



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]

RECEIVED

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

JAN 31 2020

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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:

1. Change of Site Address: 201 Ellicott Street (SBL: 111.13-13-1) was sub-divided into 225 Ellicott Street (SBL: 111.13-13-1.1) and 201 Ellicott Street (SBL: 111.13-13-1.2) which results in a change of address for the parcels.
2. Add 201 Ellicott Commercial, LLC, 201 Ellicott Residential, LLC and 201 Ellicott Housing Development Fund Corp. as New Requestors to the Brownfield Cleanup Agreement.

The nature of the amendment is explained further in
Exhibit A

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

Section I. Existing Agreement Information		
BCP SITE NAME: 201 Ellicott Street Site		BCP SITE NUMBER: C915331
NAME OF CURRENT APPLICANT(S): 201 Ellicott, LLC		
INDEX NUMBER OF EXISTING AGREEMENT: C915331-07-18 DATE OF EXISTING AGREEMENT: 9/5/18		
Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)		
NAME 201 Ellicott Residential, LLC		
ADDRESS 50 Fountain Plaza, Suite 500		
CITY/TOWN Buffalo, New York		ZIP CODE 14202
PHONE (716) 631-8000	FAX (716) 631-8034	E-MAIL pciminelli@ciminelli.com
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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. Provided in Exhibit B		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Paul Ciminelli		
ADDRESS 50 Fountain Plaza		
CITY/TOWN Buffalo, New York		ZIP CODE 14202
PHONE (716) 631-8000	FAX (716) 631-8034	E-MAIL pciminelli@ciminelli.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) No Change		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) No Change		
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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Describe Requestor's Relationship to Existing Applicant:		Provided in Exhibit B
The New Requestor, 201 Ellicott Residential, LLC, will enter the BCA as a Volunteer, The New Requestor has not operated or been involved with the Site at any time prior to the Site's entrance into the BCP. The Requestor is related to the current applicant, 201 Ellicott, LLC, because the current applicant is the sole member of the Requestor.		

Section I. Existing Agreement Information

BCP SITE NAME: 201 Ellicott Street Site

BCP SITE NUMBER: C915331

NAME OF CURRENT APPLICANT(S): 201 Ellicott, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C915331-07-18 DATE OF EXISTING AGREEMENT: 9/5/18

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

NAME 201 Ellicott Commercial, LLC

ADDRESS 50 Fountain Plaza, Suite 500

CITY/TOWN Buffalo, New York

ZIP CODE 14202

PHONE (716) 631-8000

FAX (716) 631-8034

E-MAIL pciminelli@ciminelli.com

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



Yes



No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (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.

Provided in Exhibit B

NAME OF NEW REQUESTOR'S REPRESENTATIVE Paul Ciminelli

ADDRESS 50 Fountain Plaza

CITY/TOWN Buffalo, New York

ZIP CODE 14202

PHONE (716) 631-8000

FAX (716) 631-8034

E-MAIL pciminelli@ciminelli.com

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) No Change

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) No Change

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:

Provided in Exhibit B

The New Requestor, 201 Ellicott Commercial, LLC, will enter the BCA as a Volunteer, The New Requestor has not operated or been involved with the Site at any time prior to the Site's entrance into the BCP. The Requestor is related to the current applicant, 201 Ellicott, LLC, because the current applicant is the sole member of the Requestor.

Section I. Existing Agreement Information			
BCP SITE NAME: 201 Ellicott Street Site		BCP SITE NUMBER: C915331	
NAME OF CURRENT APPLICANT(S): 201 Ellicott, LLC			
INDEX NUMBER OF EXISTING AGREEMENT: C915331-07-18 DATE OF EXISTING AGREEMENT: 9/5/18			
Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)			
NAME 201 Ellicott Housing Development Fund Corp.			
ADDRESS 50 Fountain Plaza, Suite 500			
CITY/TOWN Buffalo, New York		ZIP CODE 14202	
PHONE (716) 631-8000	FAX (716) 631-8034	E-MAIL pciminelli@ciminelli.com	
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <div style="display: flex; align-items: flex-start;"> <div style="flex: 1;"> <ul style="list-style-type: none"> 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. </div> <div style="border: 1px solid black; padding: 5px; margin-left: 10px; align-self: center;"> Provided in Exhibit B </div> </div>			
NAME OF NEW REQUESTOR'S REPRESENTATIVE Paul Ciminelli			
ADDRESS 50 Fountain Plaza			
CITY/TOWN Buffalo, New York		ZIP CODE 14202	
PHONE (716) 631-8000	FAX (716) 631-8034	E-MAIL pciminelli@ciminelli.com	
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) No Change			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) No Change			
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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Describe Requestor's Relationship to Existing Applicant: <div style="border: 1px solid black; padding: 5px; float: right;"> Provided in Exhibit B </div>			
The New Requestor, 201 Ellicott Housing Development Fund Corp., will enter the BCA as a Volunteer, The New Requestor has not operated or been involved with the Site at any time prior to the Site's entrance into the BCP. The Requestor is related to the current applicant, 201 Ellicott, LLC, because Paul Ciminelli is both a board member and member of Requestor and is also the principal owner of current 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) No Change

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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 201 Ellicott Street

CITY/TOWN Buffalo

ZIP CODE 14203

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

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
201 Ellicott Street		111.13	13	1	2.517

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_____

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
225 Ellicott Street	p/o	111.13	13	1.1	1.055
201 Ellicott Street	p/o	111.13	13	1.2	1.462



Reduction of property

Approximate acreage removed: _____

Total BCP Site
Acreage is 2.477
acres

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

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.

Provided in Exhibit C

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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
From ECL 27-1405(31): "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> 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: 201 Ellicott Street Site	BCP SITE NUMBER: C915331
NAME OF CURRENT APPLICANT(S): 201 Ellicott, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C915331-07-18	
EFFECTIVE DATE OF EXISTING AGREEMENT: 09/05/2018	

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 Managing Member) of (entity 201 Ellicott Residential, LLC); 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.

Paul F. Ciminelli's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 11/25/19 Signature: 

Print Name: Paul F. Ciminelli

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 201 Ellicott Street Site	BCP SITE NUMBER: C915331
NAME OF CURRENT APPLICANT(S): 201 Ellicott, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C915331-07-18	
EFFECTIVE DATE OF EXISTING AGREEMENT: 09/05/2018	

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 Managing Member) of (entity 201 Ellicott Commercial LLC); 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.

Paul F. Ciminelli signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 11/25/19 Signature: Paul F. Ciminelli

Print Name: Paul F. Ciminelli

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 201 Ellicott Street Site	BCP SITE NUMBER: C915331
NAME OF CURRENT APPLICANT(S): 201 Ellicott, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C915331-07-18	
EFFECTIVE DATE OF EXISTING AGREEMENT: 09/05/2018	

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 <u>Director</u>) of (entity <u>201 Ellicott Housing Development Fund Corp.</u>); 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. <u>Paul F. Ciminelli's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: <u>11/25/19</u> Signature: <u>Paul F. Ciminelli</u> Print Name: <u>Paul F. Ciminelli</u>

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 Managing Member (title) of 201 Ellicott, 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. Paul F. Ciminelli signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 11/25/19 Signature: Paul F. Ciminelli

Print Name: Paul F. Ciminelli

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:

September 18, 2018

Signature by the Department:

DATED: 5/15/20

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Michael J. Ryan

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.

EXHIBIT A

DESCRIPTION OF AMENDMENT
REQUEST

201 Ellicott Street Site
Buffalo, NY

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

As noted at Section I of the Application, the Applicant is requesting the following Amendments to the existing Brownfield Cleanup Agreement (BCA):

1) Amendment Request - Add four new Applicants (201 Ellicott Residential, LLC, 201 Ellicott Commercial, LLC, and 201 Ellicott Housing Development Fund Corp.) to the BCA:

The current applicant and owner is 201 Ellicott, LLC. Please note that ownership of the property was transferred from the City of Buffalo to 201 Ellicott, LLC on July 12, 2019. A copy of the filed Deed is provided in **Exhibit C**.

The New Requestors, 201 Ellicott Residential, LLC, 201 Ellicott Commercial, LLC, are related to the current applicant, 201 Ellicott, LLC, because the current applicant is the sole member of the Requestors. 201 Ellicott Housing Development Fund Corp. is related to the current applicant, 201 Ellicott, LLC, because Paul Ciminelli is both a board member and member of Requestor and is also the principal owner of current applicant.

New Requestors: 201 Ellicott Residential, LLC
50 Fountain Plaza, Suite 500
Buffalo, NY 14202

201 Ellicott Commercial, LLC
50 Fountain Plaza, Suite 500
Buffalo, NY 14202

201 Ellicott Housing Development Fund Corp.
50 Fountain Plaza, Suite 500
Buffalo, NY 14202

The New Requestors, 201 Ellicott Residential, LLC, 201 Ellicott Commercial, LLC, and 201 Ellicott Housing Development Fund Corp., will enter the BCA as Volunteers, None of the new Requestors have operated, owned, or been involved with the Site at any time prior to the Site's entrance into the BCP. None of the new Requestors have any legal relationship with any previous Site owners or operators. **Exhibit B** provides the NYS Department of State database printouts and documentation showing the party signing has authority to bind the New Requestors.

2) Amendment Request - Amend the property description in the BCA:

Recently, the City of Buffalo accepted the subdivision application for 201 Ellicott Street (SBL: 111.13.31-1) into two parcels:

North Parcel
225 Ellicott Street
SBL: 111.13-13-1.1

Acreage: 1.055

South Parcel
201 Ellicott Street
SBL: 111.13-13-1.2
Acreage: 1.462

This change is only to the property description in the BCA. The size of the Site is not changing. Please refer to the attached **Exhibit C** for the property survey with metes and bounds descriptions. The survey presents a breakdown of the acreage of the two subdivided parcels and the BCP Site (lower right side of the survey). The breakdown of the acreages is also provided below.

Site Acreage Table

North Parcel	1.055 acres
South Parcel	1.462 acres
Total Site	2.517 acres

BCP Acreage Tables

North BCP Parcel	1.015 acres
South BCP Parcel	1.462 acres
Total BCP Parcel	2.477 acres

EXHIBIT B

NEW REQUESTOR DOCUMENTATION

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through November 19, 2019.

Selected Entity Name: 201 ELLICOTT RESIDENTIAL, LLC
Selected Entity Status Information

Current Entity Name: 201 ELLICOTT RESIDENTIAL, LLC
DOS ID #: 5638341
Initial DOS Filing Date: OCTOBER 15, 2019
County: ERIE
Jurisdiction: NEW YORK
Entity Type: DOMESTIC LIMITED LIABILITY COMPANY
Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)
C/O CIMINELLI REAL ESTSTE CORPORATION
50 FOUNTAIN PLAZA
SUITE 500
BUFFALO, NEW YORK, 14202

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

*Stock Information

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

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
OCT 15, 2019	Actual	201 ELLICOTT RESIDENTIAL, LLC

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

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

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through November 19, 2019.

Selected Entity Name: 201 ELLICOTT COMMERCIAL, LLC

Selected Entity Status Information

Current Entity Name: 201 ELLICOTT COMMERCIAL, LLC

DOS ID #: 5638334

Initial DOS Filing Date: OCTOBER 15, 2019

County: ERIE

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

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

C/O CIMINELLI REAL ESTATE CORPORATION

50 FOUNTAIN PLAZA

SUITE 500

BUFFALO, NEW YORK, 14202

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
OCT 15, 2019	Actual	201 ELLICOTT COMMERCIAL, LLC

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

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

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through November 19, 2019.

Selected Entity Name: 201 ELLICOTT HOUSING DEVELOPMENT FUND CORP.
Selected Entity Status Information
Current Entity Name: 201 ELLICOTT HOUSING DEVELOPMENT FUND CORP.
DOS ID #: 5629901
Initial DOS Filing Date: SEPTEMBER 30, 2019
County: ERIE
Jurisdiction: NEW YORK
Entity Type: DOMESTIC NOT-FOR-PROFIT CORPORATION
Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)
C/O CIMINELLI REAL ESTATE VENTURES, LLC
50 FOUNTAIN PLAZA
SUITE 500
BUFFALO, NEW YORK, 14202

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

*Stock Information

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

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
SEP 30, 2019	Actual	201 ELLICOTT HOUSING DEVELOPMENT FUND CORP.

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

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

[Search Results](#) [New Search](#)

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201 ELLICOTT RESIDENTIAL, LLC

WRITTEN CONSENT OF THE SOLE MEMBER

JANUARY 23, 2020

The undersigned being holders of all of the membership interest of 201 ELLICOTT RESIDENTIAL, LLC, a New York limited liability company (the "**Company**"), hereby consent to the adoption of the following resolutions without a meeting and direct that this Consent be filed with the minutes of the Company:

RESOLVED, that Paul F. Ciminelli (an "**Authorized Person**") be, and hereby is, authorized, directed, and empowered, acting alone, in the name or on behalf of the Company, to execute the Brownfield Cleanup Program ("**BCP**") Application, the BCP Agreement, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property owned by the Company located at 201 Ellicott Street, Buffalo, New York; and be it further

RESOLVED, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Company as they may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions; and be it further

RESOLVED, that any acts of any officer of the Company and of any persons designated and authorized to act by any such officer of the Company, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Corporation.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the date first set forth above.

201 Ellicott, LLC, as Sole Member



Paul F. Ciminelli, Authorized Member

State of New York)
County of Erie) ss.:

On the 23rd day of January in the year 2020, before me, the undersigned, a Notary Public in and for the said state, personally appeared Paul F. Ciminelli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

KATHLEEN A. GUENTHER #01GU4675162
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 31, 2022

201 ELLICOTT COMMERCIAL, LLC

WRITTEN CONSENT OF THE SOLE MEMBER

JANUARY 23, 2020

The undersigned being holders of all of the membership interest of 201 ELLICOTT COMMERCIAL, LLC, a New York limited liability company (the "*Company*"), hereby consent to the adoption of the following resolutions without a meeting and direct that this Consent be filed with the minutes of the Company:

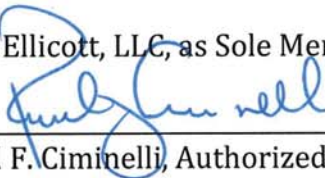
RESOLVED, that Paul F. Ciminelli (an "*Authorized Person*") be, and hereby is, authorized, directed, and empowered, acting alone, in the name or on behalf of the Company, to execute the Brownfield Cleanup Program ("*BCP*") Application, the BCP Agreement, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property owned by the Company located at 201 Ellicott Street, Buffalo, New York; and be it further

RESOLVED, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Company as they may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions; and be it further

RESOLVED, that any acts of any officer of the Company and of any persons designated and authorized to act by any such officer of the Company, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Corporation.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the date first set forth above.


201 Ellicott, LLC, as Sole Member



Paul F. Ciminelli, Authorized Member

State of New York)
County of Erie) ss.:

On the 23rd day of January in the year 2020, before me, the undersigned, a Notary Public in and for the said state, personally appeared Paul F. Ciminelli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KATHLEEN A. GUENTHER #01GU4675162
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 31, 2022

**UNANIMOUS WRITTEN RESOLUTION
OF THE BOARD OF DIRECTORS OF
201 ELLICOTT HOUSING DEVELOPMENT FUND CORP.**

JANUARY 31, 2020

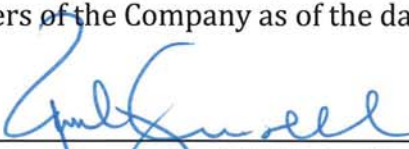
The undersigned, being holders of all of the shareholders and officers of **201 Ellicott Housing Development Fund Corp.**, a New York corporation (the "Company"), hereby jointly consent to pass, enact, approve, and adopt the following resolutions without a meeting and direct that this Resolution be filed with the minutes of the Company:

RESOLVED, that Paul F. Ciminelli of the Company, (an "Authorized Person") be, and hereby is, authorized, directed, and empowered, acting alone, in the name or on behalf of the Company, to execute the Brownfield Cleanup Program ("BCP") Agreement, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property owned by the Company located at 201 Ellicott Street, Buffalo, New York; and be it further


RESOLVED, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Company as they may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions; and be it further

RESOLVED, that any acts of any officer of the Company and of any persons designated and authorized to act by any such officer of the Company, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Company.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent of all Shareholders of the Company as of the date first set forth above.



Paul F. Ciminelli



Kyle Ciminelli



James Gottstine

This consent may be executive in various counterpart copies, and by facsimile, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

State of New York)
County of Erie) ss:

On the 31st day of January in the year 2020, before me, the undersigned, a Notary Public in and for the said state, personally appeared **Paul F. Ciminelli**, President of the Company, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KATHLEEN A. GUENTHER #01GU4675162
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 31, 2022

State of New York)
County of Erie) ss:

On the 31st day of January in the year 2020, before me, the undersigned, a Notary Public in and for the said state, personally appeared **Kyle Ciminelli**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KATHLEEN A. GUENTHER #01GU4675162
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 31, 2022

State of New York)
County of Erie) ss:

On the 31st day of January in the year 2020, before me, the undersigned, a Notary Public in and for the said state, personally appeared **James Gottstine**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KATHLEEN A. GUENTHER #01GU4675162
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 31, 2022

EXHIBIT C

PARCEL SUB-DIVISION SURVEY
WITH METES AND BOUNDS
DESCRIPTIONS



(Suggested Description)

North Parcel
1.055± Acres

Job No. 8828

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, and being part of Outer Lots 110 and 111, bounded and described as follows:

BEGINNING AT the intersection of the south line of Clinton Street with the east line of Ellicott Street;

RUNNING THENCE: Southeasterly, along the south line of Clinton Street, a distance of 301.70 feet to a point on the west line of Elm Oak Arterial (formerly Oak Street);

RUNNING THENCE: Southwesterly, at an interior angle of 89°-56'-51" with the last described line and along the west line of Elm Oak Arterial, a distance of 147.87 feet to a point;

RUNNING THENCE: Northwesterly, at an exterior angle of 89°-55'-19" with the last described line, a distance of 67.50 feet to a point;

RUNNING THENCE: Southwesterly, at an exterior angle of 90°-04'-41" with the last described line, a distance of 16.53 feet to a point;

RUNNING THENCE: Northwesterly, at right angles to the last described line, a distance of 118.0 feet to a point;

RUNNING THENCE: Northeasterly, at right angles to the last described line, a distance of 16.50 feet to a point of curvature;

RUNNING THENCE: Northwesterly, along a curve to the left having a radius of 5.0 feet, a distance of 7.85 feet to a point of tangency;

RUNNING THENCE: Northwesterly, a distance of 111.13 feet to a point on the east line of Ellicott Street;

RUNNING THENCE: Northeasterly, at right angles to the last described line and along the east line of Ellicott Street, a distance of 142.72 feet to the POINT OR PLACE OF BEGINNING, containing 1.055 Acres, be the same, more or less.

SUBJECT to easements, rights of way and restrictions of record.

(Suggested Description)

South Parcel
1.462± Acres

Job No. 8828

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, and being part of Outer Lots 110 and 111, bounded and described as follows:

BEGINNING AT A POINT on the east line of Ellicott Street at a distance of 142.72 feet southwesterly measured along the east line of Ellicott Street from its intersection with the south line of Clinton Street;

RUNNING THENCE: Southeasterly, at right angles to the last described line, a distance of 111.13 feet to a point of curvature;

RUNNING THENCE: Southeasterly, along a curve to the right having a radius of 5.0 feet, a distance of 7.85 feet to a point of tangency;

RUNNING THENCE: Southwesterly, a distance of 16.50 feet to a point;

RUNNING THENCE: Southeasterly, at right angles to the last described line, a distance of 118.0 feet to a point;

RUNNING THENCE: Northeasterly, at right angles to the last described line, a distance of 16.53 feet to a point;

RUNNING THENCE: Southeasterly, at an interior angle of 90°-04'-41" with the last described line, a distance of 67.50 feet to a point on the west line of Elm Oak Arterial;

RUNNING THENCE: Southwesterly, at an interior angle of 89°-55'-19" with the last described line and along the west line of Elm Oak Arterial, a distance of 215.56 feet to the northeast corner of lands

conveyed to Niagara Frontier Transportation Authority by deed recorded in the Erie County Clerk's Office in Liber 8278 of Deeds at Page 531; said point being also on the north line of Former Eagle Street;

RUNNING THENCE: Northwesterly, at an interior angle of 90°-05'-02" with the last described line and along the north line of said Niagara Frontier Transportation Authority lands and the north line of former Eagle Street, a distance of 301.52 feet to a point on the east line of Ellicott Street;

RUNNING THENCE: Northeasterly, at an interior angle of 89°-56'-38" with the last described line and along the east line of Ellicott Street, a distance of 220.88 feet to the POINT OR PLACE OF

BEGINNING, containing 1.462 Acres, be the same, more or less.

SUBJECT to easements, rights of way and restrictions of record.

MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE: 7/12/2019
TIME: 2:49:05 PM
RECEIPT: 19111993

LIPPES MATHIAS ETAL
ACCOUNT #: 1627

ITEM - 01 DEED
RECD: 7/12/2019 2:49:46 PM
FILE: 2019143782 BK/PG D 11346/8312
Deed Sequence: TT2018024538
CITY OF BUFFALO
201 ELLICOTT LLC

Recording Fees	230.00
RP5217 CNTY \$9	9.00
RP5217 ST-NON RES \$241	241.00
TP584	10.00
TRANSFER	
MANSION TT	0.00
TT-STATE \$2/500	9,300.00
TT-COUNTY \$2.50/500	11,625.00
Subtotal	21,415.00

TOTAL DUE	\$21,415.00
PAID TOTAL	\$21,415.00
PAID CHECK	\$21,395.00
Check #7492:	21,395.00
PAID ESCROW	\$20.00

REC BY: Megan
COUNTY RECORDER



www.evansbank.com

CASHIER'S CHECK

Branch: 21

7491

50-1012
223

NOTICE TO CUSTOMERS
THE PURCHASE OF AN INDEMNITY BOND MAY BE REQUIRED
BEFORE ANY CASHIER'S CHECK OF THIS BANK WILL BE
REPLACED OR REFUNDED IN THE EVENT IT IS LOST,
MISPLACED OR STOLEN.

DATE July 12, 2019

REMITTER 201 Ellicott LLC

PAY ONE HUNDRED NINETY-SEVEN AND 33/100

\$*****197.33

TO THE ORDER OF City of Buffalo User Fee

PURPOSE Garbage fee reimbursement



⑈007491⑈

⑆022310121⑆

⑈0457361001⑈



www.evansbank.com

CASHIER'S CHECK

Branch: 21

7489

50-1012
223

NOTICE TO CUSTOMERS
THE PURCHASE OF AN INDEMNITY BOND MAY BE REQUIRED
BEFORE ANY CASHIER'S CHECK OF THIS BANK WILL BE
REPLACED OR REFUNDED IN THE EVENT IT IS LOST,
MISPLACED OR STOLEN.

DATE July 12, 2019

REMITTER 201 Ellicott LLC

PAY NINE THOUSAND SIX HUNDRED AND 00/100

\$*****9,600.00

TO THE ORDER OF City of Buffalo

PURPOSE Developer Designation Fee Arrerage



⑈007489⑈

⑆022310121⑆

⑈0457361001⑈



www.evansbank.com

CASHIER'S CHECK

Branch: 21

7490

50-1012
223

NOTICE TO CUSTOMERS
THE PURCHASE OF AN INDEMNITY BOND MAY BE REQUIRED
BEFORE ANY CASHIER'S CHECK OF THIS BANK WILL BE
REPLACED OR REFUNDED IN THE EVENT IT IS LOST,
MISPLACED OR STOLEN.

DATE July 12, 2019

REMITTER 201 Ellicott LLC

PAY ONE MILLION NINE HUNDRED THIRTY-FIVE THOUSAND AND 00/100

\$**1,935,000.00

TO THE ORDER OF City of Buffalo

PURPOSE Balance due for Real Estate



⑈007490⑈

⑆022310121⑆

⑈0457361001⑈

QUIT CLAIM DEED WITH REVERTER, COVENANTS AND RESERVATION OF EASEMENTS

FILED

JUL 12 2019

ERIE COUNTY
CLERK'S OFFICE

Made the 10th day of July, 2019, between

The CITY OF BUFFALO, a domestic municipal corporation, with an address at 920 City Hall, Buffalo, New York 14202 ("Grantor", sometimes hereinafter also referred to as "City"), and

201 Ellicott, LLC, a Limited Liability Company organized under the laws of the state of New York, with an address at **50 Fountain Plaza, Suite 500, Buffalo, New York 14202** ("Grantee")

WITNESSETH, that Grantor, in consideration of the sum Two Million Three Hundred Twenty-Five Thousand Dollars (\$2,325,000.00), lawful money of the United States, paid to Grantor by Grantee, does hereby quitclaim unto Grantee,

SEE ATTACHED SCHEDULE A (hereinafter, the "Premises" or the "Property"). **SBL No. 111.13-13-1**

THIS conveyance is made pursuant to Item number 19-800 of the City of Buffalo Common Council Proceedings on June 11, 2019.

This conveyance is made under and subject to the following provisions, covenants and reservation of easements:

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

1. The Premises is, among other things, subject to a right of reverter (hereinafter, "Right of Reverter") that provides that ownership of the Premises shall at the sole option of Grantor revert to Grantor in the event that certain conditions subsequent occur as set forth in that certain Land Disposition Agreement and Contract for Sale of Land for Private Development by and between City of Buffalo and 201 Ellicott, LLC Developer (hereinafter, sometimes referred to as the "LDA") a copy of which is attached hereto and made a part thereof as **Schedule C**. The provisions of the LDA are made a part hereof and are incorporated into this Deed.

2. The covenants and conditions, terms and provisions contained in the Environmental Release and Indemnity Agreement set forth in **Schedule B** attached hereto and made a part hereof shall run with the land constituting the Premises and shall be binding upon Grantee and its successors and assigns.

3. Grantee shall procure all permits and pay all costs to construct and develop the Project (as defined on the LDA).

RESERVATION OF EASEMENTS

There is hereby reserved to Grantor permanent non-exclusive easements over, across and under portions of the Property for unrestricted access to the existing utilities on the Property and for the inspection, maintenance, repair, upgrade, improvement, alteration, reduction, removal and or replacement of any and all existing utility facilities and/or utility poles and/or utility lines, gas lines, and or water lines and or other lines and or facilities as may exist on, over or under the Property including but not limited to all equipment related thereto (and or also as otherwise shown or indicated on that certain survey (the "Survey") dated August 16, 2016 as Job No. 8828 done by McIntosh & McIntosh, P.C.) and for all rights related thereto and or as may be disclosed by an updated survey. These reserved easement rights shall, if and when from time to time deemed appropriate by the Grantor, be freely assignable in whole or in part(s) by Grantor to any one or more utility company or utility companies and or other utility authority or authority as is (are) deemed appropriate by the Grantor. The object and intent of the foregoing is to emphasize the right of the pertinent utility company(ies) to access and occupy those portions of the Property necessary to perform all utility company related functions relative to the poles and overhead lines, gas valves, gas lines, gas boxes, valves, water lines, catch basins, sewer lines and or light poles referenced on the Survey. Upon written request made by Grantor, Grantee agrees to execute from time to time recordable non-exclusive easement or easements to the appropriate utility company or companies or authority(ies) or party(ies) to more fully effectuate the intent of the easements reservation and such interests. Said reserved easements shall also include access rights to and over the Property of Grantee as are necessary to facilitate the rights reserved hereunder. Said reserved easements also include the right of the Grantor, but not the obligation, to remove trees, shrubs and or any other material or improvements as is/are in the sole opinion of Grantor interfering with (or likely to interfere with) the rights of Grantor or others in the reserved easements. It is expressly understood and agreed that Grantor does not have any affirmative obligations whatsoever to maintain, repair, upgrade, improve, alter and/or replace the utility facilities, lines, valves, poles, etc. and/or any components thereof. Grantee shall have the right to relocate the utility facilities within the Premises upon the prior written consent of the affected utilities, or other owner of the utilities facilities, or other affected party(ies) under terms and conditions proposed in writing Grantee but which must first be approved in writing in the sole discretion of the City's Division of Real Estate.

[Signatures on next pages]

and
Corporation Counsel
By John H. Hefron

This Deed is given to Grantee conditioned upon the agreement by Grantee to hereby be bound by all of the covenants and conditions contained in this Deed, including but not limited to the Right of Reverter provisions contained in this Deed and in the LDA. This Deed is given to Grantee yet further conditioned upon the agreement by Grantee to hereby be bound by the provisions of the Environmental Release and Indemnity Agreement attached hereto and made a part hereof as **Schedule B**. Grantee also hereby agrees to be bound by all the provisions of the LDA attached hereto and made a part hereof as **Schedule C**, the reservation of easements contained in this Deed and any and all equipment/facilities related thereto. Grantee also hereby expressly acknowledges the easement and rights held by National Fuel Gas recorded in the Erie County Clerk's Office at Liber 9727 of Deeds at Page 385. Grantee evidences its agreement to all of the foregoing by signing below.

201 Ellicott, LLC

By: Ciminelli Real Estate Corporation,
its manager

BY:


Paul F. Ciminelli, President

STATE OF NEW YORK)

) ss.:

COUNTY OF ERIE)

On this 11 day of July, in the year 2019, before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State, personally appeared **Paul F. Ciminelli**, 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/Commissioner of Deeds

KATHLEEN A. GUENTHER #01GU4675162
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 31, 2022

Schedule A

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, and being part of Outer Lots 110 and 111, in said City, bounded and described as follows:

BEGINNING AT the intersection of the south line of Clinton Street with the east line of Ellicott Street;

RUNNING THENCE: Southeasterly, along the south line of Clinton Street, a distance of 301.70 feet to a point on the west line of Elm Oak Arterial (formally Oak Street);

RUNNING THENCE: Southwesterly, at an interior angle of $89^{\circ}-56'-51''$ with the last described line and along the west line of Elm Oak Arterial, a distance of 363.44 feet to the northeast corner of lands conveyed to Niagara Frontier Transportation Authority by deed recorded in the Erie County Clerk's Office in Liber 8278 of Deeds at Page 531; said point being also on the north line of Former Eagle Street;

RUNNING THENCE: Northwesterly, at an interior angle of $90^{\circ}-05'-02''$ with the last described line and along the north line of said Niagara Frontier Transportation Authority lands and the north line of former Eagle Street, a distance of 301.52 feet to a point on the east line of Ellicott Street;

RUNNING THENCE: Northeasterly, at an interior angle of $89^{\circ}-56'-38''$ with the last described line and along the east line of Ellicott Street, a distance of 363.60 feet to the POINT OR PLACE OF BEGINNING, containing 2.517 Acres, be the same, more or less.

SUBJECT to easements, rights of way and restrictions of record.

Schedule B
ENVIRONMENTAL RELEASE AND INDEMNITY

This Release and Indemnity Agreement dated this 12 day of JULY, 2019, is given by **201 Ellicott, LLC** (hereinafter "Developer") to the City of Buffalo ("City") as a condition of the delivery and acceptance of a Land Disposition Agreement and quitclaim deed from City to Developer of real property commonly known as 201 Ellicott in Buffalo, New York (the "Property").

I. RELEASE AND INDEMNIFICATION PROVISION: Developer covenants and agrees at its sole cost and expense, to release, defend and save harmless City and its officers, employees, directors, agents and representatives (collectively, "City") from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, obligations, 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 Developer and or City, individually or collectively, at any time resulting from or arising out of:

- (a) 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 Property or migrating to parcels now or hereafter owned by Developer;
- (b) 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 Property or parcels now or hereafter owned by Developer;
- (c) Developer'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 Property or migrating off the Property to any and all other locations off-site;
- (d) human exposure to any hazardous substance, including but not limited to petroleum or petroleum based products, noises, noxious fumes, vibrations, or nuisances of whatever kind from any condition on the Property resulting from Hazardous materials, or the ownership, use, operation, sale, transfer or conveyance thereof;
- (e) a violation of any applicable state or federal statute or regulation with respect to any condition now or hereafter existing on the Property;
- (f) 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 State Department of Environmental Conservation ("DEC") or the U.S. Environmental Protection Agency ("EPA");

thereon. Further, the City makes no representations and or warranties whatsoever as to the condition and or as to the permitted use of the Property, the improvements thereon, environmental conditions at the Property and or in connection with the title to the Property or any other matter with respect to the Property.

III. GRANTEE ACKNOWLEDGEMENTS: GRANTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY SHALL CONVEY ITS INTEREST IN THE PROPERTY TO GRANTEE AND THAT GRANTEE SHALL ACCEPT THE PROPERTY "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 PROPERTY INCLUDING, BUT NOT BY WAY OF LIMITATION: (i) the quality, nature habitability, merchantability, use, operation value, marketability, adequacy or physical condition of the Property or any aspect or portion thereof, including, without limitation, structural elements, appurtenances, access, landscaping, parking, plumbing, sewage, and utility systems, facilities and appliances, soils, geology and or groundwater, (ii) the dimensions or lot size of the Property, (iii) the development or income potential, or rights of or relating to, the Property, or the Property's use, habitability, merchantability, or fitness, or the suitability, value, or adequacy of the Property for any particular purpose, (iv) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property, (v) the compliance of the Property 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 Property, (vii) the presence or absence of Hazardous Materials on, in, under, above or about the Property, (viii) the quality of any labor or materials used in any improvements, (ix) the condition of title to the Property, (x) City's ownership of the Property 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 Property. 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 Property 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 Property 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 Property or migrating therefrom as may be directed by any governing regulating agencies, including, but not limited to the DEC 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 Property and has fully availed itself of such right or has otherwise waived such right and opportunity.

IV. 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 property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property 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 Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

"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.

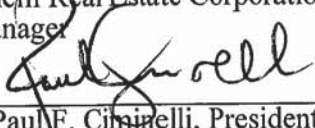
"Fines" or "Penalties" means any levy imposed by a governmental body or office, including but not limited to the DEC or EPA, authorized by statute or regulation, that is not, directly or indirectly, compensation for, or reimbursement of, any actual cost incurred, liability imposed, or loss sustained 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.

IV. THESE PROVISIONS TO RUN WITH THE LAND All of the provisions contained in this Agreement shall run with the land constituting the Property and shall be binding upon Developer and all his successors and assigns.

201 Ellicott, LLC

By: Ciminelli Real Estate Corporation,
its manager

BY:


Paul F. Ciminelli, President

**STATE OF NEW YORK
COUNTY OF ERIE
CITY OF BUFFALO**

On the 17 day of July, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **Paul F. Ciminelli**, 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/~~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

KATHLEEN A. GUENTHER #01GU4675162
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 31, 2022

Schedule C

LAND DISPOSITION AGREEMENT

AND

CONTRACT FOR SALE OF LAND

FOR PRIVATE DEVELOPMENT

BY AND BETWEEN

CITY OF BUFFALO

AND

201 ELLICOTT, LLC

DEVELOPER

LIST OF APPENDICES

APPENDIX

A LEGAL DESCRIPTION

B ENVIRONMENTAL RELEASE AND INDEMNITY

**CONTRACT FOR
SALE OF LAND FOR PRIVATE DEVELOPMENT**

This CONTRACT FOR SALE OF LAND FOR PRIVATE DEVELOPMENT (hereinafter called "Agreement"), made on or as of the 12 day of JULY, 2019, by and between the **City of Buffalo**, a New York State municipal corporation (hereinafter called "City"), having an office at Room 920 City Hall, 65 Niagara Square, Buffalo, New York 14202

AND

201 Ellicott, LLC, a New York limited liability company (and or a corporation, partnership, or other legal entity or entities to be designated by Ciminelli Real Estate Corporation and approved by the City of Buffalo, Office of Strategic Planning, hereinafter "OSP", in OSP's sole discretion), (hereinafter called "Developer") with a mailing address of 50 Fountain Plaza, Suite 500, Buffalo, New York 14202.

WITNESSETH

WHEREAS, City has offered to sell and Developer is willing to purchase certain real property in Buffalo, New York, more particularly described in Appendix A annexed hereto and made part hereof (which real property as so described is hereinafter sometimes called the "Property"), and Developer has agreed to develop the Property for and in accordance with the uses specified in the provisions of this Agreement; and

WHEREAS, the Developer shall develop the Property into a mixed use development project, which shall include but not be limited to a market having a selection of fresh and packaged foods (the "Fresh Food Market") and a significant residential element all to be located at the Property which is commonly known as 201 Ellicott Street, Buffalo, NY 14203 (the "Project").

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, each of the parties hereto does hereby covenant and agree with the other as follows:

SECTION 1 - DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as follows:

"Closing": The City delivering a quit-claim deed of the Property to the Developer and Developer simultaneously therewith paying the Purchase Price to the City.

"Closing Date": June 26, 2019 or such other later date as is immediately after the City of Buffalo Common Council approval of this Agreement has been formalized or as otherwise may be agreed to by the City.

"Deposit": One Hundred Seventeen Thousand Five Hundred (\$117,500) U.S. Dollars to be paid by Developer to City upon full execution of this Agreement, with an additional sum of \$9,600 monthly being added to the Deposit by Developer paying the City such sum monthly beginning thirty (30) days after the full execution of this Agreement. The Developer agrees that all designated developer fees paid are non-refundable and that after the date of full execution of this Agreement the Developer must continue to make the monthly \$9,600 payments to the City until Closing. The Deposit (\$117,500 as increased monthly after the date of full execution of this Agreement as described above) is over and above and in addition to any and all designated developer fees paid through the date of full execution of this Agreement. The Deposit as so increased and the designated developer fees are sometimes hereinafter referred to collectively as the "Reconveyance Premium". The Reconveyance Premium shall be deemed to be increased by the sum of \$9,600 per month from and after Closing.

"Executive Director": The City's Executive Director of the Mayor's Office of Strategic Planning.

"Property": Approximately 108,726 square foot (2.5 acre +/-) parcel primarily consisting of a surface parking lot located at 201 Ellicott Street and bounded by Ellicott, Clinton, Oak and former Eagle Streets, described more particularly on the legal description attached hereto as Appendix A.

"Purchase Price": Two Million Three Hundred Twenty-five Thousand (\$2,325,000) U.S. Dollars.

SECTION 2 - PURCHASE PRICE

(A) Subject to all the terms, covenants, and conditions of this Agreement, the City will sell the Property to the Developer, and the Developer will purchase the Property from the City, for the Purchase Price. The Purchase Price shall be paid as follows: (i) a Deposit amount of \$117,500 due upon full execution of this Agreement (subject to the Developer's \$9,600 per month additions to the Deposit monthly after the date of full execution of this Agreement), and (ii) on the Closing Date, at the time of delivery of the quit-claim Deed (as hereinafter defined) (or quit-claim Deeds) conveying the Property to Developer, the balance of the Purchase Price, subject to any adjustments and prorations provided for herein and agreed to by the City, shall be paid by Developer to City by official bank cashier's check. Reference is also made to the terms and provisions of that certain designated developer agreement that was duly entered into by the City and Ciminelli Real Estate Corporation, pursuant to Item No. 17-960 of Common Council Proceedings held on June 27, 2017, and Item No. 1534 of Common Council Proceedings held on June 21, 2016.

(B) The developer designation fees shall be applied as a credit towards the Purchase Price but are not in any event whatsoever refundable. In the event the Developer shall not proceed with the acquisition of the Property within the period set

forth in this Agreement, the Developer shall forfeit the Deposit, and the Developer shall have no further rights with respect to the Property and or against the City. All designation fees are non-refundable in any event whatsoever. The Property shall continue to be operated as a parking lot until the last day of the first full calendar month following Common Council's approval of this Agreement. Developer shall have no rights to parking lot proceeds and Developer shall have no rights to interfere with parking operations at the Property.

(C) The Developer shall pay for all title, survey (updated ALTA survey if updated survey is required by Developer), title insurance, recordation fees, filing fees, transfer tax (deed stamps), as well as for any and all other expenses related to the Closing. The Developer shall also pay for any utility pole or light pole or street light alteration or decommissioning or removal or relocation costs if it is determined by City in City's sole discretion that any utility poles or street lights need to be altered and or decommissioned and or removed and or relocated from the Property as a result of or in connection with the sale of the Property. Developer acknowledges the presence of various utility facilities on the Property and agrees that the Property is being quit-claim deeded to Developer subject to the rights of the owners of those utilities.

(D) "Purchase Price Increase" shall mean a dollar for dollar increase in the Purchase Price for any and all expenditures made and or expenses incurred by the City on or after the date of this Agreement at or related to the Property in connection with any environmental matters at the Property and or in connection with or arising from or in connection with any underground storage tank matters and or similar such matters at the Property whatsoever, it being expressly understood and agreed that any determination as to whether or not the City was or is obligated to make said expenditures shall be made solely by the City Real Estate Division (in light of and or informed by the requirements of the NYSDEC) and not by the Developer. The City will work with the Developer to facilitate Developer's being allowed by the City to directly make such expenditures and or directly incur such expenses up front and or to directly perform the work associated therewith.

SECTION 3 - CONVEYANCE OF PROPERTY

(A) **Conditions Precedent:** Developer and City understand and agree that City's obligation to convey title to the Property and Developer's obligation to accept title to the Property shall be subject to the satisfaction or waiver thereof of the following conditions precedent:

(i) If not already approved, the approval of the Purchase Price and this Agreement by the Common Council of the City of Buffalo ("Common Council");

(ii) Developer's timely payment of the \$117,500 Deposit (no later than upon the date of the full execution of this Agreement) and Developer's timely monthly \$9,600 payments thereafter into the Deposit;

(iii) Submission by the Developer of a detailed site plan of the Project for the Property at 201 Ellicott Street for approval by the City of Buffalo Planning Board (if necessary);

(iv) Said plans shall also be in accordance with Chapter 496 Unified Development Ordinance of the City of Buffalo;

(v) Submission of a colored rendering of the Project suitable for presentation to the City of Buffalo Common Council which shall be submitted by the Developer to the Office of Strategic Planning, Division of Real Estate, prior to entering a contract of sale and prior to Common Council approval and again prior to Closing showing any updates and or notifications;

(vi) Submission on or before Closing by the Developer to the Office of Strategic Planning, Division of Real Estate of evidence of Developer's HFA financing for the Project still being on track;

(vii) Submission on or before Closing of evidence satisfactory to the Mayor's Office of Strategic Planning that Developer's lease deal or sale contract with the Fresh Food Market operator is still on track;

(viii) Developer's demonstrated ability to after Closing submit to the City of Buffalo's Department of Permit and Inspection Services an application for a building permit, for the construction of the Project on the Property pursuant to the Plans (as hereafter defined), (hereinafter the "Construction of the Project") (Note: this ability has been demonstrated);

(ix) Clear and unencumbered title to the Property with no liens or encumbrances, such determination to be made by Developer, in its sole discretion;

(x) Developer satisfying itself at Developer's sole cost and expense, in Developer's sole discretion, that the Property is in compliance with all Federal and New York State environmental statutes, rules and regulations; and

(xi) Completion by both parties of all other obligations under this Agreement to be completed prior to Closing including but not limited to those as identified in Section 12(B) of this Agreement;

(xii) Developer is responsible for performing any soil borings and soil investigations, subject to prior to execution and compliance with written Access, Indemnification and Insurance Agreement(s) between the City and each and every contractor hired by the Developer that will access the Property, for the purpose of determining, to Developer's satisfaction, the suitability of the Property for its intended use, and or as to the presence or absence of hazardous substances as such term is used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (C.E.R.C.L.A.) 42 USC ss 9601 et seq.: The Hazardous Materials

Transportation Act, as amended, 49 USC ss 1801 et Seq.: The Resource Conservation and Recovery Act, as amended, 42 USC ss 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, whether previously enforced or subsequently enacted. The Access Agreement(s), and indemnity and evidence of insurance saving the City of Buffalo harmless from any and all liability must be approved as to form by the City of Buffalo's Corporation Counsel's Office and signed by the City of Buffalo prior to any and all contractors accessing the Property, said document to be in form and substance acceptable to the City in the City's sole discretion.

(B) Conditions Subsequent: In the event that subsequent to conveyance of the Property or any part thereof to Developer, and prior to completion of the Construction of the Project and opening of the Fresh Food Market to the public as certified by City:

(i) The Developer (or successor in interest) shall default in or violate its obligations under this Agreement with respect to the completion of the Construction of the Project or the opening of the Fresh Food Market, or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended or remedied within twelve (12) months after written demand by the City to do so as extended an additional six (6) months by the City if the Developer establishes a credible path forward towards completion of the Construction of the Project (or opening of the Fresh Food Market as applicable), as further extended by a second six (6) month extension by the City if the Developer is credibly executing that path forward to completion of the Construction of the Project (or opening of the Fresh Food Market as applicable) along with additional thirty (30) day extensions up to the last day of the thirty fifth (35th) month after Closing, to complete the Project and have the Fresh Food Market open to the public for business provided Developer is continuing in good faith to construct the balance of the Project not completed as of the date of the applicable extension and further provided Developer is progressing with the steps necessary to have the Fresh Food Market opened to the public for business no later than the last day of the thirty fifth (35th) month after Closing; or

(ii) Developer (or successor in interest) shall, prior to the completion of the Construction of the Project, fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement (it being understood that all encumbrances and liens included in the owner's policy of title insurance obtained by Developer in connection with the Closing of this transaction or related solely to debt and equity financing of the acquisition of the Property and or the Construction of the Project are authorized by this Agreement), or shall suffer any levy or attachment to be made, or any materialmen's or mechanic's lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed, bonded, insured over or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within ninety (90) days after written demand by City to do so;

(iii) City shall have the unilateral right (but not the obligation) to re-enter and take possession of the Property (and or the Fresh Food Market parcel as deemed applicable by the City in the City's sole discretion) and to terminate the estate conveyed by the Deed to Developer and revest same in City, subject to any permissible existing mortgage lien on the Property and such mortgage holder's rights in and to the Property. It is the intent of the foregoing provision, together with other provisions of this Agreement, that the conveyance of the Property to Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by Developer specified in this Section and failure on the part of Developer to remedy, end or cure such default, failure or violation within the time to cure provisions stated herein, City at its option shall have the unilateral right to declare a termination in favor of City of the title, and of all the rights and interests in and to the Property conveyed by the Deed to Developer, and that such title and all rights and interests of Developer, and any assigns or successors in interest to and in the Property, other than an existing mortgage holder of a permissible mortgage, shall revert to City. In addition, the City shall have the right to retain the Purchase Price paid as well as all designation fees and the Deposit and or all other deposits paid by Developer under this Agreement or otherwise without any deduction, offset or recoupment whatsoever, in the event of a default, violation or failure of Developer as specified above. In connection with the Developer's Project financing, the City will enter into a "Stand Still" agreement with Developer's mortgage holder as would allow the mortgage holder time (not to exceed 12 months unless the City in the City's sole discretion decides to allow more time) to cure or otherwise address to the satisfaction of the City such deficiencies, default(s), and or failures as may give rise to the City's right to revest the Property (or the Fresh Food Market parcel) in the City. Any provisions contained in the mortgage holder's proposed form of Standstill Agreement which go beyond (or condition or modify) the time frame for the Standstill objective, shall be subject to the City's review, comment, edit, rejection and or conditions in the City's sole discretion.

(iv) Notwithstanding the foregoing or anything contained in this Agreement which could be construed to the contrary, in the event: (A) litigation is instituted against the Project, the Developer and or the City that results in a final adverse decision (beyond any applicable appeal period) that precludes the Project from being developed as contemplated in this Agreement; (B) the Fresh Food Market deal falls through; or (C) the Project financing falls through, the Mayor's Office of Strategic Planning shall, within 60 days after the issuance of such final adverse decision or receipt of actual notice that either the Fresh Food Market deal and or the Project financing has fallen through, notify the Developer in writing that the City in the Mayor's Office of Strategic Planning's sole discretion either: (i) waives or conditionally waives the obligation of Developer to construct the Project as contemplated herein and or waives or conditionally waives the City's right to a reversion/reversion of title to the Property [such exercise of discretion shall take into account and consider an alternative plan if submitted by Developer to City, it being expressly understood and agreed however that such determination is to be made in the sole discretion of the Mayor's Office of Strategic Planning], or (ii) requires the Developer to reconvey title to the Property to the City and upon such reconveyance

(which such closing thereof shall be within 30 days of City's notice to Developer), the City will pay the Developer an amount equal to the Purchase Price less the amount of the Reconveyance Premium, such Purchase Price to be reduced further by an amount equal to the cost of the premium of a fee title insurance policy to be issued in form and substance and in coverage amount acceptable to the City insuring fee title to the Property in the City free and clear of all encumbrances (further reduced by the cost of any title cures including but not limited to the pay-off in full of any outstanding mortgages and or sums outstanding payable to the Developer's contractors and or suppliers in connection with the Project and/or the Property). Further, the City would be in a position to require either the reconveyance of the entire Property or only a portion of the Property, such determination as to reconveyance parcel size being in the sole discretion of the Mayor's Office of Strategic Planning. By way of clarification, it is expected that any splitting of the Property for these purposes will be with reference to the portion of the Project that fell through (ie. either the Fresh Food Market area or the residential element area). By way of further clarification, the formula for the calculation of the sum to be paid to Developer would see the Purchase Price reduced according to a direct square footage reduction proration. The foregoing paragraph shall survive Closing and transfer of title.

(C) Form of Deed: City shall convey title to the Property to Developer by Quit Claim Deed (hereinafter called "Deed"). Such conveyance and title shall be subject to all conditions, covenants, and restrictions of record, and or as are apparent or otherwise existing on site and or as set forth or referred to elsewhere in this Agreement. Developer has indicated to the City that the Fresh Food Market operator might prefer to take title directly to an out parcel portion of the Property for development and operation of the Fresh Food Market. The City agrees to work with the Developer to facilitate practical requirements and preferences relating to the usual and customary operations of the Fresh Food Market operator in this regard, it being expressly understood and agreed however that the terms and conditions of facilitating such requirements and preferences must be acceptable to the City in the City's sole discretion. Further, the Fresh Food Market operator must have Project timelines and construction completion/opening to the public for Fresh Food Market business timelines and milestones the same as those of the Developer which if not met could subject the Fresh Food Market parcel to a revesting of title in the City.

(D) Closing: City in City's sole discretion shall deliver the Deed to the Property to Developer on June 26, 2019 or such later date is immediately after the City of Buffalo Common Council's approval of this Agreement has been formalized unless the City, in the City's sole discretion, extends the Closing date. Conveyance shall be made at the principal office of City, and Developer shall accept such conveyance and pay the balance of the Purchase Price, subject to any applicable closing adjustments agreed to by the City, to City at such time and place. In the event the Developer shall not proceed with the acquisition of the Property within the designated period, through no fault of the City, then City may cancel this Agreement and Developer shall forfeit all fees and the Deposit paid on account, and the City shall retain all such fees. In the event that the Closing does

not take place within the designated period through no fault of the Developer, then the Deposit shall be returned to the Developer.

(E) **Apportionment of Taxes:** Non-delinquent City and County taxes, user fee and or sewer rentals for the Property allocable to the land and or improvements, if any, shall be adjusted as of the date of delivery of the Deed.

(F) **Recordation of Contract and Deed:** At or immediately following Closing, Developer shall file this Agreement and the Deed for recordation among the land records at the Erie County Clerk's Office. The Developer shall pay all costs (including but not limited to the cost of the New York State real property transfer taxes) and for recording of the Conveyance Documents and this LDA.

(G) **Evidence of Title:** Developer will provide reliable documentation with respect to title, including but not limited to title abstract, title insurance commitment (with copies of all exceptions), and updated ALTA survey (if Developer requires an updated survey), (the "Survey"), (showing among other things the location of all currently existing utilities as well as all easements and other matters) with respect to the Property. In the event Developer desires title insurance, Developer shall obtain the same at its own cost and expense. Developer must give a copy of the Developer's Property title insurance commitment (with copies of all exceptions), the title abstract(s) and the survey to the City. All must be in form and substance acceptable to the City in the City's sole but reasonable discretion.

(H) **Condition of Property:** Developer specifically acknowledges and agrees that the City shall sell, and Developer shall purchase, the Property "**AS IS, WHERE IS AND WITH ALL FAULTS,**" and Developer is not relying on any representations or warranties of any kind whatsoever, whether oral or written, express or implied, statutory or otherwise, from City, nor any officer, employee, attorney, agent or broker of City as to any matter concerning the Property, including (i) the quality, nature, habitability, merchantability, use, operation, value, marketability, adequacy or physical condition of the Property or improvements thereon and or any aspect or portion thereof, including, without limitation, structural elements, appurtenances, access, landscaping, parking, plumbing, sewage, water supply and availability in pressure and amount sufficient for the Developer's Project, and utility systems, facilities and appliances, soils, geology and or groundwater, (ii) the dimensions or lot size of the Property, (iii) the development or income potential, or rights of or relating to, the Property, or the Property's use, habitability, merchantability, or fitness, or the suitability, value or adequacy of the Property for any particular purpose, (iv) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property, (v) the compliance of the Property 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 Developer to obtain any necessary governmental approvals, licenses or permits for Developer's intended use or development of the Property, (vii) the presence or absence of asbestos and or Hazardous Materials on, in, under, above or about the Property or any adjoining or neighboring property, (viii) the quality of any labor and

materials used in any improvements, if any, (ix) the condition of title to the Property, (x) the leases, contracts or any other agreements affecting the Property, if any, or the intentions of any party with respect to the negotiation and or execution of any lease or contract with respect to the Property, (xi) City's ownership of the Property or any portion thereof, or (xii) the economics of, or the income and expenses, revenue or expense projections or other financial matters, relating to, the operation of the Property. Without limiting the generality of the foregoing, Developer expressly acknowledges and agrees that Developer is not relying on any representation or warranty of City, nor any officer, employee, attorney, agent or broker of City Agency, 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 Developer. This Section shall survive the delivery, acceptance and or recordation of this Agreement and the Deed.

(I) Indemnity and Release Provision: The Developer shall sign an Environmental Release and Indemnification Agreement in the form as set forth in Appendix B attached hereto and made a part hereof. Developer must provide the City with a copy of any and all environmental reports in Developer's possession relating to the Property and the Project.

(J) Further agreements of the Developer. In exchange for the commitments of the City in this Agreement, the Developer shall:

(1) On the Closing Date, pay the Purchase Price and Purchase Price Increase to the City in immediately available funds, upon receipt of the Deed. By way of clarification, the Developer expressly acknowledges and agrees that the City has been consistently clear to the Developer throughout the entire contract negotiation process that the Developer must, as a condition of purchasing the Property, agree to release and indemnify the City as to all environmental matters and absorb the cost of all environmental and related matters at the Property in addition to paying the City the appraised value of the Property established. To the extent that environmental related expenditures occur before the Closing, the Developer through the Purchase Price Increase mechanism is paying the cost thereof. Reference is made to the last sentence of Section 2 (D) of this Agreement.

(2) In the alternative, if the Developer elects in its sole discretion not to pay the Purchase Price Increase, the City shall have the right to cancel this Agreement upon written notice to the Developer in which event the City shall have no further obligations to the Developer. The Developer's decision as to whether or not to pay the Purchase Price Increase shall be made in writing to the City within 5 days of City giving written notice of the environmental related expenditure (whether pending or actually paid). Developer's non-response shall be deemed to be a decision not to pay the Purchase Price Increase.

SECTION 4 - TERMINATION

(A) If, after satisfaction of all conditions precedent, the City does not tender conveyance of the Property in the manner and condition, and by the date, provided

in this Agreement, and any such failure shall not be cured within ninety (90) days after the date of written demand by Developer, then Developer as its sole remedy shall have the right to terminate this Agreement and recover the Deposit from the City. Developer shall not be entitled to recover any designated developer fees and or any out of pocket expenses and or attorneys' fees and or any damages whatsoever.

(B) In the event that prior to conveyance of the Property to Developer and in violation of this Agreement;

(i) Except as provided in this Agreement, Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein, or in the Property;

(ii) Developer does not show that Developer's ability to apply for a building permit or submit to City evidence reasonably satisfactory to City of equity capital and or mortgage or other financing necessary for completion of the Project is all on track for post-Closing and within timelines as provided for in this Agreement; or

(iii) Developer breaches any other term or condition of this Agreement, and if any default or failure referred to in this Section shall not be cured within ninety (90) days after the date of written demand by City, then this Agreement, and any rights of Developer, or any assignee or transferee, in this Agreement, or arising therefrom with respect to City or the Property, shall, at the sole option of City, be terminated by City, in which event, the Deposit shall be retained by City as liquidated damages and as its property without any deduction, offset, or recoupment whatsoever, and neither Developer (or assignee or transferee) nor City shall have any further rights against or liability to the other under this Agreement. Notwithstanding the foregoing, Developer's liability under any access agreements shall not be terminated upon termination of this Agreement.

SECTION 5 – RESERVED

SECTION 6 - TIME FOR CERTAIN OTHER ACTIONS

(A) Reserved

(B) The City's action or inaction under this Agreement with respect to the foregoing shall not constitute formal issuance of building permits and or formal site plan approvals.

(C) Time for Commencement and Completion of Construction.
The time within which Developer shall commence Construction of the Project shall not in any event be later than ninety (90) days after the date of the delivery of the Deed and the receipt of a building permit from City, whichever occurs later. If weather or other force

majeure conditions do not permit the commencement of construction within the aforementioned time period, then construction shall be commenced within ninety (90) days of weather or other force majeure conditions becoming suitable for construction activity, within the sole reasonable judgment of Developer. Such construction shall be diligently completed as funding is available, with updates on the Developer's progress provided to the City upon its written request. Notwithstanding the foregoing and or any other provision of this Agreement to the contrary, Developer agrees to have the Construction of the Project completed by June 30, 2021, subject to the extensions made possible by the provisions set forth in Section 3 (B) (i) of this Agreement.

SECTION 7 - COMPLETION OF CONSTRUCTION OF IMPROVEMENTS/OPENING OF FRESH FOOD MARKET

(A) Developer agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of Developer for itself and such successors and assigns, that Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion the Construction of the Project and that construction shall in any event be completed within the time frames described in this paragraph. It is intended and agreed, and the Deed shall so expressly provide, that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of City and enforceable by City against Developer and its successors and assigns to or of the Property or any part thereof or any interest therein. Notwithstanding the foregoing and or any other provision of this Agreement to the contrary, Developer agrees to have the Construction of the Project completed by June 30, 2021, subject to the extensions made possible by the provisions set forth in Section 3 (B) (i) of this Agreement. The Fresh Food Market must be completed and open to the public for Fresh Food Market business on or before June 30, 2021, subject also to the extensions made possible by the provisions set forth in Section 3 (B) (i) of this Agreement.

(B) **Progress Reports.** Subsequent to conveyance of the Property or any part thereof to Developer, and until Construction of the Project has been completed, Developer shall make on a monthly basis, or at such other interval as may be reasonably requested by City, progress reports in such detail as may be reasonably requested by City from time to time as to the actual progress of Developer with respect to the Construction of the Project. Submission of monthly progress reports by the Developer shall be by the fifth (5th) of each month, beginning in the month following the month after the Deed is recorded. Such progress reports shall be delivered to the Office of Strategic Planning, Director of the Division of Real Estate, Room 920 City Hall, Buffalo, New York 14202, with an electronic copy to rgandour@city-buffalo.com.

SECTION 8 - CERTIFICATION OF COMPLETION/OPENING OF FRESH FOOD MARKET

(A) Promptly after completion of the Construction of the Project (and the opening of the Fresh Food Market to the public for Fresh Food Market business) on the Property in accordance with those provisions of this Agreement relating solely to the obligations of Developer to construct the Construction of the Project, the City (through the City's Director of the Division of Real Estate) will furnish Developer with an appropriate instrument so certifying. Such certification by City shall be (and it shall be so provided in the Deed and in the certification itself) a conclusive determination of satisfaction with respect to the obligations of Developer, and its successors and assigns, to complete the Construction of the Project on the Property.

(B) The certification provided for in this Section shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property, including the Deed. If the City shall refuse or fail to provide any certification in accordance with the provisions of this Section, the City shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Construction of the Project (or such portion thereof) in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such certification. In the event that City fails to provide the Developer with such written statement within such thirty (30) day period the obligations of Developer to complete the Construction of the Project shall be deemed satisfied, and any right of City to re-enter the Property, take possession of the Property, or terminate or revest in City the estate conveyed by the Deed to the Developer, shall automatically terminate. The Deed shall contain language describing the foregoing procedure by which the City's right to re-enter the Property, take possession of the Property, or terminate or revest in City the estate conveyed by the Deed to the Developer, shall terminate.

SECTION 9 - NOTICES AND DEMANDS

Any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, or delivered by recognized overnight courier such as Federal Express, and

- (i) In the case of Developer, is addressed to or delivered personally to:
Ms. Denise Juron-Borgese
50 Fountain Plaza, Suite 500
Buffalo, NY 14202 (email address provided for convenience only djuron-borgese@ciminelli.com)

With a copy to:

Blaine S. Schwartz, Esq.
Lippes Mathias Wexler Friedman LLP

50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
(email provided for convenience only bschwartz@lippes.com)

- (ii) In the case of the City, is addressed to or delivered personally to:
Executive Director Office of Strategic Planning
65 Niagara Square, Room 920 City Hall
Buffalo, New York 14202 with a required copy to:
- (iii) The Division of Real Estate
Attn: Director of Real Estate
65 Niagara Square, Room 905 City Hall
Buffalo, New York 14202
- (iv) Assistant Corporation Counsel
Attn: John Heffron
65 Niagara Square, Room 1100 City Hall
Buffalo, New York 14202

or at such other address with respect to either party as that party may, from time to time designate in writing and forward to the other as provided in this Section.

SECTION 10 - SPECIAL PROVISIONS

(A) Right of Access for Testing and Investigation: Prior to Closing and upon reasonable notice to City, and provided that arrangements satisfactory to the City can be made so as to not interfere with parking lot operations at the Property, City shall permit Developer to enter the Property for the purposes of inspecting and testing the Property upon such terms and conditions as City shall prescribe for such purpose, and on the following further conditions:

- (i) Prior to Developer, its agents, consultants or contractors entering upon the Property as herein provided, Developer, its agents, consultants or contractors shall execute an access and indemnity agreement with the City and secure and deliver to City a certificate of insurance evidencing general liability, automobile, disability and worker's compensation insurance coverage naming City as an additional insured in the case of general liability and automobile liability insurance as well as under any excess umbrella liability insurance policy (specifying the scope of the allowed access and work objective) and as certificate holder for each type of insurance coverage. Said insurance coverage shall be maintained by Developer, its agents, consultants or contractors at their own expense, for the duration of this Agreement in an amount of not less than **ONE MILLION DOLLARS (\$1,000,000.00)** for injuries or death sustained by any one person and not less than **ONE MILLION DOLLARS (\$1,000,000.00)** for injuries or death sustained by two or more persons in

any one accident and not less than **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** for property damage; to protect City, its agents and employees from any and all claims and damages for personal injuries, or death, or from damage to any property owned by City or land or property otherwise privately or publicly owned, arising from any cause resulting from or proximately caused by Developer, its agents, consultants or contractors' entrance upon the Property and or work performed by or for Developer pursuant to this Section.

(ii) Each Certificate of Insurance or policy shall contain a provision providing for thirty (30) days written notice to City of Developer's, its agents, consultants or contractors or insurance company's intention to cancel or materially change said policies. Each insurance company must be admitted in the State of New York.

(iii) Developer agrees that all testing and investigations shall be performed in a good and workmanlike manner and that Developer, its agents, consultants or contractors shall take all appropriate precautions to safeguard against injury to persons and damage to property.

(iv) Developer agrees to comply with all Federal, State, County and City laws, rules and regulations that are applicable to the development of the Property.

(v) Developer agrees not to commence Construction of the Project on the Property prior to the written approval therefore by City or the conveyance of the Property at Closing, unless expressly otherwise authorized in writing by the City in accordance with Section 10(B) of this Agreement.

(vi) Developer agrees, without limitation and at no cost to City, to defend, indemnify and hold harmless City from any and all damages, claims, suits, actions, and costs (including without limitation reasonable attorneys' fees) because of bodily injury or sickness, including death, sustained by any person or persons and from damage to or loss of property, including but not limited to the loss of use thereof, caused directly or indirectly as a result of Developer's entrance upon the Property or Developer's agent's and or contractor's entrance upon the Property and or work performed by or for Developer on the Property pursuant to this Section.

(vii) In the event that Developer fails to accept title to the Property pursuant to this Agreement or the Developer otherwise abandons its efforts to proceed with the development of the Property, then Developer shall promptly and at no cost to City restore the Property to its former

condition prior to such test or investigation, reasonable wear and tear excepted.

(B) Early Entry for Construction of the Project or for Implementation of Remedial Measures under a Brownfield Clean-up Plan: In the event that Developer desires to commence Construction of the Project on the Property prior to the transfer of title of the Property to Developer, or in the event the Developer desires to commence implementation of remedial measures on the Property under a Brownfield Clean-up Plan, Developer shall notify City in writing of same. City shall consider the request and may in the City's sole discretion grant to Developer the right to commence such Construction of the Project on the Property or remediation of the Property prior to the transfer of title of the Property upon such terms and conditions and also pursuant to written agreements providing for access and indemnity and insurance under terms and conditions all as City may require (from Developer and from any contractor[s] and or consultant[s] that are going to be working in connection with the Project) in written early entry agreement(s) to be executed by the parties and or contractor(s) and or consultant(s), which shall at a minimum include, unless waived by the City in its sole discretion the following:

(i) General liability insurance and automobile liability insurance coverage each in the amount of at least \$1,000,000 and also an owners protective liability policy coverage in the amount of at least \$1,000,000 shall be maintained by Developer, its agents, consultants or contractors at their own expense for the duration of this Agreement in an amount of not less than **ONE MILLION DOLLARS (\$1,000,000.00)** each for injuries or death sustained by any one person and not less than **ONE MILLION DOLLARS (\$1,000,000.00)** each for injuries or death sustained by two or more persons in any one accident (with an excess/umbrella liability insurance policy of at least \$5,000,000) and automobile liability insurance policy of at least \$1,000,000 (any vehicle) and not less than **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** for property damage; to protect City, their agents and employees from any and all claims and damages for personal injuries, or death, or from damage to any property owned by City or land or property otherwise privately or publicly owned, arising from any cause resulting from or proximately caused by Developer's, its agents, consultants or contractors entrance upon and or work performed by or for Developer pursuant to this Section of this Agreement. Each Certificate of Insurance shall contain a provision providing for thirty (30) days of written notice to City of Developer's or insurance company's intention to cancel or materially change said policies. In addition, the Developer shall provide the owners protective liability insurance paid for by Developer with the City being the only named insured for coverage in the amount of at least \$1,000,000. City shall be named as additional insured under the general liability, automobile liability and any excess/umbrella liability. The excess liability coverage shall follow form over both the general liability insurance coverage and the automobile liability insurance coverage. Developer shall also provide evidence of disability insurance and worker's compensation insurance both on the New York forms.

(ii) In the event that Developer fails to accept title to the Property pursuant to this Agreement or the Developer otherwise abandons its efforts to proceed with the development of the Property, then Developer shall, at no cost to City, restore the Property to its former condition and either remove any structure, or part thereof, which it constructed on the Property or reimburse City for the cost of removing said structure or part thereof. City's decision whether or not to allow early entry for construction or early remediation will be informed by whether or not Developer is deemed willing and able to complete the construction and or remediation and or to restore the Property and whether or not security in sufficient form and dollar amount is provided by Developer in City's sole discretion.

(iii) Under no circumstances shall City be obligated to complete the Construction of the Project commenced by Developer.

(iv) During the period of such Construction of the Project or remediation of the Property prior to the transfer of title of the Property to Developer, the unilateral right to enter upon the Property is reserved to the City. Notwithstanding the foregoing, City retains the right to enter upon the Property at any time prior to transfer of title of the Property to Developer.

SECTION 11 - RIGHT OF ENTRY FOR UTILITY SERVICE

City reserves for itself and any public utility company, as may be appropriate in City's sole discretion, the unqualified right to enter upon the Property at all times prior to transfer of title of the Property to Developer for the purpose of inspecting, reconstructing, maintaining, repairing and or servicing the public utilities located within the Property boundary lines. Notwithstanding the foregoing, City is not hereby obligated to undertake such measures.

SECTION 12 - UTILITY EASEMENTS

(A) Developer not to Construct Over Utility Facilities and or Easements: Developer shall not construct any building or other structure or improvement on or over any utility facilities, or within the boundary lines of any easement for any utilities, unless such construction is provided for in such easement or has been approved by the City, the utility and the Developer.

The Deed shall contain a provision in which Developer agrees to allow all utility lines and all other utility facilities to remain on or over the Property into perpetuity and which allows any encroachment(s) on to the Property to remain in place in perpetuity in the absence of a written approval to the contrary and approval to form by the City's Corporation Counsel. The Deed shall provide that the Developer shall have the right to

relocate utility lines and or utility facilities at Developer's sole cost and expense but only under such terms, provisions and conditions as are acceptable to the City in the City's sole discretion and under such terms, provisions and conditions as are acceptable to the affected utility line owner and or utility facility owner.

(B) Developer to Grant Easements and Access: Prior to Closing, Developer and City shall agree upon all easement and access rights on the Property that City will require (or which City staff believe may be required by the owners or operators of utility facilities) after the Property is conveyed to Developer, and the parties shall use their best efforts to agree upon form agreements granting or reserving such rights. At Closing, both parties shall execute such agreements and City shall arrange for same to be recorded at Developer's expense, if deemed necessary by City and in form and substance acceptable to both parties and utility company/ies (if applicable). Prior to transfer of title of the Property to Developer, City shall have the right to unilaterally opt to create easements accommodating the foregoing and as deemed necessary by the City by reserving same in the Deed.

SECTION 13 - CONSTRUCTION PHASE EMPLOYMENT

(A) Construction Phase Employment:

- (i) The Developer has agreed to use its best efforts to pursue a minority workforce goal of 25%, a woman workforce goal of 5%, a minority business enterprise (MBE) utilization goal of 25% and a women owned business enterprise (WBE) utilization goal of 5% of the Project construction cost, to the extent that it is economically and technically feasible to do so.
- (ii) The Developer has agreed to be committed to fulfilling the policies of the City in regards to non-discrimination and affirmative action.

SECTION 14 - ACCESS TO THE PROPERTY

The City shall continue to have access to the Property at all times prior to transfer of title of the Property to Developer.

SECTION 15 - BROKERS

(A) Statements and Representations: The parties shall not be liable or bound by any verbal or written statements, representations, real estate brokers "set ups" or information pertaining to the Property furnished by any real estate broker, agent, employee, servant, or any other person, unless the same are specifically set forth. The parties further acknowledge that, except as specifically set forth herein, neither party nor any agent or representative of either party have made, and the parties are not liable for or bound in any manner by, any express or implied warranties, guarantees, promises, statements, inducements or representation of information pertaining to the Property.

(A) No member, director, officer, or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, officer, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, director, officer, or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Developer or successor or on any obligations under the terms of this Agreement.

(B) All provisions of this Agreement shall run with the land and shall be binding upon the Property, Developer and all successors and assigns and transferees. None of the provisions of the Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from City to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

(C) Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 20 - ADDITIONAL PROVISIONS

(A) Developer has agreed to be committed to fulfilling the policies of the City in regards to non-discrimination and affirmative action.

(B) Developer has agreed, as to business tenants of their Project, to recommend to such tenants that they give preference to qualified persons residing within the limits of the City of Buffalo when filling employment vacancies and or hiring new employees, in accordance with the City's desire to promote development of business within the City of Buffalo and or increase employment opportunities for Buffalo residents. Notwithstanding the foregoing, the Developer shall cause the Fresh Food Market operator to agree in writing to give preference to qualified persons residing within the limits of the City of Buffalo when filling employment vacancies and or hiring new employees.

SECTION 21 - CITY'S RIGHT TO TERMINATE

(A) Notwithstanding anything in this Agreement which could be construed to the contrary, in the event the Deed for any reason whatsoever and regardless of fault has not been passed to Developer and recorded on or before December 15, 2019, both parties independently of each other shall have the unilateral right to terminate and cancel this Agreement and the Deposit shall be returned to Developer (unless Developer is at fault and or the Developer has not closed or is not preparing in good faith to close Developer's HFA Financing or other financing for the Project, then the Deposit will be forfeited), and neither Developer (or permitted assignee or transferee) nor City shall have

any further rights against or liability to the other under this Agreement; provided, however, that Developer's indemnity and related obligations contained in this Agreement shall survive such termination.

(B) The Developer acknowledges and agrees to promptly provide the City any information that may lead the City to believe the Developer cannot satisfy its obligations. If at any time the City of Buffalo determines that any of the above conditions cannot be fully satisfied, the City may terminate this Agreement and Deposit will be forfeited.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK,
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and on its behalf by its Mayor, and Developer has caused this Agreement to be duly executed in its name and behalf by an authorized person, as of the first day above written.

CITY OF BUFFALO

BY:


Byron W. Brown, Mayor

STATE OF NEW YORK
COUNTY OF ERIE
CITY OF BUFFALO

On the 10th day of July, 2019, before me, the undersigned, 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 whose behalf of which the individual acted, executed the instrument.

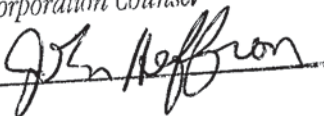

Commissioner of Deeds

YVONNE BAILEY
Commissioner of Deeds
In & For the City of Buffalo NY, Erie County
My Commission Expires December 31, 2020

APPROVED
AS TO FORM ONLY


Corporation Counsel

By



201 Ellicott, LLC

By: Ciminelli Real Estate Corporation,
its manager

BY: Paul Ciminelli
Paul Ciminelli, President

**STATE OF NEW YORK
COUNTY OF ERIE
CITY OF BUFFALO**

On the 11th day of July, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **PAUL F. CIMINELLI**, 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/~~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.

Kathleen A. Guenther
NOTARY PUBLIC

KATHLEEN A. GUENTHER #01GU4675162
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 31, 2022

APPENDIX A

Legal description

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, and being part of Outer Lots 110 and 111, in said City, bounded and described as follows:

BEGINNING AT the intersection of the south line of Clinton Street with the east line of Ellicott Street;

RUNNING THENCE: Southeasterly, along the south line of Clinton Street, a distance of 301.70 feet to a point on the west line of Elm Oak Arterial (formally Oak Street);

RUNNING THENCE: Southwesterly, at an interior angle of $89^{\circ}-56'-51''$ with the last described line and along the west line of Elm Oak Arterial, a distance of 363.44 feet to the northeast corner of lands conveyed to Niagara Frontier Transportation Authority by deed recorded in the Erie County Clerk's Office in Liber 8278 of Deeds at Page 531; said point being also on the north line of Former Eagle Street;

RUNNING THENCE: Northwesterly, at an interior angle of $90^{\circ}-05'-02''$ with the last described line and along the north line of said Niagara Frontier Transportation Authority lands and the north line of former Eagle Street, a distance of 301.52 feet to a point on the east line of Ellicott Street;

RUNNING THENCE: Northeasterly, at an interior angle of $89^{\circ}-56'-38''$ with the last described line and along the east line of Ellicott Street, a distance of 363.60 feet to the POINT OR PLACE OF BEGINNING, containing 2.517 Acres, be the same, more or less.

SUBJECT to easements, rights of way and restrictions of record.

APPENDIX B

APPENDIX B is the same Environmental Release and Indemnity which is attached as **Schedule B** to the Deed to which this LDA is attached.