.

All covenants, stipulations, promises, agreements and obligations of BUDC contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of BUDC and not of any member, director, officer, employee or agent of BUDC in his or her individual capacity, and no recourse shall be had for any claim hereunder against any member, director, officer, employee or agent of BUDC.

11. Force Majeure.

BUDC may cancel or extend its obligations hereunder in by reason of force majeure which renders BUDC unable wholly or in part to carry out its obligations under this Agreement. The term "force majeure," as used herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, materials, supplies or transportation, or any other similar or different cause not reasonably within BUDC's control.

12. Miscellaneous.

(a) The provisions of this Agreement shall be severable, and if any clause, sentence, paragraph, provision or other part hereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, which remainder shall continue in full force and effect.

(b) This Agreement shall be governed by and interpreted, construed and enforced in accordance with, the laws of the State of New York.

(c) No waiver by any party of any breach, default or violation of any term, warranty, representation, agreement, covenant, condition or provision hereof shall constitute a waiver of any subsequent breach, default or violation of the same or any other term, warranty, representation, agreement, covenant, condition or provision hereof.

(d) The provisions of this Agreement shall bind and benefit the successors and assigns of the parties hereto.

(e) This Agreement may be executed in counterparts, each of which shall be

deemed an original, but all of which together shall constitute one and the same instrument.

(f) All notices that may be given in connection with this Agreement shall be in writing and shall be delivered personally or mailed postage prepaid, by regular mail, to the parties at their addresses as set forth above, or to such other address as either party may hereafter designate by notice to the other party. Notices shall be effective from the date of delivery if delivered personally, or from one (1) business day after the day of deposit with the U.S. mail, if mailed.

(g) The captions herein are for convenience only and are not to be construed as a part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

(h) Each party hereto acknowledges its full understanding of this Agreement, that there are no verbal promises, undertakings or agreements in connection herewith and that this Agreement can be modified only by a written agreement signed by the parties hereto.

(i) This Agreement may be amended only by written instrument, duly authorized and executed by the parties hereto.

[The Remainder of This Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year above first written.

CITY OF BUFFALO

BUFFALO URBAN
DEVELOPMENT CORPORATION

By: _____
BYRON W. BROWN
Mayor

By: _____
PETER M. CAMMARATA
President

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

On the ____ day of _____, in the year 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, 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 this instrument.

Notary Public

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

On the ____ day of _____, in the year 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, 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 this instrument.

Notary Public

List of Schedules

Schedule A - Description of Parcel 3

Schedule B – Canal Park Maintenance and Repair Obligations

Schedule C – City of Buffalo Insurance Requirements

SCHEDULE A

LEGAL DESCRIPTION

ALL THAT PIECE OR PARCEL OF PROPERTY designated as Parcel No. 3, situate in Lot No. 18, in the Ogden Gore Tract, Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York bounded and described as follows:

BEGINNING at a point on the easterly boundary of existing Commerce Street as delineated on Parcel No. 360 of Map No. 327 and acquired by The People of The State of new York for the former construction of Fuhrmann Boulevard – Hamburg Turnpike by Liber 10082 of Deeds at page 121, at its intersection with the southerly boundary of the existing Union Ship Canal; thence easterly at an interior angle of $93^{\circ} 52' 35''$ and along the southerly boundary of the said canal a distance of 1,901.10 feet to a point on the easterly boundary of the said canal; thence northerly at an exterior angle of $90^{\circ} 00' 00''$ and along the easterly boundary of the said canal a distance of 200.00 feet to a point on the northerly boundary of the said canal; thence westerly at an exterior angle of $90^{\circ} 00' 00''$ and along the northerly boundary of the said canal a distance of 1,903.72 feet to a point on the easterly boundary of the existing Fuhrmann Boulevard Extension as delineated on Parcel No. 361 of map No. 327 and acquired by The People of The State of new York by said Liber 10082 of Deeds at page 121; thence northerly at an interior angle of $90^{\circ} 41' 00''$ and along the easterly boundary of the said Parcel No. 361 of map No. 327 being the easterly boundary of said existing Fuhrmann Boulevard Extension a distance of 200.01 feet to a point; thence easterly at an interior angle of $89^{\circ} 19' 00''$ and parallel with the northerly boundary of the said canal a distance of 1,924.19 feet to a point on the southwesterly line of land conveyed to Sherland Incorporation by Liber 10022 of Deeds at page 218; thence southeasterly at an interior angle of $144^{\circ} 26' 00''$ and along the said southwesterly line of land conveyed by said Liber 10022 of Deeds at Page 218 a distance of 223.64 feet to a point; thence southerly at an interior angle of $125^{\circ} 34' 00''$ and parallel with the easterly boundary of the said canal a distance of 514.92 feet to a point; thence westerly at an interior angle of $90^{\circ} 00' 00''$ and parallel with the southerly boundary of the said canal a distance of 2,117.70 feet to a point on the easterly boundary the said Parcel No. 360 of Map No. 327 being the easterly boundary of said existing Commerce Street; thence northerly at an interior angle of $86^{\circ} 07' 25''$ and along the easterly boundary the said Parcel No. 360 of Map No. 327 being the easterly boundary of said existing Commerce Street a distance of 245.56 feet to the point of beginning, being 22.175 acres of land more or less.

Subject to the easement rights of others as granted by virtue of Easement No. 2 described in Liber 6747 of Deeds at page 507 for an underground drain.

Also, subject to the rights of others as granted by virtue of Liber 8636 of Deeds at Page 586 for a 20.00-foot wide sanitary sewer easement.

SCHEDULE B

CANAL PARK MAINTENANCE AND CANAL REPAIR OBLIGATIONS

A. Property Maintenance and Property Repair Obligations

<u>Park Element</u>	<u>Property Maintenance Obligations</u> <u>(BUDC/Property Owners Association)</u>	<u>Property Repair Obligations</u> <u>(City of Buffalo)</u>
Lawn Area (including berms)	<ol style="list-style-type: none"> 1. Mow - 2.5 inch length in lawn areas (every 2 weeks May thru Oct.) 2. Mow meadows 2x year (July and Oct.) 3. Fertilize (2x year) 4. Repair/Re-seed 	N/A
Wildflower Area	<ol style="list-style-type: none"> 1. Weed for two years until established (monthly for six months) 2. Replant/Replace 3. Mow (1x year; late winter) 	N/A
Trees/Woodland Area	<ol style="list-style-type: none"> 1. Weed/Mulch (1x year) 2. Water 3. Rake Leaves (2x year) 4. Trim/Prune (1x year) 	Replace (after warranty period expires)
Trails and Paths	<ol style="list-style-type: none"> 1. Rake/maintain crushed stone paths 2. Minor repairs to asphalt paths 	<ol style="list-style-type: none"> 1. Replace crushed stone 2. Replace asphalt
Parking Area	<ol style="list-style-type: none"> 1. Seal 2. Stripe 3. Minor repairs (patching) 	<ol style="list-style-type: none"> 1. Resurface 2. Replace 3. Plow and Salt 4. Clean Storm Drain 5. Bumper and Bollard Repairs
Park Lighting	Replace lamps	Repair and replace light poles and lighting fixtures
Canal Lighting	Replace lamps	Repair and replace canal lighting fixtures

Bridge	Replace lamps	1. Repair and replace bridge 2. Repair and replace bridge lighting fixtures
General Park Area	1. Remove litter 2. Empty trash receptacles 3. Clean park furniture 4. Monitor and remove invasive species 5. Seasonal floral displays	1. Remove graffiti 2. Repair/replace park furniture
Park Signage	N/A	1. Repair and replace 2. Remove graffiti
Park Utilities	1. Maintain WiFi Network and related hardware 2. Pay electricity costs for bridge and canal lighting	1. Maintain/repair electric and water lines 2. Pay electricity costs for parking lot 3. Waive water costs
Park Storage Shed	Maintain and secure storage shed	Provide electric and water supply tie-in
Canal	Remove small debris from canal	Remove large debris from canal
Historic Artifacts	Annual Visual Inspection	Remove graffiti

B. ERP ROD Maintenance and ERP ROD Repair Obligations

<u>ERP ROD Element</u>	<u>ERP ROD Maintenance Obligations</u> <u>(BUDC/Property Owners Association)</u>	<u>ERP ROD Repair Obligations</u> <u>(City of Buffalo)</u>
Canal Seawall	Annual Visual Inspection	Repair/Replacement
Canal Outfalls	Annual Visual Inspection	Clean and Repair
Wetlands Abeyment Area/Boardwalk	Removal of invasive species from wetlands	Repair/Replace boardwalk
Soil Cover	Annual Visual Inspection	Repair/Replace Soil Cover

Appendix I

Environmental Restoration ROD

Department of Environmental Conservation

Division of Environmental Remediation

**Environmental Restoration
Record of Decision
Hanna Furnace-Subparcel 3 Site
City of Buffalo, Erie County, New York
Site Number B-00164-9**

February 2005

New York State Department of Environmental Conservation
GEORGE E. PATAKI, *Governor* DENISE SHEEHAN, *Acting Commissioner*

DECLARATION STATEMENT
ENVIRONMENTAL RESTORATION RECORD OF DECISION

Hanna Furnace-Subparcel 3 Environmental Restoration Site
City of Buffalo, Erie County, New York
Site No. B-00164-9

Statement of Purpose and Basis

The Record of Decision (ROD) presents the selected remedy for the Hanna Furnace-Subparcel 3 site, an environmental restoration site. The selected remedial program was chosen in accordance with the New York State Environmental Conservation Law and is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan of March 8, 1990 (40CFR300), as amended.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (NYSDEC) for the Hanna Furnace-Subparcel 3 environmental restoration site, and the public's input to the Proposed Remedial Action Plan (PRAP) presented by the NYSDEC. A listing of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

Assessment of the Site

Actual or threatened releases of hazardous substances from this site, if not addressed by implementing the response action selected in this ROD, presents a current or potential significant threat to public health and/or the environment.

Description of Selected Remedy

Based on the results of the Site Investigation/Remedial Alternatives Report (SI/RAR) for the Hanna Furnace-Subparcel 3 site and the criteria identified for evaluation of alternatives, the NYSDEC has selected the Soil Cover option. The components of the remedy are as follows:

- remove surface debris, regrade the site, place a demarcation layer over the site and cover with clean soil to a minimum thickness of two feet,
- develop a site management plan and impose environmental easements to ensure the long term integrity of the remedy and to restrict inappropriate use of the site,
- repair sections of the Union Ship Canal wall with the construction of underwater support berms of sand and/or stone, and
- create shallow-water fish habitats within or immediately adjacent to the canal, including the placement of a soil cover over the remainder of the canal bed where appropriate.

New York State Department of Health Acceptance

The New York State Department of Health (NYSDOH) concurs that the remedy selected for this site is protective of human health.

Declaration

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective.

Date

Dale A. Desnoyers, Director
Division of Environmental Remediation

Appendix J

Declaration of Negative Impact

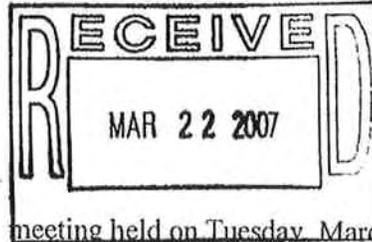


*The Common Council
Legislative Staff
City Of Buffalo, NY*

"A Laboratory For New Ideas"

*Chief of Staff
Paul W. Wolf, Esq.
Legislative Staff Manager
Mary H. Baldwin
Senior Legislative Assistant IV
James S. Pajak
Senior Legislative Assistants
Milly Castro
Lisa M. Collin
Mark J. Jaskula
Jacqueline E. Rushton
Legislative Aide
Karen D. Privateer*

March 21, 2007



At the Common Council meeting held on Tuesday, March 6, 2007, the following item was adopted.

**"The Union Ship Canal"
Item #19 CCP March 6, 2007**

A Negative Declaration for the above-referenced project is hereby filed with your office in accordance with Section 617.12 of the New York State Environmental Quality Review Act.

If you have any questions, please contact me at 851-5161.

Sincerely,


Paul W. Wolf, Esq.
Chief-of-Staff

Attachment

65 Niagara Square - Room 1413
Buffalo, NY 14202-3318
Phone: (716) 851-5105
Fax: (716) 851-4234

**NEGATIVE DECLARATION
NOTICE OF DETERMINATION OF NON-SIGNIFICANCE**

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (SEQR – New York State Environmental Quality Review Act) of the Environmental Conservation Law.

Lead Agency: City of Buffalo Common Council
Room 1315 City Hall
65 Niagara Square
Buffalo, New York 14202

As per the provisions of SEQR, the Lead Agency has reviewed the following action as it relates to the environment:

Action Title: Union Ship Canal Public Open Space Development

Location: Within an approximately 200 ft. perimeter surrounding the Union Ship Canal, which is located east of Route 5 and adjacent to the City of Lackawanna northern municipal boundary line. Erie County. Buffalo, New York.

Type of Action: Type I

Description: The City of Buffalo, in partnership with the Erie County Department of Environment and Planning, proposes to undertake the construction of a new park, which will be located around the old Union Ship Canal. The proposed project is a major component of the City of Buffalo's new Union Ship Canal District plan adopted by the City in 2002. This special review district encompasses approximately 275 acres located along the Lake Erie waterfront in South Buffalo, and was established in order for the City to encourage, support, and control the proper redevelopment of former industrial and railroad lands comprising the bulk of the area.

The proposed park site encompasses the canal and the approximately 22 acres that is delineated by a 200-foot setback from the canal bulkheads, and is also a part of the Buffalo Lakeside Commerce Park (BLCP), an industrial park currently being developed by the Buffalo Urban Development corporation and the Erie County Industrial Development Agency under the Canal District plan. The park itself will be constructed in multiple phases over an extended period of time, with the first phase focusing on the installation of the utility and drainage systems and the extensive landscaping component of the project design in support of a remedial site work program.

As a result of this environmental review, the Lead Agency has determined that the undertaking of this project will not constitute an action which would have a significant adverse impact on the environment. No further environmental review of this action will be conducted prior to project implementation and a Draft Environmental Impact Statement will not be prepared.

Reasons Supporting This Determination: Prior to the adoption of the Union Ship Canal District special plan the City of Buffalo, the Buffalo Common Council acting as lead agency, completed a Generic Environmental Impact Statement (GEIS) as per the provisions of SEQR for the entire Canal District, including the Park and the BLCP area. The GEIS was approved, and Final Findings filed, by the City in January of 2002. As a result of the GEIS it was determined that the establishment of the Canal District should be adopted, and that the redevelopment of the area would result in significant beneficial environmental impacts for the City of Buffalo provided that appropriate mitigation measures, primarily regarding soils remediation work, will be undertaken as necessary prior to the implementation of future site specific actions.

The negative impacts which were identified as a result of the environmental review for the proposed Union Ship Canal Park are all primarily due to excavation, landscaping and construction activities, which will generate increased vehicle emissions and traffic, fugitive dust, odors, and elevated noise levels. These are short-term impacts only that will have a minor effect on the environment, and are not significant in magnitude or effect. Proper construction practices in accordance with the project remedial design program, NY State regulatory requirements, and City codes will mitigate potential adverse impacts due to project activities.

Due to the disposal of fill materials in the area over the years, and past industrial uses, the soil and groundwater at the project site have been contaminated by hazardous substances. The New York DEC has issued a ROD for the site that proposes a soil cover system, a canal sediment cover system, canal wall stabilization, eco-restoration, and park development as remedies for the site. The ROD is based on the results of the Site Investigation conducted between June 2001 and March 2003, and recommendations presented in the "Site Investigation and Remedial Alternatives Report". This proposal, which will be implemented by the City of Buffalo, includes appropriate remedial measures to eliminate or mitigate the environmental threats to human health and the environment that are associated with the impacts of contaminants to the soils, surface water, and sediments of the site.

The proposed remedial site work is based on the results of extensive site investigations, the recommendations of the "Site Investigation and Remedial Alternatives Report", the "Record of Decision (ROD)" issued by the New York State Department of Environmental Conservation (DEC), and extensive concept designs. This project component will involve, but is not limited to, the following: (a) Implementing a Land Cover System to include removal of surface debris, covering the entire site with clean fill material and topsoil, and construction of a berm around the perimeter of the site as necessary to prevent run off from adjacent land; (b) Implementing a Canal Sediment Cover System to include placement of clean gravel or stone, in the water, over a geotextile material to minimize the migration of contaminated sediments, and (c) Canal Wall Stabilization to include removal of large debris from the water and construction of underwater stabilization berms.

Subsequent phases of the park development will include construction of the following major components: passive play and picnic areas on the north side of the canal; an extensive system of recreational trails, interpretive walkways and nature trails; a park maintenance building with restrooms and concession stand on the southern side of the canal; three parking areas for approximately 100 vehicles; floating docks and cantilevered platforms on the canal bulkheads; access roads; a pedestrian bridge over the canal; and the provision of Eco-Restoration work such as eight artificial reef groupings, four benthic substrate enhancement areas, shallow-water fish habitat, submerged and emergent wetland plantings, two submerged islands, and an inland embayment area on the north side of the canal. The project also involves: extensive plantings of new trees and shrubbery throughout the site; and the installation of signage, park furnishings, lighting and fencing.

In addition, the design of the park includes the possible future construction of the following facilities on the southern side of the canal: a one story hobby and restaurant building; an outdoor entertainment area; and an industrial history interpretive area.

The project is being funded by the DEC under a grant from the Environmental Restoration (Brownfields) Program as per the New York State Clean Water/Clean Air Bond Act of 1996 (\$6,030,000), the New York State Department of Transportation's Transportation Enhancement Program (\$1,400,000), and the County of Erie (\$700,000). Any additional park improvements not financed by the above agencies will be funded by the City of Buffalo.

The project will: create a major new recreational area for the use and enjoyment of residents of the City of Buffalo and the surrounding communities; contribute to the overall redevelopment of Buffalo's waterfront; remove threats to human health associated with potential exposure to surface and subsurface soil and groundwater; remove environmental threats associated with the impacts of contaminants to wildlife on the site; improve and restore wildlife habitats; improve the visual and aesthetic qualities of the area; and create short and long-term employment opportunities.

The impacts that are likely to occur as a result of the project appear, on the whole, to be beneficial and not significant in magnitude or effect, and will not, either individually or as a whole, have a significant adverse effect on the environment.

For further information relative to this Negative Declaration, contact Paul Wolf Esq. Chief of Staff, Room 1413 City Hall, Buffalo, New York 14202 , Telephone: 716-851-5161 .

Dated: March 6, 2007

A copy of this notice was sent to:

NY State Department of Environmental Conservation
NY State Department of Transportation
NY State Department of Health
Buffalo Department of Public Works
Buffalo Environmental Management Commission
Mayor Byron Brown
Buffalo Planning Board
Erie County Department of Environment and Planning
Buffalo Water Authority
Buffalo Sewer Authority
Environmental Notice Bulletin

Appendix K

NYS DOT TEP Award Letter from GBNRTC



GBNRTC

GREATER BUFFALO-NIAGARA
REGIONAL TRANSPORTATION COUNCIL

City of Buffalo
City of Niagara Falls
County of Erie
County of Niagara
New York State Thruway Authority
Niagara Frontier Transportation Authority
New York State Department of Transportation

November 2, 2006

Mr. Christopher Pawenski, Coordinator, Industrial Assistance Program
County of Erie
95 Franklin Street
Buffalo, NY 14202

Dear Mr. Pawenski:

Congratulations! This is to inform you that the application you submitted for the *Union Ship Canal Open Space* project under the Transportation Enhancement Program (TEP) has been selected for funding. The federally funded portion of your project is approved for \$1,430,199.00.

The next step before any work starts will be to develop an agreement for the project. Please contact the New York State Department of Transportation Regional Transportation Enhancements Coordinator, Greg Szewczyk, at (716) 847-3614, to discuss the necessary steps to progress the project. Keep in mind that this is a reimbursement program and work should not begin prior to federal authorization as federal reimbursement would be jeopardized. As this is a federal program, the project must comply with all applicable federal and state regulations and environmental requirements to be eligible for federal reimbursement.

Again, I congratulate you on the selection of your excellent project and we look forward to its timely implementation.

Very truly yours,



Hal Morse
Executive Director, GBNRTC

Appendix L
Cost Estimates

**OPINION OF PROBABLE CONSTRUCTION COST WORKSHEET
90% BUDGETARY ESTIMATE - FULL 90/10 ERP FUNDING ON CONCRETE PAD**



Project Title: Union Ship Canal Open Space
 Location: City of Buffalo, New York
 Owner: Buffalo Urban Development Corporation (BUDC)
 Estimated By: BG/JB/MH
 Checked By:
 Approved By:

Project No. 4080-007
 Revision Date: 7/20/2009
 Orig. Date: 9/28/2005
 Drawing No.: NA
 File: CostEst.xls

BID FORM ITEM #	DESCRIPTION	BASE BID	ALTERNATE BID	TOTAL
1 - 7	Land Cover System			
	Funding via NYSDEC ERP	\$ 2,517,450	\$ -	\$ 2,517,450
	Funding via City/County	\$ 279,400	\$ -	\$ 279,400
Alt 1a - 1e	Canal Sediment Cover System			
	Funding via NYSDEC ERP	\$ -	\$ 1,062,000	\$ 1,062,000
8	Canal Wall Stabilization			
	Funding via NYSDEC ERP	\$ 623,000	\$ -	\$ 623,000
	Funding via City/County	\$ 69,000	\$ -	\$ 69,000
Alt 2 - 4	Eco-Restoration			
	Funding via NYSDEC ERP	\$ -	\$ 389,000	\$ 389,000
SUBTOTAL		\$ 3,488,850	\$ 1,451,000	\$ 4,939,850
	Design and Oversight			
	Funding via NYSDEC ERP	\$ 444,000		\$ 444,000
	Funding via NYSDOT TEP	\$ 166,000		\$ 166,000
	Funding via City/County	\$ 55,000		\$ 55,000
P1 - P5	Park			\$ -
	Funding via NYSDOT TEP	\$ 1,120,000	\$ 494,000	\$ 1,614,000
	Funding via NYSDEC ERP	\$ 84,000	\$ 16,000	\$ 100,000
	Funding via City/County	\$ 425,000	\$ 495,000	\$ 920,000
TOTAL		\$ 5,782,850	\$ 2,456,000	\$ 8,238,850

- Total Estimated funding provided by NYSDEC - Environmental Restoration Program
- Total Estimated funding provided by New York State Dept. of Transportation (NYSDOT) - Transportation
- Total Estimated funding provided by City/County

\$ 3,668,450	\$ 1,467,000	\$ 5,135,450
\$ 1,286,000	\$ 494,000	\$ 1,780,000
\$ 828,400	\$ 495,000	\$ 1,323,400

Available NYSDEC (ERP) and NYSDOT (TEP) Funding
 NYSDEC - \$6,030,000
 NYSDOT - \$1,400,000
 Local - \$995,000

**OPINION OF PROBABLE CONSTRUCTION COST WORKSHEET
90% BUDGETARY ESTIMATE - LAND COVER SYSTEM**



Project Title: Union Ship Canal Open Space
 Location: City of Buffalo, New York
 Owner: Buffalo Urban Development Corporation (BUDC)
 Estimated By: BG/JB/MH
 Checked By:
 Approved By:

Project No. 4080-007
 Revision Date: 7/20/2009
 Orig. Date: 9/28/2005
 Drawing No.: NA
 File: CostEst.xls

BID FORM ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE MAT. & LAB.	ESTIMATED TOTAL	NYSDEC-ERP SHARE ¹	LOCAL SHARE ¹	
1	Clearing and Grubbing	10	ACRE	\$ 2,000	\$ 20,000	\$ 18,000	\$ 2,000	
2	Miscellaneous Material Removal and Disposal							
	2a. Railroad Ties	525	TON	\$ 88	\$ 47,000	\$ 42,300	\$ 4,700	
	2b. Brick	75	TON	\$ 77	\$ 6,000	\$ 5,400	\$ 600	
	2c. Roofing Materials	56	TON	\$ 77	\$ 5,000	\$ 4,500	\$ 500	
	2d. Tires	56	TON	\$ 250	\$ 14,000	\$ 12,600	\$ 1,400	
	2e. Concrete	1,250	TON	\$ 88	\$ 110,000	\$ 99,000	\$ 11,000	
	2f. Floating Debris in Canal	5	TON	\$ 250	\$ 2,000	\$ 1,800	\$ 200	
	2g. Blue Fill	1	LS	\$ 31,500	\$ 32,000	\$ 28,800	\$ 3,200	
3	Site Subgrade Preparation ²	1	LS	\$ 198,000	\$ 198,000	\$ 178,200	\$ 19,800	
4	Storm Drainage System							
	4a. Stormwater Conveyance System	1	LS	\$ 174,000	\$ 174,000	\$ 156,600	\$ 17,400	
	4b. Existing Outfall Modifications	1	LS	\$ 11,000	\$ 11,000	\$ 9,900	\$ 1,100	
	4c. Canal Wall Outfalls	1	LS	\$ 3,000	\$ 3,000	\$ 2,700	\$ 300	
5	Clean Cover Material							
	5a. Clean Cover Soil	48894	CY	\$ 24	\$ 1,184,000	\$ 1,065,600	\$ 118,400	
	5b. Topsoil	16298	CY	\$ 33	\$ 538,000	\$ 484,200	\$ 53,800	
6	Fine Grade and Seeding	1	LS	\$ 138,000	\$ 138,000	\$ 124,200	\$ 13,800	
7	Run-On Diversion Berm	2,500	CY	\$ 24	\$ 61,000	\$ 54,900	\$ 6,100	
					SUBTOTAL (Incl. O&P)	\$ 2,543,000	\$ 2,289,000	\$ 254,000
					Cont. Gen. Reqs. (5%)	\$ 127,150	\$ 114,450	\$ 12,700
					Health & Safety (5%)	\$ 127,150	\$ 114,000	\$ 12,700
					TOTAL	\$ 2,797,300	\$ 2,517,450	\$ 279,400

- Notes:
- 1 - Assume NYSDEC's ERP program will provide 90 percent of the funding for eligible cost under the Land Cover System portion of the project, with the City of Buffalo and Erie County providing the remaining 10 percent of the funding.
 - 2 - Approximately 22,000 cubic yards of fill material is required to achieve the desired subgrade elevations for the Site. This material will be relocated from other on-site locations. Excavation, on-site transport, and placement of this material is covered under the Site Subgrade Preparation Item.
 - 3 - Assume NYSDEC's ERP program will provide 90 percent of the funding for covering the eastern 2/3 of the concrete slab located to the south of the Canal. The City of Buffalo/Erie County/TEP will cover the costs associated with covering the remaining one-thirds of the concrete slab.
 - 4 - Assume NYSDEC's ERP program will provide 90 percent of funding for all topsoil costs, with the City of Buffalo and Erie County providing the remaining 10 percent of the funding.

**OPINION OF PROBABLE CONSTRUCTION COST WORKSHEET
90% BUDGETARY ESTIMATE - CANAL WALL STABILIZATION BERM**



Project Title: Union Ship Canal Open Space
 Location: City of Buffalo, New York
 Owner: Buffalo Urban Development Corporation (BUDC)
 Estimated By: BG/JB/MH
 Checked By:
 Approved By:

Project No. 4080-007
 Revision Date: 7/20/2009
 Orig. Date: 9/28/2005
 Drawing No.: NA
 File: CostEst.xls

BID FORM ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE MAT. & LAB.	ESTIMATED TOTAL	NYSDEC-ERP SHARE ¹	LOCAL SHARE ¹	
8	Canal Wall Stabilization Berm	1	LS	\$ 630,000	\$ 630,000	\$ 567,000	\$ 63,000	
					SUBTOTAL (Incl. O&P)	\$ 630,000	\$ 567,000	\$ 63,000
					Cont. Gen. Reqs. (5%)	\$ 31,000	\$ 28,000	\$ 3,000
					Health & Safety (5%)	\$ 31,000	\$ 28,000	\$ 3,000
					TOTAL	\$ 692,000	\$ 623,000	\$ 69,000

Notes:

1 - Assume NYSDEC's ERP program will provide 90 percent of the funding for eligible cost under the Canal Wall Stabilization portion of the project, with the City of Buffalo and Erie County providing the remaining 10 percent of the funding.

**OPINION OF PROBABLE CONSTRUCTION COST WORKSHEET
90% BUDGETARY ESTIMATE - CANAL COVER**

**MALCOLM
PIRNIE**

Project Title: **Union Ship Canal Open Space**
 Location: **City of Buffalo, New York**
 Owner: **Buffalo Urban Development Corporation (BUDC)**
 Estimated By: **BG/JB/MH**
 Checked By:
 Approved By:

Project No. **4080-007**
 Revision Date: **7/20/2009**
 Orig. Date: **9/28/2005**
 Drawing No.: **NA**
 File: **CostEst.xls**

BID FORM ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE MAT. & LAB.	ESTIMATED TOTAL	NYSDEC-ERP SHARE ¹
Alt 1a	Underwater Vehicle Removal	1	LS	\$ 18,700.00	\$ 19,000	\$ 19,000
Alt 1b	Geotextile Layer	400,000	SF	\$ 0.88	\$ 352,000	\$ 352,000
Alt 1c	Canal Sediment Cover Material	14,900	CY	\$ 33.00	\$ 492,000	\$ 492,000
Alt 1d	Underwater Temporary Concrete Structures	1	LS	\$ 50,600.00	\$ 51,000	\$ 51,000
Alt 1e	Benthic Substrate Enhancement	1	LS	\$ 49,500.00	\$ 50,000	\$ 50,000
SUBTOTAL (Incl. O&P)					\$ 964,000	\$ 964,000
Cont. Gen. Reqs. (5%)					\$ 49,000	\$ 49,000
Health & Safety (5%)					\$ 49,000	\$ 49,000
TOTAL					\$ 1,062,000	\$ 1,062,000

Notes:

1 - Assume NYSDEC's ERP program will provide 100 percent of the funding for eligible cost under the Canal Sediment Cover System portion of the project.

**OPINION OF PROBABLE CONSTRUCTION COST WORKSHEET
90% BUDGETARY ESTIMATE - ECO-RESTORATION**



Project Title: **Union Ship Canal Open Space**
 Location: **City of Buffalo, New York**
 Owner: **Buffalo Urban Development Corporation (BUDC)**
 Estimated By: **BG/JB/MH**
 Checked By:
 Approved By:

Project No. **4080-007**
 Revision Date: **7/20/2009**
 Orig. Date: **9/28/2005**
 Drawing No.: **NA**
 File: **CostEst.xls**

BID FORM ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE MAT. & LAB.	ESTIMATED TOTAL	NYSDEC-ERP SHARE ¹
Alt 2	Inland Embayment Area (Northeast Side of Canal)					
	Alt 2a. Excavation, Relocation, and Grading	1	LS	\$ 66,000.00	\$ 66,000	\$ 66,000
	Alt 2b. Deduction for Modification of Stormwater Outfall	1	LS	\$ (8,800.00)	\$ 8,800	\$ 8,800
	Alt 2c. Geotextile	20,000	SF	\$ 0.88	\$ 18,000	\$ 18,000
	Alt 2d. Embayment Area Clean Cover Material	1	LS	\$ 22,000.00	\$ 22,000	\$ 22,000
	Alt 2e. Emergent Plantings	1	LS	\$ 3,000.00	\$ 3,000	\$ 3,000
	Alt 2f. Submerged Plantings	1	LS	\$ 14,000.00	\$ 14,000	\$ 14,000
Alt 3	Shallow Water Fish Habitat (East End of Canal)					
	Alt 3a. Additional Berm Material	1	LS	\$ 5,000.00	\$ 5,000	\$ 5,000
	Alt 3b. Substrate Soils	1	LS	\$ 84,000.00	\$ 84,000	\$ 84,000
	Alt 3c. Emergent Plantings	1	LS	\$ 1,000.00	\$ 1,000	\$ 1,000
	Alt 3d. Submerged Plantings	1	LS	\$ 3,000.00	\$ 3,000	\$ 3,000
Alt 4	Artificial Reef Habitats					
	Alt 4a. Pre-Cast Concrete Reef Structure	24	EA	\$ 2,000.00	\$ 48,000	\$ 48,000
	Alt 4b. Reef Bedding Material	2,200	CY	\$ 36.30	\$ 80,000	\$ 80,000
SUBTOTAL (Incl. O&P)					\$ 353,000	\$ 353,000
Cont. Gen. Reqs. (5%)					\$ 18,000	\$ 18,000
Health & Safety (5%)					\$ 18,000	\$ 18,000
TOTAL					\$ 389,000	\$ 389,000

Notes:

1 - NYSDEC's ERP program will provide 100 percent of the funding for eligible cost under the Eco-Restoration portion of the project.

Appendix M

Site Plans and Renderings



LEGEND

- PROJECT LIMITS
- MULTI-USE PATH
- RECREATIONAL TRAIL
- PEDESTRIAN CIRCULATION
- NATURE TRAIL
- PEDESTRIAN BRIDGE
- SHALLOW WATER FISH HABITAT
- SUBMERGED ISLAND
- EXPOSED CRIBBING
- ARTIFICIAL REEFS
- LAWN
- NATURALIZED GRASSY AREA
- STONE MULCH

- 5a FACILITY PARKING - 40 Cars ±
- 5b FACILITY PARKING - 40 Cars ±
- 6 ARCHITECTURAL LAND FORMS SIMULATING COAL PILES
- 8 INDUSTRIAL ARTIFACTS BOSQUE
- 10 WATER LEVEL VIEWING AREA
- 11 PASSIVE / PICNIC / OPEN PLAY AREA
- 12 TRAIL HEAD PARKING - 14 Cars ±
- 13 EMBAYMENT

ITEMS ABOVE REFER TO IMPROVEMENTS TO BE CONSTRUCTED IN FUTURE PHASES AS FUNDING BECOMES AVAILABLE

THIS PLAN IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE WITHOUT NOTICE. THE CLIENT ASSUMES ALL RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

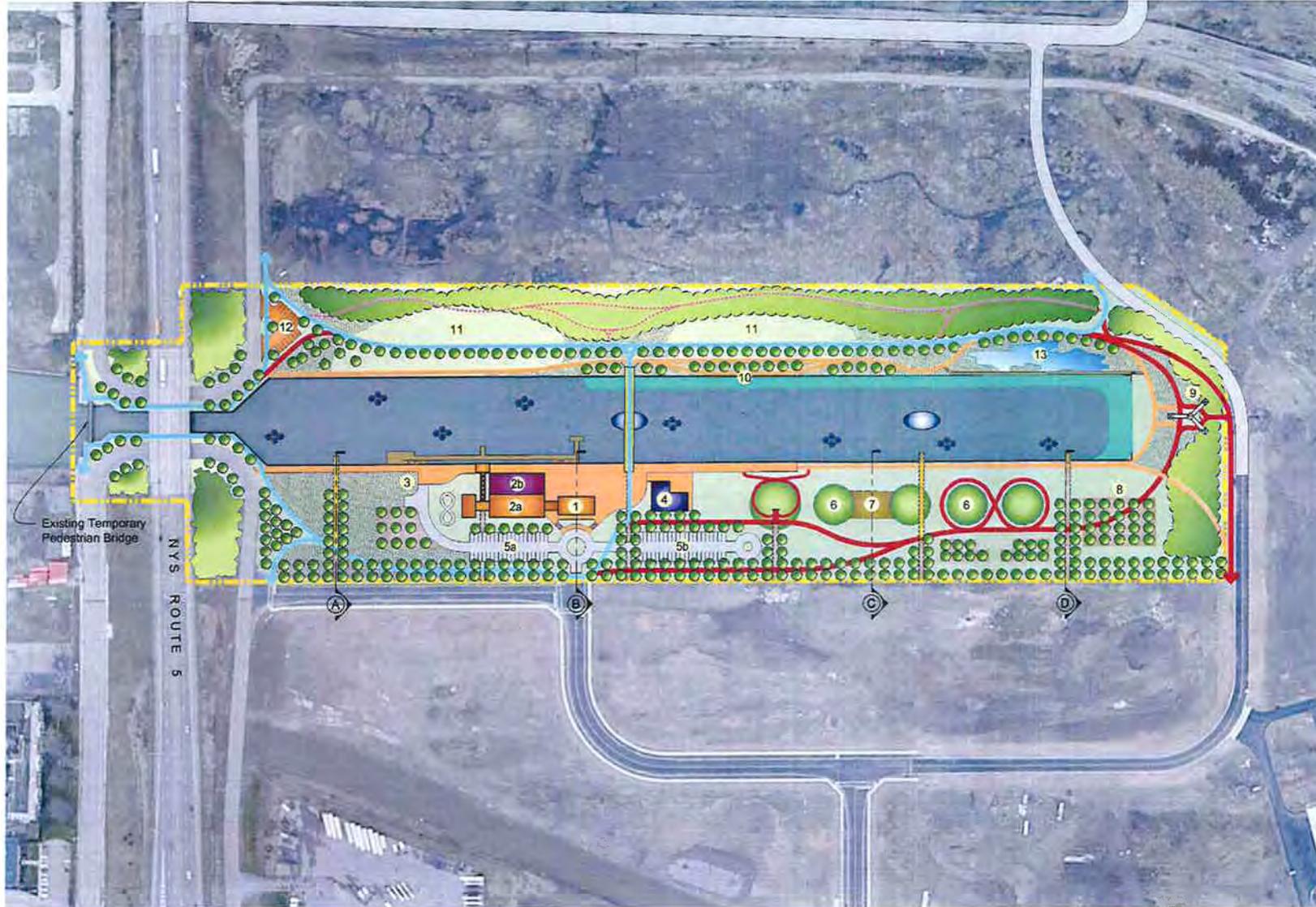
SITE PLAN
SCALE: 1"=100'

NO.	DATE	REVISION	BY	CHK.

BUFFALO URBAN DEVELOPMENT CORPORATION
**UNION SHIP CANAL OPEN SPACE
 PARCEL 3 DEVELOPMENT**
 NYS DOT P.I.N. 5757.98

UPLAND IMPROVEMENTS
**SITE PLAN
 OVERALL**
 SCALE: 1"=100'

PROJECT NO.	
DATE	JANUARY 2011
SHEET	1 OF 1
DRAWN BY	MS-1100



LEGEND

	PROJECT BOUNDARY
	MULTI-USE PATH
	RECREATIONAL TRAIL
	PEDESTRIAN CIRCULATION
	NATURE TRAIL
	PEDESTRIAN BRIDGE
	SHALLOW WATER FISH HABITAT
	SUBMERGED ISLAND
	EXPOSED CRIBBING
	ARTIFICIAL REEFS
	FLOATING DOCKS
	LAWN
	NATURALIZED GRASSY AREA
	STONE MULCH
	CROSS SECTION (SEE ATTACHED)

- 1 PARK BUILDING / PROMENADE
 - RESTROOMS
 - MAINTENANCE
 - STORAGE
 - CONCESSION
- 2 DEVELOPMENT SITE
 - 2a HOBBY CENTER
 - BOATS
 - TRAINS
 - AIRPLANES
 - 2b RESTAURANT
- 3 CAR TOP LAUNCH
- 4 INDUSTRIAL PLAYGROUND
- 5a FACILITY PARKING - 40 Cars ±
- 5b FACILITY PARKING - 40 Cars ±
- 6 ARCHITECTURAL LAND FORMS
SIMULATING COAL PILES
- 7 ENTERTAINMENT VENUE
- 8 INDUSTRIAL ARTIFACTS BOSQUE
- 9 INDUSTRIAL ICON
- 10 WATER LEVEL VIEWING AREA
- 11 PASSIVE / PICNIC / OPEN PLAY
AREA
- 12 TRAIL HEAD PARKING - 14 Cars ±
- 13 EMBAYMENT



WENDEL  DUCHSCHERER
ARCHITECTS ENGINEERS

**MALCOLM
PIRNIE**

REVISIONS			
NO.	BY	DATE	REMARKS

AKI D.P.
DAR A.A.
DUC

CITY OF BUFFALO
BUFFALO, NEW YORK
**UNION SHIP CANAL OPEN SPACE
PHASE 1**

UPLAND IMPROVEMENTS
GRAPHIC AERIAL IMAGES
SCALE: NTS

PROJECT NUMBER: 10
DATE: 11/04/2009
DRAWN BY: J.P.
CHECKED BY: J.P.



NOTES

1. Fabrication will include aluminum box panel core. Fused Resin changeable message panels and aluminum posts. Art for logo and map graphics graphics will be furnished by Owner. Remaining graphics will be furnished in schedule form.
2. See drawings S-4A and S-4B for fabrication details.

Type	Quantity
Type D-1 Primary Orientation Kiosk	
Union Ship Canal Commons	5-4



NOTES

1. Sign panel to be fabricated aluminum painted to match C-1 (Rus) with C-2 and C-3 reflective Scotchlite graphics.
2. See Detail S-10 for mounting and details.

Type	Quantity
Type A-2 Secondary Site Identification Sign	
Union Ship Canal Commons	5-1C



MALCOLM
PIRNIE

NO.	DATE	DESCRIPTION	BY	CHK.

CITY OF BUFFALO
BUFFALO, NEW YORK
UNION SHIP CANAL OPEN SPACE
PHASE I

UPLAND IMPROVEMENTS
DESIGN VOCABULARY

SCALE: NTS

DATE	REVISION
1/20/11	