

June 9, 2005

Kelly Lewandowski  
Chief, Site Control Section  
New York State Department of  
Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, New York 12233-7020

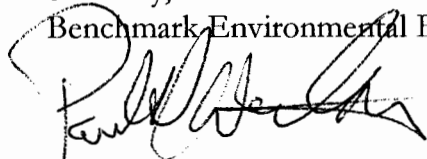
Re: Seneca Market I, LLC  
BCP Application

Dear Ms. Lewandowski:

On behalf of our client, Seneca Market I, LLC, Benchmark Environmental Engineering & Science, PLLC has prepared the enclosed Brownfield Cleanup Program (BCP) application for proposed redevelopment at the Seneca Market 1, LLC site in Watkins Glen, NY. An original signed copy as well as an electronic copy of the application and proposed Remedial Investigation Work Plan are enclosed. A hard copy of these documents has also been sent to Mr. Bart Putzig (NYSDEC Region 8) and Mr. David Chiusano (NYSDEC Albany Office).

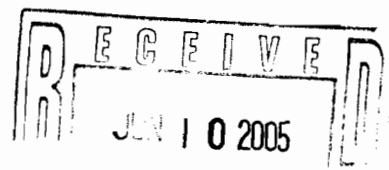
Please do not hesitate to contact us with any questions.

Sincerely,  
Benchmark Environmental Engineering & Science, PLLC



Paul H. Werthman, P.E.  
President

- C: P. Krög (Seneca Market 1, LLC)  
B. Putzig (NYSDEC Reg. 8)  
D. Chiusano (NYSDEC Albany)



**BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION**

ECL ARTICLE 27, TITLE 14

9/3/04

NAME Seneca Market 1, LLC (TBD, General Manager)		
ADDRESS 4 Centre Drive		
CITY/TOWN Orchard Park, New York		ZIP CODE 14127
PHONE 716-667-1234	FAX 716-667-1258	E-MAIL plkrog@krogcorp.com
NAME OF APPLICANT'S REPRESENTATIVE Peter L. Krog		
ADDRESS 4 Centre Drive		
CITY/TOWN Orchard Park, New York		ZIP CODE 14127
PHONE 716-667-1234	FAX 716-667-1258	E-MAIL plkrog@krogcorp.com
<p>THE APPLICANT MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:</p> <p><input type="checkbox"/> PARTICIPANT An applicant 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.</p> <p><input checked="" type="checkbox"/> VOLUNTEER An applicant other than a participant, including an applicant 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.</p> <p>NOTE: By checking this box, the applicant 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; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.</p>		
Applicant Relationship to Property (check one): <input type="checkbox"/> Previous Owner <input type="checkbox"/> Current Owner <input type="checkbox"/> Potential /Future Purchaser <input checked="" type="checkbox"/> Other <u>Current Owner Part/Future Owner Remainder</u>		
OWNER'S NAME (if different from applicant) See Attachment 1 for listing of current owners		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
OPERATOR'S NAME (if different from applicant)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL

SITE NAME Seneca Market 1, LLC Site			
SITE ADDRESS Franklin, First, & Decatur Street		CITY/TOWN Watkins Glenn	ZIP CODE 14819
COUNTY Schuyler		SITE SIZE (ACRES) Approximately 2.5	
LATITUDE (degrees/minutes/seconds) 42° 22' 59.13"		LONGITUDE (degrees/minutes/seconds) 76° 52' 27.96"	

PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE LOCATION AND BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED.

1. DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? ☒ YES ☐ NO  
IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE.
2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME) \_\_\_\_\_ ☐ YES ☒ NO
3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6)? FOR MORE INFORMATION GO TO: [http://www.nylovesbiz.com/Productivity\\_Energy\\_and\\_Environment/BrownField\\_Redevelopment/default.asp](http://www.nylovesbiz.com/Productivity_Energy_and_Environment/BrownField_Redevelopment/default.asp) ☐ YES ☒ NO  
IF YES, IDENTIFY AREA (NAME) \_\_\_\_\_

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1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE? ☐ YES ☒ NO
2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE? ☐ YES ☒ NO
3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27? ☐ YES ☒ NO
4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP? ☐ YES ☒ NO
5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM? ☐ YES ☒ NO
6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD, BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION? ☐ YES ☒ NO
7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT? ☐ YES ☒ NO
8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), 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

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1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)? ☒ YES ☐ NO
2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST? ☐ YES ☒ NO
3. IS THE SITE LISTED ON THE NYS REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES? ☒ YES ☐ NO  
IF YES, PLEASE PROVIDE: SITE # 8-49-002 CLASS # 2
4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY? ☐ YES ☒ NO
5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10? ☐ YES ☒ NO
6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM? ☒ YES ☐ NO

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PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS:

- PURPOSE AND SCOPE OF THE PROJECT
- ESTIMATED PROJECT SCHEDULE

TO THE EXTENT THAT EXISTING INFORMATION/STUDIES/REPORTS ARE AVAILABLE TO THE APPLICANT, PLEASE ATTACH THE FOLLOWING:

1. **ENVIRONMENTAL DATA**

A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT PREPARED IN ACCORDANCE WITH ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), AND ALL ENVIRONMENTAL REPORTS RELATED TO CONTAMINANTS ON OR EMANATING FROM THE SITE.

IF A FINAL INVESTIGATION REPORT IS INCLUDED, INDICATE WHETHER IT MEETS THE REQUIREMENTS OF ECL ARTICLE 27-1415(2):

☐ YES ☐ NO

2. **OWNERS**

A LIST OF PREVIOUS OWNERS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER LISTED. IF NO RELATIONSHIP, PUT "NONE").

3. **OPERATORS**

A LIST OF PREVIOUS OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBER (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OPERATOR LISTED. IF NO RELATIONSHIP, PUT "NONE").

PLEASE ATTACH, AT A MINIMUM, THE NAMES AND ADDRESSES OF THE FOLLOWING:

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.
2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.
3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.
4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.
5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.
6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.
7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G., LOCAL LIBRARY)

INDICATE KNOWN OR SUSPECTED CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN OR SUSPECTED TO HAVE BEEN AFFECTED:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum	✓	✓			✓
Chlorinated Solvents		✓			✓
Other VOCs	✓	✓			✓
SVOCs	✓				
Metals					
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

Current Use: ☐ Residential ☒ Commercial ☐ Industrial ☐ Other \_\_\_\_\_

Future Use: ☐ Residential ☒ Commercial ☐ Industrial ☒ Other 8-49-002

Please check the appropriate boxes and provide an explanation as an attachment if appropriate.

Yes No Unknown

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

☒ ☐ ☐

2. Is the proposed use consistent with applicable zoning laws/maps?

☒ ☐ ☐

3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Are there any federal or State land use designations relating to this site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the site accessible to existing infrastructure?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Are there floodplains proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Are there any institutional controls currently applicable to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas.			
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas.			
15. Describe on attachment the geography and geology of the site.			
(Note: the 16 <sup>th</sup> criteria relates to comments from the public, which would not be received at the time of application)			

(By applicant who is an individual)  
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: 2 Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

(By an applicant other than an individual)  
I certify that I am \_\_\_\_\_ (title) of \_\_\_\_\_ (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and 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: 5/2/05 Signature: [Signature] Print Name: Percey

#### SUBMITTAL INFORMATION:

Three (3) complete copies are required.

- Two (2) copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) on a CD or diskette, 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

- One (1) hard copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/der/index.html>

#### FOR DEPARTMENT USE ONLY

BCP SITE NO: \_\_\_\_\_ BCP SITE T&A CODE: \_\_\_\_\_ PROJECT MANAGER: \_\_\_\_\_

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# ATTACHMENT 1

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## PROPERTY OWNERSHIP INFORMATION

SENECA MARKET I SITE  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BROWNFIELD CLEANUP PROGRAM APPLICATION

**PROPERTY OWNERSHIP INFORMATION**  
(SEE ATTACHED TAX MAP & SURVEY)

<b>SBL #</b>	<b>SIZE (ACRES)</b>	<b>OWNER NAME &amp; ADDRESS</b>
65.09-2-59.2	0.29	SENECA MARKET I, LLC 4 CENTRE DRIVE ORCHARD PARK, NY 14127 TEL. 716-667-1234 FAX 716-667-1258
65.09-2-59.1	0.2	SENECA MARKET II, LLC 4 CENTRE DRIVE ORCHARD PARK, NY 14127 TEL. 716-667-1234 FAX 716-667-1258
65.09-2-58	0.13	SALVATORE & MARION SCATA 1809 PRAIRIE DUNES CIRCLE LAKELAND, FLORIDA 33810
65.09-2-56	1.76	SCHULYER COUNTY IDA <sup>(1)</sup> 2 N. FRANKLIN STREET SUITE 330 WATKINS GLEN, NY 14891 TEL. 607-535-4341 FAX 607-535-7221
65.09-2-61.2	0.19	SCHULYER COUNTY IDA 2 N. FRANKLIN STREET SUITE 330 WATKINS GLEN, NY 14891 TEL. 607-535-4341 FAX 607-535-7221

1. Currently being leased from Schuyler County IDA with an option to purchase for \$1.00 plus all unpaid payments in lieu of taxes under the current pilot agreement.

TAX MAP & SURVEYS

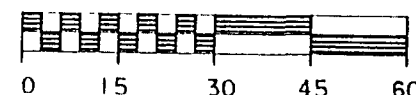




reputed  
Lakeside Development, Inc.  
L270, p33

Scata  
L282, p188

William Coon  
Veterans Association, Inc.  
L92, p330



"Alteration of or addition to a Survey Map bearing a Licensed Land Surveyor's Seal is a violation of Section 7209, of the New York State Education Law except as provided by Section 7209(2)."

"Any copy of this survey map not bearing the Land Surveyor's original signature and embossed seal shall NOT be considered a true and valid copy."

This map prepared by  
Robinson Surveying & Mapping  
117 Tenth Street, Watkins Glen, NY 14891  
Telephone: (607) 535-7643

#### Legend of Symbols

- P.O.B. Point of beginning  
5/8 inch dia. steel rod with survey cap  
utility pole / overhead electric  
fire hydrant  
dred line

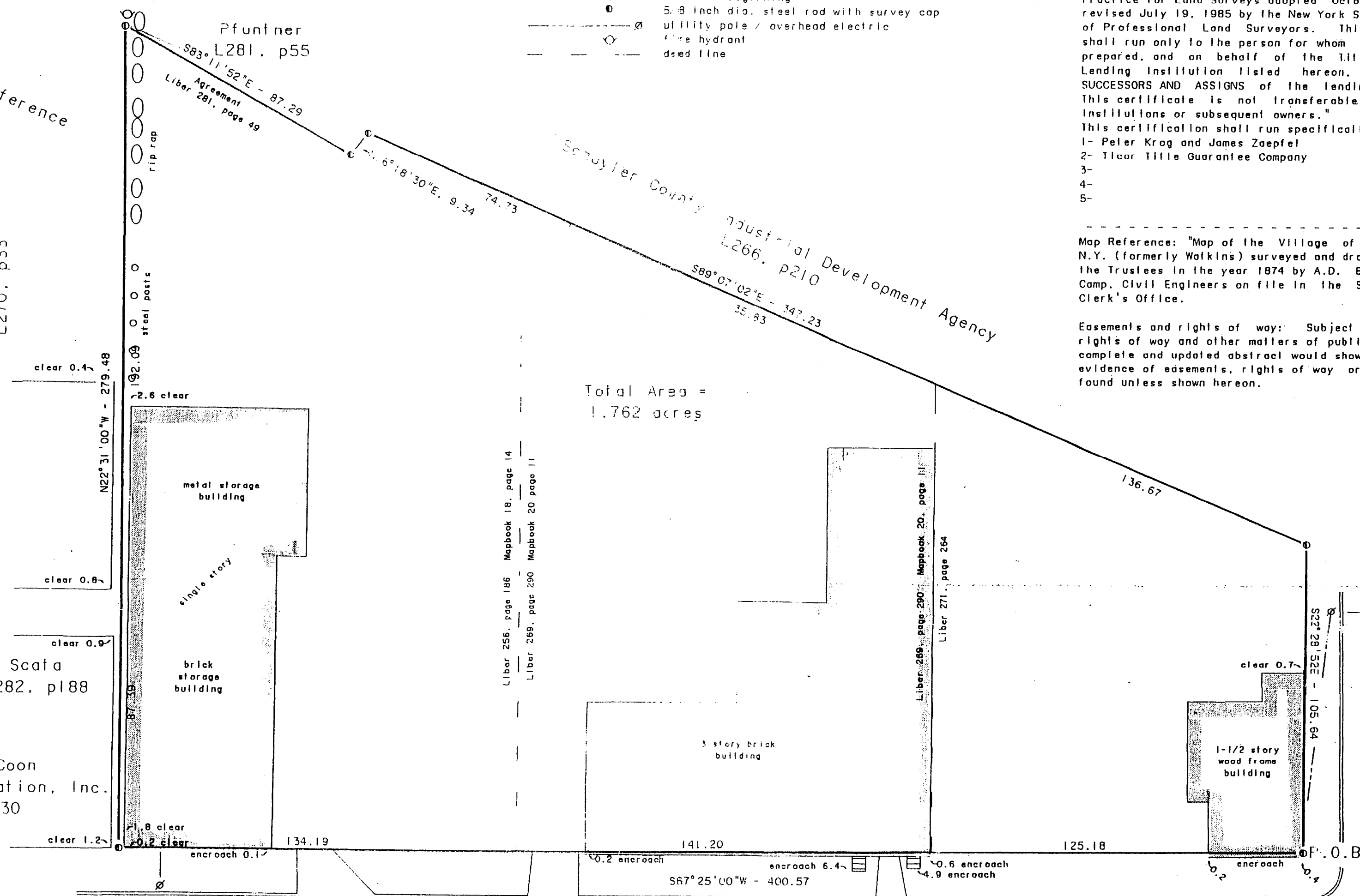
Certification: "It is hereby certified that this survey map was prepared in accordance with the Code of Practice for Land Surveys adopted October 1966, last revised July 19, 1985 by the New York State Association of Professional Land Surveyors. This Certification shall run only to the person for whom the survey was prepared, and on behalf of the Title Company and Lending Institution listed hereon, and to the SUCCESSORS AND ASSIGNS of the lending institution. This certificate is not transferable to additional institutions or subsequent owners."

This certification shall run specifically to:

- 1- Peter Krog and James Zaepfel
- 2- Ticor Title Guarantee Company
- 3-
- 4-
- 5-

Map Reference: "Map of the Village of Watkins Glen, N.Y. (formerly Watkins) surveyed and drawn by order of the Trustees in the year 1874 by A.D. Beach and F.A. Camp, Civil Engineers on file in the Schuyler County Clerk's Office."

Easements and rights of way: Subject to easements, rights of way and other matters of public record that a complete and updated abstract would show. No physical evidence of easements, rights of way or encroachments found unless shown hereon.



Map of lands to be conveyed to  
**PETER KROG & JAMES ZAEPFEL**

Scale  
1" = 30'

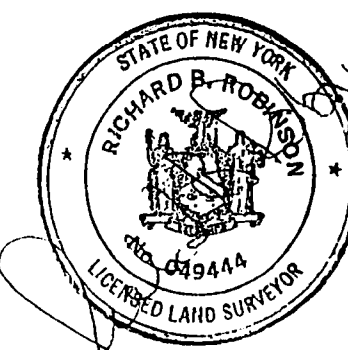
Drawn by  
DOS

Date  
November 21, 1991

Tax Parcels  
65.09-2-54,53

First Street  
Village of Watkins Glen  
Town of Dix  
Schuyler County, NYS

Page No. 36-232 | Project No. 91140

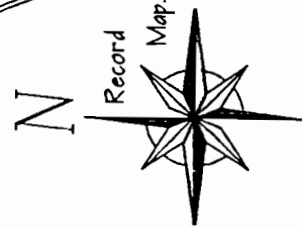


Lincoln Way  
(agreement L281, p49 14' wide)

Wine & Glass, Tour, Inc.  
L314, p322 survey MB21, p121B122

- Legend of Symbols
- P.O.B. Point of beginning
  - ⊕ survey marker, PK nail or 3/8 rod
  - + calculated point (no monument)
  - ⊙ iron rod
  - ⊖ iron pipe
  - ⊙ monitoring well
  - ⊙ utility pole / overhead electric light
  - ⊙ water valve
  - ⊙ gas valve
  - ⊙ electric pedestal/outlet
  - ⊙ sign
  - ⊙ manhole
  - ⊙ hydrant

Schuyler County Industrial Development Agency, Inc.  
L290, p462 survey MB24, p63



This map prepared by  
**Robinson Surveying & Mapping**  
117 Tenth Street, Watkins Glen, NY 14891  
Telephone: (507) 535-7643



"It is hereby certified that this survey map was prepared in accordance with the existing Code of Practice for Land Surveys by the New York State Association of Professional Land Surveyors. This certificate is not transferable to additional institutions, third parties or subsequent owners. This certification shall run specifically to:

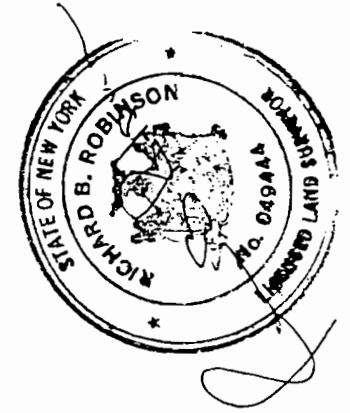
- 1- Peter L. Krog
- 2- Donald A. Narde, Jr.
- 3- Ticor Title Insurance Company
- 4- Ziff, Weismiller, Hayden & Mustico LLP
- 4- Peter S. Gilfillan, Esq.

Deed Reference: Osco W. Peterson, Referee to Donald A. Narde, Jr. dated June 25, 1992; recorded July 30, 1992 in Liber 293, page 8.

Map References: 1- "Village of Watkins Glen" by A.D. Beach and F.A. Camp dated 1974; recorded in Schuyler County Clerk's Office. 2- "White Water Development" dated September 19, 1985; recorded August 8, 1988 in Mapbook 20 at page 29.

Abstract Reference: Donald A. Narde, Jr. by Finger Lakes Abstract Corp. dated September 21, 1999

Easements and rights of way: Subject to easements, rights of way and other matters of public record that a complete and updated abstract would show. No physical evidence of easements, rights of way or encroachments found unless shown hereon.



Map of lands to be conveyed to

**Peter L. Krog**

Scale: 1" = 20' 86174 FRA Drawn by: DOS  
Date: October 20, 1999 Tax Parcel: 65.09-2-59

North Franklin Street  
Village of Watkins Glen  
Town of Dix, Schuyler Co., NYS

Page No. 1120C Project No. 83183 M3

65.09-2-27.2, 071, 36

SENECA

LAKE

61.111

1.64A

1.1A(C)

61.2

3.12A

191.25

199.41

71.75

97.96

99.04

101.42

FORMER

Simile

61.114

0.36A

108.96

59.2

0.29A

100

59.1

0.20A

58

0.13A

57

0.13A

CONSOLIDATED

RAIL

VILLAGE UTILITY

135.83

136.67

169.36

32.88

56

1.762A

DECATUR

125.18

STREET

FIRST

53

7.09A

51

0.69A

SECOND

STREET

124.58

6

0.36A

P. 03

607 535 7221

MAY-27-05 05:06 PM SCOPED, INC

LEASE AGREEMENT BETWEEN  
SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
AND  
PETER KROG & JAMES A. ZAEPFEL

SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

PETER KROG and JAMES <sup>A.</sup> ZAEPFEL  
<sub>A</sub>

---

LEASE AGREEMENT  
DATED AS OF DECEMBER 2, 1991

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-2-

THIS LEASE AGREEMENT dated as of December 2, 1991, between the SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 208 Broadway, Montour Falls, New York 14865 (the "Agency") and PETER KROG and JAMES A. ZAEPFEL, having an office at 5505 Main Street, Williamsville, New York 14221 (the "Company").

#### R E C I T A L S

Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York;

The aforesaid Act authorizes the creation of industrial development agencies for the Public Purposes of the State:

The aforesaid Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable.

Pursuant to and in accordance with the provisions of the aforesaid Act, the Agency was created and is empowered under the Act to undertake the leasing of the facility described on Schedule "A" annexed hereto (the "Facility");

The Agency proposes to lease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in this Lease Agreement.

#### AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

#### ARTICLE I

##### REPRESENTATIONS AND COVENANTS

Section 1.1 Representations and Covenants of Agency.  
The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute this Lease.

-3-

(b) The Agency will cause the Facility to be constructed and equipped and will lease the Facility to the Company pursuant to this Lease, all for the Public Purposes of the State.

(c) Neither the execution and delivery of this Lease nor the fulfillment of or compliance with the provisions of the Lease will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound.

(d) This Lease constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

Section 1.2 Representations and Covenants of Company.  
The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company has full legal right, power and authority to execute, deliver and perform this Lease and this Lease has been duly executed and delivered by the Company.

(b) Neither the execution and delivery of this Lease nor the fulfillment of or compliance with the provisions of this Lease will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof or any restriction or any agreement or instrument to which the Company is a party or by which it is bound.

(c) The Facility and the design, acquisition, construction, equipping, use and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility.

## ARTICLE II

### CONSTRUCTION AND EQUIPPING OF FACILITY

#### Section 2.1 Construction and Equipping of Facility.

(a) The Company agrees that, on behalf of the Agency, it will construct and equip the Facility.

(b) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency (i)

-4-

to construct and equip the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other party, and in general to do all things which may be requisite or proper, all for constructing and equipping the Facility with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the construction, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the construction, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

(c) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 2.1.

Section 2.2 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties.

In the event of a default by any contractor, subcontractor, materialman or other party under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other party so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other party which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The proceeds of any recovery from a contractor or subcontractor or materialman or other party shall be the property of the Company.

ARTICLE III

DEMISING CLAUSES AND RENTAL PROVISIONS

Section 3.1 Demise of Facility. The Agency hereby leases the Facility to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Lease.



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### Section 3.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 6.3 and 8.2 hereof) and the leasehold estate created hereby shall commence on the date hereof and the Company shall accept possession of the Facility on the date hereof.

(b) Except as provided in Section 8.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on January 1, 2012 or on such earlier date as may be permitted by Section 9.1 hereof.

(c) Except as provided in Sections 6.3 and 8.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 3.3 Rents and Other Amounts Payable. The Company shall pay basic rent for the Facility as follows:

One Dollar (\$1.00) per year payable on the first day of December, 1991 and on the first day of each and every December thereafter during the term of this Lease.

## ARTICLE IV

### PAYMENTS IN LIEU OF TAXES AND INSURANCE

#### Section 4.1 Payments in Lieu of Taxes and Assessments.

The Company agrees to pay, as the same become due, all payments required to be paid pursuant to the payment in lieu of tax agreement ("PILOT Agreement") between the Company and the Agency of even date herewith and all special assessments from time to time assessed against the Facility.

Section 4.2 Insurance. At all times throughout the Lease Term, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 6.2 hereof) and arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal

injury, including bodily injury or death, and property damage) and with a blanket excess liability coverage in an amount not less than \$3,000,000 combined single limit or equivalent protecting the Agency and the Company against any loss or liability or damage for person injury, including bodily injury or death, or property damage.

Section 4.3 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 4.2 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State of New York. The policy evidencing the insurance shall name the Agency as additional insured.

(b) A copy of the policy or original certificate (or original binders) of insurance hereof shall be delivered to the Agency on or before the date hereof. Prior to the expiration of each such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced. The Company shall provide such further information with respect to the insurance coverage required by this Lease as the Agency may from time to time reasonably require.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage or Destruction of the Facility.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Lease Term there shall be no abatement or reduction in the amounts payable by the Company under this Lease or the PILOT Agreement.

(b) The Company shall be entitled to all insurance proceeds from any casualty loss.

Section 5.2 Condemnation.

(a) If title to or use of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Lease Term, there shall be no abatement or reduction in the amounts payable by the Company under this Lease or the PILOT Agreement.

(b) The Company shall be entitled to the proceeds of any condemnation award.

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## ARTICLE VI

SPECIAL COVENANTS

Section 6.1 No Warranty of Condition or Suitability by Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 6.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency shall not be liable for and agrees to defend, indemnify, release and hold the Agency harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all parties that may be occasioned by, directly or indirectly, any cause whatsoever, pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Facility or the Land or (ii) liability arising from or expense incurred by the Agency's construction and equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company or any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 2.1(d) of this Lease and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its members, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligations or the application of any rule of comparative or apportioned liability.

(b) Notwithstanding any other provisions of this Lease, the obligations of the Company pursuant to this Section 6.2 shall remain in full force and effect after the termination of this Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency, or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, officers, agents or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 6.3 Right to Inspect Facility. The Agency and its duly authorized agents shall have the right at all reasonable times to inspect the Facility.

Section 6.4 Agreement to Provide Information. The Company agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations and its affairs necessary to enable the Agency to make any report required by law or any governmental regulation.

Section 6.5 Books of Record and Account. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Company.

Section 6.6 Compliance with Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof or to the construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers and companies or associations insuring and having jurisdiction over the Facility or any part thereof, or to the construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) The Company shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any contractor,

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subcontractor, tenant or subtenant, a release of Hazardous Materials onto the Facility or onto any other property. The Company shall comply with and ensure compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Facility (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, (ii) to the satisfaction of the Agency and (iii) in accordance with the orders and directives of all federal, state, and local governmental authorities; and (b) defend, indemnify, and hold harmless the Agency, its employees, agents, officers, and members, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (i) the presence, disposal, release or threatened release of any Hazardous Materials which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (ii) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached, or governmental order relating to such Hazardous Materials, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this Section, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Superfund Amendments and Reauthorization Act of 1986 (Pub.L. No. 99-499, 100 stat. 1613 (1986), the Hazardous materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Agency at common law, and shall survive the transactions contemplated herein.

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(c) Notwithstanding the provisions of subsections (a) and (b) hereof, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to Agency.

(d) Notwithstanding the provisions of this Section 6.6, if, because of a breach or violation of the provisions of subsections (a) or (b) hereof (without giving effect to subsection (c) hereof), the Agency or any of its members, officers, agents, or employees, shall be threatened with a fine or imprisonment, then, upon notice from the Agency, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Agency and its members, officers, agents and employees sufficient, to the extent permitted by applicable law, to remove the threat of such fine or imprisonment.

(e) Notwithstanding any provision of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Materials. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Company.

Section 6.7 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

## ARTICLE VII

### SALE OF FACILITY; ASSIGNMENTS

#### Section 7.1 Restriction on Sale of Facility.

Except as otherwise specifically provided in this Article VII and in Article VIII hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part hereof or any of its rights under this Lease, without the prior written consent of the Company.

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Section 7.2 Assignment.

(a) This Lease may not be assigned, in whole or in part except on the following conditions:

(i) the assignee assumes the obligations of the Company hereunder to the extent of the interest assigned;

(ii) the Company furnishes to the Agency a true and complete copy of such assignment and the instrument of assumption;

Section 7.3 Merger of Agency.

(a) Nothing contained in this Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title to the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, provided that upon such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default Defined. The following shall be "Events of Default" under this Lease:

(i) the failure by the Company to pay or cause to be paid the amount specified to be paid pursuant to Section 3.3 hereof within twenty (20) days after written notice of such failure given to the Company by the Agency ;

(ii) the failure by the Company to observe and perform any covenant contained in the PILOT Agreement within ten (10) days after receipt of written notice of such failure given to the Company by the Agency;

(iii) the failure by the Company to observe and perform any other covenant, condition or agreement hereunder on its part to be observed or performed for a period of thirty (30)

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days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency.

#### Section 8.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable (A) all unpaid installments of rent payable pursuant to Section 3.3 hereof; (B) the unamortized portion of the principal payments required to be paid pursuant to Paragraphs 3(a) and (b) of the PILOT Agreement and (C) all other payments due under this Lease.

(ii) terminate, on ten (10) days written notice to the Company, the Lease Term and all rights of the Company under this Lease and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Facility and lease the Facility to another party for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other party under the new lease and for all unpaid payments in lieu of taxes pursuant to Sections 3(a) and (b) of the PILOT Agreement;

(iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and under the PILOT Agreement, to secure possession of the Facility, and to enforce the obligations, agreements or covenants of the Company under this Lease and under the PILOT Agreement.

(b) No action taken pursuant to this Section 8.2 (including repossession of the Facility) shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof or under Sections 3(a) or (b) of the PILOT Agreement.

### ARTICLE IX

#### EARLY TERMINATION OF LEASE; OPTION IN FAVOR OF COMPANY

Section 9.1 Early Termination of Lease. The Company shall have the option to terminate this Lease at any time upon filing with the Agency a certificate stating the Company's intention to do so pursuant to this Section and the date upon which such termination shall occur.



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Section 9.2 Conditions to Early Termination of Lease.

In the event the Company exercises its option to terminate this Lease in accordance with the provisions of Section 9.1 hereof, the Company shall pay to the Agency an amount equal to all unpaid payments in lieu of taxes pursuant to Section 4 of the PILOT Agreement.

Section 9.3 Obligation to Purchase Facility.

Upon termination or expiration of the Lease Term, the Company shall purchase the Facility from the Agency for the purchase price of One Dollar (\$1.00) plus all unpaid payments in lieu of taxes pursuant to Section 4 of the PILOT Agreement. The Company shall purchase the Facility by giving written notice to the Agency (i) declaring the Company's election to purchase and (ii) fixing the date of closing such purchase, which shall be the date on which this Lease is to be terminated.

Section 9.4 Conveyance on Purchase.

At the closing of any purchase of the Facility pursuant to Sections 9.1 and 9.3 hereof, the Agency shall, upon receipt of the purchase price, deliver to the Company all necessary documents to convey to the Company title to the Facility subject only to the following: (A) any liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (B) any liens or encumbrances existing on the date hereof and (C) any liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease or arising out of an Event of Default hereunder.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Schuyler County Industrial Development Agency  
208 Broadway  
Montour Falls, New York 14865

To the Company:

Peter Krog  
James<sup>A</sup> Zaepfel  
5505 Main Street  
Williamsville, New York 14221

Any such notice shall be deemed to have been given upon receipt or upon refusal of the party being notified to accept delivery of such notice.

Section 10.2 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 10.3 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.4 Amendments, Changes and Modifications. This Lease may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto.

Section 10.5 Execution of Counterparts. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.6 Applicable Law. This Lease shall be governed exclusively by the applicable laws of the State of New York without regard or reference to its conflict of law principles.

Section 10.7 Subordination of Fee Interest.

The Agency covenants, warrants and agrees whenever and as often as Company may request, during the existence of this Lease, to mortgage its fee title to the Facility and to subject and subordinate the said title and the Agency's interest in this Lease to the lien of any mortgages for the benefit of the Company.

The Agency covenants, warrants and agrees whenever and as often as Company may request, to join in the execution of notes or bonds and mortgages, and such related and customary instruments as may be required to impose valid liens on the Facility, or any portion or portions thereof that may be designated by the Company, and to execute such amendments and modifications to this Lease and documents in connection with such mortgages as may be reasonably required by the mortgagees. The aforesaid instruments and/or mortgages shall be secured by the Facility or such parts thereof as shall be designated by the Company.

The Agency's obligation to join in the execution of the aforesaid mortgage instruments shall be subject to the condition that the notes, bonds and mortgages and related instruments by

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their terms shall provide that there shall be no personal liability thereunder on the part of the Agency and that the obligees and mortgagees shall look solely to the security of the mortgage for repayment.

Section 10.8 Limitation of Liability.

Notwithstanding anything contained in this Lease to the contrary, the Company and the entities or persons comprising the Company shall have no personal liability for the payment of any sums due hereunder or for the performance of any of the terms, covenants and conditions contained herein. In the event the Company defaults in making any payments hereunder or in performing any of the terms, covenants and conditions contained herein, the Agency shall have recourse to the Company's interest in the Facility only and shall not seek to enforce any judgment against any of the other assets of the Company or of the individuals or entities comprising the Company.

Section 10.9 Interim Lease. The Agency and the Company hereby acknowledge that this Lease is intended to be an interim lease and is intended to be amended and restated at such time as the Agency issues its industrial revenue bond for the construction and equipping of the Facility.

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease to be executed in their respective names by their duly authorized officers, all as of December 2, 1991.

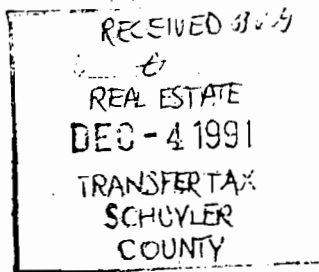
AGENCY:

SCHUYLER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By

*David Merriweather*, Chairman  
David Merriweather,  
Chairman

COMPANY:

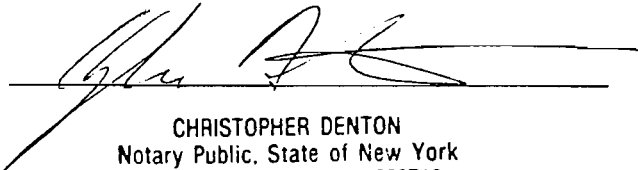


*Peter Krog*  
PETER KROG

*James Zaepffel*  
JAMES ZAEPFEL  
A.


STATE OF NEW YORK )  
COUNTY OF SCHUYLER ) SS:

On the 2nd day of December, 1991, before me personally appeared David Merriweather, to me known, who, being by me duly sworn, did depose and say that he resides at Montour-Townsend Rd., Montour Falls, New York; that he is the Chairman of the SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, Schuyler County, New York, the public benefit corporation of the State of New York described in and which executed the within Lease; and that he signed his name thereto by order of the members of said public benefit corporation.

  
CHRISTOPHER DENTON  
Notary Public, State of New York  
Chemung County, No. 4663718  
Commission Expires Nov. 30, 1993

STATE OF NEW YORK )  
COUNTY OF SCHUYLER ) SS:

On this 2nd day of December, 1991 before me, the subscriber, personally appeared PETER KROG and JAMES A. ZAEFFEL, to me known and known to me to be the same person described in and who executed the within instrument, and they acknowledged to me that they executed the same.

  
PETER S. GILFILLAN  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Nov. 30, 1993

between  
SCHUYLER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY  
and  
PETER KROG and JAMES ZAEFFEL

Dated: December 2, 1991

SCHUYLER COUNTY IS  
RECORDED ON THE 4 DAY OF  
Dec 19 91 AT 10:41 O'CLOCK  
P. M. BY REC. 37 OF CLERK  
PAGE 237 AND EXAMINED  
P. S. Gilfillan, Esq.

RECORD AND RETURN TO:  
Peter S. Gilfillan, Esq.  
Gross, Shuman, Brizdole & Gilfillan, P.C.  
465 Main St., Suite 600  
Buffalo, New York 14203  
(716) 854-4300

SENECA MARKET I SITE  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BROWNFIELD CLEANUP PROGRAM APPLICATION

ACCESS AGREEMENT FOR PARCEL NUMBERS  
65.09-2, 59.2, 59.1, AND 56

**SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

2 N. Franklin Street, Suite 330, Watkins Glen, NY 14891 - (607) 535-4341

May 27, 2005

Peter Krog  
The Krog Corporation  
4 Centre Drive  
Orchard Park NY 14127

Dear Peter:

As the Schuyler County Industrial Development Agency who holds title to the property tax parcel number's 65.09-2, 59.2, 59.1 and 56 we give you full access to carry on with your project.

Sincerely,

*Kevin Murphy*

Kevin Murphy  
Chair

**SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

2 N. Franklin Street, Suite 330, Watkins Glen, NY 14891 - (607) 535-4341

# Fax

<b>To:</b> Scott Fairbrother, Krog Corp.	<b>From:</b> Anne Bailey
<b>Fax:</b> 716-667-1258	<b>Pages:</b> 2
<b>Phone:</b>	<b>Date:</b> May 27, 2005
<b>Re:</b> Krog Property	<b>CC:</b>
<input type="checkbox"/> Urgent <input checked="" type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle	

**• Comments:**

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## ATTACHMENT 2

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### PROJECT DESCRIPTION/SCHEDULE



**Seneca Market I, LLC  
Seneca Harbor Hotel, Watkins Glen, New York  
Brownfield Cleanup Program Application**

**Project Description and Schedule**

**Background**

Seneca Market I, LLC and Seneca Market II, LLC (hereafter referred to jointly as Seneca Market) own 0.29 and 0.2-acre parcels, respectively within the block bounded by Franklin, First, Decatur Streets, and the Finger Lakes Railway right-of-way in the Village of Watkins Glen, Schuyler County, New York (see Figures 1 and 2). Seneca Market has an option on a 1.76-acre parcel and 0.13-acre parcel within this same block. The approximately 0.29-acre parcel, located along North Franklin Street, contains the Seneca Market building, a multipurpose shopping and office building located along the northern side of the property. The approximately 0.20-acre parcel contains the former Glen Vintage Auto Museum (presently unoccupied). The western portion of the 1.76-acre parcel contains a large block building that was formerly used as a bus garage and is currently leased to Seneca Hardwoods, a manufacturer of custom flooring. A building foundation, reputedly a remnant of a former Welch's Grape facility, also remains on the 1.76-acre parcel.

The 0.13-acre parcel contains a structure deemed the "former dry cleaning building." This is a two-story brick building that includes two (2) unoccupied single-story brick sheds to the east. A VFW building is located immediately south of the former dry cleaning building, but is outside of the 0.13-acre property limits. The former dry cleaning building is presently occupied by a real estate firm.

The parcels have a history of use that dates back to the 1860s. The Seneca Market building has formerly been used as a foundry; a flour and grist mill; and most recently retail shops on the first floor and professional office space on the second and third floors. A marble works building was formerly present just south of Seneca Market until it was destroyed in 1970. The former Auto Museum was previously used for miscellaneous storage, in particular auto parts. The dry cleaning building has mainly been used for retail businesses, a machine shop, and for dry cleaning operations.

**Environmental Investigations and Remedial Efforts**

*Chlorinated Organic-Impacted Area*

A 1991 Environmental Assessment of the Site revealed that groundwater under a portion of the property (i.e., 20 Franklin Street at the corner of North Franklin and First) was contaminated with chlorinated organic compounds associated with the former dry cleaning operations. NYSDEC subsequently listed an approximate 0.3-acre portion of the property as a Class 2 inactive hazardous waste

site (i.e., "the North Franklin Street Site" - NYSDEC Registry No. 8-49-002). The inactive hazardous waste site encompasses the 0.13-acre parcel, including the former dry cleaner building, and a portion of the 0.20-acre parcel. A Remedial Investigation/Feasibility Study (RI/FS) performed and completed in 1993 by URS Consultants under a Standby Contract with the NYSDEC delineated the extent of soil and groundwater contamination on and adjacent to the Franklin Street site. URS subsequently designed remediation systems to treat soil and groundwater, pursuant to a Record of Decision (ROD) signed in 1994. The remedial measures included a soil vapor extraction (SVE) system to treat shallow VOC-impacted soil, and a groundwater pump and treat system to extract and treat groundwater adjacent to the former dry cleaner building. The systems were placed into operation in Fall of 1996. Confirmatory soil samples collected during remediation indicated that SVE had effectively cleaned up the soil near the extraction wells, underneath the former auto museum, and to the rear of the former dry cleaning building. However, in the process of collecting the confirmatory soil samples, it was discovered that the soil contaminant concentrations in the immediate vicinity of the dry cleaning building were much higher and extended deeper into clay than previously thought. SVE did not clean up this area of highly contaminated soil to cleanup objectives despite subsequent modifications to and extended operation of the SVE system. Operation of the SVE system was suspended in March 1998 and operation of the groundwater treatment system was suspended at the end of April 1998, pending the results of further investigations.

In 1998/1999, URS performed additional soil investigations and cleanup technology feasibility studies to evaluate deeper soil contamination. It was concluded that chlorinated organic compounds remained on-site in a small area directly adjacent to and outside the former dry cleaning building, as well as beneath the dry cleaner building at depths greater than 16 feet. A chemical oxidation pilot study conducted from March through May 2000 significantly reduced the mass of chlorinated contaminants in Site soils. Despite the reduction, localized areas of residual chlorinated organic contamination remain in soils and groundwater adjacent to and beneath the former dry cleaner building. In March 2004, an active venting system was installed within the former dry cleaner building to control the potential indoor migration of vapors from the residual contamination. In addition, deed restrictions were placed on the inactive hazardous waste site to prevent usage of groundwater and contact with residual soil contamination.

#### *Other Areas*

A Phase I Environmental Site Assessment (ESA) was performed in November 1991 for the parcels on the eastern portion of the subject property. The ESA identified several potential environmental conditions including possible underground storage tanks, drums, an inoperable piston arrangement for a hydraulic lift, and oil spills near the corner of First and Decatur Streets. Petroleum hydrocarbons, lower levels of chlorinated hydrocarbons, and several elevated inorganic compounds related to the above described conditions were detected in the

soil and groundwater during the RI/FS. Two areas on the larger parcel that contained soil heavily contaminated with benzene, toluene, ethylbenzene, and xylene (BTEX) were excavated and bioremediated off-site in the late 1990s. As such, residual BTEX contamination in soil and groundwater may exist proximate to these historic source areas. In addition, the RI identified BTEX contamination in soil/fill and groundwater beneath the former bus garage near the former dry cleaner building. While SVE and/or insitu oxidation treatment of the chlorinated organic impacted soils may have partially addressed the BTEX impacted soils, there is likely residual BTEX contamination in soil/fill beneath the former bus garage.

### **Intended Future Use of Site**

Seneca Market plans to redevelop the approximately 2.38-acre site as a hotel complex (see Figure 3). An additional 0.19-acre parcel along the railroad and 0.21-acre property south of First Street will also be incorporated in the plan to provide space for a hotel veranda and ancillary parking, respectively. With the exception of the Seneca Market building, all buildings and foundations within this entire 2.77-acre site will be demolished to facilitate redevelopment efforts. Areas within the site that are not incorporated into the hotel or related structures will be covered by asphalt parking areas, driveway and landscaping.

### **Schedule**

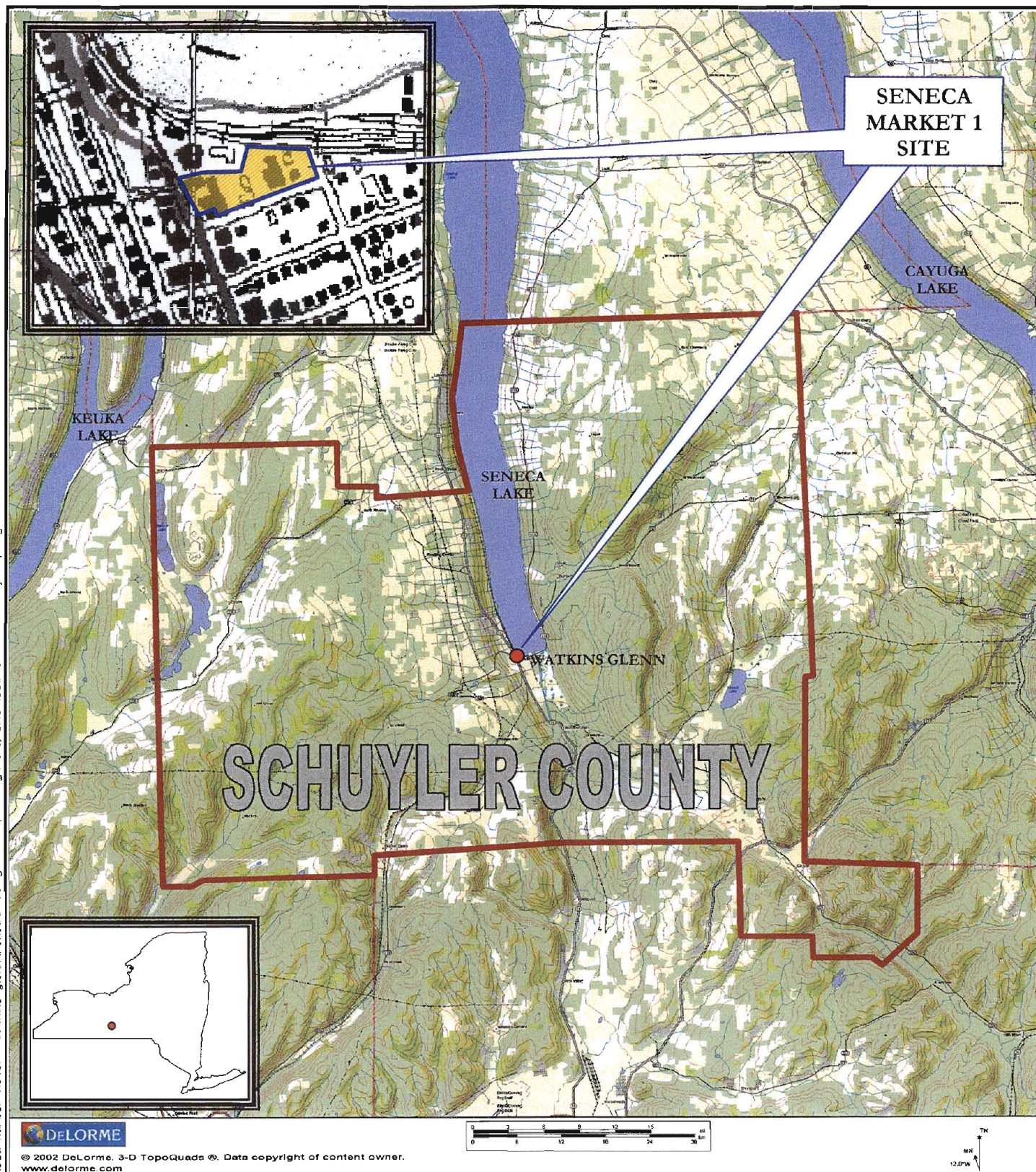
A proposed Project Schedule is attached.

### **References**

The Brownfield Cleanup Program (BCP) Application requests that any existing investigation documents be enclosed with the BCP Application. The investigation and remedial work performed to-date on the site has been led by the NYSDEC. Consequently, the NYSDEC already maintains copies of these documents on file. However, for illustration purposes Attachment 3 presents the planned hotel redevelopment relative to areas of soil and groundwater contamination as determined during previous investigations.



FIGURE 1



SENECA  
MARKET 1  
SITE

CAYUGA  
LAKE

KEUKA  
LAKE

SENECA  
LAKE

WATKINS GLENN

SCHUYLER COUNTY



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## SITE LOCATION AND VICINITY MAP

BROWNFIELDS CLEANUP PROGRAM

SENECA MARKET 1 SITE  
WATKINS GLENN, NEW YORK

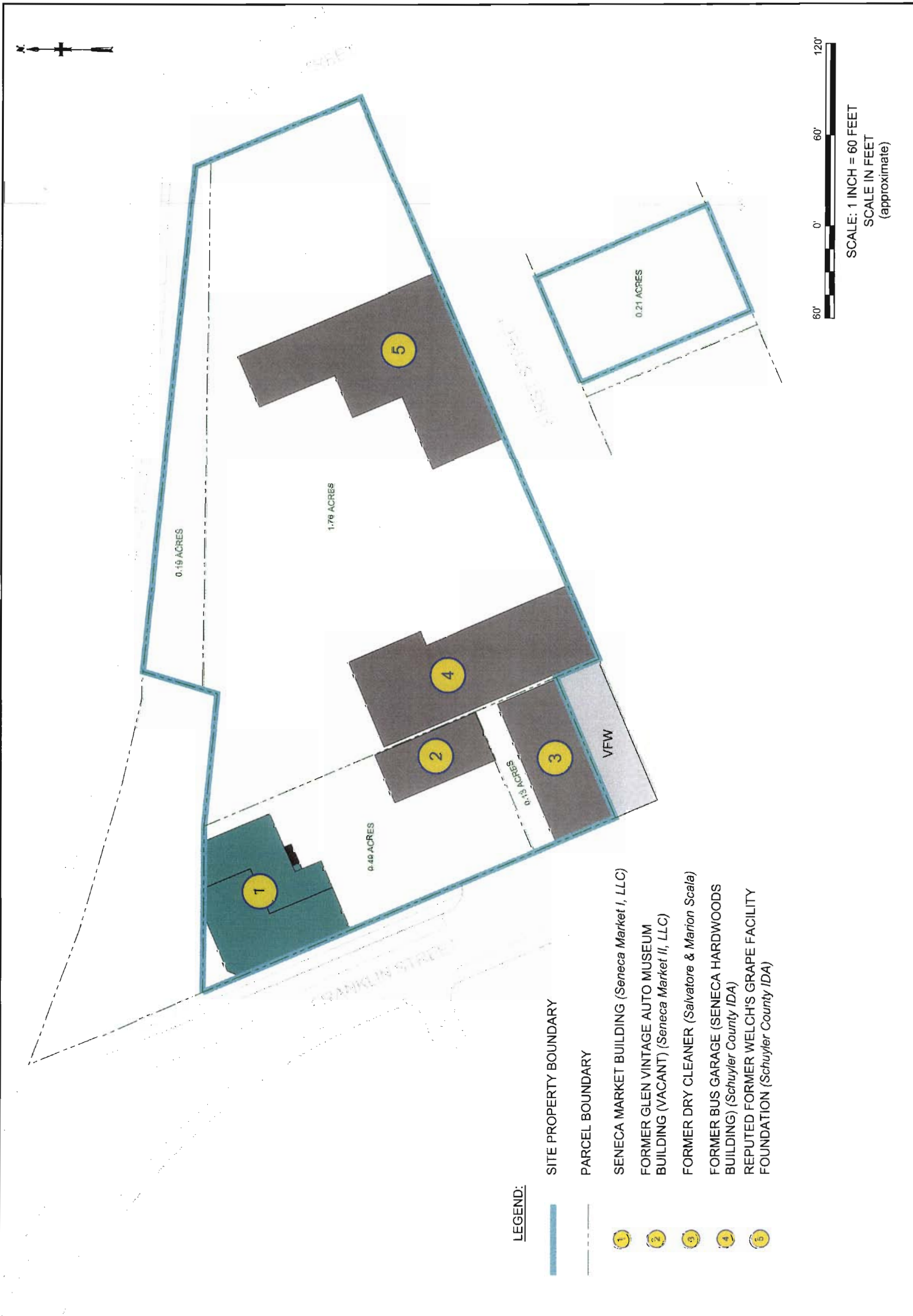
PREPARED FOR  
SENECA MARKET 1, LLC

PROJECT NO.: 0092-002-100

DATE: MAY 2005

DRAFTED BY: BCH





PROJECT SCHEDULE  
SENECA MARKET 1, LLC  
BROWNFIELD CLEANUP AND REDEVELOPMENT

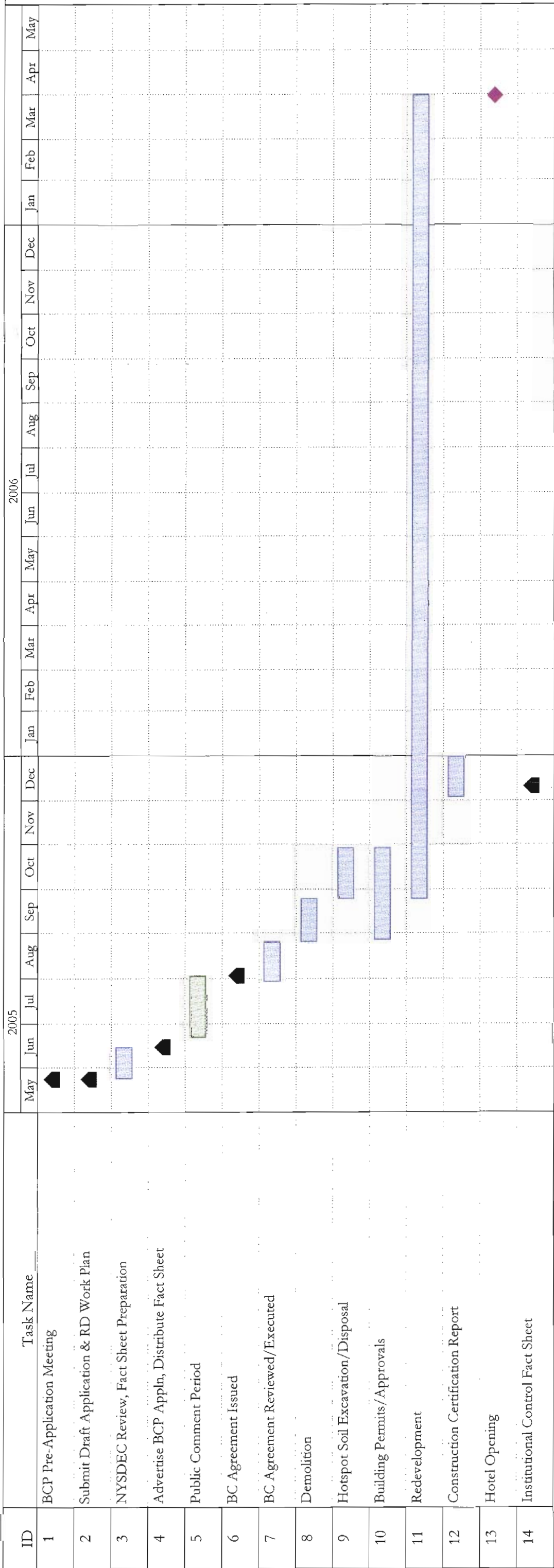


FIGURE 5





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## ATTACHMENT 3

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PLANNED HOTEL REDEVELOPMENT RELATIVE TO SOIL AND  
GROUNDWATER CONTAMINATION







DATE:	JUNE 2005
CHECKED BY:	PHW
APPROVED BY:	PHW

REVISIONS

[illegible]

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37 0 37 60

SCALE: 1 INCH = 30 FEET  
SCALE IN FEET  
(approximate)

SOURCE: DRAFT Remedial Investigation, June 1993, URS Consultants, Inc.

**LEGEND:**

BTEX  $\geq 1,000$  ppb

ND &lt; BTEX &lt; 1,000 ppb

PROPERTY BOUNDARY



[illegible]

PCE + TCE + DCE > 1,000 ppb

PCE + TCE + DCE = 100 TO 1,000 ppb

PCE + TCE + DCE = 10 TO 100 ppb

PROPERTY BOUNDARY

SOURCE: DRAFT Remedial Investigation, June 1993, URS Consultants, Inc.

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