

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director

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

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

www.dec.ny.gov

December 23, 2020

EC445, LLC
Attn: William Palladino
295 Main Street, Suite 700
Buffalo, NY 14203

441 Elmwood Remediation, LLC
Attn: Paul H. Werthman
2558 Hamburg Turnpike, Suite 370
Buffalo, NY 14218

Re: Certificate of Completion
441 Elmwood Avenue
Buffalo, New York – Erie County
Site No. C915334

Dear Mr. Palladino & Mr. Werthman:

Congratulations on having satisfactorily completed the remedial program at the 441 Elmwood Avenue site. Enclosed please find an original, signed Certificate of Completion (COC). The New York State Department of Environmental Conservation (Department) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the COC to be issued for the above-referenced site.

Please note that you are required to perform the following tasks:

- If you are the site owner, you must record the Notice of Certificate of Completion in the recording office for the county (or counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record the Notice within 30 days of the date that you acquire the site. If you are a non-owner, you must work with the owner to assure the Notice is recorded within the time frame specified. A standard Notice of Certificate of Completion form is attached to this letter.
- Provide electronic copies of the recorded Notice and proof of recording to the Department's project manager. Please return the hard copy of the proof of recording to:



Department of
Environmental
Conservation

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

- Provide the Notice of Certificate of Completion to the Document Repositories within 10 days of issuance of the COC. The Department will develop a fact sheet announcing the issuance of the COC and describing the institutional and engineering controls (IC/ECs), if any, that are required at the site and distribute it to the County Listserv within 10 days;

If you have any questions regarding any of these items, please contact the Department's Project Manager, Mr. Damianos T. Skaros, P.E. at Damianos.Skaros@dec.ny.gov.

Sincerely,



Michael J. Ryan, P.E.

Director

Division of Environmental Remediation

Enclosure

ec w/ enclosure:

C. Vooris – NYSDOH, christine.vooris@health.ny.gov
Charlotte Bethoney – NYSDOH, charlotte.bethoney@health.ny.gov
Harolyn Hood – NYSDOH, harolyn.hood@health.ny.gov
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Craig Slater, Esq. – Slater Law, cslater@cslaterlaw.com
William Palladino – Applicant, bpalladino@ellicottdevelopment.com
Paul Werthman – Applicant, pwerthman@benchmarkturnkey.com
Michael Lesakowski – Benchmark, mlesakowski@bm-tk.com
Nathan Munley – Benchmark, nmunley@bm-tk.com

ec w/o enc.:

Damianos T. Skaros – NYSDEC, damianos.skaros@dec.ny.gov
Andrea Caprio – NYSDEC, andrea.caprio@dec.ny.gov
Michael Cruden - NYSDEC, michael.cruden@dec.ny.gov
Kelly Lewandowski - NYSDEC, kelly.lewandowski@dec.ny.gov
Jennifer Dougherty - NYSDEC, jennifer.dougherty@dec.ny.gov

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)

CERTIFICATE OF COMPLETION

CERTIFICATE HOLDERS:

Name

441 Elmwood Remediation, LLC
EC445, LLC

Address

2558 Hamburg Turnpike, Suite 370, Buffalo, NY 14218
295 Main Street, Suite 700, Buffalo, NY 14203

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 9/28/18

Agreement Execution: 10/16/18

Agreement Index No.: C915334-09-28

Application Approval Amendment: 10/1/19

Agreement Execution Amendment: 10/7/19

Application Approval Amendment: 3/26/20

Agreement Execution Amendment: 3/26/20

SITE INFORMATION:

Site No.: C915334

Site Name: 441 Elmwood Avenue

Site Owner: EC445, LLC

Street Address: 443 Elmwood Avenue

Municipality: Buffalo

County: Erie

DEC Region: 9

Site Size: 0.250 Acres

Tax Map Identification Number(s): Portion of 100.46-2-2.12

Percentage of site located in an EnZone: 0 - 49 %

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

CERTIFICATE ISSUANCE

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

Allowable Uses under the BCP:

Unrestricted, Residential, Restricted-Residential, Commercial, and Industrial

Cleanup Track: Track 1: Unrestricted use

Tax Credit Provisions:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 50 %.

Tangible Property Credit is 15%. Comprised of 10% Base, 5% Track 1.

Dependent upon the project being developed in a manner consistent with the approved Brownfield Cleanup Program application, additional rate increases may be available if the site is developed as affordable housing (5%), if the Certificate Holder receives a separate Determination of Conformance with the BOA from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%) not to exceed a maximum 24 %.

No Environmental Easement has been granted pursuant to ECL Article 71, Title 36 as there are no use restrictions and there is no reliance on the long-term employment of institutional controls.

LIABILITY LIMITATION

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

CERTIFICATE TRANSFERABILITY

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

CERTIFICATE MODIFICATION /REVOCATION

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

- (1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;
- (2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;
- (3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;
- (4) there is good cause for such modification or revocation.

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing is not received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Basil Seggos
Commissioner
New York State Department of Environmental Conservation

By:  Date: 12/23/2020

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

NOTICE OF CERTIFICATE OF COMPLETION
Brownfield Cleanup Program
6 NYCRR Part 375-1.9(d)

441 Elmwood Avenue, Site ID No. 915334
443 Elmwood Avenue, Buffalo, New York, 14222
City of Buffalo, Erie County, Portion of Tax Map Identification Number 100.46-2-2.12

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to (co-applicant): EC445, LLC; and (co-applicant): 441 Elmwood Remediation, LLC for a parcel approximately 0.25 acres located at the 443 Elmwood Avenue in the City of Buffalo, Erie County.

PLEASE TAKE NOTICE, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

PLEASE TAKE NOTICE, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- ☒ Unrestricted Use, as set forth in 6 NYCRR 375-1.8(g)(1)i
- ☒ Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
- ☒ Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
- ☒ Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- ☒ Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

PLEASE TAKE NOTICE, provided that the Certificate is complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

PLEASE TAKE NOTICE, the Certificate may entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

PLEASE TAKE NOTICE, the Certificate may only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the Certificate.

PLEASE TAKE NOTICE, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

441 Elmwood Avenue, C915334, 443 Elmwood Avenue, Buffalo – New York 14222

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 located at 270 Michigan Avenue, Buffalo, New York 14203, by contacting the Regional Environmental Remediation Engineer, or at <https://www.dec.ny.gov/data/DecDocs/C915334/>.

WHEREFORE, the undersigned has signed this Notice of Certificate

EC445, LLC

By: _____

Title: _____

Date: _____

STATE OF NEW YORK) SS:
COUNTY OF)

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

Please record and return to:
EC445, LLC
295 Main Street, Suite 700
Buffalo, New York 14203;

And,

441 Elmwood Remediation, LLC
2558 Hamburg Turnpike, Suite 370
Buffalo, New York 14218

Exhibit A

✓ Metes & Bounds Description

441 Elmwood Avenue

BCP Site C915334

Boundary Description

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot 56, Township 11 and Range 8 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the point of intersection of the easterly line of Elmwood Avenue (80 feet wide) and the northerly line of Bryant Street (66 feet wide);

THENCE NORTHERLY along the easterly line of said Elmwood Avenue a distance of 112.0 feet to a point;

THENCE EASTERLY and parallel with Bryant Street, a distance of 95.26 feet to a point;

THENCE SOUTHERLY and parallel with Elmwood Avenue, a distance of 112.0 feet to a point in the northerly line of said Bryant Street;

THENCE WESTERLY along the northerly line of Bryant Street, a distance of 95.26 feet to the point of beginning.

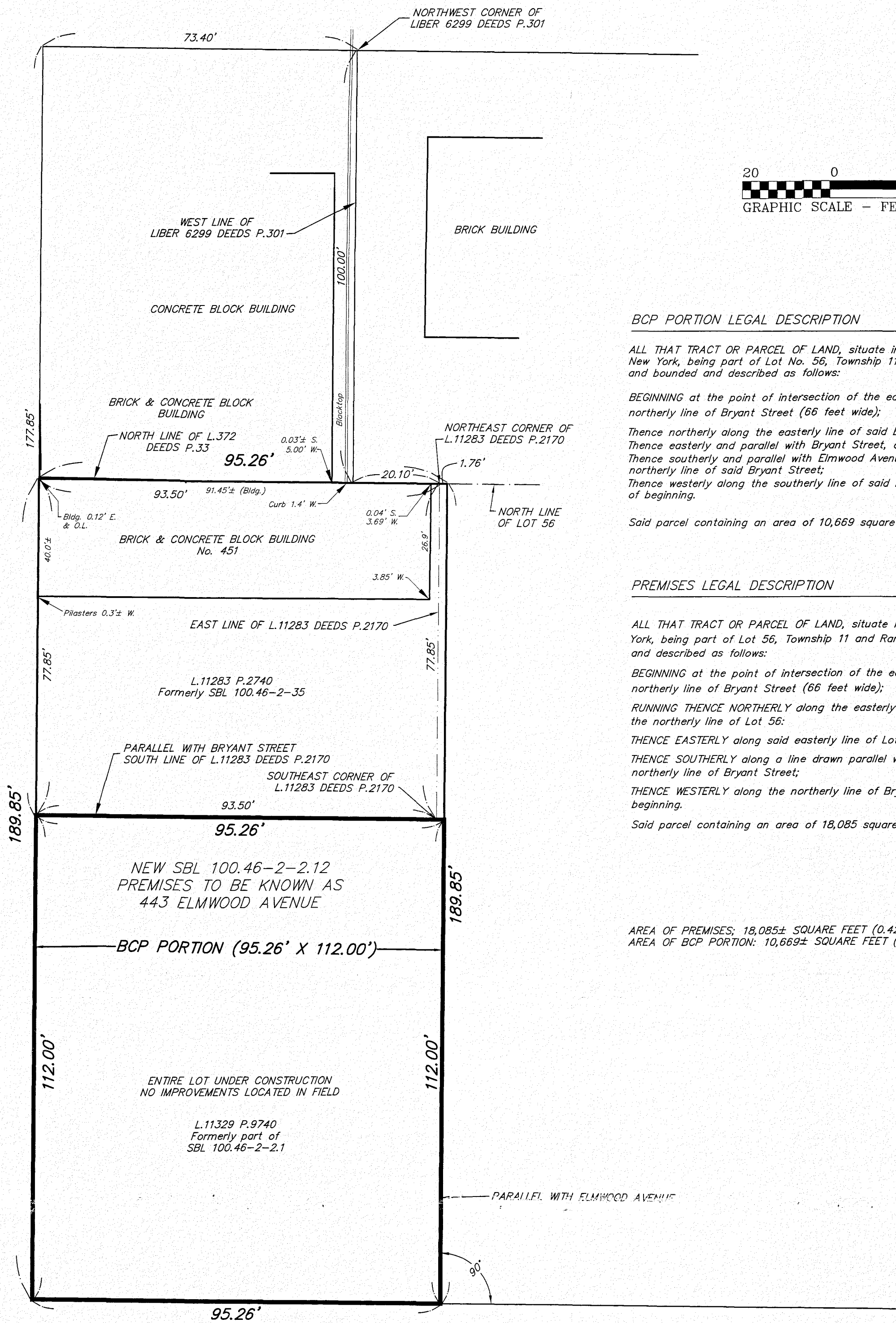
Said parcel containing an area of 10,669 square feet (0.25 acre), more or less.

Exhibit B

✓ Tax Parcel Figure

ELMWOOD AVENUE (80' WIDE)

HODGE AVENUE (60' WIDE)



BCP PORTION LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 56, Township 11 and Range 8 of the Holland Land Company's Survey and bounded and described as follows:

BEGINNING at the point of intersection of the easterly line of Elmwood Avenue (80 feet wide) and the northerly line of Bryant Street (66 feet wide);

Thence northerly along the easterly line of said Elmwood Avenue a distance of 112.00 feet to a point; Thence easterly and parallel with Bryant Street, a distance of 95.26 feet to a point; Thence southerly and parallel with Elmwood Avenue, a distance of 112.00 feet to a point in the northerly line of said Bryant Street; Thence westerly along the southerly line of said Bryant Street, a distance of 95.26 feet to the place of beginning.

Said parcel containing an area of 10,669 square feet (0.25 acre), more or less.

PREMISES LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot 56, Township 11 and Range 8 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the point of intersection of the easterly line of Elmwood Avenue (80 feet wide) and the northerly line of Bryant Street (66 feet wide);

RUNNING THENCE NORTHERLY along the easterly line of Elmwood Avenue, a distance of 189.85 feet to the northerly line of Lot 56;

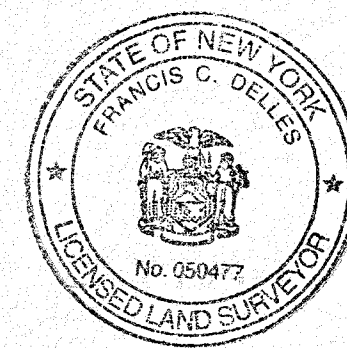
THENCE EASTERLY along said easterly line of Lot 56, a distance of 95.26 feet to a point;

THENCE SOUTHERLY along a line drawn parallel with Elmwood Avenue, a distance of 189.85 feet to the northerly line of Bryant Street;

THENCE WESTERLY along the northerly line of Bryant Street, a distance of 95.26 feet to the point of beginning.

Said parcel containing an area of 18,085 square feet (0.42 acre), more or less.

AREA OF PREMISES: 18,085± SQUARE FEET (0.42± ACRE)
AREA OF BCP PORTION: 10,669± SQUARE FEET (0.25± ACRE)



for CD

LEGEND

Ø UTILITY / SERVICE POLE	R.O.W. RIGHT OF WAY
⊗ WATER LINE VALVE	CONC. CONCRETE
⊗ FIRE HYDRANT	INV. INVERT
⊗ D.I. (DROP INLET - STORM)	M.H. MANHOLE
⊗ MANHOLE (STORM)	— GAS LINE
⊗ MANHOLE (ELECTRIC)	— WATER LINE
⊗ MANHOLE (TRAFFIC)	— TELEPHONE LINE
⊗ MANHOLE (SANITARY)	— ELECTRIC LINE
⊗ MANHOLE (TELEPHONE)	— UTILITY LINES
⊗ GASLINE MARKER	— CABLE LINES
⊗ GAS LINE VALVE	D. DEED
⊗ LIGHT STANDARD	M. MEASURED
⊗ SIGN	L. LIBER
H.C. HANDICAP	P. PAGE

INSTRUMENT(S) UTILIZED IN DETERMINING LOCATION OF BOUNDARY LINES: Legal Description
THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATE OF FACTS THAT MAY BE REVEALED IN SAID ABSTRACT.
NOTE: PROPERTY CORNER MONUMENTS WERE NOT PLACED AS PART OF THIS SURVEY.

I HEREBY CERTIFY TO: People of the State of New York - Department of Environmental Conservation THAT THIS SURVEY MAP WAS PREPARED IN ACCORDANCE WITH THE CURRENT STANDARD FOR LAND SURVEYS ADOPTED BY THE ERIE COUNTY BAR ASSOCIATION. THIS CERTIFICATION SHALL EXTEND ONLY TO THE ENTITIES LISTED HEREON AND TO THE SUCCESSORS AND/OR ASSIGNEES OF THE LENDING INSTITUTION. THIS CERTIFICATION IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS OTHER THAN STATED ABOVE. FRANCIS C. DELLES NYSRES No. 050477	©COPYRIGHT 2019 BY: Millard, MacKay & Delles LAND SURVEYORS, LLP 150 AERO DRIVE BUFFALO, NEW YORK 14225 PHONE (716) 631-5140 ~ FAX 631-3811	AMEND: "A" SURVEY DATE: 12-11-19 DRAWING DATE: 12-13-19 SCALE: 1" = 20' "ALL RIGHTS RESERVED" THIS MAP VOID UNLESS EMBOSSSED WITH NEW YORK STATE LICENSED LAND SURVEYOR'S SEAL. ALTERING ANY ITEM ON THIS MAP IS A VIOLATION OF THE LAW EXCEPT AS PROVIDED IN SECTION 7209, PART 2, OF THE NEW YORK STATE EDUCATION LAW.
441 ELMWOOD AVENUE BCP SITE C915334		
PART OF LOT 56 SECTION 11 TOWNSHIP 11 RANGE 8 OF THE: Holland Land Company's SURVEY - Erie COUNTY, N.Y.		
SURVEY OF: 443 Elmwood Avenue, City of Buffalo		
SBL No. Pt. 100.46-2-2.12		