



Department of  
Environmental  
Conservation

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

Please refer to the attached instructions for guidance on completing this application.

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment seeks to add or subtract more than an insignificant acreage of property to the BCA, applicants are encouraged to consult with the DEC project team prior to submitting this application.

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

1. Check the appropriate box(es) below based on the nature of the amendment modification(s) requested:

<input checked="" type="checkbox"/>	Amendment to modify the existing BCA (check one or more boxes below):
<input checked="" type="checkbox"/>	Add applicant(s)
<input type="checkbox"/>	Substitute applicant(s)
<input type="checkbox"/>	Remove applicant(s)
<input type="checkbox"/>	Change in name of applicant(s)
<input checked="" type="checkbox"/>	Amendment to reflect a transfer of title to all or part of the brownfield site:
	<p>a. A copy of the recorded deed must be provided. Is this attached? Yes <input checked="" type="radio"/> No <input type="radio"/></p> <p style="text-align: center;"><b>See Exhibit A-1</b></p> <p>b. <input checked="" type="checkbox"/> Change in ownership <input type="checkbox"/> Additional owner (such as a beneficial owner)</p> <p>c. Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this has not yet been submitted, include the form with this application. Is this form attached? Yes <input type="radio"/> No <input checked="" type="radio"/> Submitted on: 10/29/2020</p>
<input checked="" type="checkbox"/>	Amendment to modify description of the property(ies) listed in the existing BCA
<input checked="" type="checkbox"/>	Amendment to expand or reduce property boundaries of the property(ies) listed in the existing BCA
<input type="checkbox"/>	Sites in Bronx, Kings, New York, Queens or Richmond Counties ONLY: amendment to request determination that the site is eligible for tangible property credit component of the brownfield redevelopment tax credit.
<input checked="" type="checkbox"/>	Other (explain in detail below)

2. REQUIRED: Please provide a brief narrative describing the specific requests included in this amendment:  
SEE ATTACHED ADDENDUM.

**SECTION I: CURRENT AGREEMENT INFORMATION***This section must be completed in full. Attach additional pages as necessary.*

BCP SITE NAME: Site II-7 Tecumseh Phase II Business Park BCP SITE CODE: C915198G

NAME OF CURRENT APPLICANT(S): Tecumseh Redevelopment Inc.

INDEX NUMBER OF AGREEMENT: B90-0696-05-06(B) DATE OF ORIGINAL AGREEMENT: 03/14/2007

**SECTION II: NEW REQUESTOR INFORMATION***Complete this section only if adding new requestor(s) or the name of an existing requestor has changed.*

NAME: Buffalo and Erie County Industrial Land Development Corporation

ADDRESS: 95 Perry Street, Suite 403

CITY/TOWN: Buffalo

ZIP CODE: 14203

PHONE: 716-856-6525

EMAIL: jcappell@ecida.com

REQUESTOR CONTACT: John Cappellino

ADDRESS: 95 Perry Street, Suite 403

CITY/TOWN: Buffalo

ZIP CODE: 14203

PHONE: 716-856-6525

EMAIL: jcappell@ecidany.com

REQUESTOR'S CONSULTANT: LaBella Associates, D.P.C. CONTACT: Robert Napieralski

ADDRESS: Olympic Towers, 300 Pearl Street, Suite 300

CITY/TOWN: Buffalo

ZIP CODE: 14202

PHONE: 716-851-6283

EMAIL: rnapieralski@labellapc.com

REQUESTOR'S ATTORNEY: Harris Beach PLLC CONTACT: Robert G. Murray, Esq.

ADDRESS: 726 Exchange Street, Suite 1000

CITY/TOWN: Buffalo

ZIP CODE: 14210

PHONE: 716-200-5180

EMAIL: bmurray@harrisbeach.com

	Y	N
1. Is the requestor authorized to conduct business in New York State?	<input checked="" type="radio"/>	<input type="radio"/>
2. If the requestor is a corporation, LLC, LLP, or other entity requiring authorization from the NYS Department of State (NYSDOS) to conduct business in NYS, the requestor's name must appear exactly as given above in the NYSDOS Corporation & Business Entity Database. A print-out of entity information from the NYSDOS database must be submitted with this application. Is this print-out attached? <b>See Exhibit B</b>	<input type="radio"/>	<input checked="" type="radio"/>
3. Requestor must submit proof that the party signing this application and amendment has the authority to bind the requestor. This would be documentation showing the authority to bind the requestor in the form of corporate organizational papers, a Corporate Resolution or an Operating Agreement or Resolution for an LLC. Is this proof attached? <b>See Exhibit C</b>	<input checked="" type="radio"/>	<input type="radio"/>
4. If the requestor is an LLC, the names of the members/owners must be provided. Is this information attached?	<input checked="" type="radio"/>	<input type="radio"/>
5. Describe the new requestor's relationship to all existing applicants: New Requestor, the Buffalo and Erie County Industrial Land Development Corporation purchased the subject real property from Applicant, Tecumseh Redevelopment Inc., on August 26, 2021.		

**SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION***Complete this section only if a transfer of ownership has taken place. Attach additional pages if necessary.*Owner listed below is: ☐ Existing Applicant ☒ New Applicant ☐ Non-Applicant

OWNER'S NAME: Same as Requestor

CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

OPERATOR:

CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

**SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION***Complete this section only if adding new requestor(s). Attach additional pages if necessary.*

If answering "yes" to any of the following questions, please provide additional information as an attachment. Please refer to ECL § 27-1407 for details.

	Y	N
1. Are any enforcement actions pending against the requestor regarding this site?	<input type="radio"/>	<input checked="" type="radio"/>
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?	<input type="radio"/>	<input checked="" type="radio"/>
3. Is the requestor subject to an outstanding claim by the Spill Fund for the site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.	<input type="radio"/>	<input checked="" type="radio"/>
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of (i) any provision of the subject law; (ii) any order or determination; (iii) any regulation implementing ECL Article 27 Title 14; or (iv) any similar statute or regulation of the state or federal government? If so, provide additional information as an attachment.	<input type="radio"/>	<input checked="" type="radio"/>
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as site name, address, DEC site number, reason for denial, and any other relevant information.	<input type="radio"/>	<input checked="" type="radio"/>
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 or contaminants?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?	<input type="radio"/>	<input checked="" type="radio"/>



SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION (continued)		Y	N
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?		<input type="radio"/>	<input checked="" type="radio"/>
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?		<input type="radio"/>	<input checked="" type="radio"/>
11. Are there any unregistered bulk storage tanks on-site which require registration?		<input type="radio"/>	<input checked="" type="radio"/>
12. THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405(1) BY CHECKING ONE OF THE BOXES BELOW:			
<input type="checkbox"/> <b>PARTICIPANT</b>  A requestor who either (1) was the owner of the site at the time of the disposal of contamination 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 contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b>  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 a 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 they have 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.  <b>If a requestor's liability arises solely as a result of ownership, operation of or involvement with the site, they must submit a statement describing why they should be considered a volunteer – be specific as to the appropriate care taken.</b>		
13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached? <b>See Exhibit D</b>		N/A <input type="radio"/>	Y <input checked="" type="radio"/> N <input type="radio"/>
14. Requestor's relationship to the property (check all that apply):  <input type="checkbox"/> Prior Owner <input checked="" type="checkbox"/> Current Owner <input type="checkbox"/> Potential/Future Purchaser <input type="checkbox"/> Other: _____			
15. If the 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 being added to the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?		N/A <input checked="" type="radio"/>	Y <input type="radio"/> N <input type="radio"/>



**SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES**

Complete this section only if property is being added to or removed from the site, a lot merger or other change to site SBL(s) has occurred, or if modifying the site address for any reason.

1. Property information on current agreement (as modified by any previous amendments, if applicable):

ADDRESS: **Part of 2303 Hamburg Turnpike**

CITY/TOWN **Lackawanna**

ZIP CODE: **14218**

CURRENT PROPERTY INFORMATION

TOTAL ACREAGE OF CURRENT SITE: **14.3**

PARCEL ADDRESS **See Attached Addendum and Exhibit E-1**

SECTION

BLOCK

LOT

ACREAGE

A portion of 2303 Hamburg Turnpike, Lackawanna, NY 14218

**141.11**

**1**

**1.111**

**14.3**

2. Requested change (check appropriate boxes below):

☐

a. Addition of property (may require additional citizen participation depending on the nature of the expansion – see instructions)

PARCELS ADDED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

TOTAL ACREAGE TO BE ADDED: \_\_\_\_\_

☒

b. Reduction of property

PARCELS REMOVED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

A portion of 2303 Hamburg Turnpike, Lackawanna, NY 14218

**141.11**

**1**

**1.111**

**1.23**

TOTAL ACREAGE TO BE REMOVED: **1.23**

☒

c. Change to SBL (e.g., lot merge, subdivision, address change)

NEW PROPERTY INFORMATION:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

A portion of 2303 Hamburg Turnpike, Lackawanna, NY 14218

**141.19**

**1**

**3**

**13.07**

3. TOTAL REVISED SITE ACREAGE: **13.07** **See Attached Addendum and Exhibit E-1**

4. For all changes requested in this section, documentation must be provided. Required attachments are listed in the application instructions. Is the required documentation attached?

☒
☐

**APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT SUPPLEMENT  
QUESTIONS FOR SITE SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY**

*Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits. Provide supporting documentation as required. Refer to the application instructions for additional information.*

	Y	N
1. Is the site located in Bronx, Kings, New York, Queens or Richmond County?	<input type="radio"/>	<input type="radio"/>
2. Is the requestor seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit?	<input type="radio"/>	<input type="radio"/>
3. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="radio"/>	<input type="radio"/>
4. Is the property upside down as defined below?	<input type="radio"/>	<input type="radio"/>
<p><b>From ECL 27-1405(31):</b></p> <p>"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.</p>		
5. Is the project and affordable housing project as defined below?	<input type="radio"/>	<input type="radio"/>
<p><b>From 6 NYCRR 375-3.2(a) as of August 12, 2016:</b></p> <p>(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.</p> <p>(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' household's annual gross income.</p> <p>(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 homeowners at a defined maximum percentage of the area median income.</p> <p>(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.</p>		

APPLICATION SUPPLEMENT FOR NYC SITES (continued)	Y	N
<p>6. Is the project a planned renewable energy facility site as defined below?</p> <p><b>From ECL 27-1405(33) as of April 9, 2022:</b></p> <p>"Renewable energy facility site" shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.</p> <p><b>From Public Service Law Article 4 Section 66-p as of April 23, 2021:</b></p> <p>(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.</p>	<input type="radio"/>	<input type="radio"/>
<p>7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and meets the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?</p> <p><b>From ECL 75-0111 as of April 9, 2022:</b></p> <p>(5) "Disadvantaged communities" means communities that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.</p>	<input type="radio"/>	<input type="radio"/>



**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT****EXISTING AGREEMENT INFORMATION**

BCP SITE NAME: Site II-7 Tecumseh Phase II Business Park	BCP SITE CODE: C915198G
NAME OF CURRENT APPLICANT(S): Tecumseh Redevelopment Inc.	
INDEX NUMBER OF AGREEMENT: B90-0696-05-06(B)	DATE OF ORIGINAL AGREEMENT 03/14/2007

**Declaration of Amendment:**

By the requestor(s) and/or applicant(s) signature(s) below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from obligations held under the Agreement or those same laws.

**STATEMENT OF CERTIFICATION AND SIGNATURES: NEW REQUESTOR**

*Complete the appropriate section (individual or entity) below only if this Amendment adds a new requestor. Attach additional pages as needed.*

(Individual)

I hereby affirm that the 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. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am President/CEO (title) of Buffalo and Erie County Industrial Land Development Corporation (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.

My \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 06/07/2024 Signature: Print Name: John Cappellino

**STATEMENT OF CERTIFICATION AND SIGNATURES: EXISTING APPLICANT(S)**

An authorized representative of each applicant must complete and sign the appropriate section (individual or entity) below. Attach additional pages as needed.

**(Individual)**

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

**(Entity)**

I hereby affirm that I am Director, Environmental Land & Remediation (title) of Tecumseh Redevelopment Inc. (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Keith Nagel's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 06/07/2024 Signature: 

Print Name: Keith Nagel

PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either (1) was the owner of the site at the time of the disposal of contamination 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 contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> 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 contamination.
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Effective Date of the Original Agreement: \_\_\_\_\_

Signature by the Department:

DATED: 11/5/24

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

  
David Harrington, Assistant Director  
Division of Environmental Remediation

## ADDENDUM

Part 1(2):

This Brownfield Cleanup Program (BCP) Application to Amend Brownfield Cleanup Agreement and Amendment (the "Amendment") adds the Buffalo and Erie County Industrial Land Development Corporation ("ILDC") to the Brownfield Cleanup Agreement.

This Amendment is applicable to Site II-7 (Site Number C915198G) in the Tecumseh Phase II Business Park ("Site II-7"). Site II-7 was transferred by Tecumseh Redevelopment Inc. ("Tecumseh") to the ILDC by deed dated August 25, 2021. Please refer to the deed conveying Site II-7 attached hereto as Exhibit A-1. Please refer to the survey for Site II-7 attached hereto as Exhibit A-2.

This Amendment is also being submitted to confirm the Tax Parcel/SBL No. for Site II-7. The original Brownfield Cleanup Agreement listed Site II-7 as being part of the historical Tax Parcel/SBL No. 141.11-1-1.111. At or about the time of conveyance of the BCP Sites from Tecumseh to the ILDC, Site II-7 was part of Tax Parcel/SBL No. 141.11-1-51. As of the date of this Amendment, Site II-7 has been assigned the Tax Parcel/SBL No. 141.19-1-3.

In reference to the new Tax Parcel/SBL Number, please refer to Exhibit E-1 containing a new tax map generated by Erie County confirming that Parcel/SBL Number 141.19-1-3 has been issued for Site II-7.

Last, this Amendment reduces the acreage of Site II-7. The acreage of Site II-7 is currently 14.3 +/- acres in size and will be reduced in size by 1.23 +/- acres. Accordingly, the new acreage for Site II-7 will be 13.07 +/- acres in size. Exhibit A-2 contains a survey showing the now revised property boundary for Site II-7.



**EXHIBIT A-1**  
**DEED CONVEYING SITE II-7**  
**(SITE NUMBER C915198G)**

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

BOX 138

Party 1:

TECUMSEH REDEVELOPMENT INC

Party 2:

BUFFALO&ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

**Book Type: D Book: 11386 Page: 1420**

Page Count: 23

Doc Type: DEED

Rec Date: 08/26/2021

Rec Time: 02:38:56 PM

Control #: 2021169129

UserID: Sharon

Trans #: 21141571

Document Sequence Number  
TT2021002075

**Recording Fees:**

RECORDING	\$135.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
TP584	\$0.00

**Consideration Amount: 473700.00**

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

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**Total: \$155.00**

STATE OF NEW YORK

ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED  
BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW  
YORK. DO NOT DETACH. THIS IS NOT A BILL.

Michael P. Kearns  
Erie County Clerk

RECORD AND RETURN TO:  
HARRIS BEACH PLLC  
726 EXCHANGE STREET, SUITE 100  
BUFFALO, NY 14210  
ATTN: MELANIE MAROTTO

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## QUIT CLAIM DEED

THIS INDENTURE is made effective as of the 25<sup>th</sup> day of August, 2021 between

**TECUMSEH REDEVELOPMENT INC.**, a Delaware corporation, with an address of 4020 Kinross Lakes Parkway, Richfield, Ohio 44286 (the "Grantor"), and

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a New York not for profit corporation, with an address of 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Grantee").

**WITNESSETH**, that the Grantor, in consideration of One and 00/100 Dollar (\$1.00) and other valuable consideration paid by the Grantee, hereby remises, releases and quit-claims unto the Grantee, the successors and assigns of the Grantee forever,

**ALL THAT TRACT OR PARCEL OF LAND**, situated in the City of Lackawanna, County of Erie and State of New York and as more particularly described on **Schedule A**, attached hereto and made a part hereof (the "Premises").

**TOGETHER** with all right, title and interest, if any, of the Grantor in and to any streets and roads abutting the Premises to the centerlines thereof.

**BEING AND HEREBY** intending to convey a portion of the premises conveyed to the Grantor from Bethlehem Steel Corporation by deed dated May 6, 2003 and recorded on May 22, 2003 in the Erie County Clerk's Office in Liber 11040 of Deeds, page 8953, such portion of the premises, and the Premises conveyed hereunder, also being and hereby intending to be New York State Brownfield Cleanup Program Site Nos. C915198E, C915198F, C915198G.

**GRANTOR AND GRANTEE HEREBY COVENANT AND AGREE** that the Premises shall not be used for oil, gas or mineral exploration, extraction, production or storage activities, and such use is prohibited. This covenant shall run with the land and shall bind and inure to the benefit of Grantor and Grantee, and their respective successors and/or assigns.

**THIS CONVEYANCE** is made by Grantor expressly subject to, and Grantee accepts this conveyance expressly subject to, that certain Environmental Easement affecting that portion of the Premises as more particularly described in said Environmental Easement as New York State Brownfield Cleanup Program Site Nos. C915198E, C915198F, C915198G, held by the New York



State Department of Environmental Conservation and recorded in the Erie County Clerk's Office on July 15, 2014 in Liber 11266 of Deeds at page 5455, and Grantor and Grantee hereby covenant and agree that the Premises shall be utilized in accordance with the terms, conditions and requirements of said Environmental Easement.

**GRANTEE HEREBY FURTHER COVENANTS** that until such time as said Environmental Easement is extinguished in accordance with the requirements of New York State Environmental Conservation Law Article 71, Title 36, this Indenture and all subsequent instruments of conveyance related to the Premises shall state in at least fifteen-point bold face type:

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

**THIS CONVEYANCE** is made and accepted subject to covenants, easements and restrictions of record.

**THIS CONVEYANCE** is made and accepted subject to that certain Access Agreement made by Grantor and recorded on or about the date hereof.

**THIS CONVEYANCE** is made together with, and accepted subject to, the covenants and agreements set forth in the Declaration of Covenants attached hereto as **Schedule B** and incorporated herein (the "Declaration"). The Declaration, and all terms, covenants and agreements thereof and as more particularly described therein, shall run with the land and shall bind and inure to the benefit of Grantor and Grantee, and their respective successors and/or assigns, and the terms and obligations of the Declaration as applicable, shall bind Grantee, its affiliates, successors, assigns, and/or transferees, and/or all future owners, lessees, sub-lessees, licensees and/or operators, and shall be enforceable by the Grantor against any such parties, as applicable and as consistent with the terms, covenants and agreements of the Declaration.

**GRANTEE HEREBY FURTHER COVENANTS** that Grantee on behalf of itself and its affiliates, successors in interest, transferees, assigns and/or all future owners of the Premises, as applicable and consistent with their respective interests in the Premises, shall incorporate the covenants contained in the Declaration into any and all other deeds, conveyances or agreements transferring ownership, leasehold, sub-leasehold, license, or other operational interests in the Premises or any portion thereof.

**TO HAVE AND TO HOLD** the Premises herein granted unto Grantee, the successors and assigns of Grantee, forever.

**THIS CONVEYANCE** is not all or substantially all of the assets of the Grantor, and this conveyance is made and executed in accordance with the duly adopted approvals, resolutions and consent of the Grantor.

**THIS DEED** is subject to the trust provisions of Section 13 of the Lien Law.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows.]*

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Deed as of the day and year first above written.

**TECUMSEH REDEVELOPMENT INC.**

By: *Keith Nagel*  
Name: Keith Nagel  
Its: Director of Land and Remediation

STATE OF OHIO )  
COUNTY OF SUMMIT ) ss.:

On the 12<sup>th</sup> day of August in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared Keith Nagel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



*Susan E. Dick*  
Notary Public *Susan E. Dick*  
Commission expires *November 6, 2022*

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: John Cappellino  
Title: President, CEO

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared John Cappellino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Deed as of the day and year first above written.

**TECUMSEH REDEVELOPMENT INC.**

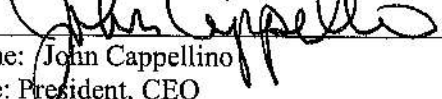
By: \_\_\_\_\_  
Name: Keith Nagel  
Its: Director of Land and Remediation

STATE OF OHIO )  
COUNTY OF SUMMIT ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared Keith Nagel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public


**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION**

By:   
Name: John Cappellino  
Title: President, CEO

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

On the 19 day of Aug. in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared John Cappellino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

MELANIE C MAROTTO  
Notary Public, State of New York  
Qualified in Erie County  
No. 01MA4973387  
Commission Expires October 22, 2022

  
\_\_\_\_\_  
Notary Public



## **SCHEDULE A**

### **PREMISES**

#### **Parcel "A": Lackawanna Business Park II Parcel II-5; Brownfield Cleanup Program Site No. C915198E**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lackawanna, County of Erie and State of New York, being part of Lot No. 24, Township 10, Range 8 of the Buffalo Creek Reservation, being BCP Site Number C915198E, as shown on a map of "Business Park Phase II", prepared by Wendel, June 2012, Project Number 411107, being more particularly bounded and described as follows:

COMMENCING at a point in the westerly highway boundary of the Hamburg Turnpike (also known as State Route No. 5) being 2,884.21 feet north of the division line between lands conveyed to Tecumseh Redevelopment Inc. recorded in the Erie County Clerk's Office in Liber 11040 of Deeds at page 8953 on the north, and lands conveyed to South Buffalo Railway Company recorded in the Erie County Clerk's Office in Liber 10119 of Deeds at page 131 on the south, as measured along the westerly highway boundary of the Hamburg Turnpike as appropriated by New York State Department of Public Works Map 1, Parcel 1, recorded in the Erie County Clerk's Office in Liber 5650 of Deeds at page 404 also by New York State Department of Transportation for the City of Lackawanna, S.H. No. FAC 49-10, Map 305, Parcel 306, recorded in the Erie County Clerk's Office in Liber 10960 of Deeds at page 2028, said point also being the southeast corner of said Business Park Phase II, Parcel "B"; thence along the southerly line of said Business Park Phase II, Parcel "B" the following 2 courses and distances:

1. S 75°-24'-22" W, a distance of 420.71 feet to a point;
2. S 52°-31'-09" W, a distance of 145.07 feet to the principal point of beginning;

Thence along the southerly line of said Business Park Phase II, Parcel "B", S-00°-25'-31" W, a distance of 225.66 feet to a point; thence continuing along the south line of said Business Park Phase II Parcel "B", S 14°-36'-37" W, a distance of 317.80 feet to a point; thence continuing along the south line of said Business Park Phase II, Parcel "B", S 74°-29'-02" W, a distance of 13.85 feet to the southeast corner of BCP Site Number C915198D; thence along the east line of said BCP Site Number C915198D, N 19°-00'-00" W, a distance of 187.23 feet to the northeast corner of said BCP Site Number C915198D; thence along the north line of said BCP Site Number C915198D, S 71°-00'-00" W, a distance of 344.23 feet to a point in the westerly line of said Business Park Phase II, Parcel "B"; thence along the westerly line of said Business Park Phase II, Parcel B, N 18°-20'-36" W, a distance of 515.77 feet to the southwest corner of BCP Site Number C915198G; thence along the southerly line of said BCP Site Number C915198G the following 3 courses and distances:

1. N 70°-54'-30' E, a distance of 434.91 feet to a point;
2. S 58°-11'-58" E, a distance of 234.94 feet to a point;

3. S 42°-41'01" E, a distance of 49.08 feet to the principal point of beginning.

EXCEPTING and reserving therefrom that portion thereof designated as Substation No. 10A, bounded and described as follows:

COMMENCING at the intersection of the westerly highway boundary of the Hamburg Turnpike (also known as State Route No. 5) as appropriated by the New York State Department of Public Works as shown on Map No. 1, Parcel 1 and recorded in the Erie County Clerk's Office in Liber 5650 of Deeds at page 404 and the municipal boundary line between the City of Lackawanna (to the north) and the Town of Hamburg (to the south). Said point also being along the northerly boundary of lands conveyed to the South Buffalo Railway Company by deed recorded in the Erie County Clerk's Office in Liber 10119 of Deeds at page 131; thence N 86° 32' 54" W along said municipal boundary line and the northerly line of said South Buffalo Railway Company's land, a distance of 507.02 feet to a point; thence N 56° 55' 40" W and continuing along said South Buffalo Railway Company's land, a distance of 386.48 feet to a point; thence N 03° 25' 27" W, a distance of 1,284.41 feet to a point of curvature of a tangent curve; thence along a curve to the left having a radius of 518.00 feet, an arc length of 168.84 feet to a point approximately 25 feet south from the existing southerly top of the high bank of Smokes Creek; thence N 30° 20' 56" E, crossing Smokes Creek, a distance of 395.26 feet to a point approximately 25 feet from the existing northerly top of high bank of Smokes Creek, said point being the principal point of beginning of Business Park Phase II, Parcel "B" as described in an Environmental Easement recorded in the Erie County Clerk's Office in Liber 11266 of Deeds at page 5455; thence N 18° 50' 22" W, a distance of 457.40 feet to the principal point of beginning, said principal point of beginning being the southwest corner of Substation No. 10A; thence N 18° 24' 23" W, a distance of 225.00 feet to a point; thence N 71° 35' 37" E, a distance of 188.17 feet to a point; thence S 18° 24' 23" E, a distance of 225.00 feet to a point; thence S 71° 35' 37" W, a distance of 188.17 feet to the principal point of beginning.

**Parcel "B": Lackawanna Business Park II Parcel II-6; Brownfield Cleanup Program Site No. C915198F**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lackawanna, County of Erie and State of New York, being part of Lot No. 24, Township 10, Range 8 of the Buffalo Creek Reservation, being BCP Site Number C915198F, as shown on a map of "Business Park Phase II", prepared by Wendel, June 2012, Project Number 411107, being more particularly bounded and described as follows:

BEGINNING at a point in the westerly highway boundary of the Hamburg Turnpike (also known as State Route No. 5) being 2,884.21 feet north of the division line between lands conveyed to Tecumseh Redevelopment Inc. recorded in the Erie County Clerk's Office in Liber 11040 of Deeds at page 8953 on the north, and lands conveyed to South Buffalo Railway Company recorded in the Erie County Clerk's Office in Liber 10119 of Deeds at page 131 on the south, as measured along the westerly highway boundary of the Hamburg Turnpike as appropriated by New York State Department of Public Works Map 1, Parcel 1, recorded in the

Erie County Clerk's Office in Liber 5650 of Deeds at page 404 also by New York State Department of Transportation for the City of Lackawanna, S.H. No. FAC 49-10, Map 305, Parcel 306, recorded in the Erie County Clerk's Office in Liber 10960 of Deeds at page 2028 said point also being the southeast corner of said Business Park Phase II "B"; thence along the south line of said Business Park Phase II Parcel "B", S 75°-24'-22" W, a distance of 420.71 feet to an angle point in said south line; thence continuing along said south line of said Business Park Phase II, Parcel "B", S 52°-31'-09" W, a distance of 87.24 feet to the southeast corner of BCP Site Number C915198G; thence along the easterly lines of BCP Site Numbers C915198G and C915198I the following 4 courses and distances:

1. N 09°-01'-35" W, a distance of 149.02 feet to a point;
2. N 02°-00'-31" W, a distance of 220.41 feet to a point;
3. N 11°-04'-28" W, a distance of 436.02 feet to a point;
4. N 18°-25'-27" W, a distance of 200.63 feet to the southwest corner of BCP Site Number C915198H;

Thence along the south line of BCP Site Number C915198H, N 71°-00'-00" E, a distance of 500.03 feet to a point in the westerly line of said Hamburg Turnpike; thence along the westerly line of said Hamburg Turnpike S 18°-25'-27" E, a distance of 334.47 feet to a point of curvature; thence continuing along the westerly line of said Hamburg Turnpike on a curve to the right having a radius of 3,226.70 feet, an arc length of 677.61 feet, and a chord bearing of S 06°-27'-47" E, at a distance of 676.37 feet to the point of beginning.

**Parcel "C": Lackawanna Business Park II Parcel II-7; Brownfield Cleanup Program Site No. C915198G**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lackawanna, County of Erie and State of New York, being part of Lot No. 24, Township 10, Range 8 of the Buffalo Creek Reservation, being BCP Site Number C915198G, and part of BCP Site Number C915198I, as shown on a map of "Business Park Phase II", prepared by Wendel, June 2012, Project Number 411107, being more particularly bounded and described as follows:

COMMENCING at a point in the westerly highway boundary of the Hamburg Turnpike (also known as State Route No. 5), being 2884.21 feet north of the division line between lands conveyed to Tecumseh Redevelopment Inc. recorded in the Erie County Clerk's Office in Liber 11040 of Deeds at page 8953 on the north, and lands conveyed to South Buffalo Railway Company recorded in the Erie County Clerk's Office in Liber 10119 of Deeds at page 131 on the south, as measured along the westerly highway boundary of the Hamburg Turnpike as appropriated by New York State Department of Public Works Map 1, Parcel 1, recorded in the Erie County Clerk's Office in Liber 5650 of Deeds at page 404 also by New York State Department of Transportation for the City of Lackawanna, S.H. No. FAC 49-10, Map 305, Parcel 306, recorded in the Erie County Clerk's Office in Liber 10960 of Deeds at page 2028, said point also being the southeast corner of said Business Park Phase II, Parcel "B"; thence along the southerly line of said Business Park Phase II, Parcel "B", S 75°-24'-22" W, a distance of 420.71 feet to a point; thence continuing along the southerly line of said Business Park Phase II,

Parcel "B", S 52°-31'-09" W, a distance of 87.24 feet to the principal point of beginning; thence continuing along the south line of said Business Park Phase II, Parcel "B", S 52°-31'-09" W, a distance of 57.83 feet to a point in the northerly line of BCP Site Number C915198E; thence along the northerly line of BCP Site Number C915198E the following 3 courses and distances:

1. N 42°-41'-01" W, a distance of 49.08 feet to a point;
2. N 58°-11'-58" W, a distance of 234.94 feet to a point;
3. S 70°-54'-30" W, a distance of 434.91 feet to a point in west line of said Business Park Phase II, Parcel "B"; thence along the westerly line of said Business Park Phase II, Parcel B, N 18°-20'-36" W, a distance of 763.91 feet to a point on the west line of BCP Site Number C915198I, being the southwest corner of lands conveyed to Time Release Properties LLC by deed recorded in Liber 11354 of Deeds at page 1209 (Parcel A), thence along the south line of said Time Release Properties LLC (Parcel A), the following 7 courses and distances:

1. N 71°-07'-01" E, a distance of 621.67 feet to a point;
2. Along a curve to the left having a radius of 967.00 feet, a chord length of 136.41 feet and an arc length of 136.52 feet, to a point;
3. N 27°-05'-15" W, a distance of 15.00 feet to a point;
4. Along a curve to the left, having a radius of 952.00 feet, a chord length of 1.95 feet and an arc length of 1.95 feet, to a point of tangency;
5. N 62°-54'-45" E, a distance of 17.99 feet to a point;
6. S 27°-05'-15" E, a distance of 15.00 feet to a point;
7. N 62°-54'-45" E, a distance of 24.27 feet to a point on the west line of BCP Site Number C915198F; thence along the west line of BCP Site Number C915198F the following 4 courses and distances:

1. S 18°-25'-27" E, a distance of 196.73 feet to a point;
2. S 11°-04'-28" E, a distance of 436.02 feet to a point;
3. S 02°-00'-31" E, a distance of 220.41 feet to a point;
4. S 09°-01'-35" E, a distance of 149.02 feet to the principal point of beginning.

TOGETHER with the non-exclusive right to use Dona Street for ingress and egress pursuant to Permanent Easement Agreements recorded in the Erie County Clerk's Office in Liber 11339 of Deeds at page 4724 and Liber 11347 of Deeds at page 224.



## **SCHEDULE B**

### **DECLARATION OF ENVIRONMENTAL COVENANTS**

**THIS DECLARATION OF ENVIRONMENTAL COVENANTS** (the "Declaration") is made as of the 25 day of August, 2021, by **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a New York not for profit corporation ("ILDC") with an address of 95 Perry Street, Suite 403, Buffalo New York 14203, on behalf of itself and its affiliates, successors in interest, transferees, assigns and/or all future owners (collectively, with the ILDC, the "Owner Covenantors") and/or all future lessees, sub-lessees, licensees and/or operators of the Premises (collectively, the "Non-Owner Covenantors", and, collectively with the Owner Covenantors, the "Covenantors") for the benefit of **TECUMSEH REDEVELOPMENT INC.**, a Delaware corporation ("Covenantant") and its related entities and affiliates, successors, assigns, officers, directors, stockholders, shareholders, attorneys, representatives, agents and employees, past, present and future, and all other persons and entities for whose acts or omissions Covenantant could be held legally responsible (collectively with the Covenantant, the "Covenantant Parties").

**WHEREAS**, Pursuant to that certain Agreement of Purchase and Sale dated as of the 24<sup>th</sup> day of June, 2021 between the ILDC and Covenantant (as may be amended or revised, the "Contract"), the ILDC has agreed to acquire that certain real property, as more particularly described on Schedule B-1 (the "Property") from Covenantant; and

**WHEREAS**, Pursuant to the Contract, the Property is to be conveyed to the ILDC in phases; and

**WHEREAS**, the real property conveyed to the ILDC pursuant to the Deed, as more particularly described on Schedule B-2 (the "Premises"), is a portion of the Property and is conveyed as one (1) of the phases pursuant to the Contract; and

**WHEREAS**, as a material inducement to Covenantant delivering the Deed to the ILDC, the ILDC expressly acknowledges and agrees that the conveyance of the Premises is made subject to the covenants set forth in this Declaration.

**NOW, THEREFORE**, the ILDC, on behalf of itself and the Covenantors, hereby covenants and agrees that the Premises, or any portion thereof, shall be held, transferred, sold, conveyed, and operated subject to the following covenants, all of which shall survive the delivery of the Deed (the "Closing Date"), shall not be merged thereby and such provisions shall run with the land and be binding upon the ILDC and the Covenantors, as applicable:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. In addition to other words and terms defined elsewhere in this Declaration (including the preamble and recitals), when used in this Declaration, the capitalized words and terms shall have the meanings set forth in Section 10 unless otherwise defined herein or the context otherwise clearly requires.

3. Except with respect to the ILDC and the warranties expressly set forth in the Contract, the Owner Covenantors waive, for the benefit of the Covenantee Parties, all warranties of any type or kind whatsoever with respect to the Premises, including, by way of description, but not limitation, those of fitness for a particular purpose, merchantability, tenantability, habitability and use.

4. (a) The Owner Covenantors, as applicable and consistent with their interests in the Premises, shall take all actions necessary to keep the Premises in the BCP.

(b) With respect to the Premises, the Owner Covenantors shall obtain and secure COCs for all Parcels as soon as practicable after the closing date for such parcels, but in no event later than the earlier to occur of March 31, 2026 or the date on which the NYSDEC requires all remediation pursuant to the BCP to be completed with respect to such parcels.

(c) The Owner Covenantors shall, at their sole cost and expense, comply with, be bound by, assume, perform, undertake and/or discharge any and all terms, conditions, responsibilities, requirements, and/or obligations pursuant to the BCP with respect to the Premises including but not limited to the terms, conditions and provisions of the COCs, the BCAs, the Environmental Easements, the SMPs, the obligation to obtain a COC for the Premises as required pursuant to Section 4(b), any post-closing groundwater monitoring and/or post-closing reporting to the NYSDEC, and adherence to the COCs.

(d) The Owner Covenantors' obligations pursuant to this Section 4, collectively, shall be referred to as the "Post-Closing BCP Obligations."

5. The Owner Covenantors and the Non-Owner Covenantors shall fully and finally and forever release Covenantee Parties, from and against any and all losses, damages, liabilities, demands, claims, suits, and causes of action of whatever nature and kind, including without limitation all claims for personal injury, emotional distress, property damage, trespass, nuisance, negligence, investigation, remediation, response, and/or corrective action costs, and/or economic loss, diminution in real property value, any claims for attorneys' or consultants' fees, all obligations pursuant to the BCP and any BCAs, and any other losses, damages, costs, expenses, liabilities, demands, claims, suits, and causes of action of whatever nature and kind (all of the foregoing, collectively, "**Losses**"), arising from or related to any current or future environmental and/or physical condition at, under, or emanating or migrating from the Premises, whether known or unknown, but such release being provided herein by the Covenantors shall be limited to Losses incurred by the Covenantors (except for when Covenantee is a licensee). Notwithstanding the foregoing, Covenantors' release pursuant to this Section 5 shall not include Losses to the extent arising from third-party claims brought against Covenantors under New York law where such third-party claims pertain to Hazardous Substances (as defined below) first released or disposed of at the Premises after May 6, 2003, when Covenantee acquired the Premises and certain adjacent tracts from Bethlehem Steel Corporation, but before the closing date for the sale from Covenantee to the ILDC of the Premises where such releases or disposal are alleged to have occurred, and where such third-party claims allege (i) personal injury as a result of exposure to such Hazardous Substances that occurred at the Premises prior to the closing date for the sale from Covenantee to the ILDC of the Premises where such exposure is alleged to have occurred, and/or (ii) personal injury as a result of exposure to such Hazardous Substances that occurred at real property other

than the Premises, and/or (iii) property damage to real property other than the Premises as result of the presence of such Hazardous Substances.

6. The Owner Covenantors shall defend, indemnify and hold Covenantee Parties harmless from and against all Losses to the extent related to or arising from (i) the Owner Covenantors' non-compliance with the BCAs, the Environmental Easements, the SMPs, the COCs, and/or any and all other Post-Closing BCP Obligations; (ii) the Owner Covenantors' failure to meet their Post-Closing BCP Obligations under and pursuant to Section 4 hereof, including, without limitation, the Owner Covenantors obtaining the COCs for all Parcels transferred to ILDC (Owner Covenantors hereby acknowledging and agreeing that the Losses incurred by Covenantee Parties in such a situation shall be deemed to specifically include, without limitation, the full liability release provided for under the BCP had such Parcels timely received the COCs); (iii) the Known Conditions; (iv) physical conditions, but not including environmental conditions, at or under the Premises, whether known or unknown; (v) any conditions at the Premises caused or exacerbated after the closing date for the sale of the Premises from Covenantee to ILDC, except to the extent such conditions are caused or exacerbated by Covenantee Parties after such closing date; and (vi) any claims, administrative actions and/or orders of NYSDEC, the United States Environmental Protection Agency and/or any other federal, state or local government agency brought or issued prior to the NYSDEC's issuance of COCs for any Parcel and arising from or related to any Known Conditions.

7. The Owner Covenantors acknowledge that they have acquired their interests in the Premises solely on the basis of their own investigation of the condition of the Premises (including, without limitation, the environmental condition), and the Owner Covenantors assume the risk that certain adverse conditions may not have been revealed by their investigations.

8. The foregoing covenants are made for and shall inure to the benefit of the Covenantee Parties, and the terms and obligations hereof shall be enforceable by them against any and all Covenantors, as applicable.

9. If any provision of this Declaration, or portion thereof, or the application to any person, entity or circumstance, shall, to any extent, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Declaration, and the terms and conditions hereof, shall not be amended or modified except by an instrument in recordable form executed and acknowledged in writing by all owners of the Premises or any part thereof, and also by Covenantee, or its corporate successors or assigns.

10. Definitions:

A. "**BCAs**" shall mean any and all Brownfield Cleanup Agreements by and between NYSDEC and Covenantee, as amended and modified, applicable to the Premises and described as BCP Site Nos. C915198E, C915198F, C915198G with effective dates of March 14, 2007.

B. "**BCP**" shall mean the New York State Brownfield Cleanup Program.

- C. **“COCs”** shall mean any and all Certificates of Completion applicable to the Premises (including any amendments thereto) issued by the NYSDEC pursuant to the BCP.
- D. **“Parcels”** shall mean the following three (3) parcels, which comprise the Premises: Lackawanna Business Park II Parcel II-5 (designated as BCP Site No. C915198E), Lackawanna Business Park II Parcel II-6 (designated as BCP Site No. C915198F), and Lackawanna Business Park II Parcel II-7 (designated as BCP Site No. C915198G).
- E. **“Deed”** shall mean the Quit Claim Deed to which this Declaration is attached.
- F. **“Environmental Easements”** shall mean Environmental Easements (including any amendments thereto) pursuant to the BCP applicable to the Premises, granted pursuant to Title 36 of the New York State Environmental Conservation Law and recorded with the Erie County Clerk on July 15, 2014 in Liber 11266 of Deeds at page 5455.
- G. **“Environmental Laws”** shall mean all federal, state and local statutes, ordinances and codes relating to chemical use, safety, sanitation, protection of the environment and/or human health, and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et seq.), the Solid Waste Disposal Act as each of these also known as the Resource Conservation and Recovery Act as amended (42 U.S.C. §6901 et seq.), the New York State Environmental Conservation Law, the New York State Navigation Law, the Clean Water Act (the “Federal Water Pollution Act”) 33 U.S.C. §1251 et seq. (“CWA”), the Clean Air Act, 42 U.S.C. §7401 et seq. (the “Clean Air Act”), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §1101-§1150 (“EPCRA”)), the Oil Pollution Act of 1990, 33 U.S.C. §2701-§2672 (the “Oil Pollution Act”), the Toxic Substances Control Act (15 U.S.C. §2601-§2692 (“TSCA”)), and the Occupational Safety and Health Act (“OSHA”), and the rules, regulations, and legally-binding interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.
- H. **“Hazardous Substances”** shall mean without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea-formaldehyde, foam insulation, polychlorinated biphenyls, petroleum products, petroleum byproducts, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, wastes, contaminants, pollutants and/or all other substances or chemicals defined in or regulated pursuant to Environmental Laws.



- I. **"Known Conditions"**, with respect to the ILDC, shall mean environmental conditions at, under, or emanating or migrating from the Premises that were known to ILDC and/or any of its consultants, representatives or agents as of the applicable closing date for the sale from Covenantee to ILDC of the Premises (A) based on review of documentation provided by or made available by Covenantee and as described within the environmental reports identified within **Schedule B-3** annexed hereto, and/or (B) identified in any written findings or reports prepared for the benefit of ILDC by ILDC's consultants, representatives or agents, including but not limited to its environmental consultant, LaBella Associates, D.P.C., prior to the applicable closing date for the sale from Covenantee to ILDC of the Premises. **"Known Conditions"**, with respect to all other Owner Covenantors, shall also include any additional environmental conditions at, under, or emanating or migrating from the Premises known to such Owner Covenantor, whether based on review of documentation prepared pursuant to the BCP or otherwise (including, but not limited to, any environmental conditions identified in written findings or reports prepared by such Owner Covenantor's consultants, representatives or agents) as of the date upon which such Owner Covenantor acquires its interest in the Premises.
- J. **"NYSDEC"** shall mean the New York State Department of Environmental Conservation.
- K. **"SMPs"** shall mean any and all site management plans (including any amendments thereto) relating to the Premises and approved by the NYSDEC pursuant to the BCP.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows.]*

IN WITNESS WHEREOF, Covenantee and ILDC have executed this Declaration as of the day and year first above written.

**TECUMSEH REDEVELOPMENT INC.**

By: *Keith Nagel*  
Name: Keith Nagel  
Its: Director of Land and Remediation

STATE OF OHIO )  
COUNTY OF SUMMIT ) ss.:

On the 12<sup>th</sup> day of August in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared Keith Nagel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



*Susan E. Dick*  
Notary Public *Susan E. Dick*  
Commission expires: *November 6, 2022*

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: John Cappellino  
Title: President, CEO

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared John Cappellino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public



## **SCHEDULE B-1**

### **THE PROPERTY**

Lackawanna Business Park II Parcel II-5, and designated as BCP Site No. C915198E, being approximately 5.78 acres

Lackawanna Business Park II Parcel II-6, and designated as BCP Site No. C915198F; being approximately 11.50 acres

Lackawanna Business Park II Parcel II-7, and designated as BCP Site No. C915198G being approximately 14.30 acres

Lackawanna Business Park II Parcel II-1, and designated as BCP Site No. C915198, being approximately 14.35 acres

Lackawanna Business Park II Parcel II-2, and designated as BCP Site No. C915198B, being approximately 9.43 acres

Lackawanna Business Park II Parcel II-3, and designated as BCP Site No. C915198C, being approximately 23.40 acres

Lackawanna Business Park II Parcel II-4, and designated as BCP Site No. C915198D, being approximately 1.40 acres



## **SCHEDULE B-2**

### **THE PREMISES**

#### **Parcel "A": Lackawanna Business Park II Parcel II-5; Brownfield Cleanup Program Site No. C915198E**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lackawanna, County of Erie and State of New York, being part of Lot No. 24, Township 10, Range 8 of the Buffalo Creek Reservation, being BCP Site Number C915198E, as shown on a map of "Business Park Phase II", prepared by Wendel, June 2012, Project Number 411107, being more particularly bounded and described as follows:

COMMENCING at a point in the westerly highway boundary of the Hamburg Turnpike (also known as State Route No. 5) being 2,884.21 feet north of the division line between lands conveyed to Tecumseh Redevelopment Inc. recorded in the Erie County Clerk's Office in Liber 11040 of Deeds at page 8953 on the north, and lands conveyed to South Buffalo Railway Company recorded in the Erie County Clerk's Office in Liber 10119 of Deeds at page 131 on the south, as measured along the westerly highway boundary of the Hamburg Turnpike as appropriated by New York State Department of Public Works Map 1, Parcel 1, recorded in the Erie County Clerk's Office in Liber 5650 of Deeds at page 404 also by New York State Department of Transportation for the City of Lackawanna, S.H. No. FAC 49-10, Map 305, Parcel 306, recorded in the Erie County Clerk's Office in Liber 10960 of Deeds at page 2028, said point also being the southeast corner of said Business Park Phase II, Parcel "B"; thence along the southerly line of said Business Park Phase II, Parcel "B" the following 2 courses and distances:

1. S 75°-24'-22" W, a distance of 420.71 feet to a point;
2. S 52°-31'-09" W, a distance of 145.07 feet to the principal point of beginning;

Thence along the southerly line of said Business Park Phase II, Parcel "B", S-00°-25'-31" W, a distance of 225.66 feet to a point; thence continuing along the south line of said Business Park Phase II Parcel "B", S 14°-36'-37" W, a distance of 317.80 feet to a point; thence continuing along the south line of said Business Park Phase II, Parcel "B", S 74°-29'-02" W, a distance of 13.85 feet to the southeast corner of BCP Site Number C915198D; thence along the east line of said BCP Site Number C915198D, N 19°-00'-00" W, a distance of 187.23 feet to the northeast corner of said BCP Site Number C915198D; thence along the north line of said BCP Site Number C915198D, S 71°-00'-00" W, a distance of 344.23 feet to a point in the westerly line of said Business Park Phase II, Parcel "B"; thence along the westerly line of said Business Park Phase II, Parcel B, N 18°-20'-36" W, a distance of 515.77 feet to the southwest corner of BCP Site Number C915198G; thence along the southerly line of said BCP Site Number C915198G the following 3 courses and distances:

1. N 70°-54'-30" E, a distance of 434.91 feet to a point;
2. S 58°-11'-58" E, a distance of 234.94 feet to a point;

3. S 42°-41'01" E, a distance of 49.08 feet to the principal point of beginning.

EXCEPTING and reserving therefrom that portion thereof designated as Substation No. 10A, bounded and described as follows:

COMMENCING at the intersection of the westerly highway boundary of the Hamburg Turnpike (also known as State Route No. 5) as appropriated by the New York State Department of Public Works as shown on Map No. 1, Parcel 1 and recorded in the Erie County Clerk's Office in Liber 5650 of Deeds at page 404 and the municipal boundary line between the City of Lackawanna (to the north) and the Town of Hamburg (to the south). Said point also being along the northerly boundary of lands conveyed to the South Buffalo Railway Company by deed recorded in the Erie County Clerk's Office in Liber 10119 of Deeds at page 131; thence N 86° 32' 54" W along said municipal boundary line and the northerly line of said South Buffalo Railway Company's land, a distance of 507.02 feet to a point; thence N 56° 55' 40" W and continuing along said South Buffalo Railway Company's land, a distance of 386.48 feet to a point; thence N 03° 25' 27" W, a distance of 1,284.41 feet to a point of curvature of a tangent curve; thence along a curve to the left having a radius of 518.00 feet, an arc length of 168.84 feet to a point approximately 25 feet south from the existing southerly top of the high bank of Smokes Creek; thence N 30° 20' 56" E, crossing Smokes Creek, a distance of 395.26 feet to a point approximately 25 feet from the existing northerly top of high bank of Smokes Creek, said point being the principal point of beginning of Business Park Phase II, Parcel "B" as described in an Environmental Easement recorded in the Erie County Clerk's Office in Liber 11266 of Deeds at page 5455; thence N 18° 50' 22" W, a distance of 457.40 feet to the principal point of beginning, said principal point of beginning being the southwest corner of Substation No. 10A; thence N 18° 24' 23" W, a distance of 225.00 feet to a point; thence N 71° 35' 37" E, a distance of 188.17 feet to a point; thence S 18° 24' 23" E, a distance of 225.00 feet to a point; thence S 71° 35' 37" W, a distance of 188.17 feet to the principal point of beginning.

**Parcel "B": Lackawanna Business Park II Parcel II-6; Brownfield Cleanup Program Site No. C915198F**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lackawanna, County of Erie and State of New York, being part of Lot No. 24, Township 10, Range 8 of the Buffalo Creek Reservation, being BCP Site Number C915198F, as shown on a map of "Business Park Phase II", prepared by Wendel, June 2012, Project Number 411107, being more particularly bounded and described as follows:

BEGINNING at a point in the westerly highway boundary of the Hamburg Turnpike (also known as State Route No. 5) being 2,884.21 feet north of the division line between lands conveyed to Tecumseh Redevelopment Inc. recorded in the Erie County Clerk's Office in Liber 11040 of Deeds at page 8953 on the north, and lands conveyed to South Buffalo Railway Company recorded in the Erie County Clerk's Office in Liber 10119 of Deeds at page 131 on the south, as measured along the westerly highway boundary of the Hamburg Turnpike as appropriated by New York State Department of Public Works Map 1, Parcel 1, recorded in the

Erie County Clerk's Office in Liber 5650 of Deeds at page 404 also by New York State Department of Transportation for the City of Lackawanna, S.H. No. FAC 49-10, Map 305, Parcel 306, recorded in the Erie County Clerk's Office in Liber 10960 of Deeds at page 2028 said point also being the southeast corner of said Business Park Phase II "B"; thence along the south line of said Business Park Phase II Parcel "B", S 75°-24'-22" W, a distance of 420.71 feet to an angle point in said south line; thence continuing along said south line of said Business Park Phase II, Parcel "B", S 52°-31'-09" W, a distance of 87.24 feet to the southeast corner of BCP Site Number C915198G; thence along the easterly lines of BCP Site Numbers C915198G and C915198I the following 4 courses and distances:

1. N 09°-01'-35" W, a distance of 149.02 feet to a point;
2. N 02°-00'-31" W, a distance of 220.41 feet to a point;
3. N 11°-04'-28" W, a distance of 436.02 feet to a point;
4. N 18°-25'-27" W, a distance of 200.63 feet to the southwest corner of BCP Site Number C915198H;

Thence along the south line of BCP Site Number C915198H, N 71°-00'-00" E, a distance of 500.03 feet to a point in the westerly line of said Hamburg Turnpike; thence along the westerly line of said Hamburg Turnpike S 18°-25'-27" E, a distance of 334.47 feet to a point of curvature; thence continuing along the westerly line of said Hamburg Turnpike on a curve to the right having a radius of 3,226.70 feet, an arc length of 677.61 feet, and a chord bearing of S 06°-27'-47" E, at a distance of 676.37 feet to the point of beginning.

**Parcel "C": Lackawanna Business Park II Parcel II-7; Brownfield Cleanup Program Site No. C915198G**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lackawanna, County of Erie and State of New York, being part of Lot No. 24, Township 10, Range 8 of the Buffalo Creek Reservation, being BCP Site Number C915198G, and part of BCP Site Number C915198I, as shown on a map of "Business Park Phase II", prepared by Wendel, June 2012, Project Number 411107, being more particularly bounded and described as follows:

COMMENCING at a point in the westerly highway boundary of the Hamburg Turnpike (also known as State Route No. 5), being 2884.21 feet north of the division line between lands conveyed to Tecumseh Redevelopment Inc. recorded in the Erie County Clerk's Office in Liber 11040 of Deeds at page 8953 on the north, and lands conveyed to South Buffalo Railway Company recorded in the Erie County Clerk's Office in Liber 10119 of Deeds at page 131 on the south, as measured along the westerly highway boundary of the Hamburg Turnpike as appropriated by New York State Department of Public Works Map 1, Parcel 1, recorded in the Erie County Clerk's Office in Liber 5650 of Deeds at page 404 also by New York State Department of Transportation for the City of Lackawanna, S.H. No. FAC 49-10, Map 305, Parcel 306, recorded in the Erie County Clerk's Office in Liber 10960 of Deeds at page 2028, said point also being the southeast corner of said Business Park Phase II, Parcel "B"; thence along the southerly line of said Business Park Phase II, Parcel "B", S 75°-24'-22" W, a distance of 420.71 feet to a point; thence continuing along the southerly line of said Business Park Phase II,

Parcel "B", S 52°-31'-09" W, a distance of 87.24 feet to the principal point of beginning; thence continuing along the south line of said Business Park Phase II, Parcel "B", S 52°-31'-09" W, a distance of 57.83 feet to a point in the northerly line of BCP Site Number C915198E; thence along the northerly line of BCP Site Number C915198E the following 3 courses and distances:

1. N 42°-41'-01" W, a distance of 49.08 feet to a point;
2. N 58°-11'-58" W, a distance of 234.94 feet to a point;
3. S 70°-54'-30" W, a distance of 434.91 feet to a point in west line of said Business Park Phase II, Parcel "B"; thence along the westerly line of said Business Park Phase II, Parcel B, N 18°-20'-36" W, a distance of 763.91 feet to a point on the west line of BCP Site Number C915198I, being the southwest corner of lands conveyed to Time Release Properties LLC by deed recorded in Liber 11354 of Deeds at page 1209 (Parcel A), thence along the south line of said Time Release Properties LLC (Parcel A), the following 7 courses and distances:

1. N 71°-07'-01" E, a distance of 621.67 feet to a point;
2. Along a curve to the left having a radius of 967.00 feet, a chord length of 136.41 feet and an arc length of 136.52 feet, to a point;
3. N 27°-05'-15" W, a distance of 15.00 feet to a point;
4. Along a curve to the left, having a radius of 952.00 feet, a chord length of 1.95 feet and an arc length of 1.95 feet, to a point of tangency;
5. N 62°-54'-45" E, a distance of 17.99 feet to a point;
6. S 27°-05'-15" E, a distance of 15.00 feet to a point;
7. N 62°-54'-45" E, a distance of 24.27 feet to a point on the west line of BCP Site Number C915198F; thence along the west line of BCP Site Number C915198F the following 4 courses and distances:

1. S 18°-25'-27" E, a distance of 196.73 feet to a point;
2. S 11°-04'-28" E, a distance of 436.02 feet to a point;
3. S 02°-00'-31" E, a distance of 220.41 feet to a point;
4. S 09°-01'-35" E, a distance of 149.02 feet to the principal point of beginning.

TOGETHER with the non-exclusive right to use Dona Street for ingress and egress pursuant to Permanent Easement Agreements recorded in the Erie County Clerk's Office in Liber 11339 of Deeds at page 4724 and Liber 11347 of Deeds at page 224.



### **SCHEDULE B-3**

#### **ENVIRONMENTAL REPORTS**

##### **Brownfield Cleanup Agreements:**

1. Phase II Business Park, Original BCA, March 14, 2007
2. Phase II Business Park, BCA Amendment No. 1, August 22, 2012
3. Phase II Business Park, BCA (C915198B), August 22, 2012
4. Phase II Business Park, BCA (C915198C), August 22, 2012
5. Phase II Business Park, BCA (C915198D), August 22, 2012
6. Phase II Business Park, BCA (C915198E), August 22, 2012
7. Phase II Business Park, BCA (C915198F), August 22, 2012
8. Phase II Business Park, BCA (C915198G), August 22, 2012
9. Phase II Business Park, BCA Amendment No. 2, April 18, 2018
10. Phase II Business Park, BCA Amendment No. 3 (C915198G), September 18, 2019

##### **Decision Documents:**

1. Phase II Business Park, (C915198), dated December, 2016
2. Phase II Business Park, (C915198B), dated January, 2017
3. Phase II Business Park, (C915198C), dated December, 2016
4. Phase II Business Park, (C915198E), dated January, 2017
5. Phase II Business Park, (C915198F), dated January, 2017
6. Phase II Business Park, (C915198G), dated January, 2017

##### **Environmental Easements:**

1. Phase II Business Park, Environmental Easement (C915198), dated June 21, 2014 and recorded with the Erie County Clerk on July 15, 2014 in Liber 11266 of Deeds at page 5455

##### **Environmental Reports:**

1. RCRA Facility Assessment, September 1988
2. Phase I Environmental Site Assessment Report for 200 Acre Brownfield Redevelopment Site (later know as Phase II and III Business Parks), June 2002
3. Final RCRA Facility Investigation Report, October 2004
4. Remedial Investigation/Alternatives Analysis Report (RI/AAR), May 2011, Revised March 2012
5. Supplemental Letter Report (C915198), April 17, 2013
6. Construction Completion Report (Railroad Realignment), (C915197, C915198, & C915199), December 2013
7. Interim Remedial Measures (IRM) Work Plan (C915198B, C, E, & K), July 2013
8. Construction Completion Report (C915198B, C, E, & K), January 2014
9. Site Management Plan (C915198 through C915198L), January 2014
10. Construction Completion Report (C915198E), April 2019


11. Corrective Measured Study Report, December 2011, Revised October 2014, Revised May 2019
12. Construction Completion Report (C915198C), March 2020
13. South Linde Area - Interim Remedial Measures Work Plan, February 2010
14. South Linde Area - 2019 Annual Report, January 2020
15. TENORM Evaluation Work Plan, August 2017
16. TENORM NYSDEC Letter October, October 2017
17. TENORM Test Result Table

**EXHIBIT A-2**

**SURVEY OF SITE II-7**

**(SITE NUMBER C915198G)**





**wendel**

Centerpointe Corporate Park • 313 Eastern Road • Suite 200  
 White Plains, New York 10622  
 PHONE: 914.271.0825  
 WEBSITE: [www.wendelcorporata.com](http://www.wendelcorporata.com)

Wendel WFO Architecture, Engineering, Surveying and Landscape Architecture P.C.

PART OF LOT#	24	SEC -	TWP 10	RANGE 8
OF THE BUFFALO CREEK RESERVATION				
CITY	LACKAWANNA	PRECED. NO.	285216	
COUNTY	ERIE	STATE	N.Y.	
OWNER	DDA	PRIN. KAC	CHIEF. RWJ	DATE 5/05/2002


**wendel**

Centerpointe Corporate Park • 313 Eastern Road • Suite 200  
 White Plains, New York 10622  
 PHONE: 914.271.0825  
 WEBSITE: [www.wendelcorporata.com](http://www.wendelcorporata.com)

Wendel WFO Architecture, Engineering, Surveying and Landscape Architecture P.C.

PART OF LOT#	24	SEC -	TWP 10	RANGE 8
OF THE BUFFALO CREEK RESERVATION				
CITY	LACKAWANNA	PRECED. NO.	285216	
COUNTY	ERIE	STATE	N.Y.	
OWNER	DDA	PRIN. KAC	CHIEF. RWJ	DATE 5/05/2002

## EXHIBIT B

### NYS DOS ENTITY INFORMATION



## Department of State Division of Corporations

### Entity Information

[Return to Results](#)[Return to Search](#)

#### Entity Details

**ENTITY NAME:**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT  
CORPORATION**DOS ID:**

745601

**FOREIGN LEGAL NAME:****FICTITIOUS NAME:**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT  
CORPORATION**ENTITY TYPE:**

DOMESTIC NOT-FOR-PROFIT CORPORATION

**DURATION DATE/LATEST DATE OF DISSOLUTION:****SECTION OF LAW:****ENTITY STATUS:**

Active

**DATE OF INITIAL DOS FILING:**

01/13/1982

**REASON FOR STATUS:****EFFECTIVE DATE INITIAL FILING:**

01/13/1982

**INACTIVE DATE:****FOREIGN FORMATION DATE:****STATEMENT STATUS:****COUNTY:**

Erie

**NEXT STATEMENT DUE DATE:**

01/31/1984

**JURISDICTION:**

New York, United States

**NFP CATEGORY:**

CHARITABLE

[ENTITY DISPLAY](#)[NAME HISTORY](#)[FILING HISTORY](#)[MERGER HISTORY](#)[ASSUMED NAME HISTORY](#)

#### Service of Process Name and Address

**Name:** THE CORPORATION**Address:** 95 PERRY STREET-SUITE 403, BUFFALO, NY, United States, 14203

#### Chief Executive Officer's Name and Address

**Name:****Address:**

#### Principal Executive Office Name and Address

**Name:****Address:**

#### Registered Agent Name and Address

**Name:**

Address:

Entity Primary Location Name and Address

Name:

Address:

Farmcorpflag

Is The Entity A Farm Corporation: No

Stock Information

Share Value	Number Of Shares	Value Per Share

EXHIBIT C  
ILDC RESOLUTION

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION  
RESOLUTION**

A meeting of the Buffalo and Erie County Industrial Land Development Corporation (the "Corporation") was convened on November 28, 2018, at 8:45 a.m.

The following resolution was duly offered and seconded, to wit:

RESOLUTION OF THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (THE "ILDC") AUTHORIZING THE ILDC TO: (i) ENTER INTO A FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT PURPOSES WITH THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") TO RECEIVE \$1,750,000.00 IN THE FORM OF A PARTIALLY REFUNDABLE GRANT FROM THE AGENCY'S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT URBAN DEVELOPMENT ACTION GRANT ("UDAG") REFLOW FUND; (ii) MAKE A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iii) AUTHORIZE THE NEGOTIATION AND EXECUTION AND DELIVERY OF AN AGREEMENT OF PURCHASE AND SALE TO BE ENTERED INTO WITH TECUMSEH REDEVELOPMENT INC. ("TECUMSEH") WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW); AND (iv) AUTHORIZE THE EXECUTION AND DELIVERY OF BROWNFIELD SITE CLEANUP AGREEMENT(S) WITH RESPECT TO THE PROJECT (AS MORE FULLY DESCRIBED BELOW)

WHEREAS, the Buffalo and Erie County Industrial Land Development Corporation (the "ILDC") is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County and to lessen the burdens of government and act in the public interest; and

WHEREAS, the ILDC desires to purchase, in one or more separate transactions, approximately 93 acres of real property and to obtain the acquisition of a right-of way to continue facilitating acquisition of real property to be incorporated into the Erie County Shoreline Trail, all such real property located on the former Bethlehem Steel site in Lackawanna, New York, (the "Real Property" as depicted within Exhibit A), where all such Real Property to be acquired is currently owned by Tecumseh Redevelopment Inc. ("Tecumseh"), and position the Real Property for reuse and redevelopment (collectively, the "Project"); and

WHEREAS, the ILDC and Tecumseh have initiated negotiations related to the terms of an Agreement of Purchase and Sale setting forth the terms and conditions relating to: (i) the disposition of the Real Property to the ILDC in furtherance of the

Project, (ii) Tecumseh's obligations with respect to undertaking certain remedial activities on certain portions of the Real Property prior to closing(s), and (iii) the purchase price being \$15,000 per acre or an amount not to exceed of \$1,500,000 for the sum total acreage of the Real Property; and

WHEREAS, the ILDC, on June 27, 2018, resolved to accept and authorize the receipt of a New York State Empire State Development ("ESD") incentive proposal award (the "ESD Incentive Proposal") that provides, among other things, \$1,500,000 in grant proceeds (the "ESD Grant") to the ILDC for purposes of acquiring the Real Property; and

WHEREAS, the ILDC does not have a sufficient amount of cash in its general fund to purchase the Real Property that would thereafter be an eligible reimbursable expenditure per the ESD Incentive Proposal; and

WHEREAS, the Erie County Industrial Development Agency (the "Agency"), an affiliate of the ILDC, maintains a UDAG Reflow Fund (the "UDAG Fund") and the ILDC has requested that the Agency grant up to \$1,500,000 to the ILDC, to allow it to purchase the Real Property, and up to \$250,000 to the ILDC to be used by the ILDC for purposes of carrying the Real Property for such expenses including, but not to be limited to, insurance costs, and special assessments and user fees costs; and

WHEREAS, the Agency desires to assist the ILDC in its efforts to acquire and redevelop the Real Property by granting UDAG Funds to the ILDC in the amount of \$1,500,000 to enable the ILDC to purchase the Real Property from Tecumseh, and the Agency desires to further assist the ILDC, upon taking title the Real Property, by granting UDAG Funds to the ILDC in an amount of \$250,000 for purposes of carrying the Real Property; and

WHEREAS, the ILDC desires to accept the Agency's grant of UDAG Funds and to enter into an appropriate grant disbursement agreement (the "GDA") with the Agency in the amount of \$1,500,000 to purchase the Real Property and in the amount of \$250,000 to carry the Real Property thereby promoting and facilitating the future redevelopment of the Real Property and the future creation of new jobs and new investment; and

WHEREAS, the ILDC proposes in return to reimburse the Agency, over time, by: (i) submitting to the Agency the amount of up to \$1,500,000 upon the ILDC's receipt of the ESD Grant, and (ii) submitting a reimbursement payment back to the Agency in an amount equal to 50% of the net proceeds received by the ILDC upon the future sale of, and with respect to each such future sale of, portions of the Real Property ("Real Property Sale Proceeds"), to refund the Agency in an amount not to exceed \$250,000; and

WHEREAS, the Project is an Unlisted Action pursuant to the New York State Environmental Quality Review Act, Article 8 of the NY Environmental Conservation Law and 6 NYCRR Part 617 (collectively referred to as "SEQR"); and



WHEREAS, the ILDC chose to pursue a coordinated review of an Unlisted Action, and initiated a Lead Agency coordination process by declaring its intent to be Lead Agency; and

WHEREAS, none of the Involved Agencies objected to the ILDC serving as Lead Agency when the ILDC distributed Part 1 of the Short Environmental Assessment Form ("EAF") and notice indicating that that a Lead Agency shall be agreed upon within 30 days of the transmission of the EAF; and

WHEREAS, to properly undertake the Project, it will be necessary for the ILDC to enter into certain Brownfield Site Cleanup Agreements (the "BCP Agreements") affecting the entirety of the Real Property to ensure that the ILDC and its successors and assigns can obtain the benefits of the New York State Brownfield Cleanup Program.

**NOW, THEREFORE, BE IT RESOLVED BY THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION AS FOLLOWS:**

Section 1. Based upon a review of the Project and the EAF prepared for the Project, the ILDC:

(i) Pursuant to 6 NYCRR § 617.4 of the SEQR regulations, the ILDC hereby accepts and assumes the responsibility to act as Lead Agency for the uncoordinated review of the Project as an Unlisted Action.

(ii) Based upon the thorough and careful review of the Project, the EAF, and all other materials related thereto, the ILDC hereby determines that the Project will not result in a potential significant adverse environmental impact, and issues a Negative Declaration for the Project in accordance with SEQR, Article 8 of the Environmental Conservation Law and, in particular, pursuant to the criteria found at 6 NYCRR § 617.7(b) of the SEQR regulations.

(iii) Determines that all of the provisions of SEQR that are required to be complied with as a condition precedent to undertake the Project and the participation by the ILDC in undertaking the Project have been satisfied.

Section 2. The ILDC hereby approves and authorizes the receipt of the UDAG Funds from the Agency to carry out the activities as described herein, in an amount not to exceed \$1,500,000 to purchase the Real Property and in the amount of \$250,000 to carry the Real Property and further approves and authorizes the ILDC to reimburse the Agency with proceeds from the ESD Grant and with Real Property Sale Proceeds upon the sale of the Real Property or parcels of the Real Property as described herein.

Section 3. The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer are hereby authorized, on behalf of the ILDC, to negotiate, execute and deliver

the GDA, and any related documents, to be entered into with the Agency, with respect to disbursement and repayment of the UDAG Funds consistent with the terms as provided for within this resolution.

Section 4. The ILDC hereby authorizes the undertaking of the acquisition of the Real Property from Tecumseh in the amount not to exceed \$1,500,000 in accordance with the terms and conditions as described herein, and the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer are hereby authorized, on behalf of the ILDC, to execute and deliver an Agreement of Purchase and Sale and any related license agreements with Tecumseh, and any other related documents required to accomplish the purposes of this resolution, with such changes, variations, omissions and insertions as the Chair, the Vice Chair, the President/Chief Executive Officer, and/or the Executive Vice President, in consultation with the ILDC general counsel, shall approve, the execution thereof by the Chair, the Vice Chair, the President/Chief Executive Officer, and/or the Executive Vice President to constitute conclusive evidence of such approval.

Section 5. The ILDC hereby authorizes the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, on behalf of the ILDC, to enter into and amend, as appropriate, the BCP Agreements that affect the entirety of the Real Property to ensure that the ILDC and its successors and assigns can obtain the benefits of the New York State Brownfield Cleanup Program.

Section 6. The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, are hereby authorized and directed, and in the name and on behalf of the ILDC to obtain such approvals and consents of regulatory or governmental authorities, negotiate and execute any related documents, certifications, or agreements, and to do all such further acts and things as may be necessary, or in the opinion of such officer, employee or agent so acting, desirable and proper to effect the purposes of the foregoing Resolutions.

Section 7. This resolution shall take effect immediately.

Dated: November 28, 2018

## Real Property



STATE OF NEW YORK )  
COUNTY OF ERIE ) SS:

I, the undersigned Secretary of the Buffalo and Erie County Industrial Land Development Corporation, DO HEREBY CERTIFY:

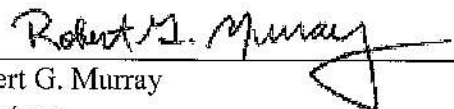
That I have compared the annexed extract of minutes of the meeting of the Buffalo and Erie County Industrial Land Development Corporation ("ILDC"), including the resolution contained therein, held on November 28, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the ILDC and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the ILDC had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the ILDC present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the ILDC this 28<sup>th</sup> day of November, 2018.

  
Robert G. Murray  
Secretary

[SEAL]

## **EXHIBIT D**

### **Brownfield Cleanup Program**

#### **Application to Amend Brownfield Cleanup Agreement and Amendment**

##### **Section IV. Eligibility Information for New Requestor**

Volunteer Certification: The Buffalo and Erie County Industrial Land Development Corporation (the "New Requestor") has appropriately answered "no" to all the eligibility questions within this section, and hereby certifies that it is a volunteer and that its liability arises solely as a result of ownership, current operation of and involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

New Requestor has and had no current or prior direct or indirect ownership interest or any other interest in any prior owner or operator of the property. New Requestor acquired its fee title interest in the property on August 26, 2021. The property was purchased from Tecumseh Redevelopment Inc. ("Tecumseh"), and Tecumseh is currently a volunteer with respect to the Brownfield Cleanup Agreement affecting the property that is the subject of this Application to Amend Brownfield Cleanup Agreement and Amendment.

Tecumseh has, prior to New Requestor obtaining title to the property, and at the insistence of New Requestor as a condition of taking title to the property, undertaken certain remedial activities on the property, and also, prior to taking title to the property, the New Requestor secured receipt of a notice from the New York State Department of Environmental Conservation confirming that the New York State Department of Environmental Conservation hereby confirms that Tecumseh Redevelopment Inc. has satisfied all interim remedial measures required by the Decision Document for BCP Parcels C915198E, C915198F, and C915198G, located in the City of Lackawanna, Erie County, New York, and therefore, placement of the cover system as required by the Decision Document dated December 22, 2019 and following submission of an approvable updated SMP and Final Engineering Report (FER), is the remaining remedial action necessary to obtain a Certificate of Completion for these parcels.

Since taking title, New Requestor has not undertaken any activity on the property resulting in soil disturbance or otherwise undertaken any activity affecting the soil or groundwater, has taken appropriate care to ensure that there are not continuing releases of contamination on the property, that there are no threatened future releases of contamination on the property, and has prevented human, environmental, or natural resource exposure to any previously released contamination.

As such, New Requestor confirms that its liability arises solely as a result of ownership, current operation of and involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum, and affirms and confirms that New Requestor should be considered a "volunteer" as that term is defined under Section 27-1405(1)(b) of the New York Environmental Conservation Law.



**EXHIBIT E**

**PROOF OF PROPOSED NEW TAX LOT/SBL**

**NUMBER**

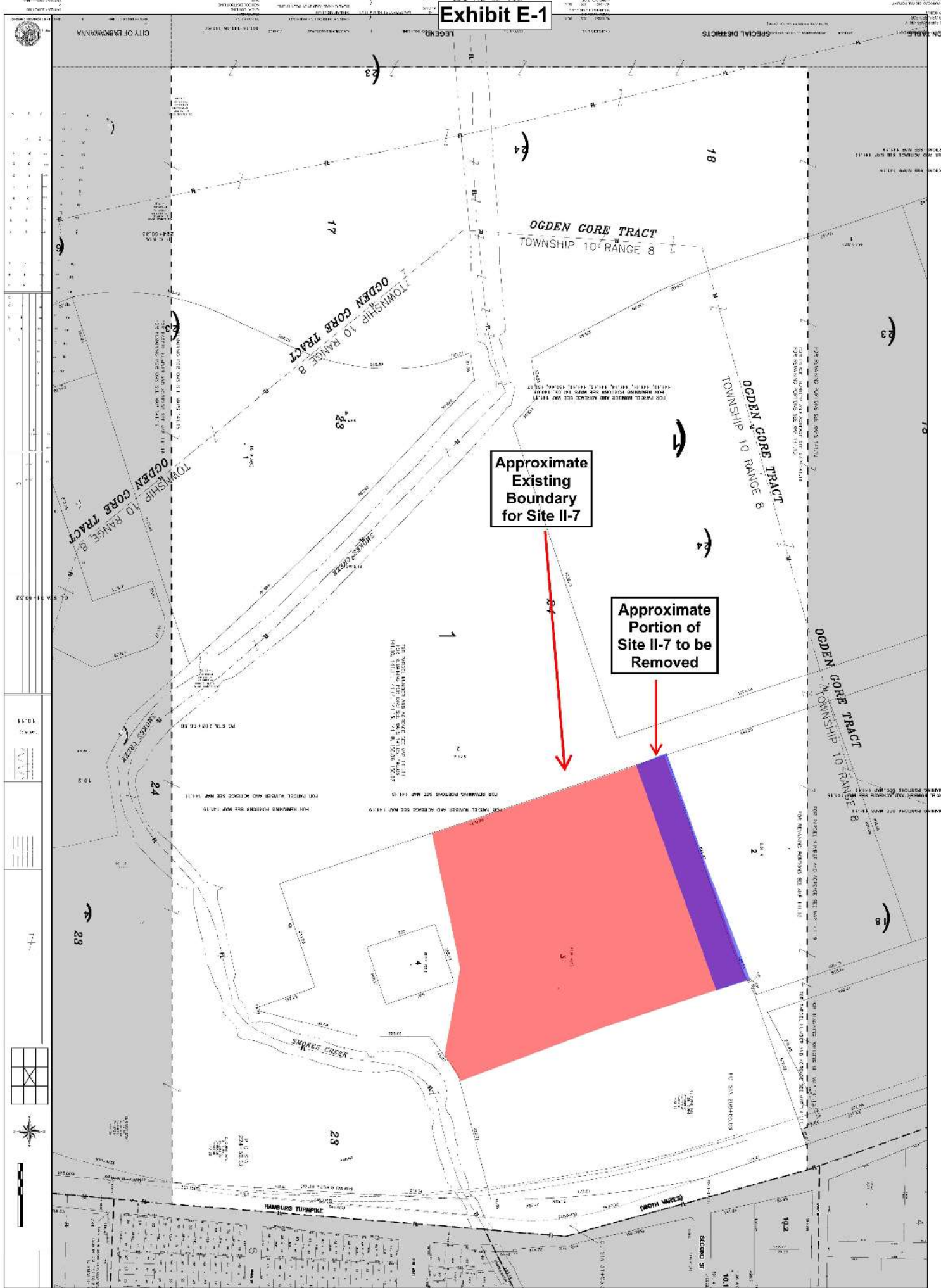
**FOR**

**SITE II-7 (SITE NUMBER C915198G)**

As stated in the Addendum attached hereto, the original Brownfield Cleanup Agreement listed Site II-6 (Site Number C915198G) ("Site II-7") as being part of the historical Tax Parcel/SBL No. 141.11-1-1.111. At or about the time of conveyance of Site II-7 from Tecumseh Redevelopment Inc. to the ILDC, Site II-7 was part of Tax Parcel/SBL No. 141.11-1-51. As of the date of this Amendment, Site II-7 has been assigned the Tax Parcel/SBL No. 141.19-1-3.

Relative to the foregoing please refer to a new tax map generated by Erie County confirming that Parcel/SBL Number 141.19-1-3 has been issued for Site II-7 attached hereto as Exhibit E-1.

Exhibit E-1

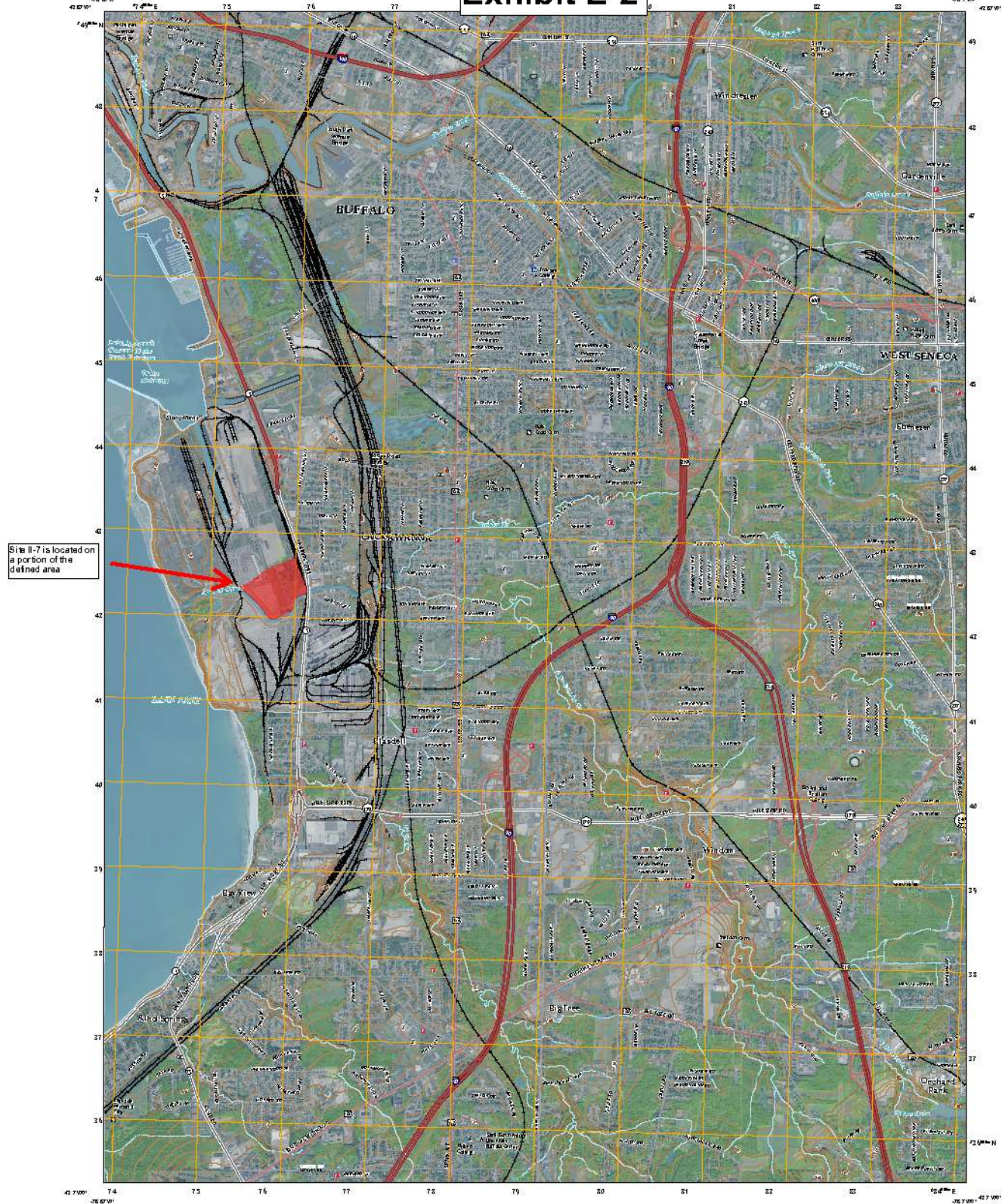
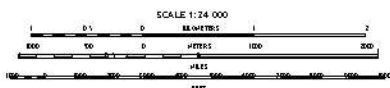






BUFFALO SE QUADRANGLE  
NEW YORK - ERIE COUNTY  
7.5-MINUTE SERIES

## Exhibit E-2

[illegible]

CONTOUR INTERNAL ID: FET  
NORTH AMERICAN VERSION: DATE OF 1988

This map was produced to perform with the  
National Geographic Program US Topo Pro-1 Standard, 2011  
Aerial data is associated with the product and is version 6.18



1	2	3	1 Bull abt 194
4		5	2 Bull abt 192
6	7	8	3 Low solar
			4 Bull abt 200
			5 On hand Park
			6 Eden
			7 Hamburg

ROUND 1: GEN SURVEY DATA		
Expensive way	_____	Low of Commission
Secondary Hwy	_____	Low of Road
Ramp	_____	640
Interstate 55	_____	US Route
		State Route

BUFFALO SE, NY  
2019



**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

June 11, 2024

726 EXCHANGE STREET, SUITE 1000  
BUFFALO, NY 14210  
(716) 200-5050

**ROBERT G. MURRAY**

DIRECT: (716) 200-5180  
FAX: (716) 200-5224  
BMURRAY@HARRISBEACH.COM

**VIA FEDERAL EXPRESS**

Chief, Site Control Section  
NYS Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

RE: Sites II-6, II-7 and II-14 Tecumseh Phase II Business Park, Lackawanna, NY  
BCP Site Numbers C915198F; C915198G; C915198N  
BCP Applications to Amend Brownfield Cleanup Agreements and Amendments

Dear Sir or Madam:

Enclosed please find Brownfield Cleanup Program ("BCP") Applications to Amend Brownfield Cleanup Agreement and Amendment for Sites II-6 (BCP Site No. C915198F), II-7 (BCP Site No. C915198G) and II-14 (BCP Site No. C915198N) Tecumseh Phase II Business Park (collectively, the "BCP Amendment Applications").

The BCP Amendment Applications are being submitted as follows with respect to the following BCP Sites:

**BCP Site No. C915198N ("Site II-14")**

The BCP Amendment Application for Site II-14 shall modify the boundaries of the real property identified in the existing Brownfield Cleanup Agreement for Site II-14 by adding an approximate 0.58 +/- acre portion of the real property from Site No. C915198F ("Site II-6") and an approximate 1.23 +/- acre portion of the real property from Site No. C915198G ("Site II-7") (collectively, the approximate 0.58 +/- acre portion of Site II-6 and the approximate 1.23 +/- acre portion of Site II-7 are hereinafter referred to as the "Added Parcels") to Site II-14. As discussed below, the Brownfield Cleanup Agreements for Sites II-6 and II-7 will be amended to account for the loss of 0.58 +/- acres and 1.23 +/- acres, respectively. The description of the addition of the Added Parcels is contained within Section V of the BCP First Amendment Application attached hereto, along with a revised survey attached therein which depicts the requested change to the boundary of Site II-14.

Please be advised that the Added Parcels are being added to the Existing BCA Agreement for Site II-14, and the entirety of Site II-14 will be ultimately conveyed to the City of Lackawanna to be used/dedicated as a public roadway. The Buffalo and Erie County Industrial Land Development Corporation (the "ILDC"), which is the current owner of Site II-14, has already constructed the public roadway on Site II-14 and upon the Added Parcels.



**BCP Site No. C915198F (“Site II-6”)**

The BCP Amendment Application for Site II-6 is being submitted to add the ILDC as a “Requestor” to Site II-6. ILDC was conveyed a fee interest in Site II-6 via quit claim deed dated August 21, 2021, a copy of which is attached to the BCP Amendment Application for Site II-6.

The BCP Amendment Application for Site II-6 is also being submitted to correct the Tax Parcel/SBL No. for Site II-6. As stated in the Addendum attached to the Amendment, the original Brownfield Cleanup Agreement identified Site II-6 as being part of the historical Tax Parcel/SBL No. 141.11-1-1.111. At or about the time of conveyance of Site II-6 and other land from Tecumseh to the ILDC, Site II-6 was part of Tax Parcel/SBL No. 141.11-1-51. As of the date of this Amendment, Site II-6 is part of Tax Parcel/SBL No. 141.19-1-3.

This BCP Amendment Application for Site II-6 is also being submitted to modify the boundaries of the real property identified in the existing Brownfield Cleanup Agreement for Site II-6 by removing an approximate 0.58 +/- acre portion of the real property from Site II-6 (the “Site II-6 Divested Parcel”). As described above, the Site II-6 Divested Parcel will be added to Site II-14. The removal of the Site II-6 Divested Parcel is described within Section V of the BCP Amendment Application for Site II-6 as attached hereto, along with a survey attached therein which depicts the requested changes to the boundaries of Site II-6.

**BCP Site No. C915198G (“Site II-7”)**

The BCP Amendment Application for Site II-7 is being submitted to add the ILDC as a new “Requestor” to Site II-7. ILDC was conveyed a fee interest in Site II-7 via quit claim deed dated August 21, 2021, a copy of which is attached to the BCP Amendment Application for Site II-17.

The BCP Amendment Application for Site II-7 is also being submitted to correct the Tax Parcel/SBL No. for Site II-7. As stated in the Addendum attached to the Amendment, the original Brownfield Cleanup Agreement identified Site II-7 as being part of the historical Tax Parcel/SBL No. 141.11-1-1.111. At or about the time of conveyance of Site II-7 and other land from Tecumseh to the ILDC, Site II-7 was part of Tax Parcel/SBL No. 141.11-1-51. As of the date of this Amendment, Site II-7 is part of Tax Parcel/SBL No. 141.19-1-3.

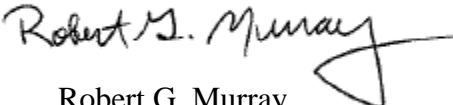
The BCP Amendment Application for Site II-7 is also being submitted to modify the boundaries of the real property identified in the existing Brownfield Cleanup Agreement for Site II-7 by removing an approximate 1.23 +/- acre portion of the real property from Site II-7 (the “Site II-7 Divested Parcel”). As described above, the Site II-7 Divested Parcel will be added to Site II-14. The removal of the Site II-7 Divested Parcel is described within Section V of the BCP Amendment Application for Site II-7 as attached hereto, along with a survey attached therein depicts the requested changes to the boundaries of Site II-7.

With respect to the removal of the Added Parcels from Sites II-6 and II-7 for inclusion in Site II-14, please recall that these changes are similar to, and are being proposed consistent with

the protocols established by, the 2021 BCP Application Amendment for BCP Site C915197H, ("Site II-8"), where certain real property was removed from Site II-8 and added to BCP Site C915198M (Site II-13") to be used as a future public roadway.

Please feel free to contact me if you require additional information. Thank you for your attention to this matter.

Very truly yours

  
Robert G. Murray

RGM/kd  
Enclosures