

Elk Street Commerce Park LLC

January 15, 2019

New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7020

Attn: **Chief, Site Control Section**

Re: **ExxonMobil Oil Former Buffalo Terminal
BCP Site ID No. C915201D**

Subj: **Application to Amend Brownfield Cleanup Agreement**

Ladies and Gentlemen:

Enclosed please find the NYSDEC BCP Application to Amend Brownfield Cleanup Agreement for ExxonMobil Oil Former Buffalo Terminal site ou3 associated with BCP Site ID No. C915201D. Please note that this Application supersedes our previous amendment submitted on July 26, 2018.

Though this Amendment we are seeking to address the following changes:

1. Revise the OU3 boundary to include the additional land deeded to Elk Street Commerce Park, LLC (ESCP) by the City of Buffalo within the Buffalo River which allowed the construction of the new steel sheet pile bulkhead;
2. Reflect the change of ownership for a portions of OU3 (a) 1 Babcock Street which was deeded to ESCP by former owner One Babcock Terminals LLC, and (b) 503 Elk Street which was deeded to ESCP by former owner ExxonMobil Corp.
3. Revised the OU3 boundary to eliminate certain lands of approximately 300' x 66' that are not owned by ESCP and that are, in part, included in a previously completed BCP project by others.

For clarity, we have included the following exhibits:

Exhibit 1 – “Boundary Changes” showing location of added and deleted property.

Exhibit 2 – Original Brownfield Cleanup Agreement (fully executed)

Exhibit 3 – Boundary Survey showing added property in Buffalo River deeded from City of Buffalo

Exhibit 4 – Legal Description for added property in Buffalo River deeded from City of Buffalo

Exhibit 5 – Survey showing property deeded from One Babcock Terminals LLC to ESCP

Exhibit 6 – Deed City of Buffalo to ESCP

Exhibit 7- Deed City of Buffalo to Buckeye Partners LLC

Exhibit 8 – Deed One Babcock Terminals to ESCP

Exhibit 9 – Survey showing revised boundaries of OU3

Exhibit 10 – Legal description revised OU3 boundaries

Exhibit 11 – Surveys and Parcel Reports for properties being deleted from OU3 BCA

Exhibit 12 - Environmental Easement for South Buffalo Development (Site No. 915232), portion of property being deleted from OU3 BCA

We trust that this provides the information need to amend the existing BCA.

Please advise if you have any questions or need additional information.

Very truly yours,

Elk Street Commerce Park, LLC



Paul R. Neureuter
Co-Manager

Encl.

CC (via email): Gene Melnyk – NYSDEC Region 9
Jennifer Dougherty – NYSDEC Region 9



Department of
Environmental
Conservation

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

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

☐ Amendment to [check one or more boxes below]

- ☐ Add
- ☐ Substitute
- ☐ Remove
- ☐ Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? ☐ Yes ☐ No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

☒ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☒ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

The property boundary (and corresponding BCP boundary) has been expanded through a City of Buffalo Land Abandonment in order to allow for the installation of a new sheet pile bulkhead in the Buffalo River as a part of the Remediation.

In addition, a change in the property ownership of the 503 Elk Street and One Babcock Street portions of the site whereby Elk Street Commerce Park, LLC has acquired certain portions of the property from ExxonMobil and One Babcock Terminals LLC. A Change of Use form has previously been submitted.

Finally, subsequent to the BCP application and BCA, it was discovered that a portion of the property was not owned by Elk Street Commerce Park (approximately 300' x 66') and was in part included in a prior BCP remediation project conducted by others. As such, the boundary is amended herein to exclude this area.

Please refer to the attached instructions for guidance on filling out this application

Section I. Existing Agreement Information

BCP SITE NAME: ExxonMobil Oil Former Buffalo Terminal BCP SITE NUMBER: C915201D

NAME OF CURRENT APPLICANT(S): Elk Street Commerce Park, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C915201D-01 DATE OF EXISTING AGREEMENT: 10-2-17

Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)? ☐ Yes ☐ No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? ☐ Yes ☐ No

Describe Requestor's Relationship to Existing Applicant:

Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)

OWNER'S NAME (if different from requestor) Elk Street Commerce Park, LLC

ADDRESS 4 Centre Drive

CITY/TOWN Orchard Park, NY

ZIP CODE 14127

PHONE 716-667-1234

FAX 716-667-1258

E-MAIL pneureuter@kroggrp.com

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? ☐ Yes ☐ No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? ☐ Yes ☐ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐ Yes ☐ No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
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, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ☐ No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. ☐ Yes ☐ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? ☐ Yes ☐ No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? ☐ Yes ☐ No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of 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? ☐ Yes ☐ No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☐ No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? ☐ Yes ☐ No
11. Are there any unregistered bulk storage tanks on-site which require registration? ☐ Yes ☐ No

THE 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:

☐ PARTICIPANT

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.

☐ VOLUNTEER

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

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

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

Requestor's Relationship to Property (check one):

☐ Prior Owner ☐ Current Owner ☐ Potential /Future Purchaser ☐ Other _____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? ☐ Yes ☐ No

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

Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS 503 Elk Street and One Babcock Street

CITY/TOWN Buffalo

ZIP CODE 14210

TAX BLOCK AND LOT (TBL) (in existing agreement)

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
503 Elk Street	1	123.13	1	2.111	10.8
625 Elk Street		123.13	1	2.112	16.7
1 Babcock Street		122.12	1	20.1	6.8

Check appropriate boxes below:

- ☒ Changes to metes and bounds description or TBL correction
☒ Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: 0.14

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
New Channel of the Buffalo River	P1958#54				0.14

- ☒ Reduction of property

Approximate acreage removed: (0.46)

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
1 Babcock Street	122.12	1	20.1	20.1	(0.46)

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.

☐ Yes ☐ No

Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.

☐ Yes ☐ No

Please answer questions below and provide documentation necessary to support answers.

1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)?

Please see [DEC's website](#) for more information.

☐ Yes ☐ No

2. Is the property upside down as defined below?

☐ Yes ☐ No

From ECL 27-1405(31):

"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.

3. Is the project an affordable housing project as defined below?

☐ Yes ☐ No

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

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

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

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

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

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information
BCP SITE NAME: ExxonMobil Oil Former Buffalo Terminal OU-3 BCP SITE NUMBER: C915201D
NAME OF CURRENT APPLICANT(S): Elk Street Commerce Park, LLC
INDEX NUMBER OF EXISTING AGREEMENT: C915201D-08-17
EFFECTIVE DATE OF EXISTING AGREEMENT: 10-2-17

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures 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 any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
(Individual)
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. 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 (title _____) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
_____ 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: _____

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)

(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 Co-manager (title) of Elk Street Commerce Park, LLC (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. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: January 15, 2019 Signature: 

Print Name: Paul R. Neureuter

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

☐

PARTICIPANT

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.

☒

VOLUNTEER

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

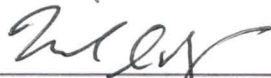
Effective Date of the Original Agreement: 10/2/17

Signature by the Department:

DATED: 5/20/19

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

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

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

BROWNFIELD CLEANUP PROGRAM (BCP)
INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.**

SECTION II NEW REQUESTOR INFORMATION

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

SECTION IV**NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

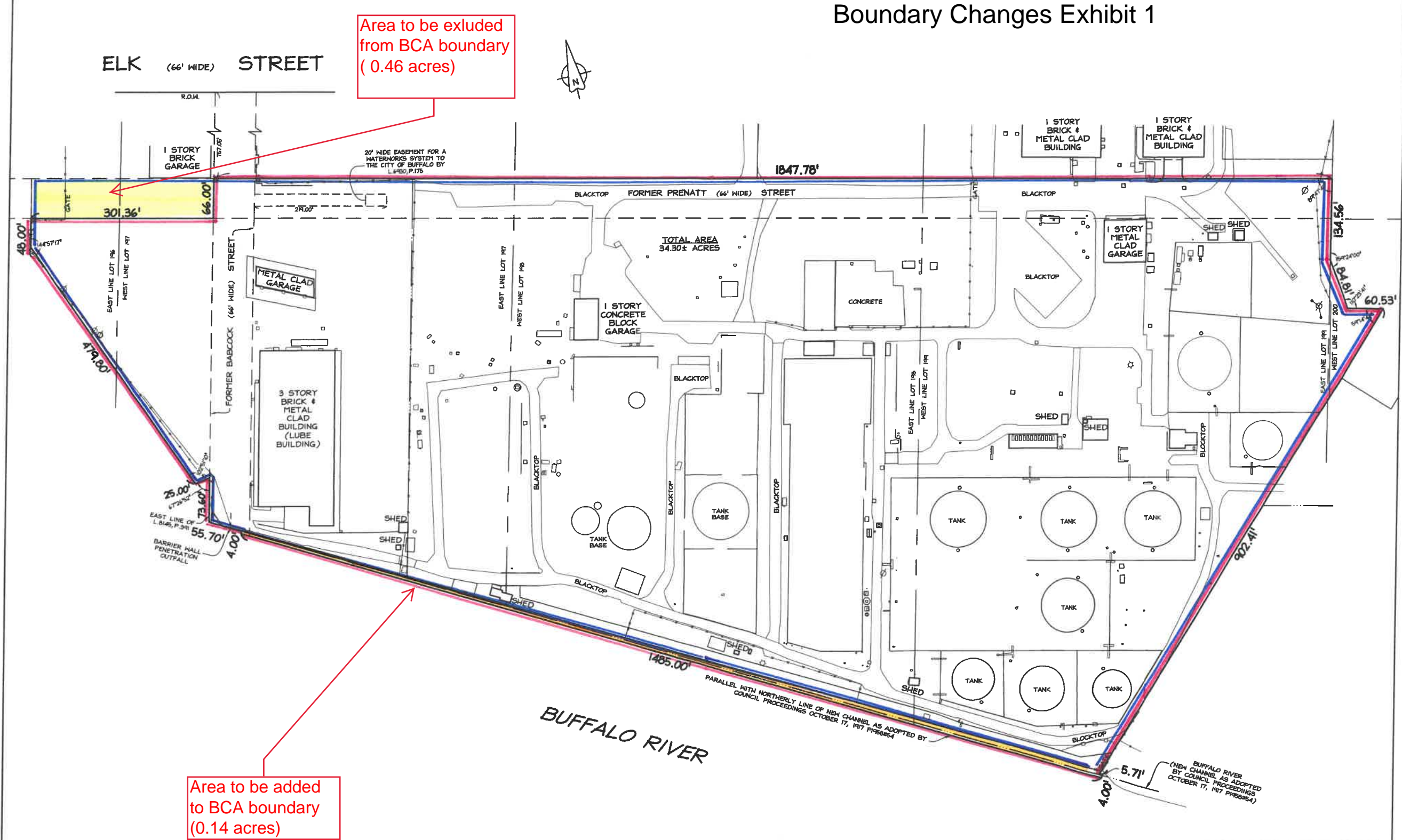
Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

Boundary Changes Exhibit 1



NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
P (716) 827-8000 F (716) 270-6091 www.nussclark.com

This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.

Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of section 7209, provision 2 of the New York State Education Law.

BOUNDARY SURVEY
Operating Unit 3
Part of Lot 196,197,198,199,200 Township 10, Range 8
Buffalo Creek Reservation
City of Buffalo
County of Erie, State of New York

Michael I. E.

Date of Survey: 4/04/18 Scale: 1" = 100' Project No.: 18J2-0361BG4c

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation

625 Broadway, 12th Floor, Albany, New York 12233-7011

P: (518) 402-9706 | F: (518) 402-9020

www.dec.ny.gov

Elk Street Commerce Park, LLC
Paul R. Neureuter
4 Centre Drive
Orchard Park, NY 14127

OCT 02 2017

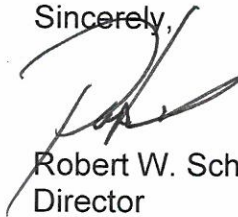
RE: Site Name: ExxonMobil Oil Former Buffalo Terminal OU-3
Site No.: C915201D
Location of Site: 503/625 Elk Street and 1 Babcock St., Erie County,
Buffalo, NY 14210

Dear Mr. Neureuter,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the ExxonMobil Oil Former Buffalo Terminal OU-3 Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Jennifer Dougherty, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 270 Michigan Avenue Buffalo, NY 14203-2915, or by email at jennifer.dougherty@dec.ny.gov.

Sincerely,



Robert W. Schick, P.E.
Director

Division of Environmental Remediation

Enclosure

ec: E. Melnyk, Project Manager

cc: J. Dougherty, Esq.
A. Guglielmi, Esq. /M. Mastroianni



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C915201D-08-17**

ExxonMobil Oil Former Buffalo Terminal OU-3

DEC Site No.: C915201D

Located at: 503/625 Elk Street and 1 Babcock St.
Erie County
Buffalo, NY 14210

Hereinafter referred to as "Site"

by:

Elk Street Commerce Park, LLC
4 Centre Drive, Orchard Park, NY 14127

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicant submitted an application received by the Department on April 11, 2017; and

WHEREAS, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicant, Elk Street Commerce Park, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Site is not located in a City having a population of one million or more. It is therefore presumed that the Site is eligible for tangible property tax credits.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 34.300 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 123.13-1-2.111
Street Number: 503 Elk Street, Buffalo
Owner: Exxon Mobil Corporation

Tax Map/Parcel No.: 123.13-1-2.112
Street Number: 625 Elk Street, Buffalo
Owner: 625 Buckeye Terminals, LLC

Tax Map/Parcel No.: 122-12-1-20.1
Street Number: 1 Babcock Street, Buffalo
Owner: One Babcock, Inc.

IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Eugene Melnyk
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Ave
Buffalo, NY 14203-2915
eugene.melnyk@dec.ny.gov

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

Jennifer Dougherty, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
270 Michigan Ave
Buffalo, NY 14203-2915
jennifer.dougherty@dec.ny.gov

2. Communication from the Department to Applicant shall be sent to:

Elk Street Commerce Park, LLC
Attn: Paul R. Neureuter
4 Centre Drive
Orchard Park, NY 14127
pneureuter@kroggrp.com

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

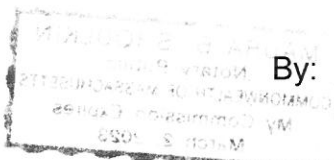
B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: *October 3, 2017*

THIS BROWNFIELD CLEANUP AGREEMENT IS
HEREBY APPROVED, Acting by and Through the
Department of Environmental Conservation as Designee
of the Commissioner,

By:



[Signature]
Robert W. Schick, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Elk Street Commerce Park, LLC

By: [Signature]

Title: Co-Manager Co-Manager

Date: 9/27/17 9/29/17

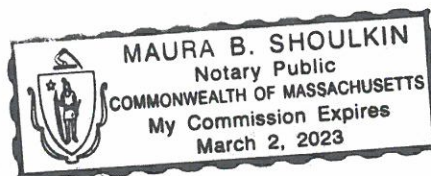
Commonwealth of Massachusetts

STATE OF NEW YORK)

) ss:
COUNTY OF Norfolk)

On the 27 day of September in the year 2017, before me, the undersigned, personally appeared Norman A. Peterson III, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Signature and Office of individual
taking acknowledgment



STATE OF NEW YORK)

) ss:
COUNTY OF Erie)

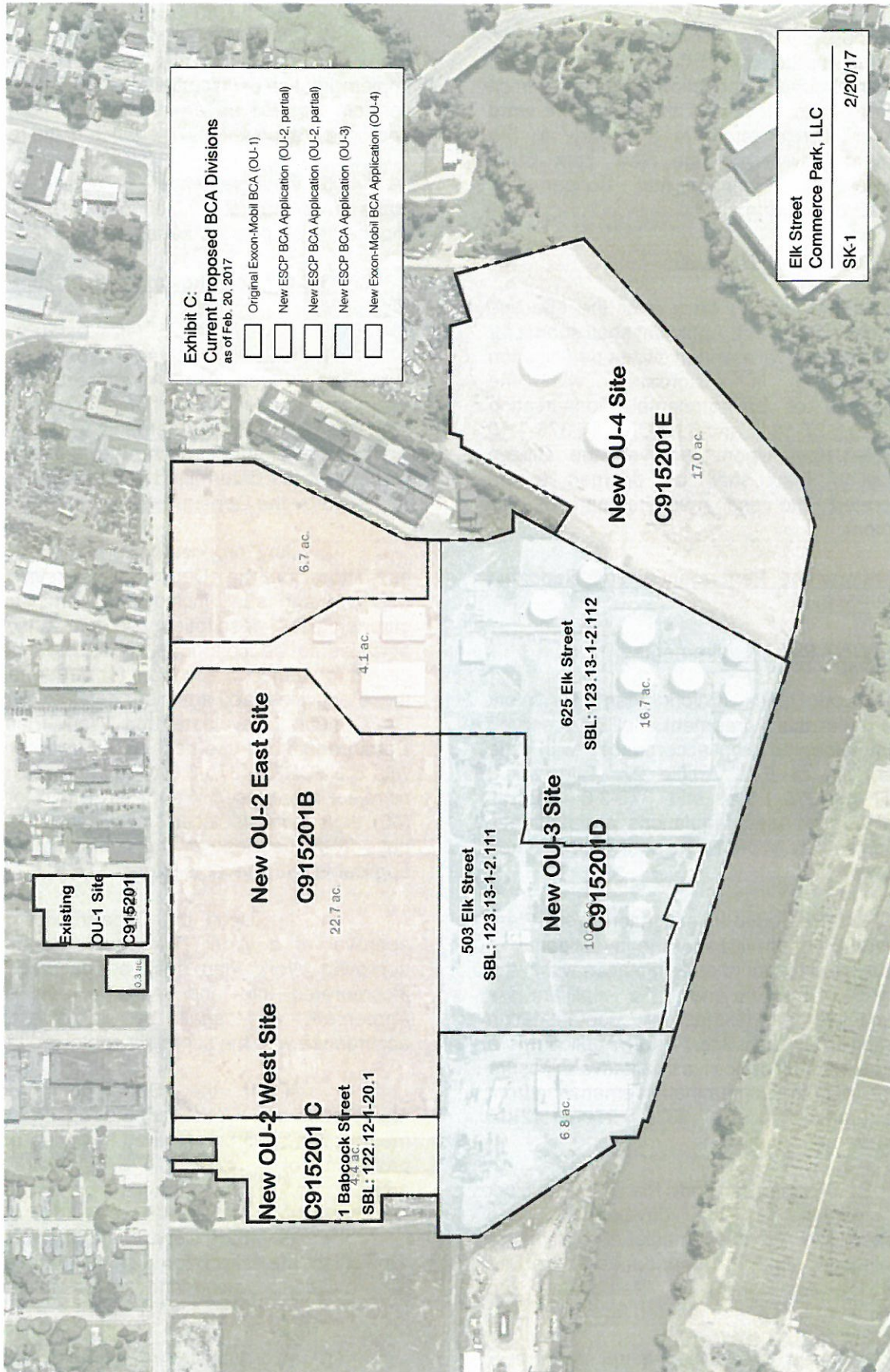
On the 25th day of September in the year 2017, before me, the undersigned, personally appeared Paul B. Neureuter, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Signature and Office of individual
taking acknowledgement

SHARON K. DETAMBLE
Notary Public, State of New York
Qualified in Erie County
Registration #01023001000
My Commission Expires Nov. 8, 2017

EXHIBIT A

SITE MAP



APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "BCA" or "Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (ECL) § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with

the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Title 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be

incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6

NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during

business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a

Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional

as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits,

easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

**WRITTEN CONSENT
OF THE MEMBERS OF
ELK STREET COMMERCE PARK LLC**

THE UNDERSIGNED, being Members of Elk Street Commerce Park LLC (ESCP), a New York limited liability company, do hereby consent to the following action and adopt the following resolutions without a formal meeting:


WHEREAS, the Members of ESCP desire to authorize Paul Neureuter and Norman ("Pete") Pedersen, as Co-Managers of ESCP pursuant to Section 4.3 of the ESCP Operating Agreement, to execute on the behalf of the entity the Acceptance Letters of the Brownfield Cleanup Agreements (BCAs) for OU2-East, OU-2 West and OU-3;

NOW THEREFORE BE IT

RESOLVED, that the Co Managers of ESCP are hereby authorized to execute the three (3) aforementioned BCA Acceptance Letters.

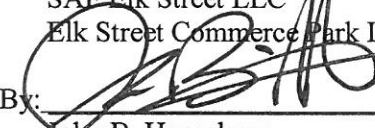
IN WITNESS WHEREOF, the undersigned have signed this Consent as of September 21, 2017.

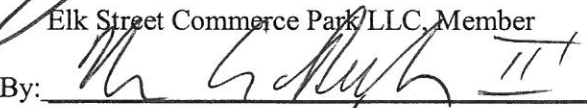
Elk Street Commerce Park LLC

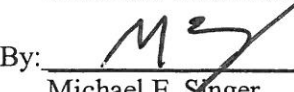
By: 
Peter L. Krog
Elk Street Commerce Park LLC, Member

By: 
PRN Elk Street LLC
Elk Street Commerce Park LLC, Member

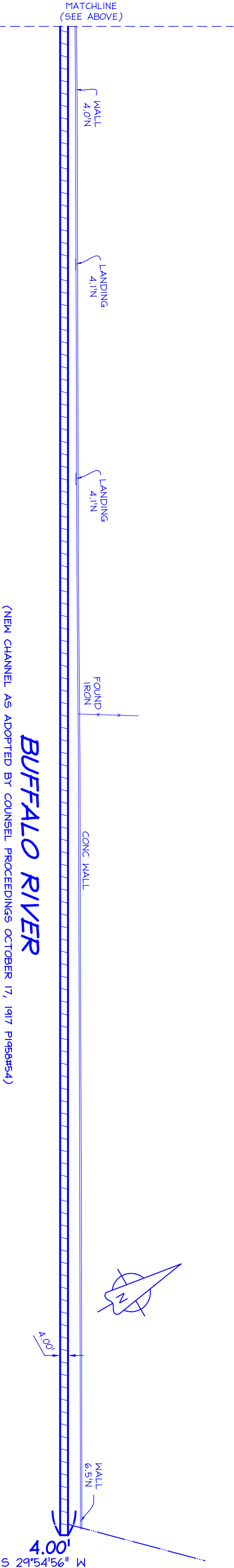
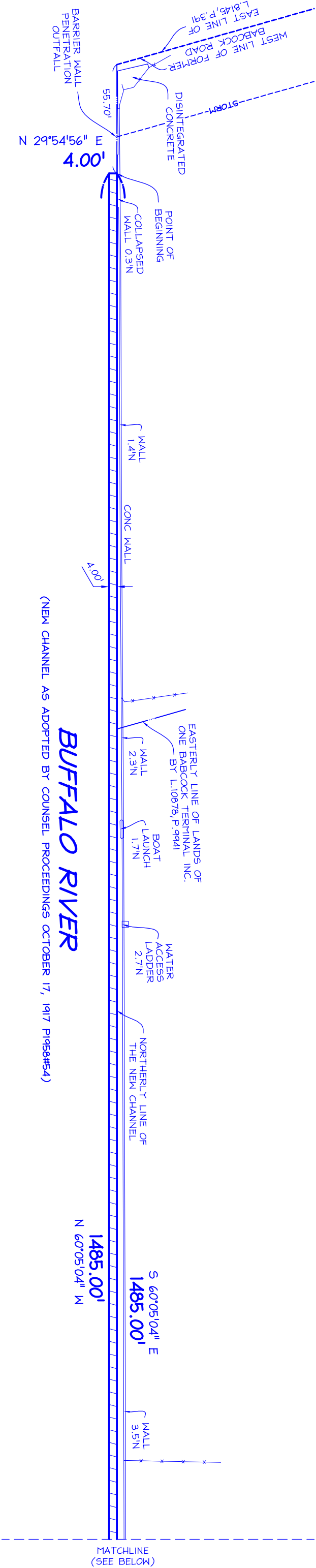
By: 
SAE Elk Street LLC
Elk Street Commerce Park LLC, Member

By: 
John B. Hanselman
Elk Street Commerce Park LLC, Member

By: 
Norman A. Pedersen
Elk Street Commerce Park, Member

By: 
Michael E. Singer
Elk Street Commerce Park LLC, Member

By: 
Kimmberia G. Martin
Elk Street Commerce Park LLC, Member



(NEW CHANNEL AS ADOPTED BY COUNSEL PROCEEDINGS OCTOBER 17, 1917 P1958#54)

BUFFALO RIVER

NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219 p (716) 827-8000 f (716) 270-6091 www.nussclarke.com	This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.	Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of section 7209, provision 2 of the New York State Education Law.
--	---	--

BOUNDARY SURVEY

Vacant Lot, Buffalo River

Part of Lot 197, 198, 199, Township 10, Range 8

Buffalo Creek Reservation

City of Buffalo

County of Erie, State of New York

Date of Survey: 3/12/18

Scale : 1" = 50'

Project No. : 18J2-O262



Melvin J. Spawick, P.E.

Exhibit 4

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of lots 197, 198, 199 Township 10, Range 8 of the Buffalo Creek Reservation, as Described as follows;

Commencing at a point along the northerly line of the New Channel of the Buffalo River as adopted by Counsel Proceedings on October 17, 1977 P1958#54 at its intersection with the east line of lands conveyed by deed recorded in the Erie County Clerk's Office in Liber 8145 of Deeds page 391;

THENCE S 60°05'04" E along the northerly line of said New Channel a distance of 55.70 feet to the point of beginning;

THENCE S 60°05'04" E continuing along the northerly line of said New Channel a distance of 1485.00 feet;

THENCE S 29°54'56" W a distance of 4.00 feet;

THENCE N 60°05'04" W, being parallel and 4 feet measured at right angles from the first course, a distance of 1485.00 feet;

THENCE N 29°54'56" E a distance of 4.00 feet to the point of beginning, containing 0.14 acres more or less.

Exhibit 5

QUIT CLAIM DEED FOR A PORTION OF BUFFALO RIVER "RIVERBED" WITH REVERTER, COVENANTS AND RESERVATION/CREATION OF EASEMENTS

Made the 8th day of June, 2018

BETWEEN, the **CITY OF BUFFALO**, a domestic municipal corporation, with an address at 901 City Hall, Buffalo, New York 14202 ("Grantor", sometimes hereinafter also referred to as "City"), and

ELK STREET COMMERCE PARK, LLC, a Limited Liability Company organized under the laws of the state of New York, with an address at **4 Centre Drive, Orchard Park, New York 14127** ("Grantee")

WITNESSETH, that Grantor, in consideration of the sum of One and more dollars (\$1.00 and more), lawful money of the United States, paid to Grantor by Grantee, does hereby quitclaim unto Grantee,

SEE ATTACHED SCHEDULE A (hereinafter, the "Land").

THIS conveyance is made pursuant to Item number 17 of the City of Buffalo Common Council Proceedings on February 6, 2018.

The informational backdrop against which this Quit Claim deed is being delivered is as follows:

The Grantee is the owner, occupant and/or operator of that certain real property that constitutes the southern portion of the property commonly known as 1 Babcock Street (the "Grantee's Elk Street Property") situate adjacent northerly to the Buffalo River in Buffalo, New York.

The Grantee's Elk Street Property has a proposed tax account SBL number of 122.12-1-20.12 and was conveyed to Grantee by deed dated ~~June~~ May 25, 2018 and recorded in the Erie County Clerk's Office on June 14, 2018, in Liber 11330 of Deeds at page 4611, said Grantee's Elk Street Property has a metes and bounds legal descriptions as is set forth on **SCHEDULE B** attached hereto and made a part hereof and is further shown on the copy of survey which is attached hereto and made a part hereof also on **SCHEDULE B**.

The Grantee's Elk Street Property and certain property(ies) adjoining and/or in the vicinity of the Grantee's Elk Street Property are going to be environmentally remediated by Grantee at Grantee's sole cost and expense under and pursuant to a bona fide Brownfield Cleanup Agreement ("BCA") being overseen by the New York State Department of Environmental Conservation ("NYSDEC") with input and advisory functions also being provided by the United States Army Corps of Engineers ("USACOE").

The Grantee's Elk Street Property and certain properties adjoining and/or in the vicinity of the Grantee's Elk Street Property have an aging bulkhead which constitutes the southern boundary

FILED
JUN 14 2018
ERIE COUNTY
CLERK'S OFFICE

property lines with the Buffalo River. Part of the BCA implementation will involve the construction of an entirely new bulkhead (the "Bulkhead Construction Project") which will necessitate permanent expansion and encroachment into the Buffalo River of an area being approximately four (4) feet wide measured south to north and approximately one thousand four hundred and eighty five (1,485) feet long measured east to west (the "Bulkhead Construction Project Expansion Area"). The Bulkhead Construction Project Expansion Area extends easterly beyond the southern property line of the Grantee's Elk Street Property but is all nonetheless a necessary component of the BCA being undertaken by the Grantee. In order to facilitate the Bulkhead Construction Project component of the BCA within the Bulkhead Construction Project Expansion Area, the City is willing to hereby quit-claim deed to the Grantee the Bulkhead Construction Project Expansion Area (herein sometimes also referred to as the "Land") subject to all of the terms, provisions, covenants and reservation/creation of easements contained in this deed.

Grantee, by acceptance and recording of this deed, agrees for itself, its successors and assigns, that:

1. Grantee will begin work on the Bulkhead Construction Project on or before January 31, 2021 and fully complete the Bulkhead Construction Project and receive from NYSDEC a Certificate of Completion ("COC") under and pursuant to the BCA on or before January 31, 2027.

2. This deed is being delivered subject to the terms and provisions of the Release and Indemnity Agreement (the "Agreement") attached hereto and made a part hereof as Schedule C.

3. Grantee shall procure all permits and pay all costs to use the Land for the Bulkhead Construction Project.

4. In addition to the other obligations and agreements of Grantee contained in this deed, Grantee agrees to operate the Land and the bulkhead in a manner entirely consistent with all directives, regulations, rules, agreements and/or other arrangements specified at any time and/or from time to time by the United States Army Corps of Engineers ("USACOE") and/or the New York State Department of Environmental Conservation ("NYSDEC") and/or the United States Environmental Protection Agency ("EPA") and all orders, requirements and any other matters as the USACOE and/or NYSDEC and/or EPA may require at any time whether or not of record (the "Regulatory Authority Requirements") into perpetuity. *See*, Schedule C.

5. The terms, provisions, covenants and conditions contained in this deed and in the Agreement shall all run with the land constituting the Land and shall be binding upon the Grantee and its successors and assigns. Grantee's obligations to the City under the Agreement and under the terms and provisions of this deed shall hereby be deemed to burden and be covenants and conditions running with the land defined herein as Grantee's Elk Street Property. *See*, Schedule C.

6. The parties acknowledge that there are possible occupancy rights, easement-like rights and/or known and/or possibly unknown utility facilities within or next to the Land serving and/or benefitting neighboring parcels and/or public utilities, but for which written easements have not been placed of record in the Erie County Clerk's Office. To the extent easements or rights are not set forth of record relating to such occupancy rights and/or utility facilities traversing the Land,

the City reserves for itself and/or on behalf of the holder or holder(s) of such occupancy rights and/or any serviced and/or benefitted neighboring parcels and/or public utility company(ies), a non-exclusive right to enter upon the Land at reasonable times and, except in the event of an emergency, upon reasonable prior written notice to Grantee for the purpose of inspecting, maintaining, repairing, upgrading, improving, altering, reducing, removing and/or replacing and/or otherwise (all in their current location unless otherwise agreed in writing) servicing the utility facilities located within the Land (each a "Prescriptive Easement") provided such entry is: (i) at reasonable times except in the event of an emergency; and (ii) does not unreasonably interfere with Grantee's use and enjoyment of the Land. The Prescriptive Easement(s) shall only apply to utility facilities and/or such rights and/or occupancy(ies) of others existing on the date of this deed and shall terminate immediately as to any specific right or rights reasonably specified upon: (i) the recording of an easement agreement, a clarifying easement agreement and/or a replacement easement agreement in the Erie County Clerk's Office; or (ii) upon the properly authorized removal (after written consent of the City) of any utility facilities and/or other occupancies for which there are no easements of record.

The Grantee shall have the right, at Grantee's sole expense (and subject to the prior written consent of the City and/or the owner or owners of the impacted utility facilities), to relocate at Grantee's expense any such utility facilities to another location within the Land (or elsewhere if agreed to by the City) should they interfere, in Grantee's sole opinion, with the Grantee's use and enjoyment of the Land. Notwithstanding the foregoing, in the event the owner of the impacted utility facilities cannot reasonably be ascertained, Grantee shall have the right to relocate such facilities as long as there is no reduction in or termination of utility services to the beneficiaries of such services.

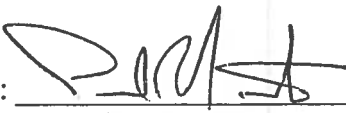
Upon written request made by the City, Grantee agrees to execute from time to time a recordable non-exclusive easement or easements to the appropriate holder of the occupancy rights and/or utility company or companies to replace any Prescriptive Easement.

Notwithstanding the foregoing, the City shall not be obligated to take any affirmative steps and/or expend any sums of money in connection with any of the foregoing, it being further expressly understood and agreed that the City does not have any affirmative obligations whatsoever to maintain, repair, upgrade, improve, alter and/or replace the utility facilities and/or any components thereof.

[Signatures on next page]

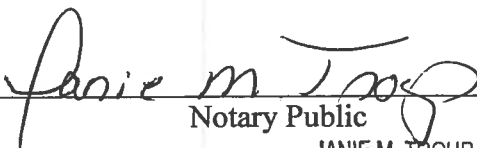
This deed is delivered to Grantee conditioned upon the agreement by Grantee to hereby be bound by all of the terms, provisions, covenants, conditions and easement reservations/creations contained in this deed. This deed is delivered to Grantee yet further conditioned upon the agreement by Grantee to hereby be bound by the provisions of the Release and Indemnity Agreement attached hereto and made a part hereof as **SCHEDULE C**. Grantee evidences its agreement to all of the foregoing by signing below.

ELK STREET COMMERCE PARK, LLC

By: 
Name: Paul R. Neureuter
Title: Co-Manager

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

On this 8TH day of JUNE, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared PAUL R. NEUREUTER, 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 he acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
JANIE M. TROUP
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES AUG. 31, 2021

ELK STREET COMMERCE PARK, LLC

By: _____

Name: Norman A. Pedersen

Title: Co-Manager

STATE OF Massachusetts)

) ss.:

COUNTY OF Norfolk)

On this 8 day of June, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Norman A. Pedersen, 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 he acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

SCHEDULE A

METES AND BOUNDS LEGAL DESCRIPTION AND COMPREHENSIVE SURVEY

SCHEDULE A

METES AND BOUNDS LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of lots 197 Township 10, Range 8 of the Buffalo Creek Reservation, as Described as follows;

Commencing at a point along the northerly line of the New Channel of the Buffalo River as adopted by Council Proceedings on October 17, 1977 P1958#54 at its intersection with the east line of lands conveyed by deed recorded in the Erie County Clerk's Office in Liber 8145 of Deeds page 391;

THENCE S 60°05'04" E along the northerly line of said New Channel a distance of 55.70 feet to the point of beginning;

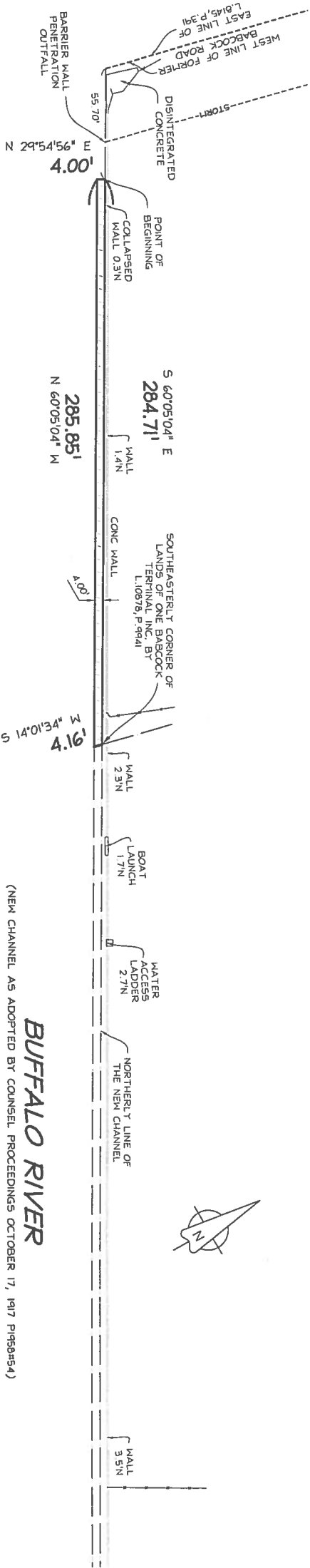
THENCE S 60°05'04" E continuing along the northerly line of said New Channel a distance of 284.71 feet to the southeasterly corner of lands conveyed to One Babcock Terminal Inc. by deed recorded in the Erie County Clerk's Office in Liber 10878 of Deeds page 9941;

THENCE S 14°01'34" W a distance of 4.16 feet;

THENCE N 60°05'04" W, being parallel and 4 feet measured at right angles from the first course, a distance of 285.85 feet;

THENCE N 29°54'56" E a distance of 4.00 feet to the point of beginning, containing 0.03 acres more or less.

SCHEDULE A COMPREHENSIVE SURVEY



BUFFALO RIVER

(NEW CHANNEL AS ADOPTED BY COUNSEL PROCEEDINGS OCTOBER 17, 1917 P195854)

NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
P (716) 827-8000 F (716) 270-6091 www.nussclark.com

This survey was prepared without the benefit of an Unauthenticated alterations or additions to any survey, drawing, map, plan or report is a violation of section 1605, provision 2 of the New York State Education Law.

BOUNDARY SURVEY

Vacant Lot, Buffalo River
(One Babcock)

Part of Lot 197, 198, 199, Township 10, Range 8
Buffalo Creek Reservation, City of Buffalo
County of Erie, State of New York

Date of Survey: 3/12/18

Scale: 1" = 50'

Project No.: 18J2-0262



[Signature]

SCHEDULE B

**METES AND BOUNDS LEGAL DESCRIPTION AND COMPREHENSIVE SURVEY OF
GRANTEE’S ELK STREET PROPERTY**

SCHEDULE B

METES AND BOUNDS LEGAL DESCRIPTION OF GRANTEE'S ELK STREET PROPERTY

THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 196 and 197, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at a point in the south line of Elk Street at its intersection with the west line of former Babcock Street as shown on a map recorded in the Erie County Clerk's Office in Liber 428 of Deeds at page 155;

Thence southerly along the west line of former Babcock Street a distance of 757.05 feet, to the north line of former Prenatt Street;

Thence easterly along the north line of former Prenatt Street a distance of 327.00 feet;

Thence southerly at right angles, a distance of 662.50 feet to the north line of the New Channel of the Buffalo River as adopted by Council proceedings October 17, 1917;

Thence north west along the north line of said New Channel of the Buffalo River a distance of 340.41 feet to the westerly line of said former Babcock street;

Thence north along the west line of said former Babcock Street a distance of 73.60 feet;

Thence southwest at an exterior angle of 67°26'52" a distance of 25.00 feet;

Thence northwest at an interior angle of 102°51'10" a distance of 479.80 feet;

Thence north at an interior angle of 144°57'17" a distance of 48.00 feet to the south line of former Prenatt Street;

Thence east along the south line of said former Prenatt Street a distance of 301.36 feet to the west line of former Babcock Street;

Thence north along the west line of said former Babcock Street distance of 66.00 feet to the point of beginning, containing 6.41 acres, more or less.

[illegible]

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
(716) 827-6000 / (716) 270-6091 www.nutsall.com

1 Babcock Street

Part of Lot 196 & 197, Township 10, Range 8
Buffalo Creek Reservation
City of Buffalo

City of Buffalo
County of Erie, State of New York
Date of Survey: 4/18/18 Rev. 05/10/18 Scale

Project No.: 18J2-0361

SCHEDULE C

RELEASE AND INDEMNITY AGREEMENT

SCHEDULE C

Release and Indemnity Agreement

This Release and Indemnity Agreement (this "Agreement") is given by Elk Street Commerce Park, LLC (hereinafter "Grantee") to the City of Buffalo (the "City") as a condition to the delivery of, and as a material part of, a quit claim deed to certain Buffalo River riverbed property in the City of Buffalo (the "Land").

I. RELEASE: Grantee covenants and agrees at its sole cost and expense, to release, waive and discharge the City and its officers, employees, directors, agents and representatives, including also but not limited to the Buffalo Water Board and Buffalo Sewer Authority (collectively, "City") from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, allegations, defenses, judgments, suits, actions, proceedings, costs, disbursements, and/or expenses, including without limitation, all attorneys' and experts' fees, costs of investigation, monitoring, remedial response, removal, restoration and/or permanent acquisition of any kind whatsoever, which may now or in the future be undertaken, suffered, paid, awarded, assessed, imposed, asserted or otherwise incurred by Grantee, individually or collectively, at any time resulting from or arising out of: :

(a) the condition of title relating in any manner to the change in use of the Land from a portion of a navigable river to perpetual use by Grantee of the Land for the Bulkhead Construction Project described in the Deed to which this Agreement is attached;

(b) the past, present or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum-based substances, in, on, above or under the Land or migrating to parcels now or hereafter owned by Grantee;

(c) a violation of any applicable state or federal statute or regulation with respect to any condition now or hereafter existing on the Land;

(d) any investigation, prosecution, enforcement, action, suit, request to negotiate or consent order or other action by any governmental body or office, including but not limited to the New York Department of Environmental Conservation ("DEC"), United States Army Corps of Engineers ("USACOE") or the United States Environmental Protection Agency ("EPA") related in any manner whatsoever to the Land; and

(e) any and all costs in connection with any clean-up, removal and/or investigation of environmental contamination, deposited on or into the Land or migrating therefrom, whether from on or off site, for which legal requirements mandate be cleaned up at, or removed from, the Land or any other property contaminated from the migration of hazardous material off-site.

(f) The release of City hereunder shall in no way be limited, abridged, impaired or otherwise affected by the following:

i. the release of Grantee, the City and/or any other person from the performance or observance of this agreement by operation of law, City's voluntary acts or otherwise;

ii. the invalidity or unenforceability of any of the terms or provisions of any of the Land purchase documents and/or related documents;

iii. any applicable statute of limitations;

iv. any investigation or inquiry conducted by or on behalf of the City or any other indemnitee (and/or releasee) or any information which City or any other indemnitee (and/or releasee) may have or obtain with respect to the environmental or ecological condition of the Land;

v. the sale, transfer or conveyance of all or part of the Land;

vi. the release or discharge in whole or in part of Grantee in any bankruptcy, insolvency, reorganization, arraignment, readjustment, composition, liquidation or similar proceeding or;

vii. any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of Grantee.

(g) Grantee, and its representatives, agents, employees, successors, predecessors and/or assigns, shall be precluded now and in the future from asserting any and all claims (whether direct claims, cross-claims, third-party claims, defenses, counter-claims or other types of claims) against City relating to the Land transfer, individually or collectively, including but not limited to any claims under (without limitation) the Resource Conservation and Recovery Act, the Oil Pollution Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the New York State Environmental Conservation Law, and/or the New York State Navigation Law in connection with the Land.

II. INDEMNITY: Grantee covenants and agrees to indemnify, defend and hold harmless the City and its officers, employees, directors, agents and representatives, including also but not limited to the Buffalo Water Board and Buffalo Sewer Authority (collectively, "City") from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, allegations, defenses, judgments, suits, actions, proceedings, costs, disbursements, and/or expenses, including without limitation, all attorneys' and experts' fees, costs of investigation, monitoring, remedial response, removal, restoration and/or permanent acquisition of any kind whatsoever, which may now or in the future be undertaken, suffered, paid, awarded, assessed, imposed, asserted and/or otherwise incurred by City and/or Grantee, individually and/or collectively, at any time resulting from or arising out of:

(a) any personal injury, wrongful death, or property or other damages arising under any statutory, common law or tort law theory, arising out of, or related to, the remediation of the Land by Grantee;

(b) Grantee's failure to promptly undertake and/or diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and/or other remedial actions with respect to a release or threat of release of any Hazardous Substance, including but not limited to petroleum or petroleum-based products, on, at or from the Land or migrating off the Land to any and all other locations off-site; and

(c) human exposure to any Hazardous Substance at the Land, including but not limited to petroleum or petroleum-based products, noises, noxious fumes, vibrations, or nuisances of whatever kind from any condition on the Land.

(d) It is expressly agreed that, notwithstanding anything contained in this Agreement which could be construed to the contrary, the Grantee's indemnity of the City does not include liability for Hazardous Substances including but not limited to petroleum or petroleum-based products that migrated off of the Land prior to the date of the deed to which this Agreement is attached. It is however expressly agreed that Grantee nonetheless releases City for and from any and all such liability arising from the Land whatsoever. By way of clarification and in an abundance of caution, the Grantee acknowledges that City expressly disclaims any and all liability whatsoever in connection with any such migrating and or purportedly migrating/migrated materials from the Land.

III. REPRESENTATIONS AND WARRANTIES: City makes no representations or warranties with respect to the past, present or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum-based substances, in, on, above or under the Land, and/or migrating off the Land to any and all other locations off-site. City makes no representations or warranties as to any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Land or operations thereon. Further, the City makes no representations and/or warranties whatsoever as to the condition and/or as to the permitted use of the Land, the improvements thereon, environmental conditions at the Land and/or in connection with the title to the Land or any other matter with respect to the Land.

IV. GRANTEE ACKNOWLEDGEMENTS: GRANTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY SHALL CONVEY ITS INTEREST IN THE LAND TO GRANTEE AND THAT GRANTEE SHALL ACCEPT THE LAND "AS IS, WHERE IS AND WITH ALL FAULTS" AND THAT GRANTEE IS NOT RELYING UPON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FROM GRANTOR, NOR ANY OFFICER, EMPLOYEE, ATTORNEY, AGENT OR BROKER OF CITY AS TO ANY MATTER WHATSOEVER CONCERNING THE LAND INCLUDING, BUT NOT BY WAY OF LIMITATION: (i) the quality, nature habitability, merchantability, use,

operation value, marketability, adequacy or physical condition of the Land or any aspect or portion thereof, including, without limitation, structural elements, appurtenances, access, landscaping, plumbing, sewage, and utility systems, facilities and appliances, soils, geology and/or groundwater, (ii) the dimensions or lot size of the Land, (iii) the development or income potential, or rights of or relating to, the Land, or the Land's use, habitability, merchantability, or fitness, or the suitability, value, or adequacy of the Land for any particular purpose including but not limited use for the Bulkhead Construction Project, (iv) the zoning or other legal status of the Land or any other public or private restrictions on the use of the Land, (v) the compliance of the Land or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any Governmental Authority or of any other person or entity (including, without limitation, the Americans with Disabilities Act), (vi) the ability of Grantee to obtain any necessary governmental approvals, licenses or permits for Grantee's intended use or development of the Land, (vii) the presence or absence of Hazardous Materials on, in, under, above or about the Land, (viii) the quality of any labor or materials used in any improvements, (ix) the condition of title to the Land including but not limited to stipulations and/or other title conditions and/or related obligations deriving from the manner in which City acquired/assembled the Land, (x) City's ownership of the Land or any portion thereof, or (xi) the economics of or the income and expenses, revenue or expense projections or other financial matters, relating to, the operation of the Land. Without limiting the generality of the foregoing, Grantee expressly acknowledges and agrees that Grantee is not relying upon any representation or warranty of City, nor any officer, employee, attorney, agent or broker of City, whether implied, presumed or expressly provided at law or otherwise, arising by virtue of any statute, common law or other legally binding right or remedy in favor of Grantee. Grantee further acknowledges and agrees that City is under no duty to make any inquiry regarding any matter that may not be readily known by City and/or by any officer, employee, attorney, agent or broker of City. This section and all provisions of this Agreement shall survive the delivery, acceptance and/or recordation of the deed to which this Agreement is attached.

Any reports, repairs or work required by Grantee are the sole responsibility of Grantee, and Grantee agrees that there is no obligation on the part of City to make any changes, alterations or repairs to the Land or to cure any violations of law or to comply with the requirements of any insurer. Grantee, at Grantee's sole cost and expense, shall be responsible for obtaining any permits necessary for use of the Land and shall also be responsible for any repairs or alterations necessary for same, all at Grantee's sole cost and expense.

Grantee agrees to remediate any and all contamination deposited on to or into the Land or migrating therefrom as may be directed by any governing regulating agencies, including, but not limited to the DEC, USACOE and/or EPA.

By executing this Release and Indemnity Agreement, Grantee acknowledges that Grantee has had the right and a full opportunity to conduct any testing or other investigation of the Land and has fully availed itself of such right or has otherwise waived such right and opportunity.

V. DEFINITIONS: As used in this Agreement, the following terms shall have the following meanings:

“Hazardous Substance” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous waste, hazardous or toxic substances and any other material defined as a hazardous substance in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; The Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; The Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; Articles 15 and 27 of the New York State Environmental Conservation Law or any other federal, state, or local law, regulation, rule, ordinance, by-law, policy, guidance, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.

“Environmental Law” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term “Environmental Law” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act, the Clean Water Act; the Clean Air Act, the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term “Environmental Law” also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Land; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Land to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Land; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Land.

“Release” with respect to any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances. Release shall also have the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601

et seq., and the regulations promulgated thereunder and Articles 15 and 27 of the New York State Environmental Conservation Law, and the regulations promulgated thereunder.

“Remediation” includes but is not limited to any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to herein.

“Legal Action” means any claim, suit or proceeding, whether administrative or judicial in nature.

“Loss or Losses” includes any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminution in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys’ fees, engineers’ fees, environmental consultants’ fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards to the extent recoverable at law or in equity.

“Fines” or “Penalties” means any levy imposed by a governmental body or office, including but not limited to the DEC or EPA, authorized by statute or regulation, that is not, directly or indirectly, compensation for, or reimbursement of, any actual cost incurred, liability imposed, or loss sustained by said governmental body or office or any other party. It is specifically understood that “fines” or “penalties” are levies imposed as a punitive or deterrent measure and do not include any other type of loss, except as otherwise defined by statute or regulation.

VI. Notwithstanding anything contained in this Release and Indemnity Agreement (and/or in the Deed to which it is attached) which could be construed to the contrary, the Grantee shall pay for counsel of the City’s choosing in the event the City determines that the need for actual defense arises pursuant to the indemnification(s) hereunder. Further, the City shall have the unilateral right to control the strategy and course of defense and all associated litigation and/or settlement.

VII. THESE PROVISIONS TO RUN WITH THE LAND AND BULKHEAD CONSTRUCTION PROJECT RELATED IMPROVEMENTS. All of the provisions contained in this Release and Indemnity Agreement shall run with the land and improvements constituting the Land and the Grantee’s Elk Street Property and shall be binding upon Grantee and all its successors and assigns as well as upon all subsequent purchasers or owners of the Land and the Grantee’s Elk Street Property.

**QUIT CLAIM DEED FOR A PORTION OF BUFFALO RIVER "RIVERBED" WITH
REVERTER, COVENANTS AND RESERVATION/CREATION OF EASEMENTS**

Made the 8th day of June, 2018

BETWEEN, the **CITY OF BUFFALO**, a domestic municipal corporation, with an address at 901 City Hall, Buffalo, New York 14202 ("Grantor", sometimes hereinafter also referred to as "City"), and

BUCKEYE TERMINALS, LLC, a Limited Liability Company organized under the laws of the State of Delaware, with an address at **5 Tek Park, 9999 Hamilton Boulevard, Breinigsville, Pennsylvania 18031** ("Grantee")

WITNESSETH, that Grantor, in consideration of the sum of One and more dollars (\$1.00 and more), lawful money of the United States, paid to Grantor by Grantee, does hereby quitclaim unto Grantee,

SEE ATTACHED SCHEDULE A (hereinafter, the "Land").

THIS conveyance is made pursuant to Item number 17 of the City of Buffalo Common Council Proceedings on February 6, 2018.

The informational backdrop against which this Quit Claim deed is being delivered is as follows:

The Grantee is the owner, occupant and/or operator of that certain real property commonly known as 625 Elk Street (the "Grantee's Elk Street Property") situate adjacent northerly to the Buffalo River in Buffalo, New York.

The Grantee's Elk Street Property has tax account SBL number 123.13-1-2.112 and was conveyed to Grantee by deed dated May 5, 2005 and recorded in the Erie County Clerk's Office on May 19, 2005, in Liber 11095 of Deeds at page 4061, said Grantee's Elk Street Property has a metes and bounds legal descriptions as is set forth on **SCHEDULE B** attached hereto and made a part hereof and is further shown on the copy of survey which is attached hereto and made a part hereof also on **SCHEDULE B**.

The Grantee's Elk Street Property and certain property(ies) adjoining and/or in the vicinity of the Grantee's Elk Street Property are going to be environmentally remediated under and pursuant to a bona fide Brownfield Cleanup Agreement ("BCA") being overseen by the New York State Department of Environmental Conservation ("NYSDEC") with input and advisory functions also being provided by the United States Army Corps of Engineers ("USACOE").

The Grantee's Elk Street Property and certain properties adjoining and/or in the vicinity of the Grantee's Elk Street Property have an aging bulkhead which constitutes the southern boundary property lines with the Buffalo River. Part of the BCA implementation will involve the

FILED
JUN 4 2018
ERIE COUNTY
CLERK'S OFFICE

construction of an entirely new bulkhead (the "Bulkhead Construction Project") which will necessitate permanent expansion and encroachment into the Buffalo River of an area being approximately four (4) feet wide measured south to north and approximately one thousand four hundred and eighty five (1,485) feet long measured east to west (the "Bulkhead Construction Project Expansion Area"). The Bulkhead Construction Project Expansion Area extends westerly beyond the southern property line of the Grantee's Elk Street Property but is all nonetheless a necessary component of the BCA being undertaken. In order to facilitate the Bulkhead Construction Project component of the BCA within the Bulkhead Construction Project Expansion Area, the City is willing to hereby quit-claim deed to the Grantee the Bulkhead Construction Project Expansion Area (herein sometimes also referred to as the "Land") subject to all of the terms, provisions, covenants and reservation/creation of easements contained in this deed.

Grantee, by acceptance and recording of this deed, agrees for itself, its successors and assigns, that:

1. Work will begin on the Bulkhead Construction Project on or before January 31, 2021 and fully complete the Bulkhead Construction Project and receive from NYSDEC a Certificate of Completion ("COC") under and pursuant to the BCA on or before January 31, 2027.

2. This deed is being delivered subject to the terms and provisions of the Release and Indemnity Agreement (the "Agreement") attached hereto and made a part hereof as Schedule C.

3. Elk Street Commerce Park, LLC, on behalf of Grantee shall procure all permits to use the Land for the Bulkhead Construction Project.

4. In addition to the other obligations and agreements of Grantee contained in this deed, Grantee agrees to operate the Land and the bulkhead in a manner entirely consistent with all directives, regulations, rules, agreements and/or other arrangements specified at any time and/or from time to time by the United States Army Corps of Engineers ("USACOE") and/or the New York State Department of Environmental Conservation ("NYSDEC") and/or the United States Environmental Protection Agency ("EPA") and all orders, requirements and any other matters as the USACOE and/or NYSDEC and/or EPA may require at any time whether or not of record (the "Regulatory Authority Requirements") into perpetuity. *See*, Schedule C.

5. The terms, provisions, covenants and conditions contained in this deed and in the Agreement shall all run with the land constituting the Land and shall be binding upon the Grantee and its successors and assigns. Grantee's obligations to the City under the Agreement and under the terms and provisions of this deed shall hereby be deemed to burden and be covenants and conditions running with the land defined herein as Grantee's Elk Street Property. *See*, Schedule C.

6. The parties acknowledge that there are possible occupancy rights, easement-like rights and/or known and/or possibly unknown utility facilities within or next to the Land serving and/or benefitting neighboring parcels and/or public utilities, but for which written easements have not been placed of record in the Erie County Clerk's Office. To the extent easements or rights are not set forth of record relating to such occupancy rights and/or utility facilities traversing the Land,

the City reserves for itself and/or on behalf of the holder or holder(s) of such occupancy rights and/or any serviced and/or benefitted neighboring parcels and/or public utility company(ies), a non-exclusive right to enter upon the Land at reasonable times and, except in the event of an emergency, upon reasonable prior written notice to Grantee for the purpose of inspecting, maintaining, repairing, upgrading, improving, altering, reducing, removing and/or replacing and/or otherwise (all in their current location unless otherwise agreed in writing) servicing the utility facilities located within the Land (each a "Prescriptive Easement") provided such entry is: (i) at reasonable times except in the event of an emergency; and (ii) does not unreasonably interfere with Grantee's use and enjoyment of the Land. The Prescriptive Easement(s) shall only apply to utility facilities and/or such rights and/or occupancy(ies) of others existing on the date of this deed and shall terminate immediately as to any specific right or rights reasonably specified upon: (i) the recording of an easement agreement, a clarifying easement agreement and/or a replacement easement agreement in the Erie County Clerk's Office; or (ii) upon the properly authorized removal (after written consent of the City) of any utility facilities and/or other occupancies for which there are no easements of record.

The Grantee shall have the right, at Grantee's sole expense (and subject to the prior written consent of the City and/or the owner or owners of the impacted utility facilities), to relocate at Grantee's expense any such utility facilities to another location within the Land (or elsewhere if agreed to by the City) should they interfere, in Grantee's sole opinion, with the Grantee's use and enjoyment of the Land. Notwithstanding the foregoing, in the event the owner of the impacted utility facilities cannot reasonably be ascertained, Grantee shall have the right to relocate such facilities as long as there is no reduction in or termination of utility services to the beneficiaries of such services.

Upon written request made by the City, Grantee agrees to execute from time to time a recordable non-exclusive easement or easements to the appropriate holder of the occupancy rights and/or utility company or companies to replace any Prescriptive Easement.

Notwithstanding the foregoing, the City shall not be obligated to take any affirmative steps and/or expend any sums of money in connection with any of the foregoing, it being further expressly understood and agreed that the City does not have any affirmative obligations whatsoever to maintain, repair, upgrade, improve, alter and/or replace the utility facilities and/or any components thereof.

[Signatures on next page]

This deed is delivered to Grantee conditioned upon the agreement by Grantee to hereby be bound by all of the terms, provisions, covenants, conditions and easement reservations/creations contained in this deed. This deed is delivered to Grantee yet further conditioned upon the agreement by Grantee to hereby be bound by the provisions of the Release and Indemnity Agreement attached hereto and made a part hereof as SCHEDULE C. Grantee evidences its agreement to all of the foregoing by signing below.

BUCKEYE TERMINALS, LLC

IN WITNESS WHEREOF, Grantor has caused this deed to be signed by its Mayor the day and year first written above.

CITY OF BUFFALO

By: Byron W. Brown
Name: Byron W. Brown
Title: Mayor, City of Buffalo

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

On this 8 day of JUNE, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Byron W. Brown, 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.

John Vincent Heffron
Notary Public

JOHN VINCENT HEFFRON
Notary Public, State of New York
No. 02HE4860576
Qualified in Erie County
My Commission Expires May 5, ~~2018~~ 2022 J.H

APPROVED
AS TO FORM ONLY

By John Heffron 6.8.18
Corporation Counsel

SCHEDULE A

METES AND BOUNDS LEGAL DESCRIPTION AND COMPREHENSIVE SURVEY

SCHEDULE A

METES AND BOUNDS LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of lots 197, 198, 199 Township 10, Range 8 of the Buffalo Creek Reservation, as Described as follows;

Beginning at a point along the northerly line of the New Channel of the Buffalo River as adopted by Council Proceedings on October 17, 1977 P1958#54 at its intersection with the east line of lands conveyed to One Babcock Terminal Inc. deed recorded in the Erie County Clerk's Office in Liber 10878 of Deeds page 9941;

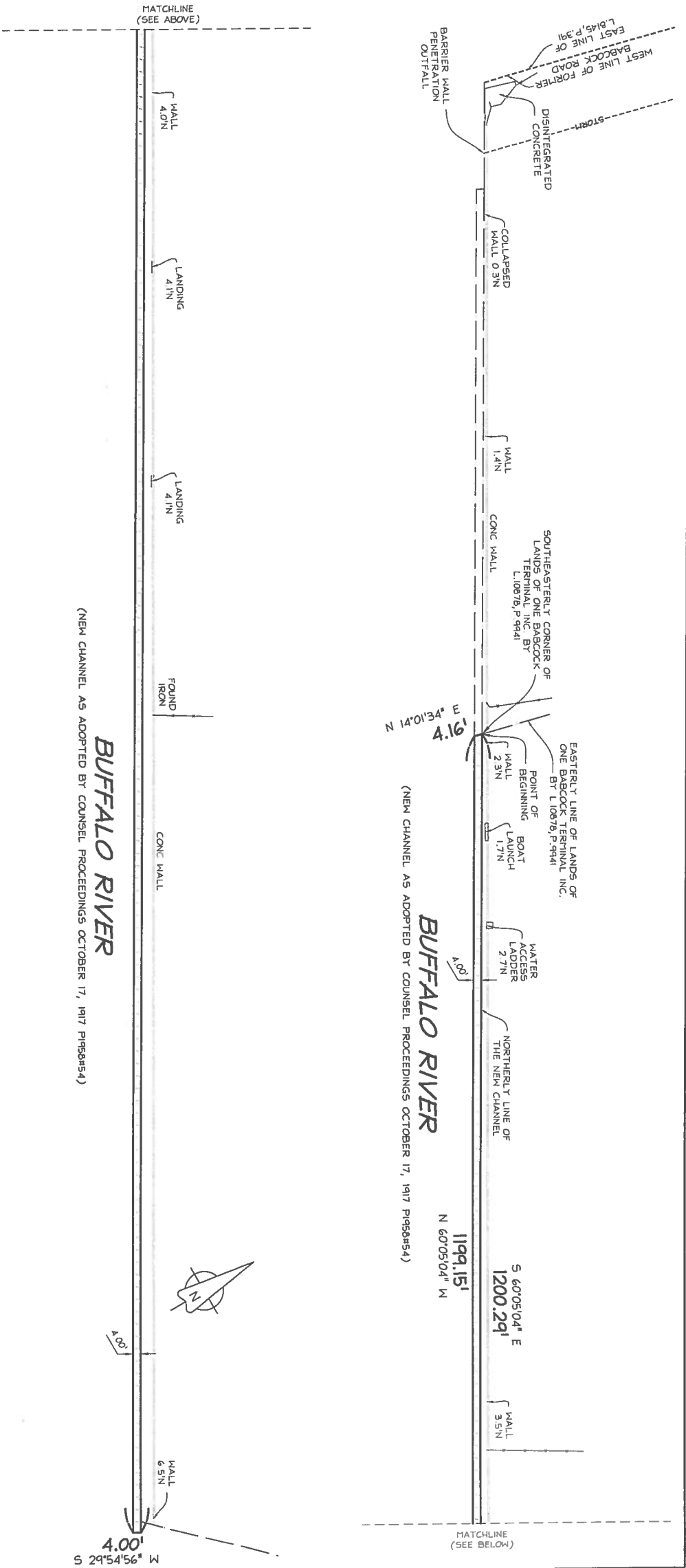
THENCE S 60°05'04" E continuing along the northerly line of said New Channel a distance of 1200.29 feet;

THENCE S 29°54'56" W a distance of 4.00 feet;

THENCE N 60°05'04" W, being parallel and 4 feet measured at right angles from the first course, a distance of 1199.15 feet;

THENCE N 14°10'34" E a distance of 4.00 feet to the point of beginning, containing 0.11 acres more or less.

SCHEDULE A COMPREHENSIVE SURVEY



(NEW CHANNEL AS ADOPTED BY COUNSEL PROCEEDINGS OCTOBER 17, 1917 P195B954)

(NEW CHANNEL AS ADOPTED BY COUNSEL PROCEEDINGS OCTOBER 17, 1917 P195B954)

BUFFALO RIVER

BUFFALO RIVER

NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON

This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.

Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of Section 1720, provision 2 of the New York State Education Law.

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
P (716) 827-8000 F (716) 270-6091 www.nussbaumerandclark.com

NUSSBAUMER & CLARKE, INC.
EST. 1933
ENGINEERS AND SURVEYORS

BOUNDARY SURVEY
Vacant Lot, Buffalo River
(Buckeye Terminal)
Part of Lot 197, 198, 199, Township 10, Range 8
Buffalo Creek Reservation, City of Buffalo
County of Erie, State of New York

Date of Survey: 3/12/18
Scale: 1" = 50'
Project No.: 1812-0262

Michael J. Clarke

SCHEDULE B

**METES AND BOUNDS LEGAL DESCRIPTION AND COMPREHENSIVE SURVEY OF
GRANTEE'S ELK STREET PROPERTY**

SCHEDULE B
METES AND BOUNDS LEGAL DESCRIPTION OF GRANTEE'S ELK STREET PROPERTY

All that certain plot, piece or parcel of land located in the City of Buffalo, County of Erie and the State of New York, being part of Lot Numbers 52, 55, 56, 197, 198, 199 and 200, Township 10, Range 8 of the Buffalo Creek Reservation and part of the bed of the Old Buffalo River as it formerly existed, being more particularly described and bounded as follows:

BEGINNING at a point on the southerly right-of-way line of Elk Street (66 foot wide), said point being located 316.77 feet westerly along said right-of-way from the westerly line of Lot 200;

Thence through the lands of the GRANTOR the following four (4) courses and distances:

1) S 13°47'03" W 275.95' to a point; thence 2) S 18°50'47" E 248.88' to a point; thence
3) S 13°59'56" W 240.26' to a point; and 4) S 76°04'31" E 181.44' to its intersection with the westerly line of said Lot 200 and the division line between the lands of the GRANTOR on the west, and the lands now or formerly of Gro Green Real Estate, Inc. (reputed owner) as described in Book 11032 of Deeds at Page 3760 on the east; thence along said division line the following eight (8) courses and distances:

1) S 13°56'40" W 166.19' to a point; thence 2) S 04°41'53" E 83.88' to a point; thence
3) S 76°03'20" E 60.81' to a point; thence 4) S 44°38'21" W 136.08' to a point; thence
5) S 45°21'39" E 99.00' to a point; thence 6) N 44°38'21" E 367.01' to a point; thence
7) S 76°03'20" E 32.00' to a point; and 8) N 30°08'54" E 34.37' to its intersection with the division line between the lands of the GRANTOR on the south, and the lands now or formerly of William J. O'Connell (reputed owner) as described in Book 10871 of Deeds at Page 1478 on the north; thence along said division line the following three (3) courses and distances:

1) S 76°03'20" E 329.28' to a point; thence 2) S 02°42'59" E 60.23' to a point; and 3) N 87°17'01" E 150.00' to its intersection with the westerly right-of-way line of Old Bailey Avenue (80 foot wide);

Thence S 02°42'59" E, along said right-of-way, 381.40' to its intersection with the northerly channel line of the Buffalo River as adopted by Counsel Proceedings on October 17, 1917 P1958#54;

Thence along the said northerly channel line of the Buffalo River the following three (3) courses and distances:

1) S 64°00'57" W 966.27' to a point; thence 2) S 88°56'14" W 150.00' to a point;
and
3) N 66°08'53" W 324.30' to a point; thence through the lands of the GRANTOR
the following three (3) courses and distances:

1) N 44°38'21" E 553.47' to a point; thence 2) N 75°55'54" W 114.98' to a point;
and
3) S 44°38'21" W 521.27' to a point on the said northerly channel line of the
Buffalo River;

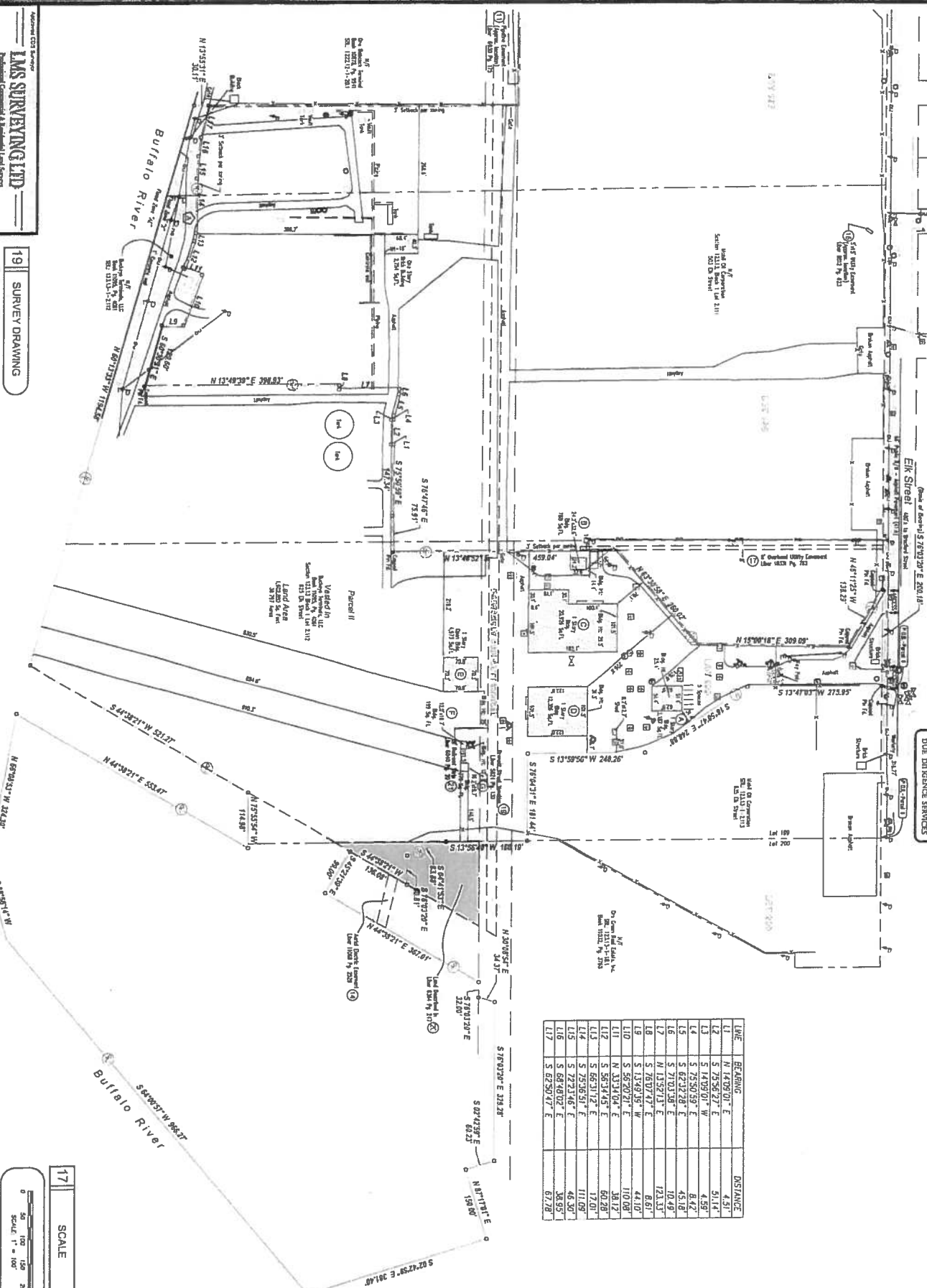
Thence N 60°13'33" W, along said northerly channel line of the Buffalo River,
1194.58' to its intersection with the division line between the lands of the
GRANTOR on the east and the lands now or formerly of One Babcock Terminal
Inc. (reputed owner) as described in Book 10878 of Deeds at Page 9941 on the
west;

Thence N 13°53'05" E, along said division line, 30.11' to a point; thence through
the lands of the GRANTOR the following twenty-five (25) courses and distances:

1) S 62°50'47" E 67.78' to a point; thence 2) S 68°48'02" E 38.95' to a point;
thence
3) S 72°23'46" E 46.30' to a point; thence 4) S 75°36'51" E 111.09' to a point;
thence
5) S 66°31'12" E 17.01' to a point; thence 6) S 56°34'45" E 60.28' to a point;
thence
7) N 33°34'04" E 38.12' to a point; thence 8) S 56°20'21" E 110.08' to a point;
thence
9) S 13°49'39" W 44.10' to a point; thence 10) S 60°30'31" E 129.60' to a point;
thence
11) N 13°49'39" E 398.93' to a point; thence 12) S 76°07'47" E 8.61' to a point;
thence
13) N 13°52'13" E 123.33' to a point; thence 14) S 71°03'38" E 10.49' to a
point; thence
15) S 62°32'28" E 45.18' to a point; thence 16) S 75°50'59" E 8.42' to a point;
thence
17) S 14°09'01" W 4.59' to a point; thence 18) S 75°56'27" E 51.14' to a point;
thence
19) N 14°09'01" E 4.51' to a point; thence 20) S 75°50'59" E 147.34' to a point;
thence
21) S 76°47'46" E 75.91' to a point; thence 22) N 13°48'52" E 459.04' to a
point; thence
23) N 63°30'58" E 260.02' to a point; thence 24) N 15°00'18" E 309.09' to a
point; and
25) N 46°11'25" W 138.29' to a point on the southerly right-of-way line of Elk
Street (66 foot wide);


Thence S 76°03'20" E, along the southerly right-of-way line of Elk Street, 200.18' to the point or place of beginning.

SCHEDULE B COMPREHENSIVE SURVEY OF GRANTEE'S ELK STREET PROPERTY



















































LWE	BEARING	DISTANCE
1	N 14.09.01 E	4.51
2	S 75.56.27 E	5.14
3	S 14.09.01 W	4.59
4	S 75.50.59 E	4.42
5	S 62.12.28 E	45.18
6	S 71.03.31 E	12.49
7	N 13.52.13 E	10.33
8	S 76.07.47 E	8.61
9	S 13.49.55 W	44.10
10	S 56.20.91 E	38.12
11	N 33.14.04 E	31.07
12	S 56.53.45 E	60.28
13	S 55.31.72 E	17.01
14	S 75.56.51 E	11.09
15	S 77.21.46 E	46.30
16	S 65.40.07 E	38.95
17	S 62.50.47 E	67.78

17 SCALE



18	ALTANSPS Land Title Survey
<p>This survey prepared in accordance with the "Minimum Standard Detail Requirements for All Registered Land Titles" of the Land Titles Office, Ontario, and is subject to the provisions of the Land Titles Act, R.S.O. 1990, Chapter L3.</p> <p>CLDS</p> <p>COMMERCIAL</p> <p>DUE DILIGENCE SERVICES</p> <p>3250 W. Hurontario Street, Third Floor Name: Catherine Ziegler Tel. Fax: (905) 332-7371</p>	
<p>Prepared For</p>	
<p>Client Ref. No.</p>	
20	PROJECT ADDRESS
<p>625 Elk Street Buffalo, NY 14210</p>	
<p>Project Name</p>	
<p>ExxonMobil-Buffalo, NY</p>	

<p>  P01 - Field of Expertise  P02 - Field of Competence  Key - Regional Way  Other  Figure 1.10  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View  Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View Global View </p>
--

9	LEGEND
---	--------

SCHEDULE C

RELEASE AND INDEMNITY AGREEMENT

SCHEDULE C

Release and Indemnity Agreement

This Release and Indemnity Agreement (this "Agreement") is given by Buckeye Terminals, LLC (hereinafter "Grantee") to the City of Buffalo (the "City") as a condition to the delivery of, and as a material part of, a quit claim deed to certain Buffalo River riverbed property in the City of Buffalo (the "Land").

I. RELEASE: Grantee covenants and agrees at its sole cost and expense, to release, waive and discharge the City and its officers, employees, directors, agents and representatives, including also but not limited to the Buffalo Water Board and Buffalo Sewer Authority (collectively, "City") from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, allegations, defenses, judgments, suits, actions, proceedings, costs, disbursements, and/or expenses, including without limitation, all attorneys' and experts' fees, costs of investigation, monitoring, remedial response, removal, restoration and/or permanent acquisition of any kind whatsoever, which may now or in the future be undertaken, suffered, paid, awarded, assessed, imposed, asserted or otherwise incurred by Grantee, individually or collectively, at any time resulting from or arising out of:

(a) the condition of title relating in any manner to the change in use of the Land from a portion of a navigable river to perpetual use by Grantee of the Land for the Bulkhead Construction Project described in the Deed to which this Agreement is attached;

(b) the past, present or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum based substances, in, on, above or under the Land or migrating to parcels now or hereafter owned by Grantee;

(c) a violation of any applicable state or federal statute or regulation with respect to any condition now or hereafter existing on the Land;

(d) any investigation, prosecution, enforcement, action, suit, request to negotiate or consent order or other action by any governmental body or office, including but not limited to the New York Department of Environmental Conservation ("DEC"), United States Army Corps of Engineers ("USACOE") or the United States Environmental Protection Agency ("EPA") related in any manner whatsoever to the Land; and

(e) any and all costs in connection with any clean-up, removal and/or investigation of environmental contamination, deposited on or into the Land or migrating therefrom, whether from on or off site, for which legal requirements mandate be cleaned up at, or removed from, the Land or any other property contaminated from the migration of hazardous material off-site.

(f) The release of City hereunder shall in no way be limited, abridged, impaired or otherwise affected by the following:

i. the release of Grantee, the City and/or any other person from the performance or observance of this agreement by operation of law, City's voluntary acts or otherwise;

ii. the invalidity or unenforceability of any of the terms or provisions of any of the Land purchase documents and/or related documents;

iii. any applicable statute of limitations;

iv. any investigation or inquiry conducted by or on behalf of the City or any other indemnitee (and/or releasee) or any information which City or any other indemnitee (and/or releasee) may have or obtain with respect to the environmental or ecological condition of the Land;

v. the sale, transfer or conveyance of all or part of the Land;

vi. the release or discharge in whole or in part of Grantee in any bankruptcy, insolvency, reorganization, arraignment, readjustment, composition, liquidation or similar proceeding or;

vii. any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of Grantee.

(g) Grantee, and its representatives, agents, employees, successors, predecessors and/or assigns, shall be precluded now and in the future from asserting any and all claims (whether direct claims, cross-claims, third-party claims, defenses, counter-claims or other types of claims) against City relating to the Land transfer, individually or collectively, including but not limited to any claims under (without limitation) the Resource Conservation and Recovery Act, the Oil Pollution Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the New York State Environmental Conservation Law, and/or the New York State Navigation Law in connection with the Land.

II. INDEMNITY: Grantee covenants and agrees to indemnify, defend and hold harmless the City and its officers, employees, directors, agents and representatives, including also but not limited to the Buffalo Water Board and Buffalo Sewer Authority (collectively, "City") from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, allegations, defenses, judgments, suits, actions, proceedings, costs, disbursements, and/or expenses, including without limitation, all attorneys' and experts' fees, costs of investigation, monitoring, remedial response, removal, restoration and/or permanent acquisition of any kind whatsoever, which may now or in the future be undertaken, suffered, paid, awarded, assessed, imposed, asserted and/or otherwise incurred by City and/or Grantee, individually and/or collectively, at any time resulting from or arising out of:

(a) any personal injury, wrongful death, or property or other damages arising under any statutory, common law or tort law theory, arising out of, or related to, the remediation of the Land by Grantee;

(b) Grantee's failure to promptly undertake and/or diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and/or other remedial actions with respect to a release or threat of release of any Hazardous Substance, including but not limited to petroleum or petroleum based products, on, at or from the Land or migrating off the Land to any and all other locations off-site; and

(c) human exposure to any Hazardous Substance at the Land, including but not limited to petroleum or petroleum-based products, noises, noxious fumes, vibrations, or nuisances of whatever kind from any condition on the Land.

(d) It is expressly agreed that, notwithstanding anything contained in this Agreement which could be construed to the contrary, the Grantee's indemnity of the City does not include liability for Hazardous Substances including but not limited to petroleum or petroleum based products that migrated off of the Land prior to the date of the deed to which this Agreement is attached. It is however expressly agreed that Grantee nonetheless releases City for and from any and all such liability arising from the Land whatsoever. By way of clarification and in an abundance of caution, the Grantee acknowledges that City expressly disclaims any and all liability whatsoever in connection with any such migrating and or purportedly migrating/migrated materials from the Land.

III. REPRESENTATIONS AND WARRANTIES: City makes no representations or warranties with respect to the past, present or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum based substances, in, on, above or under the Land, and/or migrating off the Land to any and all other locations off-site. City makes no representations or warranties as to any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Land or operations thereon. Further, the City makes no representations and/or warranties whatsoever as to the condition and/or as to the permitted use of the Land, the improvements thereon, environmental conditions at the Land and/or in connection with the title to the Land or any other matter with respect to the Land.

IV. GRANTEE ACKNOWLEDGEMENTS: GRANTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY SHALL CONVEY ITS INTEREST IN THE LAND TO GRANTEE AND THAT GRANTEE SHALL ACCEPT THE LAND "AS IS, WHERE IS AND WITH ALL FAULTS" AND THAT GRANTEE IS NOT RELYING UPON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FROM GRANTOR, NOR ANY OFFICER, EMPLOYEE, ATTORNEY, AGENT OR BROKER OF CITY AS TO ANY MATTER WHATSOEVER CONCERNING THE LAND INCLUDING, BUT NOT BY WAY OF LIMITATION: (i) the quality, nature habitability, merchantability, use, operation value, marketability, adequacy or physical condition of the Land or any aspect or portion

thereof, including, without limitation, structural elements, appurtenances, access, landscaping, plumbing, sewage, and utility systems, facilities and appliances, soils, geology and/or groundwater, (ii) the dimensions or lot size of the Land, (iii) the development or income potential, or rights of or relating to, the Land, or the Land's use, habitability, merchantability, or fitness, or the suitability, value, or adequacy of the Land for any particular purpose including but not limited use for the Bulkhead Construction Project, (iv) the zoning or other legal status of the Land or any other public or private restrictions on the use of the Land, (v) the compliance of the Land or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any Governmental Authority or of any other person or entity (including, without limitation, the Americans with Disabilities Act), (vi) the ability of Grantee to obtain any necessary governmental approvals, licenses or permits for Grantee's intended use or development of the Land, (vii) the presence or absence of Hazardous Materials on, in, under, above or about the Land, (viii) the quality of any labor or materials used in any improvements, (ix) the condition of title to the Land including but not limited to stipulations and/or other title conditions and/or related obligations deriving from the manner in which City acquired/assembled the Land, (x) City's ownership of the Land or any portion thereof, or (xi) the economics of or the income and expenses, revenue or expense projections or other financial matters, relating to, the operation of the Land. Without limiting the generality of the foregoing, Grantee expressly acknowledges and agrees that Grantee is not relying upon any representation or warranty of City, nor any officer, employee, attorney, agent or broker of City, whether implied, presumed or expressly provided at law or otherwise, arising by virtue of any statute, common law or other legally binding right or remedy in favor of Grantee. Grantee further acknowledges and agrees that City is under no duty to make any inquiry regarding any matter that may not be readily known by City and/or by any officer, employee, attorney, agent or broker of City. This section and all provisions of this Agreement shall survive the delivery, acceptance and/or recordation of the deed to which this Agreement is attached.

Any reports, repairs or work required by Grantee are the sole responsibility of Grantee, and Grantee agrees that there is no obligation on the part of City to make any changes, alterations or repairs to the Land or to cure any violations of law or to comply with the requirements of any insurer. Grantee, at Grantee's sole cost and expense, shall be responsible for obtaining any permits necessary for use of the Land and shall also be responsible for any repairs or alterations necessary for same, all at Grantee's sole cost and expense.

Grantee agrees to remediate any and all contamination deposited on to or into the Land, or migrating therefrom as may be directed by any governing regulating agencies, including, but not limited to the DEC, USACOE and/or EPA.

By executing this Release and Indemnity Agreement, Grantee acknowledges that Grantee has had the right and a full opportunity to conduct any testing or other investigation of the Land and has fully availed itself of such right or has otherwise waived such right and opportunity.

V. DEFINITIONS: As used in this Agreement, the following terms shall have the following meanings:

“Hazardous Substance” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous waste, hazardous or toxic substances and any other material defined as a hazardous substance in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; The Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; The Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; Articles 15 and 27 of the New York State Environmental Conservation Law or any other federal, state, or local law, regulation, rule, ordinance, by-law, policy, guidance, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.

“Environmental Law” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term “Environmental Law” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act, the Clean Water Act; the Clean Air Act, the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term “Environmental Law” also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Land; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Land to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Land; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Land.

“Release” with respect to any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances. Release shall also have the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601

et seq., and the regulations promulgated thereunder and Articles 15 and 27 of the New York State Environmental Conservation Law, and the regulations promulgated thereunder.

“Remediation” includes but is not limited to any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to herein.

“Legal Action” means any claim, suit or proceeding, whether administrative or judicial in nature.

“Loss or Losses” includes any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminution in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys’ fees, engineers’ fees, environmental consultants’ fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards to the extent recoverable at law or in equity.

“Fines” or “Penalties” means any levy imposed by a governmental body or office, including but not limited to the DEC or EPA, authorized by statute or regulation, that is not, directly or indirectly, compensation for, or reimbursement of, any actual cost incurred, liability imposed, or loss sustained by said governmental body or office or any other party. It is specifically understood that “fines” or “penalties” are levies imposed as a punitive or deterrent measure and do not include any other type of loss, except as otherwise defined by statute or regulation.

VI. Notwithstanding anything contained in this Release and Indemnity Agreement (and/or in the Deed to which it is attached) which could be construed to the contrary, the Grantee shall pay for counsel of the City’s choosing in the event the City determines that the need for actual defense arises pursuant to the indemnification(s) hereunder. Further, the City shall have the unilateral right to control the strategy and course of defense and all associated litigation and/or settlement.

VII. THESE PROVISIONS TO RUN WITH THE LAND AND BULKHEAD CONSTRUCTION PROJECT RELATED IMPROVEMENTS. All of the provisions contained in this Release and Indemnity Agreement shall run with the land and improvements constituting the Land and the Grantee’s Elk Street Property and shall be binding upon Grantee and all its successors and assigns as well as upon all subsequent purchasers or owners of the Land and the Grantee’s Elk Street Property.

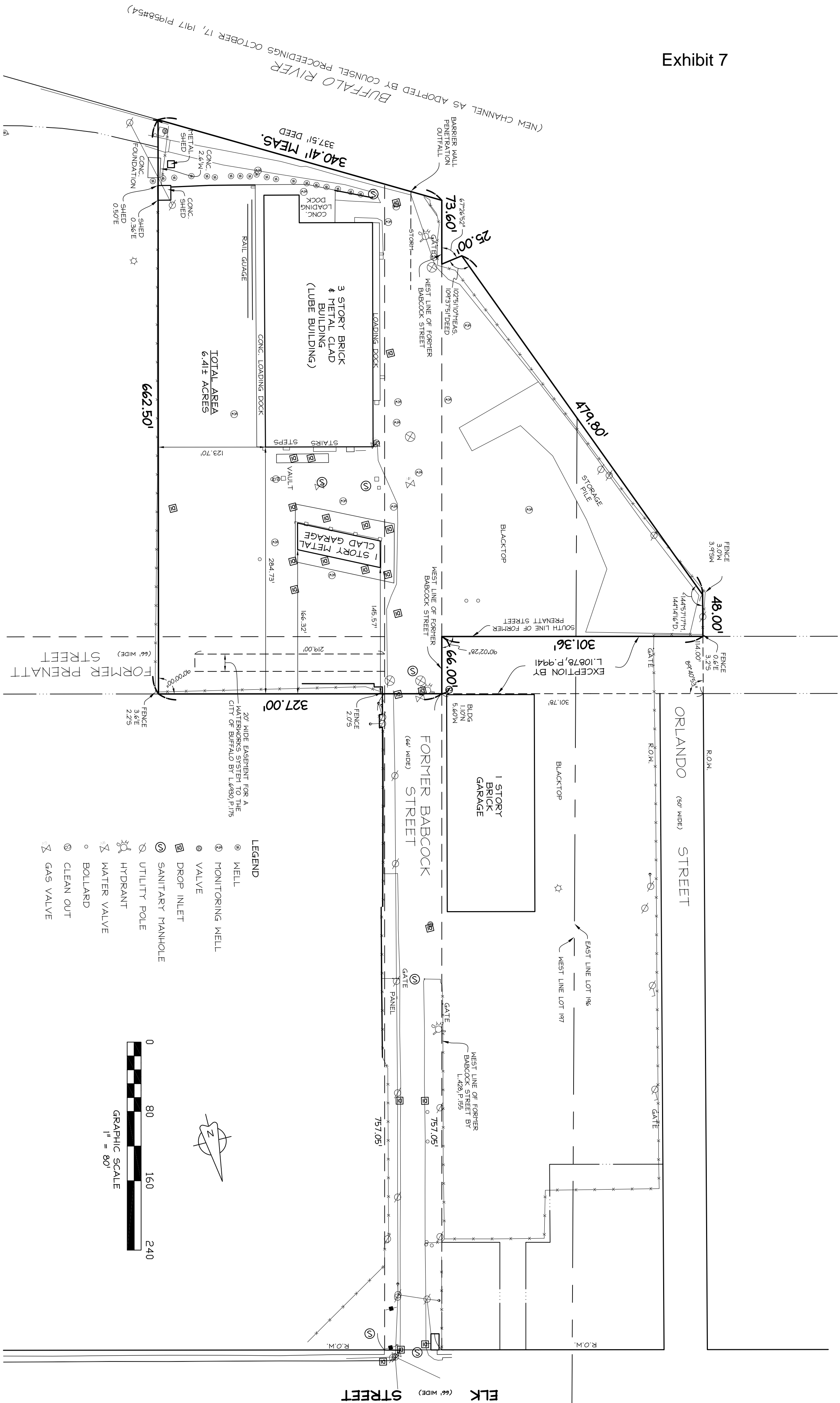


Exhibit 8

BARGAIN AND SALE DEED

THIS INDENTURE, made the 29th day of May, two thousand and eighteen,
between

ONE BABCOCK TERMINAL INC., a New York corporation with an address of 1 Babcock Street, Buffalo, New York 14210,

Party of the first part or Grantor,

and

ELK STREET COMMERCE PARK, LLC, a New York limited liability company with an office at 4 Centre Drive, Orchard Park, New York 14127,

Party of the second part or Grantee.

WITNESSETH, that the party of the first part, in consideration of one and more dollars (\$1.00 and more), lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever;

Parcel A

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 196 and 197, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at a point in the south line of Elk Street at its intersection with the west line of former Babcock Street as shown on a map recorded in the Erie County Clerk's Office in Liber 428 of Deeds at page 155;

Thence southerly along the west line of former Babcock Street a distance of 757.05 feet, to the north line of former Prenatt Street to the actual place of beginning;

Thence easterly along the north line of former Prenatt Street a distance of 327.00 feet;

Thence southerly at right angles, a distance of 662.50 feet to the north line of the New Channel of the Buffalo River as adopted by counsel proceedings October 17, 1917;

Thence north west along the north line of said New Channel of the Buffalo River a distance of 340.41 feet the westerly line of said former Babcock street;

Thence north along the west line of said former Babcock Street a distance of 73.60 feet;

Thence southwest at an exterior angle of 67°26'52" a distance of 25.00 feet;

Thence northwest at an interior angle of 102°51'10" a distance of 479.80 feet;

Thence north at an interior angle of 144°57'17" a distance of 48.00 feet to the south line of former Prenatt Street;

Thence east along the south line of said former Prenatt Street a distance of 301.36 feet to the west line of former Babcock Street;

Thence north along the west line of said former Babcock Street distance of 66.00 feet to the point of beginning, containing 6.41 acres, more or less.; and

Parcel B

ALLTHAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 196 and 197, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at a point in the south line of Elk Street at its intersection with the west line of former Babcock Street as shown on a map recorded in the Erie County Clerk's Office in Liber 428 of Deeds at page 155;

Thence southerly along the west line of former Babcock Street a distance of 757.05 feet, to the north line of former Prenatt Street; to the actual place of beginning;

Thence westerly along the north line of former Prenatt Street a distance of 301.78 feet;

Thence southerly at an interior angle of 89°40'53", a distance of 66.00 feet to the south line of former Prenatt Street;

Thence easterly along the southerly line of former Prenatt Street a distance of 301.36' to the westerly line of former Babcock street;

Thence north along the west line of said former Babcock Street a distance of 66.00 feet, to the point of beginning, containing 0.46 acres more or less.

EXCEPTING that Grantor does not warrant title to Parcel B.

Parcel A and Parcel B intending to represent all of Grantor's right, title and interest in and to the property currently included in the "New OU-3 Site" C915201D as identified on Exhibit A attached hereto and made a part hereof.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

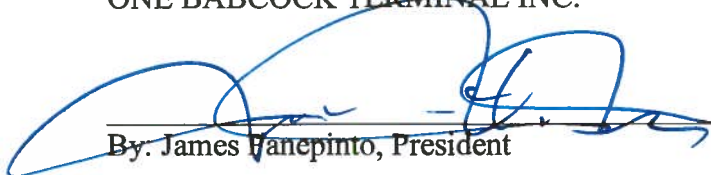
AND the party of the first part, covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

ONE BABCOCK TERMINAL INC.



By: James Panepinto, President

STATE OF NEW YORK)

) ss.:

COUNTY OF ERIE)

On the 25th day of May in the year 2018 before me, the undersigned, personally appeared James Panepinto personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.








Notary Public

DEANNE STACHOWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Sept. 7, 2020

EXHIBIT A

Exhibit C:
Current Proposed BCA Divisions
as of Feb. 20, 2017

	Original Exxon-Mobil BCA (OU-1)
	New ESCP BCA Application (OU-2, partial)
	New ESCP BCA Application (OU-2, partial)
	New ESCP BCA Application (OU-3)
	New Exxon-Mobil BCA Application (OU-4)

0.3 ac.
1.5 ac.

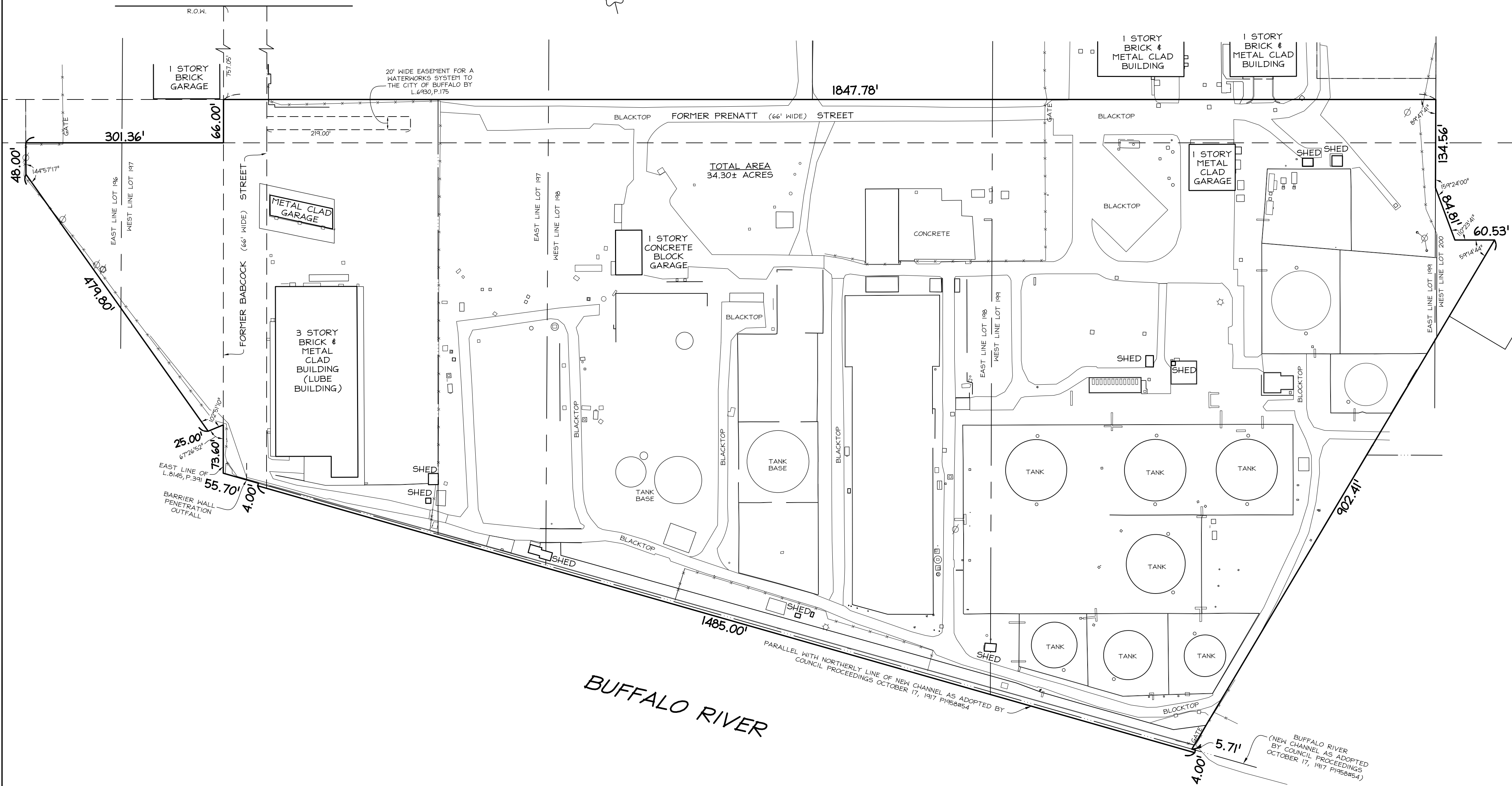
4.4 ac.
22.7 ac.
4.1 ac.
6.7 ac.

6.8 ac.
10.8 ac.
16.7 ac.
17.0 ac.

Exxon-Mobil under separate agreement
Exxon-Mobil under separate agreement

Elk Street Commerce Park, LLC
SK-1
2/20/17

ELK (66' WIDE) STREET



NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
p (716) 827-8000 f (716) 270-6091 www.nussclarke.com

This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.

Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of section 7209, provision 2 of the New York State Education Law.



BOUNDARY SURVEY

Operating Unit 3

Part of Lot 196,197,198,199,200 Township 10, Range 8

Buffalo Creek Reservation

City of Buffalo

County of Erie, State of New York

Date of Survey: 4/04/18

Scale : 1" = 100'

Project No. : 18J2-0361BG4c

Michael I. E.

Exhibit 10

OU3 Description

THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 196, 197, 198, 199 and 200, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at a point in the south line of Elk Street at its intersection with the west line of former Babcock Street as shown on a map recorded in the Erie County Clerk's Office in Liber 428 of Deeds at page 155;

Thence south along the west line of former Babcock Street a distance of 757.05 feet, to the north line of former Prenatt Street, said point being the point of Beginning;

Thence east along the north line of former Prenatt Street a distance of 1847.78 feet;

Thence south at an interior angle of $89^{\circ}47'41''$ a distance of 134.56 feet;

Thence south at an exterior angle of $159^{\circ}24'00''$ a distance of 84.81 feet;

Thence east at an exterior angle of $110^{\circ}23'41''$ a distance of 60.53 feet;

Thence southwest at an interior angle of $59^{\circ}14'44''$ a distance of 902.41 feet to the north line of the New Channel of the Buffalo River as adopted by Counsel Proceedings on October 17, 1917 P1958#54

Thence east along the north line of said New Channel of the Buffalo River a distance of 5.71 feet;

Thence south at right angles a distance of 4.00 feet;

Thence west along a line measured 4 feet perpendicular to the north line of said New Channel of the Buffalo River a distance of 1485.00 feet;

Thence north at right angles a distance of 4 feet to a point on the north line of said New Channel of the Buffalo River;

Thence west along the north line of said New Channel of the Buffalo River a distance of 55.70 feet, to the east line of lands conveyed by deed recorded in the Erie County Clerk's Office in Liber 8145 of Deeds page 391, also being the west line of former Babcock Street;

Thence north along the west line of said former Babcock Street a distance of 73.60 feet;

Thence west at an exterior angle of $67^{\circ}26'52''$ a distance of 25.00 feet;

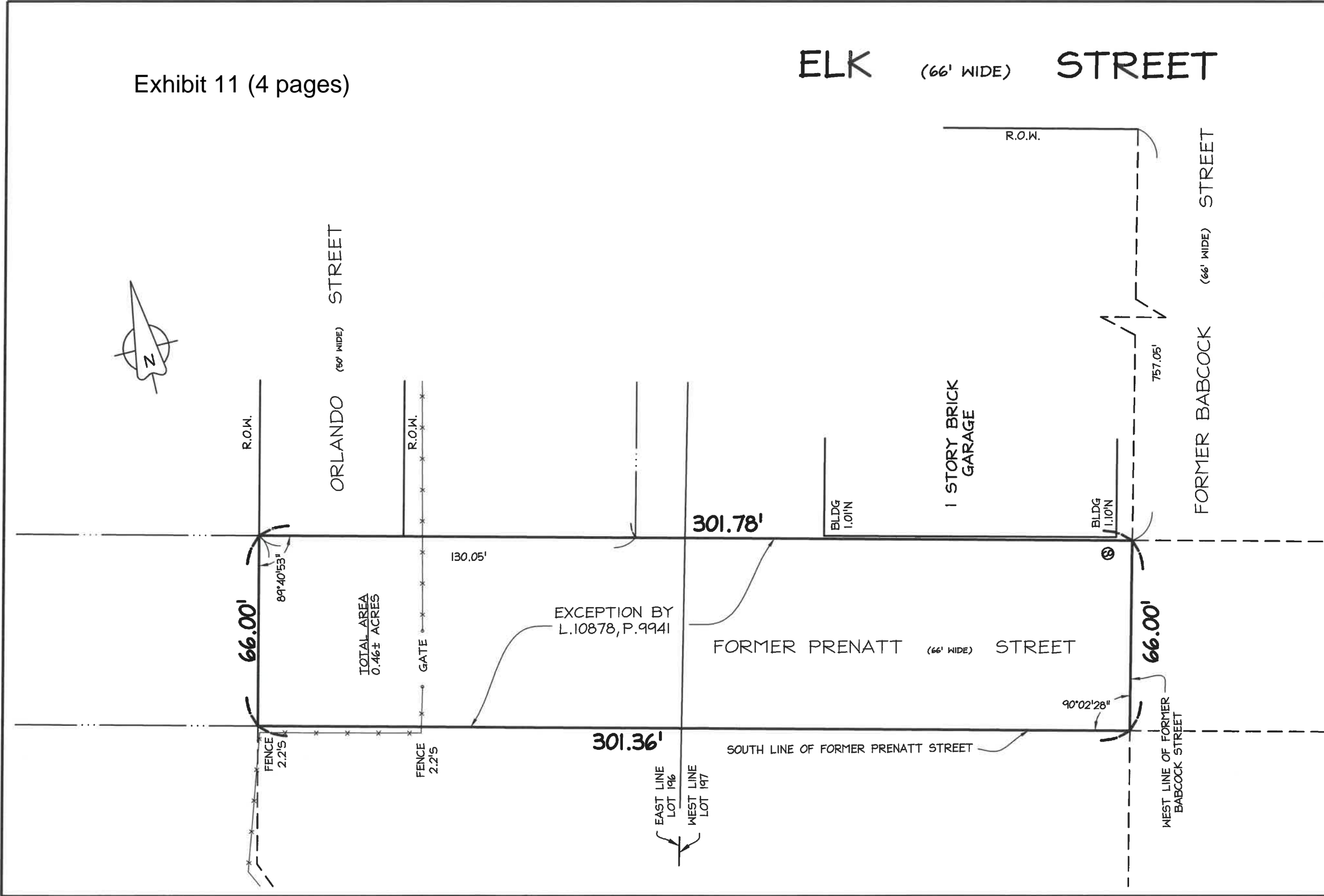
Thence northwest at an interior angle of $102^{\circ}51'10''$ a distance of 479.80 feet;

Thence north at an interior angle of $144^{\circ}57'17''$ a distance of 48.00 feet to the south line of former Prenatt Street;

Thence east along the south line of said former Prenatt Street a distance of 301.36 feet to the west line of former Babcock Street;

Thence north along the west line of said former Babcock Street distance of 66.00 feet to the north line of former Prenatt Street, to the point of beginning.

Exhibit 11 (4 pages)



3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
p (716) 827-8000 f (716) 270-6091 www.nussclarke.com

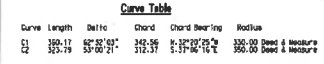
NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.
This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.
Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of section 7209, provision 2 of the New York State Education Law.

BOUNDARY SURVEY
Vacant Lot
 Part of Lot 196 & 197, Township 10, Range 8
 Buffalo Creek Reservation
 City of Buffalo
 County of Erie, State of New York
 Date of Survey: 04/04/18

Project No. : 18J2-0361 BC#2
 Scale : 1" = 40'
 Successors to the records of Graf Land Surveyors
 James L. Shisler, Land Surveyor

NUSSBAUMER & CLARKE, INC.
 EST. 1933
 ENGINEERS AND SURVEYORS

James L. Shisler



Kenneth L. Slagenhaupt Ltd. No. 50349

Erie County On-Line Mapping System
Parcel Detail Report

Address: 0
SBL: 122.12-1-2
Report generated: 1/10/2012 2:36:36 PM



Parcel Overview Map



Parcel Detail Map

PIN: 1402001221200001002000
SBL: 122.12-1-2
Address: 0
Owner 1: CSX TRANSPORTATION INC
Owner 2:
Mailing Address:
City/Zip:
Municipality: City of Buffalo
Property Class: 0
Class Description: -
Front: 0
Depth: 0
Deed Roll: 0
Deed Book: CORP
Deed Page: MERGE
Deed Date: 08/27/2004

Acreage: 1.027
Total Assessment: \$0
Land Assessment: \$0
County Taxes: \$0
Town Taxes: \$0
School Taxes: \$0
Village Taxes: \$0
School District:
Year Built: 0
Sqft Living Area: 0
Condition: 0
Heating: 0
Basement: 0
Fireplace: 0
Beds: 0
Baths: 0

Erie County On-Line Mapping System
Parcel Detail Report

Address: 55 LEE
SBL: 122.16-1-1.111
Report generated: 1/11/2012 9:03:21 AM



Parcel Overview Map



Parcel Detail Map

PIN: 1402001221600001001111

SBL: 122.16-1-1.111

Address: 55 LEE

Owner 1: P.V.S. CHEMICALS INC

Owner 2: C/O ATTN: CONTROLLER

Mailing Address: 10900 HARPER AVE

City/Zip: DETROIT MI 48213

Municipality: City of Buffalo

Property Class: 710

Class Description: C - Manufacture

Front: 449

Depth: 0

Deed Roll: 1

Deed Book: 09068

Deed Page: 00164

Deed Date: 10/02/1981

Acreage: 14.896

Total Assessment: \$985,000

Land Assessment: \$164,400

County Taxes: \$985,000

Town Taxes: \$0

School Taxes: \$0

Village Taxes: \$0

School District: CITY OF BUFFALO

Year Built: 0

Sqft Living Area: 0

Condition: 0

Heating: 0

Basement: 0

Fireplace: 0

Beds: 0

Baths: 0

SCHEDULE "A" AND ENVIRONMENTAL EASEMENT AREA DESCRIPTION

339 Elk Street – 122.12-1-9.13
100 Lee Street – 122.12-1-9.11
427 Elk Street – 122.12-1-12.1
5 Babcock Street – 122.12-1-30
98 Maurice Street- 122.12-1-31
City of Buffalo, Erie County, NY

Area E

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, State of New York, being part of Lot Nos. 133, 193, 194, 195, 196 and 197 of the Buffalo Creek Reservation, and more particularly bounded and described as follows:

BEGINNING at the intersection of the easterly line of Lee Street with the northerly line of former Prenatt Street;

Thence along the easterly line of Lee Street a record bearing of N.13° 38' 00"E and measured bearing of N.13°45'01"E a distance of 525.93 feet to the southerly line of lands conveyed to Elk-Lee LLC by deed filed in the Erie County Clerks Office in Liber 11106 of deeds at page 9020;

Thence parallel with the south line of Elk Street S.76°10'39"E east and along the southerly line of Elk-Lee LLC, a distance of 831.47 feet to the westerly line of the former Maurice Street;

Thence N.13°45'01"E along the former west line of Maurice Street and along the east line of Elk-Lee, LLC a distance of 197.00 to the south line of Elk Street;

Thence N.13°45'01"E along the south line of Elk Street a distance of 260.00 feet to the westerly line of Orlando Street;

Thence S.13°45'01"W along the westerly line of Orlando street a distance of 757.00 feet to a point on the North line of the former Prenatt Street;

Thence S.76°10'39"E along the former north line of Prenatt Street a distance of 300.00 feet to the west line of Babcock Street;

Thence S.13°45'01"W along the west line of Babcock street a distance of 33.00 feet to the north east corner of lands conveyed to The Buffalo Creek Railroad Company by deed filed in the Erie County Clerks Office in Liber 6040 of deeds at page 437;

Thence N.71°48'22"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 170.56 feet to a point in the west line lot 197 distant 20 feet southerly, measured along the west line of Lot 197 from the north line of the former Prenatt Street;

Thence N.76°10'39"W parallel with the north line of the former Prenatt Street, along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 660.00 feet to a point in the west line lot 97 distant 20 feet southerly, measured along the west line of Lot 196 from the north line of the former Prenatt Street;

Thence N.75°10'16"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 398.50 feet to a point in the west line lot 195 distant 13 feet southerly, measured along the west line of Lot 195 from the north line of the former Prenatt Street;

Thence N.71°53'01"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 100.89 feet to a point in a line drawn parallel with and 25 feet southerly measured at right angles from the north line of the former Prenatt Street;

Thence N.63°37'29"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 77.02 feet to a point in the west line of the street closing (Prenatt Street) as described in deed filed in the Erie County Clerks Office in Liber 5836 of deeds at page 182, parcel A;

Thence N.43°02'06" along the west line of the street closing (Prenatt Street) as described in deed filed in the Erie County Clerks Office in Liber 5836 of deeds at page 182, parcel A a distance of 26.10 feet to the point or place of beginning.

EXCEPTING

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 133, according to a map and survey of a part of the Buffalo Creek Reservation adjoining the City of Buffalo, made by Lovejoy & Emslie, said lot being in Township 10, Range 8 of the Holland Land Company's Survey, more particularly described as follows:

Beginning at a point in the north line of Prenatt Street, said point being 30.47 feet, measured easterly from the point of intersection of the northerly line of Prenatt Street with the easterly line of Lee Street;

Thence northerly at right angles to the northerly line of Prenatt Street N.26°22'30"E a distance of 30 feet to a point;

Thence easterly in a strait line parallel with and distant 30 feet at right angles from the north line of Prenatt Street S.63°37'29"E a distance of 135 feet deed, 129.84 feet measure more or less to a point in the east line of Lot 133;

Thence southerly along the east line of Lot 133 S.13°45'01"W a distance of 28.50 feet to a point in the north line of Prenatt Street;

Thence westerly along the north line of Prenatt Street N.76°10'39"W a distance of 10.02 feet to an angle point in the north line of Prenatt Street;

Thence continuing along the north line of Prenatt street N.63°37'29"W a distance of 126.29 feet more or less to the Point or Place of Beginning.

Portion of Area E

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, State of New York, being part of Lot No. 133 of the Buffalo Creek Reservation, and more particularly bounded and described as follows:

BEGINNING at the intersection of the easterly line of Lee Street with the Southerly line of Elk street;

Thence easterly along the south line of Elk Street on a record deed bearing of S76° 17' 40"E and a measured bearing of S76°10'39"E a distance of 85.00 feet to a point;

Thence southerly on a record deed bearing of S13° 38' 00"W and measured bearing of S13°45'01"W a distance of 53.00 feet to a point;

Thence westerly on a record deed bearing N76° 17' 40"W and measured bearing of N76°10'39"W a distance of 85.00 feet to a point on the east line of Lee Street;

Thence northerly along the east line of Lee Street on a record bearing of N63° 44' 30"W and measured bearing of N13°45'01"E a distance of 53.00 feet to the Point or Place of Beginning, Containing 0.103 Acre more or less

