

Brownfield Cleanup Program Application

*293 Grote Street
Buffalo, New York*

January 2021

0549-020-005

Prepared For:

MCG Real Estate Holdings, LLC



Prepared By:



2558 Hamburg Turnpike, Suite 300, Buffalo, New York | phone: (716) 856-0635 | fax: (716) 856-0583



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION FORM

DEC requires an application to request major changes to the description of the property set forth in a Brownfield Cleanup Agreement, or "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). Such application must be submitted and processed in the same manner as the original application, including the required public comment period. **Is this an application to amend an existing BCA?**

☐ Yes

☒ No

If yes, provide existing site number: _____

PART A (note: application is separated into Parts A and B for DEC review purposes) *BCP App Rev 10*

Section I. Requestor Information - See Instructions for Further Guidance

DEC USE ONLY
BCP SITE #:

NAME MCG Real Estate Holdings, LLC

ADDRESS 455 Cayuga Road, Suite 200

CITY/TOWN Buffalo

ZIP CODE 14225

PHONE 716-829-1900

FAX 716-819-1530

E-MAIL mowens@mcguireddevelopment.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 Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to the New York State Department of Environmental Conservation (DEC) with the application to document that the requestor is authorized to do business in NYS. **Please note:** If the requestor is an LLC, the members/owners names need to be provided on a separate attachment. **See Appendix A; Section I**

Do all individuals that will be certifying documents meet the requirements detailed below? ☒ Yes ☐ No

- Individuals that will be certifying BCP documents, as well as their employers, meet the requirements of Section 1.5 of [DER-10: Technical Guidance for Site Investigation and Remediation](#) and Article 145 of New York State Education Law. **Documents that are not properly certified will be not approved under the BCP.** **See Appendix A; Section I**

Section II. Project Description

1. What stage is the project starting at?

☒ Investigation

☐ Remediation

NOTE: If the project is proposed to start at the remediation stage, a Remedial Investigation Report (RIR) at a minimum is required to be attached, resulting in a 30-day public comment period. If an Alternatives Analysis and Remedial Work Plan are also attached (see DER-10 / Technical Guidance for Site Investigation and Remediation for further guidance) then a 45-day public comment period is required.

2. If a final RIR is included, please verify it meets the requirements of Environmental Conservation Law (ECL) Article 27-1415(2): ☐ Yes ☐ No **Not Applicable**

3. Please attach a short description of the overall development project, including:

- the date that the remedial program is to start; and **See Appendix A; Section II**
- the date the Certificate of Completion is anticipated. **See Figure 5**

Section III. Property's Environmental History**See Appendix A; Section III**

All applications **must include** an Investigation Report (per ECL 27-1407(1)). The report must be sufficient to establish contamination of environmental media on the site above applicable Standards, Criteria and Guidance (SCGs) based on the reasonably anticipated use of the property.

To the extent that existing information/studies/reports are available to the requestor, please attach the following (***please submit the information requested in this section in electronic format only***):

1. **Reports:** an example of an Investigation Report is a Phase II Environmental Site Assessment report prepared in accordance with the latest American Society for Testing and Materials standard (ASTM E1903). **Please submit a separate electronic copy of each report in Portable Document Format (PDF).**

2. SAMPLING DATA: INDICATE KNOWN CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN TO HAVE BEEN AFFECTED. LABORATORY REPORTS SHOULD BE REFERENCED AND COPIES INCLUDED.

Contaminant Category	Soil	Groundwater	Soil Gas
Petroleum	X		
Chlorinated Solvents			
Other VOCs			
SVOCs	X		
Metals	X		
Pesticides			
PCBs	X		
Other*			

*Please describe: _____

3. FOR EACH IMPACTED MEDIUM INDICATED ABOVE, INCLUDE A SITE DRAWING INDICATING:

- SAMPLE LOCATION **See Appendix A; Section III**
- DATE OF SAMPLING EVENT
- KEY CONTAMINANTS AND CONCENTRATION DETECTED **See Figure 7**
- FOR SOIL, HIGHLIGHT IF ABOVE REASONABLY ANTICIPATED USE
- FOR GROUNDWATER, HIGHLIGHT EXCEEDANCES OF 6NYCRR PART 703.5
- FOR SOIL GAS/ SOIL VAPOR/ INDOOR AIR, HIGHLIGHT IF ABOVE MITIGATE LEVELS ON THE NEW YORK STATE DEPARTMENT OF HEALTH MATRIX

THESE DRAWINGS ARE TO BE REPRESENTATIVE OF ALL DATA BEING RELIED UPON TO MAKE THE CASE THAT THE SITE IS IN NEED OF REMEDIATION UNDER THE BCP. DRAWINGS SHOULD NOT BE BIGGER THAN 11" X 17". THESE DRAWINGS SHOULD BE PREPARED IN ACCORDANCE WITH ANY GUIDANCE PROVIDED.

ARE THE REQUIRED MAPS INCLUDED WITH THE APPLICATION?*

(*answering No will result in an incomplete application)

☒ Yes ☐ No

4. INDICATE PAST LAND USES (CHECK ALL THAT APPLY):

- | | | | |
|---|---|---|--|
| ☐ Coal Gas Manufacturing | ☒ Manufacturing | ☐ Agricultural Co-op | ☐ Dry Cleaner |
| ☐ Salvage Yard | ☐ Bulk Plant | ☐ Pipeline | ☐ Service Station |
| ☐ Landfill | ☐ Tannery | ☐ Electroplating | ☐ Unknown |

Other: Machine Shop

Section IV. Property Information - See Instructions for Further Guidance				
PROPOSED SITE NAME 293 Grote Street				
ADDRESS/LOCATION 293 Grote Street				
CITY/TOWN Buffalo		ZIP CODE 14207		
MUNICIPALITY(IF MORE THAN ONE, LIST ALL):				
COUNTY Erie County		SITE SIZE (ACRES) 0.746		
LATITUDE (degrees/minutes/seconds) 42 ° 56 ' 31.21" N		LONGITUDE (degrees/minutes/seconds) 78 ° 52 ' 48.78" W		
Complete tax map information for all tax parcels included within the proposed site boundary. If a portion of any lot is proposed , please indicate as such by inserting "P/O" in front of the lot number in the appropriate box below, and only include the acreage for that portion of the tax parcel in the corresponding far right column. ATTACH REQUIRED MAPS PER THE APPLICATION INSTRUCTIONS.				
Parcel Address	See Appendix A; Section IV	Section No.	Block No.	Lot No.
293 Grote Street		89.21	1	1
Acreage 0.746				
1. Do the proposed site boundaries correspond to tax map metes and bounds? ☒ Yes ☐ No If no, please attach an accurate map of the proposed site: See Appendix A; Section IV				
2. Is the required property map attached to the application? ☒ Yes ☐ No (application will not be processed without map) See Figures 2, 3 & 4				
3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)? (See DEC's website for more information) Yes ☒ No ☐ If yes, identify census tract : Census Tract 55 Percentage of property in En-zone (check one): ☐ 0-49% ☐ 50-99% ☒ 100%				
4. Is this application one of multiple applications for a large development project, where the development project spans more than 25 acres (see additional criteria in BCP application instructions)? ☐ Yes ☒ No If yes, identify name of properties (and site numbers if available) in related BCP applications:				
5. Is the contamination from groundwater or soil vapor solely emanating from property other than the site subject to the present application? ☐ Yes ☒ No				
6. Has the property previously been remediated pursuant to Titles 9, 13, or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law? ☐ Yes ☒ No If yes, attach relevant supporting documentation.				
7. Are there any lands under water? ☐ Yes ☒ No If yes, these lands should be clearly delineated on the site map.				

Section IV. Property Information (continued)

8. Are there any easements or existing rights of way that would preclude remediation in these areas?
If yes, identify here and attach appropriate information. ☐ Yes ☒ No

Easement/Right-of-way Holder

Description

9. List of Permits issued by the DEC or USEPA Relating to the Proposed Site (type here or attach information)

Type

Issuing Agency

Description

None/Unknown

10. Property Description and Environmental Assessment – **please refer to application instructions for the proper format of each narrative requested.** See Appendix A; Section IV

Are the Property Description and Environmental Assessment narratives included in the **prescribed format**?

☒ Yes ☐ No

Note: Questions 11 through 13 only pertain to sites located within the five counties comprising New York City

11. Is the requestor seeking a determination that the site is eligible for tangible property tax credits? ☐ Yes ☐ No

If yes, requestor must answer questions on the supplement at the end of this form.

Not Applicable

12. Is the Requestor now, or will the Requestor in the future, seek a determination that the property is Upside Down? ☐ Yes ☐ No

Not Applicable

13. If you have answered Yes to Question 12, above, is an independent appraisal of the value of the property, as of the date of application, prepared under the hypothetical condition that the property is not contaminated, included with the application? ☐ Yes ☐ No

Not Applicable

NOTE: If a tangible property tax credit determination is not being requested in the application to participate in the BCP, the applicant may seek this determination at any time before issuance of a certificate of completion by using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category.

If any changes to Section IV are required prior to application approval, a new page, initialed by each requestor, must be submitted.

Initials of each Requestor: _____

BCP application - PART B (note: application is separated into Parts A and B for DEC review purposes)

Section V. Additional Requestor Information See Instructions for Further Guidance		DEC USE ONLY BCP SITE NAME: _____ BCP SITE #: _____	
NAME OF REQUESTOR'S AUTHORIZED REPRESENTATIVE Mr. F. James McGuire			
ADDRESS 455 Cayuga Road			
CITY/TOWN Buffalo		ZIP CODE 14225	
PHONE 716-829-1900	FAX 716-819-1530	E-MAIL mowens@mcguireddevelopment.com	
NAME OF REQUESTOR'S CONSULTANT Benchmark Environmental Engineering & Science, PLLC - Christopher Boron, P.G.			
ADDRESS 2558 Hamburg Turnpike, Suite 300			
CITY/TOWN Buffalo		ZIP CODE 14218	
PHONE 716-856-0599	FAX 716-856-0583	E-MAIL cboron@bm-tk.com	
NAME OF REQUESTOR'S ATTORNEY Marc A. Romanowski, Esq.			
ADDRESS 1600 Liberty Building, 424 Main Street			
CITY/TOWN Buffalo		ZIP CODE 14202	
PHONE 716-854-3400	FAX 716-819-1530	E-MAIL Romanowski@ruppbaase.com	
Section VI. Current Property Owner/Operator Information – if not a Requestor			
CURRENT OWNER'S NAME MCG Real Estate Holdings, LLC		OWNERSHIP START DATE: 12-23-2020	
ADDRESS 455 Cayuga Road, Suite 200			
CITY/TOWN Buffalo		ZIP CODE 14225	
PHONE 716-829-1900	FAX	E-MAIL mowens@mcguireddevelopment.com	
CURRENT OPERATOR'S NAME Vacant - No current operations			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
PROVIDE A LIST OF PREVIOUS PROPERTY OWNERS AND OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS AS AN ATTACHMENT. DESCRIBE REQUESTOR'S RELATIONSHIP, TO EACH PREVIOUS OWNER AND OPERATOR, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND PREVIOUS OWNER AND OPERATOR. IF NO RELATIONSHIP, PUT "NONE". See Appendix B; Section VI			
IF REQUESTOR IS NOT THE CURRENT OWNER, DESCRIBE REQUESTOR'S RELATIONSHIP TO THE CURRENT OWNER, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND THE CURRENT OWNER.			
Section VII. Requestor Eligibility Information (Please refer to ECL § 27-1407) See Appendix B; Section VII			
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 subject to an existing order for the investigation, removal or remediation of contamination at the site? ☐ Yes ☒ No			
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator. ☐ Yes ☒ No			

Section VII. Requestor Eligibility Information (continued)

4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the ECL Article 27; ii) any order or determination; iii) any regulation implementing 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, DEC 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 DEC, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to DEC? ☐ 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 REQUESTOR MUST CERTIFY THAT HE/SHE IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW: [See Appendix B; Section VII](#)

☐ PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

☒ 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.

Section VII. Requestor Eligibility Information (continued)

Requestor Relationship to Property (check one):

☐ Previous 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 VIII. Property Eligibility Information - See Instructions for Further Guidance

1. Is / was the property, or any portion of the property, listed on the National Priorities List?
If yes, please provide relevant information as an attachment. ☐ Yes ☒ No
2. Is / was the property, or any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites pursuant to ECL 27-1305? ☐ Yes ☒ No
If yes, please provide: Site # _____ Class # _____
3. Is / was the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility? ☐ Yes ☒ No
If yes, please provide: Permit type: _____ EPA ID Number: _____
Date permit issued: _____ Permit expiration date: _____
4. If the answer to question 2 or 3 above is yes, is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer? Attach any information available to the requestor related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filing and corporate dissolution documentation. ☐ Yes ☐ No
5. Is the property subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10? ☐ Yes ☒ No
If yes, please provide: Order # _____
6. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? ☐ Yes ☒ No
If yes, please provide explanation as an attachment.

Section IX. Contact List Information See Appendix B; Section XI

To be considered complete, the application must include the Brownfield Site Contact List in accordance with [DER-23 / Citizen Participation Handbook for Remedial Programs](#). Please attach, at a minimum, the names and addresses of the following:

1. The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located.
2. Residents, owners, and occupants of the property and properties adjacent to the property.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the property is located. See Figure 8
5. Any person who has requested to be placed on the contact list.
6. The administrator of any school or day care facility located on or near the property.
7. The location of a document repository for the project (e.g., local library). **If the site is located in a city with a population of one million or more, add the appropriate community board as an additional document repository.** In addition, attach a copy of an acknowledgement from each repository indicating that it agrees to act as the document repository for the site.

Section X. Land Use Factors**See Appendix B; Section X**

1. What is the current municipal zoning designation for the site? N-1S

What uses are allowed by the current zoning? (Check boxes, below)

☒ Residential ☒ Commercial ☐ Industrial

If zoning change is imminent, please provide documentation from the appropriate zoning authority.

2. Current Use: ☐ Residential ☐ Commercial ☐ Industrial ☒ Vacant ☐ Recreational (check all that apply)

Attach a summary of current business operations or uses, with an emphasis on identifying possible contaminant source areas. If operations or uses have ceased, provide the date.

3. Reasonably anticipated use Post Remediation: ☒ Residential ☐ Commercial ☐ Industrial (check all that apply) **Attach a statement detailing the specific proposed use.**

If residential, does it qualify as single family housing?

☐ Yes ☒ No

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

☒ Yes ☐ No

5. Is the proposed use consistent with applicable zoning laws/maps? Briefly explain below, or attach additional information and documentation if necessary.

☒ Yes ☐ No

6. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans? Briefly explain below, or attach additional information and documentation if necessary.

☒ Yes ☐ No

XI. Statement of Certification and Signatures

(By requester who is an individual)

If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: _____

Signature: _____

Print Name: _____

(By a requestor other than an individual)

I hereby affirm that I am General Manager (title) of MCG Real Estate Holdings, LLC (entity); that I am authorized by that entity to make this application and execute the Brownfield Cleanup Agreement (BCA) and all subsequent amendments; that this application was prepared by me or under my supervision and direction. If this application is approved, I acknowledge and agree: (1) to execute a BCA within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 1/6/2021

Signature: F. James McGuire

Print Name: F. James McGuire

SUBMITTAL INFORMATION:

- **Two (2)** copies, one paper 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 DEC USE ONLY

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

Supplemental Questions for Sites Seeking Tangible Property Credits in New York City ONLY. Sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27 1407(1-a) must be submitted if requestor is seeking this determination.

BCP App Rev 10

Not Applicable

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	☐ Yes ☐ No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	☐ Yes ☐ No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to NYS Tax Law 21(b)(6)? Please see DEC's website for more information.	
☐ Yes ☐ No	
2. Is the property upside down or underutilized as defined below?	Upside Down? ☐ Yes ☐ No
	Underutilized? ☐ Yes ☐ No
From ECL 27-1405(31): "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated. From 6 NYCRR 375-3.2(I) as of August 12, 2016: (Please note: Eligibility determination for the underutilized category can only be made at the time of application) 375-3.2: (I) "Underutilized" means, as of the date of application, real property on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and (1) the proposed use is at least 75 percent for industrial uses; or (2) at which: (i) the proposed use is at least 75 percent for commercial or commercial and industrial uses; (ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and (iii) one or more of the following conditions exists, as certified by the applicant: (a) property tax payments have been in arrears for at least five years immediately prior to the application; (b) a building is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; or (c) there are no structures. "Substantial government assistance" shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.	

Supplemental Questions for Sites Seeking Tangible Property Credits in New York City (continued)

3. If you are seeking a formal determination as to whether your project is eligible for Tangible Property Tax Credits based in whole or in part on its status as an affordable housing project (defined below), you must attach the regulatory agreement with the appropriate housing agency (typically, these would be with the *New York City Department of Housing, Preservation and Development*; the *New York State Housing Trust Fund Corporation*; the *New York State Department of Housing and Community Renewal*; or the *New York State Housing Finance Agency*, though other entities may be acceptable pending Department review). **Check appropriate box, below:**

- ☐ Project is an Affordable Housing Project - Regulatory Agreement Attached;
- ☐ Project is Planned as Affordable Housing, But Agreement is Not Yet Available*
(*Checking this box will result in a “pending” status. The Regulatory Agreement will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.);
- ☐ This is Not an Affordable Housing Project.

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.

BCP Application Summary (for DEC use only)

Site Name: 293 Grote Street

City: Buffalo

Site Address: 293 Grote Street

County: Erie County

Zip: 14207

Tax Block & Lot

Section (if applicable): 89.21

Block: 1

Lot: 1

Requestor Name: MCG Real Estate Holdings, LLC

City: Buffalo

Requestor Address: 455 Cayuga Road, Suite 200

Zip: 14225

Email: mowens@mcguiredevelopment.com

Requestor's Representative (for billing purposes)

Name: Mr. F. James McGuire

Address: 455 Cayuga Road

City: Buffalo

Zip: 14225

Email: mowens@mcguiredevelopment.com

Requestor's Attorney

Name: Marc A. Romanowski, Esq.

Address: 1600 Liberty Building, 424 Main Street

City: Buffalo

Zip: 14202

Email: Romanowski@ruppbaase.com

Requestor's Consultant

Name: Benchmark Environmental Engineering & Science, PLLC - Christopher Boron, P.G. **Address:** 2558 Hamburg Turnpike, Suite 300

City: Buffalo

Zip: 14218

Email: cboron@bm-tk.com

Percentage claimed within an En-Zone: ☐ 0% ☐ <50% ☐ 50-99% ☒ 100%

DER Determination: ☐ Agree ☐ Disagree

Requestor's Requested Status: ☒ Volunteer ☐ Participant

DER/OGC Determination: ☐ Agree ☐ Disagree

Notes:

For NYC Sites, is the Requestor Seeking Tangible Property Credits: ☐ Yes ☐ No

Does Requestor Claim Property is Upside Down: ☐ Yes ☐ No

DER/OGC Determination: ☐ Agree ☐ Disagree ☐ Undetermined

Notes:

Does Requestor Claim Property is Underutilized: ☐ Yes ☐ No

DER/OGC Determination: ☐ Agree ☐ Disagree ☐ Undetermined

Notes:

Does Requestor Claim Affordable Housing Status: ☐ Yes ☐ No ☐ Planned, No Contract

DER/OGC Determination: ☐ Agree ☐ Disagree ☐ Undetermined

Notes:

FIGURES

Figure 1	Site Location and Vicinity Map
Figure 2	Site Plan (Aerial)
Figure 3	Tax Map
Figure 4	Property Base Map (1,000' Setback)
Figure 5	Preliminary Project Schedule
Figure 6	Preliminary Project Rendering
Figure 7	First Floor PCB Sample Locations and Results
Figure 8	Second Floor PCB Sample Locations and Results
Figure 9	Phase II Investigation Locations & Areas of Concern
Figure 10	En-Zone Map
Figure 11	Adjacent Property Owners
Figure 12	Zoning Map
Figure 13	USDA Soil Type Map

FIGURE 1



4,000' 0' 4,000' 8,000'

SCALE: 1 INCH = 4,000 FEET
SCALE IN FEET
(approximate)



BASE MAP PER BUFFALO, NEW YORK USGS QUADRANGLE, 2016



**2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599**

PROJECT NO.: B0549-020-005

DATE: DECEMBER 2020

DRAFTED BY: CNK

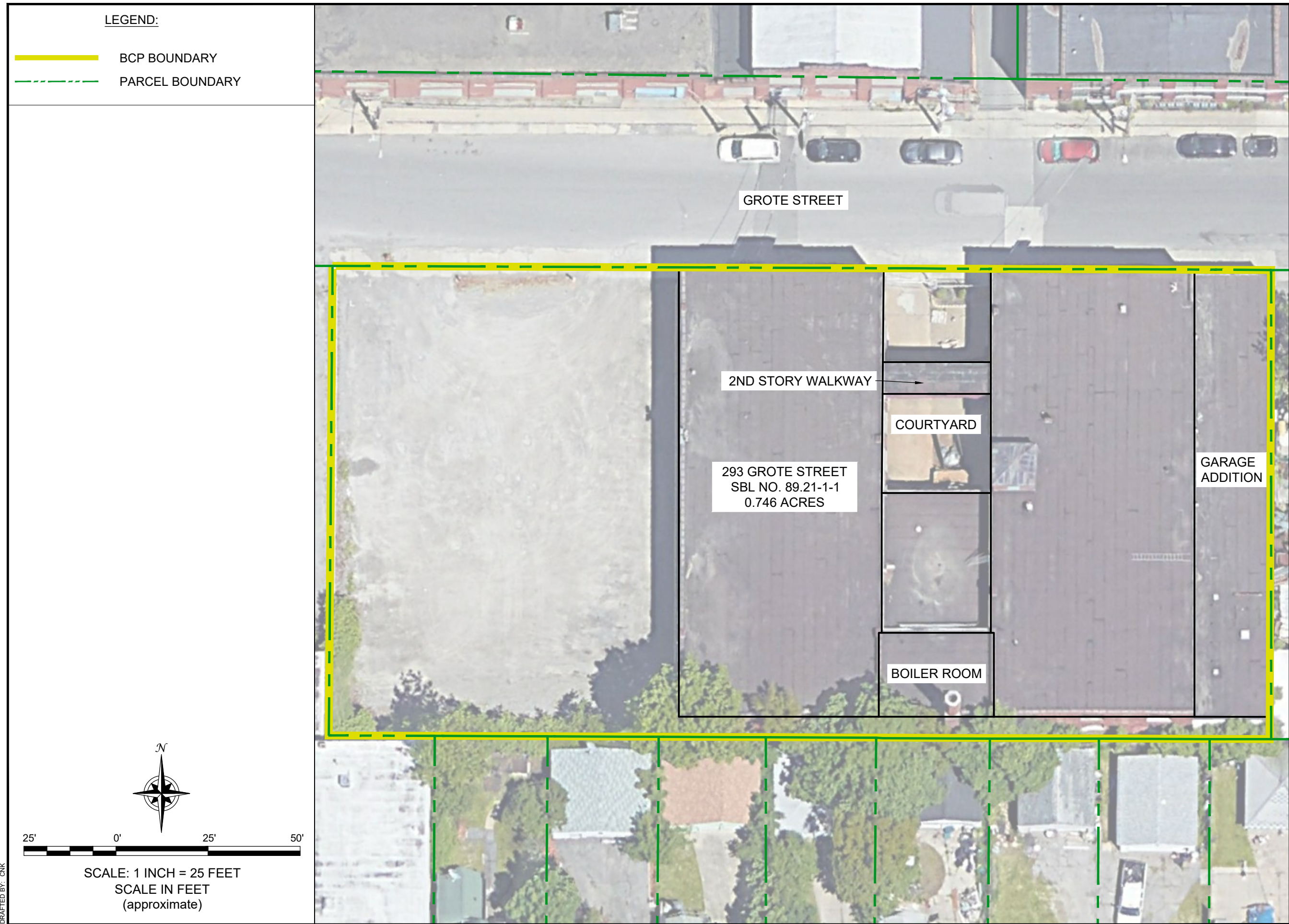
SITE LOCATION & VICINITY MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

**293 GROTE STREET
BUFFALO, NEW YORK**

PREPARED FOR
MCG REAL ESTATE HOLDINGS, LLC

DISCLAIMER:
PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.



SITE PLAN (AERIAL)

BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK

PREPARED FOR

PREPARED FOR
MCG REAL ESTATE HOLDINGS, LLC

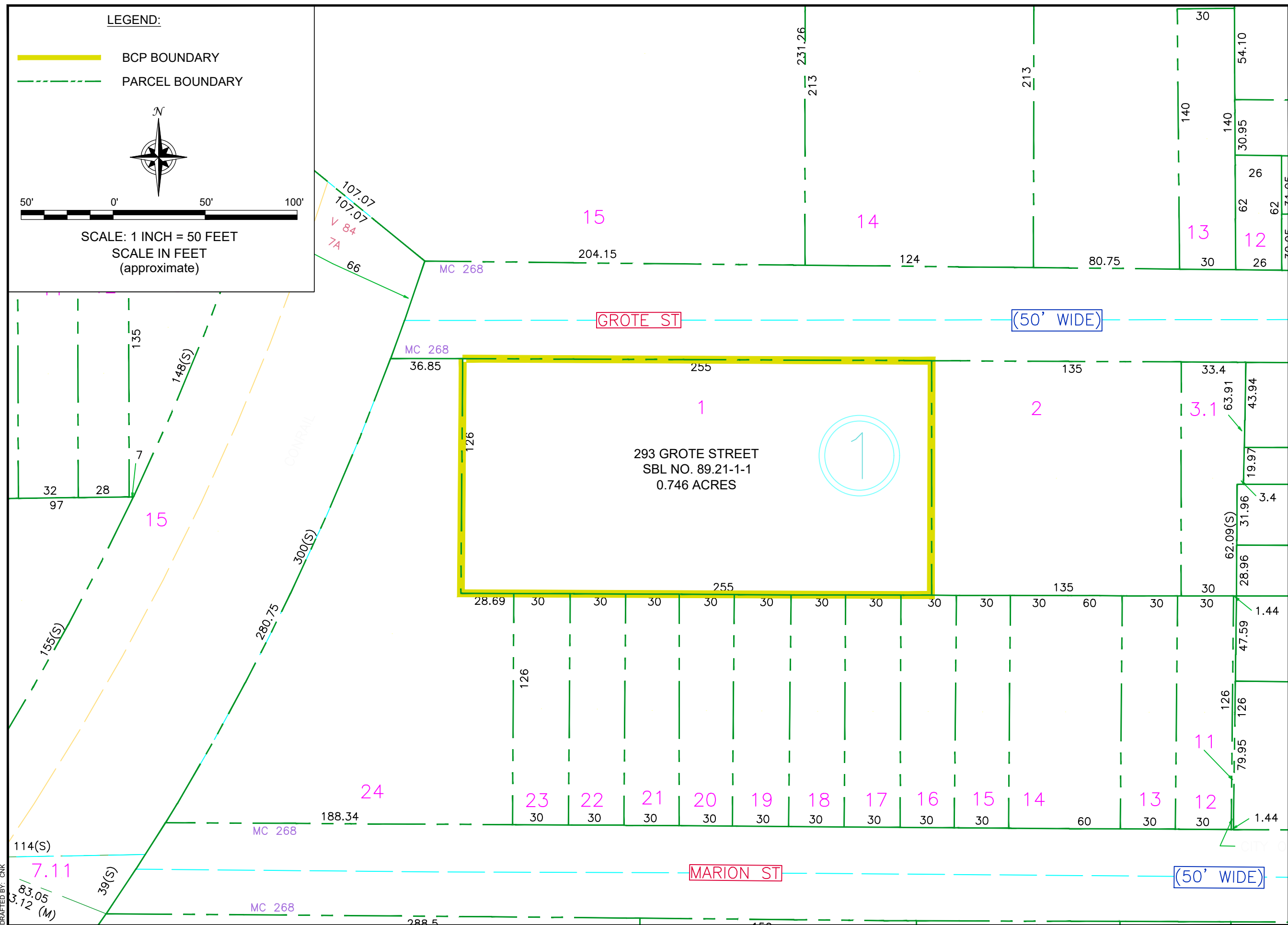


2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

JOB NO.: B0549-020-005

FIGURE 2

DISCLAIMER: PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.



BENCHMARK
ENVIRONMENTAL
ENGINEERING &
SCIENCE, PLLC

2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

JOB NO.: B0549-020-005

TAX MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK

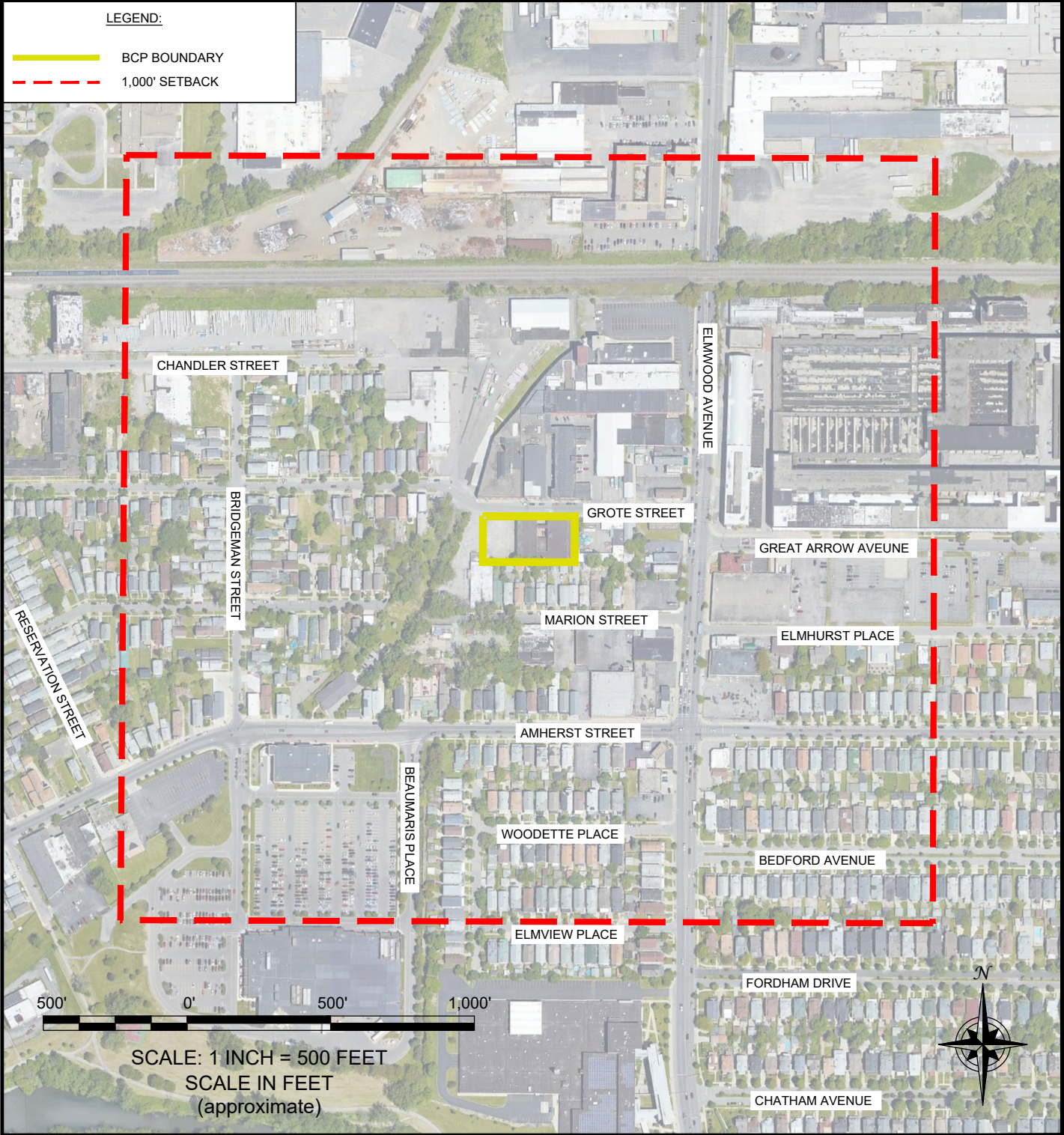
ALCO, INLEW
PREPARED FOR

PREPARED FOR
MCG REAL ESTATE HOLDINGS, LLC

FIGURE 3

DISCLAIMER: PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.

FIGURE 4



 BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC	2558 HAMBURG TURNPIKE SUITE 300 BUFFALO, NY 14218 (716) 856-0599
	PROJECT NO.: B0549-020-005
	DATE: DECEMBER 2020
	DRAFTED BY: CNK

PROPERTY BASE MAP (1,000' SETBACK)

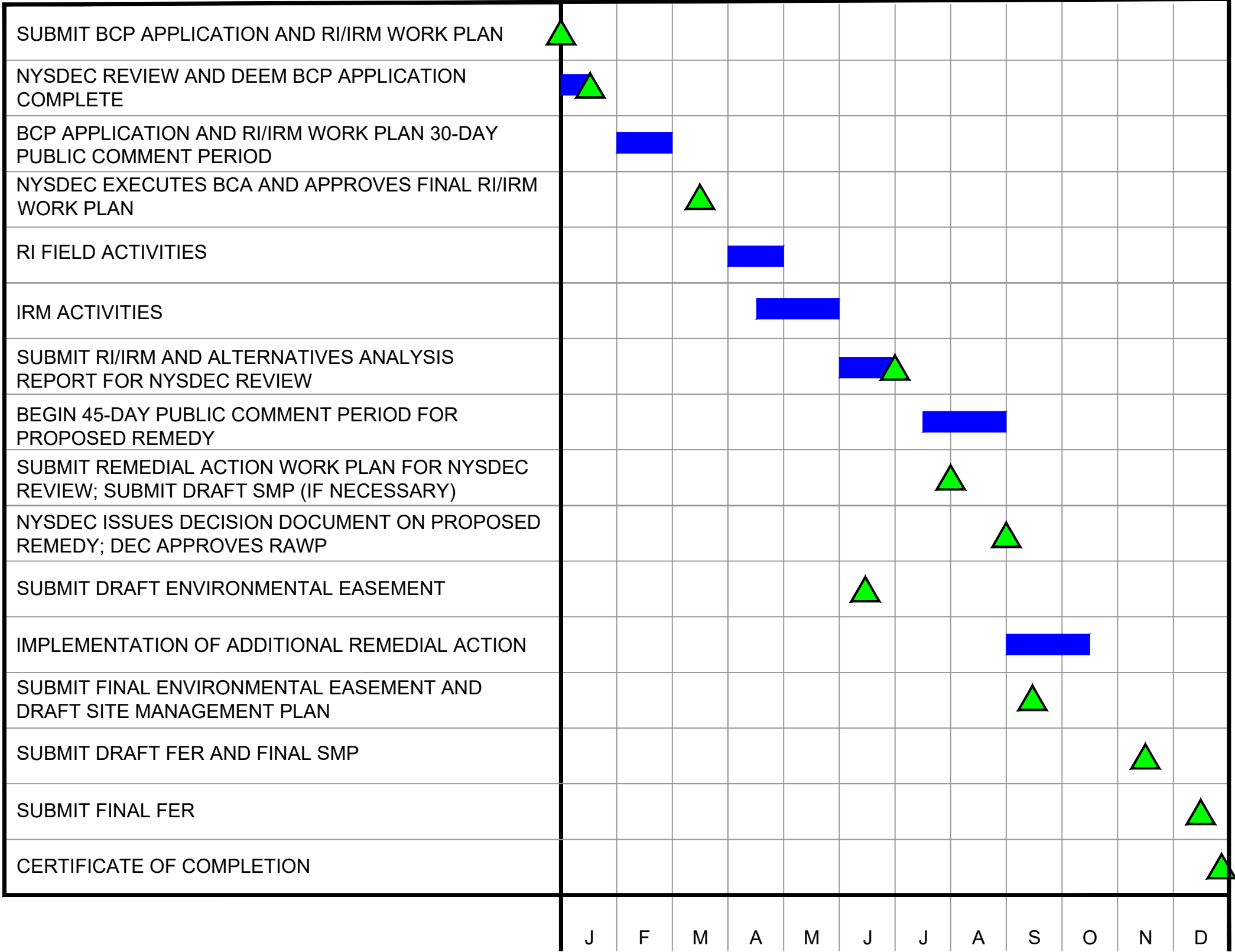
BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK

PREPARED FOR
MCG REAL ESTATE HOLDINGS, LLC

DISCLAIMER:
PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.

PROJECT TASKS:



PRELIMINARY PROJECT SCHEDULE

BROWNFIELD CLEANUP PROGRAM APPLICATION
293 GROTE STREET
BUFFALO, NEW YORK
PREPARED FOR
MCG REAL ESTATE HOLDINGS, LLC



JOB NO.: B0549-020-005

FIGURE 5

DISCLAIMER: PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.

DATE: JANUARY 2021
DRAFTED BY: CNK

1
A-101
Level 1 - Floor Plan
1/8" = 1'-0"



SCALE: 1 INCH = 20 FEET
SCALE IN FEET
(approximate)

GENERAL FLOOR PLAN NOTES

1. **DO NOT SCALE DRAWINGS.** If there is a dimension that is not shown on the construction documents that requires clarification, request that clarification of the Architect. The Contractor shall verify all dimensions, grades, boundaries, and construction documents and immediately report any discrepancies to the architect.
2. All work shall conform to the requirements of all Local, State and Federal codes. Local, State and Federal Codes are to take precedence over the drawings and specifications. If discrepancy is noted, inform the Architect immediately and before proceeding with the work.
3. All dimensions, notes, finishes and fixtures shown on typical floor plans, sections and details shall apply to all similar, opposite hand, or symmetrical plans, sections or details.
4. All dimensions are to face of said construction, unless otherwise noted.
5. All new walls shall be aligned with the center or nearest edge (as indicated on drawings) of existing walls, columns, window openings, etc., unless otherwise noted.
6. The contractor shall confine operations at the site to areas indicated on the drawings and shall not encumber the site with material and equipment.
7. Failure to show of mention minor details shall not be warrant for omission of necessary appearances for the normal, usual or proper completion of the Work.
8. All Finishes not involved in areas of Construction shall be protected in such a manner that when the work is complete the finishes would be in the same condition they were before the work started. Any unfortunate damage to existing to remain will be restored at no additional cost to the Owner.
9. Coordinate all new architectural work with Design-Build Engineer construction documents for Mechanical, Electrical, Plumbing and Fire Protection Systems.
10. Smoke Tight: areas indicating smoke tight construction shall meet requirements of the Building Code of NYS, 2010 edition, Section 7.10. Penetrations and joints shall be filled with an approved material to limit the free passage of smoke, such as fire rated spray foam.
11. For information on all interior finishes and millwork in the project, refer to the INTERIORS drawings (I-100, I-101...).
- 12.

FLOOR PLAN LEGEND

- Existing Wall to Remain
- Existing Door to Remain
- New Wall Construction
- New Door to be Installed
Size as Spec'd, Type by Owner
- New Window to be Installed
Size as Spec'd, Type by Owner

FLOOR PLAN KEYNOTES

- ALIGN DEMISING WALL WITH CENTERLINE OF EXISTING COLUMN AND/OR PLASTER
- ALIGN DEMISING WALL WITH CENTERLINE OF NEW WINDOW MULLION SEE DETAILS XXX ON A-XXX FOR WALL CONNECTION DETAIL
- ALIGN WALL PARTITION WITH CENTERLINE OF COLUMN SEE A-XXX/XXX FOR WALL PARTITION TYPES



467 Main Street, Suite 500
Buffalo, New York 14203
P: 716.842.3166
F: 716.816.8143

PRELIMINARY
NOT FOR CONSTRUCTION
12/19/2020 9:53:12 AM

PROFESSIONAL SEAL

REVISIONS:
No. Description Date

PROJECT NAME:
Project Status
293 Grote Street
293 Grote Street,
Buffalo, NY 14207

Issued for Construction: 07/07/20
Municipality Submission: Author
Drawn By: Checker
Checked By:

DRAWING NAME:
Level 1 - Plan

DRAWING NO.
A-101
Project No.: 20.191

PRELIMINARY PROJECT RENDERING

BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK

PREPARED FOR

MCG REAL ESTATE HOLDINGS, LLC

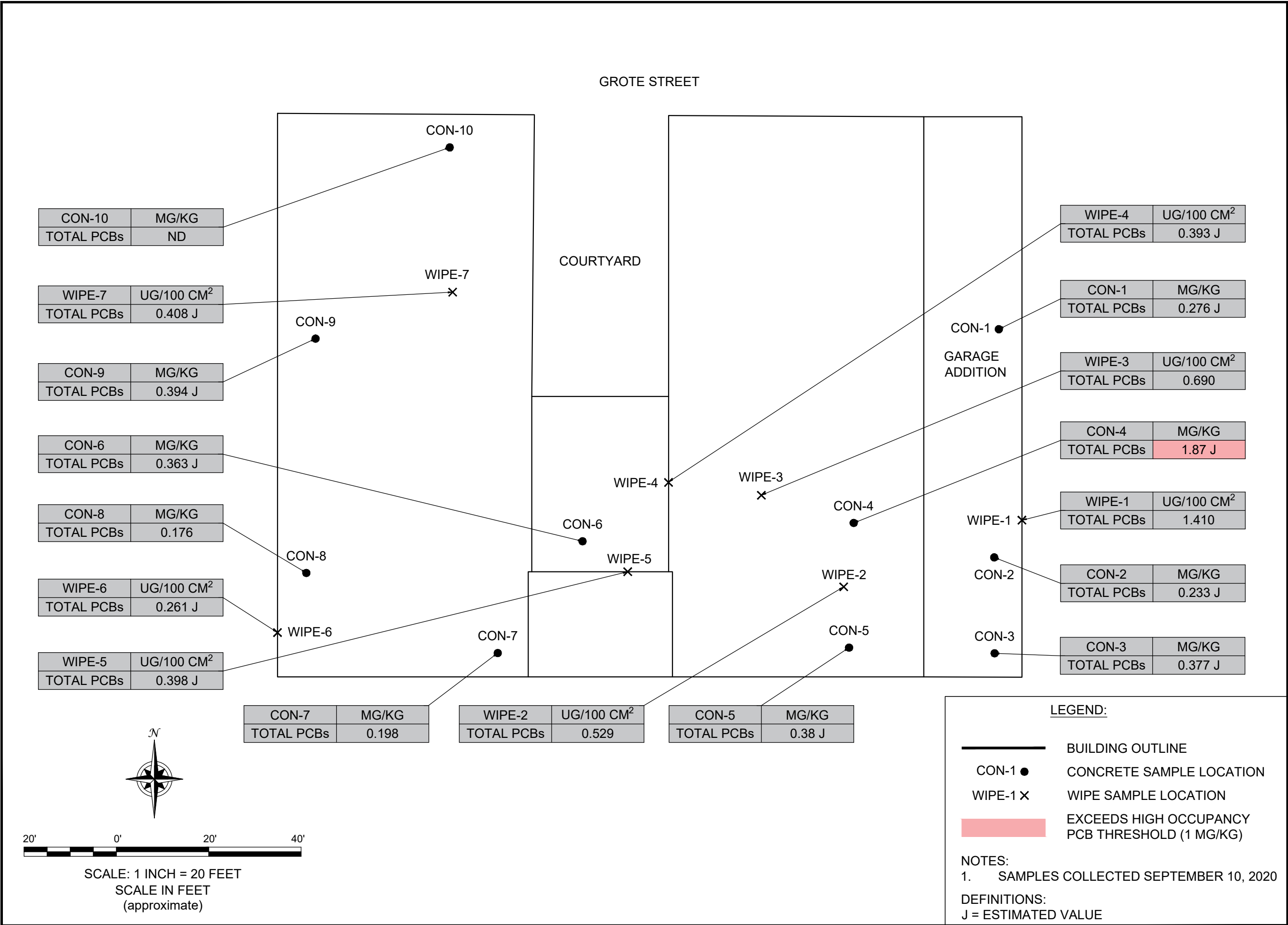


2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

JOB NO.: B0549-020-005

FIGURE 6

DISCLAIMER: PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.



FIRST FLOOR PCB SAMPLE LOCATIONS AND RESULTS

BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK

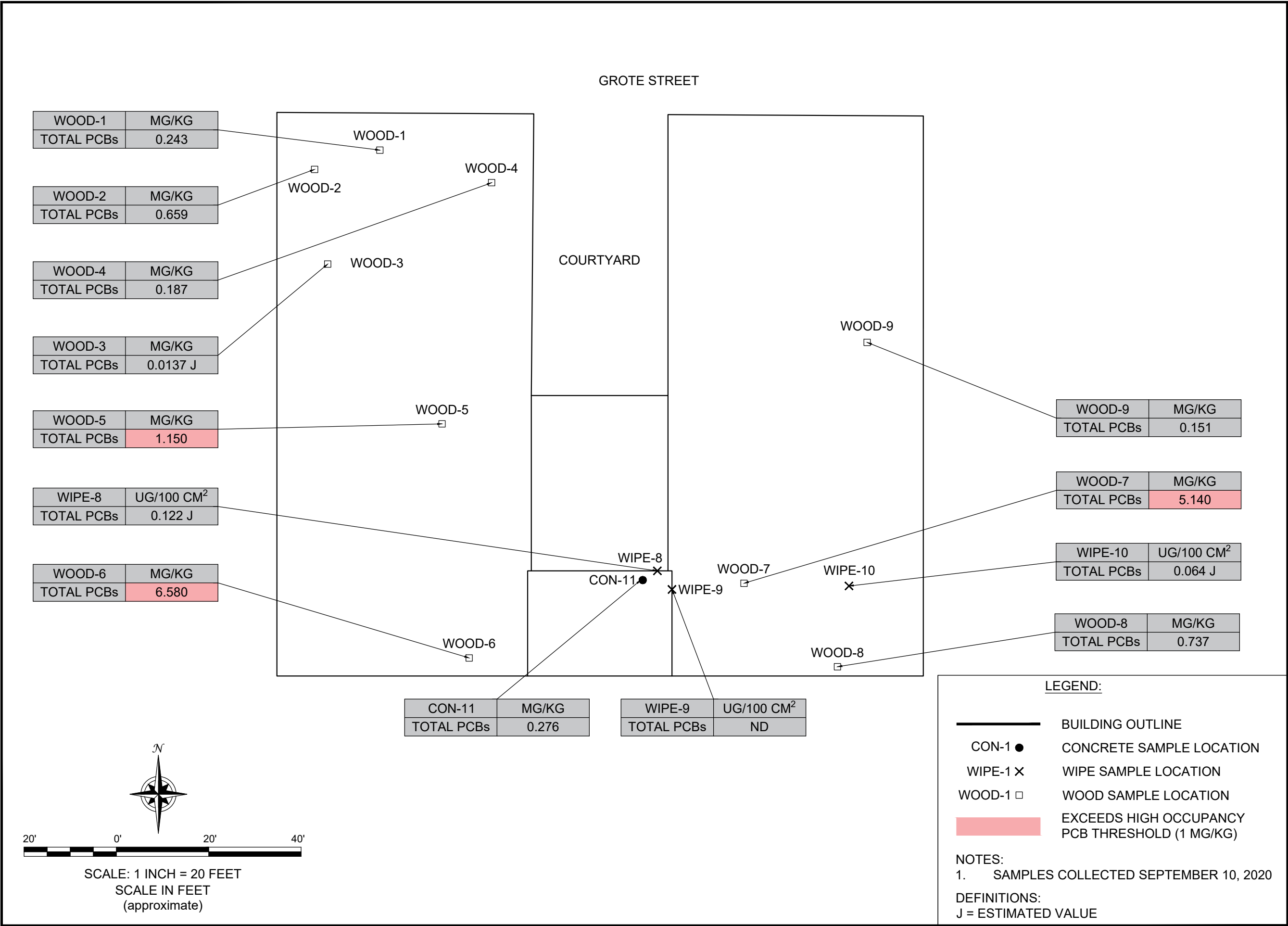
PREPARED FOR

MCG REL ESTATE HOLDINGS, LLC



JOB NO.: B0549-020-005

FIGURE 7



SECOND FLOOR PCB SAMPLE LOCATIONS AND RESULTS

BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK

PREPARED FOR

MCGUIRE DEVELOPMENT COMPANY

BENCHMARK
ENVIRONMENTAL
ENGINEERING &
SCIENCE, PLLC

2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

JOB NO.: B0549-020-005

FIGURE 8

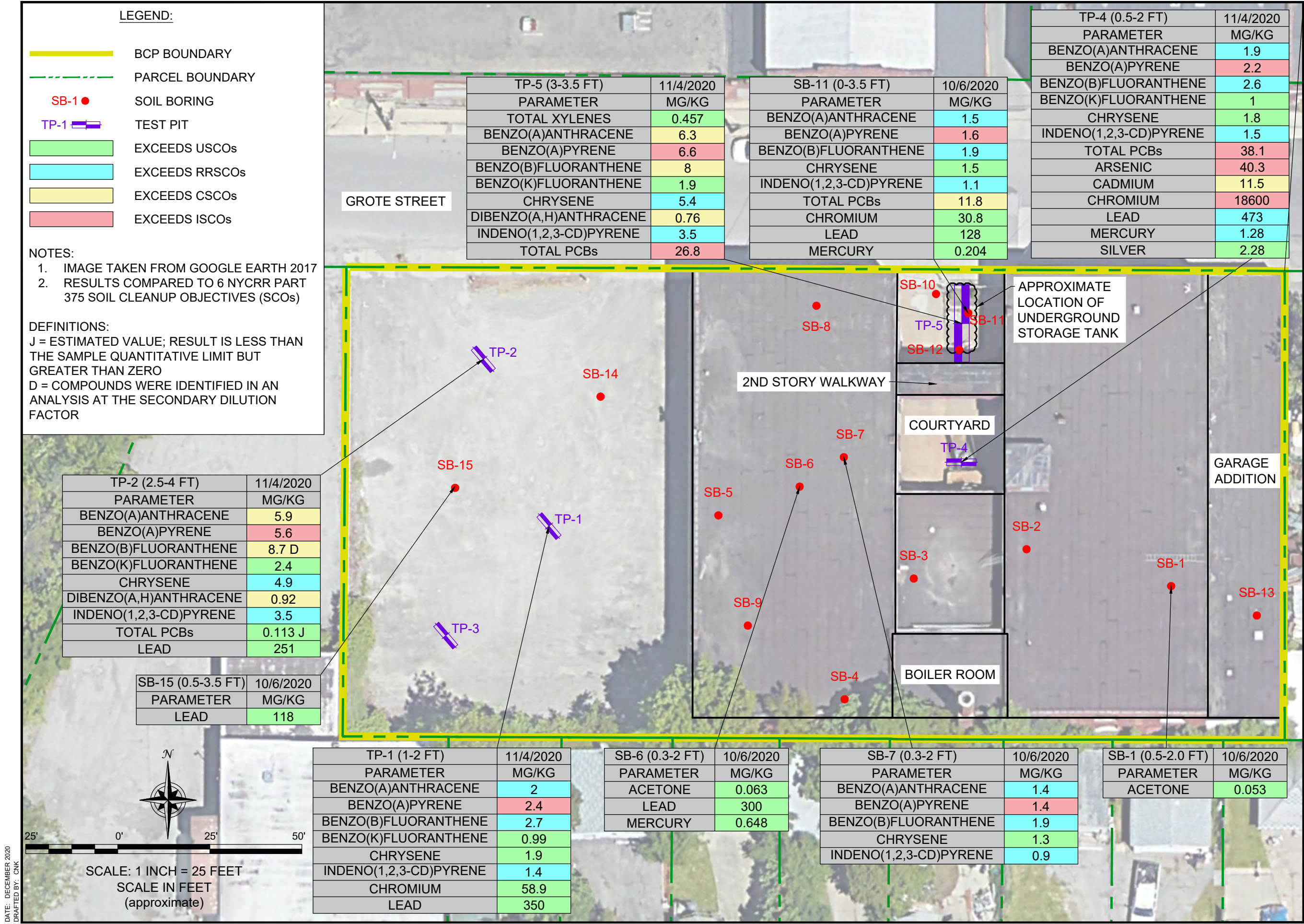
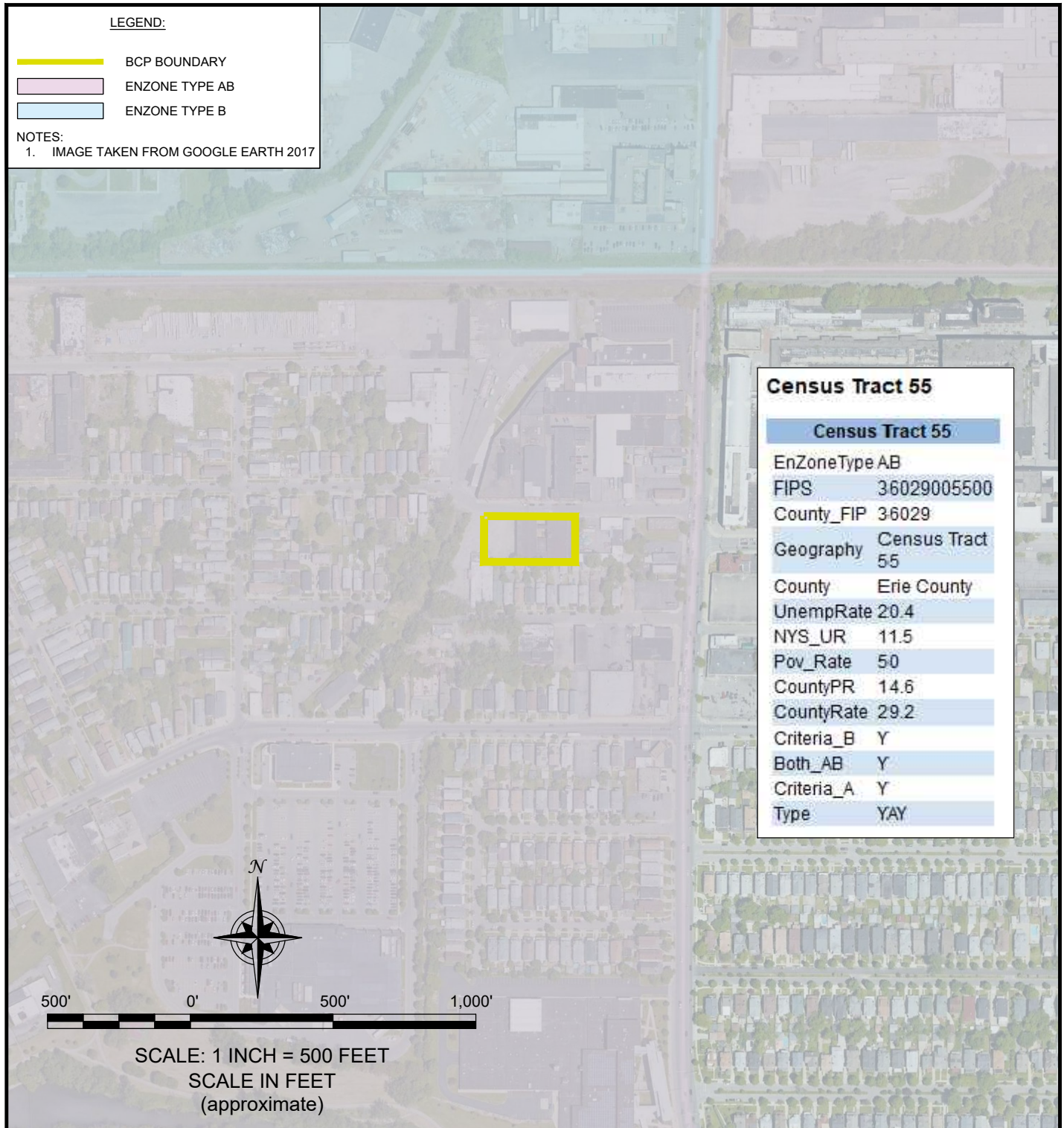


FIGURE 10



2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

EN-ZONE MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK

PREPARED FOR

MCG REAL ESTATE HOLDINGS, LLC

PROJECT NO.: B0549-020-005

DATE: DECEMBER 2020

DRAFTED BY: CNK

DISCLAIMER:

PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.

F:\CAD\Benchmark\McGuire Development\315 Grote Street\03-BCP Application\Figure 11: Adjacent Property Owners.dwg, 12/17/2020 2:32:49 PM

DATE: DECEMBER 2020
DRAFTED BY: CNK

LEGEND:

BCP BOUNDARY

PARCEL BOUNDARY

ADJACENT PROPERTIES

Adjacent Property Address			Property Owner Mailing Address
No.	Street	Property Use	
291	Grote Street	Other Storage, warehouse, and distribution facilities	291 Grote Street Associates LLC 291 Grote Street Buffalo, NY 14207
302	Grote Street	Manufacturing and processing	Weatherpanel Holdings Inc. 285 Chandler Street Buffalo, NY 14207
316	Grote Street	Downtown row type (detached)	Houk Lofts LLC 391 Washington Street, Suite 800 Buffalo, NY 14203
317	Grote Street	One story small structure – multi-occupant	331 Grote LLC 2 Glen Eagle Court Williamsville, NY 14221
134	Marion Street	Two family year-round residence	Patrick J. McNichol 500 Connecticut Street Buffalo, NY 14213
138	Marion Street	Two family year-round residence	Nilda L. Echevarria 138 Marion Street Buffalo, NY 14207
142	Marion Street	Two family year-round residence	Jessica Lynn Zucarelli 142 Marion Street Buffalo, NY 14207
144	Marion Street	Two family year-round residence	Peter J. Galvin 217 Wallace Avenue Buffalo, NY 14216
146	Marion Street	Two family year-round residence	Arcadia M. Stacey and Jason L. Brent 146 Marion Street Buffalo, NY 14207
150	Marion Street	Two family year-round residence	Sondra J. Mansur 150 Marion Street Buffalo, NY 14207
152	Marion Street	Two family year-round residence	Catherine E. Handley 152 Marion Street Buffalo, NY 14207
154	Marion Street	Two family year-round residence	Howard F. & Marie Handley 154 Marion Street Buffalo, NY 14207

N

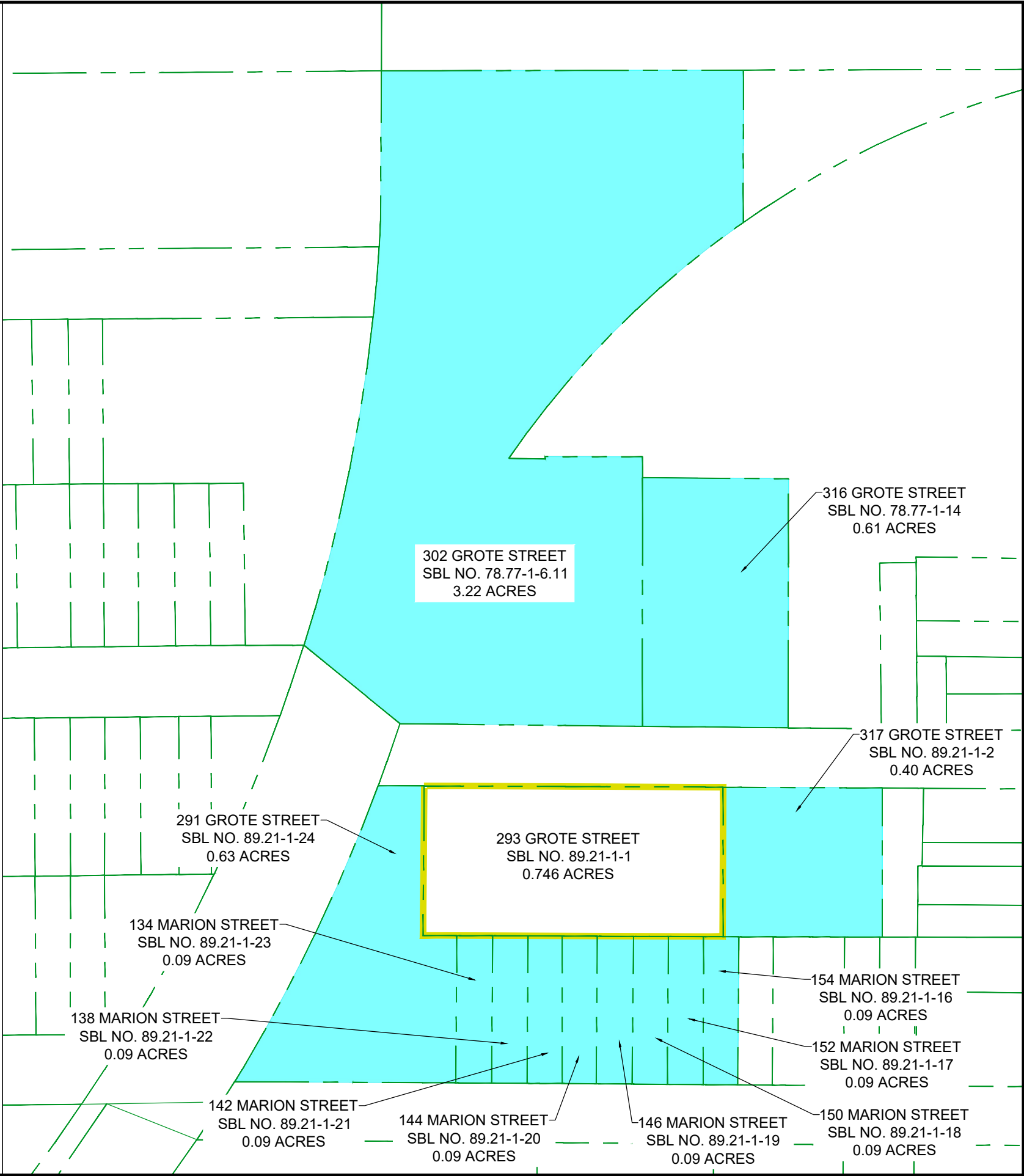
100'

0'

100'

200'

SCALE: 1 INCH = 100 FEET
SCALE IN FEET
(approximate)



2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 858-0599

BENCHMARK

ENVIRONMENTAL
ENGINEERING &
SCIENCE, PLLC

JOB NO.: B0549-020-005

ADJACENT PROPERTY OWNERS

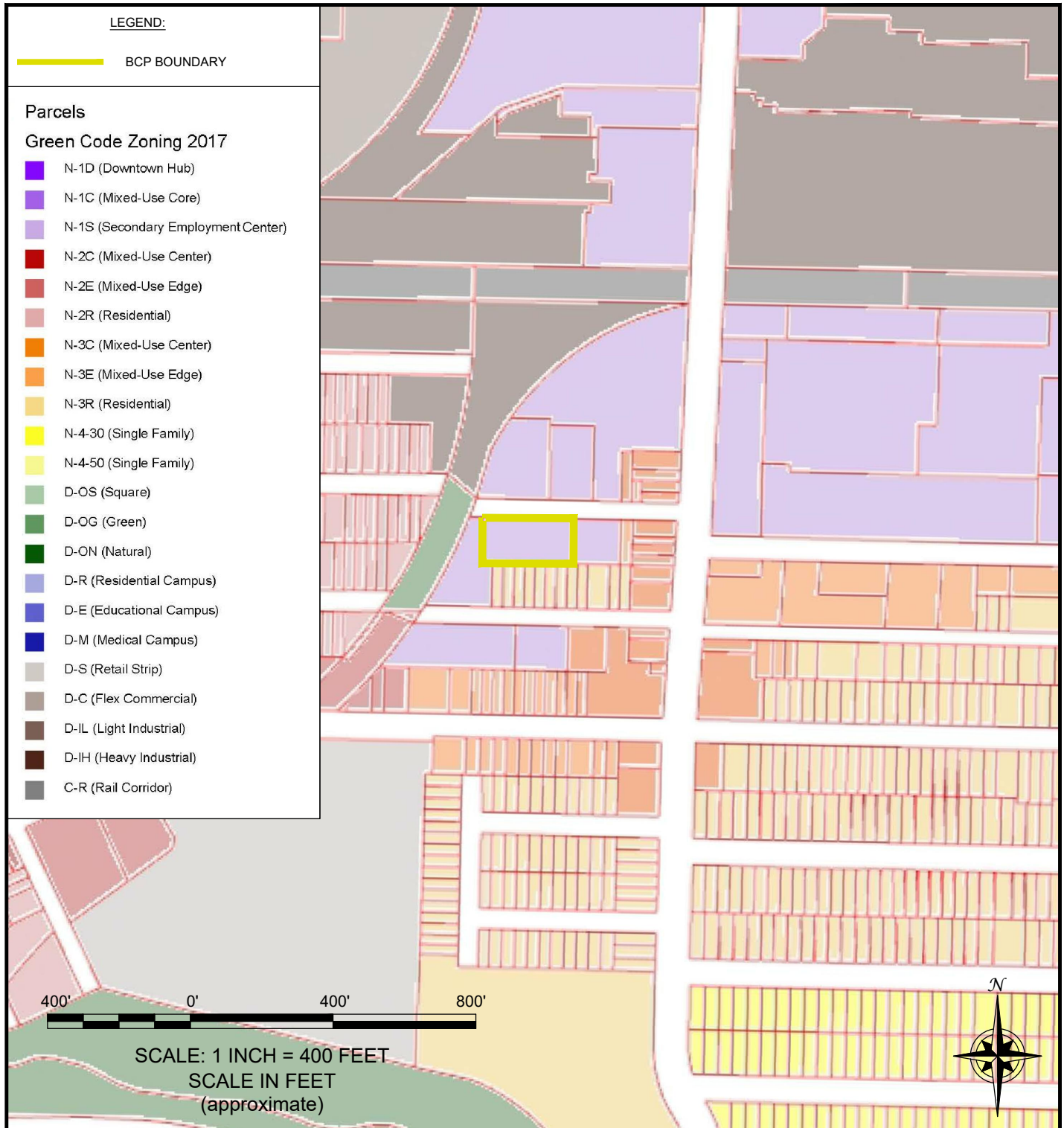
BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK
PREPARED FOR
MCG REAL ESTATE HOLDINGS, LLC

FIGURE 11

DISCLAIMER: PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.

FIGURE 12



2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

PROJECT NO.: B0549-020-005

DATE: DECEMBER 2020

DRAFTED BY: CNK

ZONING MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

293 GROTE STREET
BUFFALO, NEW YORK

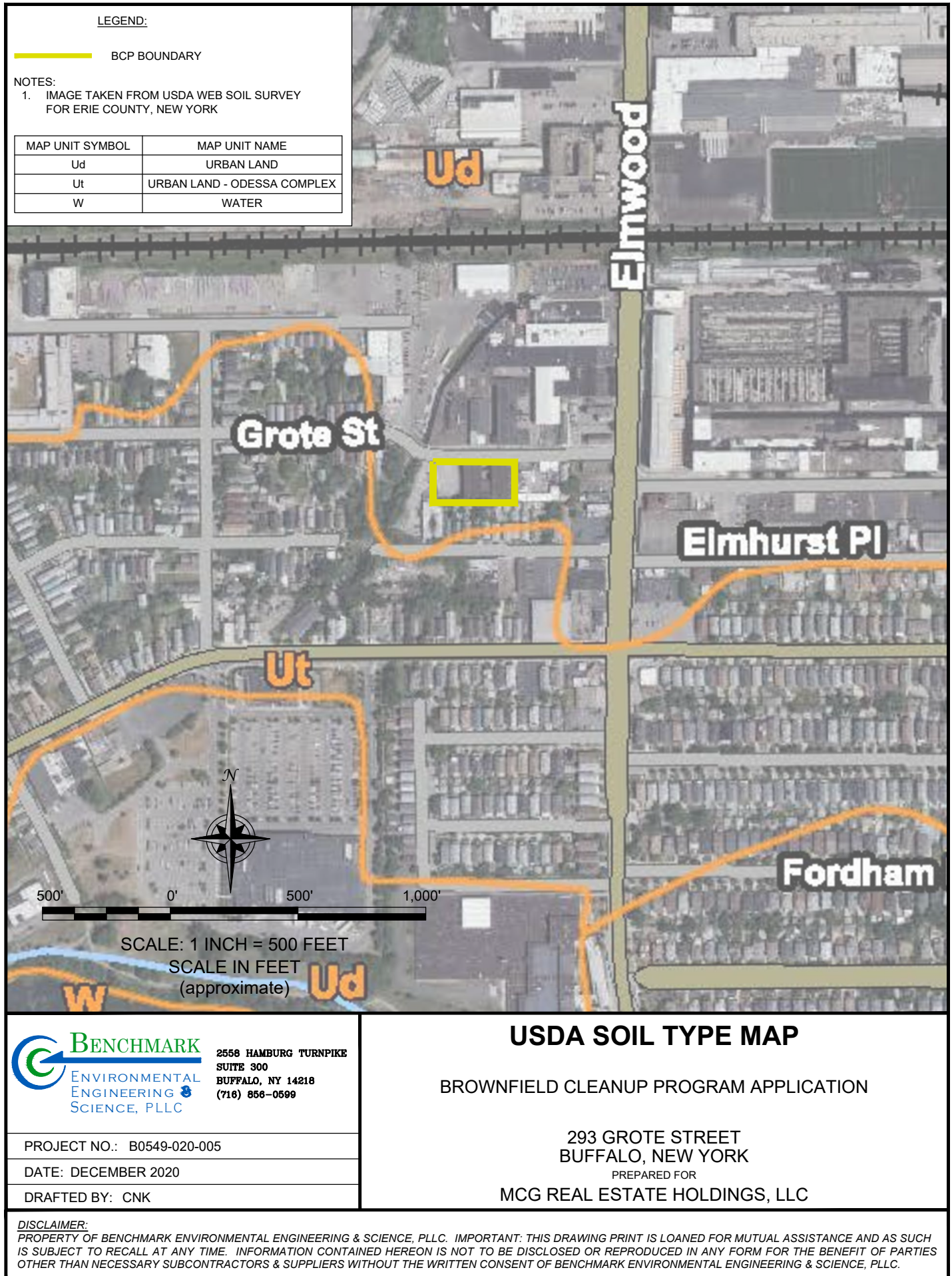
PREPARED FOR

MCG REAL ESTATE HOLDINGS, LLC

DISCLAIMER:

PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC.

FIGURE 13



APPENDIX A

BCP APPLICATION PART A – SECTIONS I - IV

SECTION I - REQUESTOR INFORMATION

SECTION II – PROJECT DESCRIPTION

SECTION III – PROPERTY’S ENVIRONMENTAL HISTORY

SECTION IV – PROPERTY INFORMATION

A1 - NYS DOS CORPORATION & BUSINESS ENTITY DATABASE

INFORMATION MCG REAL ESTATE HOLDINGS, LLC

A2 - SIGNATURE RESOLUTION

A3 - ERIE COUNTY PARCEL DETAIL REPORT

A4 - SANBORN MAPS

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

SECTION I – REQUESTOR INFORMATION

Requestor, MCG Real Estate Holdings, LLC, a New York State limited liability company, is authorized to conduct business in New York State. A copy of the New York State Corporation and Business Entity Database printout for MCG Real Estate Holdings, LLC is attached as Exhibit A1.

Exhibit A2 is the Signature Consent which identifies James McGuire, of MCG Real Estate Holdings, LLC, as authorized person to execute document or agreements necessary under the Brownfield Cleanup Program (BCP).

Benchmark Environmental Engineering and Science, PLLC (Benchmark), a registered NYS engineering firm, and licensed NYS Professional Engineer (PE) will be acting as the Engineer of Record for this BCP project.

SECTION II – PROJECT DESCRIPTION

MCG Real Estate Holdings, LLC, acting as a Volunteer, is willing to complete additional investigation and remediate the Site (see Figures 1-4) under the NYS BCP and is submitting this BCP Application for eligibility acceptance into the program.

MCG Real Estate Holdings, LLC has prepared a Remedial Investigation/Interim Remedial Measures (RI/IRM) Work Plan for concurrent submittal with the BCP Application and is prepared to complete a Remedial Investigation (RI) and the necessary Interim Remedial Measures (IRMs), upon acceptance into the BCP.

A preliminary project schedule is shown on Figure 5.

The Volunteer plans to redevelop the ±0.746-acre property Site with residential apartments. The conceptual redevelopment plan is shown on Figure 6. The Site redevelopment plan estimates capital investment of approximately \$7,000,000.

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

The Project will result in the remediation, redevelopment, and reuse of an idle environmentally impacted property at 293 Grote Street in the City of Buffalo, New York.

SECTION III – PROPERTY’S ENVIRONMENTAL HISTORY

A summary of the previous environmental investigation findings completed for the 293 Grote Street Site (hereinafter, the “Project Site” or the “Site”) are provided below.

Interior Assessment of Floors and Walls for PCBs, Former Buerk Tool, 315 Grote Street, Buffalo NY (Benchmark Environmental Engineering Science, PLLC, October 2020)

Benchmark completed an interior assessment of the floors and walls of the building at 293 Grote Street for polychlorinated biphenyls (PCBs) based on its previous use as a machine shop. The mailing address for the previous occupant, Buerk Tool, was listed as 315 Grote Street. During the Phase I Environmental Site Assessment (Phase I), discussed below, it was identified that the actual parcel address is 293 Grote Street.

Buerk Tool was a former machine shop that had been in operation since 1919 and utilized various lathes, grinders, bore mill, etc. that used cutting oils in their operations. Evidence of the oil use can be seen throughout the building. Oil dispensers, 55-gallon drums, 5-gallon buckets, along with heavy staining were observed within the building during our August 19th site visit.

The 1st floor of the former machine shop areas are concrete and the 2nd floor of the building is primarily wood. The walls of the building are primarily painted brick, concrete block and clay tile and the interior column supports of the building are wood beams, of which the majority are painted. Office areas, restrooms, and secured storage areas (2nd floor) were not included as part of the assessment.

The interior PCB assessment consisted of the collection of eleven (11) concrete floor samples, nine (9) wood floor samples, and ten (10) wipe samples from the walls and columns. Figures 7 and 8 show the approximately locations of the samples collected. Benchmark personnel made visual observations of the floor and wall areas prior to collecting the samples with bias towards oil-stained areas. The concrete floor samples were collected using an electric hammer drill and 1-inch diameter drill bit to drill approximately 3-inches into the concrete slab. The concrete fines generated from the drilling were placed in

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

laboratory-provided jars. The wood floor samples from the 2nd floor were collected using an electric drill and 1-inch diameter core barrel to core into the wood floor. The wood cores collected from each location were further processed to approximately 1/4-inch or less in the field and placed in the laboratory-provided jars.

The results of the analytical samples collected and analyzed as part of the interior assessment are summarized on attached Figure 7 (1st floor samples) and Figure 8 (2nd floor samples) of this BCP application. The concrete, wood, and wipe sample results were compared to the United State Environmental Protection Agency's (USEPAs) thresholds for high occupancy (as the proposed reuse of the building is residential which falls under the high occupancy category). The wood and concrete sample results were compared to the USEPA's threshold for high occupancy of 1 milligram per kilogram (mg/kg) per 40 CFR § 761.61 (a)(4)(i)(A). The analytical results of the wipe samples were reported by the laboratory as microgram-absolute (ug/Abs), with results being representative of a 100 centimeters square (cm-sq.) wipe sampling area; therefore, samples results are ug/100 cm-sq. The wall and column sample results were compared to the USEPA's threshold for high occupancy of ≤10 ug/100 cm-sq per 40 CFR § 761.61 (a)(4)(ii).

Concrete Floor Samples

PCBs were detected in ten (10) of the eleven (11) concrete samples above method detection limits. One (1) sample location, CON-4, had concentration of 1.87 mg/kg which is above the high occupancy threshold of 1 mg/kg (see Figure 7). The concentrations of the other concrete sample results were either non-detect or less than 1 mg/kg.

Wood Floor Samples

PCBs were detected in the nine (9) wood samples above method detection limits. Three (3) sample locations, WOOD-5, WOOD-6, and WOOD-7 had concentration of 1.15 mg/kg, 6.58 mg/kg, and 5.14 mg/kg, respectively, above the high occupancy threshold of 1 mg/kg (see Figure 8). The PCB concentrations of the other six (6) samples were less the 1 mg/kg.

Wall and Column Wipe Samples

PCBs were detected in nine (9) of the ten (10) wipe samples above method detection limits collect from the walls and columns on the 1st and 2nd floors. The concentrations of the wipe samples were below the 10 ug/cm² threshold for high occupancy areas for non-porous surfaces (see Figures 7 and 8).

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

Phase I Environmental Site Assessment (Benchmark Environmental Engineering Science, PLLC, October 2020)

Benchmark completed a Phase I Environmental Site Assessment (Phase I) on the 293 Grote Street property. Benchmark identified the following Recognized Environmental Conditions (REC):

- Historic operations (i.e., machine shop, factories, manufacturing, and automotive repair) along with the presence of remaining equipment, a floor drain, a sump, a catch basin, trenches, oil-filled voids of unknown nature, and the historic use and generation of hazardous/regulated materials (as evidenced by the RCRA Generator regulatory listing) are considered RECs as subsurface conditions are unknown.
- The black staining noted at the Site is considered a REC due to its significant nature with visual impacts to ground surfaces and the potential for sub-slab impacts.
- Remaining electrical equipment is considered a REC due to the potential for PCBs.
- The suspect UST-related vent/fill pipes noted during Benchmark's site reconnaissance and the 5,000-gallon fuel oil tank identified in municipal records (it is unknown to Benchmark whether the suspect UST noted during Benchmark's site visit is related to the tank identified in municipal records) are considered RECs as sufficient tank closure documentation is unavailable.
- Interior floor sampling conducted identified PCBs in the concrete (1st floor) and wood (2nd floors) floors at concentrations above the USEPA high-occupancy threshold (1 mg/kg) for PCBs that should be address prior to building reuse.
- The "closed" and "inactive" spill incidents identified for adjacent/nearby properties are considered historical RECs (HRECs) and as such have been addressed to the satisfaction of the NYSDEC.
- No Controlled RECs (CRECs) were identified.

A complete copy of the Phase I report is provided as a separate PDF file on the enclosed CD.

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

Phase II Environmental Investigation (Benchmark Environmental Engineering and Science, PLLC, November 2020)

Benchmark completed a Phase II Environmental Investigation (Phase II) on the 293 Grote Street property. The Phase II activities consisted of 15 soil borings (SBs), five (5) test pits (TPs), and submittal of thirteen (13) subsurface soil/fill samples for laboratory analysis, which included volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals, and PCBs. The SBs were advanced using a track-mounted direct push drill rig to assess subsurface soil/fill conditions beneath the building, in the vicinity of the UST in the exterior courtyard, and gravel parking lot west of the building. The test pits were completed with a mini-excavator and were completed in the gravel parking lot and courtyard/UST area.

The Phase II investigation locations and summary of analytical results are shown on Figure 9. Findings of the Phase II are summarized below:

- Fill materials were generally encountered in the upper 1 to 4 fbg and consisted of black fines intermingled with gray clay and man-made constituents (brick, cinders, ash, metal cuttings, etc.). The fill material thickness was observed to be about 1 to 2 feet beneath the building (SB-1 through SB-9, and SB-13), about 2 feet (TP-4) to 4 fbg in the courtyard area near the UST (SB-10 through SB-12) and varied from about 1 foot to 6 feet in the parking lot area west of the building (SB-14, SB-15, TP-1, TP-2, and TP-3). Native clay soils were encountered below the fill material. Saturated subsurface soils (i.e., evidence of groundwater) were not encountered during the Phase II activities.
- During the completion of TP-5, Benchmark exposed the south end of the UST down to a depth of approximately 10 fbg. The UST has approximate dimensions of 7 feet in diameter and 18 feet in length (approximately a 5,000-gallon tank). Along the south end of the UST, at the bottom of the excavation, a small amount of perched water was encountered in the bedding material around the UST. Petroleum odors, elevated PID readings (approximately 30 to 80 ppm), and evidence of product (globules of product on the water at the bottom of excavation at south end of the of the UST) were noted. Due to these findings, NYSDEC was notified and Spill No. 2007182 was assigned to the Site.

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

- The tank contained a mixture of residual product and water, which measured to be approximately 1 foot thick at the bottom of the UST (approximately 400 gallons). A sample of the residual product was collected and sent to the laboratory for characterization analysis via NYSDOH 310.13, TCL VOCs, RCRA 8 metals, PCBs, and ignitibility. The results indicated that the product was a medium weight petroleum hydrocarbon as diesel fuel and the contents are acceptable for non-hazardous reclamation. We note that No. 2 fuel oil and diesel have similar characteristics, and an Assessors record reviewed during the previous ESA indicated a 5,000-gallon fuel oil tank was present at the Site in at least 1957.
- SVOCs were detected above their respective RRSCOs, Commercial SCOs (CSCOs), and respective Industrial SCOs (ISCOs) at six (6) sample locations: SB-7 (0.3 to 2 ft), SB-11 (0 to 3.5 ft), TP-1 (1 to 2 ft), TP-2 (2.5 to 4 ft), TP-4 (0.5 to 2 ft) and TP-5 (3 to 3.5 ft). The sample from SB-7 was representative of the fill material present beneath the western portion of the building. The samples from SB-11 and TP-4 were representative of the fill material present in the exterior courtyard. The sample from TP-5 was from the south end of the UST and samples from TP-1 and TP-2 were from the fill material present beneath the gravel parking lot in the western portion of the Site.
- Metals (arsenic, cadmium, chromium, lead and mercury) were detected above their respective RRSCOs, CSCOs and/or ISCOs at TP-4 (0.5 to 2 ft).
- PCBs were detected above their respective CSCO at SB-11 (0 to 3.5 ft) and their respective ISCO at TP-4 (0.5 to 2 ft) and TP-5 (3 to 3.5 ft)

In addition to the contamination identified above, the 5,000-gallon UST, its contents and petroleum contamination around the UST will need to be removed and properly disposed to address NYSDEC Spill Number 2007182.

A complete copy of the Phase II report is provided as a separate PDF file on the enclosed CD.

SECTION IV – PROPERTY INFORMATION

Parcel Description

The 293 Grote Street Site, subject to this BCP application, is in a highly developed commercial and residential use area in the City of Buffalo (see Figures 1 and 2). The BCP

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

Site consists of a ± 0.746 -acre parcel located at 293 Grote Street, Buffalo, Erie County, New York (SBL # 89.21-1-1, see Figure 3).

The Erie County tax parcel detail report for the 293 Grote Street parcel is provided for reference in Exhibit A3.

Easements and Permits

MCG Real Estate Holdings, LLC is not aware of any formal enforcement action, civil judicial or administrative enforcement cases in connection with the subject property. In addition, based on information gathered to date, there are no institutional controls recorded for the Site. Utilities are located in the right-of-way along Grote Street. The Site is supplied with municipal sanitary sewer, electric, natural-gas, and public potable water. MCG Real Estate Holdings, LLC is not aware of any other easements or restrictions on the Site.

Location

The Site is located on Grote Street, east of Elmwood Avenue and north of Amherst Street, in a highly developed mixed-use residential, commercial, and former industrial area of the City of Buffalo, Erie County, New York. The Site is bordered by Grote Street to the north, residential houses on Marion Street to the south, a 1-story commercial building and associated parking lot occupied Elwood Fire Protection to the west, and a commercial property with multiple 1-story structures occupied by Hadala Construction and Progressive Roofing to the east (see Figure 2 and 4). Adjacent property owners are identified on Figure 11.

Site Features

The Site is currently vacant and consists of a 2-story, approximately $\pm 17,500$ square foot brick building with exterior courtyard and an approximate 0.3-acre gravel parking lot to the west. An out-of-service 5,000-gallon UST is present in the courtyard area and will be properly removed as part of the BCP project.

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

Zoning and Land Use

The redevelopment plan for the Site is residential and consistent with the City of Buffalo zoning assigned to the Site (see Figure 12). The current zoning for the Site and the adjacent properties to the north, east and west are N-1S: Secondary Center defined as mixed-use mid-rise development clusters defined by large-footprint structures. The properties immediately south are zoned residential and consist of 2-family residences.

The Site is currently vacant. The surrounding parcels are currently used as follows:

- north – commercial;
- south – 2-family residential;
- east – commercial; and,
- west – vacant warehouse and commercial.

Planned redevelopment of the Site is residential, which is consistent with the City of Buffalo Land Use for the area.

Past Use of the Site

The past uses of the Site have included residential, auto repair, a meter manufacturer, and machine shop. The most recent occupant was Buerk Tool & Machine which went out of business in 2019. Sanborn Maps from years 1986, 1981, 1950, and 1916 for the Site and surrounding area are included as Exhibit A4.

A 5,000-gallon UST, reportedly installed around 1957 for fuel oil storage, is present in the courtyard area of the Site (see Figure 9). Evidence of a petroleum release was identified during Phase II activities and Spill Number 2007182 was assigned to the Site. Additionally, PCBs and metals contamination were identified in the courtyard and likely associated with historic machine shop usage. Fill materials were identified in the gravel parking lot west of the Site in the vicinity of former residential dwellings in that area. Impacted fill materials containing SVOCs and metals are present and may be associated with fill material import

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

after the buildings were demolished. The Site is impacted by past usage as evidenced by SVOCs, metals, and PCBs exceeding the Part 375 USCOs, RRSCOs, CSCOs and/or ISCOs.

The previous investigation reports are provided electronically on the enclosed CD.

Site Geology and Hydrogeology

The Site is located within the Lake Erie-Niagara River major drainage basin, which is typified by little topographic relief that gently slopes westward towards Lake Erie and the Niagara River, except in the immediate vicinity of major drainage ways. According to the United States Department of Agriculture (USDA) Web soil survey, Site soils are characterized as Urban Land (Ud). Soils associated with the Urban Land are characterized as miscellaneous areas in which 80% or more of the soil surface is covered by asphalt, concrete, buildings, or other impervious structures. These areas generally range from 3 to 500 acres or more and are mostly nearly level to sloping (see Figure 13).

The previous investigation identified the Site geology as fill material in the upper 1 to 4 fbs, consisting of black fines intermingled with gray clay and man-made constituents (brick, cinders, ash, metal cuttings, etc.). The fill material thickness was observed to be about 1 to 2 feet beneath the building (SB-1 through SB-9, and SB-13), about 2 feet (TP-4) to 4 fbs in the courtyard area near the UST (SB-10 through SB-12). It varied from about 1 foot to 6 feet in the parking lot area west of the building (SB-14, SB-15, TP-1, TP-2, and TP-3). Native clay soils were encountered below the fill material.

The Site is situated over the Camillus Shale of the Upper Silurian Middle Devonian Series. The Onondaga Formation is comprised of a limestone of varying texture, from coarse to very finely crystalline, with a dark gray to tan color and chert and fossils within. The unit has an approximate thickness of 110 to 160 feet. Structurally, the bedrock formations strike in an east-west direction and exhibit a regional dip that approximates 40 feet per mile (0.4 degrees) toward the south and southwest. The depth to bedrock in the vicinity of the Site is greater than 40 fbs.

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

Regional groundwater is anticipated to flow westerly towards the Niagara River which flows north. However, local groundwater flow may be influenced by subsurface features, such as excavations, utilities, and localized fill-conditions. Saturated subsurface soils (i.e., evidence of groundwater) were not encountered during the Phase II activities. One boring, SB-2, was advanced to a depth of 20 fbs and temporary 1-inch diameter PVC well was installed and allowed to sit for approximately 6 hours. No water was observed in the temporary PVC well.

Additional work is required to investigate groundwater flow direction and quality at the Site. Monitoring wells are planned to be installed to assess and characterize groundwater flow patterns and quality during the Remedial Investigation.

Environmental Assessment Narrative

The past uses of the Site have included residential, auto repair, a meter manufacturer, and machine shop. The most recent use was Buerk Tool & Machine which went out of business in 2019. Additionally, a 5,000-gallon UST, reportedly installed around 1957 for fuel oil storage, is present in the courtyard area of the Site. Evidence of a petroleum release was identified during Phase II activities and Spill Number 2007182 was assigned to the Site.

Phase II analytical data (discussed below and in Section III of Appendix A) indicate the Site has PAH, PCB, and metal contaminants present above their respective RRSCOs, CSCOs, and/or ISCOs in the soil/fill at the Site. The PCB contamination is likely associated with historic machine shop usage. The interior PCB assessment data also indicates PCBs present in concrete and wood floor samples collected within the building exceeding the EPA high occupancy threshold of 1 mg/kg. PAH contamination may be associated with urban fill material identified in the parking lot area west of the building. Metal contaminants may be associated with the former machine shop usage and the presence of urban fill. Figure 9 summarizes the environmental impacts identified in the previous investigation.

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

Semi Volatile Organic Compounds (SVOCs)

Laboratory analytical results detected SVOCs at or above their respective Part 375 RRSCOs (i.e., the applicable SCOs for the intended Site reuse) at six (6) investigation locations, SB-7 (0.3-2.0 ft), SB-11 (0.0-3.5 ft), TP-1 (1-2 ft), TP-2 (2.5-4 ft), TP-4 (0.5-2 ft), and TP-5 (3-3.5 ft). A summary of contaminants and their respective exceedances are listed below:

- Benzo(a)anthracene exceeded its RRSCO (1 mg/kg) at four (4) locations, SB-7 (1.4 mg/kg), SB-11 (1.5 mg/kg), TP-1 (2 mg/kg), and TP-4 (1.9 mg/kg) and its CSCO (5.6 mg/kg) at two (2) locations, TP-2 (5.9 mg/kg) and TP-5 (6.3 mg/kg).
- Benzo(a)pyrene exceeded its ISCO (1.1 mg/kg) at six (6) locations, SB-7 (1.4 mg/kg), SB-11 (1.6 mg/kg), TP-1 (2.4 mg/kg), TP-2 (5.6 mg/kg), TP-4 (2.2 mg/kg), and TP-5 (6.6 mg/kg).
- Benzo(b)fluoranthene exceeded its RRSCO (1 mg/kg) at four (4) locations, SB-7 (1.9 mg/kg), SB-11 (1.9 mg/kg), TP-1 (2.7 mg/kg), TP-4 (2.6 mg/kg) and its CSCO (5.6 mg/kg) at two (2) locations, TP-2 (8.7 mg/kg) and TP-5 (8 mg/kg).
- Chrysene exceeded its RRSCO (3.9 mg/kg) at two (2) locations, TP-2 (4.9 mg/kg) and TP-5 (5.4 mg/kg).
- Dibenzo(a,h)anthracene exceeded its CSCO (0.56 mg/kg) at two (2) locations, TP-2 (0.92 mg/kg) and TP-5 (0.76 mg/kg).
- Indeno(1,2,3-cd)pyrene exceeded its RRSCO (0.5 mg/kg) at six (6) locations, SB-7 (0.9 mg/kg), SB-11 (1.1 mg/kg), TP-1 (1.4 mg/kg), TP-2 (3.5 mg/kg), TP-4 (1.5 mg/kg), and TP-5 (3.5 mg/kg).

Polychlorinated Biphenyls (PCBs)

Laboratory analytical results detected total PCBs at or above their respective Part 375 RRSCOs at three (3) investigation locations, SB-11 (0-3.5 ft), TP-4 (0.5-2 ft), and TP-5 (3-3.5 ft). A summary of exceedances is listed below:

- Total PCBs exceeded its CSCO (1 mg/kg) at one (1) location, SB-11 (11.8 mg/kg) and its ISCO (25 mg/kg) at two (2) locations, TP-4 (38.1 mg/kg) and TP-5 (26.8 mg/kg).

APPENDIX A
BCP Application – Part A
Section I – Section IV
293 Grote Street Site

Laboratory analytical results also detected PCBs in concrete and wood floor samples in the building above the USEPA high occupancy threshold of 1 mg/kg. A summary of exceedances is listed below:

- Total PCBs exceeded 1 mg/kg at one (1) concrete floor sample located on the first floor, CON-4 (1.87 mg/kg).
- Total PCBs exceeded 1 mg/kg at three (3) wood floor samples located on the second floor, WOOD-5 (1.15 mg/kg), WOOD-6 (6.58 mg/kg), and WOOD-7 (5.14 mg/kg).

Metal Analytes

Laboratory analytical results detected metal analytes at or above their respective Part 375 RRSCOs at one (1) location, TP-4 (0.5-2 ft). A summary of contaminants and their respective exceedances are listed below:

- Arsenic exceeded its ISCO (16 mg/kg) at one (1) location, TP-4 (40.3 mg/kg).
- Cadmium exceeded its CSCO (9.3 mg/kg) at one (1) location, TP-4 (11.5 mg/kg).
- Chromium exceeded its ISCO (6800 mg/kg) at one (1) location, TP-4 (18600 mg/kg).
- Lead exceeded its RRSCO (400 mg/kg) at one (1) location, TP-4 (473 mg/kg).
- Mercury exceeded its RRSCO (0.81 mg/kg) at one (1) location, TP-4 (1.28 mg/kg).

Acetone, xylenes, PAHs, PCBs, chromium, lead, mercury, and silver were also detected above their respective USCOs in soil/fill samples collected during the Phase II.

The Phase II report and Interior Assessment of Floors and Walls for PCBs report are provided electronically on the enclosed CD.

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through December 11, 2020.

Selected Entity Name: MCG REAL ESTATE HOLDINGS, LLC

Selected Entity Status Information

Current Entity Name: MCG REAL ESTATE HOLDINGS, LLC

DOS ID #: 3705913

Initial DOS Filing Date: AUGUST 07, 2008

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)

MCG REAL ESTATE HOLDINGS, LLC

C/O JAMES MCGUIRE

455 CAYUGA ROAD, STE 200

BUFFALO, NEW YORK, 14225

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
AUG 07, 2008	Actual	MCG REAL ESTATE HOLDINGS, 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.

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

[Services/Programs](#) | [Privacy Policy](#) | [Accessibility Policy](#) | [Disclaimer](#) | [Return to DOS](#)
[Homepage](#) | [Contact Us](#)

AFFIDAVIT AS TO GENERAL MANAGER'S AUTHORITY
TO EXECUTE DOCUMENTS ON BEHALF OF
MCG REAL ESTATE HOLDINGS, LLC

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

F. James McGuire, being duly sworn, deposes and says:

THAT, MCG Real Estate Holdings, LLC (the "Company") is a New York limited liability company in good standing with the New York State Department of State.

THAT, the Company was duly formed pursuant to New York State law on August 7, 2008.

THAT, a true and accurate copy of the Company's Articles of Organization are attached hereto as Exhibit A.

THAT, a true and accurate copy of the Company's Operating Agreement is attached hereto as Exhibit B.

THAT, pursuant to Article 7.1 of the Company's Operating Agreement, I am the General Manager of the Company.

THAT, pursuant to Article 7.1 of the Company's Operating Agreement, as General Manager, I have "the full power to execute, for and on behalf of the Company, any and all documents and instruments which may be necessary to carry on the business of the Company . . ." as if such documents were executed by the Company itself.

THAT, the Company is the title owner of certain real property located at 293 Grote Street, Buffalo, New York (the "Property").

THAT, I make this affidavit for the purpose of confirming to the New York State Department of Environmental Compliance ("NYSDEC") that I am the proper and appropriate individual to execute documents necessary for the NYSDEC's review and consideration of the Company's application for admission to the Brownfield Cleanup Program with regard to the Property.


F. James McGuire

Sworn to before me this
16th Day of January, 2021


Notary Public

KELLY MOELLER
Notary Public, State of New York
01MO6216383
Qualified in Erie County
Commission Expires Jan. 11 2022

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

=====

ENTITY NAME: MCG REAL ESTATE HOLDINGS, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ERIE

=====

FILED: 08/07/2008 DURATION: ***** CASH#: 080807000299 FILM #: 080807000269

FILER:

EXIST DATE

HARRIS BEACH PLLC
99 GARNSEY ROAD-----
08/07/2008

PITTSFORD, NY 14534

ADDRESS FOR PROCESS:

RICHARD P KRIEGER ESQ
HARRIS BEACH PLLC
BUFFALO, NY 14210

726 EXCHANGE STREET STE 1000

REGISTERED AGENT:



=====

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL SERVICE CODE: AL *

=====

FEES 235.00

FILING 200.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 25.00

=====

PAYMENTS 235.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 235.00
OPAL 0.00
REFUND 0.00

=====

22820

=====

DOS-1025 (04/2007)

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and the official seal of the
Department of State, at the City of Albany, on
August 11, 2008.

A handwritten signature in cursive script that reads "Paul LaPointe".

Paul LaPointe
Special Deputy Secretary of State

080807000 269

ARTICLES OF ORGANIZATION

OF

MCG REAL ESTATE HOLDINGS, LLC

Under Section 203 of the Limited Liability Company Law

The undersigned, for the purpose of forming a limited liability company pursuant to Section 203 of the New York Limited Liability Company Law, hereby certifies:

1. The name of the limited liability company is MCG Real Estate Holdings, LLC.
2. The office of the limited liability company shall be located in the County of Erie, State of New York.
3. The Secretary of State of the State of New York is hereby designated as the agent of the limited liability company upon whom process in any action or proceeding against it may be served and the address to which the Secretary of State shall mail a copy of process in any action or proceeding against the company which may be served upon him is Richard P. Krieger, Esq., Harris Beach PLLC, 726 Exchange Street, Suite 1000, Buffalo, New York 14210.
4. The limited liability company shall be managed by one or more managers.

IN WITNESS WHEREOF, I have signed these Articles of Organization this 6th day of August, 2008.

/s/ Carla J. Penazek

Carla J. Penazek
Organizer

080807000269

080807000 269

ARTICLES OF ORGANIZATION

OF

MCG REAL ESTATE HOLDINGS, LLC

Under Section 203 of the Limited Liability Company Law

FILED

2008 AUG -7 AM 10:07

LCS
DRAWDOWN - #AL

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED AUG 07 2008

TAXS _____
BY: SRL

2008 AUG -7 AM 9:07

RECEIVED

HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, New York 14534

Customer Ref. # 22820

299

OPERATING AGREEMENT
for
MCG REAL ESTATE HOLDINGS, LLC

THIS OPERATING AGREEMENT (this "Agreement") is made effective as of the 7th day of August, 2008, by and among the individuals and entities described on Schedule A.

ARTICLE I - FORMATION, NAME AND PLACE OF BUSINESS

1.1 Formation. The Members, by this Agreement and the Company's Articles of Organization (the "Articles") to be filed with the New York Secretary of State pursuant to Section 203 of the New York Limited Liability Company Law (the "Law"), hereby form a limited liability company.

1.2 Name. The Company shall operate under the name of **MCG REAL ESTATE HOLDINGS, LLC**.

1.3 Place of Business. The principal place of business of the Company shall be 560 Delaware Avenue, Suite 400, Buffalo, New York 14202. The principal place of business may be changed, and other offices may be established, by actions taken in accordance with the provisions of this Agreement that govern management of the Company's business.

ARTICLE II - PURPOSES

The purpose and business of the Company shall be to own, sell, lease, manage, develop and operate real property. The Company shall also own and hold membership and other interests in companies, partnership, limited liability companies, organizations and entities engaged in lawful business operations, except to the extent not allowed by the Law or the provisions of this Agreement.

ARTICLE III - TERM

The Company shall commence as of the date the Articles are filed with the New York Secretary of State and shall continue unless sooner terminated as hereinafter provided.

ARTICLE IV - MEMBER INTERESTS AND CAPITAL CONTRIBUTIONS

4.1 Pro Rata Shares.

(a) As of the formation of the Company, each Member holds the number of units (the "Units") set forth beside the Member's name on Schedule A. Schedule A also sets forth the total number of units of the Company.

(b) Each Member's pro rata share (individually referred to in this Agreement as the "Pro Rata Share" and collectively referred to in this Agreement as the "Pro Rata Shares") shall be a fraction the numerator which is the number of Units held by the Member and the denominator of which is the total number of Units outstanding.

(c) The term "Majority of the Units" shall mean the affirmative vote or written consent of Member(s) whose Pro Rata Share(s) exceed fifty percent (50%).

4.2 Capital Contributions.

(a) Upon execution of this Agreement, each Member has made an initial capital contribution to the Company as reflected on the Company books and records.

(b) If, at any time or times, the General Manager (as defined in Section 7.1) determines that the Company's capital should be increased, the additional capital shall be contributed by the Members in the proportion to their Pro Rata Shares (as defined in Section 4.2). The General Manager shall issue a written call for the additional capital to all Members stating therein the total additional equity capital required by the Company to perform its purposes, the total number of additional Units to be issued therefore, and the price of each Unit. Each Member shall have a period of thirty (30) days following the issuance of the written call within which to subscribe and pay for, at such price, its Pro Rata Share of the additional Units. In the event that any Member shall fail, in whole or in part, to subscribe and pay for the additional Units within the thirty (30) day period, the General Manager shall offer the unsubscribed (or not paid for) additional Units to the remaining Members who shall have a further option within an additional fifteen (15) days (following expiration of the original thirty day period) to purchase the unpurchased portion of Units proportionately or as these Members shall otherwise so agree in writing. Notice of the event or events giving rise to the options shall be given by email communication and/or facsimile transmission and by registered mail by the General Manager and the notice of the exercise of any option shall likewise be given in the same manner. After the foregoing procedure shall have been followed, the General Manager may, at any time within nine (9) months after the issuance of the call, offer the additional Units to any other Person.

(c) No Member shall receive, or be entitled to, interest on his or her contributions to capital. No Member shall have the right to withdraw all or any part of its capital contribution or receive payment of the value of its Member's interest prior to the dissolution and liquidation of the Company pursuant to provisions of this Agreement, except as expressly provided herein. The Members agree that the Company property is not and will not be suitable for partition. Accordingly, each Member hereby irrevocably waives any and all rights (if any) that it may have to maintain any action for partition of the Company property or any of it.

ARTICLE V - CAPITAL ACCOUNTS AND DISTRIBUTIONS

5.1 Capital Accounts. A separate capital account shall be maintained for each Member. Each Member's capital shall be increased by his or her capital contributions and Pro Rata Share of Company net profits and decreased by his or her distributions and Pro Rata Share of Company net losses. No additional shares of profits or losses shall inure to any Member because of fluctuations in the Member's capital account.

5.2 Distributions. The Company shall make distributions to Members in such amounts and at such times as the General Manager shall so determine to be in the best interests of the Company and the Members. Distributions shall be paid to each Member based on the Member's Pro Rata Share as of the date the distribution is made.

ARTICLE VI - PROFITS AND LOSSES

6.1 Determination of Profits or Losses. The net profits or net losses of the Company shall be determined: (a) at the close of each calendar year; (b) upon the dissolution of the Company;

and (c) upon the winding up of the Company's business. The net profits or net losses of the Company shall be computed in accordance with the accounting method followed by the Company for federal income tax purposes, applied in a consistent manner.

6.2 Allocation of Profits or Losses. Except as provided in Sections 6.3 and 6.4, the net profits or net losses of the Company shall be credited or charged to the Members in accordance with their Pro Rata Shares.

6.3 Built-in Gains and Losses. In accordance with Section 704(c) of the Internal Revenue Code of 1986 ("Code") and Treasury Regulations promulgated thereunder, income, gain, loss and deduction with respect to property contributed to the capital of the Partnership shall, solely for income tax purposes, be allocated among the Members so as to take account of variations between the adjusted basis of the property contributed and the property's fair value. The allocations shall be made using such reasonable methods as the General Manager determines.

6.4 Changes in Percentage Interests. In the event of the transfer of any Unit in any calendar year, the net profit and net losses for the calendar year in which the transfer occurs shall be allocated among the Members to reflect their varying interest during the calendar year. For purposes of computing the varying interests of each Member, the Company shall make an interim closing of its books as of the effective date of the transfer of the Unit and compute the items of net profits and net losses applicable to the period before and after the transfer using the accrual method of accounting. Transfers shall be effective as of the last day of a month nearest the actual transfer, which should be either the last day of the previous calendar month or the current calendar month.

6.5 Item Allocations. Except as provided in Sections 6.3 and 6.4, for federal and state income taxes purposes each item of income, gain, loss or deduction shall be allocated to each Member in accordance with the Member's Pro Rata Share.

ARTICLE VII - MANAGEMENT

7.1 The General Manager. The business and affairs of the Company shall be managed under the direction and control of a general manager (the "General Manager"). Upon the commencement of the Company, the General Manager shall be F. James McGuire. Upon the General Manager's death, incapacity, mental disability, bankruptcy, retirement, resignation or expulsion, the Members holding a Majority of the Units shall elect a new General Manager. The General Manager may be removed only for cause, and such removal shall be by the affirmative vote of Members holding a Majority of the Units, excluding the Units held by the General Manager to be removed. A vacancy created by the death, incapacity, resignation or removal of any General Manager may be filled only by the vote of the remaining Members holding a Majority of the Units. The General Manager may, but need not, be a Member. The General Manager shall have the full power to execute, for and on behalf of the Company, any and all documents and instruments which may be necessary to carry on the business of the Company, including, without limitation, any and all contracts, leases, agreements, deeds, instruments of conveyance or assignment, notes, mortgages, easements, rights-of-way, and security agreements. The General Manager is not obligated to devote all of his/her time or business efforts to the affairs of the Company. The General Manager shall devote whatever time, effort and skill as he/she deems appropriate for the operation of the Company. The General Manager of the Company, either individually or with others, shall have the right to participate in other business ventures of every kind. No person dealing with the General Manager need inquire into the validity or propriety of any document or instrument executed in the name of the

Company by the General Manger, or as to the authority of the General Manager in executing the same.

7.2 The Management Committee and Officers.

The General Manager may appoint a Management Committee to provide guidance and direction as to the operation and business of the Company. The members of the Management Committee may, but need not, be Members and may be removed by the General Manager or by a vote of the Members holding a Majority of the Units with or without cause. The initial members of the Management Committee (subject to removal or replacement as provided for herein) shall be F. James McGuire and James Dentinger.

The General Manager or Management Committee may appoint such officers (ex: CEO, President, Vice President, Secretary and Treasurer) of the Company as it determines to be necessary or appropriate. Every officer must be at least 18 years of age. An officer may be, but need not be, a Member or General Manager of the Company, and any number of offices may be held by the same person. Officers shall have such powers and shall perform such duties as may be prescribed from time to time by the General Manager or the Management Committee. The officers shall hold office at the pleasure of the General Manager or the Management Committee and may be removed, with or without cause, at any time by the same. The Members may also remove any Officer by a vote of the Members holding a Majority of the Units. No officer shall have any personal liability to the Company or its Members for damages for the breach of duty in such capacity, except to the extent that a judgment or other final adjudication adverse to the officer establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

7.3 Meetings of Management Committee. Meetings of the Management Committee shall be held at the principal place of business of the Company or at any other place that a majority of the members of the Management Committee determine. In the alternative, meetings may be held by conference telephone, provided that each member of the Management Committee can hear the others. The presence of at least two of the members of the Management Committee shall constitute a quorum for the transaction of business. Meetings shall be held in accordance with a schedule established by the Management Committee. The Management Committee also may make decisions, without holding a meeting, by written consent of all members of the Management Committee. Minutes of each meeting and a record of each decision shall be kept by the General Manager and shall be given to the Members promptly upon request. Decisions of the Management Committee shall require the approval of at least a simple majority of its members.

7.4 Compensation. Except as otherwise agreed by the Members, the General Manager and the members of the Management Committee shall serve without compensation from the Company.

7.5 Superseding Provisions. This Article VII supersedes any authority granted to the Members pursuant to Section 412 of the Law. Without limiting the foregoing, the Members shall have no power to participate in the management of the Company except as expressly authorized in this Agreement. No Member, acting solely in the capacity of a Member, is an agent of the Company, nor does any Member, unless expressly and duly authorized in writing to do so by the Management Committee or as expressly authorized by this Agreement, has any power or authority to bind or act

on behalf of the Company in any way, to pledge its credit, to execute any instrument on its behalf or to render it liable for any purpose. Any Member who takes any action or binds the Company in violation of this Article VII shall be solely responsible for any loss and expense incurred as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

7.6 Outside Activities of Members. Each Member may engage in other enterprises, including enterprises in competition with the Company. Members need not offer competing or other business opportunities to the Company and may take advantage of opportunities for their own accounts or for the accounts of others. Neither the Company nor any Member shall have any right to any income or profit derived by another Member from any enterprise or opportunity permitted under this Section 7.6.

7.7 Bank Accounts. A Company bank account shall be established at Manufacturers and Traders Trust Company or at such other bank or banks as the General Manager shall determine. Checks, drafts or withdrawal slips drawn on Company accounts may be executed by the General Manager or any person authorized by the General Manager.

7.8 Reimbursement by Company. The General Manager and members of the Management Committee, employees and other representatives of the Company shall be reimbursed for reasonable out-of-pocket expenses incurred on behalf of the Company or in connection with the business and affairs of the Company. In addition, the Company will indemnify the General Manager and members of the Management Committee, employees and other representatives of the Company in respect of payments made and liabilities reasonably incurred in the ordinary and proper conduct of the Company's business, or for the preservation of the business or property of the Company.

7.9 Liability and Indemnity.

(a) Neither the General Manager nor the members of the Management Committee shall be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by the Management Committee or the General Manager within the scope of the authority conferred on the Management Committee and the General Manager by this Agreement, except for fraud, bad faith, gross negligence or an intentional breach of this Agreement.

(b) The Company shall indemnify the General Manager and the members of the Management Committee for any act performed by the Management Committee or the General Manager within the scope of the authority conferred on the Management Committee and the General Manager by this Agreement, except for fraud, bad faith, gross negligence or an intentional breach of this Agreement.

7.10 Tax Matters. The General Manager shall be the Company's "tax matters partner," as that term is defined in the Code. If there is no General Manager serving, then a member of the Management Committee shall be designated to act as interim tax matters partner until the appointment of a General Manager.

7.11 Tax Status. The Members intend and agree that the Company will be classified as a partnership for federal, state and local tax purposes. The Members further agree to file any and all elections required to ensure that the Company is classified as a partnership for federal, state and local tax purposes. The tax classification or fiscal year of the Company may not be changed except by the

vote of the holders of a Majority of the Units.

ARTICLE VIII - BOOKS, RECORDS AND FINANCIAL REPORTS

The books and records of the Company shall at all times be maintained at the principal office of the Company. Each Member, or its duly authorized agent, shall have full, complete and unrestricted access to all of the Company's books and records at all times. The Company will file income tax returns on a calendar year basis. At the close of each calendar year, an accounting shall be made of the operations for the year, which shall include the preparation of a balance sheet as at the close of the year and a statement of the operations of the Company for the year. Based on the determinations so made, the Company shall, within the time required (including extensions), file all necessary information returns. The Company will not have its financial statements audited but any Member may have an audit of the Company's books and records and financial statements conducted provided that the Member making the request pay all out-of-pocket expenses incurred in connection therewith.

The determination of each Member's share of each item of income, gain, loss, deduction or credit of the Company for any period or fiscal year shall, for purposes of Sections 702 and 704 of the Code, be made in accordance with the allocations set forth in this Agreement. The General Manager and/or the tax matters partner shall have no liability to the Members or the Company if they shall rely upon the opinion of tax counsel or accountants retained by the Company with respect to all matters (including disputes) relating to computations and determinations required to be made under any provision of this Agreement or relating to the determination of the purchase price under Article X of this Agreement.

ARTICLE IX - TRANSFER OF INTEREST

Except as provided in Article X, no Member shall withdraw from the Company or encumber, hypothecate or transfer, by sale, gift, bequest, assignment, operation of law or otherwise, all or any portion of the Member's Units. Any withdrawal, encumbrance, hypothecation or transfer in contravention of this Article IX shall be null and void and of no effect whatsoever.

ARTICLE X- TRANSFERS OF UNITS

10.1 Company's Restriction on Transfer. The Company shall neither cause nor permit the Transfer of all or any portion of any Units by Members to be made unless the Transfer is permitted by this Agreement and has been made in accordance with its terms. For purposes of this Article, the term "Transfer" or "Transfers" shall mean any direct or indirect sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange, grant, conveyance or any other disposition, whether voluntary or involuntary, whether by entering into any agreement as a result of which any other Person shall become interested in the Company or by operation of law or otherwise (including through a change in capital structure of any Member). The term "Person" shall mean any natural person and any general partnership, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

10.2 Member's Restriction on Transfer. No Member may, directly or indirectly, voluntarily or involuntarily, Transfer all or any portion of his/her Units now or hereafter owned by such Member or any of such Member's economic rights as a Member without the prior written consent of the Management Committee (which consent may be given or withheld in the sole discretion of the Management Committee) or except as otherwise permitted by this Agreement and made in accordance

with its terms. Any direct or indirect, voluntary or involuntary, Transfer in violation of this Agreement shall be void and shall not (i) operate to pass legal or beneficial ownership to such Units, or (ii) make the intended recipient a third-party beneficiary of this Agreement.

10.3 Prohibited Transfers. Notwithstanding anything to the contrary contained in this Agreement, no Transfer of any Units shall be consummated if the Transfer would:

(a) violate any provision of any agreement to which the Company is a party or by which the Company or its assets are bound or affected, unless a written and signed consent to the Transfer is obtained from all third parties who are intended to be benefited by the Transfer restriction;

(b) require registration of the Units under any federal or state securities laws; or

(c) jeopardize the treatment of the Company as a partnership for federal income tax purposes, or violate, or cause the Company to violate, any applicable laws, rules, or regulations, including, but not limited to, any provisions of state and federal securities law.

10.4 Permitted Transfers. With notice to the Company, the following Transfers may be made by a Member without complying with the applicable Sections of this Agreement:

(a) the gift, transfer, bequest or other disposition of such Member's Units to such Member's Immediate Family, or to a custodian, trustee or other fiduciary for the account of the Member or such members of such Member's Immediate Family or to a family limited partnership, limited liability company or other entity or Person in connection with a bona fide estate planning transaction;

(b) the gift, transfer, bequest or other disposition of such Member's Units to any other Person with the unanimous written consent of the other Members;

(c) a bona fide pledge of such Member's Units to secure the indebtedness of the Company and the transfer of the pledged Units to the pledgee or its permitted designee upon the default by the Company of such indebtedness; or

(d) a transfer pursuant to a merger or consolidation of the Company with or into another Person; provided such transfer is authorized in accordance with this Agreement.

For purposes of this Section 10.4, the term "Immediate Family" shall mean, with respect to any Member, such Member's children (natural or adopted), stepchildren, and grandchildren and the term "Person" shall mean any natural person.

10.5 Certain Conditions to Transfers; Assignees and Substitute Members.

(a) A transferee of a Unit (sometimes referred to herein as an "Assignee"), shall be admitted to the Company as a substitute Member and be entitled to all rights and privileges of a Member if the Assignee and/or the transferring Member, as the case may be, satisfies the conditions set forth in this Agreement, including subsection (b) below. In the event the conditions of this Agreement are not satisfied, the transferee will not be a Member and will be a mere Assignee who is only entitled to receive, to the extent assigned, the distributions and allocation of income and losses to which the transferring Member would otherwise be entitled.

(b) An Assignee shall be admitted as a Member and have all of the rights of a Member only if:

(i) the transferring Member has complied with the terms, conditions and provisions of this Agreement;

(ii) the Management Committee receives a copy of the instrument affecting the Transfer of the Units to the transferee;

(iii) the transferee, other than pursuant to a Transfer described in this Article, agrees to pay all of the fees and costs incurred by the Company in connection with the Transfer, including any legal fees incurred by the Company;

(iv) evidence, in form satisfactory to the Management Committee, of the Assignee's acceptance of all the terms of this Agreement and assumption of all of the obligations of the transferor Member under this Agreement is delivered to the Management Committee (including a counterpart of this Agreement executed by the Assignee); and

(v) the Management Committee receives such other documents or instruments as may be required, in the reasonable discretion of the Management Committee, to effect the Assignee's admission as a Member.

(c) Upon admission of the Assignee as a Member under this Article, such transferee shall assume all of the obligations of the transferring Member with respect to the Units acquired, and shall have all of the rights and powers of a Member, shall be subject to all of the restrictions applicable to Members, and shall attain the status of Member and shall in all respects be a Member of the Company.

10.6 Repurchase Upon Death of a Member. In the event of a Member's death, the deceased Member's executor, legal guardian, attorney in fact or similar official (each a "*Legal Representative*") shall, within 90 days of the Member's death or his or her appointment, whichever is later, offer to sell all, but not less than all, of the deceased Member's Units, to the Company, or the surviving Members, as the case may be, in accordance with the procedures set out in this Article and the deceased Member's Legal Representative shall be deemed to be an "*Offering Member*". The purchase price for the deceased Member's Units shall be the aggregate Value of such Units determined in accordance with Section 10.10 below; and, in the event the Company and/or the surviving Members do not purchase all of the deceased Member's Units pursuant to this Article, the Company and the surviving Members shall lose their right to purchase the deceased Member's Units hereunder and arising as a result of such occurrence and the deceased Member's Legal Representative shall be subject to this Agreement and shall execute and deliver to the Company a counterpart signature to this Agreement and such other documents or instruments as are required by this Agreement.

10.7 Mandatory Sales.

(a) If any Transfer in violation of this Agreement is made it shall be void and the Company and the other Members shall have the right to purchase, at any time before or after the attempted Transfer, any or all of such delinquent Member's Units in accordance with the procedures set out in Section 10.9 (except as expressly modified by this Section) and such delinquent Member or its Legal Representative or transferee shall be deemed to be an "*Offering Member*". The purchase price for the delinquent Member's Units shall be the price, if any, paid for or proposed to be paid for such Units or the aggregate Value of such Units determined in accordance with Section 10.10, whichever is less.

(b) A Member shall be deemed to have made a Transfer in violation of this Agreement, if: (i) the Member makes an assignment for the benefit of creditors; (ii) the Member files a voluntary petition in bankruptcy; (iii) the Member is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in bankruptcy or insolvency proceedings; (iv) the Member files a petition or

answer seeking reorganization, liquidation, dissolution of the Member or similar relief under any statute, law or regulation; (v) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature; (vi) the Member seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of the Member's properties; (vii) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation is commenced; (viii) a Member is subject to a Transfer of its Units by any divorce, alimony or support proceeding or otherwise by operation of law (other than by death, in which case the provisions of this Article apply); or the Member otherwise Transfers (or attempts to Transfer) its Units in violation of this Agreement.

(c) In the event that a Member resigns from employment with the Company (or any of its related or affiliated companies) or is terminated "for cause" by the Company (or any of its related or affiliated companies), then a mandatory sale and purchase of the resigning or terminating Member's Units shall be required under this Agreement. The sale by the Member and the purchase by the Company shall be governed by the provisions of Section 10.8

10.8 Right of First Refusal for Sales of Membership Interests by Members. Except as permitted under Section 10.4, in the event that any Member (sometimes referred hereinafter as an "Offering Member") wishes to Transfer any or all of such Member's Units ("Offered Units") to any Person, such Offering Member shall first offer to sell the Offered Units to the Company and to each of the other remaining Members ("Non-Selling Members") at the price, upon the terms and conditions and in the manner provided in Sections 10.9 and 10.10.

10.9 Procedure for Right of First Refusal.

(a) *Right of First Refusal.*

(i) The Company shall, pursuant to this Section, have the first right and option to purchase the Offering Member's Units. The Offering Member shall, prior to any proposed Transfer, deliver a written notice (the "Offer") to the Company, stating (i) the Offering Member's bona fide intention to Transfer such Member's Units, (ii) the name of the prospective transferee, the number of Units proposed to be transferred, the purchase price or other consideration for which the Units are proposed to be purchased, and any other terms or conditions applicable to such Transfer, and (iii) a true and complete copy of the prospective transferee offer (the "Transferee Offer").

(ii) The Offer shall be and remain irrevocable for a period (the "Offer Period") ending at 11:59 p.m. local time at the Company's principal office, on the thirtieth (30th) day following the date the Offer shall have been given to the Company. At any time during the Offer Period, the Company may accept the Offer by notifying the Offering Member in writing that the Company intends to purchase all or a portion of the Offering Member's Units proposed to be Transferred and, including in such notice the number of Units the Company intends to purchase and the aggregate purchase price (as determined pursuant to the provisions of this Article – (the "Purchase Price")) to be paid by the Company for such Units. If the Company shall accept the Offer as to all of Offered Units, then the parties shall fix a closing date (the "Company Closing Date") for the purchase, which shall not be more than 60 days after the expiration of the Offer Period.

(iii) If the Company does not exercise its right of first refusal during the Offer Period, or if the Company affirmatively notifies the Offering Member in writing before the end of the Offer Period that it will not exercise its rights under this Section or if the Company exercises

its right of first refusal as to only a portion of the Offered Units, the Offering Member shall then offer to sell the Offering Member's Units identified in the Offer and not accepted for purchase by the Company to the Non-Selling Member(s) at the Purchase Price and upon the same terms and conditions of the Offer (the "*Second Offer*"). The Second Offer shall be accompanied by a copy of the Offer to the Company, together with a notice of the number of Units the Company has elected to purchase (if any), and shall be and remain irrevocable for a period ending at 11:59 p.m. local time 30 days following receipt of the Second Offer (the "*Second Offer Period*"). At any time during the Second Offer Period, the Non-Selling Member(s) may purchase, by notifying the Offering Member in writing of their intention to purchase the Offered Units described in the Second Offer, including in such notice the number of Units such Non-Selling Member intends to purchase and the aggregate Purchase Price to be paid by the Non-Selling Member. If there shall be an over-subscription for the Offered Units among the Non-Selling Member(s) electing to purchase, then the Non-Selling Member(s) may purchase their Non-Selling Member Pro Rata Share of the Offered Units. For purposes of this Section and application of the rights of first refusal hereunder, the *Non-Selling Member Pro Rata Share* of a Non-Selling Member, shall be determined based on a fraction, the numerator of which is the number of Units owned by the Non-Selling Member, and the denominator of which is the aggregate number of Units issued and outstanding and owned by all Non-Selling Member(s) exercising their rights of purchase hereunder. If one or more of the Non-Selling Member(s) shall accept the Second Offer, such that all of the Offered Units identified in the Transferee Offer are subject to acceptance offers by the Non-Selling Members and the Company, then the parties shall fix a closing date (the "*Non-Selling Member(s) Closing Date*") for the purchase, which shall not be more than 60 days after the expiration of the Second Offer Period.

(iv) The closing and payment of the purchase price hereunder shall occur in accordance with Section 10.10.

(v) If the Company and the Non-Selling Members fail to accept all of the Offered Units pursuant to this Section, then the Offering Member shall be free, subject to the provisions of this Section below, for a period (the "*Free Transfer Period*") of 60 days after the earlier of (a) the expiration of the Second Offer Period and (b) the date on which the Company and all of the Non-Selling Member(s) affirmatively notify the Offering Member that they will not exercise their respective rights of purchase under this Section, to Transfer its Units (as specified in both the Offer and Second Offer) to the same transferee specified in the Transferee Offer on terms no more favorable to such transferee as specified in the Transferee Offer. The transferee shall be subject, however, to this Agreement and shall execute and deliver to the Company a counterpart signature to this Agreement and such other documents or instruments as are required by this Article of this Agreement. If the Offering Member shall not Transfer the Offered Units within the Free Transfer Period, the Offering Member's right to Transfer the Offered Units pursuant to this Section shall cease and terminate, and the Offering Member shall again be required to comply with the provisions of Section 10.8 and this Section 10.9 before it may Transfer any Units.

(vi) Any Transfer by the Offering Member after the last day of the Free Transfer Period or without strict compliance with the terms, provisions and conditions of this Section and the other terms, provisions and conditions of this Agreement shall be null and void and of no force or effect.

(vii) *Purchase Price.* The aggregate purchase price payable with respect to the Offered Units proposed to be purchased by the Company and/or the Non-Selling Members pursuant to this Section shall be equal to the lesser of (a) the purchase price or the value of the other consideration proposed to be paid by the prospective transferee and set forth in the

Transferee Offer and (b) the aggregate Value of the Offered Units, determined in accordance with Section 10.10 below.

10.10 Value; Closing

(a) *Value.* The Value of any Member's Unit subject to purchase pursuant to this Article (the "*Value*"), shall be equal to the amount that a Member holding one Unit would receive if each of the assets of the Company were sold for its Fair Market Value on the date of occurrence of the event(s) giving rise to the right to purchase a Member's Units under this Article (the "*Determination Date*"), the Company were to pay all of its outstanding liabilities, and the remaining proceeds were to be distributed to the Members in accordance with the terms of this Agreement. The "*Determination Date*" for purposes of Section 10.6 shall be date of the Member's death, for purposes of Section 10.7 shall be the date of the occurrence of an event described in Subsections thereto or the discovery of the occurrence of such an event, whichever is later, and for purposes of Section 10.9 shall be the date of the Company's receipt of the Offer. For purposes of this Article, the term "Fair Market Value" shall mean the gross value of any asset, as of the date of the event requiring the determination, as determined by the Management Committee, acting in good faith and based upon a commercially reasonable estimate of the amount that would be realized by the Company if the asset(s) of the Company were sold to a non-affiliated purchaser in an arms' length transaction where neither the purchaser nor the seller were under any economic compulsion to enter into the transaction (without regard to any discount in value as a result of the Company's minority interest in any asset or any illiquidity of the Company's interest in any asset).

(b) *Closings; Tenders.* At any closing with respect to a Transfer of a Member's Units provided for in this Agreement (including any Transfers pursuant to Sections 10.6, 10.7 and 10.9 of this Agreement), the transferring or selling Member (or the Member's Legal Representative, as the case may be) shall deliver to the appropriate purchaser(s) the certificates representing the transferring or selling Member's Units (or, in the event the Units are uncertificated, such other documentation evidencing the Member's legal ownership of the Units) to be purchased, duly endorsed for Transfer, in exchange for payment by each purchaser of such purchaser's portion of the aggregate Purchase Price determined as provided in this Agreement. A purchaser may off-set against the Purchase Price any amounts owing to the purchaser by the selling or transferring Member.

(c) *Payment of Purchase Price.* In the event that the Purchase Price to be paid by the Company or the Non-Selling Members due to transaction arising under this Article is equal to or less than One Million Dollars (\$1,000,000), then the Company or the Non-Selling Members, as the case may be, shall pay to the transferring or Selling Member the Purchase Price in full at closing. In the event that the Purchase Price to be paid by the Company or the Non-Selling Members due to transaction arising under this Article is greater than One Million Dollars (\$1,000,000), then the Company or the Non-Selling Members, as the case may be, shall pay the first One Million Dollars (\$1,000,000) of the Purchase Price at closing and shall deliver to the transferring or Selling Member a promissory note for the balance of the Purchase Price. The note shall have a term of five (5) years and shall bear interest at the lowest prime rate reported by the Wall Street Journal (or similar reporting institution) on the date of execution and delivery of the note.

10.11 Assignment of Right to Purchase. Any person or party may not assign any right it may have to purchase Units pursuant to this Agreement.

10.12 Irreparable Harm. The Members acknowledge that a breach of their respective obligations relating to Transfers will cause irreparable harm to the Company and to the other Member(s) that will be difficult to quantify and for which money damages would be inadequate. As a result, the Members agree that in the event of such a breach or threat of such a breach the Company and the other Member(s) may, in addition to any other legal or equitable remedies they may have, enforce their

respective rights by actions for specific performance (to the extent permitted by law), without the necessity of posting a bond, and the Company may refuse to recognize any transferee as one of its Members for any purpose, including, without limitation, for purposes of voting rights and rights to taxable income and losses unless and until all applicable provisions of this Agreement have been complied with.

ARTICLE XI - TERMINATION AND LIQUIDATION

11.1 The Company shall be dissolved upon the first to occur of:

(a) disposal of all or substantially all of the Company's assets except that, if the Company receives a purchase money mortgage or other non-cash consideration in connection with the disposition, the Company shall not dissolve until the non-cash consideration is converted into cash or distributed to the Members;

(b) the dissolution of the Company as approved by an 80% majority of the Members;

(c) the death, incapacity, mental disability, bankruptcy, retirement, resignation, dissolution, or expulsion of any Member unless within ninety (90) days after that event Members holding a Majority of the Units vote or consent in writing to the continuation of the Company;

(d) entry of a decree of judicial dissolution of the Company pursuant to the Law;
and

(e) the expiration of the term of the Company as specified in Article III.

11.2 Liquidation. Upon the termination of the Company, the General Manager shall proceed with reasonable promptness to wind-up the business of the Company. The assets of the Company shall be sold and the proceeds of sale shall be: (a) first, applied to pay or provide for the payment of all liabilities of the Company; (b) second, applied to pay all expenses of termination and liquidation; and (c) finally, distributed to the Members in accordance with their Pro Rata Shares.

11.3 No Member Dissolution Right. No Member shall have any right to have dissolution or winding up of the Company by decree of court or otherwise, and each Member hereby irrevocably waives and releases all such rights it may otherwise have had under applicable Law. Any Member who shall in any way effect a wrongful dissolution of the Company shall be liable to the other Members therefor, and such Member's interest shall be subject to lien or attachment as security for such liability.

ARTICLE XII - MISCELLANEOUS

12.1 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any or all of the Members shall be personally delivered or sent by first class mail, postage prepaid, to the address set forth on Schedule A. Additionally, if any member of the Management Committee or the General Manager is not a Member, the address for notices to any such party shall be given by notice to the Members. All notices, demands or requests shall be effective on personal delivery or if mailed, three days following their deposit in the mail as required by this Section 12.1. Any address for the sending of notice may be changed by a Member sending a notice to that effect to the other Members.

12.2 Merger and Amendment. This Agreement contains the sole and entire agreement and understanding of the Members with respect to the subject matter hereof. All prior discussions, negotiations, commitments, and understandings relating thereto are merged herein. This Agreement can be changed or terminated only by a writing signed by Members holding eighty percent (80%) of the Units. Each Member may grant or withhold its approval of amendments in its discretion and copies of each amendment shall be furnished to each Member.

12.3 Waiver. No consent or waiver, express or implied, by any Member to or of any breach or default in the performance of another Member's obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of any other obligation under this Agreement.

12.4 Severability. If any provisions of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the full extent permitted by law.

12.5 Binding Agreement. Subject to the restrictions on transfers and encumbrances set forth herein, this Agreement shall inure to the benefit of and be binding upon the Members and their respective heirs, executors, legal representatives, successors and assigns. Whenever, in this Agreement, a reference to any Member is made, the reference shall include the heirs, executors, legal representatives, successors and assigns of the Member.

12.6 Definitions and Articles, Sections and Paragraph References. As used in this Agreement, the singular includes the plural and the masculine, feminine and neuter gender each include the other where the context so indicates. References to Articles, Sections and paragraphs shall be references to the Articles, Sections and paragraphs of this Agreement.

12.7 No Rights Created in Third Persons. This Agreement is intended solely for the benefit of the Members and does not create any rights in persons not who are not Members except for the right of the General Manager and the Management Committee members as set forth in Section 7.9.

12.8 Execution. Each Member has signed a signature page to this Agreement. The original of this Agreement and of each signature page shall be retained by the Company and a copy furnished to each Member.

12.9 Governing Law. This Agreement and the obligations of the Members hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of New York.

12.10 Power of Attorney. Each Member constitutes and appoints the General Manager and each member of the Management Committee as the Member's attorney-in-fact to make, execute, sign, acknowledge, and file: (a) the Articles and all amendments thereto; (ii) all documents which the General Manager or the Management Committee deems appropriate to reflect any amendment, change, or modification of this Agreement; (b) any and all other certificates and instruments required to be filed by the Company under the laws of the State of New York or of any other state or jurisdiction including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify a limited liability company under the laws of the State of New

York; (c) one or more fictitious or trade name certificates; and (d) all documents which may be required to dissolve and terminate the Company and to cancel the Articles. The power of attorney is irrevocable and is coupled with an interest and, to the extent permitted by applicable law, shall survive the death or disability of a Member. The power of attorney also shall survive the transfer of all or any part of a Member's Units except that, if the transferee is admitted as Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the General Manager and each member of the Management Committee to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the General Manager and each member of the Management Committee acting in good faith under this power of attorney.

12.11 Separate Counsel. Each party to this Agreement acknowledges and agrees that such party has been provided the opportunity and encouraged to consult with counsel of such party's own choosing with respect to this Agreement and that no party other than the Company has engaged Harris Beach PLLC to represent his or its interests.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement as of the date first above written.

(Individual signature pages for each member to follow hereafter)

Schedule A

MEMBERS

Name and Address of Members	Units/Percentage
F. James McGuire 560 Delaware Avenue, Suite 400 Buffalo, NY 14202	<u>15</u> /15%
Michael McGuire 515 Chandler Court Shoreview, MN 55126	<u>15</u> /15%
Kathleen M. McGuire 6609 Kilmarnoch Catonsville, MD 21228	<u>15</u> /15%
Jeannie Marie McGuire 400 E. 71 st Street Apartment 23U New York, NY 10021	<u>15</u> /15%
Jacquelyn McGuire Gurney 144 Middlesex Road Buffalo, NY 14216	<u>15</u> /15%
Kelly McGuire 560 Delaware Avenue, Suite 400 Buffalo, NY 14202	<u>15</u> /15%
James Dentinger 560 Delaware Avenue, Suite 400 Buffalo, NY 14202	<u>10</u> /10%

Signature Page to Operating Agreement

The undersigned who presently owns 15 Units has executed this counterpart of the Operating Agreement.

as of August 7, 2008
(Date)

F. JAMES McGUIRE
Member's Name

F James McGuire
Member's Signature

560 Delaware Ave

Suite 400

Buffalo, New York 14202
(Member's Address, Telephone Number
and Facsimile Number)

716 - 759- 7239

Signature Page to Operating Agreement

The undersigned who presently owns 15 Units has executed this counterpart of the Operating Agreement.

August 7, 2008
(Date)

MICHAEL McGUIRE
Member's Name


Member's Signature

515 Chandler Court
Shoreview, MN 55126

(Member's Address, Telephone Number
and Facsimile Number)

612-865-6410
651-330-8034 (fax)

Signature Page to Operating Agreement

The undersigned who presently owns 15 Units has executed this counterpart of the Operating Agreement.

10/14/09
(Date) as of August 7, 2008

KATHLEEN M. McGUIRE
Member's Name

Kathleen McGuire
Member's Signature

6609 Kilmarnoch
Centonsville, MD 21228

(Member's Address, Telephone Number
and Facsimile Number)

410 - 744 - 8481
410 - 981 - 5405 (fax)

Signature Page to Operating Agreement

The undersigned who presently owns 15 Units has executed this counterpart of the Operating Agreement.

August 7, 2008
(Date)

JEANNIE MARIE McGUIRE
Member's Name

Jeannie Marie McGuire
Member's Signature

400 E. 71st Street

Apartment 230

New York, NY 10021
(Member's Address, Telephone Number
and Facsimile Number)

212-288-0403

Signature Page to Operating Agreement

The undersigned who presently owns 15 Units has executed this counterpart of the Operating Agreement.

as of August 7, 2008
(Date)

JACQUELYN McGUIRE GURNEY
Member's Name


Member's Signature

144 Middlesex Rd.
Buffalo, NY 14216

(Member's Address, Telephone Number
and Facsimile Number)

716-875-4924

Signature Page to Operating Agreement

The undersigned who presently owns 15 Units has executed this counterpart of the Operating Agreement.

as of August 7, 2008
(Date)

KELLY McGUIRE
Member's Name

F James McGuire
Member's Signature *attorney in fact*

560 Delaware Ave.

Suite 400

Buffalo, NY 14202
(Member's Address, Telephone Number
and Facsimile Number)

716-228-1629

Signature Page to Operating Agreement

The undersigned who presently owns 10 Units has executed this counterpart of the Operating Agreement.

as of August 7, 2008
(Date)

JAMES DENTINGER
Member's Name

[Signature]
Member's Signature

560 Delaware Ave.
Suite 400
Buffalo, NY 14202
(Member's Address, Telephone Number
and Facsimile Number)
716-881-3269

#1374735

MCG REAL ESTATE HOLDINGS, LLC

**CONSENT TO PARTICIPATE IN THE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S
BROWNFIELD CLEANUP PROGRAM**

THE UNDERSIGNED, F. James McGuire, in his capacity as General Manager of MCG Real Estate Holdings, LLC (hereinafter "MCG")

DOES HEREBY CERTIFY:

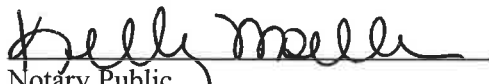
RESOLVED, that F. James McGuire is hereby authorized to execute documentation for MCG's participation in the New York State Department of Conservation's Brownfield Cleanup Program in relation to the property located at 293 Grote Street, Buffalo, New York (Tax parcel ID No. 89.21-1-1), encompassing approximately .75 acres.

IN WITNESS WHEREOF, the undersigned has hereto affixed the hand and seal of MCG Real Estate Holdings, LLC this 6 day of January, 2021.

MCG Real Estate Holdings, LLC

By: 
F. James McGuire

Sworn to before me this
6 day of January, 2021


Notary Public

KELLY MOELLER
Notary Public, State of New York
01MO6216383
Qualified in Erie County
Commission Expires Jan. 11 2022

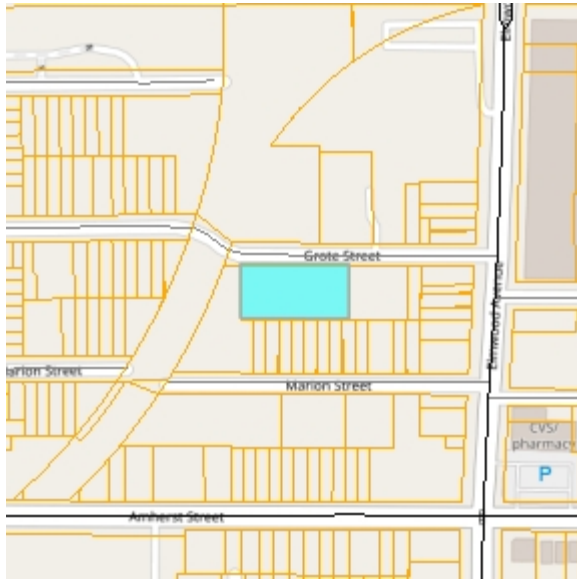
Erie County On-Line Mapping System

Parcel Detail Report

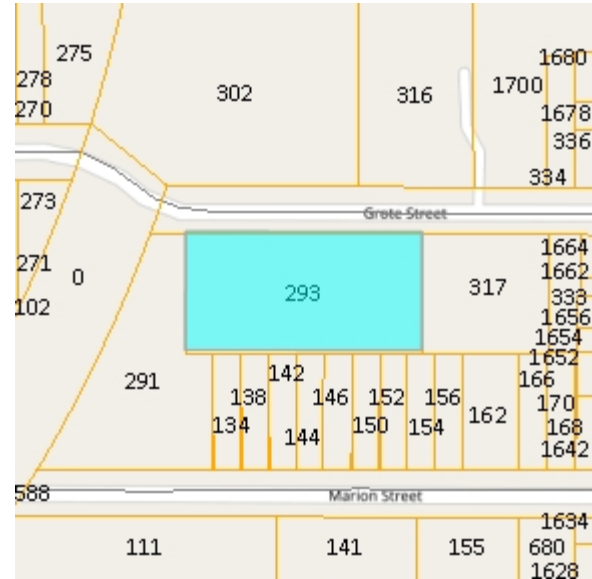
Report generated:

12/14/2020 9:40:59 AM

Exhibit A3



Parcel Overview Map



Parcel Detail Map

PIN: 1402000892100001001000

SBL: 89.21-1-1

Address: 293 GROTE

Owner 1: 315 GROTE STREET LLC

Owner 2:

Mailing Address: 8 SOLDIERS PL

City/Zip: BUFFALO NY 14222

Municipality: City of Buffalo

Property Class: 710

Class Description: C - Manufacture

Front: 255

Depth: 126

Deed Roll: 1

Deed Book: 11087

Deed Page: 8847

Deed Date:

Acreage: 0.74691434

Total Assessment: \$253,900

Land Assessment: \$14,500

County Taxes: \$253,900

Town Taxes: \$0

School Taxes: \$0

Village Taxes: \$0

School District: CITY OF BUFFALO

Year Built: 0

Sqft Living Area: 0

Condition: 0

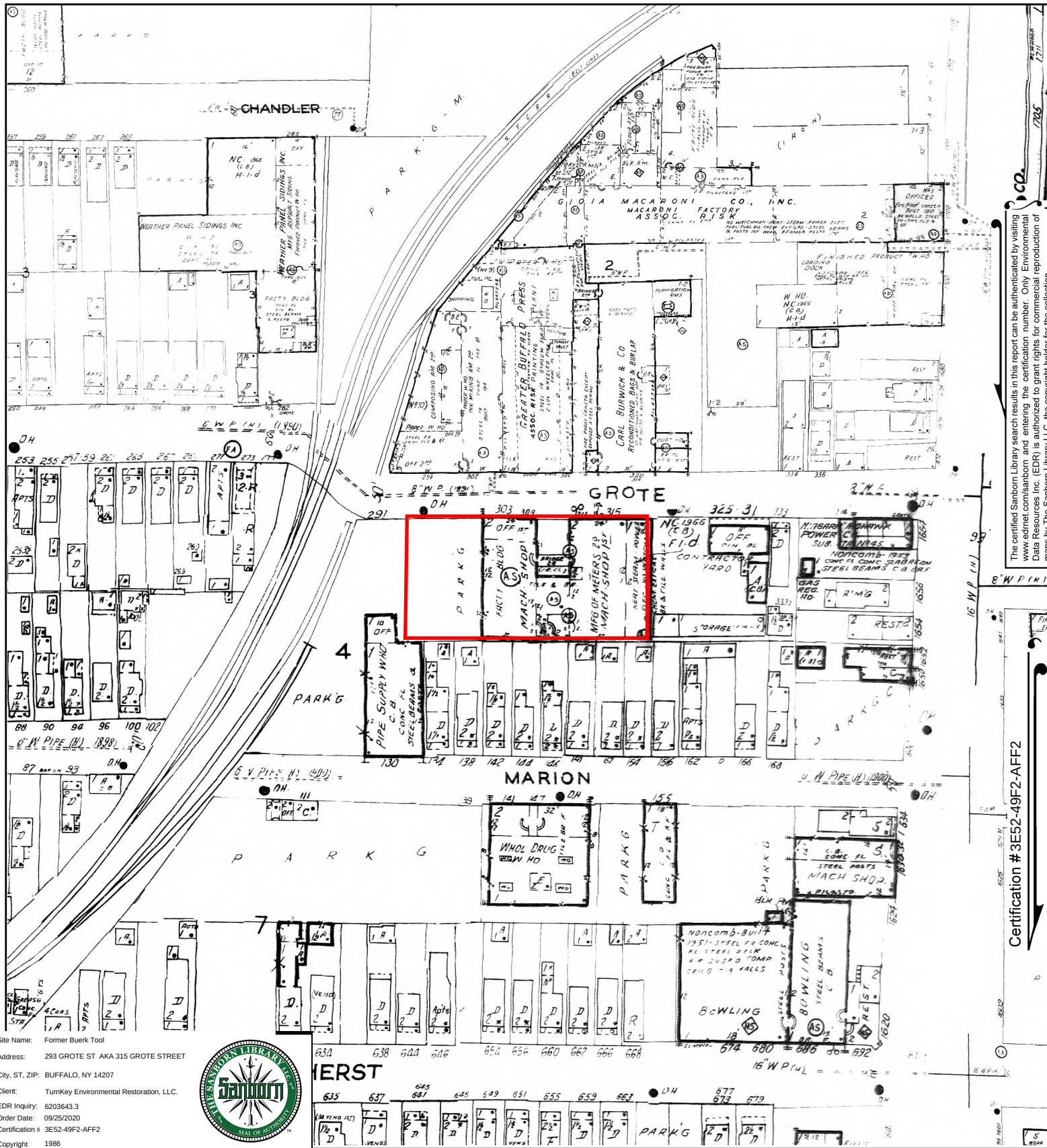
Heating: 0

Basement: 0

Fireplace: 0

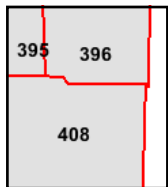
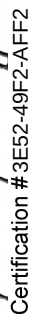
Beds: 0

Baths: 0

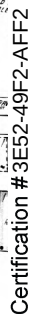


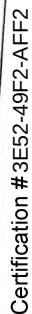
The certified Sanborn Library search results in this report can be authenticated by visiting www.edr.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # 3E52-49F2-AFF2



6203643 - 3 page 6





6203643 - 3 page 8

APPENDIX B

BCP APPLICATION PART B – SECTION V - XI

SECTION VI – CURRENT PROPERTY OWNER/OPERATOR INFORMATION

SECTION VII – REQUESTOR ELIGIBILITY

SECTION IX – CONTACT LIST

SECTION X – LAND USE FACTORS

B1 - DEED TO SHOW OWNERSHIP

B2 - DOCUMENT REPOSITORY CONFIRMATION

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

SECTION VI – CURRENT PROPERTY OWNER/OPERATOR INFORMATION

Reasonable attempts were made to attain complete information regarding current and previous site owners and operators. Information for the previous and current owners/operators is provided in the table below, as available.

Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
293 Grote Street (Previously 293-315 Grote Street)			
Current Owner/Operator			
MCG Real Estate Holdings, LLC 455 Cayuga Road, Suite 200 Buffalo, NY 14225	Vacant	December 2020 to Present	Current Owner Applicant
Previous Owners/Operators			
315 Grote Street LLC 8 Soldiers Place Buffalo, NY 14222	Industrial/ Vacant	December 2004 to December 2020	Previous Owner None – No relationship
Linda B. Matt 315 Grote Street Buffalo, NY 14207	Industrial	December 2004	Previous Owner None – No relationship
Richard K. Buerk/Benjamin C. Buerk/Buerk Tool & Machine Corp. 293/315 Grote Street Buffalo, NY 14207	Industrial	June 1968 to December 2004	Previous Owner None – No relationship
Greater Buffalo Press 293/315 Grote Street Buffalo, NY 14207	Commercial/ Industrial	At least 1970 to at least 1985	Previous Owner/Operator None – No relationship
Visco Meter Corporation 311-315 Grote Street Buffalo, NY 14207	Commercial/ Industrial	At least 1935 to at least 1970	Previous Owner/Operator None – No relationship
Anntonette Sobizak, Henry C. Luczak 293 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1960 to at least 1964	Previous Owner/Operator None – No relationship
Lu Transmission Motor Repair 293 Grote Street Buffalo, NY 14207	Commercial/ Industrial	At least 1960	Previous Owner/Operator None – No relationship
Edmund Koziel 295 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1955	Previous Owner/Operator None – No relationship

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

Chester Koziel, John, Koziel 295 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1950 to at least 1955	Previous Owner/Operator None – No relationship
Buerk Tool Works 315 Grote Street Buffalo, NY 14207	Commercial/ Industrial	At least 1935 to at least 1955	Previous Owner/Operator None – No relationship
Joseph W. Badner 295 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1946 to at least 1950	Previous Owner/Operator None – No relationship
Lawrence Penksa 293 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1935 to at least 1950	Previous Owner/Operator None – No relationship
Robert E. Williams & Sons Co Inc 303-309 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1935 to at least 1950	Previous Owner/Operator None – No relationship
John Nowocien 293 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1935 to at least 1946	Previous Owner/Operator None – No relationship
Mary Kolano 295 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1940	Previous Owner/Operator None – No relationship
Andrew Kawa 293 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1930	Previous Owner/Operator None – No relationship
Michael Boguslawski 295 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1930	Previous Owner/Operator None – No relationship
311 15 Mann Kgllogg & Co Inc 311-315 Grote Street Buffalo, NY 14207	Commercial	At least 1930	Previous Owner/Operator None – No relationship
Thomas Banas, Stanley Zembel, Martin Duda, John Macuda 295 Grote Street Buffalo, NY 14207	Residential/ Commercial	At least 1925	Previous Owner/Operator None – No relationship
Upholstered Construction Corporation 303 Grote Street Buffalo, NY 14207	Commercial	At least 1925	Previous Owner/Operator None – No relationship
Unknown Residential Owner(s) 303-315 Grote Street Buffalo, NY 14207	Residential	Prior to 1925	Previous Owner(s)/Operator(s) None-No relationship

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

SECTION VII – REQUESTOR ELIGIBILITY INFORMATION

The Applicant, MCG Real Estate Holdings, LLC, qualifies as a “Volunteer” in accordance with NY ECL 27-1405(1)(b) and 6NYCRR 375-3.2(b)(2).

SVOC, metal, and PCB impacts are present at the Site. The former use of the Site including a machine shop, factories, manufacturing, and automotive repair impacted the Site. The Applicant has recently purchased the property and has become involved with the property after the disposal or discharge of contaminants and has no relationship with the previous owners/operators at the Site. Therefore, MCG Real Estate Holdings, LLC is entitled to Volunteer status under NY ECL27-1405(1)(b).

The Applicant is the owner of the property as of December 23, 2020 and has the ability to complete the Site investigation and remediation under the BCP. Attached as Exhibit B1 is a copy of the deed to show ownership of 293 Grote Street.

SECTION IX – CONTACT LIST INFORMATION

Site Contact List

The following is the contact list for the subject property. Each contact will be sent fact sheets throughout the project’s duration.

Erie County Contacts:

Honorable Mark Poloncarz
Erie County Executive
95 Franklin Street
Buffalo, NY 14202

Erie County Legislator Lisa Chimera
District 3
1701 Hertel Avenue
Buffalo, NY 14216

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

Commissioner Thomas R. Hersey, Jr.
Erie Co. Environment & Planning
95 Franklin Street
Buffalo, NY 14202

Mr. John Hood
Erie Co. Environment & Plan.
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Mr. Robert M. Graber
Erie County Legislature Clerk
25 Delaware Avenue
Buffalo, NY 14202

Mr. John Cappellino
ECIDA
95 Perry Street
Buffalo, NY 14203

Commissioner Gale Burstein, MD
Erie County Health Department
95 Franklin Street, Room 931
Buffalo, NY 14202

Commissioner Daniel Neaverth, Jr.
Erie County Local Emergency
45 Elm Street
Buffalo, NY 14203

City of Buffalo Contacts:

Byron Brown, Mayor
City of Buffalo
65 Niagara Sq
Buffalo, NY 14219

Joseph Golombek, Jr.
North District Councilmember
65 Niagara Sq, Rm 1502
Buffalo, NY 14202

James K. Morrell, Chairman
City of Buffalo
Planning Board
901 City Hall
Buffalo, NY 14219

Supplier of Potable Water:

Buffalo Water Department
Veolia Water
281 Exchange Street
Buffalo, NY 14204

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

Local News Media:

Buffalo News
ATTN: Ms. Aaron Besecker
1 News Plaza
Buffalo, NY 14240

WIVB - Ch. 4
ATTN: Ms. Lisa Fullone
2077 Elmwood Avenue
Buffalo, NY 14207

WJYE
ATTN: Environmental News Desk
1700 Rand Building
Buffalo, NY 14203

WBEN News Radio 930
Entercom Radio of Buffalo
500 Corporate Pkwy, Suite 200
Buffalo, NY 14226

WGRZ TV - Ch. 2
ATTN: Ms. Maria Sisti
259 Delaware Avenue
Buffalo, NY 14202

WKBW News Channel 7
ATTN: Ms. Melanie Pritchard
7 Broadcast Plaza
Buffalo, NY 14202

Business First
ATTN: Anne Marie Franczyk
465 Main Street
Buffalo, NY 14203-1793

WNED, Environmental News Desk
ATTN: Mr. Michael Desmond
P.O. Box 1263, Horizons Plaza
Buffalo, NY 14240

Nearby Schools:

Danielle Bruno, Principal
Elmwood Village Charter School
665 Hertel Avenue
Buffalo, NY 14207

Marquita Bryant, Principal
PS 64 Frederick Law Olmstead
874 Amherst Street
Buffalo, NY 14216

Kric Klapper, Executive Director
Tapestry Charter School
111 Great Arrow Avenue
Buffalo, NY 14216

Martha Eadie, Principal
Our Lady of Black Rock School
16 Peter Street
Buffalo, NY 14207

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

Marlon Lee, Principal
PS 79 Grabiarz School of Excellence
225 Lawn Avenue
Buffalo, NY 14207

Keith W. Frome, Ed.D, Interim Head of School
Elmwood Franklin School
104 New Amsterdam Avenue
Buffalo, NY 14216

Elaine Nieman, Principal
PS 94 West Hertel Academy
489 Hertel Avenue
Buffalo, NY 14207

Christopher D. Burner, Head of School
Nichols School
2358 Main Street
Buffalo, NY 14214

Nicholas Klaich, Principal
PS 81 School
140 Tacoma Avenue
Buffalo, NY 14216

Other Interested Parties:

WNY Director
Citizens Environmental Coalition
543 Franklin Street
Buffalo, NY 14202-1109

Document Repository:

April Tompkins
Repository Documents
Buffalo & Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203

North Park Branch Director
Buffalo & Erie County Public Library
975 Hertel Avenue
Buffalo, NY 14216

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

Adjacent Property Owners

Information for the residents, owners, and occupants of the properties adjacent to the Site are provided in the table below (see Figure 11).

Adjacent Property Address			Property Owner Mailing Address
No.	Street	Property Use	
291	Grote Street	Other Storage, warehouse, and distribution facilities	291 Grote Street Associates LLC 291 Grote Street Buffalo, NY 14207
302	Grote Street	Manufacturing and processing	Weatherpanel Holdings Inc. 285 Chandler Street Buffalo, NY 14207
316	Grote Street	Downtown row type (detached)	Houk Lofts LLC 391 Washington Street, Suite 800 Buffalo, NY 14203
317	Grote Street	One story small structure – multi-occupant	331 Grote LLC 2 Glen Eagle Court Williamsville, NY 14221
134	Marion Street	Two family year-round residence	Patrick J. McNichol 500 Connecticut Street Buffalo, NY 14213
138	Marion Street	Two family year-round residence	Nilda L. Echevarria 138 Marion Street Buffalo, NY 14207
142	Marion Street	Two family year-round residence	Jessica Lynn Zucarelli 142 Marion Street Buffalo, NY 14207
144	Marion Street	Two family year-round residence	Peter J. Galvin 217 Wallace Avenue Buffalo, NY 14216

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

146	Marion Street	Two family year-round residence	Arcadia M. Stacey and Jason L. Brent 146 Marion Street Buffalo, NY 14207
150	Marion Street	Two family year-round residence	Sondra J. Mansur 150 Marion Street Buffalo, NY 14207
152	Marion Street	Two family year-round residence	Catherine E. Handley 152 Marion Street Buffalo, NY 14207
154	Marion Street	Two family year-round residence	Howard F. & Marie Handley 154 Marion Street Buffalo, NY 14207

Document Repository

The Buffalo and Erie County Library (North Park Branch) has agreed to act as the document repository for the proposed BCP Site. A letter of acknowledgement from the repository is included in Exhibit B2.

SECTION X – LAND USE FACTORS

1 – Current Zoning

The current zoning for the Site is N-1S (Secondary Employment Center – mixed-use employment centers) consistent with the City of Buffalo Unified Development Ordinance (see Figure 12). The planned redevelopment is consistent with the City of Buffalo Green Code and Land Use plans.

2 – Current Use

The Site is currently vacant and covered with one 2-story building, concrete, gravel, fill, and vegetation. The previous investigations have identified SVOCs, metal, and PCB contamination on-Site that will require remediation.

APPENDIX B
BCP Application – Part B
Section V – Section X
293 Grote Street Site

3, 4, 5 and 6 – Planned Future Use

The Volunteer plans to redevelop the ±0.746-acre property Site with residential apartments. The Conceptual Project Plan is shown on Figure 6.

The planned redevelopment (residential) is consistent with the historic and recent development patterns within the City of Buffalo. Historically, the Site and surrounding areas have included residential, commercial, manufacturing and/or industrial uses. The current zoning for the Site is N-1S, which is Secondary Employment Center (mixed-use employment center). Surrounding properties are zoned N-1S, N-2E (mixed-use edge), N-2R (Residential), N-3C (mixed-use center), N-3E (mixed-use edge), N-3R (Residential), D-0G (green space), D-IL (light industrial). The proposed redevelopment supports recent development patterns and current land use requirement.

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

BOX 147

Party 1:

315 GROTE STREET LLC

Party 2:

MCG REAL ESTATE HOLDINGS LLC

Book Type: D Book: 11371 Page: 6264

Page Count: 4

Doc Type: DEED

Rec Date: 12/23/2020

Rec Time: 09:48:36 AM

Control #: 2020222099

UserID: Megan

Trans #: 20389619

Document Sequence Number

TT2020011103

Recording Fees:

RECORDING	\$40.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
RP5217 CNTY \$9	\$9.00
RP5217 ST-NON RES \$241	\$241.00
TP584	\$10.00

Consideration Amount: 794054.00

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$3,178.00
ROAD FUND TT	\$3,972.50

Total: \$7,470.50

STATE OF NEW YORK

ERIE COUNTY CLERK'S OFFICE

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

Michael P. Kearns
Erie County Clerk

THIS INDENTURE

Made the 17th day of December, between 315 Grote Street LLC, a New York limited liability company with offices at 8 Soldiers Place, Buffalo, New York, 14222, party of the first part and MCG Real Estate Holdings LLC, a New York limited liability company with offices at 455 Cayuga Road, Suite 100, Buffalo, New York, 14225, party of the second part.

WITNESSETH, That the said party of the first part, in consideration of the sum of One and More (\$1.00 and More) Dollars, lawful money of the United States, paid by the said party of the second part, does hereby grant and release unto the said party of the second part, its successors and assigns forever, those premises described on Schedule A attached hereto.

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. 83, Township 11, Range 8 of the Holland Land Company's Survey and further distinguished as the westerly 1/2 of Subdivision Lot No. 29 and all of Subdivision Lots Nos. 30 to 37 inclusive, as shown on map filed in Erie County Clerk's Office under Cover No. 268 and being 255 feet from and rear by 126 feet in depth located on the south side of Grote Street, beginning 293.4 feet west of Elmwood Avenue.

SUBJECT TO easements, restrictions and rights of way of record, if any.

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

TO HAVE AND TO HOLD, the above granted premises unto the said party of the second part, its successors and assigns forever.

AND, the party of the first part does covenant with the said party of the second part as follows:

THAT the party of the second part shall quietly enjoy the said premises.

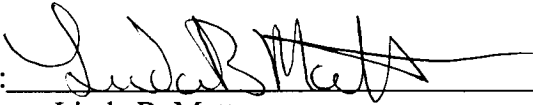
THAT the grantor, in compliance with Section 13 of the Lien Law, will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement, and that the grantor will apply same first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

THAT the said party of the first part will forever warrant title to said premises.

222099 CTY
MF DEED-3

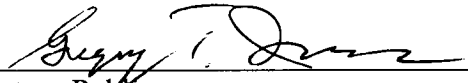
IN WITNESS WHEREOF, the party of the first part has caused these presents to be signed by its duly sole member this 17th day of December, 2020.

315 Grote Street LLC

By: 
Name: Linda B. Matt
Its: Sole Member/Manager

State of New York)
County of Erie') SS:

On this 17th day of December, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared Linda B. Matt, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

GREGORY T. IVANCIC
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Mar. 9, 2021

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 83, Township 11 and Range 8 of Holland Land Company's Survey and further distinguished as the westerly one-half (1/2) of Subdivision Lot No. 29, and Subdivision Lot No. 30 to 37 inclusive, as shown on Map on file in the Erie County Clerk's Office under Cover No. 268 and being 255 feet front and rear by 126 feet in depth located on the south side of Grote Street, beginning 293.4 feet west of Elmwood Avenue.

FOR COUNTY USE ONLY

C1. SWIS Code

140200

C2. Date Deed Recorded

12/23/20

C3. Book

11371

C4. Page

6264

New York State Department of
Taxation and Finance

Office of Real Property Tax Services

RP- 5217

Real Property Transfer Report (8/10)

PROPERTY INFORMATION

1. Property
Location

293

Grote Street

* STREET NUMBER

* STREET NAME

Buffalo

* CITY OR TOWN

VILLAGE

14207

* ZIP CODE

2. Buyer
Name

MCG Real Estate Holdings

LLC

* LAST NAME/COMPANY

FIRST NAME

LAST NAME/COMPANY

FIRST NAME

3. Tax
Billing
AddressIndicate where future Tax Bills are to be sent
if other than buyer address(at bottom of form)

LAST NAME/COMPANY

FIRST NAME

STREET NUMBER AND NAME

CITY OR TOWN

STATE

ZIP CODE

4. Indicate the number of Assessment
Roll parcels transferred on the deed

1

of Parcels

OR

☐ Part of a Parcel

(Only if Part of a Parcel) Check as they apply:

4A. Planning Board with Subdivision Authority Exists

☐5. Deed
Property
Size

255

X

126

OR

0.00

* FRONT FEET

* DEPTH

* ACRES

4B. Subdivision Approval was Required for Transfer

☐

4C. Parcel Approved for Subdivision with Map Provided

☐6. Seller
Name

315 Grote Street LLC

* LAST NAME/COMPANY

FIRST NAME

LAST NAME/COMPANY

FIRST NAME

*7. Select the description which most accurately describes the
use of the property at the time of sale:

Check the boxes below as they apply:

8. Ownership Type is Condominium

☐

9. New Construction on a Vacant Land

☐

10A. Property Located within an Agricultural District

☐10B. Buyer received a disclosure notice indicating that the property is in an
Agricultural District☐

F. Commercial

SALE INFORMATION

11. Sale Contract Date

08/24/2020

* 12. Date of Sale/Transfer

12/22/2020

*13. Full Sale Price

794,054.00

(Full Sale Price is the total amount paid for the property including personal property.
This payment may be in the form of cash, other property or goods, or the assumption of
mortgages or other obligations.) Please round to the nearest whole dollar amount.14. Indicate the value of personal
property Included in the sale

.00

15. Check one or more of these conditions as applicable to transfer:

- ☐ A. Sale Between Relatives or Former Relatives
☐ B. Sale between Related Companies or Partners in Business.
☐ C. One of the Buyers is also a Seller
☐ D. Buyer or Seller is Government Agency or Lending Institution
☐ E. Deed Type not Warranty or Bargain and Sale (Specify Below)
☐ F. Sale of Fractional or Less than Fee Interest (Specify Below)
☐ G. Significant Change in Property Between Taxable Status and Sale Dates
☐ H. Sale of Business is Included in Sale Price
☒ I. Other Unusual Factors Affecting Sale Price (Specify Below)
☒ J. None

Comment(s) on Condition:

ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

16. Year of Assessment Roll from which information taken(YY) 20

*17. Total Assessed Value

253,900

*18. Property Class 710

*19. School District Name

Buffalo

*20. Tax Map Identifier(s)/Roll Identifier(s) (If more than four, attach sheet with additional Identifier(s))

89.21-1-1

CERTIFICATION

I Certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and I understand that the making of any willful
false statement of material fact herein subject me to the provisions of the penal law relative to the making and filing of false instruments.

SELLER SIGNATURE

BUYER CONTACT INFORMATION

(Enter information for the buyer. Note: If buyer is LLC, society, association, corporation, joint stock company, estate or
entity that is not an individual agent or fiduciary, then a name and contact information of an individual/responsible
party who can answer questions regarding the transfer must be entered. Type or print clearly.)

SELLER SIGNATURE

DATE

BUYER SIGNATURE

BUYER SIGNATURE

DATE

LAST NAME

FIRST NAME

AREA CODE

TELEPHONE NUMBER (Ex: 9999999)

* STREET NUMBER

* STREET NAME

* CITY OR TOWN

* STATE

* ZIP CODE

BUYER'S ATTORNEY

Blinkoff

Michael

LAST NAME

FIRST NAME

(716)

AREA CODE

332-6104

TELEPHONE NUMBER (Ex: 9999999)

December 22, 2020

Ms. April Tompkins
Repository Documents
Buffalo & Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203

Re: Document Repository for Brownfield Cleanup Program
293 Grote Street Site
Buffalo, New York

Dear Ms. Tompkins:

On behalf of our client, Benchmark Environmental Engineering & Science, PLLC would like to request the Buffalo & Erie County Public Library – North Park Branch to act as the document repository for the above-referenced Site. In the future, we will be sending various documents relating to the Site that should be made available for public review upon request.

Please contact me if you have questions or require additional information.

Sincerely,
Benchmark Environmental Engineering & Science, PLLC



Chelsea Kanaley
Geologist

File: B0549-020-005

Strong Advocates, Effective Solutions, Integrated Implementation

www.benchmarkturnkey.com

2558 Hamburg Turnpike, Suite 300 | Buffalo, NY 14218
phone: (716) 856-0599 | fax: (716) 856-0583

From: [April Tompkins](#)
To: [Chelsea N. Kanaley](#)
Subject: FW: Document Repository Request - 293 Grote Street Site
Date: Tuesday, December 29, 2020 11:43:01 AM
Attachments: [Document Repository Request - 293 Grote Street Site.pdf](#)

Good morning Chelsea,

Per your request, this is to inform you that the Buffalo and Erie County Public Library will be the repository for all document(s) submitted by your company for the Brownfield Cleanup Program at the **293 Grote Street Site**. These documents will be made available for public viewing at the **North Park Branch Library** and/or any other library of your choice. Please refer to our procedure below.

We prefer that you do not take and/or send documents to individual libraries. Please bring or send your document(s), and cover letter, to the Central Library and we will process according to our procedure and distribute to the location of your choice. **If you would like a confirmation that your document was received, you will need to include the request in your cover letter and provide an email address.**

Please keep the following in mind:

- Documents (including updates) for public viewing should be either brought in person (to my attention) to the Central Library's administrative reception desk located on the second floor or sent via mail carrier. Documents sent via e-mail will not be accepted. The mailing address is:

Attention: April Tompkins
Re: Repository Documents
Buffalo and Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203

- Documents are made available within three business days after receipt, excluding weekends and holidays. Documents for the Central/Downtown library are located on the first floor in the Information Services Department.
- If you would like the document(s) distributed at **libraries other than Central**, you will need to send or give us the appropriate quantity of copies with labels regarding their destination(s). We will distribution accordingly. We do not make copies for distribution.
- Documents that cannot be stapled, should be kept together spiral bound or in a ring binder. Please do not send 'loose' papers, especially if including a cd or flash drive.
- You have the choice regarding the format (hard copy print and / or disk) you wish to submit. If submitting in both formats, please be sure that they are titled/labeled accordingly. **If cd's or flash drives are included, please secure to the corresponding printed document(s) to**

prevent it from getting lost or separated. Although CD-ROMs cannot be used on public library computers, patrons may bring in their personal laptop to view the disc in-house. If optional, an alternative is the availability to go online using a provided link for patrons to read/print. Patrons are not allowed to take original repository documents out of the Library.

If you still have any questions/concerns, please feel free to contact me by replying to this e-mail or by phone at 716-858-7129. Thank you.

Regards,
April

April Tompkins, Sr. Library Clerk
Office of Chief Operating Officer & Technical Support
Buffalo and Erie County Public Library
1 Lafayette Square | Buffalo, NY 14203
Voice: 716-858-7129 | Fax: 716-858-6211
E-mail: tompkinsa@buffalolib.org

From: Chelsea N. Kanaley <ckanaley@bm-tk.com>
Sent: Tuesday, December 22, 2020 9:30 AM
To: April Tompkins <tompkinsa@buffalolib.org>
Subject: Document Repository Request - 293 Grote Street Site

Dear Ms. Tompkins,

Please see the attached document repository request for the Brownfield Cleanup Program.

Thank you,
Chelsea Kanaley

DISCLAIMERS:

Confidentiality Notice: *The information contained in this message is intended only for the use of the addressee, and may be confidential and/or privileged. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately.*

Virus Warning: *While reasonable precautions have been taken to protect against viruses in this message, we accept no responsibility for any damages arising from the potential presence of such viruses.*

Contracts: *Nothing in this message shall be construed as legally binding upon Benchmark or TurnKey.*

Professional Opinions: *Views expressed in this message may only be relied upon as professional opinion if and when provided by principals of the Companies to authorized*

representatives of the organization with which we have an active client-engineer relationship and when directly pertaining to a binding contract scope of work.

Buffalo & Erie County Public Libraries have more than 3.2 million materials - books, eBooks, DVDs, music & more. Free library cards (traditional and eLibrary) are available to Erie County, New York residents and to those who work and/or attend school in Erie County, NY. Follow the library on [Facebook](#), [Twitter](#), [Instagram](#), [Pinterest](#), [Flickr](#) and on our podcast [All Booked Up!](#) Information: 716-858-8900 or <http://www.buffalolib.org>.
DISCLAIMERS:

Confidentiality Notice: *The information contained in this message is intended only for the use of the addressee, and may be confidential and/or privileged. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately.*

Virus Warning: *While reasonable precautions have been taken to protect against viruses in this message, we accept no responsibility for any damages arising from the potential presence of such viruses.*

Contracts: *Nothing in this message shall be construed as legally binding upon Benchmark or TurnKey.*

Professional Opinions: *Views expressed in this message may only be relied upon as professional opinion if and when provided by principals of the Companies to authorized representatives of the organization with which we have an active client-engineer relationship and when directly pertaining to a binding contract scope of work.*