

MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE:12/10/2019
TIME:3:00:19 PM
RECEIPT: 19208432

RUPP, BAASE, PFALZGRAF
ACCOUNT #: 1776

ITEM - 01 785
RECD: 12/10/2019 3:01:49 PM
FILE: 2019272454 BK/PD D 11353/9556
Deed Sequence: TT2019010044
ELK STREET COMMERCE PARL LLC
NEW YORK STATE DEPARTMENT OF ENVIROMENTAL CO
NSERVATION

Recording Fees	90.50
TP584	10.00
Subtotal	100.50

TOTAL DUE	\$100.50
PAID TOTAL	\$100.50
PAID CHECK	\$100.50
Check #7659:	100.50

REC BY: Loretta
COUNTY RECORDER

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 6th day of December, 2019, between Owner, Elk Street Commerce Park, LLC, having an office at 4 Centre Drive, Orchard Park, New York 14127, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 45 Orlando Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 122.12 Block 1 Lot 20.11, being a portion of the property conveyed to Grantor by deed dated March 25, 2019 and recorded in the Erie County Clerk's Office in Liber and Page 11344/1734.

WHEREAS, the property subject to this Environmental Easement (the "Controlled Property") comprises approximately 4.35 +/- acres, and is hereinafter more fully described in the Land Title Survey dated October 29, 2019 prepared by Michael Ennis, P.L.S. of Nussbaumer & Clarke, Inc., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation

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established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C915201C-08-17, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining

contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

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

Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:
(i) are in-place;
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by

by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

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SCHEDULE "A" PROPERTY DESCRIPTION

OU2-West Description

Property Owned by Elk Street Commerce Park, LLC

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

Beginning at a point in the south line of Elk Street at its intersection with the east line of former Babcock Street;

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

Thence west along the north line of former Prenatt Street a distance of 238.43 feet;

Thence north at right angles and along the west line of subplot 46 as shown on map recorded in the Erie County Clerk's office in Liber 428 of Deeds at page 155 and an extension north, a distance of 163.00 feet;

Thence west at right angles a distance of 80.25 feet to the east line of Orlando Street;

Thence north along the east line of Orlando Street a distance of 380.00 feet;

Thence east parallel with Elk Street and along the north line of subplot 63 a distance of 130.75 feet to the northeast corner of subplot 63;

Thence north along the west line of sublots 25,24, and 23 a distance of 90.00 feet to the southwest corner of subplot 18;

Thence east along the along the south line of sublots 18 and 19 a distance of 28.00 feet;

Thence north and parallel with the west line of subplot 19 a distance of 124.00 feet to the south line of Elk Street;

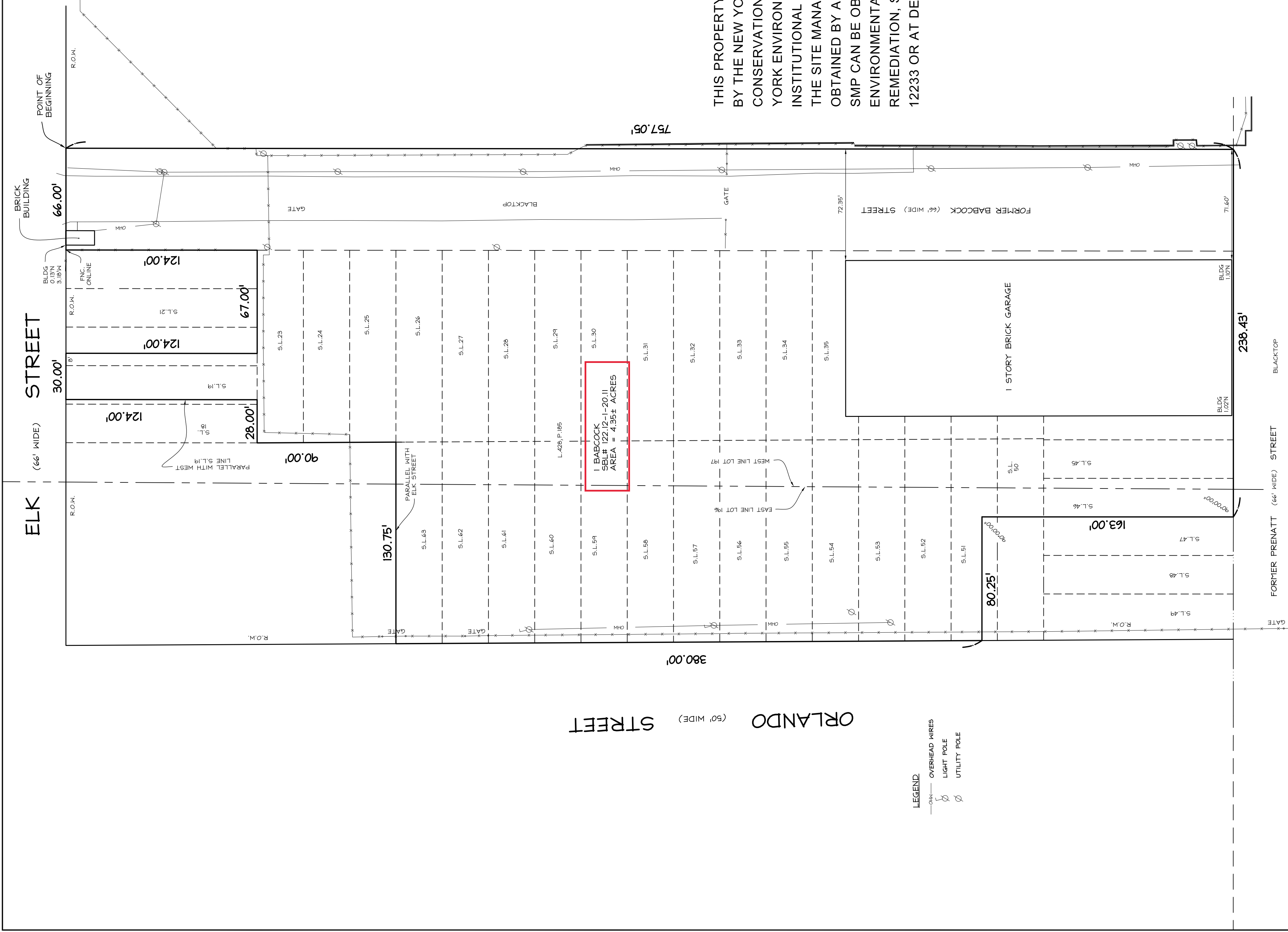
Thence east along the south line of elk street a distance of 30.00 feet to a point 8 feet east of the west line of subplot 20;

Thence south and parallel with the west line of subplot 20 a distance of 124.00 feet to the south line of subplot 20;

Thence east along the south line of subplot 20, 21, and 22 a distance of 67.00 feet to the west line of former Babcock Street;

Thence north along the west line of former Babcock Street a distance of 124.00 feet to the south line of Elk Street;

Thence east along the south line of Elk Street a distance of 66.00 feet to the point of beginning, containing 4.35 acres, more or less.



THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL EASEMENT HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36 OF ARTICLE 71 OF THE NEW YORK ENVIRONMENTAL CONSERVATION LAW. THE ENGINEERING AND INSTITUTIONAL CONTROLS FOR THIS EASEMENT ARE SET FORTH IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP CAN BE OBTAINED FROM THE NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 625 BROADWAY, ALBANY, NY 12233 OR AT DERWEB@DEC.NY.GOV

ENVIRONMENTAL EASEMENT LEGAL DESCRIPTION
Operating Unit 2 West (OU2 W)

THAT TRACT OR PARCEL OF LAND, SITUATE IN THE CITY OF BUFFALO, COUNTY OF ERIE, AND STATE OF NEW YORK, BEING PART OF LOTS 196 AND 197, TOWNSHIP 10, RANGE 8 OF THE BUFFALO CREEK RESERVATION, BOUND AND DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT IN THE SOUTH LINE OF ELK STREET AT ITS INTERSECTION WITH THE EAST LINE OF FORMER BABCOCK STREET;
THENCE SOUTH ALONG THE EAST LINE OF FORMER BABCOCK STREET A DISTANCE OF 757.05 FEET, TO THE NORTH LINE OF FORMER PRENATT STREET;
THENCE WEST ALONG THE NORTH LINE OF FORMER PRENATT STREET A DISTANCE OF 238.43 FEET;
THENCE NORTH AT RIGHT ANGLES AND ALONG THE WEST LINE OF SUBLLOT 46 AS SHOWN ON MAP RECORDED IN THE ERIE COUNTY CLERK'S OFFICE IN LIBER 428 OF DEEDS AT PAGE 155 AND AN EXTENSION NORTH, A DISTANCE OF 163.00 FEET;
THENCE WEST AT RIGHT ANGLES A DISTANCE OF 80.25 FEET TO THE EAST LINE OF ORLANDO STREET;
THENCE NORTH ALONG THE EAST LINE OF ORLANDO STREET A DISTANCE OF 380.00 FEET;
THENCE EAST PARALLEL WITH ELK STREET AND ALONG THE NORTH LINE OF SUBLLOT 63 A DISTANCE OF 130.75 FEET TO THE NORTHEAST CORNER OF SUBLLOT 63;
THENCE NORTH ALONG THE WEST LINE OF SUBLLOTS 25, 24, AND 23 A DISTANCE OF 90.00 FEET TO THE SOUTHWEST CORNER OF SUBLLOT 18;
THENCE EAST ALONG THE SOUTH LINE OF SUBLLOTS 18 AND 19 A DISTANCE OF 28.00 FEET;
THENCE NORTH AND PARALLEL WITH THE WEST LINE OF SUBLLOT 19 A DISTANCE OF 124.00 FEET TO THE SOUTH LINE OF ELK STREET;
THENCE EAST ALONG THE SOUTH LINE OF ELK STREET A DISTANCE OF 30.00 FEET TO A POINT 8 FEET EAST OF THE WEST LINE OF SUBLLOT 20;
THENCE SOUTH AND PARALLEL WITH THE WEST LINE OF SUBLLOT 20 A DISTANCE OF 124.00 FEET TO THE SOUTH LINE OF SUBLLOT 20;
THENCE EAST ALONG THE SOUTH LINE OF SUBLLOT 20, 21, AND 22 A DISTANCE OF 67.00 FEET TO THE WEST LINE OF FORMER BABCOCK STREET;
THENCE NORTH ALONG THE WEST LINE OF FORMER BABCOCK STREET A DISTANCE OF 124.00 FEET TO THE SOUTH LINE OF ELK STREET;
THENCE EAST ALONG THE SOUTH LINE OF ELK STREET A DISTANCE OF 66.00 FEET TO THE POINT OF BEGINNING, CONTAINING 4.35 ACRES, MORE OR LESS.

NO WORK SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED OTHERWISE
This survey was prepared without the benefit of an Uninterrupted chain of title. The surveyor is not responsible for any errors or omissions that may be revealed by an examination of such records.
3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
P (716) 827-9000 F (716) 270-6091 www.nussamer.com
UNREGISTERED PROFESSIONAL ENGINEER
NO. 12233

ENVIRONMENTAL EASEMENT SURVEY
Operating Unit 2 West
1 Babcock Street
Part of Lot 196 & 197, Township 10, Range 8
Buffalo Creek Reservation, City of Buffalo
County of Erie, State of New York
Date of Survey: 04/04/18 Lic. No. 50415 Scale: 1" = 40'
Project No.: 1822-03618C6b

NUSSAMER & CLARKE, INC.
ENGINEERS AND SURVEYORS
50 W. MAIN ST., 1ST FL.
BUFFALO, NY 14202

STATE OF NEW YORK
DIVISION OF SURVEYING
REGISTERED PROFESSIONAL ENGINEER
NO. 12233