



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION FORM

DEC requires an application to request major changes to the description of the property set forth in a Brownfield Cleanup Agreement, or "BCA" (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). Such application must be submitted and processed in the same manner as the original application, including the required public comment period. **Is this an application to amend an existing BCA?**

☐

Yes

☒

No

If yes, provide existing site number: _____

PART A (note: application is separated into Parts A and B for DEC review purposes) *BCP App Rev 10*

Section I. Requestor Information - See Instructions for Further Guidance

DEC USE ONLY
BCP SITE #: _____

NAME 28 South Division Owner LLC

ADDRESS 625 RXR Plaza

CITY/TOWN Uniondale

ZIP CODE 11556

PHONE 516.506.6000

FAX 516.506.6800

E-MAIL jdworken@rxrrealty.com

Is the requestor authorized to conduct business in New York State (NYS)?

☒

Yes

☐

No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to the New York State Department of Environmental Conservation (DEC) with the application to document that the requestor is authorized to do business in NYS. **Please note:** If the requestor is an LLC, the members/owners names need to be provided on a separate attachment. See Attachment "A"

Do all individuals that will be certifying documents meet the requirements detailed below? ☒ Yes ☐ No

- Individuals that will be certifying BCP documents, as well as their employers, meet the requirements of Section 1.5 of [DER-10: Technical Guidance for Site Investigation and Remediation](#) and Article 145 of New York State Education Law. **Documents that are not properly certified will be not approved under the BCP.**

Section II. Project Description

1. What stage is the project starting at?

☒

Investigation

☐

Remediation

NOTE: If the project is proposed to start at the remediation stage, a Remedial Investigation Report (RIR) at a minimum is required to be attached, resulting in a 30-day public comment period. If an Alternatives Analysis and Remedial Work Plan are also attached (see DER-10 / Technical Guidance for Site Investigation and Remediation for further guidance) then a 45-day public comment period is required.

2. If a final RIR is included, please verify it meets the requirements of Environmental Conservation Law (ECL) Article 27-1415(2): ☐ Yes ☒ No

3. Please attach a short description of the overall development project, including:

- the date that the remedial program is to start; and
- the date the Certificate of Completion is anticipated.

See Attachment "B"

Section III. Property's Environmental History

All applications **must include** an Investigation Report (per ECL 27-1407(1)). The report must be sufficient to establish contamination of environmental media on the site above applicable Standards, Criteria and Guidance (SCGs) based on the reasonably anticipated use of the property. See Attachment "C"

To the extent that existing information/studies/reports are available to the requestor, please attach the following (***please submit the information requested in this section in electronic format only***):

1. **Reports:** an example of an Investigation Report is a Phase II Environmental Site Assessment report prepared in accordance with the latest American Society for Testing and Materials standard (ASTM E1903). **Please submit a separate electronic copy of each report in Portable Document Format (PDF).**

2. SAMPLING DATA: INDICATE KNOWN CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN TO HAVE BEEN AFFECTED. LABORATORY REPORTS SHOULD BE REFERENCED AND COPIES INCLUDED.

Contaminant Category	Soil	Groundwater	Soil Gas
Petroleum			
Chlorinated Solvents			X
Other VOCs			
SVOCs	X		
Metals	X	X	
Pesticides			
PCBs			
Other*			

*Please describe: MERCURY, LEAD, PCE

3. FOR EACH IMPACTED MEDIUM INDICATED ABOVE, INCLUDE A SITE DRAWING INDICATING:

- **SAMPLE LOCATION** See Attachment "C"
- **DATE OF SAMPLING EVENT**
- **KEY CONTAMINANTS AND CONCENTRATION DETECTED**
- **FOR SOIL, HIGHLIGHT IF ABOVE REASONABLY ANTICIPATED USE**
- **FOR GROUNDWATER, HIGHLIGHT EXCEEDANCES OF 6NYCRR PART 703.5**
- **FOR SOIL GAS/ SOIL VAPOR/ INDOOR AIR, HIGHLIGHT IF ABOVE MITIGATE LEVELS ON THE NEW YORK STATE DEPARTMENT OF HEALTH MATRIX**

THESE DRAWINGS ARE TO BE REPRESENTATIVE OF ALL DATA BEING RELIED UPON TO MAKE THE CASE THAT THE SITE IS IN NEED OF REMEDIATION UNDER THE BCP. DRAWINGS SHOULD NOT BE BIGGER THAN 11" X 17". THESE DRAWINGS SHOULD BE PREPARED IN ACCORDANCE WITH ANY GUIDANCE PROVIDED.

ARE THE REQUIRED MAPS INCLUDED WITH THE APPLICATION?*

(*answering No will result in an incomplete application)

☒ Yes ☐ No

4. INDICATE PAST LAND USES (CHECK ALL THAT APPLY):

- | | | | |
|---|--|---|--|
| <input type="checkbox"/> Coal Gas Manufacturing | <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Agricultural Co-op | <input type="checkbox"/> Dry Cleaner |
| <input type="checkbox"/> Salvage Yard | <input type="checkbox"/> Bulk Plant | <input type="checkbox"/> Pipeline | <input type="checkbox"/> Service Station |
| <input type="checkbox"/> Landfill | <input type="checkbox"/> Tannery | <input type="checkbox"/> Electroplating | <input type="checkbox"/> Unknown |

Other: plumbing shop, carpentry shop.

Section IV. Property Information - See Instructions for Further Guidance				
PROPOSED SITE NAME 28 South Division Street				
ADDRESS/LOCATION 28, 42, 44, and 48 South Division Street				
CITY/TOWN New Rochelle		ZIP CODE 10805		
MUNICIPALITY(IF MORE THAN ONE, LIST ALL): New Rochelle				
COUNTY Westchester		SITE SIZE (ACRES) 1.061		
LATITUDE (degrees/minutes/seconds) 40 ° 54 ' 26.46 "		LONGITUDE (degrees/minutes/seconds) - 73 ° 46 ' 52.43 "		
<p>Complete tax map information for all tax parcels included within the proposed site boundary. If a portion of any lot is proposed , please indicate as such by inserting "P/O" in front of the lot number in the appropriate box below, and only include the acreage for that portion of the tax parcel in the corresponding far right column. ATTACH REQUIRED MAPS PER THE APPLICATION INSTRUCTIONS.</p> <div style="border: 1px solid black; display: inline-block; padding: 2px;">See Attachment "D"</div>				
Parcel Address	Section No.	Block No.	Lot No.	Acreage
<p>1. Do the proposed site boundaries correspond to tax map metes and bounds? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If no, please attach an accurate map of the proposed site.</p>				
<p>2. Is the required property map attached to the application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (application will not be processed without map) <div style="border: 1px solid black; display: inline-block; padding: 2px;">See Attachment "D"</div></p>				
<p>3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)? (See DEC's website for more information) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p style="text-align: center;">If yes, identify census tract : _____</p> <p>Percentage of property in En-zone (check one): <input type="checkbox"/> 0-49% <input type="checkbox"/> 50-99% <input type="checkbox"/> 100%</p>				
<p>4. Is this application one of multiple applications for a large development project, where the development project spans more than 25 acres (see additional criteria in BCP application instructions)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, identify name of properties (and site numbers if available) in related BCP applications: _____</p>				
<p>5. Is the contamination from groundwater or soil vapor solely emanating from property other than the site subject to the present application? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>				
<p>6. Has the property previously been remediated pursuant to Titles 9, 13, or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, attach relevant supporting documentation.</p>				
<p>7. Are there any lands under water? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, these lands should be clearly delineated on the site map.</p>				

Section IV. Property Information (continued)

8. Are there any easements or existing rights of way that would preclude remediation in these areas?
If yes, identify here and attach appropriate information. ☐ Yes ☒ No

Easement/Right-of-way Holder

Description

9. List of Permits issued by the DEC or USEPA Relating to the Proposed Site (type here or attach information)

Type

Issuing Agency

Description

NONE

10. Property Description and Environmental Assessment – **please refer to application instructions for the proper format of each narrative requested.**

See Attachment "D"

Are the Property Description and Environmental Assessment narratives included in the **prescribed format**?

☒ Yes ☐ No

Note: Questions 11 through 13 only pertain to sites located within the five counties comprising New York City

11. Is the requestor seeking a determination that the site is eligible for tangible property tax credits? ☐ Yes ☐ No

If yes, requestor must answer questions on the supplement at the end of this form.

12. Is the Requestor now, or will the Requestor in the future, seek a determination that the property is Upside Down? ☐ Yes ☐ No

13. If you have answered Yes to Question 12, above, is an independent appraisal of the value of the property, as of the date of application, prepared under the hypothetical condition that the property is not contaminated, included with the application? ☐ Yes ☐ No

NOTE: If a tangible property tax credit determination is not being requested in the application to participate in the BCP, the applicant may seek this determination at any time before issuance of a certificate of completion by using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category.

If any changes to Section IV are required prior to application approval, a new page, initialed by each requestor, must be submitted.

Initials of each Requestor: _____

BCP application - PART B (note: application is separated into Parts A and B for DEC review purposes)

Section V. Additional Requestor Information See Instructions for Further Guidance		DEC USE ONLY BCP SITE NAME: _____ BCP SITE #: _____	
NAME OF REQUESTOR'S AUTHORIZED REPRESENTATIVE Jared Dworken, RXR Realty			
ADDRESS 625 RXR Plaza			
CITY/TOWN Uniondale		ZIP CODE 11556	
PHONE 516.506.6000	FAX 516.506.6800	E-MAIL jdworken@rxrrealty.com	
NAME OF REQUESTOR'S CONSULTANT AKRF / Axel Schwendt			
ADDRESS 440 Park Ave South, 7th Floor			
CITY/TOWN New York		ZIP CODE 10016	
PHONE 646-388-9529	FAX 212-726-0942	E-MAIL aschwendt@akrf.com	
NAME OF REQUESTOR'S ATTORNEY Allen & Desnoyers LLP / Dale Desnoyers, Esq.			
ADDRESS 90 State Street, Suite 1009			
CITY/TOWN Albany		ZIP CODE 12207	
PHONE 518-426-2288	FAX 518-426-2299	E-MAIL dale@allendesnoyers.com	
Section VI. Current Property Owner/Operator Information – if not a Requestor			See Attachment "E"
CURRENT OWNER'S NAME (See Attachment "E")		OWNERSHIP START DATE:	
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
CURRENT OPERATOR'S NAME N/A			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
PROVIDE A LIST OF PREVIOUS PROPERTY OWNERS AND OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS AS AN ATTACHMENT. DESCRIBE REQUESTOR'S RELATIONSHIP, TO EACH PREVIOUS OWNER AND OPERATOR, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND PREVIOUS OWNER AND OPERATOR. IF NO RELATIONSHIP, PUT "NONE". <div style="text-align: center;">See Attachment "E"</div>			
IF REQUESTOR IS NOT THE CURRENT OWNER, DESCRIBE REQUESTOR'S RELATIONSHIP TO THE CURRENT OWNER, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND THE CURRENT OWNER.			
Section VII. Requestor Eligibility Information (Please refer to ECL § 27-1407)			
If answering "yes" to any of the following questions, please provide an explanation as an attachment.			
1. Are any enforcement actions pending against the requestor regarding this site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
2. Is the requestor subject to an existing order for the investigation, removal or remediation of contamination at the site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

Section VII. Requestor Eligibility Information (continued)

4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the ECL Article 27; ii) any order or determination; iii) any regulation implementing Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ☒ No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, DEC assigned site number, the reason for denial, and other relevant information. ☐ Yes ☒ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? ☐ Yes ☒ No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? ☐ Yes ☒ No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of DEC, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to DEC? ☐ Yes ☒ No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9 (f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☒ No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? ☐ Yes ☒ No
11. Are there any unregistered bulk storage tanks on-site which require registration? ☐ Yes ☒ No

THE REQUESTOR MUST CERTIFY THAT HE/SHE IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW: See Attachment "F"

☐ PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

☒ VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

Section VII. Requestor Eligibility Information (continued)

Requestor Relationship to Property (check one):

☐ Previous Owner ☒ Current Owner ☒ Potential /Future Purchaser ☐ Other _____

Current Owner of Lots 4, 5 and 6; Future purchaser of Lot 8.01

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?

☒ Yes

☐ No

See Attachment "G"

Note: a purchase contract does not suffice as proof of access.

Section VIII. Property Eligibility Information - See Instructions for Further Guidance

1. Is / was the property, or any portion of the property, listed on the National Priorities List?
If yes, please provide relevant information as an attachment. ☐ Yes ☒ No
2. Is / was the property, or any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites pursuant to ECL 27-1305? ☐ Yes ☒ No
If yes, please provide: Site # _____ Class # _____
3. Is / was the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility? ☐ Yes ☒ No
If yes, please provide: Permit type: _____ EPA ID Number: _____
Date permit issued: _____ Permit expiration date: _____
4. If the answer to question 2 or 3 above is yes, is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer? Attach any information available to the requestor related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filing and corporate dissolution documentation. ☐ Yes ☐ No
5. Is the property subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10? ☐ Yes ☒ No
If yes, please provide: Order # _____
6. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? ☐ Yes ☒ No
If yes, please provide explanation as an attachment.

Section IX. Contact List Information

To be considered complete, the application must include the Brownfield Site Contact List in accordance with [DER-23 / Citizen Participation Handbook for Remedial Programs](#). Please attach, at a minimum, the names and addresses of the following: See Attachment "H"

1. The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located.
2. Residents, owners, and occupants of the property and properties adjacent to the property.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the property is located.
5. Any person who has requested to be placed on the contact list.
6. The administrator of any school or day care facility located on or near the property.
7. The location of a document repository for the project (e.g., local library). **If the site is located in a city with a population of one million or more, add the appropriate community board as an additional document repository.** In addition, attach a copy of an acknowledgement from each repository indicating that it agrees to act as the document repository for the site.

Section X. Land Use Factors

1. What is the current municipal zoning designation for the site? DO-2 (Downtown Overlay Z)

What uses are allowed by the current zoning? (Check boxes, below)

☒ Residential ☒ Commercial ☐ Industrial

If zoning change is imminent, please provide documentation from the appropriate zoning authority.

2. Current Use: ☐ Residential ☐ Commercial ☐ Industrial ☒ Vacant ☐ Recreational (check all that apply)

See Attachment "I"

Attach a summary of current business operations or uses, with an emphasis on identifying possible contaminant source areas. If operations or uses have ceased, provide the date.

3. Reasonably anticipated use Post Remediation: ☒ Residential ☐ Commercial ☐ Industrial (check all that apply) **Attach a statement detailing the specific proposed use.**

If residential, does it qualify as single family housing?

See Attachment "J"

☐ Yes ☒ No

4. Do current historical and/or recent development patterns support the proposed use?

☒ Yes ☐ No

5. Is the proposed use consistent with applicable zoning laws/maps? Briefly explain below, or attach additional information and documentation if necessary.

☒ Yes ☐ No

The City of New Rochelle Department of Development Planning Board passed Resolution #36-2018 approving the plan.
See Attachment "K"

6. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans? Briefly explain below, or attach additional information and documentation if necessary.

☒ Yes ☐ No

The City of New Rochelle Department of Development Planning Board passed Resolution #36-2018 approving the plan.
See Attachment "K"

XI. Statement of Certification and Signatures

(By requestor who is an individual)

If this application is approved, I hererby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: _____

Signature: _____

Print Name: _____

(By a requestor other than an individual)

See Attachment "L" - LLC Authorization/Resolution

I hereby affirm that I am an Authorized Person (title) of 28 South Division Owner LLC (entity); that I am authorized by that entity to make this application and execute the Brownfield Cleanup Agreement (BCA) and all subsequent amendments; that this application was prepared by me or under my supervision and direction. If this application is approved, I acknowledge and agree: (1) to execute a BCA within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 1/27/2020

Signature: 

Print Name: TODD RECHLER, AUTHORIZED PERSON, 28 SOUTH DIVISION OWNER LLC

SUBMITTAL INFORMATION:

- **Two (2)** copies, one paper copy with original signatures and one electronic copy in Portable Document Format (PDF), must be sent to:
 - Chief, Site Control Section
 - New York State Department of Environmental Conservation
 - Division of Environmental Remediation
 - 625 Broadway
 - Albany, NY 12233-7020

FOR DEC USE ONLY

BCP SITE T&A CODE: _____

LEAD OFFICE: _____

Supplemental Questions for Sites Seeking Tangible Property Credits in New York City ONLY. Sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27 1407(1-a) must be submitted if requestor is seeking this determination.

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Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to NYS Tax Law 21(b)(6)? Please see DEC's website for more information. <input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Is the property upside down or underutilized as defined below?	Upside Down? <input type="checkbox"/> Yes <input type="checkbox"/> No Underutilized? <input type="checkbox"/> Yes <input type="checkbox"/> No
From ECL 27-1405(31): "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.	
From 6 NYCRR 375-3.2(I) as of August 12, 2016: (Please note: Eligibility determination for the underutilized category can only be made at the time of application)	
375-3.2: (I) "Underutilized" means, as of the date of application, real property on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and (1) the proposed use is at least 75 percent for industrial uses; or (2) at which: (i) the proposed use is at least 75 percent for commercial or commercial and industrial uses; (ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and (iii) one or more of the following conditions exists, as certified by the applicant: (a) property tax payments have been in arrears for at least five years immediately prior to the application; (b) a building is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; or (c) there are no structures.	
"Substantial government assistance" shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.	

Supplemental Questions for Sites Seeking Tangible Property Credits in New York City (continued)

3. If you are seeking a formal determination as to whether your project is eligible for Tangible Property Tax Credits based in whole or in part on its status as an affordable housing project (defined below), you must attach the regulatory agreement with the appropriate housing agency (typically, these would be with the *New York City Department of Housing, Preservation and Development*, the *New York State Housing Trust Fund Corporation*; the *New York State Department of Housing and Community Renewal*; or the *New York State Housing Finance Agency*, though other entities may be acceptable pending Department review). **Check appropriate box, below:**

- ☐ Project is an Affordable Housing Project - Regulatory Agreement Attached;
- ☐ Project is Planned as Affordable Housing, But Agreement is Not Yet Available*
(*Checking this box will result in a “pending” status. The Regulatory Agreement will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.);
- ☐ This is Not an Affordable Housing Project.

From 6 NYCRR 375- 3.2(a) as of August 12, 2016:

(a) “Affordable housing project” means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.

(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency’s affordable housing program, or a local government’s regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants’ households annual gross income.

(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency’s affordable housing program, or a local government’s regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.

(3) “Area median income” means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.

ATTACHMENT A
SECTION 1 – REQUESTOR INFORMATION

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application
Attachment A – LLC Membership

The sole member of 28 South Division Owner LLC is as follows:

RXR Church-Division Tower B REIT LLC.

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 20, 2019.

Selected Entity Name: 28 SOUTH DIVISION OWNER LLC

Selected Entity Status Information

Current Entity Name: 28 SOUTH DIVISION OWNER LLC

DOS ID #: 5360259

Initial DOS Filing Date: JUNE 15, 2018

County: NASSAU

Jurisdiction: DELAWARE

Entity Type: FOREIGN LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C T CORPORATION SYSTEM
28 LIBERTY ST.
NEW YORK, NEW YORK, 10005

Registered Agent

C T CORPORATION SYSTEM
28 LIBERTY ST.
NEW YORK, NEW YORK, 10005

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies.

Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUL 25, 2019	Actual	28 SOUTH DIVISION OWNER LLC
JUN 15, 2018	Actual	RXR CHURCH-DIVISION TOWER B HOLDINGS LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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ATTACHMENT B
SECTION II - PROJECT DESCRIPTION

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application

Attachment B – Project Description

Section II. Project Description

The 28 South Division Street (the “Project”), is located in the City of New Rochelle, Westchester County, New York, and is a phased, mixed-use, ground-up development on an assemblage of several adjacent parcels comprising 1.061 acres located at 28, 42, 44 and 48 South Division Street, New Rochelle, New York. The property is located in a mixed use commercial and residential neighborhood and is bounded on the west by South Division Street and on the east by Church Street. The currently vacant site most recently held a portion of a 62,500 square foot municipal parking garage, which was recently demolished. The through-block site has frontage on both Church and South Division Streets and is situated between Main St and Prospect St. The physical address of the property is 28 S. Division St., New Rochelle, NY 10805. The site is a Block 414, lots 4, 5, 6 and 8.01.

Development features:

- one (1) 28-story residential tower.

Development specifics*:

- approximately 390 residential rental units ranging from studios to 3-bedrooms;
- street-level retail, with approximately 7.7K SF of retail space;
- a subsurface parking structure of approximately 429 parking spaces; and
- a public pedestrian plaza.

The date that the remedial program is anticipated to start is: May/June 2020

The date that the Certificate of Completion is anticipated is: December 2020

*Final plans are in development so the number of residential units, square footage of the retail space, number of parking spaces and public amenities are subject to change.

ATTACHMENT C
SECTION III ENVIRONMENTAL HISTORY AND ASSESSMENT
AND IMPACTED MEDIUM FIGURES

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application
ATTACHMENT C

Property's Environmental History (*BCP Application - Section III*)
and
Environmental Assessment (*BCP Application - Section IV, Question 10*)

I. Summary of Environmental Investigations

As outlined below, a Phase I Environmental Site Assessment (AKRF, August 2017) and a Limited Subsurface Phase II Investigation (AKRF, June 2019) have been conducted at the Property. Eleven soil borings were advanced and 10 test pits were excavated for the collection and laboratory analysis of 41 soil samples, 1 groundwater sample and 6 soil vapor samples. A geophysical survey was conducted prior to the subsurface investigation but no anomalies consistent with a potential UST were identified; however, the presence of historic USTs at the Site cannot be ruled out.

A separate Subsurface (Phase II) Investigation was conducted by SESI Consulting Engineers (SESI) of Pine Brook, NJ in December 2018 of the Property and the north-adjacent portion of the tax lot. The on-site investigation included the advancement of 7 soil borings and 8 test pits with the collection of 30 soil samples, 2 soil vapor samples, and 1 groundwater sample. Results of SESI's testing concurs with AKRF's findings.

The below provides an overview of the results of the environmental investigations conducted to date (by AKRF and SESI). Please refer to the Exhibit to this Attachment C for the list of relevant figures that are being provided electronically with this application.

II. Summary of Environmental Conditions

Overview of Property's Environmental Condition:

The 2017 Phase I ESA was completed on a larger parcel (which included a majority portion of the Site) in conformance with ASTM Standard E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Practice*. This assessment revealed evidence of Recognized Environmental Conditions (RECs) and other environmental concerns at the Property, including:

RECs

- Industrial and automotive uses were located on-site historically, including a plumbing shop, a garage with tire repairs, and several upholsterers between circa 1892 and 1951. No underground storage tanks (USTs) or aboveground storage tanks (ASTs) were documented

at the Site; however, the former buildings likely included undocumented USTs and/or ASTs with potential associated releases.

- The regulatory database identified a drycleaner listed as a hazardous waste generator of chlorinated solvent wastes approximately 120 feet west of the Site (on the west-adjacent block).

Historical on-site (and nearby) uses with suspected solvent or petroleum use were identified, suggesting the potential for vapor encroachment into future on-site buildings.

Other Environmental Concerns

- Several industrial and automotive facilities were identified in the surrounding area between circa 1892 and 1990, including a tin shop, paints and oils storage facilities, a sewing machine shop, a wallpaper shop, a filling station on the west-adjacent block; and a fire department headquarters with an associated garage on the east-adjacent block. No documented spills were listed for these facilities in the regulatory database information; however undocumented releases could have potentially affected area soil/soil vapor and/or groundwater quality.

Potential for Vapor Encroachment

The Phase I assessment identified historical onsite (and nearby) uses with a potential for solvent or petroleum use, and thus a potential for vapor encroachment into current or future buildings at the property.

Based on the results of the Phase I ESA, AKRF conducted a limited Phase II investigation in November 2018, January 2019, and May 2019; SESI conducted a Phase II investigation in December 2018. These reports are provided on the CD-ROM attached to this Application. Based on these studies, the following is a summary of environmental conditions at the Property:

Site Geology: The topography in the general area slopes downward to the southeast. Based on the U.S. Geological Survey, Mount Vernon, NY Quadrangle (2013) map, the Site is approximately 100 feet above the National Geodetic Vertical Datum of 1988 (an approximation of sea level). Presumed bedrock was encountered during this investigation at varying depths up to 13.5 feet below grade. Surficial materials consisted of historical fill (sand with silt, gravel, glass, plant roots, and brick) to a maximum depth of approximately 10 feet below grade (bgs).

Hydrogeology: Groundwater was encountered in only one soil boring (advanced in southern portion) and one test pit (advanced in northeastern portion) at approximately 10 and 11.5 feet below grade, respectively. Groundwater was measured at a depth of approximately 4.3 feet below sidewalk grade in the permanent monitoring well located in the sidewalk on Church Street. Groundwater is assumed to flow in the southeasterly direction towards the New Rochelle Harbor, approximately 2,000 feet away. However, actual groundwater flow can be affected by many factors including underground utilities, bedrock, and other factors beyond the scope of this study. There are no surface water bodies or streams at or adjacent to the Site.

Soil Quality: The analytical results of the limited subsurface (Phase II) investigations conducted by AKRF and SESI detected exceedances of the NYSDEC Part 375 Restricted Residential SCO Standards for the following:

- Metals: Lead, Mercury

Groundwater Quality: During the Limited Subsurface (Phase II) Investigation, shallow bedrock precluded the ability to thoroughly investigate groundwater. Nonetheless, the groundwater analytical results detected exceedances of the NYSDEC Class GA Ambient Standards for the following:

- Metals:
 - Total Metals: Iron, Manganese, Magnesium, Sodium
 - Dissolved Metals: Iron, Manganese, Magnesium, Sodium

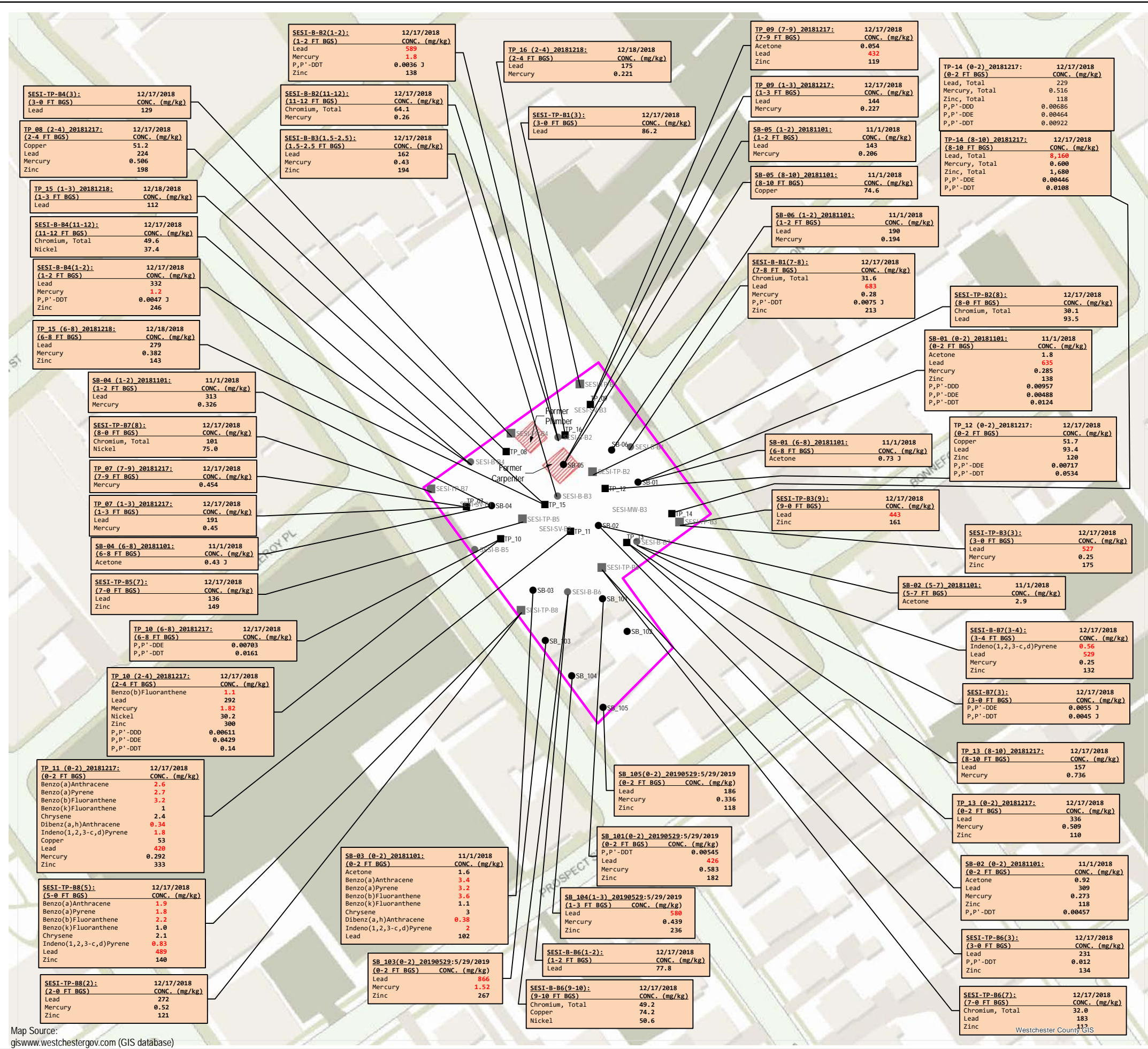
Soil Vapor Quality: The Limited Subsurface (Phase II) Investigation Soil Vapor Analytical Results showed exceedances of the NYSDEC 2006 Soil Vapor Intrusion Air Guidance Value Standards for the following:

- VOCs: Tetrachloroethylene

Exhibits Attached:

- Figure 2 Soil Analytical Results
- Figure 3 Groundwater Analytical Results
- Figure 4 Soil Vapor Analytical Results
- Exhibit A Phase I ESA, prepared by AKRF, dated August 24, 2017
- Exhibit B Limited Subsurface (Phase II) Investigation, prepared by AKRF, dated June 2019 (includes at Appendix A, Exhibit C: Limited Subsurface (Phase II) Investigation, prepared by SESI, dated January 2019)
- Exhibit C

Exhibits A, B (and Exhibit C, embedded in Exhibit B at Appendix A) are provided on USB Flash-Drive attached to this Application.

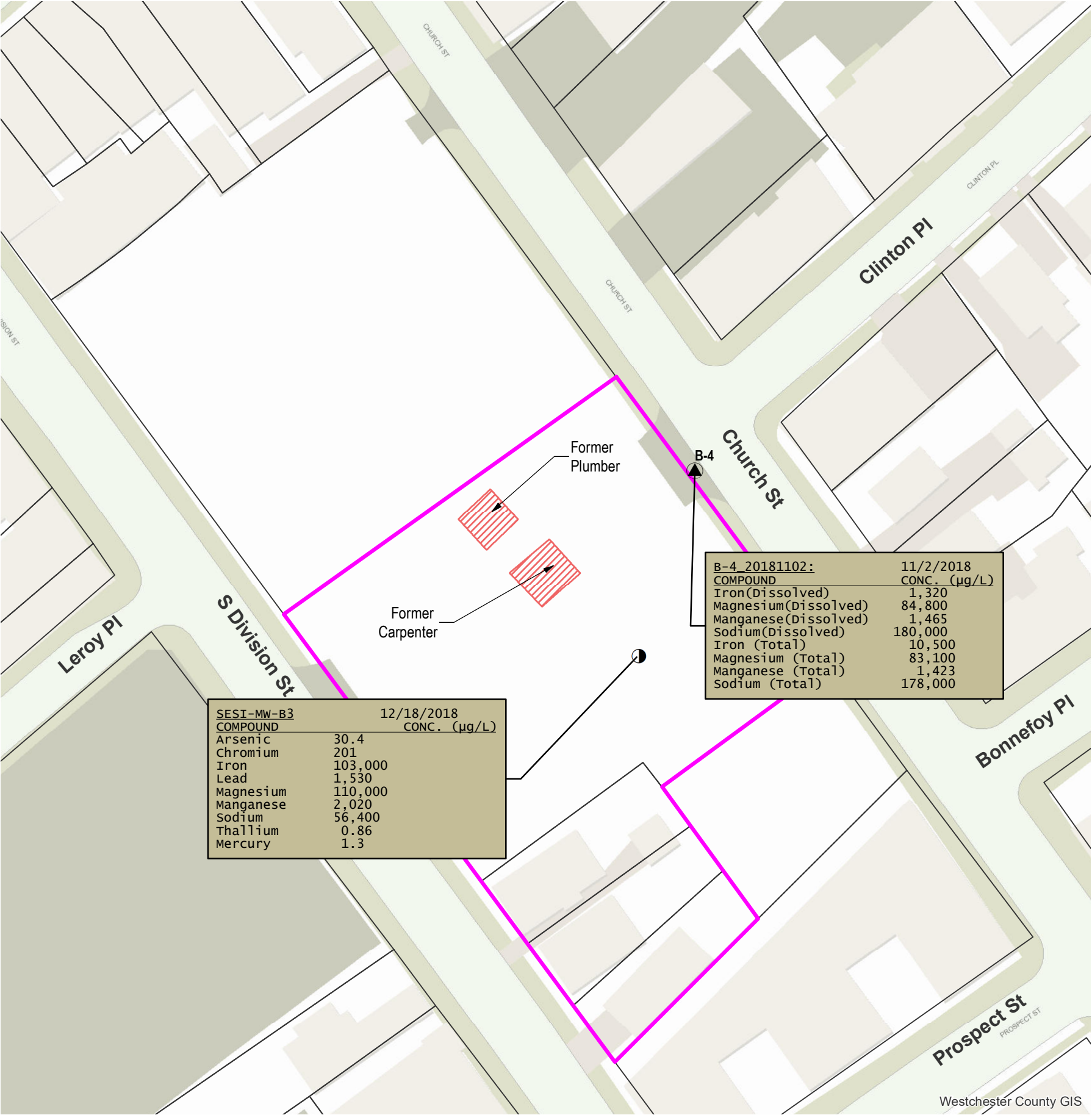


DATE
7/30/2019

PROJECT NO.
190188

FIGURE
2

© 2019 AKRF W:\Projects\190188 - 28 SOUTH DIVISION STREET\Technical\GIS and Graphics\hazmat\190188 Fig 3 GWExceedances BCP.mxd7/16/2019 11:34:02 AM iszalus



LEGEND

- MONITORING WELL
- BCP PROJECT SITE BOUNDARY
- LOT BOUNDARY
- APPROXIMATE LOCATION OF FORMER STRUCTURES
- TEMPORARY WELL (SESI DECEMBER 2018)



NYSDEC Class GA Ambient Standard (µg/L)	
Metals	
Chromium, Total + Dissolved	50
Iron, Total + Dissolved	300
Lead, Total + Dissolved	25
Magnesium, Total + Dissolved	35000
Manganese, Total + Dissolved	300
Sodium, Total + Dissolved	20000
Mercury, Total + Dissolved	0.7
Thallium, Total + Dissolved	0.5

GROUNDWATER

NYSDEC Class GA Ambient Standard:
New York State Department of Environmental Conservation Technical and Operational Guidance Series (1.1.1): Class GA Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations. (AWQS)

Only parameters with exceedances of NYSDEC Class GA Ambient Standards are shown.

µg/L: micrograms per Liter = parts per billion (ppb)

J: The reported value is estimated

Sample ID	B-4_20181102:	11/2/2018	Sample Date
	COMPOUND	CONC. (µg/L)	
	Iron(Dissolved)	1,320	
	Magnesium(Dissolved)	84,800	
	Manganese(Dissolved)	1,465	
	Sodium(Dissolved)	180,000	
	Iron (Total)	10,500	
Analyte/Compound	Magnesium (Total)	83,100	Concentration
	Manganese (Total)	1,423	
	Sodium (Total)	178,000	



28 South Division Street
New Rochelle, New York



440 Park Avenue South, New York, NY 10016

GROUNDWATER SAMPLE CONCENTRATIONS ABOVE NYSDEC AWQS

DATE

7/16/2019

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FIGURE

3

ATTACHMENT D
SECTION IV - PROPERTY INFORMATION

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application

Attachment D – Property Description, Environmental Assessment and Property Maps

(BCP Application - Section IV, Questions 2, 10)

Property Description Narrative

Location

The proposed BCP site is four adjacent lots located in New Rochelle, New York (the “Property”). The Property is located in an urban area. The Property occupies 1.061 acres and is bounded to the north by vacant land (former garage building) followed by a mix of commercial and residential buildings, to the south by a residential building, to the west by Division Street, and to the east by Church Street.

Current Site Features

The Site includes a vacant earthen lot and three adjacent lots improved by single family homes with partial basements.

Current Zoning and Land Use

The Property is zoned DO-2 (Downtown Overlay Zone District). The surrounding area is mixed commercial/residential.

Past Use of the Site

The portion of the Property that is 28 South Division Street formerly housed a portion of a two-story, 62,500 square foot municipal parking garage (circa 1972-73), which was recently demolished and removed. Prior to this, industrial and automotive operations occurred on-site between circa 1892 and 1951, including a garage with tire repairs, and several upholsterers. The portion of the Property that is comprised of 42, 44, and 48 South Division Street has been residential.

Site Geology and Hydrogeology

Geology: The topography in the general area slopes downward to the southeast. Based on the U.S. Geological Survey, Mount Vernon, NY Quadrangle (2013) map, the Site is approximately 100 feet above the National Geodetic Vertical Datum of 1988 (an approximation of sea level). Presumed bedrock was encountered during this investigation at depths ranging from 3 to 13.5 feet below grade.

Hydrology: Groundwater was encountered in only one soil boring (advanced in southern portion) and one test pit (advanced in northeastern portion) at approximately 10 and 11.5 feet

below grade, respectively. Groundwater was measured at a depth of approximately 4.3 feet below sidewalk grade in the permanent monitoring well located in the sidewalk on Church Street. Groundwater is assumed to flow in the southeasterly direction towards the New Rochelle Harbor, approximately 2,000 feet away. However, actual groundwater flow can be affected by many factors including underground utilities, bedrock, and other factors beyond the scope of this study. There are no surface water bodies or streams at or adjacent to the Site.

Environmental Assessment

AKRF conducted a Phase I ESA (August 2017) at the Property in accordance with ASTM Standard E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Practice* that identified the following RECs (first two bullets) and Environmental Concerns:

- Industrial and automotive uses were located on-site historically, including a plumbing shop, a garage with tire repairs, and several upholsterers between circa 1892 and 1951. No underground storage tanks (USTs) or aboveground storage tanks (ASTs) were documented at the Site; however, the former buildings may have included undocumented USTs and/or ASTs with potential associated releases.
- The regulatory database identified a drycleaner listed as a hazardous waste generator of chlorinated solvent wastes approximately 120 feet west of the Site (on the west-adjacent block).
- Historical on-site (and nearby) uses with suspected solvent or petroleum use were identified, suggesting the potential for vapor encroachment into future on-site buildings..

Based on the results of the Phase I ESA, AKRF conducted a Limited Subsurface (Phase II) Investigation at the property located at 28 South Division Street in New Rochelle, New York (the Site). The investigation was conducted to determine whether former on-site or off-site activities have adversely affected the subsurface, and included: the advancement of 11 borings and excavation of 10 test pits with the collection and laboratory analysis of 41 soil samples, 1 groundwater sample, and 6 soil vapor samples. A geophysical survey was also conducted to search for potential buried tanks.

A Subsurface (Phase II) Investigation was also conducted by SESI in December 2018 that included the advancement of 7 soil borings and excavation of 8 test pits for the collection of 30 soil samples, 1 groundwater sample, and 2 soil vapor samples.

Subsurface materials at the Site consisted of historical fill (sand with silt, gravel, glass, plant roots, and brick) to a maximum depth of approximately 10 feet below grade. The fill was underlain by presumed native sand, silt, and gravel. A maximum PID reading of 41 ppm was noted in one of the test pits. No other signs of contamination (odors, staining and or sludge/sheen) were observed in the borings or test pits. Groundwater was encountered above bedrock in one of the borings (SB-102) advanced in the southern portion of the Site and in one test pit (TP-16) advanced in the northeastern portion of the Site, at approximately 10 and 11.5 feet below grade, respectively. No evidence of contamination (i.e., sheen or floating product) was noted in the groundwater samples collected.

Soil sample analytical results were compared to NYSDEC 6 NYCRR Part 375 Soil Cleanup Objectives for Unrestricted Use Soil Cleanup Objectives (UUSCOs) and Soil Cleanup Objectives for Restricted – Residential Use (RRSCOs). Groundwater analytical results were compared to NYSDEC Technical and Operational Guidance Series (1.1.1): Class GA Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations.

The results of the soil vapor analysis were compared to the NYSDOH 2006 Guidance for Evaluating Soil Vapor Intrusion indoor Air Guidance Values (AGVs) and matrices, incorporating subsequent updates. These values provide an extremely conservative means of comparison. The AGVs are intended to be protective of indoor air, and the comparison assumes that any soil vapor detected would completely penetrate into the future building, a condition that would not be expected to actually occur. USEPA suggests an attenuation factor of 0.03 between soil vapor and indoor air in Table 6-1 of their June 2015 Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air. AGVs have only been established for five VOCs [carbon tetrachloride, methylene chloride, 1,1,1-trichloroethane (1,1,1-TCA), trichloroethene (TCE), and tetrachloroethene (PCE or perc)] and matrices have only been established for carbon tetrachloride, PCE, 1,1,1-TCA, TCE, vinyl chloride, 1,1-dichloroethene, and cis-1,2-dichloroethene.

A summary of the analytical results of AKRF's and SESI's investigations is as follows:

- Lead was detected at a concentration of 8,160 ppm in sample TP-14 (8-10). In addition, elevated mercury and lead concentrations were detected above the RRSCOs and/or UUSCOs across the Site and within the historic fill, suggesting a Site-wide concern. These elevated concentrations could represent a hazardous waste as defined by the Resource Conservation and Recovery Act (RCRA) under Title 40 of the Code of Federal Regulations (CFR) when analyzed via the Toxicity Characteristic Leaching Procedure (TCLP) (not conducted for this preliminary study). Elevated levels of SVOCs and other metals detected in the shallow soil samples are also indicative of a contaminated historic fill layer, which ranged in thickness of up to 10 feet across the Site.
- Low levels of metals were detected in the analyzed groundwater sample at concentrations above the Ambient Water Quality Standards (AWQS). These findings are naturally occurring (in the case of the metals) and/or may be attributable to suspended sediment/historic fill in the samples; however, some influence from historic on-site operations cannot be ruled out.
- PCE was detected in five soil vapor samples at concentrations ranging from 1.73 to 45.2 $\mu\text{g}/\text{m}^3$, exceeding the AGV of 30 $\mu\text{g}/\text{m}^3$ in one sample. The detection of chlorinated solvents at the Site can be attributed, at least in part, to the historic on-site operations (a plumbing shop, a garage with tire repairs, and several upholsterers between circa 1892 and 1951)..

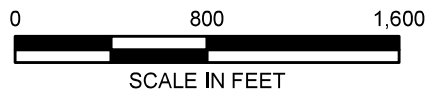
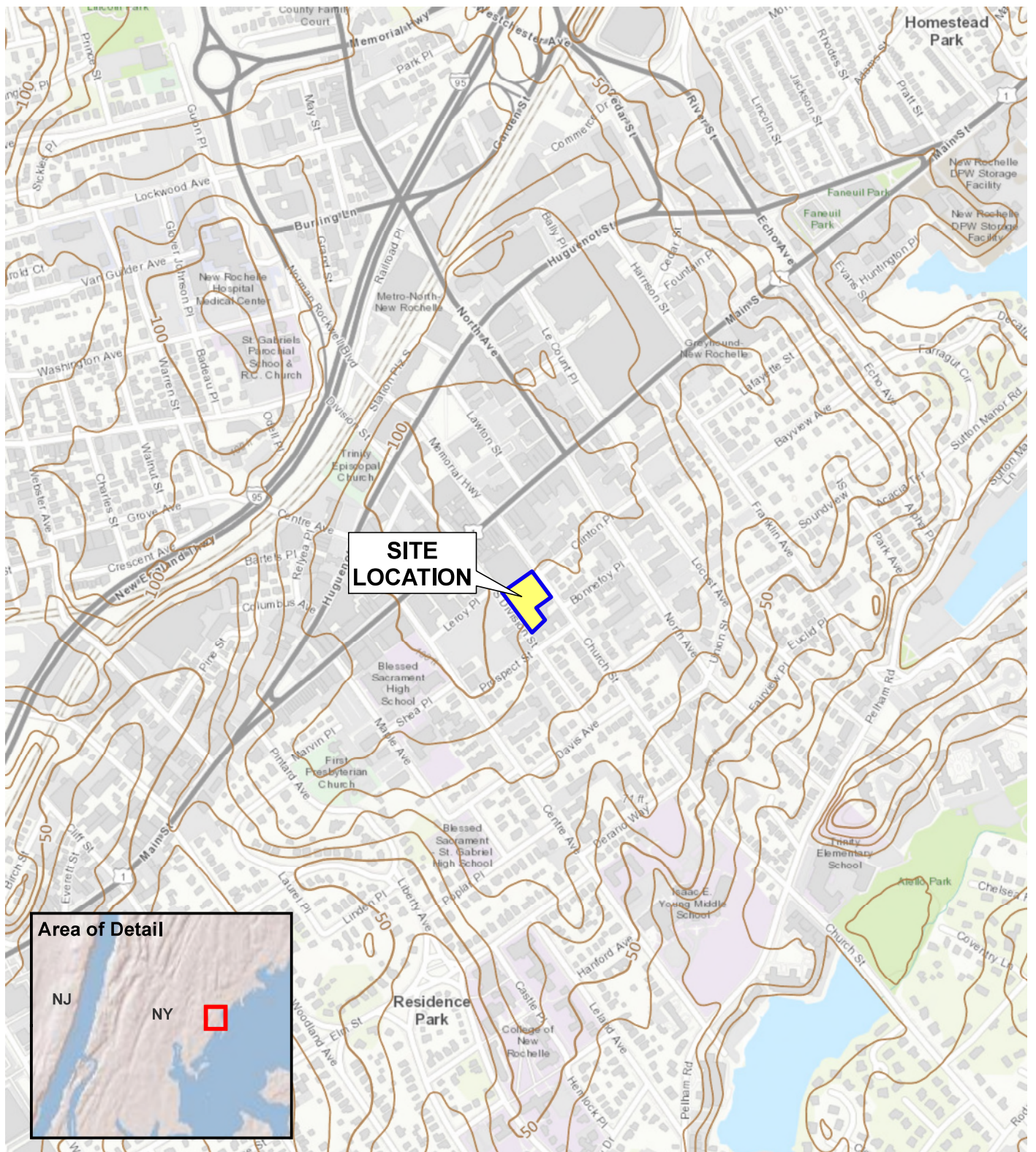
These investigations identified contaminated fill materials containing significantly elevated concentrations of lead and mercury (above RRSCOs). Furthermore, elevated levels of the chlorinated solvent, PCE, were detected in soil vapor. Although the source of the solvent vapors was not identified, the history of manufacturing at the property suggests that an on-site source may be present, particularly in groundwater, which due to shallow bedrock, was unable to be thoroughly investigated by this study.

28 South Division Street, Brownfield Cleanup Application

Section VI. – Parcel Information

Parcel Address	Section	Block	Lot	Acreage	Occupancy Status
28 South Division Street	2	414	0008.01	.811	Vacant Lot
48 South Division Street	2	414	0004	.08	Vacant Since 6/30/2019
44 South Division Street	2	414	0005	.08	Vacant Since 2/28/2019
42 South Division Street	2	414	0006	.09	Vacant Since 5/3/2019

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440 Park Avenue South, New York, NY 10016

28 South Division Street
New Rochelle, New York

SITE LOCATION

DATE

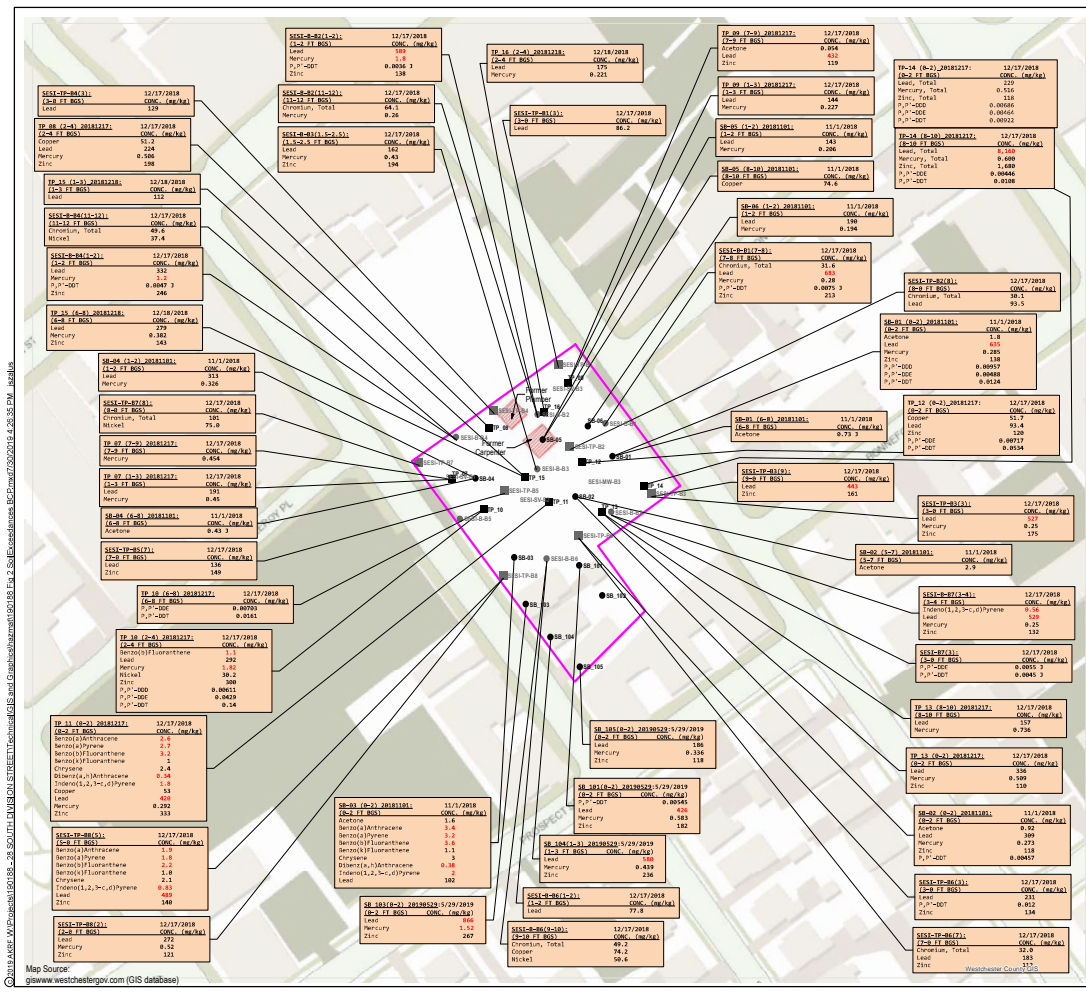
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PROJECT NO.

190188

FIGURE

1



LEGEND

- BCP PROJECT SITE BOUNDARY
- SOIL BORING
- TEST PIT LOCATION
- SOIL BORING (SESI DECEMBER 2018)
- TEST PIT LOCATION (SESI DECEMBER 2018)
- APPROXIMATE LOCATION OF FORMER STRUCTURES

Part 375 Restricted Residential		Part 375 Unrestricted
mg/kg		mg/kg
Volatiles Organic Compounds		
Acetone	100	0.05
Semi-volatile Organic Compounds		
Benz(a)Anthracene	1	1
Benz(a)Pyrene	1	1
Benz(b)Fluoranthene	1	1
Benz(k)Fluoranthene	3.9	0.8
Chrysene	3.9	1
Dibenz(a,h)Anthracene	0.33	0.33
Indeno(1,2,3-c,d)Pyrene	0.5	0.5
Metals		
Chromium, Total	180	30
Copper	270	50
Lead	400	63
Mercury	0.81	0.18
Nickel	310	30
Zinc	10000	109
Pesticides		
P,P'-DDD	13	0.0033
P,P'-DDE	8.9	0.0033
P,P'-DDT	7.9	0.0033

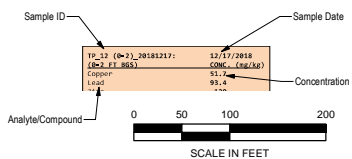
SOIL

Part 375 Soil Cleanup Objectives:
Soil Cleanup Objectives listed in NYSDEC
(New York State Department of Environmental Conservation)
(New York State Part 375)
(New York State Part 375)

Exceedances of Part 375 Unrestricted Use SCOs
(USCOS) are shown in Black.
Exceedances of Both Part 375 Restricted Residential SCOs
(RSCOS) and Unrestricted Use SCOs
(USCOS) are highlighted in red.

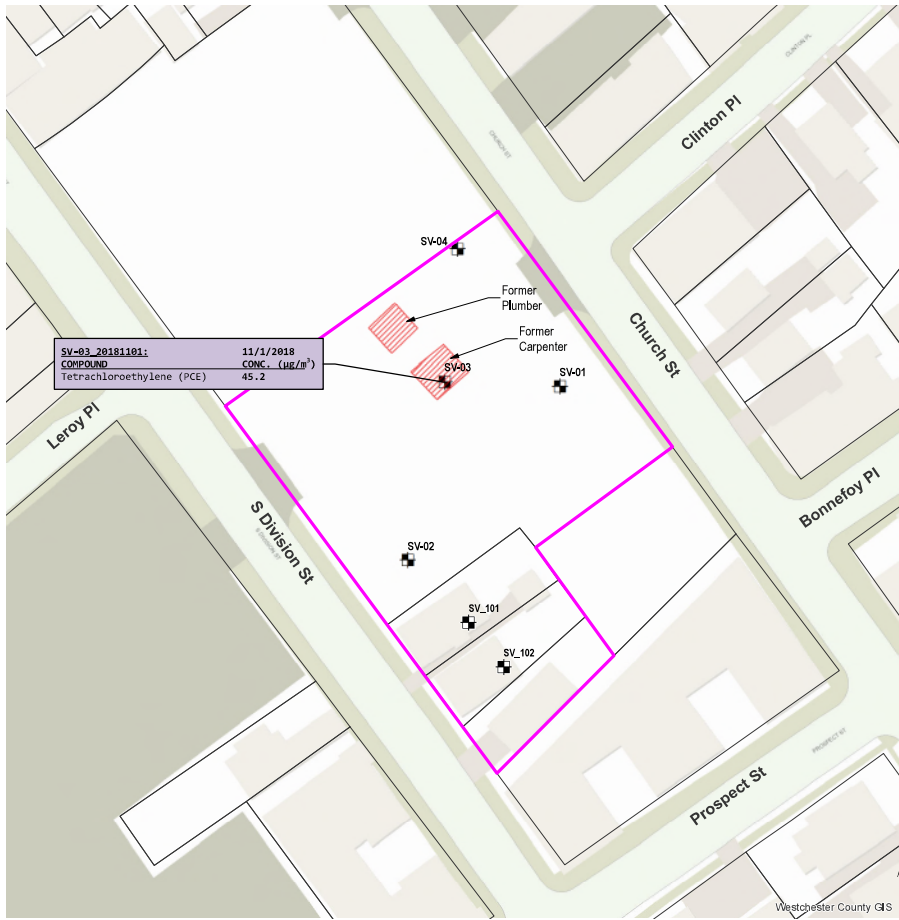
mg/kg: milligrams per kilogram = parts per million (ppm)

J: The reported value is estimated
P: Indicates a pesticide/aroclor target analyte had a
percent difference greater than 25% between the two gc columns.
The lower of the two results is reported.



Map Source:
gisweb.westchestergov.com (GIS database)

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LEGEND

- BCP PROJECT SITE BOUNDARY
- LOT BOUNDARY
- APPROXIMATE LOCATION OF FORMER STRUCTURES
- SOIL VAPOR POINT

NYSDOH 2006 SV INTRUSION AIR GUIDELINE (ug/m³)	
Volatile Organic Compounds	
Tetrachloroethylene (PCE)	30
Trichloroethylene (TCE)	2

SOIL VAPOR
NYSDOH Soil Vapor Intrusion Value:
NYSDOH Soil Vapor Intrusion Matrix Values presented in the Final Guidance for Evaluating Soil Vapor Intrusion in the State of New York, dated October 2006, updated May 2017.
Exceedances of NYSDOH Soil Vapor Intrusion Air Guidance Values are shown.
µg/m³= micrograms per cubic meter

Sample ID	SV-03_20181101;	11/1/2018	Sample Date
	COMPOUND	CONC. (ug/m³)	
Analyte/Compound	Tetrachloroethylene (PCE)	45.2	Concentration



440 Park Avenue South, New York, NY 10016

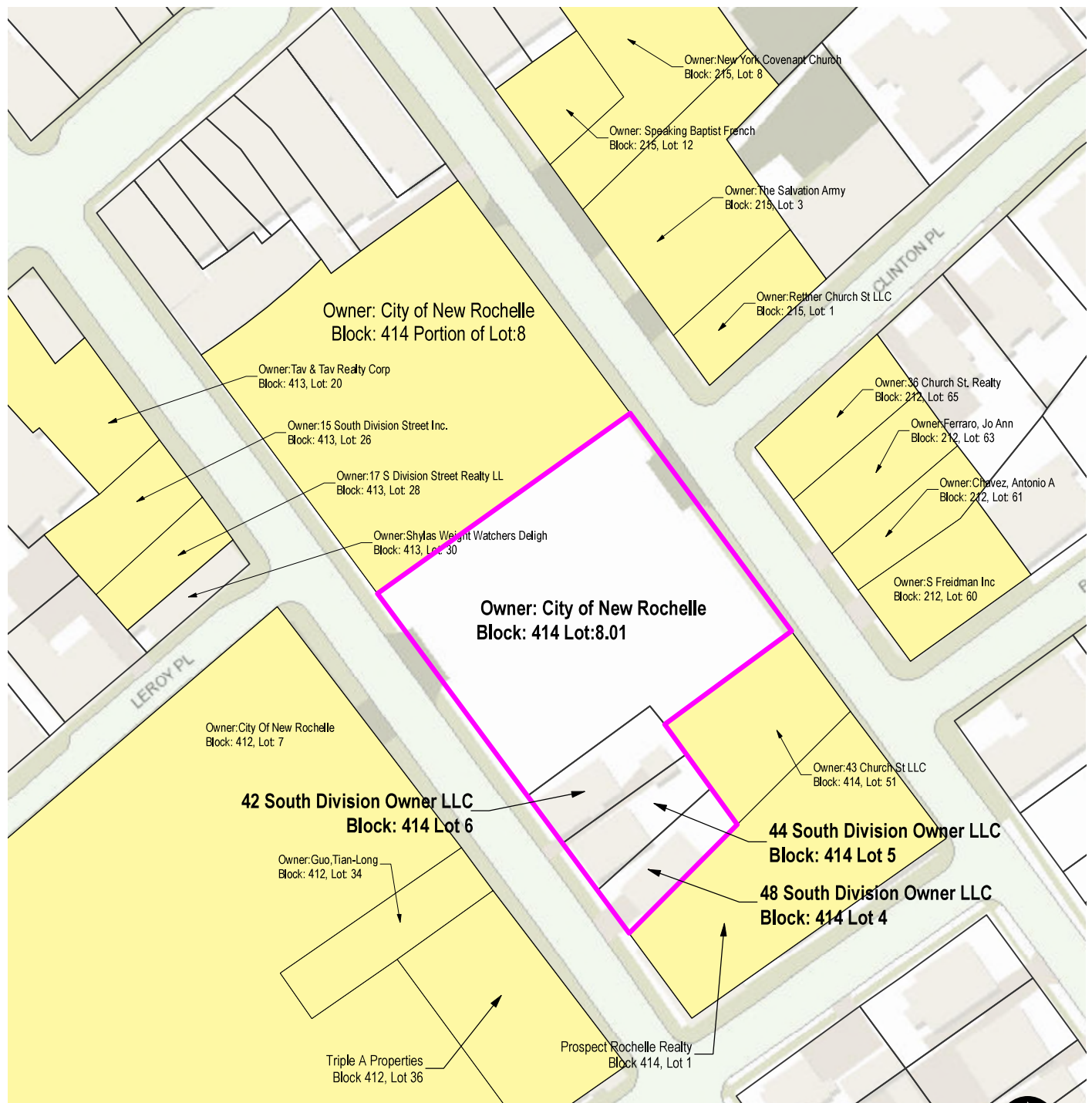
28 South Division Street
New Rochelle, New York

SOIL VAPOR CONCENTRATIONS ABOVE DOH GUIDANCE

DATE
7/16/2019

PROJECT NO.
190188

FIGURE
4



Map Source:
giswww.westchestergov.com (GIS database)



LEGEND

- PROJECT SITE BOUNDARY
- ADJACENT PARCELS TO PROJECT SITE BOUNDARY
- LOT BOUNDARY



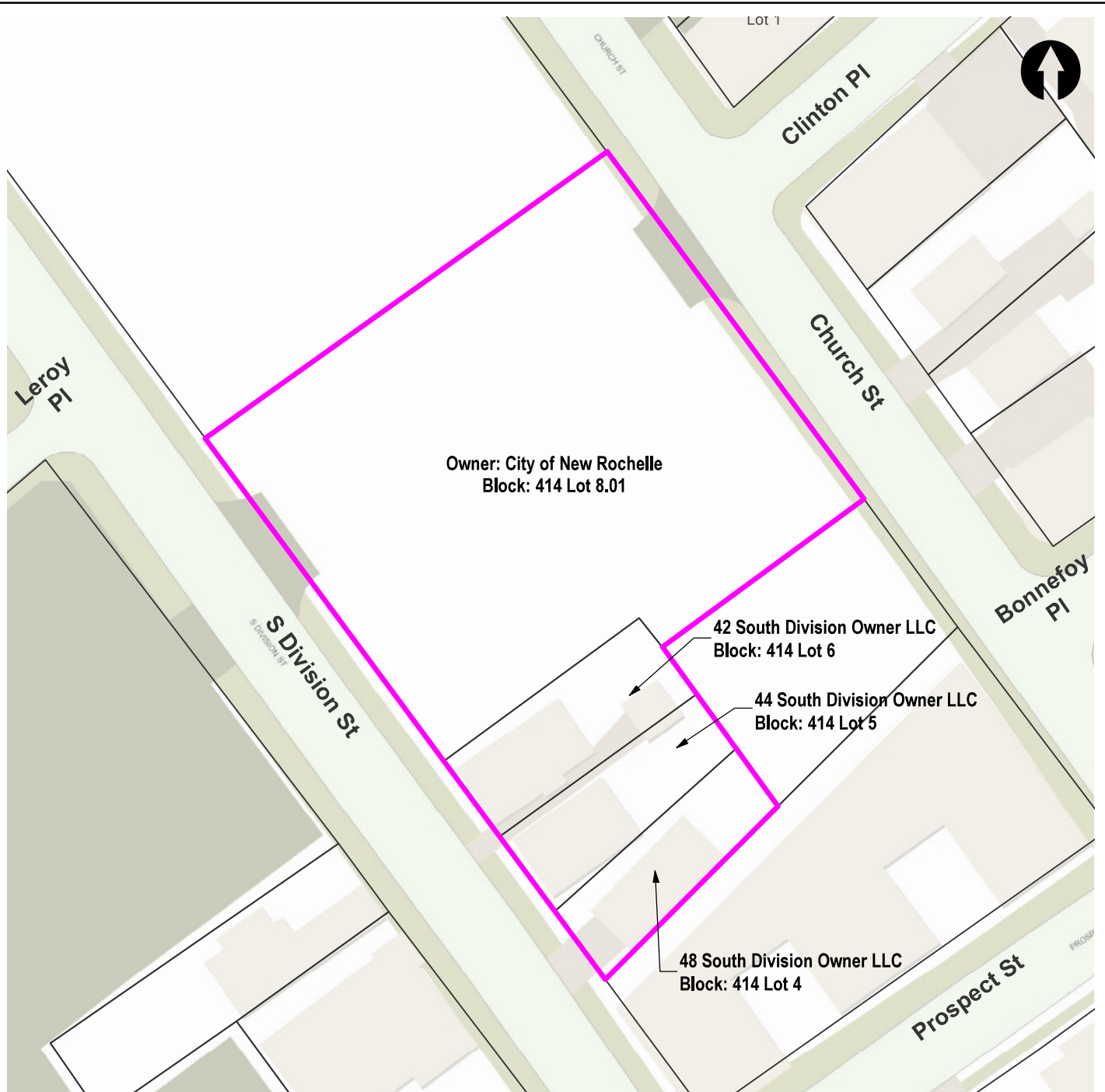
440 Park Avenue South, New York, NY 10016

**28 South Division Street
New Rochelle, New York**

**PROPOSED BROWNFIELD PROPERTY
AND ADJACENT PROPERTY OWNERS**



DATE
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PROJECT NO.
190188
FIGURE
5

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Map Source:
giswww.westchestergov.com (GIS database)

LEGEND

-  BCP PROJECT BOUNDARY
-  LOT BOUNDARY

Parcel Address	Section No.	Block No.	Lot No.	Acreage	Zoning
28 Division Street South	8	414	lot 8.01	0.811	DO-2
42 Division Street South	8	414	lot 6	0.095	DO-2
44 Division Street South	8	414	lot 5	0.080	DO-2
48 Division Street South	8	414	lot 4	0.080	DO-2



440 Park Avenue South, New York, NY 10016

28 South Division Street
New Rochelle, New York

TAX MAP FOR PROJECT PARCELS

DATE
7/16/2019
PROJECT NO.
190188
FIGURE
6

**SECTION VI – PREVIOUS PROPERTY OWNER/CURRENT OWNER-OPERATOR
ATTACHMENT E
INFORMATION**

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application
Section VI. – Current Property Owner/Operator Information

Parcel Address	Owner Information
28 South Division Street	Name: City of New Rochelle Ownership Start Date: 1954 Address: 515 North Avenue City/Town: New Rochelle, NY Zip code: 10801 Phone #: 914-654-2140 Fax #: 914-654-2174 Email: cstrome@newrochelleny.com
48 Division Street South	Name: 48 South Division Owner LLC Ownership Start Date: 5/13/2019 Address: 625 RXR Plaza City/Town: Uniondale Zip code: 11556 Phone #: 516-506-6000 Fax #: 516-506-6800 Email: jdworken@rxrrealty.com
44 Division Street South	Name: 44 South Division Owner LLC Ownership Start Date: 2/28/2019 Address: 625 RXR Plaza City/Town: Uniondale Zip code: 11556 Phone #: 516-506-6000 Fax #: 516-506-6800 Email: jdworken@rxrrealty.com
42 Division Street South	Name: 42 South Division Owner LLC Ownership Start Date: 5/3/2019 Address: 625 RXR Plaza City/Town: Uniondale Zip code: 11556 Phone #: 516-506-6000 Fax #: 516-506-6800 Email: jdworken@rxrrealty.com

28 SOUTH DIVISION STREET, BROWNFIELD CLEANUP APPLICATION**SECTION VI. – CURRENT OWNER/OPERATOR INFORMATION**

The City of New Rochelle, a municipal corporation, is the owner of the portion of the Property that is 28 South Division Street. The 28 South Division parcel was aggregated through the acquisition, by the City of New Rochelle, of 13 separate parcels, in 1954. The three lots at 42, 44 and 48 South Division Street were recently acquired for this project from private owners. The Applicant has no relationship to any prior owner.

Property: 28 South Division Street, New Rochelle, NY 10805

(portion) Section, Block & Lot: 2-414-8.01

Title History:

Parcel	Date	Record Type	Party 1	Party 2	Status of Entity (Alive, Deceased, Active, Dissolved)	Relationship to Requestor
1	07/06/1954	Deed	Michael Guadagnoli 25 Badeau Place New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
2	07/05/1954	Deed	Antoinette V. Major McLean 151 Center Avenue New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
3	07/06/1954	Deed	Estate of Anna C. Rall	City of New Rochelle, a municipal corporation	Active	None
4	06/29/1954	Deed	Estate of Emma Glatz	City of New Rochelle, a municipal corporation	Active	None
5	07/08/1954	Deed	George and Rose Roscos 15 Lyon Place New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
6	07/06/1954	Deed	George J. and Carrie A. Santel 24 S. Division St. New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
7	08/26/1954	Deed	Richard C. Fernandez 71 Potter Ave. New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
8	10/18/1954	Deed	CODI Corporation 40 Wall Street New York, NY	City of New Rochelle, a municipal corporation	Active	None

9	10/18/1954	Deed	Estate of Edith c. Iselin	City of New Rochelle, a municipal corporation	Active	None
10	11/09/1954	Deed	John S. Bell 20 Davenport Ave.; Helen S. Bell 5 Circuit Rd.; Norman W. Bell 17 Merton St. New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
11	09/24/1954	Deed	Vito and Giovanna Cestone 150 Van Guilder Ave. New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
12	07/06/1954	Deed	Michael O'Connell 113 S. Third Ave. Mount Vernon, NY	City of New Rochelle, a municipal corporation	Active	None
13	11/25/1954	Deed	Salvation Army 120-130 West 14 th St. New York, NY	City of New Rochelle, a municipal corporation	Active	None

Property: 42 South Division Street, New Rochelle, NY 10805

Section, Block & Lot: 2-414-6

Title History:

Date	Record Type	Party 1	Party 2	Status of Entity (Alive, Deceased, Active, Dissolved)	Relationship to Requestor
05/03/2019	Deed	Shylas Weight Watchers Delight Inc., 42 South Division St., New Rochelle, NY 10805	42 South Division Owner LLC, 625 RXR Plaza, Uniondale, NY 11556	Active	None
05/03/2019	Quitclaim Deed	Albie Abraham, Abraham Vaccachan, Shirly Vaccachan aka Shirley Abraham, and Philip Blumenfeld, 42 South Division St., New Rochelle, NY 10805	Shylas Weight Watchers Delight, Inc., 42 South Division St., New Rochelle, NY 10805	Unknown	None
02/08/2018 (corrected deed dated 05/30/2018)	Deed	Albie Abraham 42 South Division St., New Rochelle, NY 10805	Shylas Weight Watchers Delight Inc., 42 South Division St., New	NA	None

			Rochelle, NY 10805		
10/12/2017	Deed	Phillip Blumenfeld 25 Rockledge Ave., Apt. 613, White Plains, NY 10601	Albie Abraham 133 Church Street, New Rochelle, NY 10805	NA	None
04/09/2017	Deed	Shirley Abraham 42 South Division St., New Rochelle, NY 10805	Philip Blumenfeld 52 Rockledge Ave., Apt. 613, White Plains, NY 10601	NA	None
11/12/1991	Deed	Herbert A. Ellenbogen, 64 Drake Ave., New Rochelle, NY 10805	Abraham Vaccachan and Shirley Vaccachan, 48 Drake Ave., New Rochelle, NY 10805	NA	None
12/12/1986	Deed	Evelyn Hart and Christian Olsen, 42 South Division St., New Rochelle, NY 10805	Herbert A. Ellenbogen, 777 Pelham Rd., New Rochelle, NY 10805	NA	None
04/18/1969	Deed (1/3 Interest)	Estate of Carrie Olsen (Henry F. Ruben, Exec.) 271 North Ave., New Rochelle, NY 10805	Evelyn Hart 42 South Division St., New Rochelle, NY 10805	NA	None

Property: 44 South Division Street, New Rochelle, NY 10805

Section, Block & Lot: 2-414-5

Title History:

Date	Record Type	Party 1	Party 2	Status of Entity (Alive, Deceased, Active, Dissolved)	Relationship to Requestor
02/28/2019	Deed	James Poirier, 44 South Division St., New Rochelle, NY 10805	44 South Division Owner LLC, 625 RXR Plaza, Uniondale, NY 11556	Active	None
03/15/2018	Deed	James Poirier and Joseph Francis Poirier, Jr., 44 South Division St., New Rochelle, NY 10805	James Poirier, 44 South Division St., New Rochelle, NY 10805	NA	None
08/02/2014	Deed	Joseph Francis Poirier, Jr., 44 South Division St., New Rochelle, NY 10805	James Poirier and Joseph Francis Poirier, Jr., 44 South Division St., New Rochelle, NY 10805	NA	None
03/08/1972	Deed	Leonard De Julio Corp., 3 Edgewood Park, New Rochelle,	Joseph Francis Poirier, Jr. and Jean D. Poirier, 311	NA	None

		NY 10805	Huguenot St., New Rochelle, NY 10805		
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Property: 48 South Division Street, New Rochelle, NY 10805

Section, Block & Lot: 2-414-4

Title History:

Date	Record Type	Party 1	Party 2	Status of Entity (Alive, Deceased, Active, Dissolved)	Relationship to Requestor
05/13/2019	Deed	48 So. Division Street, Inc., 192 Nepperhan Ave., Yonkers, NY 10701	48 South Division Owner LLC, 625 RXR Plaza, Uniondale, NY 11556	Active	None
05/13/2019	Corrective Deed	48 South Division Street, Inc., 192 Nepperhan Ave., Yonkers, NY 10701	48 So. Division Street, Inc., 192 Nepperhan Ave., Yonkers, NY 10701	Unknown	None
04/05/1994	Deed	Jose Peixoto, 453 Park Avenue, Yonkers, NY 10703	48 South Division Street, Inc., 192 Nepperhan Ave., Yonkers, NY 10701	NA	None

ATTACHMENT F
SECTION VII – REQUESTOR ELIGIBILITY INFORMATION
(VOLUNTEER STATEMENT)

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application
Section VII. – Volunteer Status Statement

Requestor is a volunteer to the BCP, with any liability arising solely as a result of its acquiring control or ownership of the site subsequent to any disposal, discharge or release of contaminants on the site. Requestor has conducted no operations at the site and contamination found on the site is historical in nature. Requestor carried out all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and took reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

As such, Requestor meets the statutory definition of a Volunteer.

ATTACHMENT G
SECTION VII – PROOF OF ACCESS

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

CHURCH-DIVISION STREET BROWNFIELD CLEANUP APPLICATION**SECTION VI. – CURRENT OWNER/OPERATOR INFORMATION**

The City of New Rochelle, a municipal corporation, is the owner of the parcel. The parcel was aggregated through the acquisition, by the City of New Rochelle, of 13 separate parcels, in 1954. The Applicant has no relationship to any prior owner.

Property: 28 South Division Street, New Rochelle, NY 10805

Section, Block & Lot: 2-414-8

Title History:

Parcel	Date	Record Type	Party 1	Party 2	Status of Entity (Alive, Deceased, Active, Dissolved)	Relationship to Requestor
9	10/18/1954	Deed	Estate of Edith c. Iselin	City of New Rochelle, a municipal corporation	Active	None
10	11/09/1954	Deed	John S. Bell 20 Davenport Ave.; Helen S. Bell 5 Circuit Rd.; Norman W. Bell 17 Merton St. New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
11	09/24/1954	Deed	Vito and Giovanna Cestone 150 Van Guilder Ave. New Rochelle, NY	City of New Rochelle, a municipal corporation	Active	None
12	07/06/1954	Deed	Michael O'Connell 113 S. Third Ave. Mount Vernon, NY	City of New Rochelle, a municipal corporation	Active	None
13	11/25/1954	Deed	Salvation Army 120-130 West 14 th St. New York, NY	City of New Rochelle, a municipal corporation	Active	None

Property: 42 South Division Street, New Rochelle, NY 10805

Section, Block & Lot: 2-414-6

Title History:

Date	Record Type	Party 1	Party 2	Status of Entity (Alive, Deceased, Active, Dissolved)	Relationship to Requestor
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05/03/2019	Deed	Shylas Weight Watchers Delight Inc., 42 South Division St., New Rochelle, NY 10805	42 South Division Owner LLC, 75 Rockefeller Plaza, Suite 1300, NY, NY 10019	Active	None
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Property: 44 South Division Street, New Rochelle, NY 10805
Section, Block & Lot: 2-414-5

Title History:

Date	Record Type	Party 1	Party 2	Status of Entity (Alive, Deceased, Active, Dissolved)	Relationship to Requestor
02/28/2019	Deed	James Poirier, 44 South Division St., New Rochelle, NY 10805	44 South Division Owner LLC, 625 RXR Plaza, Uniondale, NY 11556	Active	None

Property: 48 South Division Street, New Rochelle, NY 10805
Section, Block & Lot: 2-414-4

Title History:

Date	Record Type	Party 1	Party 2	Status of Entity (Alive, Deceased, Active, Dissolved)	Relationship to Requestor
05/13/2019	Deed	48 So. Division Street, Inc., 192 Nepperhan Ave., Yonkers, NY 10701	48 South Division Owner LLC, 625 RXR Plaza, Uniondale, NY 11556	Active	None



July 22, 2019

Charles B. Strome
City Manager
City of New Rochelle
515 North Avenue
New Rochelle, NY 10801

Re: Church-Division Lot Access
28 S Division St – Proposed Section 2, Block 414, Lot 8.01

Dear Mr. Strome,

As you are aware, 28 South Division Owner LLC ("RXR") will be submitting an application to the New York State Brownfield Cleanup Program ("BCP") for the property located at 28 S Division St, New Rochelle, NY 10801, which is currently owned by the City of New Rochelle. As the BCP applicant, we are required to demonstrate we have the ability to access the property to implement the investigation and remedial work required under work plans approved by the New York State Department of Environmental Conservation. Additionally, the City of New Rochelle agrees to allow the recording of an environmental easement, if required, with the Westchester County Clerk. In order to file the application, therefore, we need written permission from you to access the property throughout the BCP Project, including the ability to record an environmental easement, if required. By execution of this site access agreement letter, you are hereby allowing site access for this purpose and agreeing that an environmental easement can be recorded, if required.

Sincerely,

28 South Division Owner, LLC

By:

Todd Rechler
Authorized Person

As Site owner, I agree to allow RXR, and its contractors, to enter 28 S Division St, New Rochelle, NY 10801, which is currently owned by the City of New Rochelle, to perform the required BCP investigation and/or remediation work.

City of New Rochelle

By:

Charles B. Strome
City Manager

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement"), is entered into as of September 24, 2019 (the "Effective Date"), by and between **42 SOUTH DIVISION OWNER LLC**, a Delaware limited liability company having an address at c/o 625 RXR Plaza, Uniondale, New York 11556 (together with its successors and assigns, "Licensor") and **28 SOUTH DIVISION OWNER LLC**, a Delaware limited liability company having an address at c/o 625 RXR Plaza, Uniondale, New York 11556 (together with its successors and assigns, "Licensee").

RECITALS:

A. Licensor is the owner of the property located in the City of New Rochelle, State of New York, and commonly known as 42 S. Division Street (Section 2, Block 414, Lot 6), which property is more particularly described on Exhibit A attached hereto and made a part hereof (the "Licensor Property").

B. Licensee has entered into discussions with Licensor to acquire the Licensor Property and desires to commence certain due diligence activities in connection therewith, including without limitation to determine if, and to the extent, environmental contamination exists at, on or under the Licensor Property and whether the Licensor Property is eligible to be remediated in connection with the Brownfield Cleanup Program administered by the New York State Department of Environmental Conservation ("NYSDEC") pursuant to Environmental Conservation Law Article 27 Title 14.

C. Licensee desires to enter upon the Licensor Property for the purpose of performing environmental investigations of possible contamination on the Licensor Property and remediation as may be necessary and such other activities as may be necessary or desirable in connection with the admission of the Licensor Property into such Brownfield Cleanup Program, which investigation and remediation may require the imposition of an Environmental Easement and may disturb the foundations, parking lots or other surface soil areas of the Licensor Property, and geophysical and geotechnical investigation activities to plan for the foundation of future building structures thereon ("Permitted Use/Work"), in each instance in compliance with all applicable federal, state or local laws, ordinances, orders, rules, regulations or requirements of any governmental authority having or asserting jurisdiction over the Permitted Use/Work (separately or collectively, the "Applicable Law").

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(1) **GRANT**: Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee (together with Licensee's Representatives) a non-exclusive temporary license (the "License") during the Term (hereinafter defined) to enter upon and under the Licensor Property, and to conduct and implement the Permitted Use/Work, at such times and in such manner as Licensee shall reasonably determine, subject to the terms and conditions of this Agreement. Notwithstanding anything to the contrary that may be set forth herein, the License granted hereunder shall permit

and allow Licensee and each of Licensee's employees, agents, representatives, engineers, architects, contractors, and all other entities necessary to perform the Permitted Use/Work (collectively, "Representatives"), access and entry upon and under the Licensor Property at all commercially reasonable times (subject to the limitations set forth in this Agreement) to perform the Permitted Use/Work in accordance with all Applicable Law.

(a) Licensee will cause all activities performed in connection with the Permitted Use/Work to be performed in a safe, diligent, good and workmanlike manner, in compliance with all Applicable Law, and this Agreement, in all material respects, by professionals and/or contractors possessing experience in the performance of similar tasks.

(b) Licensee agrees that all activities undertaken by Licensee and Licensee's Representatives pursuant to the License granted pursuant to this Agreement shall be performed at Licensee's sole cost and expense and in accordance with all Applicable Law. Licensee shall be solely responsible for obtaining, at its own cost and expense, all necessary governmental permits and approvals in connection therewith, and Licensor hereby consents to the obtaining of such permits and approvals and agrees to promptly execute any applications reasonably needed therefor to the extent required by Applicable Laws provided such Licensor obligations shall be at no cost or expense to Licensor.

(c) Licensor agrees that, for so long as Licensee is faithfully performing its obligations under this Agreement, Licensor shall not materially impede, restrict, or interfere with Licensee's or Licensee's Representatives' access to the Licensor Property or their ability to perform and complete the Permitted Use/Work in the manner required under this Agreement.

(2) **TERM:** The term of this Agreement and the License (the "Term") shall commence upon the Effective Date and expire on the date that Licensee advises Licensor, by written notice, that the Permitted Use/Work has been completed and access is no longer required. Notwithstanding the foregoing, in the event Licensee materially breaches this Agreement, Licensor shall notify Licensee in writing of such alleged material breach (such notice to set forth in reasonable detail the basis on which Licensor is alleging that Licensee has materially breached this Agreement) and, to the extent that such material breach is ongoing after thirty (30) business days of Licensee's receipt of such written notice (with Licensee having been provided with a reasonable opportunity to cure such breach during such thirty (30) business day period), Licensor may terminate this Agreement and the License provided by Licensor in this Agreement will be revoked; provided, however, that if Licensee proceeds with due diligence to cure such breach during the thirty (30) business day cure period hereinabove provided, and is unable by reason of the nature of the breach or the acts or omissions of Licensor to cure same within the notice period, the time period for such cure shall be extended as may be reasonably necessary for Licensee to effect such cure with due diligence, and Licensee shall diligently prosecute such efforts to cure such breach during the cure period as so extended and complete such cure. At or prior to the end of the Term, Licensee shall cause all temporary walls or other temporary protection measures that Licensee may have installed in connection with the Permitted

Use/Work, to the extent permissible under Applicable Law, to be removed at Licensee's sole cost and expense.

(3) **IMPLEMENTATION & REPAIRS:** The License granted hereunder shall be solely for the Permitted Use/Work.

(4) **NOTICE OF ACCESS:** The License granted pursuant to this Agreement shall permit the Licensee and Licensee's Representatives to access the Licensor Property and carry out the Permitted Use/Work thereon.

(5) **TEMPORARY SAFETY MEASURES:** Licensee shall at its cost and expense, implement all measures commercially reasonably necessary to protect public safety and the safety of persons working on, traveling upon, or in any way using the Licensor Property in connection with the Permitted Use/Work, and is hereby granted a license to do so.

(6) **INSURANCE:** Prior to the commencement of the Term, Licensee and/or its contractors who shall be performing work in connection with the Permitted Use/Work shall furnish Licensor with certificates of insurance evidencing general liability insurance, which may include excess coverage, in at least the amount of \$5,000,000.00 per occurrence and in the aggregate, covering Licensee and Licensee's contractors that may access the Licensor Property under this Agreement with respect to claims for bodily injury, death and/or property damage on or about the Licensor Property to the extent arising out of the Permitted Use/Work. Furthermore, any of Licensee's contractors that shall be performing any activities on the Licensor Property in connection with the Permitted Use/Work shall provide worker's compensation insurance having such limits and containing such terms and conditions as are required under Applicable Law. All insurance policies required to be procured and maintained hereunder shall (i) with the exception of worker's compensation insurance, insure and name Licensor as an additional insured as its interests may appear; (ii) be issued by financially responsible insurance companies authorized to do business in the State of New York; (iii) be written as primary policy coverage and not contributing with or in excess of any coverage which Licensor may carry; and (iv) contain an express waiver of any right of subrogation by the insurance company against Licensor and its agents and employees, to the extent covered by insurance. Upon Licensor's request therefor, Licensee shall deliver to Licensor certificates of insurance evidencing all of the coverages required hereunder. The insurance required to be provided by Licensee and/or its contractors shall be maintained until the expiration of the Term (or the earlier termination of this Agreement in accordance with its terms).

(7) **INDEMNIFICATION:** Licensee shall defend, indemnify and hold harmless Licensor and its officers, directors, members, shareholders, employees and agents (each, a "Licensor Indemnified Party") against any and all liability, claims, suits, demands, damages, costs, interest and expenses (including reasonable legal fees and disbursements incurred in defense thereof) (collectively, "Claims") to which any Licensor Indemnified Party may be subject or suffer from bodily injury, personal injury, death or property damage arising from or out of any occurrence in or upon the Licensor Property occasioned wholly or in part (in which event, applying principles of comparative negligence, Licensee's liability shall be reduced to the extent Licensor is found to be partially liable and unless such Claims result solely from the negligence or willful act or omission of Licensor) or arising, directly or indirectly, out of Licensee's or Licensee's agents,

contractors, employees, licensees, or invitees entry upon the Licensor Property in connection with the Permitted Use/Work or any other access granted pursuant to this Agreement.

(8) **PROTECTION FROM LIENS:** Licensee shall keep the Licensor Property and every part thereof free and clear of any and all liens and encumbrances for work performed by Licensee, or on Licensee's behalf.

(9) **NO LEASE.** THIS AGREEMENT IS NOT INTENDED TO CREATE A LEASE OR ANY OTHER INTEREST IN REAL PROPERTY IN FAVOR OF LICENSEE, BUT MERELY CREATES A LICENSE IN ACCORDANCE WITH THE TERMS HEREOF. LICENSEE ACKNOWLEDGES THAT ITS AGREEMENT TO TREAT THIS AGREEMENT AS A LICENSE FORMED A MATERIAL PART OF THE CONSIDERATION FOR LICENSOR TO GRANT THIS LICENSE.

(10) **NOTICES.** Any notice, statement, demand, consent, approval or other communication required or permitted to be given, rendered or made by either of the parties pursuant to this Agreement shall be in writing and shall be deemed to have been properly given, rendered or made when received, or delivery refused, if delivered personally, or by receipted hand or overnight air courier delivery service, to the following address:

If to Licensee: 42 South Division Owner LLC
c/o 625 RXR Plaza
Uniondale, New York 11556
Attn: Jason Barnett
Email: JBarnett@RXRRealty.com

With a copy to: c/o RXR Realty
75 Rockefeller Plaza, Suite 1400
New York, New York 10019
Attn: Todd Rechler and Joanne Minieri

With a copy to: DelBello Donnellan Weingarten
Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Heidi M. Winslow, Esq.
Email: hmw@ddw-law.com

If to Licensee: 28 South Division Owner LLC
c/o 625 RXR Plaza
Uniondale, New York 11556
Attn: Jason Barnett
Email: JBarnett@RXRRealty.com

With a copy to: c/o RXR Realty
75 Rockefeller Plaza, Suite 1400
New York, New York 10019
Attn: Todd Rechler and Joanne Minieri

With a copy to: DelBello Donnellan Weingarten
Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Heidi M. Winslow, Esq.
Email: hmw@ddw-law.com

Notice shall be invalid if sent only by email.

(11) **MISCELLANEOUS:**

(a) This Agreement constitutes the entire understanding between the parties relative to the License and the performance of the Permitted Use/Work. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. All of the recital paragraphs preceding Section 1 and Exhibits and Schedules are hereby incorporated into the terms of this Agreement. This Agreement supersedes any prior verbal understanding or written agreement between the parties relative to the subject matter hereof, and may not be amended, supplemented or discharged except by an instrument in writing signed by both parties.

(b) This Agreement has been made in and shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of New York without regard to conflicts of laws principles.

(c) With respect to any suit, action or proceeding relating to this Agreement, each party irrevocably (a) submits to the exclusive jurisdiction of the state and federal courts located in the State of New York, County of Westchester and (b) waives any objection which it may have at any time to the laying of venue of any such proceeding brought in such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party. Notwithstanding anything to the contrary contained in this Agreement, in connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its litigation-related costs and reasonable attorneys' fees through and including any appeal and post-judgment proceedings.

(d) If any provision of this Agreement shall be determined by any court having competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby but shall continue in full force and effect as though such invalid, illegal or unenforceable provision or provisions were not originally a part hereof.

(e) No waiver by either party of any breach of a condition, term or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or of any other condition, term or provision hereof.

(f) This Agreement may be executed in counterparts and a fax or .pdf copy of signatures shall be deemed originals for purposes of execution.

(g) Upon notice to Licensor, Licensee shall have the right to assign all of its right, title and interest in and to this Agreement to any affiliate(s) of Licensee.


(h) The terms "business day(s)" shall refer to normal working business days, i.e., Monday through Friday of each calendar week, exclusive of federal or New York State holidays, and days when banks in New York are closed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have signed this License Agreement as of the date first written above.

LICENSOR:

42 SOUTH DIVISION OWNER LLC

By: 
Name: Todd Rechler
Title: Authorized Person

[Signatures continue on following Page]

[Signature Page to License Agreement]

LICENSEE:

28 SOUTH DIVISION OWNER LLC

By: 
Name: Todd Rechler
Title: Authorized Person

[Faint, illegible text]

[Signature Page to License Agreement]

EXHIBIT A
Description of Licensor Property

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of New Rochelle, County of Westchester, State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the northeasterly side of South Division Street (formerly Banks Street) said point being distant northwesterly 146.70 feet from the intersection of the northwesterly side of Prospect Street with the northeasterly side of South Division Street;

RUNNING THENCE northwesterly along the northeasterly side of South Division Street North 28 degrees 08 minutes 50 seconds West 40.00 feet to a point;

RUNNING THENCE northeasterly along lands now or formerly City of New Rochelle Parking Structure North 61 degrees 11 minutes 00 seconds East 99.35 feet to a point;

THENCE southeasterly partly along lands now or formerly City of New Rochelle Parking Structure and partly along lands now or formerly Gaetano and Carolina Tedone, South 28 degrees 39 minutes 50 seconds East 40.00 feet to a point;

THENCE southwesterly along lands now or formerly Bernard Rubin South 61 degrees 11 minutes 00 seconds West 99.70 feet to a point or place of BEGINNING.

Said premises is more currently described as follows:

ALL that certain plot, piece or parcel of land lying and being in the City of New Rochelle, County of Westchester and State of New York, being bounded and described as follows:

BEGINNING at a point on the northerly right-of-way line of Division Street South (a.k.a. Bank Street), said point being distant of 147.23 feet from the intersection with Prospect Street and running, thence;

Along said right-of-way line, North 36 degrees 15 minutes 25 seconds west, a distance of 40.00 feet to a point; thence;

North 53 degrees 05 minutes 11 seconds east, a distance of 99.45 feet to a point, thence;

South 36 degrees 42 minutes 04 seconds east, a distance of 40.00 feet, passing over capped iron pipe at 11.9 feet, thence;

South 53 degrees 05 minutes 11 seconds west, a distance of 99.76 feet to the point of BEGINNING.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement"), is entered into as of September 24, 2019 (the "Effective Date"), by and between **44 SOUTH DIVISION OWNER LLC**, a Delaware limited liability company having an address at c/o 625 RXR Plaza, Uniondale, New York 11556 (together with its successors and assigns, "Licensor") and **28 SOUTH DIVISION OWNER LLC**, a Delaware limited liability company having an address at c/o 625 RXR Plaza, Uniondale, New York 11556 (together with its successors and assigns, "Licensee").

RECITALS:

A. Licensor is the owner of the property located in the City of New Rochelle, State of New York, and commonly known as 44 S. Division Street (Section 2, Block 414, Lot 5), which property is more particularly described on Exhibit A attached hereto and made a part hereof (the "Licensor Property").

B. Licensee has entered into discussions with Licensor to acquire the Licensor Property and desires to commence certain due diligence activities in connection therewith, including without limitation to determine if, and to the extent, environmental contamination exists at, on or under the Licensor Property and whether the Licensor Property is eligible to be remediated in connection with the Brownfield Cleanup Program administered by the New York State Department of Environmental Conservation ("NYSDEC") pursuant to Environmental Conservation Law Article 27 Title 14.

C. Licensee desires to enter upon the Licensor Property for the purpose of performing environmental investigations of possible contamination on the Licensor Property and remediation as may be necessary and such other activities as may be necessary or desirable in connection with the admission of the Licensor Property into such Brownfield Cleanup Program, which investigation and remediation may require the imposition of an Environmental Easement and may disturb the foundations, parking lots or other surface soil areas of the Licensor Property, and geophysical and geotechnical investigation activities to plan for the foundation of future building structures thereon ("Permitted Use/Work"), in each instance in compliance with all applicable federal, state or local laws, ordinances, orders, rules, regulations or requirements of any governmental authority having or asserting jurisdiction over the Permitted Use/Work (separately or collectively, the "Applicable Law").

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(1) **GRANT**: Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee (together with Licensee's Representatives) a non-exclusive temporary license (the "License") during the Term (hereinafter defined) to enter upon and under the Licensor Property, and to conduct and implement the Permitted Use/Work, at such times and in such manner as Licensee shall reasonably determine, subject to the terms and conditions of this Agreement. Notwithstanding anything to the contrary that may be set forth herein, the License granted hereunder shall permit

and allow Licensee and each of Licensee's employees, agents, representatives, engineers, architects, contractors, and all other entities necessary to perform the Permitted Use/Work (collectively, "Representatives"), access and entry upon and under the Licenser Property at all commercially reasonable times (subject to the limitations set forth in this Agreement) to perform the Permitted Use/Work in accordance with all Applicable Law.

(a) Licensee will cause all activities performed in connection with the Permitted Use/Work to be performed in a safe, diligent, good and workmanlike manner, in compliance with all Applicable Law, and this Agreement, in all material respects, by professionals and/or contractors possessing experience in the performance of similar tasks.

(b) Licensee agrees that all activities undertaken by Licensee and Licensee's Representatives pursuant to the License granted pursuant to this Agreement shall be performed at Licensee's sole cost and expense and in accordance with all Applicable Law. Licensee shall be solely responsible for obtaining, at its own cost and expense, all necessary governmental permits and approvals in connection therewith, and Licenser hereby consents to the obtaining of such permits and approvals and agrees to promptly execute any applications reasonably needed therefor to the extent required by Applicable Laws provided such Licenser obligations shall be at no cost or expense to Licenser.

(c) Licenser agrees that, for so long as Licensee is faithfully performing its obligations under this Agreement, Licenser shall not materially impede, restrict, or interfere with Licensee's or Licensee's Representatives' access to the Licenser Property or their ability to perform and complete the Permitted Use/Work in the manner required under this Agreement.

(2) **TERM:** The term of this Agreement and the License (the "Term") shall commence upon the Effective Date and expire on the date that Licensee advises Licenser, by written notice, that the Permitted Use/Work has been completed and access is no longer required. Notwithstanding the foregoing, in the event Licensee materially breaches this Agreement, Licenser shall notify Licensee in writing of such alleged material breach (such notice to set forth in reasonable detail the basis on which Licenser is alleging that Licensee has materially breached this Agreement) and, to the extent that such material breach is ongoing after thirty (30) business days of Licensee's receipt of such written notice (with Licensee having been provided with a reasonable opportunity to cure such breach during such thirty (30) business day period), Licenser may terminate this Agreement and the License provided by Licenser in this Agreement will be revoked; provided, however, that if Licensee proceeds with due diligence to cure such breach during the thirty (30) business day cure period hereinabove provided, and is unable by reason of the nature of the breach or the acts or omissions of Licenser to cure same within the notice period, the time period for such cure shall be extended as may be reasonably necessary for Licensee to effect such cure with due diligence, and Licensee shall diligently prosecute such efforts to cure such breach during the cure period as so extended and complete such cure. At or prior to the end of the Term, Licensee shall cause all temporary walls or other temporary protection measures that Licensee may have installed in connection with the Permitted

Use/Work, to the extent permissible under Applicable Law, to be removed at Licensee's sole cost and expense.

(3) **IMPLEMENTATION & REPAIRS:** The License granted hereunder shall be solely for the Permitted Use/Work.

(4) **NOTICE OF ACCESS:** The License granted pursuant to this Agreement shall permit the Licensee and Licensee's Representatives to access the Licensor Property and carry out the Permitted Use/Work thereon.

(5) **TEMPORARY SAFETY MEASURES:** Licensee shall at its cost and expense, implement all measures commercially reasonably necessary to protect public safety and the safety of persons working on, traveling upon, or in any way using the Licensor Property in connection with the Permitted Use/Work, and is hereby granted a license to do so.

(6) **INSURANCE:** Prior to the commencement of the Term, Licensee and/or its contractors who shall be performing work in connection with the Permitted Use/Work shall furnish Licensor with certificates of insurance evidencing general liability insurance, which may include excess coverage, in at least the amount of \$5,000,000.00 per occurrence and in the aggregate, covering Licensee and Licensee's contractors that may access the Licensor Property under this Agreement with respect to claims for bodily injury, death and/or property damage on or about the Licensor Property to the extent arising out of the Permitted Use/Work. Furthermore, any of Licensee's contractors that shall be performing any activities on the Licensor Property in connection with the Permitted Use/Work shall provide worker's compensation insurance having such limits and containing such terms and conditions as are required under Applicable Law. All insurance policies required to be procured and maintained hereunder shall (i) with the exception of worker's compensation insurance, insure and name Licensor as an additional insured as its interests may appear; (ii) be issued by financially responsible insurance companies authorized to do business in the State of New York; (iii) be written as primary policy coverage and not contributing with or in excess of any coverage which Licensor may carry; and (iv) contain an express waiver of any right of subrogation by the insurance company against Licensor and its agents and employees, to the extent covered by insurance. Upon Licensor's request therefor, Licensee shall deliver to Licensor certificates of insurance evidencing all of the coverages required hereunder. The insurance required to be provided by Licensee and/or its contractors shall be maintained until the expiration of the Term (or the earlier termination of this Agreement in accordance with its terms).

(7) **INDEMNIFICATION:** Licensee shall defend, indemnify and hold harmless Licensor and its officers, directors, members, shareholders, employees and agents (each, a "**Licensor Indemnified Party**") against any and all liability, claims, suits, demands, damages, costs, interest and expenses (including reasonable legal fees and disbursements incurred in defense thereof) (collectively, "**Claims**") to which any Licensor Indemnified Party may be subject or suffer from bodily injury, personal injury, death or property damage arising from or out of any occurrence in or upon the Licensor Property occasioned wholly or in part (in which event, applying principles of comparative negligence, Licensee's liability shall be reduced to the extent Licensor is found to be partially liable and unless such Claims result solely from the negligence or willful act or omission of Licensor) or arising, directly or indirectly, out of Licensee's or Licensee's agents,

contractors, employees, licensees, or invitees entry upon the Licensors Property in connection with the Permitted Use/Work or any other access granted pursuant to this Agreement.

(8) **PROTECTION FROM LIENS:** Licensee shall keep the Licensors Property and every part thereof free and clear of any and all liens and encumbrances for work performed by Licensee, or on Licensees behalf.

(9) **NO LEASE.** THIS AGREEMENT IS NOT INTENDED TO CREATE A LEASE OR ANY OTHER INTEREST IN REAL PROPERTY IN FAVOR OF LICENSEE, BUT MERELY CREATES A LICENSE IN ACCORDANCE WITH THE TERMS HEREOF. LICENSEE ACKNOWLEDGES THAT ITS AGREEMENT TO TREAT THIS AGREEMENT AS A LICENSE FORMED A MATERIAL PART OF THE CONSIDERATION FOR LICENSOR TO GRANT THIS LICENSE.

(10) **NOTICES.** Any notice, statement, demand, consent, approval or other communication required or permitted to be given, rendered or made by either of the parties pursuant to this Agreement shall be in writing and shall be deemed to have been properly given, rendered or made when received, or delivery refused, if delivered personally, or by receipted hand or overnight air courier delivery service, to the following address:

If to Licensee: 44 South Division Owner LLC
c/o 625 RXR Plaza
Uniondale, New York 11556
Attn: Jason Barnett
Email: JBarnett@RXRRealty.com

With a copy to: c/o RXR Realty
75 Rockefeller Plaza, Suite 1400
New York, New York 10019
Attn: Todd Rechler and Joanne Minieri

With a copy to: DelBello Donnellan Weingarten
Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Heidi M. Winslow, Esq.
Email: hmw@ddw-law.com

If to Licensee: 28 South Division Owner LLC
c/o 625 RXR Plaza
Uniondale, New York 11556
Attn: Jason Barnett
Email: JBarnett@RXRRealty.com

With a copy to: c/o RXR Realty
75 Rockefeller Plaza, Suite 1400
New York, New York 10019
Attn: Todd Rechler and Joanne Minieri

With a copy to: DelBello Donnellan Weingarten
Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Heidi M. Winslow, Esq.
Email: hmw@ddw-law.com

Notice shall be invalid if sent only by email.

(11) **MISCELLANEOUS:**

(a) This Agreement constitutes the entire understanding between the parties relative to the License and the performance of the Permitted Use/Work. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. All of the recital paragraphs preceding Section 1 and Exhibits and Schedules are hereby incorporated into the terms of this Agreement. This Agreement supersedes any prior verbal understanding or written agreement between the parties relative to the subject matter hereof, and may not be amended, supplemented or discharged except by an instrument in writing signed by both parties.

(b) This Agreement has been made in and shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of New York without regard to conflicts of laws principles.

(c) With respect to any suit, action or proceeding relating to this Agreement, each party irrevocably (a) submits to the exclusive jurisdiction of the state and federal courts located in the State of New York, County of Westchester and (b) waives any objection which it may have at any time to the laying of venue of any such proceeding brought in such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party. Notwithstanding anything to the contrary contained in this Agreement, in connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its litigation-related costs and reasonable attorneys' fees through and including any appeal and post-judgement proceedings.

(d) If any provision of this Agreement shall be determined by any court having competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby but shall continue in full force and effect as though such invalid, illegal or unenforceable provision or provisions were not originally a part hereof.

(e) No waiver by either party of any breach of a condition, term or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or of any other condition, term or provision hereof.

(f) This Agreement may be executed in counterparts and a fax or .pdf copy of signatures shall be deemed originals for purposes of execution.

(g) Upon notice to Licensor, Licensee shall have the right to assign all of its right, title and interest in and to this Agreement to any affiliate(s) of Licensee.

(h) The terms "business day(s)" shall refer to normal working business days, i.e., Monday through Friday of each calendar week, exclusive of federal or New York State holidays, and days when banks in New York are closed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have signed this License Agreement as of the date first written above.

LICENSOR:

44 SOUTH DIVISION OWNER LLC

By: 

Name: Todd Rechler


Title: Authorized Person

[Signatures continue on following Page]

[Signature Page to License Agreement]

LICENSEE:

28 SOUTH DIVISION OWNER LLC

By: 
Name: Todd Rechler
Title: Authorized Person

[Signature Page to License Agreement]

EXHIBIT A
Description of Licensor Property

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of New Rochelle, County of Westchester and State of New York and bounded and described as follows:

BEGINNING at a point on the northeasterly side of South Division Street (formerly Banks Street) distant northwesterly along the same 108.04 feet from the intersection of the northeasterly side of South Division Street and the northerly side of Prospect Street, said point also being the division line between land formerly of Price and premises herein described;

RUNNING THENCE along the northeasterly side of South Division Street North 28 degrees 08 minutes 50 seconds West, 38.66 feet to land now or formerly of Mrs. Sherwood;

RUNNING THENCE along land of Mrs. Sherwood North 61 degrees 11 minutes East, 99.70 feet to land now or formerly of George Govers;

RUNNING THENCE along land of Govers South 28 degrees 39 minutes 50 seconds East 29.93 feet to land formerly of Price;

RUNNING THENCE along said land formerly of Price South 56 degrees 11 minutes 30 seconds West 100.50 feet to the point or place of BEGINNING.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "**Agreement**"), is entered into as of September 24, 2019 (the "**Effective Date**"), by and between **48 SOUTH DIVISION OWNER LLC**, a Delaware limited liability company having an address at c/o 625 RXR Plaza, Uniondale, New York 11556 (together with its successors and assigns, "**Licensor**") and **28 SOUTH DIVISION OWNER LLC**, a Delaware limited liability company having an address at c/o 625 RXR Plaza, Uniondale, New York 11556 (together with its successors and assigns, "**Licensee**").

RECITALS:

A. Licensor is the owner of the property located in the City of New Rochelle, State of New York, and commonly known as 48 S. Division Street (Section 2, Block 414, Lot 4), which property is more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Licensor Property**").

B. Licensee has entered into discussions with Licensor to acquire the Licensor Property and desires to commence certain due diligence activities in connection therewith, including without limitation to determine if, and to the extent, environmental contamination exists at, on or under the Licensor Property and whether the Licensor Property is eligible to be remediated in connection with the Brownfield Cleanup Program administered by the New York State Department of Environmental Conservation ("**NYSDEC**") pursuant to Environmental Conservation Law Article 27 Title 14.

C. Licensee desires to enter upon the Licensor Property for the purpose of performing environmental investigations of possible contamination on the Licensor Property and remediation as may be necessary and such other activities as may be necessary or desirable in connection with the admission of the Licensor Property into such Brownfield Cleanup Program, which investigation and remediation may require the imposition of an Environmental Easement and may disturb the foundations, parking lots or other surface soil areas of the Licensor Property, and geophysical and geotechnical investigation activities to plan for the foundation of future building structures thereon ("**Permitted Use/Work**"), in each instance in compliance with all applicable federal, state or local laws, ordinances, orders, rules, regulations or requirements of any governmental authority having or asserting jurisdiction over the Permitted Use/Work (separately or collectively, the "**Applicable Law**").

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(1) **GRANT:** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee (together with Licensee's Representatives) a non-exclusive temporary license (the "**License**") during the Term (hereinafter defined) to enter upon and under the Licensor Property, and to conduct and implement the Permitted Use/Work, at such times and in such manner as Licensee shall reasonably determine, subject to the terms and conditions of this Agreement. Notwithstanding anything to the contrary that may be set forth herein, the License granted hereunder shall permit

and allow Licensee and each of Licensee's employees, agents, representatives, engineers, architects, contractors, and all other entities necessary to perform the Permitted Use/Work (collectively, "Representatives"), access and entry upon and under the Licenser Property at all commercially reasonable times (subject to the limitations set forth in this Agreement) to perform the Permitted Use/Work in accordance with all Applicable Law.

(a) Licensee will cause all activities performed in connection with the Permitted Use/Work to be performed in a safe, diligent, good and workmanlike manner, in compliance with all Applicable Law, and this Agreement, in all material respects, by professionals and/or contractors possessing experience in the performance of similar tasks.

(b) Licensee agrees that all activities undertaken by Licensee and Licensee's Representatives pursuant to the License granted pursuant to this Agreement shall be performed at Licensee's sole cost and expense and in accordance with all Applicable Law. Licensee shall be solely responsible for obtaining, at its own cost and expense, all necessary governmental permits and approvals in connection therewith, and Licenser hereby consents to the obtaining of such permits and approvals and agrees to promptly execute any applications reasonably needed therefor to the extent required by Applicable Laws provided such Licenser obligations shall be at no cost or expense to Licenser.

(c) Licenser agrees that, for so long as Licensee is faithfully performing its obligations under this Agreement, Licenser shall not materially impede, restrict, or interfere with Licensee's or Licensee's Representatives' access to the Licenser Property or their ability to perform and complete the Permitted Use/Work in the manner required under this Agreement.

(2) **TERM:** The term of this Agreement and the License (the "Term") shall commence upon the Effective Date and expire on the date that Licensee advises Licenser, by written notice, that the Permitted Use/Work has been completed and access is no longer required. Notwithstanding the foregoing, in the event Licensee materially breaches this Agreement, Licenser shall notify Licensee in writing of such alleged material breach (such notice to set forth in reasonable detail the basis on which Licenser is alleging that Licensee has materially breached this Agreement) and, to the extent that such material breach is ongoing after thirty (30) business days of Licensee's receipt of such written notice (with Licensee having been provided with a reasonable opportunity to cure such breach during such thirty (30) business day period), Licenser may terminate this Agreement and the License provided by Licenser in this Agreement will be revoked; provided, however, that if Licensee proceeds with due diligence to cure such breach during the thirty (30) business day cure period hereinabove provided, and is unable by reason of the nature of the breach or the acts or omissions of Licenser to cure same within the notice period, the time period for such cure shall be extended as may be reasonably necessary for Licensee to effect such cure with due diligence, and Licensee shall diligently prosecute such efforts to cure such breach during the cure period as so extended and complete such cure. At or prior to the end of the Term, Licensee shall cause all temporary walls or other temporary protection measures that Licensee may have installed in connection with the Permitted

Use/Work, to the extent permissible under Applicable Law, to be removed at Licensee's sole cost and expense.

(3) **IMPLEMENTATION & REPAIRS:** The License granted hereunder shall be solely for the Permitted Use/Work.

(4) **NOTICE OF ACCESS:** The License granted pursuant to this Agreement shall permit the Licensee and Licensee's Representatives to access the Licensors Property and carry out the Permitted Use/Work thereon.

(5) **TEMPORARY SAFETY MEASURES:** Licensee shall at its cost and expense, implement all measures commercially reasonably necessary to protect public safety and the safety of persons working on, traveling upon, or in any way using the Licensors Property in connection with the Permitted Use/Work, and is hereby granted a license to do so.

(6) **INSURANCE:** Prior to the commencement of the Term, Licensee and/or its contractors who shall be performing work in connection with the Permitted Use/Work shall furnish Licensors with certificates of insurance evidencing general liability insurance, which may include excess coverage, in at least the amount of \$5,000,000.00 per occurrence and in the aggregate, covering Licensee and Licensee's contractors that may access the Licensors Property under this Agreement with respect to claims for bodily injury, death and/or property damage on or about the Licensors Property to the extent arising out of the Permitted Use/Work. Furthermore, any of Licensee's contractors that shall be performing any activities on the Licensors Property in connection with the Permitted Use/Work shall provide workers compensation insurance having such limits and containing such terms and conditions as are required under Applicable Law. All insurance policies required to be procured and maintained hereunder shall (i) with the exception of workers compensation insurance, insure and name Licensors as an additional insured as its interests may appear; (ii) be issued by financially responsible insurance companies authorized to do business in the State of New York; (iii) be written as primary policy coverage and not contributing with or in excess of any coverage which Licensors may carry; and (iv) contain an express waiver of any right of subrogation by the insurance company against Licensors and its agents and employees, to the extent covered by insurance. Upon Licensors request therefor, Licensee shall deliver to Licensors certificates of insurance evidencing all of the coverages required hereunder. The insurance required to be provided by Licensee and/or its contractors shall be maintained until the expiration of the Term (or the earlier termination of this Agreement in accordance with its terms).

(7) **INDEMNIFICATION:** Licensee shall defend, indemnify and hold harmless Licensors and its officers, directors, members, shareholders, employees and agents (each, a "Licensors Indemnified Party") against any and all liability, claims, suits, demands, damages, costs, interest and expenses (including reasonable legal fees and disbursements incurred in defense thereof) (collectively, "Claims") to which any Licensors Indemnified Party may be subject or suffer from bodily injury, personal injury, death or property damage arising from or out of any occurrence in or upon the Licensors Property occasioned wholly or in part (in which event, applying principles of comparative negligence, Licensee's liability shall be reduced to the extent Licensors is found to be partially liable and unless such Claims result solely from the negligence or willful act or omission of Licensors) or arising, directly or indirectly, out of Licensee's or Licensee's agents,

contractors, employees, licensees, or invitees entry upon the Licensors Property in connection with the Permitted Use/Work or any other access granted pursuant to this Agreement.

(8) **PROTECTION FROM LIENS:** Licensee shall keep the Licensors Property and every part thereof free and clear of any and all liens and encumbrances for work performed by Licensee, or on Licensee's behalf.

(9) **NO LEASE.** THIS AGREEMENT IS NOT INTENDED TO CREATE A LEASE OR ANY OTHER INTEREST IN REAL PROPERTY IN FAVOR OF LICENSEE, BUT MERELY CREATES A LICENSE IN ACCORDANCE WITH THE TERMS HEREOF. LICENSEE ACKNOWLEDGES THAT ITS AGREEMENT TO TREAT THIS AGREEMENT AS A LICENSE FORMED A MATERIAL PART OF THE CONSIDERATION FOR LICENSOR TO GRANT THIS LICENSE.

(10) **NOTICES.** Any notice, statement, demand, consent, approval or other communication required or permitted to be given, rendered or made by either of the parties pursuant to this Agreement shall be in writing and shall be deemed to have been properly given, rendered or made when received, or delivery refused, if delivered personally, or by receipted hand or overnight air courier delivery service, to the following address:

If to Licensee: 48 South Division Owner LLC
c/o 625 RXR Plaza
Uniondale, New York 11556
Attn: Jason Barnett
Email: JBarnett@RXRRealty.com

With a copy to: c/o RXR Realty
75 Rockefeller Plaza, Suite 1400
New York, New York 10019
Attn: Todd Rechler and Joanne Minieri

With a copy to: DelBello Donnellan Weingarten
Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Heidi M. Winslow, Esq.
Email: hmw@ddw-law.com

If to Licensee: 28 South Division Owner LLC
c/o 625 RXR Plaza
Uniondale, New York 11556
Attn: Jason Barnett
Email: JBarnett@RXRRealty.com

With a copy to: c/o RXR Realty
75 Rockefeller Plaza, Suite 1400
New York, New York 10019
Attn: Todd Rechler and Joanne Minieri

With a copy to: DelBello Donnellan Weingarten
Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Heidi M. Winslow, Esq.
Email: hmw@ddw-law.com

Notice shall be invalid if sent only by email.

(11) **MISCELLANEOUS:**

(a) This Agreement constitutes the entire understanding between the parties relative to the License and the performance of the Permitted Use/Work. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. All of the recital paragraphs preceding Section 1 and Exhibits and Schedules are hereby incorporated into the terms of this Agreement. This Agreement supersedes any prior verbal understanding or written agreement between the parties relative to the subject matter hereof, and may not be amended, supplemented or discharged except by an instrument in writing signed by both parties.

(b) This Agreement has been made in and shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of New York without regard to conflicts of laws principles.

(c) With respect to any suit, action or proceeding relating to this Agreement, each party irrevocably (a) submits to the exclusive jurisdiction of the state and federal courts located in the State of New York, County of Westchester and (b) waives any objection which it may have at any time to the laying of venue of any such proceeding brought in such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party. Notwithstanding anything to the contrary contained in this Agreement, in connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its litigation-related costs and reasonable attorneys' fees through and including any appeal and post-judgment proceedings.

(d) If any provision of this Agreement shall be determined by any court having competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby but shall continue in full force and effect as though such invalid, illegal or unenforceable provision or provisions were not originally a part hereof.

- (e) No waiver by either party of any breach of a condition, term or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or of any other condition, term or provision hereof.
- (f) This Agreement may be executed in counterparts and a fax or .pdf copy of signatures shall be deemed originals for purposes of execution.
- (g) Upon notice to Licensor, Licensee shall have the right to assign all of its right, title and interest in and to this Agreement to any affiliate(s) of Licensee.
- (h) The terms "business day(s)" shall refer to normal working business days, i.e., Monday through Friday of each calendar week, exclusive of federal or New York State holidays, and days when banks in New York are closed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have signed this License Agreement as of the date first written above.

LICENSOR:

48 SOUTH DIVISION OWNER LLC


By: 
Name: Todd Rechler
Title: Authorized Person

[Signatures continue on following Page]

[Signature Page to License Agreement]

LICENSEE:

28 SOUTH DIVISION OWNER LLC

By: 
Name: Todd Rechler
Title: Authorized Person

[Signature Page to License Agreement]

EXHIBIT A
Description of Licensor Property

REVISED 5/2/2019

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of New Rochelle, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Division Street f/k/a Banks Street, distant seventy-two and 04/100 (72.04) feet northerly from the corner formed by the intersection of the easterly side of Division Street with the northerly side of Prospect Street; and

RUNNING THENCE northerly along the said easterly side of Division Street thirty-six (36) feet to land now or formerly of Charles Schmitt;

THENCE along said Schmitt's land North 56 degrees 11 minutes 30 seconds East 100.50 feet to land now or formerly of George Govers;

THENCE along land formerly of said Govers, South 28 degrees 39 minutes 50 seconds East 29.93 feet; and

THENCE South 52 degrees 47 minutes 20 seconds West 101.47 feet to the point or place of BEGINNING.

Said premises is more currently described as follows:

ALL that certain plot, piece or parcel of land lying and being in the City of New Rochelle, County of Westchester and State of New York, and described as follows:

BEGINNING at a point on the northerly right-of-way line of South Division Street (a.k.a. Bank Street), said point being distant of 72.57 feet from the intersection with Prospect Street and running, thence;

1. Along said right-of-way line, North 36 degrees 15 minutes 25 seconds West, a distance of 36.00 feet to a point, thence;
 2. North 48 degrees 05 minutes 42 seconds East, a distance of 100.50 feet to a point, thence;
 3. South 36 degrees 37 minutes 46 seconds East, a distance of 29.93 feet to a point, thence;
 4. South 44 degrees 41 minutes 34 seconds West, a distance of 101.47 feet to the point of BEGINNING.
-

ATTACHMENT H
SECTION IX – CONTACT LIST INFORMATION

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application
Section IX. Site Contact List

1. Chairperson of each county, city, town and village in which the property is located.

George Latimer
County Executive
County of Westchester
Michaelian Office Building
148 Martine Avenue
White Plains, NY 10601

Noam Bramson, Mayor
New Rochelle City Hall
515 North Avenue
New Rochelle, NY 10801

Sarah C. Dodds-Brown, Chair
City of New Rochelle Planning Board
515 North Avenue
New Rochelle, NY 10801

Kevin Kaine, Director
Department of Planning and Development
515 North Avenue
New Rochelle, NY 10801

Katheen Gill, Chief of Staff
Corporation Counsel
City of New Rochelle
515 North Avenue
New Rochelle, NY 10801

Edward Burroughs, Commissioner
Westchester County Planning Department
Michaelian Office Bldg.
148 Martine Avenue
White Plains, NY 10601

Jeremiah Lynch, Chairman
Westchester County Planning Board
Michaelian Office Bldg.
148 Martine Avenue
White Plains, NY 10601

2. Residents, owners, and occupants of the property and properties adjacent to the property.

Owner	Section	Block	Lot	Property Address	Mailing Address
S Friedman Inc	1	212	60	44 Church Street, New Rochelle, NY 10801	Katonah, NY 10536
Jo Ann Ferraro	1	212	63	40 Church Street, New Rochelle, NY 10801	40 Church Street, New Rochelle, NY 10801
Antonio A. Chavez	1	212	61	42 Church Street, New Rochelle, NY 10801	42 Church Street, New Rochelle, NY 10801
36 Church St Realty	1	212	65	36 Church Street, New Rochelle, NY 10801	36 Church Street, New Rochelle, NY 10801
Rettner Church Street LLC	1	215	1	30 Church Street, New Rochelle, NY 10801	30 Church Street, New Rochelle, NY 10801
Shylas Weight Watchers Deligh	2	413	30	23 Division Street S. New Rochelle, NY 10801	17 Division Street S. New Rochelle, NY 10801
City of New Rochelle	2	412	7	35 Prospect Street New Rochelle, NY 10801	515 North Ave, New Rochelle, NY 10801
Min K. Guo	2	412	34	41 Division Street S. New Rochelle, NY 10801	41 Division Street S. New Rochelle, NY 10801
43 Church St LLC	2	414	51	43 Church Street New Rochelle, NY 10801	271 North Avenue New Rochelle, NY 10805
Prospect Rochelle Realty LLC	2	414	1	1 Prospect St, New Rochelle, NY 10805	1 Prospect St, New Rochelle, NY 10805
Triple A Properties, Inc.	2	412	36	25 Prospect Street, New Rochelle, NY 10805	101 Miles Square Rd., Yonkers, NY 10701
Tian Long Guo and Ming Hua Li	2	412	34	41 Division Street, New Rochelle, NY 10805	41 Division Street, New Rochelle, NY 10805

3. Local news media from which the community typically obtains information.

The Journal News
1133 Westchester Avenue
Suite 110N
White Plains, NY 10604

4. The public water supplier which services the area in which the property is located.

Suez
2525 Palmer Avenue
New Rochelle, NY 10801

5. Any person who has requested to be placed on the contact list.

N/A

6. The administrator of any school or day care facility located on or near the property.

Dr. Magda Parvey, Interim Superintendent
City School District of New Rochelle
515 North Avenue
New Rochelle, NY 10801

Jeffrey Hastie, President
New Rochelle Board of Education
515 North Avenue
New Rochelle, NY 10801

Anthony Bongo, Principal
Isaac E. Young Middle School
270 Centre Avenue
New Rochelle, NY 10805

Michael Hilderbrand, Principal
Trinity Elementary School
180 Pelham Road
New Rochelle, NY 10805

Kimmerly Nieves, Principal
Jefferson Elementary School
131 Weyman Avenue
New Rochelle, NY 10805

The Hallen School
97 Centre Avenue

New Rochelle, NY 10801

Michael Galland, Principal
Columbus Elementary School
275 Washington Avenue
New Rochelle, NY 10801

New Rochelle Stars Middle School
50 Washington Avenue
New Rochelle, NY 10801

Saint Gabriel's Church
120 Division Street
New Rochelle, NY 10801

Bennett Academy of the Performing Arts
225A Main Street, 2nd Floor
New Rochelle, NY 10801

Trinity Cooperative Nursery
311 Huguenot Street
New Rochelle, NY 10801

William Latimer, Ph.D., President
The College of New Rochelle
29 Castle Place
New Rochelle, NY 10805

Salesian High School
148 East Main Street
New Rochelle, NY 10801

Holy Name of Jesus
70 Petersville Road
New Rochelle, NY 10801

Westchester Area School
456 Webster Avenue
New Rochelle, NY 10801

Melissa A. Passarelli, Principal
Daniel Webster Elementary School
95 Glenmore Drive
New Rochelle, NY 10801

New Rochelle Daycare

11 Woodbury Street
New Rochelle, NY 10805

Children's Center
50 Pintard Avenue
New Rochelle, NY 10801

Growing Minds of New York, Inc.
466 Main Street
New Rochelle, NY 10801

Creative Learning Center
32 Lecount Pl
New Rochelle, NY 10801

Little Rascals Daycare
18 Badeau Pl
New Rochelle, NY 10801

Essence Child Care
233 Webster Avenue
New Rochelle, NY 10801

The Learning Experience
1 Bally Pl
New Rochelle, NY 10801

Flowers Learning Garden LLC
27 Morris Street
New Rochelle, NY 10801

Little Blessing Childcare/Pre-School
10 Winyah Terrace
New Rochelle, NY 10801

Dee's Tots Childcare
116 Lincoln Avenue
New Rochelle, NY 10801

Children's Center for Learning
95 Lincoln Avenue
New Rochelle, NY 10801

Dominique's Day Care
58 Windsor Oval
New Rochelle, NY 10805

TLC Transitional Learning
555 Davenport Avenue
New Rochelle, NY 10805

Kidz Korner New Rochelle
555 Davenport Avenue
New Rochelle, NY 10805

Marc M. Jerome, President
Monroe College
434 Main Street
New Rochelle, NY 10801

7. The location of a document repository for the project (e.g., local library). In addition, attach a copy of an acknowledgement from the repository indicating that it agrees to act as the document repository for the property.

New Rochelle Public Library
Attn: Tom Geoffino
1 Library Plaza
New Rochelle, NY 10801
Phone: (914) 632-7879
FAX: (914) 632-0262
tgeoffino@nrpl.org

Hours: Monday-Tuesday: 9:00am-8:00pm; Wednesday: 10:00am-6:00pm; Thursday: 9:00am-8:00pm; Friday: 9:00am-5:00pm; Saturday: 9:00am-5:00pm; Sunday: 1:00pm-5:00pm

Please see repository acknowledgement letter attached.

8. Any community board located in a city with a population of one million or more, if the proposed site is located within such community board's boundaries.

N/A

Re: New Rochelle Public Library - 28 South Division Owner LLC

Tom Geoffino <tgeoffino@nrpl.org>

Tue 1/7/2020 12:57 PM

To: Dale A. Desnoyers <dale@allendesnoyers.com>**Cc:** Patrick Kehoe <patrick@allendesnoyers.com>

Hi Dale - Yes, I agree to allow our library to be used as a document repository re State's Brownfield Cleanup Program relative to property at 28 South Division Street in New Rochelle. Regards, Tom Geoffino

On Tue, Jan 7, 2020 at 11:40 AM Dale A. Desnoyers <dale@allendesnoyers.com> wrote:

Tom, Happy New Year. On behalf of a prospective applicant to the State's Brownfield Cleanup Program relative to property at 28 South Division Street in New Rochelle, I am requesting permission to use the New Rochelle Public Library as a document repository.

As you are aware, the Brownfield Cleanup Program application process requires the designation of a document repository for documents and reports that can be reviewed by citizens. The project will require shelf space for environmental reports for approximately 18 -24 months. The shelf space required would likely be approximately 12 inches wide and the stack of reports approximately 12 inches tall. A total of four to six reports / documents (e.g., application, Investigation Work Plan, Remedial Action Work Plan and Final Engineering Report) will be produced over the course of the project. Unless you indicate otherwise, when possible, electronic copies of the project documents will be submitted to the New Rochelle Public library in an effort to reduce the required space.

Please confirm in writing that the use of the New Rochelle Public Library as the document repository for this project as noted above is acceptable. A response via e-mail is acceptable.

Should you have any questions or concerns, please do not hesitate to contact me via email or phone (518-426-2288). Thank you in advance for your time and consideration.

--

Thomas Geoffino
Director
New Rochelle Public Library
1 Library Plaza
New Rochelle NY 10801

914-632-7879
914-632-0262 (Fax)
tgeoffino@nrpl.org

ATTACHMENT I
SECTION X – LAND USE FACTORS

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application
Section X. Land Use Factors – Current Site Use

28 South Division Street, Brownfield Cleanup Application
Attachment I – Current Site Use

The site is comprised of an approximately 1.061 acres, including a vacant lot and three lots improved by single family residences. Between approximately 1972 until 2018 the portion of the Property that is 28 South Division Street contained a portion of a 62,500-square foot, two story municipal parking garage, which has since been demolished and 28 South Division Street is now a vacant lot. The portion of the Property that comprises 42, 44 and 48 South Division Street previously contained 3 residential homes. The residential homes, each of which are now demolished, were vacated by the former occupants as follows:

- 42 South Division St vacated on 5/3/2019
- 44 South Division St vacated on 2/28/2019
- 48 South Division St vacated on 6/30/2019

ATTACHMENT J
SECTION X – POST REMEDIATION USE

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application

Section X. Land Use Factors – Post-Cleanup Use

Attachment J – Post Cleanup Use

The 28 South Division Street (the “Project”), is located in the City of New Rochelle, Westchester County, New York, and is a phased, mixed-use, ground-up development on an assemblage of several adjacent parcels comprising 1.061 acres located at 28, 42, 44 and 48 South Division Street, New Rochelle, New York. The property is located in a mixed use commercial and residential neighborhood and is bounded on the west by South Division Street and on the east by Church Street. The currently vacant site most recently held a portion of a 62,500 square foot municipal parking garage, which was recently demolished. The through-block site has frontage on both Church and South Division Streets and is situated between Main St and Prospect St. The physical address of the property is 28, 42, 44 and 48 South Division St, New Rochelle, NY 10805. The site is Block 414, Lots 4, 5, 6 and 8.01.

Development features:

- One 28-story residential towers.

Development specifics*:

- Approximately 390 residential rental units ranging from studios to 3-bedrooms;
- Street-level retail, with approximately 7.7K SF of retail space;
- A subsurface parking structure of approximately 429 parking spaces; and
- A public pedestrian plaza.

Site plan approval is pending before the City of New Rochelle Planning Board.

*Final plans are in development so the number of residential units, square footage of the retail space, number of parking spaces and public amenities are subject to change.

ATTACHMENT K
SECTION X – ZONING AND MUNICIPAL AUTHORIZATION

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

28 South Division Street, Brownfield Cleanup Application
Section X. Land Use Factors – Zoning and Municipal Authorization

Attachment K – Zoning and Municipal Authorization

The 28 South Division Street (the “Project”), is located in the City of New Rochelle, Westchester County, New York, and is a mixed-use, ground-up development in New Rochelle, New York. The site plan for this development is pending before the City of Rochelle Department of Development Planning Board.

**CITY OF NEW ROCHELLE, NEW YORK
DEPARTMENT OF DEVELOPMENT
PLANNING BOARD**

Members Present:	Brown, Dodds-Brown, Lipow, Mercado, Pitocchi, Smith
Members Absent:	Contreras
Introduced:	April 24, 2018
Adopted:	April 24, 2018
Moved By:	Lipow
Seconded By:	Pitocchi
Abstained:	None
Opposed:	None
Passed:	Unanimously

**PB 12-18
Site Plan
Approval**

**RESOLUTION NO. 38-2018
26 Division Street, Block 414, Lot 8**

WHEREAS, an application has been filed by **RXR Church Division Holdings Tower A LLC** and **RXR Church Division Holdings Tower B**, for subdivision and site plan approval to construct a mixed-use development at **26 Division Street** (Block 414, Lot 8), in a DOZ-2 Downtown Overlay Zone District; and

WHEREAS, it has been determined that this site is not located in a Critical Environmental Area, and is an Unlisted Action under the State Environmental Quality Review (SEQRA) process; now, therefore, be it

RESOLVED, the New Rochelle Planning Board does hereby approve the site plan subject to the following conditions:

1. *The applicant shall provide a Fair Share Mitigation payment of \$732,807 for Tower A and \$749,901 for Tower B of the project, prior to the issuance of a building permit for each Phase of the project, for a total payment of \$1,482,708 based on the calculations below. Should the final design result in an adjustment to the calculations below, the applicant shall return to the Planning staff for an administrative review.*

<i>Tower A Use Category</i>	<i>Count</i>	<i>Area</i>	<i>% of Total Units</i>	<i>Allocated Common Area</i>	<i>Total area for Mitigation Calc.</i>	<i>Mitigation Amount (\$/sf)</i>	<i>Adjustment Factor</i>	<i>Fee Amount</i>
Studio	54	28,731	15%	12,999	41,730	1.326	100%	\$55,334
1BR	149	109,169	42%	35,868	145,037	1.591	100%	\$230,753
2BR	147	151,744	42%	35,386	187,130	2.122	100%	\$397,090
3BR	4	6,044	1%	963	7,007	2.652	100%	\$18,583
Retail	2	13,617			13,617	1.326	75%	\$13,542
Parking	330					53.045		\$17,505
						TOTAL AMOUNT:	\$732,807	FEE

<i>Tower B Use Category</i>	<i>Count</i>	<i>Area</i>	<i>% of Total Units</i>	<i>Allocated Common Area</i>	<i>Total area for Mitigation Calc.</i>	<i>Mitigation Amount (\$/sf)</i>	<i>Adjustment Factor</i>	<i>Fee Amount</i>
Studio	63	33,478	15%	13,344	46,822	1.326	100%	\$62,086
1BR	166	121,206	42%	36,820	158,026	1.591	100%	\$251,419
2BR	144	148,536	42%	36,326	184,862	2.122	100%	\$392,277
3BR	3	4,227	1%	988	5,215	2.652	100%	\$13,830
Retail	2	12,054			12,054	1.326	75%	\$11,988
Parking	345					53.045		\$18,301
						TOTAL AMOUNT:	FEE \$749,901	

2. The applicant is proposing to build 4 bonus stories for each phase of the project, 51,630 square feet for Tower A and 51,066 square feet for Tower B, for a combined square footage of 102,696. The cost/sf at this project location in DO-2 under Development Standard 3 is \$40/sf., making the value of the 3 bonus stories \$4,107,840. To receive this height bonus, the applicant will design and construct improvements to the City sewer system in the vicinity of the project that will be subject to approval by the City Engineer; and will design and construct improvements to a pedestrian plaza providing for a publicly accessible, pedestrian connection between Church and Division Streets subject to design approval by the Commissioner of Development. The total value of the Community Benefits will not be less than \$4,107,840.

The applicant has been awarded 4 bonus stories with a total square footage of 102,696 as the approved community benefit bonus.

3. The applicant shall comply with the City's affordable housing requirements in Section 331-152 of the municipal code by providing for 73 units of affordable housing at an off-site location. The units will be of the same unit type ratio as in the proposed development.

The applicant shall provide thirty-five units that meet the requirements of Section 331-152 in the following mix for Tower A: five studios, fifteen 1-bedroom units and fifteen 2-bedroom units.

The applicant shall provide thirty-eight units that meet the requirements of Section 331-152 in the following mix for Tower B: six studios, seventeen 1-bedroom units and fifteen 2-bedroom units.

On an annual basis, the applicant shall provide a list of affordable housing units to the City for use in the City's affordable housing lottery program.

If the units in the off-site location are not completed prior to the issuance of a certificate of occupancy for each Tower, the applicant shall place \$4,650,000 for Tower A and \$5,000,000 for Tower B in an escrow account until the off-site units are completed.

4. The applicant shall comply with the City's Economic Opportunity and Nondiscrimination Policy, including provision of quarterly reporting to the City for purposes of monitoring such compliance.
5. The applicant shall satisfy the code requirement for recreation and open space as set forth in Section 331-118G of the code. A payment of \$263.00 per additional dwelling unit on-site shall be paid to Account T-037 prior to the issuance of a building permit.

6. *The applicant shall satisfy the requirement for private art betterments in accordance with Section 331-120.1. The artwork shall be approved by the Municipal Arts Commission. The minimum cost shall be not less than 0.0025 of the construction cost of the project.*
7. *The applicant shall satisfy the code requirement for provision of parking as set forth in Section 331-125 and 331-126 of the code.*
8. *The publicly accessible parking rates shall be competitively priced with other parking lots in the area of similar size, operation, and type.*
9. *The applicant shall comply with the City's requirements for valet parking as set forth in Section 331 Article XXI.*
10. *The applicant shall provide an emergency power source for the mechanical vehicle lifts.*
11. *The applicant shall comply with the City's requirement for off-street bicycle parking facilities in Section 331-126.1, or, alternatively, in Section 331-126.2.*
12. *The applicant shall continue the exterior building materials along the Church Street and Division Street elevations into the interior walls of the parking area.*
13. *Larger rooftop furniture shall be mechanically fastened to the roof. Additionally, all moveable furniture on the roof shall be stored indoors when not in use.*
14. *Applicant shall provide granite curbing along the municipal right-of-way for the subject site's frontage per City standards.*
15. *The applicant shall incorporate and address the final recommendations of the Professional Architectural Review Committee.*
16. *Prior to issuance of a building permit, the applicant shall submit a comprehensive construction plan including pertinent staging, drainage, shoring, dewatering, utility, erosion control and curb cut details and details of how materials, construction vehicles and heavy trucks will circulate on the site and move to/from the site, to the New Rochelle Department of Public Works (DPW) to be reviewed and approved by the Building Official, City Engineer and Traffic Engineer. In such plan, the applicant shall provide details as to any temporary utility structures or equipment. The applicant shall obtain appropriate permits from DPW, Westchester County and NYSDEC for work on the site under Section 239 F of the General Municipal Law.*

The construction plan shall detail any planned closures of sidewalks, roadways, traffic lanes and/or parking spaces, with plans outlining mitigation of negative effects to the public. Sidewalks shall remain open and available to the public at all times. If additional space is needed for construction activity, a temporary sidewalk shall be provided.
17. *The applicant shall obtain any requisite permits from any Westchester County department/agency, New York state department/agency or federal department/agency prior to the issuance of a building permit.*
18. *The Applicant shall, at its own cost, complete all applicable on-site and off-site improvements shown on the site plan in accordance with DPW specifications and shall obtain any requisite permits for construction and inspection by DPW. Prior to issuance of a building permit, the Applicant shall post a bond or letter of credit acceptable to Corporation Counsel according to Section 331-136 of the Code to cover the total cost for construction of such improvements and other infrastructure improvements, which amount shall be estimated by the Applicant's engineer and submitted to the Department of Public Works (DPW) for acceptance.*

19. *The Applicant shall, at its own cost, build all utilities, sanitary and storm drainage improvements, driveways, curbs, sidewalks, handicapped ramps, and other necessary infrastructure shown on the site plan, all in accordance with the New Rochelle Department of Public Works' standards and acceptable to the City Engineer.*
20. *The applicant's engineer shall submit the existing and proposed sanitary sewer flows for inflow and infiltration removal.*
21. *The minimum separation between the water main and sewer main shall be reviewed and approved by the City Engineer and City Sewer Inspector prior to installation to ensure compliance with applicable city regulations.*
22. *All proposed sanitary sewer lines shall be comprised of extra heavy cast iron.*
23. *The applicant shall comply with the grading and draining provisions in Section 331-129B. Oil/grit separators shall be constructed to permit access for inspection and maintenance and the Owner shall submit maintenance reports together with a signed and notarized certification on a form supplied by the Building Official twice per year, once between April 15 and May 30 and once between October 15 and November 30, certifying that the oil/grit separator was inspected and cleaned out during the above-described time periods and that said separators are in working order. The Owner shall be further required to post a long-term maintenance bond, or an evergreen letter of credit with respect to the performance of the maintenance required herein. If the maintenance bond expires or is used by the City in order to conduct the required inspection and cleaning in the event of default by the Owner, then the City may serve an abatement notice for further expenses incurred by or on behalf of the City pursuant to the procedures set forth in Section 200 of the City Charter.*
24. *A performance and maintenance bond, evergreen letter of credit, cash deposit or other surety, acceptable to the Corporation Counsel, shall be posted by the applicant to guarantee the planting and maintenance of trees and landscaping, as shown on an approved landscape plan for a period of five years, in accordance with § 331-119B(4)(a) of the Zoning Code. The amount of the bond shall be determined by the Building Official for site plans in accordance with § 331-119B(4)(a). The Bureau of Buildings shall confirm the required plantings prior to and as a condition of releasing the landscape bond required under City Code Section 301-23.B.*
25. *If severe weather generates snow volumes which exceed capacity of the snow storage area, excess snow shall not be permitted to be stored on city streets or right-of-way.*
26. *The applicant shall comply with all exterior lighting requirements in Section 331.22 of the municipal code.*
27. *Excavations and shoring for building foundations must remain on the applicant's property and not within the City right-of-way, unless approved by the city.*
28. *Developer shall be responsible for maintaining and/or relocating all streetlights and traffic signs and for repairs to any wiring damaged by construction.*
29. *Applicant shall provide new ornamental street lights on both the Church Street and Division Street sides of the projects to match the adjacent Hadco lighting.*
30. *Developer shall be responsible for any damage to traffic signal equipment, particularly at Church Street and Clinton Place.*
31. *All existing street lights must remain functional until replacement or temporary lighting is operational.*

32. *All sidewalk construction details shall match existing and adjacent segments of Church Street and Division Street.*
33. *Applicant shall align the northern crosswalk at Church Street and Clinton Place so that it is parallel with Clinton Place.*
34. *Applicant shall construct a new crosswalk with ADA ramps at the western end of the plaza at Leroy Place.*
35. *Applicant shall install pedestrian activated, edge-lit LED signs, which shall be reviewed and approved by the City's traffic engineer.*
36. *The applicant shall install rumble strips, or a similar traffic calming device near the parking drive aisle's intersection with the sidewalk on both street frontages to the satisfaction of the city's Traffic Engineer.*
37. *Street numbers for all entrances shall be approved by the Fire Department.*
38. *Applicant shall comply with all requirements set forth in the Downtown Overlay Zone.*
39. *Plans shall be reviewed and approved by the City Engineer prior to the issuance of a building permit.*
40. *A full building code analysis shall be performed upon submission for a building permit.*
41. *Applicant shall conduct a computer simulated wind analysis based on the final design of the project. If the analysis shows potential for negative impacts based on applicable local and state building codes, additional in-depth wind analysis & mitigation may be required.*
42. *The applicant shall work with the Department of Development and City Historian to develop a mutually agreed upon recognition of the burial ground believed to have been located elsewhere in the downtown area, not on the applicant's site specifically.*
43. *The applicant shall have a final review conducted by the New York State Office of Parks, Recreation and Historic Preservation, as it related to the requirement to perform additional, archeological studies on the site, prior to the issuance of a building permit.*
44. *A Phase 1 B archeology site investigation shall be completed prior to the issuance of a building permit. The findings of the investigation shall be incorporated into the site plan as required by applicable local, state and federal regulations applicable to the project.*
45. *During construction, if the applicant uncovers any material, remnants or other historically significant item, as required by applicable local, state and federal regulations applicable to the project, construction shall stop and the applicant shall conduct an appropriate analysis, and complete any measures required by applicable local, state and federal regulations, in order to resume construction; and be it further*

RESOLVED, that in accordance with General City Law Subsection 27-a (7), the Applicant's engineer or architect, prior to the issuance of any type of building permit for construction, shall submit to the Building Official an estimate of the costs of all required site infrastructure and improvements associated with this site plan approval, which estimate shall be verified by the Building Official as adequate to cover all such site infrastructure and improvements. Thereupon, the Applicant shall provide to the City Bureau of Buildings a performance bond or other security acceptable to Corporation Counsel, in an amount and for a period of time acceptable to the Building Official, all in accordance with Section 27-a, Subsection 7 and Section 33, Subsection 8 of General City Law; and, be it further

RESOLVED, that in accordance with the Zoning Code, prior to issuance of the final Certificate of Occupancy, The Applicant shall provide to the City Bureau of Buildings all necessary maintenance bonds or other security acceptable to Corporation Counsel, in an amount and for a period of time acceptable to the Building Official for any proposed landscaping and, if applicable, for any oil/grit separators; and, be it further

RESOLVED, that in accordance with Section 331-123 of Chapter 331 (Zoning) of the New Rochelle City Code, such approval for any construction shall expire if a building permit is not issued within two (2) years from the date of approval and if all construction work is not completed within five (5) years of the date of issuance of such permit. Upon application to the Planning Board, extensions totaling a maximum of twelve (12) months may be granted to each of these time periods, for appropriate cause; and, be it further

RESOLVED, that the applicant and all successors/assignees are hereby informed that in accordance with Section 331-140 of the zoning code; Penalties for Offenses, if any element of an approved site plan is amended without knowledge or approval by the Planning Board, a fee shall be assessed to return to the Planning Board so as to formally file a site amendment, and be it, further

RESOLVED, the Planning Board Clerk is authorized to grant an extension of one (1) month beyond the second year site plan approval date, for any or all of the following conditions: if the applicant can demonstrate that reasonable progress has been made in satisfying the Planning Board's conditions of approval, if the Applicant needs the extension during the Planning Board's annual vacation period, or if other extenuating conditions have occurred, which the Planning Board Clerk considers reasonable for the granting of the additional one (1) month extension. If the Applicant has not obtained the required building permit within this one month extended approval period, the Applicant may apply to the Planning Board to extend the site plan approval for the remaining eleven (11) months.

Dated: April 1, 2018


Max E. Schwartz, Planning Board Clerk

Filed City Clerk's Office ^{Max} April 1, 2018


Interim City Clerk

ATTACHMENT L

SECTION XI – STATEMENT OF CERTIFICATION AND SIGNATURES

28 South Division Street
Brownfield Cleanup Program Application

28 South Division Street, New Rochelle, New York

Church-Division Street, Tower B, Brownfield Cleanup Application
Section XI. – LLC Authorization

**CONSENT
TO THE ADOPTION OF RESOLUTIONS
BY THE SOLE MEMBER OF
28 SOUTH DIVISION OWNER LLC**

The undersigned, being the sole member of 28 South Division Owner LLC, a Delaware limited liability company (the "Company"), authorized to do business in New York State, hereby consents to and approves the adoption of the following resolutions and the actions contemplated hereby, such resolutions to have the same force and effect as if duly adopted at a meeting of the Company duly called and held on the date hereof:


BE IT RESOLVED, that the Company be and hereby is authorized and empowered to apply for and enter into a Brownfield Site Cleanup Agreement (the "Agreement") with the New York State Department of Environmental Conservation ("NYSDEC") with respect to the property located at 28 South Division Street in the City of New Rochelle, New York, bearing City of New Rochelle Tax Map Designation (portion) Section 2, Block 414 and Lot 8.01, comprising approximately 0.811 acres and more particularly described on Attachment "A" (the "Property"); and it is further

RESOLVED, that the individuals specified on Schedule 1 attached hereto, each as an "Authorized Person", acting alone, be and hereby is authorized and empowered and directed to do all things that may be necessary and/or proper to enter into the Agreement, including executing the Agreement, and Environmental Easement and/or any other instrument, document and/or agreement as the NYSDEC and the Authorized Person shall determine to be necessary, useful and/or required in furtherance of or in order to give effect to the purpose and/or intent of the Agreement and resolutions set forth herein; and it is further

RESOLVED, that any act of the Authorized Person, acting alone, on behalf of the Company, taken prior to the date hereof which would have been authorized by the foregoing resolutions, be and the same hereby are individually and/or collectively ratified, confirmed, adopted and approved.

IN WITNESS WHEREOF, the undersigned sole member has executed this Consent as of this 24 day of July 2019.

28 South Division Owner LLC
By: 28 South Division Owner LLC

By: 
Name: Todd Rechler
Title: Authorized Person

Schedule 1

Authorized Persons

Scott Rechler
Jason Barnett
Michael Maturo
Todd Rechler
Richard Conniff
David Frank
Frank Adipietro