

STATE OF NEW YORK
COUNTY OF ERIE SUPREME COURT

In the Matter of the Application of

TERRENCE A. ROBINSON,
Petitioner,

VERIFIED PETITION

for judgment pursuant to Articles 78 & 30 of the CPLR

Index No. 2013002402

-against-

RJI No.:

THE CITY OF BUFFALO COMMON COUNCIL,

PAID NO/FEE
08/19/2013/ 13:44:42
ERIE COUNTY CLERK
RCPT # 13132042
0

Respondent.

Petitioner, proceeding *pro se*, respectfully alleges and states:

INTRODUCTION

1. This hybrid proceeding pursuant to Article 78 and Article 30 of the CPLR seeks: (1) to annul the April 30, 2013 determination of the Buffalo Common Council that denied local landmark designation for Trico Plant No. 1 (2) to compel the Buffalo Common Council to act in accordance with the Charter of the City of Buffalo in its consideration and determination of landmark applications brought before that body (3) the declaratory judgment of this Court on the status of Trico Plant No. 1 as property protected under Public Buildings Law, and (4) the declaratory judgment of this Court on the period covered by the initial term of the Trico Plant No. 1 Designated Developer Agreement, signed on June 28, 2007.

VENUE

2. Pursuant to CPLR§506(b), venue for the Article 78 proceeding is proper in any county in the Eighth Judicial District, including Erie County, where the determination complained of was made, and where respondent has failed to perform the duties specifically enjoined on them by law, where material events have taken place, and where the principal offices of respondent The City of Buffalo Common Council are located.

PARTIES

A. Petitioner

3. Petitioner, Terrence A. Robinson, is a life-long Buffalo resident and a taxpayer active in community affairs. He is a founding Trustee and current member of the Board of Trustees of Preservation Buffalo Niagara (PBN), an organization dedicated to preservation activities throughout the Western New York region. Petitioner is a member of the Board of Directors of the Graycliff Conservancy, a not-for-profit organization dedicated to restoring and preserving the Frank Lloyd Wright designed Graycliff Estate as a publicly accessible landmark. Petitioner is a member of the National Trust for Historic Preservation, the Preservation League of New York State and the Buffalo Historical Museum. He is a sworn member of the City of Buffalo Preservation Board. Petitioner is an avid student of local history and an advocate for local preservation efforts. Petitioner has delivered remarks on local preservation topics before The National Trust Conference, Buffalo 2011, the international conference of the Society of Architectural Historians, Buffalo 2013, the Preservation Plus Conference 2012 and Buffalo Talks Series 2013 sponsored by PBN, the Council, Council Committees, and numerous public hearings. Petitioner has invested countless hours, substantial money, and significant effort in the research, analysis, and advocacy of preservation efforts in Western New York.

Standing allegations

4. Petitioner has a substantial interest, greater than that of the general public, in this matter. The April 30, 2013 determination of the Council not to landmark Trico Plant No. 1 has, in fact, injured Petitioner. The April 30, 2013 determination totally undermined the credibility and authority of the Buffalo Preservation Board and its role as the public body tasked with the review, establishment, and monitoring of landmark sites in the City of Buffalo. Petitioner's statutory

responsibility to promote and designate historic sites as landmarks in the City of Buffalo has been impeded and substantially diminished by; the actions of the Council, the Council's continual failure to act in accordance with the Charter of the City of Buffalo, and the April 30, 2013 determination. The April 30, 2013 determination and the process leading to that determination have had a chilling effect on the Preservation Board's confidence to submit landmark designation applications for the Council's review.

5. Petitioner, as an active member of Buffalo's preservation community, has been deprived of the assurance of a properly administered public process for the designation of local landmark sites. The Council's actions have deprived the petitioner of the full enjoyment of historic sites that have been improperly denied landmark designation and the public benefit that would result from designation.
6. Within the boundaries of the designated National Register of Historic Places (NRHP) site Trico Plant No. 1, New York State has invested over 30 million dollars of public money. The State has committed to an additional 50 million dollar investment in the site. The substantial past and future investments of public money entitles the Petitioner to standing to challenge the public disposition of NRHP Trico Plant No. 1 and the public funds associated with the site.

B. Respondent

7. Respondent, the City of Buffalo Common Council (Council) is organized as a representative assembly with one Member elected from each of nine Common Council Districts. The Council is vested with all legislative powers of the City and the power to confirm the Mayor's major administrative appointments.

STATUTORY FRAMEWORK

8. Congress established a preservation program for the United States with the National Historic Preservation Act of 1966. Since that time, the national historic preservation program has operated as a decentralized partnership between the federal government and the states with the common purpose of identifying, evaluating, and protecting the nation's historic properties. All preservation related programs are implemented primarily by the states through its State Historic Preservation Officers (SHPO) whose authority was also established by the 1966 legislation. Recognizing the success of this relationship, Congress expanded the partnership to provide for participation by local governments. The 1980 amendments to the National Historic Preservation Act [*16 U.S.C. 470a (7)(C)*] contained the authorization in *Section 101(a)(7)(C)* for a federal-state- local preservation partnership that became known as the **Certified Local Government (CLG)** program. Federal law directs the Secretary of the Interior to certify qualified local governments through the authority delegated to the National Park Service. Working with the SHPO, the National Park Service specifies several requirements that local governments must meet to qualify for certification. Any municipality may request certification and the request is reviewed by the SHPO.
9. CLG status is granted when a Certification Agreement is signed by both the SHPO and the chief elected official (CEO) of the local government after a review and with the concurrence of the National Park Service.
10. The overall objective of historic preservation is to ensure that historic resources continue to have an active use within a community while retaining their historic and architectural integrity. The power and duties, structure, membership and decision making procedures of a historic preservation commission in the Certified Local Government program allow them to take a long-term approach by focusing on architectural merit and historic significance of properties. Adherence to these requirements distinguish those municipalities from others that have enacted local preservation legislation, but whose ordinances do not meet the Certified Local Government guidelines.

11. Historic preservation review commission or the term commission means a board, council, commission, or similar body established by local historic preservation legislation and having the authority to carry out municipal responsibilities for a historic preservation program. Historic Preservation legislation must establish a separate historic preservation commission that operates independently from any other board or commission.
12. As part of its establishment and continued operation, the commission must be made up of members who are qualified (Exhibit 1) to carry out the required decision making. The CLG program takes a long-term approach to the survival of resources by isolating designation and project review from other factors. The designation and review processes should operate free from any undue political influence.
13. The local government must have and enforce local legislation for the designation and protection of historic properties enacted under the provisions of the *New York State General Municipal Law Article 5, Section 96-a and 119aa-119dd*.
14. The following provisions must be included either in the local legislation or implementation regulations: A statement of purpose; the establishment of an historic preservation review commission; assignment of powers to the commission which must include at least the power to designate or recommend designation of properties worthy of preservation.
15. Provisions must include establishment of criteria and procedures for designation of historic properties worthy of preservation. The provisions must also include procedures for commission actions and standards and criteria for commission decisions that are consistent with the Secretary of the Interior's Standards for Archeology and Historic Preservation.
16. A CLG must actively identify and document historic resources. Working in partnership with SHPO staff, the municipality must establish and maintain a system by which historic resources are identified.
17. Local preservation legislation is codified as Chapter 337 of The Charter of the City of Buffalo (Charter).

18. § 337-1 states, *inter alia*: It is hereby declared as a matter of public policy that preservation, protection, conservation, enhancement, perpetuation and utilization of sites, buildings, improvements and districts of special character, historical or aesthetic interest or value are necessary and required in the interest of the health, education, culture, prosperity, safety and high quality of life of the people.
19. §337-1 further states: “The purpose of this Preservation Code is to: Preserve, protect, perpetuate and utilize landmarks, landmark sites, historic districts, neighborhoods, areas, places, buildings, structures and improvements which have a distinctive character or are of historic, aesthetic, architectural, archeological or cultural interest or value to this City, state or nation; ...Avoid demolition of historically or architecturally important properties and ...Preserve the economic and architectural integrity of vacant or underutilized landmark properties by means of substantial rehabilitation and adaptive reuse.”
20. §337-5 states, *inter alia*: “The Preservation Board shall have the following powers and duties: To document, propose, review and propose modifications, with due consultation with the applicant, and act on the designation of landmarks, landmark sites and historic districts in accordance with the purposes of this Preservation Code; ... To prepare and update preservation plans to guide the preservation and future development of landmarks, landmark sites and historic districts; ... To nominate landmarks, landmark sites and historic districts to the National Register of Historic Places and review and comment on any national nomination submitted to the Preservation Board”
21. § 337-6 states: “Any person, group of persons or association may request designation of a landmark, landmark site or an historic district by submitting an application for designation on a form furnished by the Preservation Board to the Secretary of the Preservation Board. The Preservation Board may also initiate proceedings for designation of a landmark, landmark site or historic district.”

22. § 337-7 requires “The Preservation Board shall schedule a public hearing not more than 60 days after receipt of a completed application for designation of a landmark, landmark site or an historic district.” and that, “The Secretary shall publish a notice of public hearings to be held by the Preservation Board in an official newspaper or a newspaper of general circulation at least once 10 days before said hearings.”
23. § 337-8 requires that: “The Preservation Board shall, within 90 days of receipt of a completed application form, take its final action thereon, which shall be in the form of a recommendation to the Common Council. The recommendation may limit itself to the landmark, landmark site or historic district as described in the application or may include modifications thereto. Within 10 days of its adoption by the Board, its written recommendation shall be filed in the offices of the Director of the Division of Planning and the City Clerk. The recommendation shall be accompanied by a report containing the following: Explanation of the significance or lack of significance of the nominated landmark, landmark site or historic district as it relates to the criteria for designation... Explanation of the integrity or lack of integrity of the nominated landmark, landmark site or historic district... The relationship of the nominated landmark, landmark site or historic district to the on-going effort of the Preservation Board to identify and nominate all potential areas and structures that meet the criteria for designation.”
24. § 337-9 requires: “The City Clerk shall cause the Preservation Board’s recommendation and report to be presented to the Common Council at its next stated meeting. The Common Council shall refer the recommendation and report to its Committee on Legislation.”
25. § 337-10 mandates: “The Committee on Legislation shall hold a public hearing thereon not more than 60 days after receipt of the recommendation and report, except that the Common Council may, upon consent of the owner, waive the public hearing when an individual landmark or landmark site is being considered.” And that, “The City Clerk shall also give notice of the public hearing by publication in an official newspaper or a newspaper of general circulation at least once and at least 10 days immediately prior to the hearing.”

26. § 337-11 mandates: “Within 30 days of the public hearing required herein, the Committee on Legislation shall take action upon the recommendation and report of the Preservation Board and shall transmit same to the Common Council. The Committee may approve, disapprove or modify a designation. However, if a designation is modified, the Committee shall hold an additional public hearing prior to approval thereof.
27. § 337-12 details the final determination: “The Common Council may approve or disapprove the designation of a proposed landmark, landmark site or historic district and shall set forth its specific reasons for approval or disapproval.”
28. § 337-15 establishes the criteria for designation of local landmarks: “The Preservation Board shall, upon such investigation as it deems necessary, make a determination as to whether a proposed landmark, landmark site or historic district meets one or more of the following criteria: It has character, interest or value as part of the development, heritage or cultural characteristics of the City, state or nation; Its location is a site of a significant local, state or national event; It exemplifies the historic, aesthetic, architectural, archaeological, educational, economic or cultural heritage of the City, state or nation; It is identified with a person or persons who significantly contributed to the development of the City, state or nation; It embodies distinguishing characteristics of an architectural style valuable for the study of a period, type, method of construction or use of indigenous materials; It is the work of a master builder, engineer, designer, architect or landscape architect whose individual work has influenced the development of the City, state or nation; It embodies elements of design, detailing, materials or craftsmanship that render it architecturally significant; It embodies elements that make it structurally or architecturally innovative; It is a unique location or contains singular physical characteristics that make it an established or familiar visual feature within the City. Any structure, property or area that meets one or more of the above criteria shall also have sufficient integrity of location, design, materials and workmanship to make it worthy of preservation or restoration.

29. § 337-26 details the appeals process for Chapter 337: “Jurisdiction. The Common Council shall have jurisdiction to decide all appeals from action of the Preservation Board brought by aggrieved applicants. Procedure. All such appeals shall be fixed with the City Clerk, who shall cause the appeals to be presented to the Common Council at its next stated meeting. The Common Council shall refer such appeals to the Committee on Legislation. The Committee shall set the matter down for a public hearing, as provided in §§ 337-6 through 337-14 herein, unless such hearing is waived by consent of the applicant. After hearing the parties, the Committee shall recommend to the Common Council the action to be taken. Determination. The Committee shall forward its recommendation to the Common Council, which may affirm, reverse, modify or amend the Preservation Board's recommendation within 60 days of the date of the filing of the appeal. The Common Council shall set forth its reasons for such action.”

Public Buildings Law

30. Article 4-B of New York State Public Buildings Law (PBL) states, *inter alia*, the following: § 60. Public policy. It is hereby declared to be the public policy of this state to provide leadership in preserving, restoring and maintaining the historic, architectural, archeological and cultural environment of this state and that therefore it is the purpose of this article to provide that the instrumentalities of the state administer the historic and cultural properties under their control in a spirit of stewardship and trusteeship for the future generations and conduct their activities, plans and programs in a manner consistent with the preservation and enhancement of historic and cultural properties.

31. § 61 of PBL defines: "State agency" means any state department, officer, board, commission, agency, or a public authority or public benefit corporation at least one of whose members is appointed by the governor.”

32. § 63 of PBL requires: “The commissioner of the office of general services or the chief executive officer of any state agency shall: Consult with the commissioner of parks and recreation as early in the planning process as may be practicable when planning to demolish, alter or transfer any property under their jurisdiction listed on the state or national register or that has been determined by the commissioner of parks and recreation to be eligible for the state register, for the purpose of exploring alternatives to demolition, alteration or transfer.

FACTS

33. Trico Plant No. 1 is a historic landmark listed on the National Register of Historic Places (NRHP).
34. Trico Plant No. 1 is a historic landmark listed on the New York State Register of Historic Places (SRHP).
35. On March 22, 2012, The Campaign for Greater Buffalo History, Architecture, & Culture (Campaign), filed an application for local landmark designation of Trico Plant No. 1 with the City of Buffalo Preservation Board (Preservation Board).
36. The Campaign application included the NRHP Registration Form that was prepared by Claire Ross of the New York State Office of Parks Recreation and Historic Preservation during the 2000 NRHP nomination process.
37. The Preservation Board determined that the Trico Plant No. 1 site met 7 of 9 criteria set for designation of a landmark by Chapter 337 – Preservation Standards of the City Charter. The Board voted unanimously to forward its recommendation for approval of landmark designation to the Council.
38. The Preservation Board filed its written recommendation and accompanying report with the Division of Planning and the City Clerk.
39. The Legislation Committee of the Council held a public hearing on April 24, 2012. The record of that hearing is included by reference here. The Committee voted to send the Campaign application to the Council without recommendation.
40. On May 1, 2012, the item came before the Council. On the motion of the Legislation Committee Chairman, by unanimous vote the item was received and filed. The record of that proceeding is included by reference here.

41. In a letter to Councilmember Darius Pridgen, Legislation Committee Chairman, dated December 28, 2012, Preservation Buffalo Niagara (PBN) Executive Director Tom Yots requested that the Council treat the Campaign application in accordance with the city's preservation ordinance [Exhibit 2].
42. In a letter to Council President Richard Fontana, dated February 1, 2013, PBN Executive Director Tom Yots requested that the Council approve the Campaign application for landmark designation of NRHP Trico Plant No. 1 [Exhibit 3].
43. In the February 1, 2013 letter, with attachment, Yots also requested clarification on the initial term of the Designated Developer Agreement (DDA) between the Buffalo Urban Development Corporation (BUDC), Buffalo Niagara Medical Campus (BNMC), and the Buffalo Brownfield Restoration Corporation (BBRC).
44. The offices of Councilmember Pridgen and Council President Fontana acknowledged receipt of their respective letters but provided no other response.
45. In February 2013, the Preservation Board prepared a de novo application for landmark designation of NRHP Trico Plant No. 1. [Exhibit 4]. The Preservation Board again determined that the NRHP Trico Plant No. 1 site met 7 of the 9 criteria for local landmark designation and unanimously approved the recommendation for local landmark designation.
46. The Preservation Board filed its written recommendation and accompanying report with the Division of Planning and the City Clerk.
47. On March 26, 2013, The Legislation Committee held a public hearing on the Preservation Board application for local landmark designation of NRHP Trico Plant No 1. The Committee postponed their vote on the application. The record of the proceeding is included by reference here.
48. On April 23, 2013, The Legislation Committee again held a public hearing on the Preservation Board recommendation to landmark NRHP Trico Plant No. 1. There is no evidence in the record of public notice for the hearing. The Committee voted to send the item to the Council without recommendation. The record of the proceeding is included by reference here.

49. On April 30, 2013, the Council voted not to approve the local landmark designation of NRHP Trico Plant No. 1. During the Council's colloquy on the matter, several councilmembers expressed their intent to introduce legislation that would provide a temporary solution and permit parties to seek alternative options for redevelopment of NRHP Trico Plant No. 1. The record of the proceeding is included by reference here.
50. On May 14, 2013, the Council unanimously approved a Resolution dated May 1, 2013, entitled Trico Building Moratorium [Exhibit 5]. The resolution was *de facto* temporary landmark designation premised on the building's historic significance.

Public Building

51. On June 28, 2007, BUDC, BNMC, and BBRC entered into a Designated Developer Agreement (the Agreement) for NRHP Trico Plant No. 1 [Exhibit 6]. The Initial Term commenced on the Effective Date of the Agreement.
52. On September 20, 2007, BNMC and FNUB, a subsidiary of the University at Buffalo Foundation (UB Foundation), purchased the Trico Buildings and parking lot and the M. Wile Buildings and parking lot from the estate of Stephen B McGarvey. The deal closed on November 14, 2007 [Exhibit 7].
53. Title to NRHP Trico Plant No. 1 was transferred to the BBRC on closing. The BBRC, is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-For-Profit-Corporation Law of the State of New York and is a Type B corporation as defined in section 201 of the Not-For-Profit-Corporation Law. The BBRC is a subsidiary of the BUDC, a local development corporation formed pursuant to Not-For-profit Corporations Law §1411.
54. Ex-Officio members of the Board of Directors of the BUDC include; the Common Council President, Executive Director of the Niagara Frontier Transit Authority (NFTA), and the Regional Director of the Empire State Development Corporation (ESDC).
55. ESDC has invested several million dollars in the acquisition and development of the Trico Complex [Exhibit 8]

56. The State University Construction Fund (SUCF) has reimbursed FNUB for the full purchase price of the Trico Complex.

Public Process

57. Numerous meetings, public hearings, and comments on social media were generated in the course of the public debate on the local landmark application of NRHP Trico Plant No. 1. The overwhelming majority of the opinions expressed and documentation offered has been in favor of the local landmark designation.
58. The capacity of the Preservation Board to perform its duties has been severely curtailed by the absence of funding and lack of staff assigned to its mission. The Chairperson of the Preservation Board, Paul McDonnell AIA detailed the Board's concerns regarding the absence of a "Board Secretary" and Senior Planner, in a letter dated December 12, 2012 [Exhibit 9].
59. UB Foundation Activities are closely coordinated with State University of New York (SUNY) objectives and are well regulated [Exhibit 10]
60. Petitioner repeats and realleges all of the facts set forth above with same force and effect as if set forth in full herein in support of the following **Causes of Action:**

CAUSES OF ACTION

1. THE APRIL 30, 2013 DETERMINATION OF THE COMMON COUNCIL NOT TO DESIGNATE NRHP TRICO PLANT NO. 1 AS A LOCAL LANDMARK WAS ARBITRARY AND CAPRICIOUS BECAUSE OF ITS FAILURE TO COMPLY WITH THE LAW.
 - *The Common Council abrogated its duty under the Charter of the City of Buffalo and acted in a manner inconsistent with the Council's published rule.*
 - *The Common Council's April 30, 2013 determination not to designate NRHP Trico Plant No. 1 as a local landmark was contrary to the public policy clause of §337-1 of the Charter.*

- *The Common Council's April 30, 2013 determination not to designate NRHP Trico Plant No. 1 as a local landmark was contrary to the purpose clause of §337-1 of the Charter.*
- *The Common Council's April 30, 2013 determination not to designate NRHP Trico Plant No. 1 as a local landmark undermines the powers and duties of the Preservation Board defined in §337-5 of the Charter.*
- *The Council did not provide notice of the public hearing held before the Legislation Committee on April 23, 2013 in violation of §337-10 of the Charter.*
- *The Committee's April 23, 2013 failure to approve, disapprove or modify the designation and its' action to send the item without recommendation to the Council were not authorized by §337-11 and were contrary to the directive of §337-11*
- *The Common Council's failure to set forth the specific reasons for its' April 30, 2013 determination not to designate NRHP Trico Plant No. 1 as a local landmark is a violation of §337-12 of the Charter.*
- *The Common Council's April 30, 2013 determination not to designate NRHP Trico Plant No. 1 as a local landmark was not in accordance with the duly promulgated criteria set forth in §337-15 of the Charter.*
- *"It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature" (Patrolmen's Benevolent Assn. of City of N.Y. v City of New York 41 NY2d 205, 208 [1976]; see also Matter of M.B., 6 NY3d 437, 447 [2006]).*
- *A statute . . . must be construed as a whole and its various sections must be considered together and with reference to each other" (People v Mobil Oil Corp., 48 NY2d 192, 199 [1979]).*
- *"Landmark designations are clearly administrative and not quasi-judicial in nature," and are therefore reviewable under the "arbitrary and capricious" standard of CPLR 7803 (3)]; Matter of L.S.O.F. CYNWYD v Town of N Hempstead, 298 AD2d 520 [2002] see also Lutheran Church in Am. v City of New York, 35 NY2d 121, 128 n 2.*

- *The Common Council abrogated its duty under the Certified local Government Program and Guidelines by its failure to adhere to the higher standards required of certified governments.*
- *Petitioner has no other remedy at law than the Court's review and judgment in this matter*

2. THE APRIL 30, 2013 DETERMINATION OF THE COMMON COUNCIL WAS ARBITRARY AND CAPRICIOUS: THE COUNCIL'S DISREGARD OF THE FACTS ADDUCED IN THE RECORD WAS AN ABUSE OF POWER AND DISCRETION THAT WAS UNSUPPORTED BY CRITERIA DEFINED BY STATUTE.

- *The Common Council's April 30, 2013 determination not to designate NRHP Trico Plant No. 1 as a local landmark was not consistent with the longstanding designation of NRHP Trico Plant No. 1 on the State Register of Historic Places and National Register of Historic Places*
- *The Council's prior resolutions involving funding and development related to NRHP Trico Plant No 1 and the Trico Complex were cognizant of the site's historic significance and landmark status.*
- *It is well established that "[a] landmark designation is an administrative determination . . . that must be upheld if it has support in the record, a reasonable basis in law, and is not arbitrary and capricious" (Matter of Teachers Ins. & Annuity Assn. v City of New York, 82 NY2d 35, 41 [1993]; see Matter of Canisius Coll. v City of Buffalo, 217 AD2d 985, 985-986 [1995], lv denied 86 NY2d 709 1995]; see generally Matter of Concerned Citizens of Perinton v Town of Perinton, 261 AD2d 880 [1999], appeal dismissed 93 NY2d 1040 [1999], cert denied sub nom. Nisco v Town of Perinton, 529 US 1111 [2000]).*
- *In Matter of Market Sq. Props. v Town of Guilderland Zoning Bd. of Appeals (66 NY2d 893, 895 [1985]), the Court of Appeals held that "expert opinion . . . may not be disregarded in favor of{*5 NY3d at 241} generalized community objections,"*

- *The Common Council's April 30, 2013 determination not to designate NRHP Trico Plant No. 1 as a local landmark was made without regard to the duly promulgated criteria set forth in §337-15 of the Charter. A determination will be deemed rational if it has some objective factual basis, as opposed to resting entirely on subjective considerations such as general community opposition.*
- *It is well established that "legislation is to be interpreted so as to give effect to every provision [, and a] construction that would render a provision superfluous is to be avoided" (Majewski, 91NY2d at 587).*
- *When the interpretation or construction of the Code language being applied is irrational or unreasonable, an error of law exists that warrants reversing the determination of the agency (see Brooklyn Assembly at 334; Transitional Svcs at 802).*
- *The Common Council's failure to set forth in the record a written explanation with the reasons that justified the April 30, 2013 determination not to designate NRHP Trico Plant No. 1 as a local landmark is fatal error.*
- *'Findings of fact which show the actual grounds of a decision are necessary for an intelligent judicial review of a quasi-judicial or administrative determination' " (Matter of Perrella v Suffolk County Classification & Salary Appeals Bd., 117 AD2d 603, 604 [1986]; see Matter of Paloma Homes, Inc. v Petrone, 10 AD3d 612 [2004]). 4th Dept – In the matter of South Blossom Ventures, LLC,*
- *"A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious." Knight v. Amelkin, 68 N.Y.2d 975, 977, 510N.Y.S.2d 550 (1986).*

- *“The underlying precept is that in administrative, as in judicial, proceedings ‘justice demands that cases with like antecedents should breed like consequences.’” Failure to adhere to precedent renders the later decision arbitrary and capricious. Knight v. Amelkin, 68 N.Y.2d 975,977, 510 N.Y.S.2d 550 (1986); Matter of Charles A. Field Delivery Serv. v. Roberts,66 N.Y.2d 516, 498 N.Y.S.2d 111 (1985).*

3. THE COUNCIL MUST BE COMPELLED TO ACT IN ACCORDANCE WITH CHAPT 337 – PRESERVATION STANDARDS AND CERTIFIED LOCAL GOVERNMENT GUIDELINES.

- *Petitioner is not seeking any change in legislative policy or reordering of priorities, he asks only that the landmark designation process be effected in the manner that it was legislated. (Klostermann v Cuomo, 61 NY2d 525, 537).*
- *Petitioner has a clear legal right to the proper determination of local landmark applications in accordance with statutorily defined process.*
- *The contemporary rule is that a party has standing to enforce a statutory right if its abuse will cause him injury and it may fall within the 'zone of interest' protected by the legislation" (Matter of District Attorney of Suffolk County, 58 NY2d 436, 442 [1983]).*
- *Although the writ of mandamus to compel performance is an extraordinary remedy, it may be granted when a petitioner's claim is premised upon a specific legal right, ministerial in nature (Sullivan v Siebert, 70 AD2d 975, 417 NYS2d 129 [3d Dept 1979]).*
- *The act sought to be compelled is based upon a "specific statutory authority mandating performance in a specified manner" (Highland Hall Apartments, LLC v New York State Div. of Housing and Community Renewal, 66 AD3d 678 888 NYS2d 67 [2d Dept 2009] citing Matter of Peirez v Caso, 72 AD2d 797, 797, 421 NYS2d 627)).*

- *Respondent Council failed to render any decision on the Campaign application. A matter submitted for determination, whether to an administrative agency or a court, imposes a clear duty to render a decision. The obligation to issue a determination is absolute and therefore ministerial. The failure to perform the duty to render a determination within a reasonable time is grounds for mandamus to compel. Gianelli v New York State Div. of Housing and Community Renewal, 142 Misc 2d 285, 536 NYS2d 675 [Sup. Ct., Queens County 1989]*
- *Council's failure to forward the Campaign's application from Legislative Committee with a recommendation and the subsequent votes to receive and file the application without action were in flagrant disregard of the spirit and letter of the law.*
- *Council's determination not to designate NRHP Trico Plant No. 1 as a local landmark is inconsistent with Chapter 337 of the Charter and CLG Guidelines.*
- *The April 30, 2013 determination exhibits Respondent's fundamental lack of awareness of its statutorily mandated role and the consequences of its failure to landmark historic sites. It is a fundamental tenet of statutory construction that the Legislature is presumed to be aware of the law in existence at the time of an enactment, as well as the effect and implication of its own enactments (see Brady v. Village of Malverne, 76 AD3d 691, 693; Llanos v. Shell Oil Co., 55 AD3d 796, 798).*
- *Council's failure; to adhere to promulgated preservation standards, provide oversight of City preservation efforts, and failure to assure allocation of the resources necessary to comply with certified local government guidelines is an abrogation of Council's statutorily mandated duty.*
- *Petitioner has no other remedy than the Court's direct intervention to compel Respondent's compliance with Chapter 337 and CLG Guidelines*

4. PETITIONER REQUESTS THE COURT'S DECLARATORY JUDGEMENT ON THE STATUS OF NRHP TRICO PLANT NO. 1 AS A SITE PROTECTED UNDER PUBLIC BUILDINGS LAW.

- *NRHP Trico Plant No.1 is eligible for consideration as a property entitled to protection under N Y State Public Buildings Law*
- *The UB Foundation has been an instrument of SUNY for the acquisition and development of NRHP Trico Plant No. 1 and the Trico Complex*
- *The State has purchased and invested in NRHP Trico Plant No. 1 and the Trico complex for State purposes.*
- *ESDC, in concert with SUNY, BNMC, and the City of Buffalo has invested millions of dollars for the acquisition of NRHP Trico Plant No. 1 and the development of the Trico Complex.*
- *There is a hybrid membership structure of the BUDC with State, SUNY, Erie County, Municipal Executive and Legislative, and other interests represented.*
- *Unlike other plaintiffs, citizen-taxpayers need not demonstrate an injury-in-fact to acquire standing. Instead, pursuant to State Finance Law § 123-b (1), a citizen- taxpayer may bring suit to prevent the unlawful expenditure of state funds "whether or not such person is or may be affected or specially aggrieved" by the challenged action.*
- *A plaintiff's claims must have a "sufficient nexus to fiscal activities of the State" in order to confer standing (Rudder v. Pataki, 93 N.Y.2d at 281, 689 N.Y.S.2d 701, 711 N.E.2d 978).*

5. PETITIONER REQUESTS THE COURT'S DECLARATORY JUDGEMENT ON THE INITIAL TERM OF THE DESIGNATED DEVELOPER AGREEMENT FOR NRHP TRICO PLANT NO 1.

- *The designated developer agreement is a contract and its' meaning must be discerned under several cardinal principles of contractual interpretation. A written agreement that is clear, complete and subject to only one reasonable interpretation must be enforced according to the plain meaning of the language chosen by the contracting parties (see e.g. Vintage, LLC v Laws Constr. Corp., 13 NY3d 847, 849 [2009]; Samuel v Druckman & Sinel, LLP, 12 NY3d 205, 210 [2009]; Greenfield v Philles Records, 98 NY2d 562, 569 [2002]).*
- *The three year period of the Initial Term commenced on the Effective Date of the Agreement.*

RELIEF

Petitioner seeks judgment:

1. Ordering, adjudging and decreeing that the April 30, 2013 determination of the Buffalo Common Council not to designate NRHP Trico Plant No. 1 as a local landmark is arbitrary, capricious, and invalid;
2. Enjoining the Buffalo Common Council to review local landmark applications strictly in accordance with Chapter 337 of the City Charter;
3. Enjoining the Buffalo Common Council to review and make a final determination on local landmark applications in a timely fashion;
4. Enjoining the Buffalo Common Council to fully comply with Certified Local Government statutes and Guidelines;
5. Declaring that the three year initial term of the designated developer agreement for NRHP Trico Plant No. 1 commenced on the Effective Date of the Agreement, June 28, 2007;
6. Declaring that the State of New York's financial interest, oversight, control and development interests in NRHP Trico Plant No. 1 are sufficient to warrant the protection of Public Buildings Law for the building;

5. PETITIONER REQUESTS THE COURT'S DECLARATORY JUDGEMENT ON THE INITIAL TERM OF THE DESIGNATED DEVELOPER AGREEMENT FOR NRHP TRICO PLANT NO 1.

- *The designated developer agreement is a contract and its' meaning must be discerned under several cardinal principles of contractual interpretation. A written agreement that is clear, complete and subject to only one reasonable interpretation must be enforced according to the plain meaning of the language chosen by the contracting parties (see e.g. Vintage, LLC v Laws Constr. Corp., 13 NY3d 847, 849 [2009]; Samuel v Druckman & Sinel, LLP, 12 NY3d 205, 210 [2009]; Greenfield v Philles Records, 98 NY2d 562, 569 [2002]).*
- The three year period of the Initial Term commenced on the Effective Date of the Agreement.

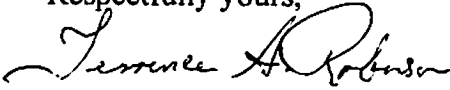
RELIEF

Petitioner seeks judgment:

1. Ordering, adjudging and decreeing that the April 30, 2013 determination of the Buffalo Common Council not to designate NRHP Trico Plant No. 1 as a local landmark is arbitrary, capricious, and invalid;
2. Enjoining the Buffalo Common Council to review local landmark applications strictly in accordance with Chapter 337 of the City Charter;
3. Enjoining the Buffalo Common Council to review and make a final determination on local landmark applications in a timely fashion;
4. Enjoining the Buffalo Common Council to fully comply with Certified Local Government statutes and Guidelines;
5. Declaring that the three year initial term of the designated developer agreement for NRHP Trico Plant No. 1 commenced on the Effective Date of the Agreement, June 28, 2007;
6. Declaring that the State of New York's financial interest, oversight, control and development interests in NRHP Trico Plant No. 1 are sufficient to warrant the protection of Public Buildings Law for the building;

7. Together with such other and further relief as to the Court may seem just, proper and equitable.

DATED: August 14, 2013
Buffalo, New York

Respectfully yours,

Terrence A. Robinson
Pro-se

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

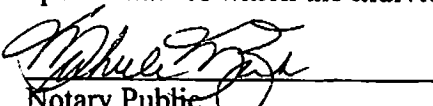
TERRENCE A. ROBINSON, being duly sworn, deposes and says:

1. That he is a petitioner in the within action;
2. That he has read the foregoing verified petition and knows the contents thereof;
3. That the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.


Terrence A. Robinson

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On the 16th day of August in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared Terrence A. Robinson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

MICHELLE M. ZUREK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
LIC. #01ZU5062830
My Commission Expires July 8, 20 14

INDEX OF EXHIBITS

EXHIBIT 1

- 36 CFR PART 61, Appendix A: PROFESSIONAL QUALIFICATIONS STANDARDS – 2 pages

EXHIBIT 2

- PBN LETTER dated December 28, 2012 – Tom Yots to Darius Pridgen – 2 pages

EXHIBIT 3

- PBN LETTER dated February 1, 2013 – Tom Yots to Richard Fontana – 1 page
- Attachment to letter of February 1, 2013 – 9 pages

EXHIBIT 4

- APPLICATION FOR LANDMARK/LANDMARK SITE – Trico Plant No. 1 – filed 4 March 2013 – 28 pages

EXHIBIT 5

- BUFFALO COMMON COUNCIL RESOLUTION – Trico Plant Moratorium – dated May 1, 2013 – 1 page

EXHIBIT 6

- DESIGNATED DEVELOPER AGREEMENT dated June 28, 2007 – 8 pages

EXHIBIT 7

- REPORT OF SALE – filed November 27, 2007 – 4 pages
- CLOSING STATEMENT – filed November 27, 2007 – 7 pages

EXHIBIT 8

- ESDC – MINUTES – August 16, 2012 – 8 pages
- FOR CONSIDERATION DOCUMENTS – August 16, 2012 – 12 pages

EXHIBIT 9

- BUFFALO PRESERVATION BOARD LETTER dated December 12, 2012
Paul McDonnell to Brendan Mehaffey – 1 page
- BUFFALO PRESERVATION BOARD LETTER dated March 8, 2013
Paul McDonnell to Brendan Mehaffey – 1 page

EXHIBIT 10

- OFFICE OF THE STATE COMPTROLLER LETTER dated November 5, 2009
Brian E. Mason to Nancy L. Zimpher – 5 pages

EXHIBIT 1

**36 CFR PART 61, Appendix A:
PROFESSIONAL QUALIFICATIONS STANDARDS
2 pages**



**Certified Local Government Program
Historic Preservation Field Services Bureau**

**Code of Federal Regulations (CFR):
Qualifications for Historic Preservation Commission Members**

36 CFR Part 61, Appendix A: PROFESSIONAL QUALIFICATIONS STANDARDS

HISTORY: Graduate degree in history or closely related field **OR** Bachelor's degree in history or closely related field, **PLUS** either 2 years full-time research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution, **OR** substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

ARCHEOLOGY: Graduate degree in archeology, anthropology or closely related field **PLUS** 1 year full-time professional experience or equivalent specialized training in archeological research, administration, or management; 4 months of supervised field and analytic experience in general North American archeology; **AND** demonstrated ability to carry research to completion.

PREHISTORIC ARCHEOLOGY: In addition, 1 year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period.

HISTORIC ARCHEOLOGY: In addition, 1 year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period,

ARCHITECTURAL HISTORY: Graduate degree in architectural history, art history, historic preservation or closely related field, with coursework in American architectural history **OR** Bachelor's degree in architectural history, art history, historic preservation or closely related field, **PLUS** either 2 years full-time research, writing, teaching, in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution **OR** substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

ARCHITECTURE: A. A professional degree in architecture **PLUS** 2 years of full-time professional experience in architecture **OR** B. a state license to practice architecture.

HISTORIC ARCHITECTURE: Professional degree in architecture **OR** State license to practice architecture, **PLUS** either 1 year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field **OR** 1 year full-time professional experience on historic preservation projects. Either experience must include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

CLOSELY RELATED FIELDS: Planning, Folklore, Cultural Anthropology, Curatorial, Conservation, Landscape Architecture.

Exhibit 1 p. 1

Historic Preservation Commission Membership Application

Municipality/CLG: _____

Name: _____

Address: _____

Interest, competence or knowledge of historic preservation is demonstrated by:

Education:* _____

Employment/Profession:* _____

Community Service:* _____

Memberships (e.g., historical societies): _____

Seminars/Workshops: _____

Hobbies/Interests: _____

** Please provide sufficient detail (i.e., major field of college degrees, duration of professional experience, titles of published works, names of exemplary projects) to determine if 36 CFR 61, Appendix A, "Professional Qualification Standards" are met.*

EXHIBIT 2

PBN LETTER dated December 28, 2012

Tom Yots to Darius Pridgen

2 pages

PRESERVATION
Buffalo Niagara
Building on the past for our FUTURE

December 28, 2012

Darius G. Pridgen
Ellicott District Council Member
1408 City Hall
Buffalo, New York 14202

Council Member Pridgen,

I am writing you with great concern regarding the status of the Local Landmark Nomination Application (Application) for the Trico Plant #1 Building (Trico) located in the Ellicott District. It has been several months since the Legislation Committee of the Buffalo Common Council (Committee), of which you are the chairman, has had any legislative action on the application. Preservation Buffalo Niagara (PBN) is fearful that proper procedure is not being followed per the City of Buffalo's Preservation Standards (Preservation Ordinance) in regard to the Trico Application.

On March 8, 2012, the City of Buffalo Preservation Board (Preservation Board) unanimously approved the application for Trico, set a date for a public hearing on the matter, and provided for necessary notification. On April 24, 2012, your Committee addressed the matter and held a public hearing in the Council Chambers. After the close of the hearing, over your objection, the item was voted out of Committee and sent to the Buffalo Common Council (Council) without the Committee's recommendation. Your objections were clearly presented and were premised, at least in part, on demands for more information about the potential environmental and structural concerns of Trico.

I would like to take this opportunity to note that the criteria for eligibility as a Local Landmark set forth by the Preservation Ordinance does not pertain to the environmental or structural integrity of a structure. Trico has been listed on the National Register of Historic Places since the Fall of 2000 having met the required criteria for eligibility set forth by the National Park Service in partnership with the New York State Historic Preservation Office. Given this national and state status, and the fact that the threshold for local landmark designation is considerably lower than that of a National Register-listed structure, it is overwhelmingly apparent that Trico is also eligible to be designated as a City of Buffalo Local Historic Landmark. This should be the only relevant factor that influences your decision regarding this subject. Regardless, on May 1, 2012, at a regular meeting of the Council, on your motion, the item was received and filed and there has since been no further legislative action on the matter.

Sir, with due regard to your position as Chairman of the Legislation Committee and as Council Member for the Ellicott District, Preservation Buffalo Niagara respectfully requests that the landmark application for the Trico site be restored and properly discharged from the

617 Main Street, Buffalo, New York 14203 • Phone: (716) 852-3300 • Fax: (716) 852-5340
www.PreservationBuffaloNiagara.org • info@p-b-n.org

Exhibit 2 p.1

PRESERVATION *Buffalo Niagara*

Building on the past for our FUTURE

Committee as soon as practicable. The Preservation Ordinance states that the Committee has thirty (30) days to act on an application following the required public hearing. This legislative action, which is required by law, is well overdue. Furthermore, PBN requests that the Council approves the application for Trico at its next regular meeting or as soon thereafter as is practicable.

As a Certified Local Government, the City of Buffalo is required per the adopted Preservation Ordinance to list local historic landmarks regardless of environmental concerns, structural condition or owner consent. Given that Trico is already listed on the National Register of Historic Places, it is tremendously obvious that the building is eligible to be listed as a local historic landmark. Inaction on the matter of Trico's application hampers efforts to develop an appropriate redevelopment plan for the site. Preservation Buffalo Niagara is eager to assist the Committee and the Council in whatever capacity to ensure that local ordinances are understood and followed.

Regards,



Tom Yots,
Executive Director, Preservation Buffalo Niagara

Cc: City of Buffalo Preservation Board, Chairman Paul McDonnell,
City of Buffalo Common Council, Council President Richard A. Fontana

617 Main Street, Buffalo, New York 14203 • Phone: (716) 852-3300 • Fax: (716) 852-5340
www.PreservationBuffaloNiagara.org • info@p-b-n.org

Exhibit 2 p. 2

EXHIBIT 3

PBN LETTER dated February 1,2013
Tom Yots to Richard Fontana
1 page
Attachment to Letter of February 1, 2013
9 pages

PRESERVATION
Buffalo Niagara
Building on the past for our FUTURE

February 1, 2013

Council President Richard Fontana
Buffalo Common Council
1315 City Hall
Buffalo, New York 14202

Council President Fontana:

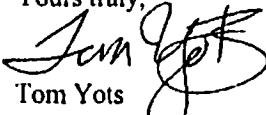
In March 2012, Paul McDonnell, President of Campaign for Greater Buffalo, History, Architecture and Culture filed an application for landmark of Trico Plant No. 1, 791 Washington Street. The application was approved by the Buffalo Preservation Board. The Legislation Committee of the Buffalo Common Council (Council) forwarded the item to the Council without recommendation. On motion of the Legislation Committee Chairman at a regular meeting of the Council on May 1, 2012, the Members voted to receive and file the item. There has been no legislative action on the application since that time. PBN respectfully requests that the Council approve the application for landmark of Trico Plant No. 1 at its next regular meeting or as soon thereafter as is practicable.

On November 19, 2012, the Buffalo Niagara Medical Campus, Inc. (BNMC) announced the release of the Trico Complex Redevelopment Feasibility Study dated October 23, 2012 (Study). A consultant team retained by BNMC prepared the Study.

Fundamental considerations at the outset of planning for any proposed project are ownership and site control. The Buffalo Brownfield Restoration Corporation (BBRC), a subsidiary of the Buffalo Urban Development Corporation (BUDC), owns Trico Plant No.1. On June 28, 2007, BBRC, BUDC, and BNMC signed an agreement that granted BNMC exclusive development rights for a three-year period. There is no evidence in the record that BNMC renewed the designated development agreement within the contractually designated period. To clarify this matter, on September 7, 2012, PBN mailed requests to BBRC, BUDC, BNMC, City of Buffalo Corporation Counsel (Corporation Counsel), and independent legal experts seeking their opinions on the effective date of the agreement. The BBRC, BUDC, BNMC, and Corporation Counsel have not responded.

It is important that the Council is aware of the site control issue, the Study, critical facts related to those matters, and other matters necessary to make an informed decision on the landmark application of Trico Plant No. 1. PBN respectfully submits the attached information for your review and consideration. Additionally, we offer to meet with you to explain our role to date and why we feel that issue surrounding the Trico Plant #1 building needs to be addressed immediately in a proper manor.

Yours truly,


Tom Yots
Executive Director

cc. Office of the City Clerk

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www.PreservationBuffaloNiagara.org • info@p-b-n.org

Exhibit 3 p. 1

THE TRICO COMPLEX REDEVELOPMENT FEASIBILITY STUDY

Methodology

Consultants

Doug Swift Development Company

Doug Swift's multi-faceted activities in Buffalo's Development and Preservation communities were nearly unique qualifications for his selection as BNMC's principal spokesperson and advisor leading the redevelopment study process. After Mr. Swift announced his commission, he resigned as a trustee of Preservation Buffalo Niagara, at least in part, to avoid any question of conflict of interest at the outset of a study designed to review a range of alternatives. PBN as a matter of record is an advocate for Trico Plant No. 1's National Register of Historic Places (NRHP) and local landmark status.

Foit-Albert Associates

Gwen Howard, as author, has extensive experience in Buffalo's Design, Development and Preservation communities. She is a member of the Buffalo Preservation Board. Foit - Albert prepared several of the previous reports that were reviewed in the instant Study. Foit -Albert's business relationship with U.B. and the BNMC is well established. Bonnie Foit is a Director of the UB Foundation. Foit-Albert was a plaintiff in the bankruptcy action against the McGarvey Estate where the UB Foundation on behalf of BNMC purchased parcels of the Trico Complex.

Militello Realty

James Militello is perhaps the most knowledgeable person in the City of Buffalo on the real estate aspects of Trico Plant No. 1 and the BNMC. Militello Realty brokered the sale of Trico to the late Mr. McGarvey and Trico's move to the Buffalo Industrial Park. Militello Realty has been active in leasing space both on the Medical Campus and in the Central Business District. Mr. Militello was a member of the Master Planning Team of The Buffalo Building Reuse Project (BBRP). Militello Realty has been a ubiquitous presence in major City of Buffalo real estate transactions for decades.

Architectural Resources

Architectural Resources (AR) acts as in-house advisors to BNMC on matters of design and planning. Their close relationship yields an understanding and continuity that is consistent. The image of the "Goodell Scheme" presented in the Study is an image previewed in the February-March 2012 discussions of potential redevelopment options.

Baer and Associates

Baer and Associates are well-established reliable experts in construction cost estimating. Richard Baer is a Life Trustee of PBN.

Contents

Affirmations:

- The study detailed the presence of hazardous materials and/or conditions on site.
- Consistent with previous reports and studies, environmental conditions have deteriorated since 2007 acquisition of the site.
- Code violations exist at the site
- The structural integrity of the site has deteriorated since 2007 acquisition
- Remediation of environmental hazards is required prior to demolition or renovation of the site.
- BNMC previously contracted Ontario Specialties to selectively demolish most of the site for future development. The value of the demolition agreement is approximately \$3,750,000, a figure that has been used as a basis of several of the calculations in the Study.

Errors:

- Financial calculations premised on tax credits being provided after demolition of significant portions of the site are erroneous. Elizabeth Martin, of the State Historic Preservation Office [SHPO] has repeatedly stated that tax credits and/or any form of public financing would be jeopardized by significant demolition or significant unapproved alteration of the NRHP site.

Omissions:

- Preservation input – The study does not include and/or did not consider current opinions or recommendations of any federal, state, or local preservation agency or organization.
- Energy/Environmental calculations- The study does not contain a comparative or cost/benefit analysis of embedded energy – demolition new-build alternatives
- Innovative/Alternative technology and uses have not been detailed in the evaluation of preferred options. There is no discussion of urban agriculture – vertical farming – green roofs – smart materials – social innovation – collaborative or progressive solutions.
- Beecher Innovation Center statistics - The study does not contain data on occupancy, renovation costs, operation and maintenance costs, revenue, square feet of high tech lab space, specialized development costs or other information necessary to assess the Innovation Center as a model for future development.

PROCESS CONSIDERATIONS

CERCLA

Superfund is the common name for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Superfund provides broad federal authority to clean up releases or threatened releases of hazardous substances that may endanger public health or the environment. Phase I Environmental Site Assessments prepared for BNMC by Watts Architecture and Engineering, P.C. (Watts) in 2006 and 2007 contain User Questionnaires prepared in accordance with The Small Business Liability and Brownfields Revitalization Act. The Act was passed in 2002 and amended CERCLA to limit the liability faced by developers, especially small developers. BBRC as current owner may be subject to liability for environmental hazards as a potentially responsible party.

NEPA

The National Environmental Policy Act (NEPA) is a United States environmental law that established a U.S. national policy promoting the enhancement of the environment. The essential purpose of NEPA is to ensure that environmental factors are weighted equally when compared to other factors in the decision making process undertaken by federal agencies. The act establishes the national environmental policy, including a multidisciplinary approach to considering environmental effects in federal government agency decision making. Trico Plant No.1 as an NRHP requires NEPA consideration.

SEQRA

In New York State, most projects or activities proposed by a state agency or unit of local government, and all discretionary approvals (permits) from a NYS agency or unit of local government, require an environmental impact assessment as prescribed by 6 NYCRR Part 617 State Environmental Quality Review (SEQRA) [Statutory authority: Environmental Conservation Law Sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113]. SEQRA requires the sponsoring or approving governmental body to identify and mitigate the significant environmental impacts of the activity it is proposing or permitting.

CERO

Chapter 168 of the Buffalo City Charter is the Environmental Review Ordinance. The basic purpose of this chapter is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of the City at the earliest possible time. To accomplish this goal, this chapter requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

Local Preservation

Chapter 337 - Preservation Standards of the City Charter codifies the purpose and rules governing Preservation policy in the City of Buffalo. Landmark status for NRHP Trico Plant No.1 site is the option most consistent with statute.

PUBLIC BENEFIT

Employment

The University of Buffalo Urban Design Project with the Greater Buffalo Niagara Regional Transportation Council (2003) published an Employee Survey For The Buffalo Niagara Medical Campus and Chan Krieger and Associates. Buffalo Niagara Medical Campus employees, according to a survey conducted by the five member institutions, are affluent professional and managerial workers who commute from the suburbs, take a quick lunch, don't have time to shop, and have mixed feelings about the campus environment and its amenities. Medical campus employees are typically well educated and affluent. More than four-fifths are white, only 8 percent African American. Two thirds have college degrees; a quarter have graduate degrees and beyond. A third makes more than \$75,000 a year. Only 15 percent make less than \$30,000 per year.

Housing

The BNMC has not included housing in its past development plans or expenditures. The "Goodell Scheme" does have a limited housing component. Potential redevelopment options for NRHP Trico Plant No. 1 that have been discussed within the preservation community include a range of mixed-use scenarios that may include housing for visitors, patients, students, professionals, and/or neighborhood residents displaced by other development projects.

Economic Development

Cultural/Historic Tourism

Every comprehensive development plan for the City of Buffalo and the Western New York Region emphasizes the critical role of cultural/historic resources and their full integration into the planning and development processes. Landmark status of the NRHP Trico Plant No. 1 site is consistent with those plans.

Local Businesses

For all its professional employees, the BNMC is a "lunch bucket" place. Fully one fifth bring a lunch from home every day. Three quarters do so at least once a week. About 40 percent eat at an employee cafeteria at least once a week. Nearly 30 percent buy lunch from a carry out restaurant one or more times per week. Eighty-five percent never eat lunch at a sit-down restaurant. BNMC employees almost never travel as much as 15 minutes to eat lunch. Fewer than one in five has a full hour or more to eat. About half have from 30 to 45 minutes. About a fifth have a lunch period of 30 minutes or less. One in ten doesn't take a lunch break at all. Not surprisingly,

they don't spend much. Nearly 70 percent spend under \$6 for lunch.

BNMC employees' negative view of shopping opportunities is matched by their behavior. About three quarters say they never go shopping during their lunch period. Evidence of BNMC's practical impact on small businesses in its vicinity may be seen in the examples of Ullrichs, Campieri's, K. Gallaghers, Nadia's, and Fiddleheads; small local restaurants unable to sustain themselves in the shadow of the BNMC, and the tenuous commercial activity along Allen, Main, and High streets.

If the NRHP Trico Plant No. 1 site is landmarked and repurposed to provide a multitude of retail, service, educational, manufacturing, storage, food, and housing options, we feel that tax revenue, local employment, and retail traffic in the area will see a significant increase.

Buffalo Building Reuse Project

The Buffalo Building Reuse Project (BBRP), crafted by the Buffalo Niagara Partnership at the request of Mayor Byron Brown, offers a blueprint for older downtown buildings. The program identified Buffalo Urban Development Corp. as the lead agency to work with developers while also deciding how public-sector seed money may be used as gap financing. In direct response to the BBRP report, Mayor Brown committed \$11.25 million over a three-year period to help implement the BBRP recommendations. These funds supplement \$4 million awarded by New York State through the Regional Economic Development Council process, and \$23 million in federal money for the Cars on Main Street project. Additional funding will be sought from foundations, private sector and utility companies.

Various real estate reports, including one issued on Jan. 19 by CBRE/Buffalo, a leading commercial real estate firm, indicate that downtown remains a popular spot for residential development, especially if it involves renovating late 1800s and early 1900s buildings

As owner of the NIIRP Trico Plant No. 1 site, BBRC's record of the last five years deserves close scrutiny. Decisions of the BBRC regarding disposition of the site, the remediation of environmental hazards, and redevelopment will define the template of the city's preservation and/or development strategies in regard to the BBRP. The question of BUDC's suitability as lead agency of BBRP rests, in part, on NRHP Trico Plant No.1.

Certified Local Government

The 1980 amendments to the National Historic Preservation Act [*16 U.S.C. 470a (7)(C)*] contained the authorization in *Section 101(a)(7)(C)* for a federal-state-local preservation partnership that became known as the **Certified Local Government (CLG)** program. The local government must have and enforce local legislation for the designation and protection of historic properties enacted under the provisions of the *New York State General Municipal Law Article 5, Section 96-a and 119aa-119dd*. In order to maintain

CLG status, the local government must perform certain responsibilities according to the specified performance standards; including the requirement that local legislation shall be enforced continuously and consistently. The SHPO shall monitor CLG programs and shall evaluate each certified local government to ensure that it is fulfilling its responsibilities. CLG status is a major public benefit for the City of Buffalo. Local landmark designation of NRHP Trico Plant No. 1 would be consistent with CLG statute.

Tax Dollars

Significant federal, state, and local government funds have gone into the BNMC and the Beecher Innovation Center since 2007. In excess of 24 million dollars in public funds and 3-4 million in Oshei foundation funds have been invested in renovation of the building. The City of Buffalo secured 4.5 million in Restore NY funding even prior to BNMC purchase of the site. Empire State Development Corp. (ESDC) re-purposed 14.8 million for development of the site pursuant to a 2007 Memorandum between Gov. Pataki and State Senate and Assembly leaders. Additional ESDC, federal Small Business Administration and Federal Highway Administration funds, and City of Buffalo funds have been invested in 640 Ellicott Street and adjacent infrastructure. Each of these investments and the participation of government agencies, in funding, permit, review and other actions require compliance with NEPA, SEQRA, General Municipal Law and other provisions.

BNMC and several of its' member institutions receive well over 90% of their funding from public sources. The rapidly increasing concentration of wealth and development in this sector rests largely on tax-exempt property, tax abatements, and subsidized financing. Landmark of the NRHP Trico Plant No. 1 site and control by a responsible party is a more sustainable model for positive return on investment of public dollars.

Integrity

Confidence in the integrity of public agencies and officials is a public benefit of inestimable value. Consistent performance by public entities in accordance with established laws and regulations is the reasonable expectation of every citizen. The integrity of the public process, in this instance, will be served by compliance with all of the appropriate statutes and the decision to landmark NRHP Trico Plant No. 1.

LEGISLATIVE/MUNICIPAL RECORD

National Register of Historic Places

In October 2000 the Buffalo Preservation Board and Mayor Anthony Masiello submitted letters in support of Trico Plant No.1's application for listing on the State and National Registers of Historic Places. The applications were prepared by Foit-Albert. The Common Council approved the nomination.

Negative Declaration

Published July 9, 2008, in the Environmental Notice Bulletin (ENB) of the New York State Department of Environmental Conservation (NYSDEC), a Negative Declaration of Environmental Impact was filed. It stated, "The City of Buffalo Planning Board, as lead agency, has determined that the proposed renovation of 640 Ellicott Street will not have a significant adverse environmental impact. The action involves the renovation of a semi vacant four story, 109,000 square foot structure located in the Buffalo Niagara Medical Campus. The project is located at 640 Ellicott Street in the City of Buffalo, New York" The Common Council approved the Declaration.

Legislation Committee/Preservation Board Public Hearing

In March 2012, the Preservation Board approved the application for local landmark status of NRHP Trico Plant No. 1. The unanimous recommendation of the Board was forwarded to the Common Council in accordance with Chapter 337 of the City Charter.

On April 24, 2012, a Public Hearing was held before the Legislation Committee of the Common Council on the landmark application of NRHP Trico Plant No. 1. The record of expert testimony before the Committee includes, but is not limited to: several speakers detailing the architectural/historic significance of NRHP Trico Plant No. 1, and developer Rocco Termini addressing building code violations, redevelopment options, and market factors. Distinguished SUNY Professor Frank Kowsky, Dana Saylor, and many credentialed members of the preservation community spoke in support of the landmark application for NRHP Trico Plant No. 1.

Terrence M. Gilbride, Esq., partner at Hodgson Russ LLP, spoke in opposition to the landmark application of NRHP Trico Plant No. 1. Mr Gilbride stated that a forthcoming proposal to the City Planning Board would show: that adaptive reuse of the facility was taken into account with respect to the BNMC's future plans and that the deterioration and pervasive contamination of the structure was substantiated by seventeen environmental and engineering studies. Mr. Gilbride is past trustee of the UB Foundation. The UB Foundation purchased the parcels of the Trico Complex in a September 2007 Bankruptcy Auction of the McGarvey Estate. The purchase has been characterized by the BNMC as a single-lot transaction. Hodgson Russ handled wire transfer of funds and closing details. Watts Engineering was retained by BNMC and the UB Foundation to conduct environmental assessments of the Trico Complex prior to purchase. Those reports were sent directly to Mr. Gilbride.

Asst. Corporation Counsel Alan Gerstman, who sits as non-voting member of the Preservation Board, engaged Mr. Gilbride, at the hearing, on the respective roles of the Planning Board and Preservation Board as a consequence of landmark status. Ed Watts Jr., of Watts Engineering, is a voting member of the Preservation Board.

RELATED DEVELOPMENTS

The Study omits mention of the 100 page Pre-Renovation Asbestos Survey prepared by Foit-Albert in December 2001 for Steve McGarvey. The asbestos containing roof

membrane was removed in accordance with the survey's recommendation. The Study refers to a 1994 report.

December 5, 2012, HSBC USA N.A. announced that it would vacate One HSBC Center in downtown Buffalo early next year. A specific caveat in the Study warns that, should HSBC decide to vacate their tower, a ripple effect on the commercial real estate market and rent structure throughout the downtown area could be expected.

On December 4, 2012, the Buffalo Planning Board approved Savarino Development's detailed plan for the former FN Burt Co. at 500 Seneca St. Savarino acquired the site in 2010 for \$200,000. Initial plans called for partial demolition and reconstruction of the 330,000 sq ft building. Current plans for the \$35 million project are for a mixed-use structure developed in accordance with Secretary of the Interior Standards and eligible for state and federal tax credits. The size, structure, and condition of the facility immediately bring to mind NRHP Trico Plant No 1.

CONCLUSIONS

1. Critical information has been withheld from the public regarding facts, plans, and options for NRHP Trico Plant No. 1
2. Little material effort has been made to protect, preserve, or restore NRHP Trico Plant No. 1 since its acquisition in 2007.
3. BNMC, BUDC, BBRP, and UB Foundation were aware of every environmental, structural, and preservation issue of concern to the NRHP Trico Plant No. 1 site prior to 2007.
4. The City of Buffalo procurement of 4.5 million of Restore NY funds, award of a 3.75 million demolition contract to Ontario Specialties, statements of BBRC representatives to the Planning Board, unabated deteriorating building conditions, and published plans demonstrate the long established intent to demolish all or a significant portion of NRHP Trico Plant No. 1.
5. Preservation of NRHP Trico Plant No. 1 is now dependant upon local landmark of the site, and responsible sustainable development by the owners.
6. The landmark, remediation, and redevelopment of NRHP Trico Plant No. 1 are consistent with the legislative record and relevant statutes.
7. Development of 640 Ellicott Street – Beecher Innovation Center; contiguous to NRHP Trico Plant No.1 and within the National Registry boundary, requires compliance with statute for funding and actions by public agencies.
8. Demolition of NRHP Trico Plant No. 1, by statute, jeopardizes all public funding of projects at the site
9. Although it contains some valuable information, the BNMC Study is not complete as a comprehensive review of preservation and related redevelopment options for the NRHP Trico Plant No. 1 site. Additional investigation in these areas should be done to complete the study.
10. Greater public benefit will be accomplished through landmark and development of NRHP Trico Plant No. 1 as a place where Buffalo residents live, work, shop,

play, and learn in a historic structure that fosters innovation and progress than other proffered solutions.

11. Landmark and development of NRHP Trico Plant No. 1 will generate tax revenue, fair wages and equitable employment opportunities.
12. Landmark and development of NRHP Trico Plant No 1 is a feasible and financially sound undertaking.

PBN RECOMMENDATIONS/ROLE

- Proper study
- Council approve landmark application
- Site control question

EXHIBIT 4

APPLICATION FOR LANDMARK/LANDMARK SITE

Trico Plant No 1 – filed 4 March 2013

28 pages

Application for Landmark/Landmark Site

Buffalo Preservation Board
901 City Hall
Buffalo, New York 14202
Telephone: (716)851-5029
Fax: (716) 851-4388

Instructions to Applicant:

The following information is required, at a minimum, prior to the Buffalo Preservation Board considering an application complete:

- a) Three (3) copies of this application;
- b) One complete set of quality photographs, (Preferably 8"x 10"), of all exterior elevations of the building. Interior photographs may also be submitted;
- c) A site plan, map or survey that indicates in sufficient details what building/properties are being proposed for designation;
- d) Any additional information you can furnish that substantiates that the property is deemed to be of architectural, historical, geographical, cultural or aesthetic significance.

Failure to submit the required information may result in an incomplete application and delay the review process:

******check in the amount of \$500.00 made out to the City Of Buffalo Preservation Board must be submitted at time of application for non-owner occupied structures/sites.**

Please provide the following on the property for which landmark consideration is requested.

- 1. Address of Site: 791 Washington Street A.K.A. 817 Washington Street
- 2. Name of Property (if any): Trico Plant No. 1
- 3. Name of Present Owner: Buffalo Brownfield Restoration Corporation, subsidiary of
Buffalo Urban Development Corporation
Address: 143 Genesee St., Buffalo, NY 14203, Phone: 716-856-6525
Contact person: Peter Cammarata. Phone: 716-362-8361

2013 MAR -1 PM 1:08
RECEIVED

Note: If property is in multiple ownership, list the names/addresses of other persons having legal or equitable interest in property:

4. Has the owner, if other than applicant, been contacted?

Owner will be contacted as per City of Buffalo Code.

If yes, is owner in favor of landmark designation?

Agency is proposing demolition, presumption is no

If yes, submit a signed statement/affidavit by owner supporting Designation.

5. Present use of property: Vacant

6. Year of Construction: 1920 – 1950

7. Architect: Plumer & Mann Engineers and Architects

Information Source: Kowsky

8. Is property endangered? Yes

If yes, explain: Owner and prospective owner have proposed demolition

9. The Trico Building meets the following criteria (1, 3, 4, 5, 7, 9) for Land marking as per: United States Department of Interior Standards for Historic Preservation and the Preservation Standards as cited in the Charter and Code of the City of Buffalo, New York.

Criteria 1: It has character, interest, or value as part of the development, heritage, or cultural characteristics of the city, state, or nation. (Principal plant of the world's first, and for decades, largest windshield wiper manufacturer, an item ubiquitous around the world. Trico employed thousands of people at its peak, and founder John Oishei was a significant supporter of many social institutions personally and founded the what is now the John Oishei Foundation).

Criteria 3: It exemplifies the historic, aesthetic, architectural, archeological, educational, economic, or cultural heritage of the city, state, or nation (steel reinforced concrete construction defined the daylight factory, and Buffalo was a prime location in the development of reinforced concrete in buildings).

Criteria 4: It is identified with a person or persons who significantly contributed to the development of the city, state, or nation. (John Oishei)

Criteria 5: It embodies distinguishing characteristics of an architectural style valuable for the study of a period, type, method of construction, or use of indigenous materials. (reinforced concrete construction and the daylight factory)

Criteria 7: It embodies elements of design, detailing, materials, or craftsmanship that render it architecturally significant.

Exhibit 4 p.2

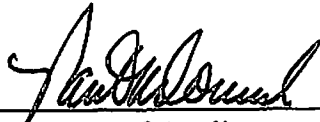
Criteria 9: It is a unique location or contains singular physical characteristics that make it an established or familiar visual feature within the city. (Location between downtown, Allentown, the Fruitbelt and the medical complex, on Goodell Street renders it part of the everyday life of Buffalonians and visitors. It is part of the Goodell Street canyon that is an important cultural landscape that helps define the city's urbanity)

10. Please find attached the National Registration of Historic Places Registration Form for Trico Plant #1, 817 Washington Street, Buffalo, NY 14203

11. Name of Applicant: Paul McDonnell, Chair, Buffalo Preservation Board

Organization: Buffalo Preservation Board

I hereby certify that the information contained herein is true and correct to the best of my knowledge.



Signature of Applicant

3-4-13

Date

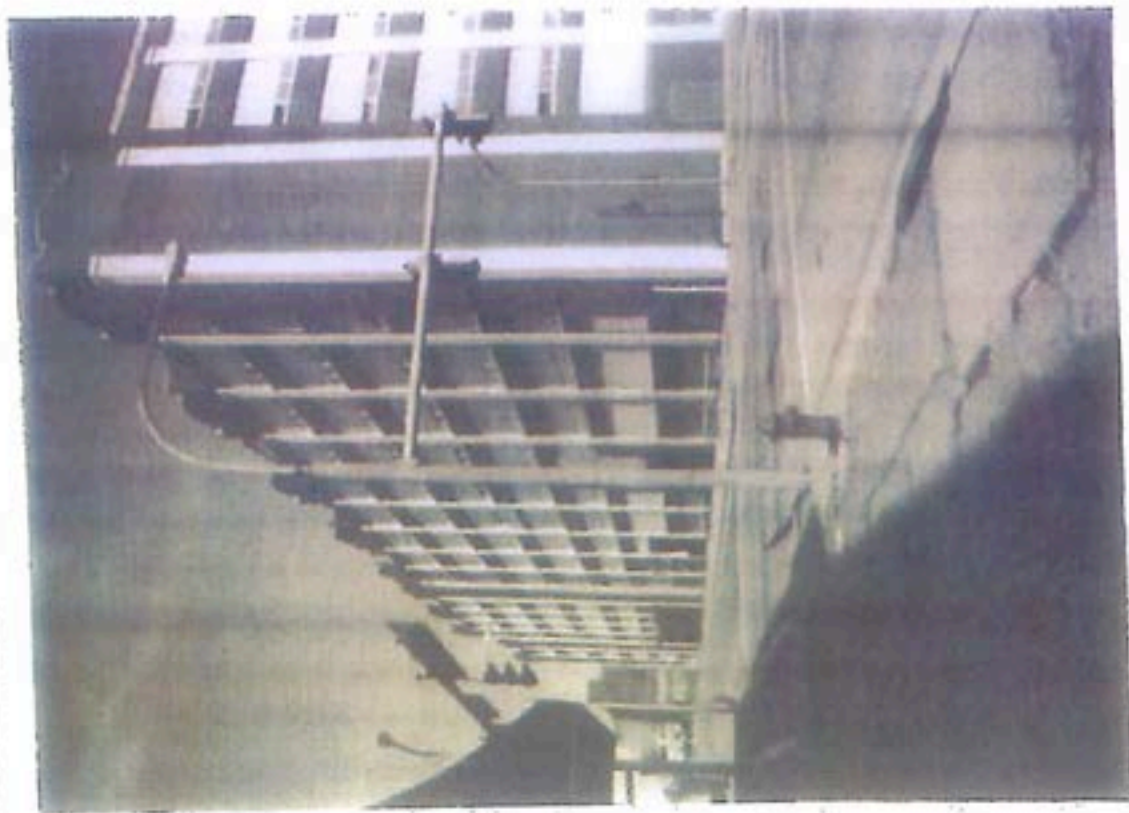


Exhibit 4 p.4

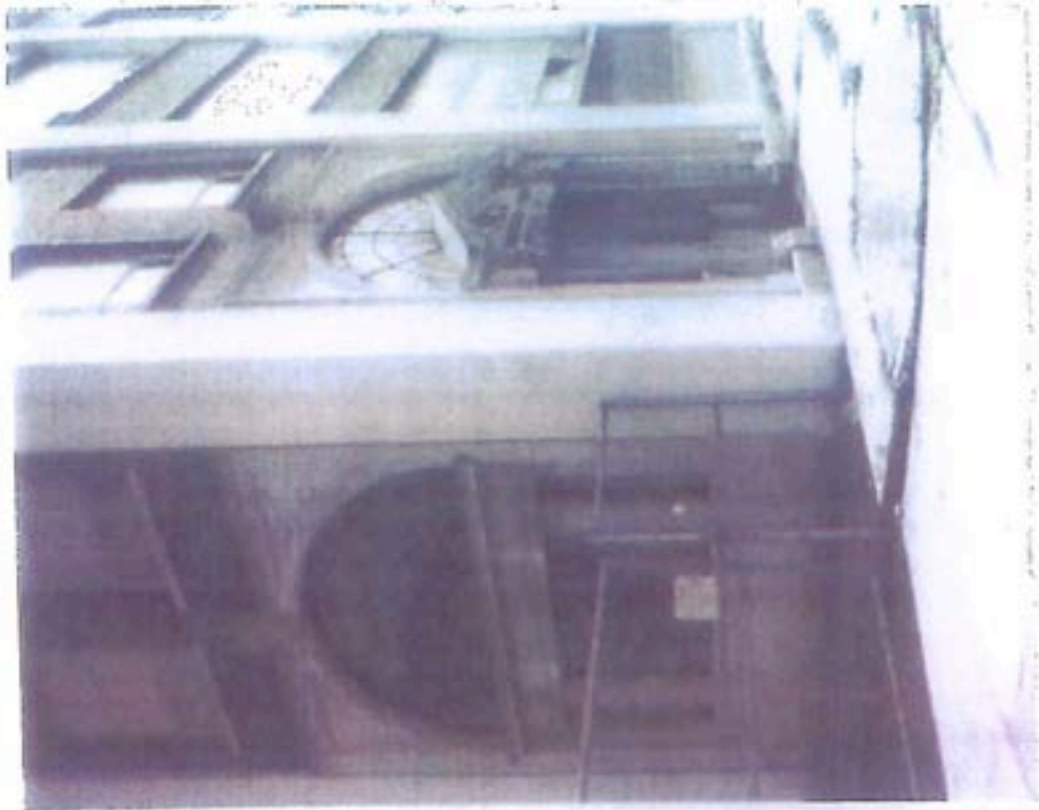






EXHIBIT 4p.7



Exhibit 4 p. 8

NPS Form 10-900
(Oct. 1990)

OMB No. 10024-0018

United States Department of the Interior
National Park Service

National Register of Historic Places
Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "X" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name Trico Plant #1

other name/site number _____

2. Location

street & town 817 Washington Street not for publication

city or town Buffalo vicinity

state New York code NY county Erie County code 029 zip code 14203

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this nomination request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property meets does not meet the National Register criteria. I recommend that this property be considered significant nationally statewide locally. (See continuation sheet for additional comments.)

[Signature] Dep. Comm. for Hist. Preservation 13 December '90
Signature of certifying official/Title Date

State of Federal agency and bureau

In my opinion, the property meets does not meet the National Register criteria. (See continuation sheet for additional comments.)

Signature of certifying official/Title Date

State or Federal agency and bureau

4. National Park Service Certification

I hereby certify that the property is:

entered in the National Register.
 See continuation sheet.

determined eligible for the National Register.
 See continuation sheet.

determined not eligible for the National Register.

removed from the National Register.

other, (explain): _____

Signature of the Keeper

Date of Action

Exhibit 4 p.9

Trico Plant #1
Name of Property

Erie County, New York
County and State

5. Classification

Ownership of Property
(check as many boxes as apply)

Category of Property
(check only one box)

Number of Resources within Property
(Do not include previously listed resources in the count.)

- public-local
- private
- public-State
- public-Federal

- district
- building(s)
- site
- structure
- object

Contributing	Noncontributing
1	buildings
0	sites
0	structures
0	objects
1	Total

Name of related multiple property listing
(Enter "N/A" if property is not part of a multiple property listing.)

Number of contributing resources previously listed in the National Register

N/A

N/A

6. Function or Use

Historic Function
(Enter categories from instructions)

Current Function
(Enter categories from instructions)

INDUSTRY/PROCESSING/EXTRACTION/manufacturing facility

partly vacant

7. Description

Architectural Classification
(Enter categories from instructions)

Materials
(Enter categories from instructions)

OTHER/Daylight Factory

foundation concrete stone

walls brick

concrete

roof asphalt

other _____

Narrative Description

(Describe the historic and current condition of the property on one or more continuation sheets.)

Exhibit 4 p. 10

United States Department of the Interior
National Park Service

OMB No. 1024-0018, NPS Form

Trico Plant #1
Erie County, New York

**NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET**

Section number 7 Page 1

Description Statement

The Trico Plant #1 is a complex of industrial buildings erected or converted to company use between ca. 1920 and 1950 and located one block east of Main Street in downtown Buffalo, New York. The property is bounded on the south by Goodell Street, on the east by Ellicott Street between numbers 610 and 672, and on the west by Washington Street north to Burton Place and north of Burton Place by Rochevot Alley (which runs parallel to Ellicott Street) north one property short of Virginia Street. The north boundary follows Burton Place from the corner of Washington Street east one half block to Rochevot Alley. The "panhandle" thus formed with Rochevot Alley as its western boundary ends on the north with the rear of 670-672 Ellicott Street near the angle formed with Virginia Street. The buildings in this complex are identified by a numbering system that reflects the chronology of their construction. They are: Building 1 (624 Ellicott Street, built ca. 1890 and purchased for use by the company in 1920; floors 5 and 6 added in 1924; a 6th floor crossover to Building 2 was added in 1931); Building 2 (632-636 Ellicott Street, 1924; floors 5 and 6 added in 1931); Building 3 (638-644 Ellicott Street, 1928; floor 5 added 1929; floor 6 added in 1931); Building 7 (807-817 Washington Street, 1936), Building 8 (787-805 Washington Street, 1937); Building 9 (648-668 Ellicott Street, 1954, with additions and alterations in 1957 and 1989--this is a non-contributing structure); and Building 10 (670-672 Ellicott Street, erected prior to 1923 and purchased for company use in 1946). Building 4, 5 and 6 were demolished to make way for existing construction on the site.

Building 1, the oldest structure in the Trico complex, is the former storehouse of the Christian Weyand Brewery. It was purchased for company use in 1920 when Trico moved to this site from another location in Buffalo. The original 50' wide, four-story eastern elevation of the brewery building is visible on Ellicott Street. It consists of a high, two-story, rusticated ashlar brownstone basement above, which rests a tall third story equal in height to the stone basement and made of brick. The brick wall is articulated by two recessed panels, two brownstone stringcourses, and a crowning brick corbel table. Above this is a shorter fourth floor of brick with a brick cornice defining the original height of the building. Nearly all of the small, symmetrically arranged rectangular windows on the Ellicott Street elevation have been bricked up long ago. (Those in the basement level are filled with glass block; all windows on the exposed northern flank have also been closed up.) In the 1920's, two, three-bay stories of metal construction with brick facing and metal sash windows were added to the top of the brewery building. At this time, a white concrete pier was embedded in the northeast corner of the brewery building to help support the new upper floors. The south and west sides of this building are no longer visible from the outside, for they have been incorporated in reinforced concrete construction of later factory buildings. The interior of the enlarged factory preserves the original load bearing walls of the brewery building together with a row of steel posts running down the center of the open rectangular space.

Building 2 is primarily a four-bay, 100' by 133' reinforced concrete, curtain wall structure consisting of white concrete piers rising from the ground level to the flat roof. Red brick spandrels and metal sash windows fill in the grid. Building 2 was erected in 1924 to the north of Building 1. A low, two-story pedimented brick structure (considered part of Building 2) with a loading dock abuts Building 1 on Ellicott Street. Above this low structure is an open space rising to the sixth floor where, in 1931, a crossover floor was constructed to bridge Building 1 and Building 2. Behind the two-story building is a four-story wing of Building 2. The main section of the east elevation on Ellicott Street consists of upright concrete piers rising six stories above a basement level. (Windows in this level are below the brick spandrels and are now filled with glass blocks.) Red brick spandrels and metal sash windows fill in the exterior grid. In 1931, two stories were also added to most of Building 2 in the same style and method of construction as the original four-story portion. At a later date, the twin, narrow sash windows in the north and south bays were bricked up. On the interior, each floor consists of open floor space. Concrete piers spaced 20' apart with flaring capitals support concrete floor slabs. Modern fluorescent lighting supplements the daylight that enters each floor from the large windows.

Building 3 is an L-shaped structure of reinforced concrete and curtain wall structure with red brick spandrels and metal sash windows and a flat roof. Building 3 was erected in 1928 adjacent to the north of Building 2 and extended from Ellicott Street west through the block back to Washington Street. An 82'-wide elevation of four bays faces Ellicott Street, a 265'-wide elevation of 14 bays faces Burton Place, and a 60'-wide elevation of three bays faces Washington Street. In 1928, a fifth floor was added to Building 3, followed in 1931 by a sixth floor over the eastern portion (back to Rochevot Alley). The exterior elevations consist of upright concrete piers rising through the full height of the building above a basement level. (The original windows below the brick spandrels of the basement level have been replaced with glass blocks.) Red brick spandrels and metal sash windows fill in the exterior grid. The end bays of the Washington Street elevation preserve the characteristic Trico pediments that were the trademark of the company. Since this building housed administrative offices, it was given a monumental entrance. A classical-styled, stone entrance to this building is

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*Trico Plant #1
Erie County, New York***NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET****Section number 7 Page 2**

located on Washington Street at the corner of Burton Place. Beneath a round stone arch with a bracket for a keystone. Ionic half columns supporting a pediment in which appears the name "Trico Products Corporation," in roman letters flank a doorway. Around the corner, the first bay on Burton Street is treated in a similar way, with Doric pilasters articulating a large plate glass window that lights the entrance vestibule. On the interior, each floor consists of open floor space. Concrete piers spaced 20' apart with flaring capitals support concrete floor slabs. Modern fluorescent lighting supplements the daylight that enters each floor through large metal sash windows.

Building 7 is a 92' by 132' rectangular reinforced concrete, curtain wall structure of six stories above the basement and a flat roof. Building 7 was erected in 1936 behind Building 2 and immediately abutting the south elevation of Building 3. Its only visible façade is on Washington Street where there is an inconspicuous entrance in the southernmost bay. The exterior elevation consists of upright white concrete piers rising from the ground level to the roof. Red brick spandrels and metal sash windows fill in the grid except for the ground floor, which consists of a loading dock area. The roofline preserves the characteristic brick Trico pediment. On the interior, each floor consists of open floor space. Concrete piers spaced 20' apart with flaring capitals support concrete floor slabs. Modern fluorescent lighting supplements the daylight that enters each floor through metal sash windows.

Building 8 is a six-story, L-shaped structure with a nine-bay, 180' elevation on Washington Street, a 14-bay, 265' elevation on Goodell Street, and five-bay, 100' elevation on Ellicott Street. It abuts Building 1 on Ellicott Street and Building 7 on Washington Street. With its construction in 1937, Trico Plant #1 came to occupy all of the land within the block bordered by Goodell Street on the south, Ellicott Street on the east, Burton Place on the north and Washington Street on the west. Building 8 is a reinforced concrete, curtain wall structure of six stories with red brick spandrels, metal sash windows and a flat roof. As elsewhere on the exterior, thin, white concrete piers rise from the ground level to the roof and define the bays. The roofline preserves the Trico pediment over every other bay along Washington Street, together with twin pediments in the center of the along Goodell Street façade and a pair of pediments at the Goodell and Ellicott Street corner where the words "Trico Plant 1" are still in place. (The original narrow windows in these corner bays have been bricked up.) A seventh floor of corrugated metal construction is visible on the roof, set back from the façade. The exterior elevations consist of upright white concrete piers rising six stories above a basement level, the original windows of which have been filled in with glass block. Inconspicuous entrances are in the southeast corner at Washington and Goodell Streets and the southwest corner at Ellicott and Goodell Streets. The interior consists of open floor space. Concrete piers spaced 20' apart with flaring capitals support concrete floor slabs. Modern fluorescent lighting supplements the daylight that enters each floor through metal sash windows.

Building 9, facing Ellicott Street, is a four-story, seven-bay, steel frame structure with red brick curtain walls, industrial metal sash windows and a flat roof. The original portion of the building was erected in 1954 (with alterations in 1957 above the loading dock area) north of Burton Place back to Rochevot Alley. In 1989, a four-story, metal and glass portion was built at 640 Ellicott Street, immediately adjacent to Building 3, where it occupies the former Burton Place. Building 9, which has been transformed from factory to office use, is considered non-contributing.

Building 10, facing Ellicott Street north of Building 9, is a flat-roofed, single-story rectangular red brick structure resting on a four-foot limestone base course. It was erected prior to 1923 with internal metal supports and is considered contributing. All of its windows, as well as the central loading dock opening, are bricked up. Its rear wall, which is similar in appearance to the Ellicott Street façade, overlooks Rochevot Alley.

Trico Plant #1
Name of Property

Erie County, New York
County and State

8. Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing.)

- A** Property is associated with events that have made a significant contribution to the broad patterns of our history.
- B** Property is associated with the lives of persons significant in our past.
- C** Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- D** Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

Property is:

- A** owned by a religious institution or used for religious purposes.
- B** removed from its original location.
- C** a birthplace or grave.
- D** a cemetery.
- E** a reconstructed building, object, or structure.
- F** a commemorative property.
- G** less than 50 years of age or achieved significance within the past 50 years.

Narrative Statement of Significance
(Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

Bibliography
(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):

- preliminary determination of individual listing (36 CFR 67) has been requested
- previously listed in the National Register
- previously determined eligible by the National Register
- designated a National Historic Landmark
- recorded by Historic American Buildings Survey # _____
- recorded by Historic American Engineering Record # _____

Areas of Significance
(enter categories from instructions)

ARCHITECTURE

INDUSTRY

Period of Significance
1920-1950

Significant Dates
1920, 1924, 1928, 1929, 1931, 1935, 1936, 1937

Significant Persons
(Complete if Criterion B is marked above)
John R. Olshei

Cultural Affiliation
N/A

Architect/BUILDER
Plumer and Mann Engineers and Architects of Buffalo, NY

Burton and Ellicott of Buffalo, NY

Primary location of additional data:

- State Historic Preservation Office
- Other State agency
- Federal agency
- Local government
- University
- Other Name of repository:

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*Trico Plant #1
Erie County, New York***NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET**

Section number 8 Page 1

Significant Statement

The Trico Plant #1 at 817 Washington Street in Buffalo, New York, is significant architecturally as an outstanding local example of the so-called Daylight Factory. With the exception of a portion of the plant that incorporates an historic brewery building from the 1890's, Trico Plant #1 is constructed of reinforced concrete piers and floors and curtain walls of metal sash windows and brick spandrels. This type of manufacturing building superceded earlier factories that had been built with load bearing brick walls and wooden floors. The plant is also significant for its association with significant contributions the company made to the progress of the automotive industry. Trico manufactured the first windshield wiper blades for automobiles. Finally, the building is significant for its association with the life of John R. Oishei (1888-1968), the founder in 1917 of Tri-Continental Products, which later became Trico Products Corporation. Together with Buffalo inventor John Jepson, Oishei developed and manufactured the first windshield wiper blades for automobiles. The steady expansion of his business is reflected in the pattern of additions and alterations that Oishei made during the 1920-1950 period of significance. With the wealth Oishei accumulated from his business, he established what is today known as the John R. Oishei Foundation, the largest philanthropic organization in Western New York. The Trico business continued to operate at the Washington Street address until 1998, when, after having transferred most of its manufacturing facilities to Texas and Mexico, the company moved out of its historic building. Finally, the Trico Plant No. 1 is significant in the history of manufacturing in Buffalo as one of the city's major employers during the Depression and post-Depression eras.

John R. Oishei and the Trico in Automotive History

After John R. Oishei, the manager of the Teck Theater in downtown Buffalo, struck a cyclist with his car during a thunderstorm, he teamed up with Buffalo inventor John Jepson in 1917 to market the windshield wiper blade Jepson had invented. At first, they rented manufacturing space in a building in North Buffalo. In 1919, the Pierce Arrow Motor Company adopted Oishei's manually operated wiper as standard equipment on its luxury automobiles. The following year, Packard, Cadillac, and Lincoln did the same. This initial success prompted Oishei, who had bought out Jepson's interest and reorganized the company, to move operations to larger quarters in the former cold storage building of the Christian Weyand Brewery at 624 Ellicott Street. The area around this building (built ca. 1890 and known by Trico as Building 1) bounded by Washington, Ellicott, Burton, and Goodell Streets was to become the expanded headquarters of Trico during the ensuing decades. The road to large-scale success seemed clear in 1922 when Cadillac became the first automobile to adopt as standard equipment the automatic wiper blade that Oishei had begun producing that year before.

During Oishei's years at the helm, Trico continued to pursue innovative automotive products, including the first automatic windshield washers. The company eventually held over one thousand patents on equipment that included wiper systems, blades and refills, headlight controls, linkage mechanisms, and vacuum and pressure gauges. By the time Oishei retired in 1968, "the man who was Trico" had become an internationally known industrialist and Trico was supplying parts to American and foreign auto manufacturers. Employment had risen from the original thirty-five employees to nearly forty-six-hundred in 1950, the end of the period of significance. Under John Oishei's leadership, Trico (which now operates as a subsidiary of the Stant Corporation) assumed an important place in the history of the modern automobile.

Oishei, who was born and educated in Buffalo, was a loyal citizen of his native town. He used much of his wealth to benefit the city. In 1940, after the death of his mother, Julia, and his wife, Estelle, he formed the Julia and Estelle Foundation in their memory. The foundation had as its purpose to support worthwhile community projects in the fields of education, medicine, and the arts. (In his days as a theater manager, Oishei was himself a would-be playwright and throughout his life cultivated friendships with actors, actresses, and writers.) In his will, Oishei left an additional \$15,000,000 to the foundation, which in 1997 was renamed the John R. Oishei Foundation. At the end of the century, the foundation, with assets valued at \$230,000,000, makes a significant contribution to the quality of life in Western New York.

Architecture

The construction of Trico Plant #1 is complicated. A steady progression of new buildings and additions to existing structures took place beginning several years after the purchase of the 1890's brewery building, known as Building 1, until 1950, the cut off for the period of significance. Initial work began in 1924 when Oishei hired the Buffalo architectural and engineering firm of Harold E. Plumer and Paul F. Mann to erect a modern four-story reinforced concrete building, called Building 2, a short distance to the north of

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Trico Plant #1
Erie County, New YorkNATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET

Section number 8 Page 2

the brewery building. (Prior to this time, Mann had enjoyed a successful partnership with Harold J. Cook; Plumer, about whom little is known, would be responsible in 1929 for the Pierce-Arrow Showroom that still stands at Main Street and Jewett Parkway in Buffalo.) The four-bay, brick-spandrel-and-concrete-pier exterior of Building 2, which featured short pediments above the Trico name at either end of the Ellicott Street façade, extended to the depth of the brewery building. A low, two-story structure with skylights and with a short pediment facing Ellicott Street was built at this time between the brewery and Building 2. (This low structure was a machine room.) And apparently at this time were added the two metal frame and brick curtain wall level that raised the brewery building to six stories. Plumer and Mann's work set the pattern that would be followed by later additions to the plant, including the short pediment with the Trico name that appeared at the corners of the building. These were obliterated in 1931 when fifth and sixth floors were added to Building 2. This new sixth floor was then linked to the sixth floor of Building 1 by bridging the space above the 1924 two-story structure with reinforced concrete crossover story.

In 1928, the growing company erected Building 3 adjacent to Building 2 on Ellicott Street. Similar in appearance to Building 2, this four-story, reinforced concrete structure was designed by Burton and Ellicott of Buffalo and constructed by Warwick and Jewel, Construction Engineers. It reached from Building 2 north to Burton Place. The north façade of Building 3 filled the length of Burton Street to Washington Street. The following year, Building 3 received an additional floor with twin Trico pediments marking the Ellicott and Burton Place corner. Building 3 housed general offices on the eastern portion of the first through fifth floors. For this reason, two decorative entrances were located at the building's northwest angle. There, two doorways framed by classical elements beneath large round arches, opened onto Washington Street and Burton Place. (This street no longer exists east of Washington Street.) In 1931, a sixth floor was added to Building 3.

At the time of their construction, Trico Building 2 and 3 represented state-of-the-art industrial architecture. They are good examples of the so-called Daylight Factory. This type of multi-storied factory building used reinforced concrete in an exposed frame system of construction with the spaces between exterior piers filled with steel sash windows above a low brick spandrel. Unadorned except for entrances at the corner of Burton Street that are decorated with Ionic columns, Doric Pilasters, and other Classical details, Trico Plant #1 epitomizes this modern building type, which is especially identified with Ernest Ransome, C. A. P. Turner, and the Buffalo firm of Lockwood, Greene and Company. These firms developed this revolutionary factory type during the first decade of the twentieth century. By the 1920's, it had replaced the brick-pier walls and wooden beam supported floors of nineteenth century factories as well as gained ascendancy over steel-framed manufacturing buildings. The Daylight Factory answered the need of manufacturing for wide open, naturally lit floor space in fireproof buildings that were inexpensive and quick to erect.

During the third quarter of the nineteenth century, Ernest Ransome, working first in California and later in New York City, developed a system of embedding steel rods in concrete to create a strong, fireproof structural system that supported concrete slab floors. This system proved especially suited to multi-storied industrial architecture, for it allowed for the creation of layer upon layer of virtually unobstructed floor space. On exterior walls, large windows filled the spaces between the exposed concrete frame, admitting abundant light and fresh air to each floor. Elevators and hoists linked the various work levels. Reinforced concrete construction was also inexpensive, easily standardized, and fireproof. "Around 1900, then," wrote architectural historian Peter Reyner Banham in his book *Concrete Atlantis*, "the action and the excitement were not in iron and steel but in concrete, which was about to take off into the most spectacular stage of its development in the United States. The new men, headed by Ransome, were above all specialists in concrete, and their subject matter--the Daylight factory and the grain elevator--was to be (along with bridge building) concrete's primary province. The evidence for this is overwhelming, on the ground and in the professional literature" (Banham 106).

As Banham further argued in *Concrete Atlantis*, functional buildings like these came to influence significantly the course of high style modern architecture. On the exterior of his buildings Ransome, and other pioneers of this method of construction such as Buffalo's Lockwood, Greene and Company, left the skeletal structure of vertical supports and horizontal floor slabs exposed to view. These simple, repetitive exteriors were thus composed of a concrete frame filled in with banks of simple, steel sash windows. Only a modest spandrel was sometimes present beneath the windows to provide space for radiators. By 1924, this revolutionary system, which Banham called "Daylight Factory," was fully developed. There were several major examples in Buffalo prior to Trico Plant #1, notably the huge Larkin R/S/T block of 1911, the Buffalo Meter Company building of 1915, and the Pierce-Arrow Plant (National Register listed) of 1907. The unadorned beauty of structure and proportions that these elementary exteriors portrayed deeply impressed architects such as Walter Gropius, Le Corbusier and Mies Van Der Rohe. Indeed, the first portions of Trico Plant #1 are contemporary with Gropius' Bauhaus in Dessau, Germany, the icon of the International Style. The Buffalo factory was of the same type that, says Banham, "Le Corbusier had used to exemplify his arguments [for a new architecture]: multi-storied American industrial

Exhibit 4 p. 8

*Trico Plant #1
Erie County, New York*

**NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET**

Section number 8 Page 3

building with exposed concrete frames, filled in only by transparent glazing like X-ray images, their very bones on public display" (Banham, 23-26).

The largest construction project undertaken at the Trico site occurred in 1936 and 1937. Erected then to plans by Warwick and Jewel were Building 7 and 8. (There are no longer any Buildings 4, 5, and 6.) These large reinforced concrete structures followed the daylight factory system established by Plumer and Mann's 1924 Building 2. Building 7, built in 1936, was sited on Washington Street behind Building 2 and abuts the south side of Building 3; Building 8 has an L-shaped plan that embraces the rear wall and south flank of the old brewery building. Building 8's western façade extends from Building 7 south to Goodell Street; its southern façade stretches along Goodell between Washington and Ellicott Streets. With the completion of Building 7 and Building 8, the Trico facility fully occupied the block bordered by Ellicott Street on the east, Burton Place on the north, Washington Street on the west, and Goodell Street on the south.

Building 9, located to the north of former Burton Place at 648-668 Ellicott Street was erected in 1954 (and enlarged in 1957 and 1989) and is outside the period of significance. Therefore, it is considered to be non-contributing.

Building 10, a steel-framed building erected at 762 Ellicott Street prior to 1923 and located adjacent on the north to Building 9, was purchased by the company for use as a foundry in 1946 and is considered contributing.

The oldest building on the site is a fire-story, brick and sandstone storage facility of the former Weyand Brewery. In 1868, Christian Weyand (1826-1898), a German-speaking immigrant from the border province of Lorraine in eastern France, gave up shoe making for brewing, which he undertook at 794 Main Street in partnership with John Schetter. In 1883, Weyand became the sole owner of the brewery, which henceforth operated under the name of the Weyand Brewing Company. It was probably shortly after 1890, when Weyand brought his two sons into the business, that he expanded the brewery with the construction of the cold storage warehouse nearby at 624 Ellicott Street. With a capacity of over 1000,000 barrels, the Weyand Brewery was one of several large breweries located in this former German-American neighborhood. The building incorporated in Trico Plant #1 is the only surviving part of this important local brewery, which closed in 1920 due to the passage of the Eighteenth Amendment. Seizing the opportunity that Prohibition created, John Oishei purchased the unused warehouse for his nascent windshield wiper business. Oishei's decision to adapt and reuse the brewery building has preserved one of the few remnants of Buffalo's once flourishing beer-making industry. Its stone and brick walls and narrow windows evoke a picturesque contrast with the reinforced concrete and curtain wall Trico buildings that have engulfed it.

Alterations to the Trico Plant #1 have for the most part been limited to the installation of non-historic window sash at the exterior after 1950. The altered windows are similar in their grid design to the historic units and may be viewed as a relatively minor change given the enormous scale and strong integrity characterizing the plant in its totality. Original steel sash units remain in use in the interior light and ventilation shafts. The plant is an outstanding and increasingly rare example of the design and engineering characteristics of a Daylight Factory and recalls a vibrant chapter in Buffalo's twentieth century industrial development.

United States Department of the Interior
National Park Service

OMB No. 1024-0018, NPS Form

Trico Plant #1
Erie County, New York

NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET

Section number 9 Page 1

Bibliography

- Bailey, George. *Buffalo Illustrated. The Queen City of the Lakes.* 1890.
- Banham, Reyner. *Concrete Atlantis U. S. Industrial Building and European Modern Architecture.* Cambridge, MA. 1986.
- Blue Book of Buffalo Commerce,* Buffalo, 1917-1919.
- Brown, Richard C., and Watson, Bob. *Buffalo, Lake City in Niagara Land.* Detroit, 1981.
- Buffalo Architecture: A Guide,* Cambridge, MA., 1981.
- Buffalo City Directories.
- "Funeral to be Monday for Trico Chief Officer," *Buffalo Courier Express,* January 28, 1968, 24.
- "John R. Oishei," *New York Times,* January 28, 1968, 76.
- "John R. Oishei, 50-Year Trico Leader," *Buffalo Evening News,* January 27, 1968, A-4.
- John R. Oishei Foundation, *Annual Reports.*
- "Local Necrology, Christian Weyand" obituary dated Aug. 14, 1898, in the Buffalo and Erie County Public Library scrapbook collection.
- Powell, Stephen R. *Rushing the Growler: A History of Brewing in Buffalo,* 3rd ed., Buffalo. 1999.
- Trico Corporation. *Annual Reports.*
- Unpublished Sources:*
- Buffalo and Erie County Historical Society, photograph archives.
- Buffalo and Erie County Public Library, scrapbook collection.
- City of Buffalo building permits card file.
- Sanborn Fire Insurance Maps, Buffalo, New York.
- Stant Corporation website, history page.
- Trico Product Corporation archives.

Exhibit 4 p. 17

Trico Plant #1
Name of Property

Erie County, New York
County and State

10. Geographical Data

Acraege of Property 7.792 acres

UTM References
(Place additional boundaries of the property on a continuation sheet.)

1 17 673960 4751130
Zone Easting Northing

2
Zone Easting Northing

3
Zone Easting Northing

4
Zone Easting Northing

See continuation sheet

Verbal Boundary Description
(Describe the boundaries of the property on a continuation sheet.)

Boundary Justification
(Explain why the boundaries were selected on a continuation sheet.)

11. Form Prepared By

name/title Claire L. Ross, Program Analyst (Consultant: Dr. Francis Kowsky)
organization NYS Office of Parks, Recreation and Historic Preservation date October 3, 2000
street & number Peebles Island, P. O. Box 189 telephone 518-237-8643
city or town Waterford state NY zip code 12188

Additional Documentation

Submit the following items with the completed form:

Continuation Sheets

Maps

A USGS map (7.5 or 15 minute series) indicating the property's location.
A Sketch map for historic districts and properties having large acreage or numerous resources.

Photographs

Representative black and white photographs of the property.

Additional Items
(Check with the SHPO or FPO for any additional items)

Property Owner

(Complete this item at the request of SHPO or FPO.)

name/title Stephen Mc Garvey, Midtown Renovations for Century Cente, LP
street & number 1301 French Street telephone 814-455-5817
city or town Erie state PA zip code 16501

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; and the Office of Management and Budget, Paperwork Reductions Projects (1024-0018), Washington, DC 20503.

Exhibit 4 p. 18

United States Department of the Interior
National Park Service

OMB No. 1024-0018, NPS Form

*Trico Plant #1
Erie County, New York*

**NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET**

Section number 10 Page 1

Verbal Boundary Description

The boundary for the Trico Plant #1 Building is shown as a heavy black line on the accompanying land surveyor map at 817 Washington Street, Buffalo, Erie County, New York.

Boundary Justification

The boundary for the nomination has been drawn to coincide with the historic and current legal lot line for the property at 817 Washington Street, Buffalo, Erie County, New York.

Exhibit 4 p. 19

Goodell St.

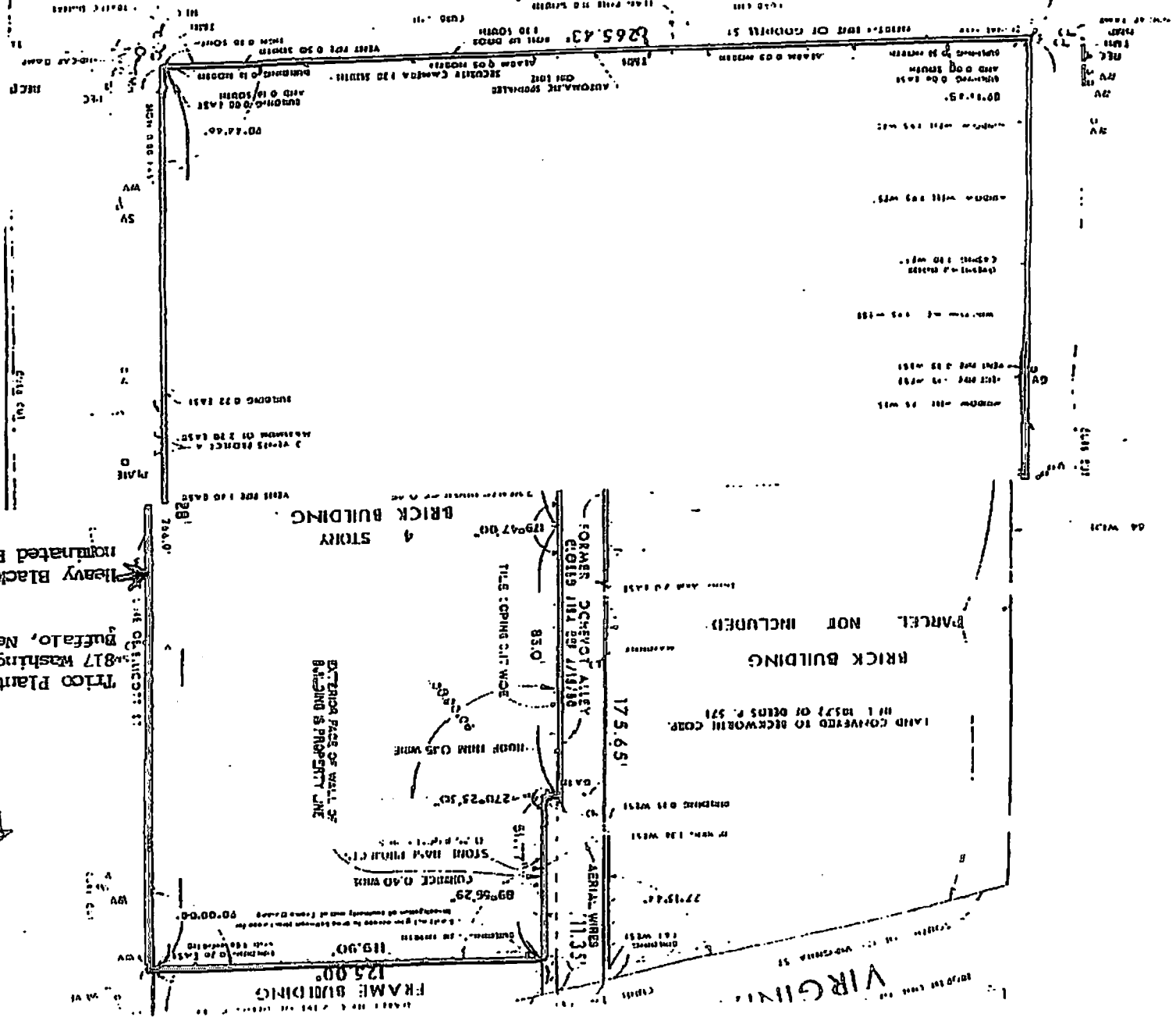


Exhibit 4 p. 20

United States Department of the Interior
National Park Service

OMB No. 1024-0018, NPS Form

*Trico Plant #1
Erie County, New York*

**NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET**

Section 11 Page 1

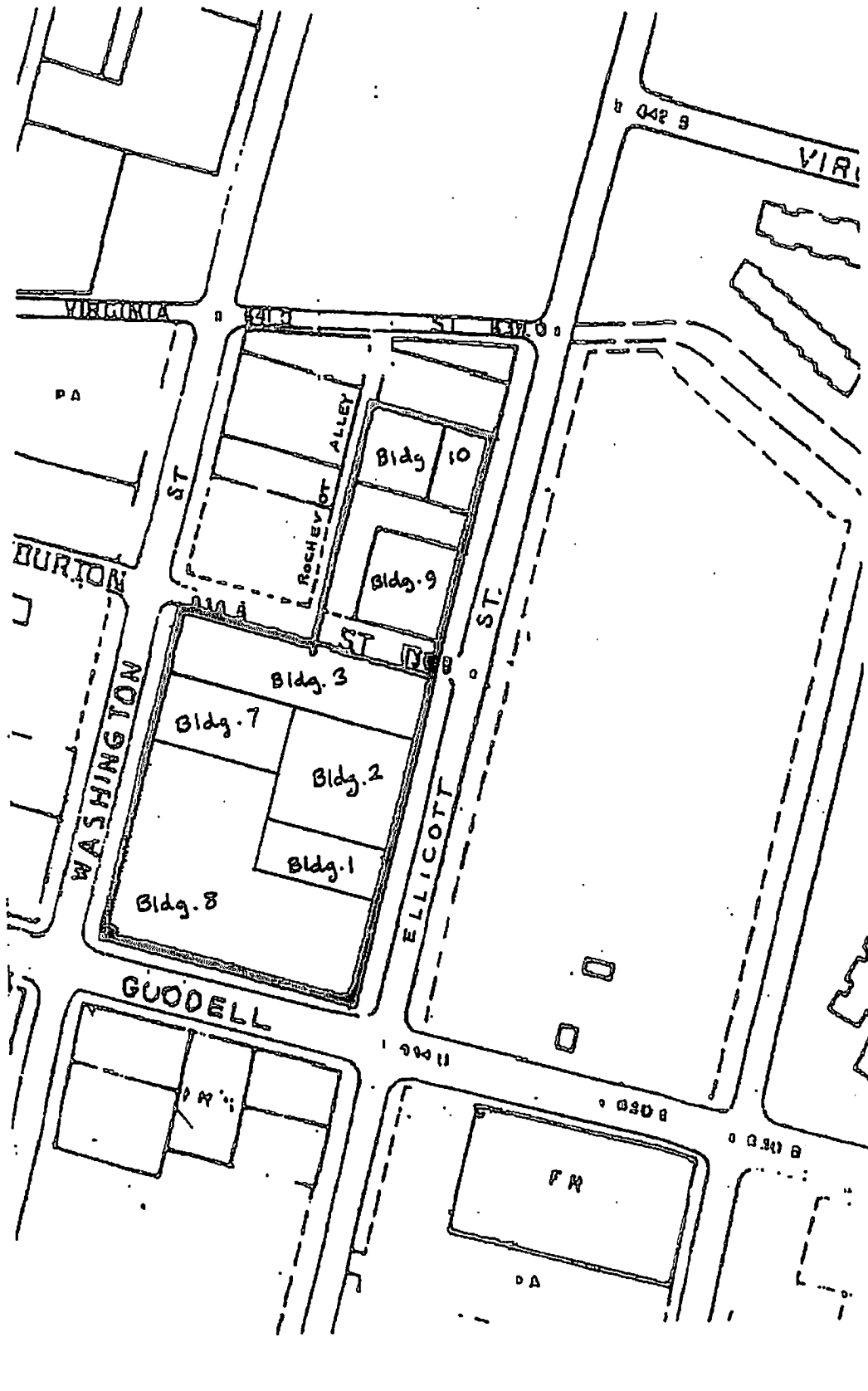
Form Research by:

Foit-Albert Associates Architecture
Engineering & Surveying, P.C.
763 Main Street
Buffalo, New York 14203-1395

Form Drafted by:

Dr. Francis Kowsky
62 Niagara Falls Blvd.
Buffalo, New York 14214

Exhibit 4 p. 21

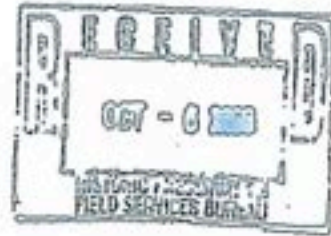


TRICO PLANT NO. 1 817 WASHINGTON ST., BUFFALO, ERIE CO., NEW YORK
SITE PLAN ILLUSTRATING PLANT COMPONENTS.

Exhibit 4p. 22



CITY OF BUFFALO
OFFICE OF THE MAYOR



ANTHONY M. MASIELLO
MAYOR

October 3, 2000

Claire L. Ross, Program Analyst
NYS Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, P.O. Box 189
Waterford, New York 12188-0189

Re: Trico Plant #1
317 Washington Street
Buffalo, New York, Erie County

Dear Ms. Ross:

I concur with the Buffalo Preservation Board's support for the nomination of the property listed above to the State and National Registers of Historic Places.

The Board, after due consideration, finds that the property met the following criteria established for listing on the State and National Registers of Historic Places:

- o That the Trico Plant #1 at 317 Washington Street is architecturally and historically significant as a representative example of an early 20th century "Daylight Factory" building in Buffalo, New York. This building type began to dot the American industrial landscape at the turn of the 20th century. Initially, Trico Plant #1 was built in c. 1924-1927 to the designs made by the Buffalo architectural firm of Plummer and Mann Engineers & Architects, with subsequent historic additions ending in 1937. The "Daylight Factory" building is a large 6-story, brick fireproof building employing reinforced concrete technology made popular in America by Charles Turner. The plant served as the home factory for the Buffalo-based Trico Products Corporation, manufacturers of the 1st windshield wiper device for automobiles, from its construction until the company vacated the property in 1998. Trico Plant #1 is also significant for its association with the automotive industry in the United States. Mr. John R. Oishei, founder of Trico in 1917 was responsible for his company's development of over 1000 patents for automobiles.
- o That the Trico Plant #1 is associated with the events that have made a significant contribution to the broad patterns of our history.


Exhibit 4 p. 23

Claire L. Ross, Program Analyst
October 3, 2000
Page 2

- o That the Trico Plant #1 is associated with the lives of persons significant in our past.
- o That the Trico Plant #1 Factory embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.

I am in support of the nomination of the Trico Plant #1 to the State and National Registers of Historic Places.

Sincerely,



Anthony M. Masiello
Mayor

AMM/sa

Exhibit 4p.24



BUFFALO PRESERVATION BOARD

901 City Hall
Buffalo, New York 14202
(716) 851-5029

Thomas W. Marbette, Secretary

October 2, 2000



Claire L. Ross, Program Analyst
NYS Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Pebbles Island, P.O. Box 189
Waterford, New York 12188-0189

Re: Trico Plant # 1
817 Washington Street
Buffalo, New York, Erie County

Dear Ms. Ross:

At its meeting on September 28, 2000, the Buffalo Preservation Board met to consider the nomination of the property listed above to the State and National Registers of Historic Places.

The Board after due consideration, finds that the property met the following criteria established for listing on the State and National Registers of Historic Places:

- o That the Trico Plant #1 at 817 Washington Street is architecturally & historically significant as a representative example of an early 20th century "Daylight Factory" building in Buffalo, New York. This building type began to dot the American industrial landscape after the turn of the 20th century. Initially, Trico Plant # 1 was built in c. 1924-1927 to the designs made by the Buffalo architectural firm of Plummer and Mann Engineers & Architects, with subsequent historic additions ending in 1937. The "Daylight Factory" building is a large 6-story, brick fireproof building employing reinforced concrete technology made popular in America by Charles Turner. The plant served as the home factory for the Buffalo-based Trico Products Corporation, manufacturers of the 1st windshield wiper device for automobiles, from its construction until the company vacated the property in 1998. Trico Plant # 1 is also significant for its association with the automotive industry in the United States. Mr. John R. Olshei, founder of Trico in 1917 was responsible for his company's development of over 1000 patents for automobiles.
- o That the Trico Plant #1 is associated with the events that have made a significant contribution to the broad patterns of our history.
- o That the Trico Plant # 1 is associated with the lives of persons significant in our past.
- o That the Trico Plant #1 Factory embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.

Exhibit 47.25

Trico Plant #1
817 Washington Street
Buffalo, New York, Erie County
Page 2

Consequently, we support the nomination of the Trico Plant #1 to the State and National Registers of Historic Places.

Sincerely,

Buffalo Preservation Board



John M. Laping, FAIA
Chairman

JML: tm

Cc: Beverly Foit-Albert, R.A., Ph.D./Foit-Albert Associates
Steven Garvey, President, Signature Management



1301 French Street
Erie, Pennsylvania 16501
814-455-5717

December 7, 2000

Ms. Claire Ross
NYS Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Service Bureau
Peebles Island, P.O. Box 189
Waterford, NY 12183-0189

Re: Trico Plant #1
817 Washington Street
Buffalo, New York, Erie County

Dear Ms. Ross:

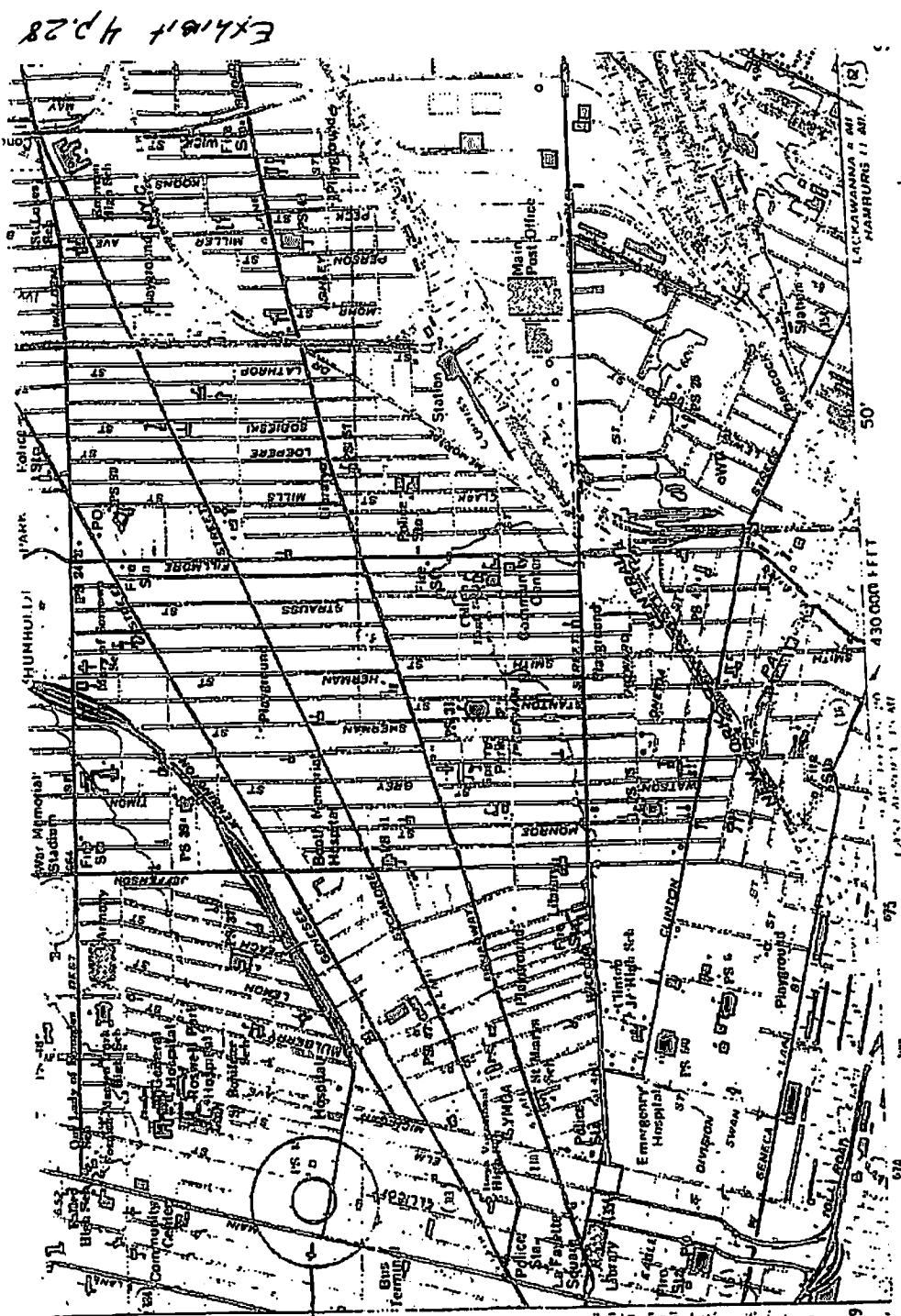
As owner/developer of the Trico Plant #1 building and the adjacent M. Wila building, I support and recommend the inclusion of the above referenced building on the State and National Registers of Historic Places. I also support the approval of Part I of the historic preservation tax credit application.

Signature Management Group is pursuing the adaptive reuse of the building as a mixed use, residential and commercial building. This building along with the M. Wila building redevelopment is intended to create a revitalized urban district with "Century Centre" at it's core. This is an important economic development project for the city of Buffalo.

Please accept this letter of support for the nomination. The building is truly one of a kind and would be happy to answer any questions you may have. You may contact my office at (814) 455-5717.

Very Truly Yours,

Stephen B. McGarvey
President



42°52'30" 78°52'30" 1000 0 1000 2000

MAP. GN
728 MILS
L 229
728 MILS

UTM GRID AND 1965 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET

THIS MAP COMPLEES WITH FOR SALE BY U. S. GEOLOGICAL SURVEY A FOLDER DESCRIBING TOPOGRAPHY

Control by USGS, USC&GS, USCE, and U.S. Lake Survey
Planimetry compiled by U.S. Corps of Engineers from aerial photographs taken 1942. Topography by planimetric surveys 1948. Revised 1965
Polyconic projection. 1927 North American datum
10,000 foot grid based on New York coordinate system, west zone
1000 meter Universal Transverse Mercator grid ticks, zone 17, shown in blue
Red tint indicates areas in which only landmark buildings are shown

Trico Plaster
817 W. ... Street
Buffalo, N.Y.
Erie Co.
Building No. 500
Zone 17
Easting
672960
North
1151100

EXHIBIT 4 P. 28

EXHIBIT 5

BUFFALO COMMON COUNCIL RESOLUTION

Trico Plant Moratorium – dated May 1, 2013

1 page

RESOLUTION

BY: Darius G. Pridgen

DATE May 1, 2013

SUBJECT: Trico Building Moratorium

WHEREAS, The Trico Product Building bounded by Ellicott, Goodell, Washington and Virginia streets, is the former home of the Trico Products Corporation windshield wiper factory. Trico Products Corporation manufactured the first windshield wiper and employed thousands of City workers at the site up until March 2004, when the factory was closed after 87 years; and

WHEREAS, Due to this history of the building it is important to give additional time for interested groups to do additional due diligence in order to make a fair and appropriate decision; and

WHEREAS, It has been stated in the local media that the Buffalo Niagara Medical Campus would support giving Preservation Buffalo Niagara six months to come up with a viable plan to preserve and reuse the Trico complex; and

NOW, THEREFORE BE IT RESOLVED,

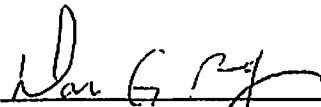
That the City of Buffalo Common Council request a moratorium on the demolition of the Trico Products Building until December 31, 2013 for further feasibility studies on behalf of interested parties; and

BE IT FURTHER RESOLVED,

That the Department of Inspections and Permit Services not issue any demolitions permits for the said structure during that period; and

BE IT FINALLY RESOLVED,

That certified copies of this resolution be immediately forwarded to the Department of Public Works, Department of Inspections and Permit Services, Preservation Board, Mayor's Office, City Comptroller, Corporation Counsel, Buffalo Niagara Medical Campus, Preservation Buffalo Niagara.



Darius G. Pridgen
Ellicott District Council Member

mcw

Exhibit 5 p.1 74.

EXHIBIT 6

DESIGNATED DEVELOPER AGREEMENT

dated June 28, 2007

8 pages

DESIGNATED DEVELOPER AGREEMENT

THIS DESIGNATED DEVELOPER AGREEMENT (the "Agreement") is made as of this 28th day of June, 2007 (the later of such date or the date on which fully-executed counterpart originals of this Agreement are delivered by each party to the other being hereinafter referred to as the "Effective Date"), by and among the **BUFFALO NIAGARA MEDICAL CAMPUS, INC.**, a New York not-for-profit corporation having its principal office at 701 Ellicott Street, Suite 40, Buffalo, New York 14203 ("Developer"), the **BUFFALO URBAN DEVELOPMENT CORPORATION**, a New York not-for-profit local development corporation having its principal office at 275 Oak Street, Suite 150, Buffalo, New York 14203 ("BUDC") and the **BUFFALO BROWNFIELD RESTORATION CORPORATION**, a New York not-for-profit corporation having its principal office at 275 Oak Street, Suite 150, Buffalo, New York 14203 ("BBRC").

RECITALS

A. The Developer is organized for the purpose of cultivating a world-class medical campus for clinical care, research, education and entrepreneurship in downtown Buffalo;

B. Certain entities owned by the Estate of Stephen B. McGarvey (the "Estate"), which are currently in bankruptcy, hold title to property in downtown Buffalo consisting of the former Trico Plant site, including the four-story building, the six-story building and the parking lot located thereon, and the M. Wile Complex (collectively, the "Property");

C. Developer intends to enter into a purchase agreement with the entities owned by the Estate (the "Purchase Agreement"), pursuant to which Developer will obtain the right to acquire title to the Property, and the closing of the Purchase Agreement is scheduled to occur sixty (60) days following conclusion of the Bankruptcy Court auction;

D. Upon closing, the Developer will take fee title to all of the Property except the six-story building included within the Trico Plant site and the land on which such building stands as identified by SBL # 111.31-1-1.11 (collectively, the "Building"); and

E. Subject to the terms and conditions of this Agreement, BUDC and BBRC have agreed for BBRC to acquire title to the Building, and for the Developer to be named as the exclusive developer for the Building, for the potential redevelopment thereof.

NOW, THEREFORE, in consideration of the mutual covenants hereafter set forth, Developer, BUDC and BBRC agree as follows:

ARTICLE 1 - TERM

1.1 Initial Term and Renewal Term. The initial term of this Agreement shall commence on the Effective Date, continue for a period through and including the conveyance of title to the Building pursuant to Section 2.1, and continue thereafter for a period of three (3) years (the "Initial Term"). Upon written notice delivered at least sixty (60) days prior to the end of the Initial Term, Developer shall have the sole option to renew the term of this Agreement for an

additional three (3) years (the “**Renewal Term**”) (the term of this Agreement, whether during the Initial Term or the Renewal Term, is hereinafter referred to as the “Term”).

1.2 End of Term. At the expiration of the Term, the parties may choose to extend this Agreement by mutual written consent.

ARTICLE 2 – AGREEMENT TO HOLD TITLE; EXCLUSIVE RIGHT TO DEVELOP

2.1 Acquisition of Title. At or concurrently with Developer's acquisition of fee title to the portions of the Property other than the Building, Developer will convey good and marketable (or insurable) fee simple title to the Building to BBRC (or cause such title to be conveyed to BBRC) free and clear of all liens and encumbrances and shall pay to BBRC the amount of \$100,000. BBRC agrees to accept and hold title to the Building during the Term in accordance with the terms of this Agreement.

2.2 Exclusive Right to Develop. During the Term, Developer shall have the exclusive option, which shall be exercisable at Developer's sole discretion, to acquire fee title to the Building for a public purpose related to the expansion of the Buffalo Niagara Medical Campus, and Developer acknowledges that the basis for the participation of BUDC and BBRC in this Agreement is to facilitate this public purpose. As a condition precedent to the exercise of Developer's option to acquire fee title in the Building, Developer will submit to BBRC documentation (which may include a certification executed by an officer of Developer) in a form reasonably satisfactory to BBRC that Developer is exercising its option for the public purpose described herein.

2.3 Development Restrictions During Term. During the Term, except as otherwise expressly provided for herein, neither BBRC nor BUDC shall have any right to convey, mortgage, encumber, alter, reconfigure, modify, use, develop or redevelop the Building, or allow any other party to convey, mortgage, encumber, alter, reconfigure, modify, use, develop or redevelop the Building. Without limiting the generality of the foregoing, during the Term, BBRC shall keep the Building free and clear of all encumbrances. Without limiting the generality of the foregoing, BBRC and BUDC acknowledge and agree that Developer shall have the right, prior to the exercise of its option to develop the Building hereinafter provided for, to remove, at its sole cost and risk, any fixtures and other items of equipment and personalty located in the Building for the purpose of realizing the scrap value thereof, provided however, that Developer shall not remove any fixtures or other items of equipment if such removal would reasonably affect the structural integrity of the Building, and provided further that Developer shall first obtain appropriate liability insurance to undertake such removal naming BBRC as additional insured.

2.4 Exercise of Option to Develop the Building. Subject to Developer's compliance with the condition precedent set forth in Section 2.2 of this Agreement, Developer's right to acquire fee title to the Building shall be exercised upon sixty (60) days' written notice delivered by Developer to BUDC and BBRC. On or about such 60th day, BBRC shall convey good and marketable (or insurable) fee simple title to Developer by bargain sale deed with a covenant against grantor's acts. Upon exercise of the Developer's option to acquire fee title to the Building

pursuant hereto and the closing of the transfer of title to the Building from BBRC to Developer, the Term of this Agreement shall end and none of the parties shall have any further rights or obligations with respect to the others, excepting only those provisions of this Agreement which, by their terms, expressly survive termination or expiration hereof.

2.5 End of Term. If at the end of the Term, Developer has failed to exercise its right to acquire title to the Building, BBRC shall have the right to convey, mortgage, encumber, alter, reconfigure, modify, use, demolish, develop or redevelop the Building, or allow any other party to convey, mortgage, encumber, alter, reconfigure, modify, use, demolish, develop or redevelop the Building in its sole discretion.

2.6 Condition of the Building. Developer represents and warrants that it has provided to BUDC and BBRC complete and accurate copies of all third party documents and reports in Developer's possession or control (or to which Developer has access) related to the condition of the Building, including without limitation (i) all geotechnical, environmental, structural, assessment, decommissioning or other engineering reports; and (ii) all correspondence and documents from governmental agencies regarding any alleged violation of any law applicable to the Building (collectively, the "Third Party Building Reports"). Developer shall indemnify and hold harmless BUDC, BBRC and each of their respective members, officers, directors, employees and agents from and against any and all losses, costs, claims, liabilities, damages and expenses (including without limitation reasonable attorney's fees) arising from a breach by Developer of the representation and warranty set forth in this Section 2.6. The representation and warranty and indemnity provided for in this Section 2.6 shall survive any termination or expiration of this Agreement.

ARTICLE 3 – OPERATION AND MAINTENANCE

3.1 Operation of the Building. During the Term, following conveyance of title to the Building to BBRC pursuant to Section 2.1, BBRC shall be responsible for operating and maintaining the Building so as to keep the Building in its current condition, reasonable wear and tear and damage by casualty excepted. Such operation and maintenance to include, without limitation, provision of any necessary utility service to the Building, payment of any real estate taxes or assessments imposed with respect to the Building during the Term, Building carrying costs and procurement of liability insurance with respect to the Building (collectively, "O&M"). Notwithstanding anything to the contrary contained herein, under no circumstance shall BBRC be obligated to undertake any capital repairs or upgrades to the Building, other than the parapet repairs hereinafter referenced.

ARTICLE 4 - PAYMENT & COSTS

4.1 Payment to BBRC. In consideration for its designation as the exclusive developer of the Building, the Developer shall pay the amounts set forth in Section 2.1 to BBRC. Such amounts shall be paid to BBRC at the time that Developer conveys title to the Building in accordance with Section 2.1 of this Agreement.

4.2 Use of Proceeds. Upon receipt of payment of the amounts set forth in Section 2.1, BBRC shall undertake due diligent efforts to commence repairs (or cause the commencement of such repairs) to the parapet on the Building so as to stabilize such parapet from further deterioration. Such repairs shall be completed to the reasonable satisfaction of Developer. To the extent that BBRC does not use the full amount of the payment provided for in Section 2.1, any balance thereof remaining after such repairs may be retained by BBRC. To the extent such repairs exceed the full amount of the payment provided for in Section 2.1, Developer shall be responsible for and pay any cost in excess of such amount. Should BBRC fail to complete the repairs to the parapet within one hundred eighty (180) days of the Effective Date, the Developer may, but is not required to, perform such repairs, and the reasonable costs associated with such repairs will be reimbursed to Developer by BBRC solely from amounts paid to BBRC pursuant to Section 2.1 of this Agreement which remain unexpended by BBRC.

4.3 O&M Costs. The Developer hereby agrees to reimburse BBRC for all actual out of pocket O&M costs incurred during the Term, including BUDC staff costs associated with O&M activities ("O&M Costs"), subject to the provisions of this Section 4.3.

4.3.1 During the Initial Term, reimbursement shall be limited to an annual maximum amount of seventy-five thousand dollars (\$75,000.00) for each twelve (12) month period following conveyance of title to the Building pursuant to Section 2.1 (subject to the rollover described herein) and a maximum aggregate amount of one hundred and fifty thousand dollars (\$150,000.00) for the entire Initial Term. Any unused amounts in a twelve (12) month period shall rollover into the following twelve (12) month period, such that the full amount available for such following twelve (12) month period shall equal the amount of the rollover plus the annual maximum amount of seventy five thousand dollars (\$75,000.00) applicable to that twelve (12) month period.

4.3.2 If the Developer elects to renew the Term, during the Renewal Term, reimbursement shall be limited to an annual maximum amount of seventy-five thousand dollars (\$75,000.00) for each twelve (12) month period commencing on the first day of the Renewal Term (subject to the rollover described herein) and a maximum aggregate amount of two hundred thousand dollars (\$200,000.00) for the entire Renewal Term. Any unused amounts in a twelve (12) month period shall rollover into the following twelve (12) month period, such that the full amount available for such following twelve (12) month period shall equal the amount of the rollover plus the annual maximum amount of seventy five thousand dollars (\$75,000.00) applicable to that twelve (12) month period.

4.3.3 Developer shall reimburse BBRC for O&M Costs and the reimburseable costs described in Sections 4.5 and 4.6 of this Agreement within thirty (30) days after presentation by BBRC of each invoice for such costs incurred by BBRC. Any payment not received within thirty (30) days after presentation of an invoice for same shall be subject to a late charge equal to two percent (2%) of such payment per month until such payment is received by BBRC, in addition to any other remedies which BBRC may have at law or equity as to any such late payment.

4.4 Break-up Fee. In the event that Developer chooses not to exercise its option to renew this Agreement as permitted under Section 1.1 of this Agreement, Developer shall pay BBRC the sum of one hundred thousand dollars (\$100,000.00) as a break-up fee (the "Break Up Fee"). Developer shall pay the Break Up Fee to BBRC no later than forty-five (45) days prior to the expiration of the Initial Term in cash (bank draft or certified funds) or by wire transfer of immediately available funds to an account designated by BBRC.

4.5 Reimbursement of Due Diligence Costs. Developer shall reimburse BUDC and BBRC for any out-of-pocket expenses incurred by BUDC or BBRC for third party consultants retained by either BUDC or BBRC in conjunction with due diligence with respect to the Building. Such reimbursement shall be limited to a maximum aggregate amount of ten thousand dollars (\$10,000).

4.6 Reimbursement for Column Repair. Developer shall reimburse BBRC for any out-of-pocket expenses incurred by BBRC in performing repairs to the column covers at the Building in accordance with the recommendations of Syracuse Engineers LLP as set forth in their letters of June 5, 2007 and June 11, 2007. Such reimbursement shall be limited to a maximum aggregate amount of sixty thousand dollars (\$60,000).

ARTICLE 5 - DEFAULT

5.1 Default. In the event any party shall breach any covenant under this Agreement or otherwise fail to perform any obligation owing by it under the terms of this Agreement, the party alleging such default shall deliver to the other written notice listing the reasons for such default and the party allegedly in default will have thirty (30) days following receipt of such notice to cure such alleged default or, in the event the alleged default cannot reasonably be cured within a 30-day period, to commence action and proceed diligently to cure such alleged default (any such alleged default which remains outstanding after written notice and opportunity to cure have been provided as required by this Section 5.1, being hereinafter referred to as an "Event of Default"). The notice and cure provisions of this Section 5.1 shall not apply to the reimbursement obligations of Developer set forth in Section 4.3 of this Agreement.

ARTICLE 6 - MISCELLANEOUS

6.1 Incorporation of Recitals. The Recitals are hereby incorporated and made a part of this Agreement.

6.2 Entire Agreement. This Agreement embodies and constitutes the entire understanding among the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

6.3 Waiver. No waiver by any party hereto of any failure or refusal by a party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such party to so comply.

6.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to principles of conflict of laws.

6.5 Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

6.6 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed as original, and all of which constitute, collectively, one agreement.

6.7 Assignment. BBRC and the Developer bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither BBRC nor the Developer shall assign this Agreement without the written consent of the other, however the Developer may assign this Agreement without consent to a subsidiary or affiliate of the Developer, provided such subsidiary or affiliate agrees in writing to be bound by the terms and conditions of this Agreement.

6.8 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

6.9 Force Majeure. No Event of Default shall be deemed to occur with respect to either party if it is unable to materially comply with any provision of this Agreement because of an action of a national, state or local government, body or court or an act of God, war, strike, riot or catastrophe, or other reason which is beyond the control of the party. A party claiming a force majeure shall notify the other party in writing as soon as practicable upon obtaining knowledge of such event and shall request an appropriate modification to this Agreement. Notwithstanding the foregoing, the parties agree that force majeure shall not be available with respect to the reimbursement obligations of Developer set forth in Section 4.3 of this Agreement.

6.10 Notices. Any notice to be given pursuant to this Agreement shall be sufficient if given by personal service, guaranteed overnight delivery service; or, if it is mailed postage prepaid, certified or registered mail, return receipt requested, to the parties at the addresses set forth below, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, or two (2) days after mailing certified or registered mail. Notice addresses for the parties shall be as follows:

If intended for BUDC: Buffalo Urban Development Corporation
275 Oak Street, Suite 150
Buffalo, New York 14203
Attention: Peter M. Cammarata

Copy to: Kevin J. Zanner, Esq.
Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, New York 14202

If intended for BBRC: Buffalo Brownfield Restoration Corporation
275 Oak Street, Suite 150
Buffalo, New York 14203
Attention: Peter M. Cammarata

Copy to: Kevin J. Zanner, Esq.
Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, New York 14202

If intended for the Developer: Buffalo Niagara Medical Campus, Inc.
701 Ellicott Street, Suite 401
Buffalo, New York 14203
Attn: Matthew K. Enstice, Executive Director

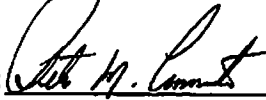
Copy to: Terrence M. Gilbride, Esq.
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203

6.11 Board Approval. The obligations of each of Developer, BUDC and BBRC hereunder are contingent upon ratification by each such party's board of directors, such ratification to occur within twenty (20) days of the Effective Date.

REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS

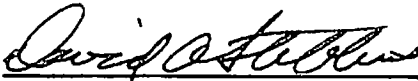
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

BUFFALO URBAN DEVELOPMENT CORPORATION

By: 
Name: Peter M. Cammarata
Title: President


Dated: June 28, 2007

BUFFALO BROWNFIELD RESTORATION CORPORATION

By: 
Name: David A. Stebbins
Title: Vice President

Dated: June 28, 2007

BUFFALO NIAGARA MEDICAL CAMPUS, INC.

By: 
Name: Matthew K Enstler
Title: Exec. Director

Dated: 6/28, 2007

EXHIBIT 7

REPORT OF SALE – filed November 27, 2007

4 pages

CLOSING STATEMENT – filed November 27, 2007

7 pages

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)	Case Nos. 06-11342-WWB and
)	06-11343WWB
CENTURY CENTRE LIMITED)	(jointly administered)
PARTNERSHIP, AN OHIO LIMITED)	
PARTNERSHIP, AND STEPHEN B.)	Chapter 11
MCGARVEY, LLC,)	
)	
Debtors-in-Possession)	Docket No. ____
)	
CENTURY CENTRE LIMITED)	Related to Docket Nos. 130 and 205
PARTNERSHIP, AN OHIO LIMITED)	
PARTNERSHIP, AND STEPHEN B.)	
MCGARVEY, LLC,)	
)	
)	
Movants)	
vs.)	
)	
NATIONAL CITY BANK (formerly)	
NATIONAL CITY BANK OF)	REPORT OF SALE
PENNSYLVANIA); LEHIGH)	
CONSTRUCTION GROUP, INC.; HUNT)	
REAL ESTATE CORP.; FOIT-ALBERT)	
ASSOCIATES ARCHITECTURE,)	
ENGINEERING AND SURVEYING,)	
P.C.; URS CORPORATION; CROWNER)	
KING ARCHITECTS; NIAGARA)	
MOHAWK POWER CORP.; J.R.)	
MILLITELLO REALTY, INC.;)	
SUGARMAN LAW FIRM, LLP;)	
GARY H. COLLISON, ESQUIRE; TICOR)	
TITLE INSURANCE COMPANY; RAY)	
L. SONNENBERGER; CROW ENERGY)	
SERVICES, INC.; PHILLIP J. BARR;)	
SAHLEM'S ROOFING & SIDING, INC.;)	
DONNA L. KOSTRZEWSKI; MLP)	
PLUMBING AND MECHANICAL, INC.;)	
CONTRACT SPECIALIST)	
INTERNATIONAL, INC.; UNITED)	
SERVICES, LTD.; JOSEPH GIUSIANA)	
COMPANY; CIMINELLI REAL ESTATE)	
CORPORATION; CIMINELLI)	
DEVELOPMENT COMPANY, INC.;)	
WASHINGTON GOODELL)	
ASSOCIATES, LLC; TRICO PRODUCTS)	
CORPORATION; A.M. CARPET)	

SERVICE, INC.; CENTURY CENTRE)
DEVELOPMENT, LLC.; DEUFFETT)
PLUMBING & HEATING, INC.;)
COMMERCIAL REAL ESTATE)
CORPORATION OF BUFFALO; CITY)
OF BUFFALO, NEW YORK)
DEPARTMENT OF ASSESSMENT AND)
TAXATION; ERIE COUNTY, NEW)
YORK DEPARTMENT OF)
ASSESSMENT AND TAXATION; ERIE)
TAX CERTIFICATE CORPORATION;)
ESTATE OF STEPHEN B. MCGARVEY;)
RAYMOND L. MCGARVEY, CO-)
EXECUTOR OF THE ESTATE OF)
STEPHEN B. MCGARVEY; JAMES A.)
VOSS, CO-EXECUTOR OF THE)
ESTATE OF STEPHEN B. MCGARVEY;)
APOLLO HOUSING CAPITAL, LLC;)
BUFFALO ECONOMIC RENAISSANCE)
CORPORATION; KELTIC FINANCIAL)
PARTNERS, LP; UNITED STATES OF)
AMERICA, DEPARTMENT OF)
INTERNAL REVENUE SERVICE;)
WACHOVIA BANK; AND, M & T)
BANK;)
Respondents)

REPORT OF SALE

AND NOW, this 27th day of November, 2007, come the Debtors, by and through their counsel, with this Report of Sale, as follows:

1. Debtors filed separate, voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on October 20, 2006. The cases were consolidated for administration at the above-referenced case number by Order dated October 30, 2006 at Docket No. 29.
2. The Debtors' Amended Chapter 11 Plan was confirmed by Order dated September 20, 2007 at Docket No. 193.
3. The confirmed Plan provided for sale of the Debtors' property.

4. Debtors filed a motion for private sale of real and personal property on June 29, 2007 at Docket No. 130.

5. The Debtors were authorized to sell their property to the Buffalo Niagara Medical Campus, Inc., a not-for-profit corporation ("BNMC"), or its assigns, for \$20,090,000 by Order Denying Private Sale and Confirming and Authorizing Public Sale of Real and Personal Property dated October 12, 2007 at Docket No. 205.

6. The closing was held in Buffalo, New York on November 14, 2007. A copy of the closing statement is attached hereto as Exhibit A.

7. Debtors' counsel received three wire transfers from the closing, as follows:

(a) \$200,000 under the stipulation between the Debtor, National City Bank and URS Corporation ("URS") to be used as necessary to cure the URS lease, as provided for in the Order authorizing the Debtor to assume and assign the URS lease to BNMC dated October 12, 2007 at Docket No. 206;

(b) \$422,733.28 earmarked for Altair Management's brokerage commission; and,

(c) \$17,258,891.16 to be distributed only after further order of court after notice and hearing.

8. On November 21, 2007, the funds referred to in paragraph 7(c) were deposited into two (2) interest bearing accounts at Citizens Bank in the name of Guy C. Fustine, Escrow Agent for Century Centre Limited Partnership, Bank Account Nos. 6219565685 and 6219565855. Two accounts were used to maximize the interest earned.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.
Attorneys for Debtors

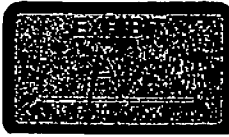
By: */s/ Guy C. Fustine*
Guy C. Fustine
PA I.D. No. 37543
120 West Tenth Street
Erie, Pennsylvania 16501-1461
(814) 459-2800

CLOSING STATEMENT
FOR SALE OF PROPERTY COMMONLY KNOWN AS
THE TRICO BUILDINGS AND PARKING LOT AND
THE M. WILE BUILDING AND PARKING LOT
BY
CENTURY CENTRE LIMITED PARTNERSHIP
AND
STEPHEN B. MCGARVEY, LLC
TO
FNUB, INC.,
589 ELLICOTT STREET, LLC,
640 ELLICOTT STREET, LLC
AND
BUFFALO BROWNFIELD RESTORATION CORPORATION

Closing Date: November 14, 2007
Adjustments as of: Midnight, November 13, 2007

	4-Story Trico Bldg., Parking Lot and Alley to be Acquired by 640 Ellicott Street, LLC	Trico Parking Lot to be Acquired by 589 Ellicott Street, LLC	Subtotal	M. Wile Bldg., and M. Wile Parking Lots to be Acquired by FNUB, Inc.	6-Story Trico Bldg. to be Acquired by BBRC	Grand Total
Purchase Price:	\$1,928,700.00	\$1,800,000.00	\$3,728,700.00	\$12,040,000.00	\$4,321,300.00	\$20,090,000.00
Credit for Prepaid Rent under Nosnevets, LLC lease \$2,500.00/30 days = \$83.33/day x 17 days =	-0-	-0-	-0-	\$1,416.61	-0-	\$1,416.61
Credit for Security Deposit under Nosnevets LLC Lease				\$2,500.00		\$2,500.00
Adjusted Purchase Price:	<u>\$1,928,700.00</u>	<u>\$1,800,000.00</u>	<u>\$3,728,700.00</u>	<u>\$12,043,916.61</u>	<u>\$4,321,300.00</u>	<u>\$20,093,916.61</u>
Credits to Purchaser:						
Deposit	\$250,000.00	-0-	\$250,000	450,000.00	-0-	\$700,000.00
Adjustment for Prepaid Rents and CAM Charges per attached Schedule A	\$30,323.24	-0-	\$30,323.24	\$61,918.60	-0-	\$92,241.84
Adjustment for Security Deposits per attached Schedule A	\$54,129.48	-0-	\$54,129.48	-0-	-0-	\$54,129.48
Total Credits to Purchaser:	\$334,452.72		\$334,452.72	\$511,918.60	-0-	\$846,371.32
Balance Due at Closing from Purchaser:	<u>\$1,594,247.28</u>	<u>\$1,800,000.00</u>	<u>\$3,394,247.28</u>	<u>\$11,531,998.01</u>	<u>\$4,321,300.00</u>	<u>\$19,247,545.29</u>
PLUS release of Deposit held by Escrow Agent	250,000.00	-0-	\$250,000.00	450,000.00	-0-	\$700,000.00
Total Due Seller:	<u>\$1,844,247.28</u>	<u>\$1,800,000.00</u>	<u>\$3,644,247.28</u>	<u>\$11,981,998.01</u>	<u>\$4,321,300.00</u>	<u>\$19,947,545.29</u>

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Funds Delivered by Purchaser to Seller at Closing (Total \$19,247,545.29), as follows:

Hodgson Russ LLP Check No. <u>020754</u> Payable to Erie County Clerk (Seller's Recording Fees)	\$40.00
Hodgson Russ LLP Check No. _____ Payable to Hodgson Russ LLP (Seller's Redemption Certificate Recording Fees)	\$322.00
Hodgson Russ LLP Check No. _____ Payable to City of Buffalo (Nosenvets parcel Taxes)	\$363.00
Hodgson Russ LLP Check No. _____ Payable to City of Buffalo (Water)	\$50,375.10
Hodgson Russ LLP Check No. _____ Payable to City of Buffalo (User Fee)	\$818.18
Hodgson Russ LLP Check No. <u>020757</u> Payable to URS Corporation (Amounts payable under lease per Bankruptcy Court Order)	\$134,000.00
Wire Transfer to Knox McLaughlin Gornall & Sennett, P.C. (Amounts to be deposited into Escrow Account for URS Corporation per Bankruptcy Court Order)	\$200,000.00
Total Required to Pay Delinquent Taxes (See Schedule B for details on required bank checks)	\$1,169,204.75
Wire Transfer to Knox McLaughlin Gornall & Sennett, P.C. (Seller's Broker's Fees)	\$422,733.28
Hodgson Russ LLP Check No. <u>020759</u> Payable to Clientlogic Corporation	\$10,798.00
Wire Transfer to Knox McLaughlin Gornall & Sennett, P.C. (Closing Proceeds)	\$17,258,891.16
Total Paid at Closing:	<u>\$19,247,545.29</u>

Agreed to and accepted this 14th day of November, 2007

SELLERS' ATTORNEY:

PURCHASERS' ATTORNEY:

KNOX MCLAUGHLIN GORNALL & SENNETT, P.C.

HODGSON RUSS LLP

By: 

By: 

DISBURSEMENTS OF SELLERS:

DISBURSEMENTS OF PURCHASERS:

Transfer Tax	Exempt
File TP-584 (4)	\$40.00
File Redemption Certificates	\$322.00
Total	<u>\$362.00</u>

Record Deeds (4)	\$200.00 (est.)
File RP-5217 (4)	\$660.00
Record Assignment of Leases with TP-584	\$100.00 (est.)
Record Assignment of Nosnevets Lease with TP-584	\$50.00 (est.)
Title Insurance Premiums	<u>\$51,331.00</u>
Total	<u>\$52,341.00</u>

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Exhibit 7p.6

RECAP OF AMOUNTS DUE FROM BUFFALO NIAGARA MEDICAL CAMPUS ON BEHALF OF 640 ELLICOTT STREET, 589 ELLICOTT STREET AND BBRC:

BALANCE DUE AT CLOSING FROM PURCHASER PER CLOSING STATEMENT	\$7,715,547.28
TITLE INSURANCE PREMIUM	\$13,807.00
OTHER DISBURSEMENTS OF PURCHASER	\$695.00
AMOUNT PAYABLE TO BUFFALO BROWNFIELD RESTORATION CORPORATION	<u>\$100,000.00</u>
TOTAL DUE FROM BUFFALO NIAGARA MEDICAL CAMPUS ON BEHALF OF 640 ELLICOTT STREET, 589 ELLICOTT STREET AND BBRC AT CLOSING	\$7,830,049.28
AMOUNT DUE J.R. MILITELLO REALTY INC. (PAID OUTSIDE OF CLOSING)	\$137,500.00
EARNEST MONEY DEPOSIT PAID UNDER PURCHASE CONTRACT	\$250,000.00
TOTAL PAID BY BUFFALO NIAGARA MEDICAL CAMPUS ON BEHALF OF 640 ELLICOTT STREET, 589 ELLICOTT STREET AND BBRC	<u>\$8,217,549.28</u>

RECAP OF AMOUNTS DUE FROM PURCHASER (FNUB):

BALANCE DUE AT CLOSING FROM PURCHASER PER CLOSING STATEMENT	\$11,531,998.01
TITLE INSURANCE PREMIUM	\$37,524.00
OTHER DISBURSEMENTS OF PURCHASER	<u>\$315.00</u>
TOTAL DUE FROM FNUB, INC. AT CLOSING	\$11,569,837.01
AMOUNT DUE J.R. MILITELLO REALTY INC. (PAID OUTSIDE OF CLOSING)	\$137,500.00
EARNEST MONEY DEPOSIT PAID UNDER PURCHASE CONTRACT	\$450,000.00
TOTAL PAID BY FNUB, INC. FOR OTHER DUE DILIGENCE AND PRE-CLOSING COSTS	\$103,935.87
TOTAL PAID BY FNUB, INC.	<u>\$12,261,272.88</u>

PURCHASER'S FUNDS TO BE WIRED TO HODGSON RUSS LLP AS FOLLOWS:

Wire Instructions - Hodgson Russ LLP - Client's Account/Trust
 Account Name: Hodgson Russ LLP
 Account Number: #10-314-3
 Bank Name: Manufacturers and Traders Trust Co., Buffalo, NY
 Bank ABA#: 022000046
 For Foreign Wire: M & T Swift Code MANTUS 33
 Contact: Sandy Pulli - 716-848-1378 or Julie Rosenberg 716-848-1389
 Wire Reference - BNMC # 044886.00001
 (Notify Amy Fitch, Ext. 81384)

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Exhibit 7p.7

SCHEDULE A

[SEE 11/14/07 CAM RECONCILIATION PREPARED BY ALTAIR]

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Exhibit Page 4 of 7

SCHEDULE B
PROPERTY TAXES

PAYABLE BY BANK CHECKS AS FOLLOWS:

<u>Payable To:</u>	<u>Reference:</u>	<u>Amount</u>
City of Buffalo	2007-08 and Prior City Tax/Sewer Rents	\$971,639.96
County of Erie	2006 County Tax	\$37,214.33
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 336130 Property: 821 Washington, Buffalo, NY 2005 and Prior County Tax	\$1,093.22
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405657 Property: 821 Washington, Buffalo, NY 2005 and Prior County Tax	\$938.29
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480783 Property: 821 Washington, Buffalo, NY 2005 and Prior County Tax	\$797.13
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 335038 Property: 525 Virginia, Buffalo, NY 2005 and Prior County Tax	\$36.44
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 399440 Property: 525 Virginia, Buffalo, NY 2005 and Prior County Tax	\$31.36
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480784 Property: 525 Virginia, Buffalo, NY 2005 and Prior County Tax	\$26.71
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 332755 Property: 589 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$11,238.78
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 342350 Property: 589 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$4,799.79
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405939 Property: 589 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$4,119.24
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480781 Property: 589 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$3,499.39
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 333725 Property: 791 Washington, Buffalo, NY 2005 and Prior County Tax	\$32,341.37
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 346508 Property: 791 Washington, Buffalo, NY 2005 and Prior County Tax	\$13,910.62
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405943 Property: 791 Washington, Buffalo, NY 2005 and Prior County Tax	\$11,938.12
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480924 Property: 791 Washington, Buffalo, NY 2005 and Prior County Tax	\$10,141.55
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 339183 Property: 640 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$16,134.05
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405945 Property: 640 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$13,846.24
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480782 Property: 640 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$11,762.52
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 338571 Property: 77 Goodell, Buffalo, NY 2005 and Prior County Tax	\$9,158.58
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405942 Property: 77 Goodell, Buffalo, NY 2005 and Prior County Tax	\$7,859.94
Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480927 Property: 77 Goodell, Buffalo, NY 2005 and Prior County Tax	\$6,677.12
TOTAL		\$1,169,204.75

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BANK CHECKS (OR WIRE TRANSFERS) TO BE ISSUED BY HODGSON RUSS LLP:

	Payable To:	Reference:	Amount
1	Erie County Clerk	Seller's Recording Costs	\$40.00
2	Hodgson Russ LLP	Seller's Recording Costs	\$322.00
3	Erie County Clerk	Purchasers' Recording Costs	\$1,010.00
4	City of Buffalo	Nosenvets Parcel Taxes	\$363.00
5	City of Buffalo	Water Charges	\$50,375.10
6	City of Buffalo	User Fees	\$818.18
7	Ticor Title Insurance Company	Title Insurance Premium	\$51,579.00
8	Clientlogic Operating Corporation	CAM Reimbursement	\$10,798.00
9	URS Corporation	Amounts Payable Under Lease per Bankruptcy Court Order	\$134,000.00
10	Knox McLaughlin Gornall & Sennett, P.C.	Amounts to be deposited into Escrow Account for URS Corporation per Bankruptcy Court Order	\$200,000.00
11	Knox McLaughlin Gornall & Sennett, P.C.	Seller's Broker's Fees	\$422,733.28
12	Knox McLaughlin Gornall & Sennett, P.C.	Net Sale Proceeds	\$17,258,891.16
13	Buffalo Brownfield Restoration Corporation	Per Agreement	\$100,000.00
14	Treasurer City of Buffalo	2007-08 and Prior City Tax/Sewer Rents	\$971,639.96
15	County of Erie	2006 County Tax	\$37,214.33
16	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 336130 Property: 821 Washington, Buffalo, NY 2005 and Prior County Tax	\$1,093.22
17	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405657 Property: 821 Washington, Buffalo, NY 2005 and Prior County Tax	\$938.29
18	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480783 Property: 821 Washington, Buffalo, NY 2005 and Prior County Tax	\$797.13
19	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 335038 Property: 525 Virginia, Buffalo, NY 2005 and Prior County Tax	\$36.44
20	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 399440 Property: 525 Virginia, Buffalo, NY 2005 and Prior County Tax	\$31.36
21	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480784 Property: 525 Virginia, Buffalo, NY 2005 and Prior County Tax	\$26.71
22	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 332755 Property: 589 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$11,238.78
23	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 342350 Property: 589 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$4,799.79
24	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405939 Property: 589 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$4,119.24
25	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480781 Property: 589 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$3,499.39
26	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 333725 Property: 791 Washington, Buffalo, NY 2005 and Prior County Tax	\$32,341.37
27	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 346508 Property: 791 Washington, Buffalo, NY 2005 and Prior County Tax	\$13,910.62
28	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405943 Property: 791 Washington, Buffalo, NY 2005 and Prior County Tax	\$11,938.12
29	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480924 Property: 791 Washington, Buffalo, NY 2005 and Prior County Tax	\$10,141.55
30	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 339183 Property: 640 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$16,134.05

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31	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405945 Property: 640 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$13,846.24
32	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480782 Property: 640 Ellicott, Buffalo, NY 2005 and Prior County Tax	\$11,762.52
33	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 338571 Property: 77 Goodell, Buffalo, NY 2005 and Prior County Tax	\$9,158.58
34	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 405942 Property: 77 Goodell, Buffalo, NY 2005 and Prior County Tax	\$7,859.94
35	Wachovia Bank as Custodian for ETCC	Payoff Quote ID # 480927 Property: 77 Goodell, Buffalo, NY 2005 and Prior County Tax	\$6,677.12
	TOTAL		\$19,400,134.29

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EXHIBIT 8

ESDC – MINUTES – August 16, 2012

8 pages

FOR CONSIDERATION DOCUMENTS – August 16, 2012

12 pages

DRAFT – SUBJECT TO REVIEW AND REVISION

UPSTATE EMPIRE STATE DEVELOPMENT CORPORATION

Meeting of the Directors
Held at the New York City Regional Office
633 Third Avenue
New York, New York 10017

and

Buffalo Regional Office
95 Perry Street
Buffalo, New York 14203

and

Syracuse Regional Office
620 Erie Boulevard West
Syracuse, New York 13204

August 16, 2012

MINUTES

**In Attendance
Directors:**

Julie Shimer (Chair)
Sam Hoyt

**Present for Upstate
ESD:**

Stephen Gawlik, Deputy General Counsel
Eileen McEvoy, Secretary

Present for ESD:

Maria Cassidy, Deputy General Counsel
Kathleen Mize, Controller
Christine Orsi, Director–Western New York Regional Office
Frances Walton, Chief Financial and Administrative Officer

Also Present:

The Press
The Public

DRAFT – SUBJECT TO REVIEW AND REVISION

The meeting of the Upstate Empire State Development Corporation, a wholly-owned subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), was called to order at 9:15 a.m. by Chair Shimer. It was noted for the record that notices to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

First, Chair Shimer noted that the public is free to comment on any matters on the Agenda.

The Chair then called for a motion to approve the Minutes of the July 25, 2012 Directors’ meeting. Upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JULY 25, 2012 MEETING OF THE DIRECTORS OF THE CORPORATION FOR UPSTATE EMPIRE STATE DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on July 25, 2012, as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Chair Shimer then asked Ms. Orsi to present the Buffalo Niagara Medical Campus Upstate Regional Blueprint Fund Capital grant item for the Directors’ consideration.

DRAFT – SUBJECT TO REVIEW AND REVISION

Ms. Orsi explained that the Directors were being asked to approve a \$4,000,000 grant to the Buffalo Niagara Medical Campus for the redevelopment of the former Trico Building.

Ms. Orsi noted that the Buffalo Niagara Medical Campus is a non-profit organization consisting of a consortium of the region's largest health care provider, medical training institution and life science research institution.

This non-profit agency, she continued, has been diligently working on the build-out of the 100 acre Medical Campus which is an anchor to development in downtown Buffalo.

This project, Ms. Orsi explained, involves building renovations to the 109,000 square foot, formerly vacant, Trico Building on the edge of the Medical Campus. Ms. Orsi further explained that the building was renovated at a cost of \$15,000,000 with the intention of serving as a business incubator.

Ms. Orsi further noted that the project is complete and almost fully leased to a mix of small life science companies.

Following the full presentation, Chair Shimer inquired with regard to what she viewed as discrepancies in the finance memo provided with the materials. Specifically, Chair Shimer noted that in 2009, the memo shows the net revenue of \$2.4 million with a pretax profit of \$3.9

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million which, she stated, does not work inasmuch as you cannot have a profit larger than your revenue. She speculated that a capital grant was counted towards profit but not as revenue, which, she noted, seems like a balance sheet item. Chair Shimer stated the way that this was displayed was confusing and did not make sense to her.

Ms. Walton stated that the person who had prepared that memo was not in the conference room but that staff will answer her question before the end of the ESD Directors' meeting which immediately follows this meeting.

Chair Shimer said she was not opposed to the project moving forward and would not hold up the vote pending this clarification.

The Chair asked if the finance memos are made a part of the public record and she was informed that they are not.

The Chair then called for any further questions or comments. Director Hoyt echoed Chair Shimer's concern with regard to the finance memo. Director Hoyt then noted the importance of the project and said he would vote to move it forward with the provision that the issue be clarified. It was ultimately decided that the item would be voted on and the issue would be clarified as soon as possible.

There being no further questions or comments, and upon motion duly made and

DRAFT – SUBJECT TO REVIEW AND REVISION

seconded, the following resolution was unanimously adopted:

Buffalo (Western New York Region – Erie County) – Buffalo Niagara Medical Campus URB Capital – Upstate Regional Blueprint Fund – Business Investment (Capital Grant) – Findings and Determinations Pursuant to Sections 16-q and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Buffalo (Erie County) – Buffalo Niagara Medical Campus URB Capital – Upstate Regional Blueprint Fund – Business Investment (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to the Buffalo Niagara Medical Campus a grant for a total amount not to exceed Four Million Dollars (\$4,000,000) from the Upstate Regional Blueprint Fund, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

DRAFT – SUBJECT TO REVIEW AND REVISION

RESOLVED, that the President and Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

* * *

There being no further business, the meeting was adjourned at 9:23 a.m.

Respectfully submitted,

Eileen McEvoy
Corporate Secretary

D. BNMC - Pioneers of Science, Scientific Recruitment and Entrepreneurial Development Fund Capital (U488)

August 19, 2009

Authorization to Amend the General Project Plan, Project Scope and Budget;
Adoption of Findings Pursuant to the State Environmental Quality Review Act

Grantee: Buffalo Niagara Medical Campus, Inc. (the "BNMC")

ESD Investment: \$10,000,000 approved on September 20, 2006 (Western New York Economic Development (Capital Grant)). At the Grantee's request, \$4,909,674 in Pioneers of Science ("POS") grant funds were redirected to other BNMC projects, subsequently reducing this grant to \$5,090,326.

**Background/
Project Status:** These materials refer to and include, in their entirety, the attached materials presented to and approved by the ESD Directors on September 20, 2006 and August 13, 2008 (the "Materials"). Any substantive changes to the project or terms and conditions are noted below.

On May 9, 2006, Governor Pataki, as represented by the Director of the Budget, entered into an MOU with representatives of the Senate and Assembly, to agree upon the commitment of the remaining \$44 million of the \$50 million authorized pursuant to Chapters 62 and 684 of the Laws of 2003 (the former Adelpia funds) for economic development projects within downtown Buffalo, the Buffalo Inner Harbor or surrounding environs.

Of the \$44 million, the parties agreed that \$14.8 million would be available to the BNMC, which has discretion over how the funds are to be allocated. In addition to the \$5,090,326 grant mentioned above, the ESD Directors have approved the following projects for BNMC for the development of a medical campus (the "Campus"):

- \$1.37 million for the demolition of the former Hamlin House (approved August 14, 2006);
- \$3.07 million for the purchase and renovation of 73 High Street (approved March 15, 2007). In addition, \$544,080 was transferred from POS for the purchase and renovation of 73 High Street (approved October 18, 2007);
- \$1.13 million for a surface parking lot at 50 High Street (approved September 20, 2007); and
- \$3,402,220 for the acquisition of a collection of properties known as Century Center (approved November 15, 2007). In addition, \$195,000 was transferred from POS for the acquisition of Century Center on January 17, 2008. In August 2008, \$1,626 was transferred from Century Center back to POS.

**BNMC - Pioneers of Science, Scientific Recruitment and
Entrepreneurial Development Fund Capital (U488)**

August 19, 2009

In February 2009, the BNMC notified ESD that the Campus required the construction of a parking garage to implement a sustainable and comprehensive transportation plan to accommodate projected area economic growth, including an expected 2,800+ increase in Campus personnel over the next two years. In preparation for ramp construction, the Campus required the completion of pre-construction activities including consultant, architectural and engineering services; geological activities; the demolition of three adjacent buildings located at 134 High Street; interior renovations to 640 Ellicott Street to accommodate dislocated tenants of 134 High Street; and the relocation of current building tenants; however, it lacked sufficient funds to complete the pre-construction activities and therefore requested the utilization of POS funds to proceed with the project.

Of the \$5,090,326 grant, ESD reimbursed the BNMC \$2,082,356 in May 2008 for laboratory equipment. The BNMC is currently in the process of purchasing approximately \$2.15 million in additional equipment, leaving approximately \$872,000 available for additional project expenditures, including parking ramp pre-construction activities.

**Revised Project
Scope and
Budget:**

The initial project scope for this grant involved: the acquisition and installation of specialized equipment; research laboratory renovations; technology infrastructure necessary to recruit leading scientists, researchers or research teams, or to assist in technology development and new commercialization activities, or for new technology to be used as a shared resource. This request is to amend the general project plan, project scope and budget to also include pre-construction activities, demolition, interior renovations, and relocation activities, related to the future construction of a parking garage for Campus use. The project is scheduled for completion in July 2010.

The revised budget is as follows:

Financing Uses	Amount	Financing Sources	Amount	Percent
Specialized equipment, research laboratory renovations, technology infrastructure, shared technology resources, parking garage pre-construction activities, demolition, interior fit-out, & relocation costs	\$5,090,326	ESD Grant	\$5,090,326	100%
Total Project Costs	\$5,090,326	Total Project Financing	\$5,090,326	100%

FOR CONSIDERATION

August 16, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Buffalo (Western New York Region – Erie County) – Buffalo Niagara Medical Campus URB Capital – Upstate Regional Blueprint Fund – Business Investment (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-q and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

General Project Plan

I. Project Summary

Grantee: Buffalo Niagara Medical Campus, Inc. (“BNMC” or the “Campus”)

UESD* Investment: A grant of up to \$4,000,000 to be used for a portion of the cost to build-out space to accommodate new technology company tenants at the Innovation Center, formerly known as the Trico Building.

* The Upstate Empire State Development Corporation (the “Corporation”), a subsidiary of the New York State Urban Development Corporation doing business as Empire State Development (“ESD”)

Project Location: Innovation Center, 640 Ellicott Street, Buffalo, Erie County

Proposed Project: Building renovations and tenant build-out.

Project Type: Business expansion involving job creation.

Regional Council: The Western New York Regional Council has been made aware of this item. The Incentive Offer was accepted in May 2010, predating the Regional Council Initiative. The project is consistent with the Regional Plan as it builds on target industry sectors.

Exhibit 8 p. 9

Employment:	Initial employment at time of ESD Incentive Offer:	0
	Current employment level:	20
	Minimum employment through January 1, 2015:	50**

**Employees must be located at the Innovation Center and on the Grantee's tenants' payroll.

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Building Renovations	\$11,000,000
Interior Build-out	<u>4,400,000</u>

Total Project Costs \$15,400,000

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-URBF Grant (#X045)	\$ 4,000,000	26%	
ESD-RESTORE Grant (#W090)***	4,500,000	29%	
Key Bank-Loan	5,050,000	33%	4.37%/10yrs/2nd on RE
Grantee Equity	<u>1,850,000</u>	<u>12%</u>	
Total Project Financing	<u>\$15,400,000</u>	<u>100%</u>	

***Previously approved by the ESD Directors on July 17, 2008

III. Project Description

A. Company

Industry: BNMC is a consortium of the region's premier health care, life sciences research, and medical education institutions which performs its mission by promoting the clinical, research and academic excellence of its member institutions and the community at-large.

Company History: BNMC was formed in 2001 by key medical and research institutions, government agencies and neighborhood groups to oversee developing a medical campus for clinical care, research, education and entrepreneurship located on 120 acres in the City of Buffalo (the "City"). The Campus is comprised of Western New York's top clinical research and medical institutions, including University at Buffalo's New York State Center of Excellence in Bioinformatics, Roswell Park Cancer Institute and its Center for Genetics and Pharmacological Research, Hauptman Woodward Institute's Medical Research Institute. BNMC adopted a master plan in 2002, which included development policies, design standards and strategic infrastructure projects intended to support development of approximately 2.5 million square feet of additional research, clinical and support facilities over the next fifteen years. It

accomplishes its plan objectives by acquiring real estate and creating shovel-ready sites to stimulate private sector investment, construction of infrastructure to support development on the campus and creating or acquiring commercial and industrial space to attract new businesses and life sciences start-up companies to the Campus. On May 9, 2006 the Governor, Senate and Assembly signed an MOU, authorizing \$14.8 million to be made available to BNMC for such purposes.

- Ownership:** Not-for-profit corporation.
- Size:** BNMC houses Kaleida Health's Buffalo General Hospital and newly-constructed \$300 million Vascular Center, as well as numerous other public and privately held medical research companies, private practices, parking facilities and other amenities that support over 12,000 employees and over 1.2 million patients and visitors to the Campus annually.
- Market:** The BNMC's member institutions service a broad cross section of the region's population primarily focused around the delivery of medical services and research. Clients include those seeking treatment for vascular diseases and cancer, to emergency room services and everyday traditional doctor's office visits. The market is stable with limited rightsizing of service delivery in the region. The Campus recently expanded by over 2,000,000-gross-square-feet as a result of new construction including the High Pointe Skilled Nursing Facility, the Global Vascular Institute, and the Clinical and Translational Research Center.
- Further development on the Campus include the construction of the Women's and Children's Hospital, the Medical Office Building, and the University at Buffalo's School of Medicine. All these facilities are scheduled to open in 2016.
- ESD Involvement:** By early-2009, development of the BNMC was considered one of the City's strategic investment areas in its award-winning Queen City Hub Plan; deemed integral to the County of Erie achieving its regional vision of positioning the area as a medical powerhouse; and aligned with the advancement of the State University of New York at Buffalo's ("UB") 2020 strategic plan to relocate health sciences programs to downtown Buffalo, advancing UB's strength in the biomedical sciences and other research fields, and increase the university's economic impact in Buffalo. The BNMC was proceeding with the renovations to the Innovation Center, but lacked sufficient funds to complete build-out costs, allowing for the reduction in lease rates for prospective new technology company tenants. The Grantee sought assistance in financing the project through the competitive Upstate Regional Blueprint Fund Request for Proposals.

Based on the merit of the project, ESD provided an incentive package of a \$4 million grant which was accepted on May 28, 2010. Without ESD assistance, the BNMC lacked sufficient funds to proceed with the tenant-build out of the Innovation Center.

Past ESD Support:

In order to leverage new development, attract new companies to the area, and make infrastructure and streetscape improvements on the Campus, ESD Directors have approved the following projects:

- \$1.37 million approved on August 2006 for the demolition of the former Hamlin House. The project is complete and all funds have been disbursed.
- \$10 million originally approved on September 2006 known as Pioneers of Science for capital expenditures involving specialized equipment, research laboratory renovations and technology infrastructure necessary to recruit leading scientists, researchers and research teams. The project was amended in August 2008 and the grant was reduced to \$5,090,326 of which \$4,627,966 has been disbursed. The project is expected to be completed in the early 2013.
- \$3,614,080 approved in March, 2007 for the purchase and renovation of 73 High Street. All funds have been disbursed.
- \$1.13 million approved in September 2007 for a surface parking lot at 50 High Street. All funds have been disbursed.
- \$3,402,220 approved in November 2007 for the acquisition of a collection of properties known as Century Center located at 589 Ellicott Street, 640 Ellicott Street (the "Trico Building"), 525 Virginia Street, 791 Washington Street and 821 Washington Street, Buffalo. In addition, \$195,000 was transferred from Pioneers of Science for the acquisition of the Trico Building for Century Center in January 2008. All funds have been disbursed.
- \$4.5 million RESTORE II grant approved in July 2008 to the City of Buffalo for the benefit of the BNMC, which was used for a portion of approximately \$11 million in interior and exterior renovations necessary to transform the previously vacant Trico Building into the Innovation Center, a facility offering private and shared lab and office space for newly-established technology companies. All funds have been disbursed.

B. The Project

Completion: February 2014

Activity: The \$15.4 million project involves building renovations to the 109,000-square-foot former, vacant Trico Building including roof and window replacement, limited facade repairs, installation of a new HVAC system;

electrical, plumbing, security, telephone, flooring and elevator upgrades, and build-out costs including general interior office construction and installation of infrastructure to allow for emergency power and wet labs necessary to provide, economical, leasable lab and office space to accommodate new technology company tenants.

Results:

The creation of new lab and office space on the Campus will accelerate biotech and life sciences commercialization; increase private sector biotech companies generating new industry job growth; and allow the BNMC to compete with other national regions that are developing similar initiatives to stimulate growth of the life sciences industry. The Innovation Center currently has two types of tenants, lease tenants and suite tenants. Suite tenants occupy small offices and workspaces on a month to month term and are provided IT, phones, furniture, administrative support and access to conference rooms and current include: Advantage Home Telehealth, AllPro Parking, Ameriprise, Amherst Chamber of Commerce, BWI National Health Promotional Training Institute, Cake Face, CASA Medical Consulting, Ceno Technologies, Continental 1, Delphonics, Del Vecchio and Stadler, FinePrintfinders, LLC, Green Options Buffalo, Imagine Staffing, Lake Effects Labs Inc., Medical Acoustics, M.I.C.E., The Lunch Box, The PCA Group, Think Solutions, UB Division of Allergy Immunology & Rheumatology, Ultimate Savings Bootcamp, The Kane Firm and Yormick and Associates. Lease tenants require more square footage and specialized environments (wet labs, clean rooms) and have had access to Tenant Improvement funds to offset the costs of respective build-outs, and currently include Immco Diagnostics, OncoMed Oncology, Sitel, The Inventures Group Inc., TrainSMART, Wynne Creative Group, D'Youville College, WNY Sleep Center and Apnea Care Inc.,

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$2,982,594;
- Fiscal cost to NYS government is estimated at \$4,000,000;
- Project cost to NYS government per direct job is \$140,000;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$87,003;
- Ratio of project fiscal benefits to costs to NYS government is 0.75:1;
- Fiscal benefits to all governments (state and local) are estimated at \$5,130,251;
- Fiscal cost to all governments is \$4,000,000;
- All government cost per direct job is \$140,000;
- All government cost per total job is \$87,003;
- The fiscal benefit to cost ratio for all governments is 1.28:1;

- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$30,705,591, or \$667,868 per job (direct and indirect);
- The economic benefit to cost ratio is 7.68:1;
- Project construction cost is \$15,400,000, which is expected to generate 153 direct job years and 105 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 0.61 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is one year.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

Grantee Contact: Mr. Matthew K. Enstice, Executive Director
 The Innovation Center
 640 Ellicott Street, Suite 401
 Buffalo, NY 14203
 Phone: (716) 881-8918 Fax: (716) 849-6651

ESD Project No.: X045

Project Team:	Origination	Christina Orsi
	Project Management	Jean Williams
	Contractor & Supplier Diversity	Vikas Gera
	Finance	Amit Nihalani
	Environmental	Soo Kang

C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Grantee shall pay a commitment fee of 1% of the \$4,000,000 capital grant (\$40,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Grantee will demonstrate no materially adverse changes in its financial condition prior to disbursement.
3. The Grantee will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Grantee's acceptance of ESD's offer. Equity is defined as cash injected into the project by the Grantee or by investors, and should be auditable through Grantee financial statements or Grantee accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
4. Prior to disbursement, the Grantee must employ at least the number of Full-time

Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.

5. Up to \$4,000,000 will be disbursed to the Grantee in four installments as follows:
 - a) an Initial Disbursement of an amount equal to 25% of the grant (\$1,000,000) upon submission of documentation verifying \$11 million for building renovations; \$1.1 million for tenant build-out expenditures and creation of at least 10 Full-time Permanent Employees from new tenants at the Innovation Center as described in these materials;
 - b) a Second Disbursement of an amount equal to 25% of the grant (\$1,000,000) will be disbursed upon documentation verifying additional build-out expenditures of \$1.1 million (aggregate total of \$2.2 million) and a total of at least 20 Full-time Permanent Employees (Employment Increment of 10) from new tenants at the Innovation Center as described in these materials;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$1,000,000) upon submission of documentation verifying additional build-out expenditures of an \$1.1 million (aggregate total of \$3.3 million) and creation of at least 30 Full-time Permanent Employees (Employment Increment of 10) from new tenants at the Innovation Center as described in these materials.
 - d) a Fourth Disbursement of an amount equal to 25% of the grant (\$1,000,000) upon submission of documentation verifying additional build-out expenditures of an \$1.1 million (aggregate total of \$4.4 million) and creation of at least 50 Full-time Permanent Employees (Employment Increment of 20) from new tenants at the Innovation Center as described in these materials

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenditures must be incurred on or after May 28, 2010, to be considered eligible project costs. All disbursements must be requested by April 1, 2015.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$4,000,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.

7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an "Employment Shortfall"), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee's number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	0
A	B
Reporting Date	Employment Goals
February 1, 2013	0+W+X+Y+Z
February 1, 2014	0+W+X+Y+Z
February 1, 2015	0+W+X+Y+Z
February 1, 2016	0+W+X+Y+Z
February 1, 2017	0+W+X+Y+Z

W = Grantee's Employment Increment that will be the basis of the First Disbursement of the Grant as described in section C.5 above (i.e. W=10, and Employment Goals shall equal $[0 + W = 10^*]$ if the First Disbursement is made, in the year such disbursement is made and for each year thereafter). If the First Disbursement has not yet been made then W=0.

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=10, and Employment Goals shall equal $[0 + W + X = 20^*]$ if the

Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee's Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=10, and Employment Goals shall equal $[0 + W + X + Y = 30^*]$ if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

Z= Grantee's Employment Increment that will be the basis of the Fourth Disbursement of the Grant as described in section C.5 above (i.e. Z=20, and Employment Goals shall equal $[0 + W + X + Y + Z = 50^*]$ if the Fourth Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Fourth Disbursement has not yet been made then Z=0.

*Employees must be located at the Innovation Center and on the Grantee's tenants' payroll.

8. The BNMC shall, to the maximum extent economically feasible, recapture monies expended for tenant build-out allowances at the Innovation Center via loan or equity contribution from tenants leasing space at the Innovation Center. Should the BNMC recapture any build-out monies invested in the Innovation Center via loan or equity, the funds will be reinvested in an economic development fund to be created by the BNMC to support future private company growth and job creation on the Campus.

IV. Statutory Basis

This project is authorized under Section 16-q of the New York State Urban Development Corporation Act (the "Act") and satisfies the eligibility criteria in the Act and the rules and regulations for the Upstate Regional Blueprint Fund Program. No residential relocation is required as there are no families or individuals residing on the site.

V. Environmental Review

Pursuant to the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617), and in connection with the approval of funding for the proposed project, the Directors made a Determination of No Significant Effect on the Environment at their meeting of July 17, 2008. This determination addressed all aspects of the proposed project. Therefore, no further environmental review is required in connection with this action.

VI. Non-Discrimination and Contractor Supplier Diversity

ESD's Non-discrimination and Contractor and Supplier Diversity policy will apply. The Grantee shall use their Good Faith Efforts to achieve an overall Minority and Women Business Enterprise ("MWBE") Participation Goal of 5% related to the total value of ESD's funding, and to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and to include minorities and women in any job opportunities created by the project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions

New York State Map

Project Finance Memorandum

Benefit-Cost Analysis

August 16, 2012

Buffalo (Western New York Region – Erie County) – Buffalo Niagara Medical Campus URB Capital – Upstate Regional Blueprint Fund – Business Investment (Capital Grant) – Findings and Determinations Pursuant to Sections 16-q and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Buffalo (Erie County) – Buffalo Niagara Medical Campus URB Capital – Upstate Regional Blueprint Fund – Business Investment (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to the Buffalo Niagara Medical Campus a grant for a total amount not to exceed Four Million Dollars (\$4,000,000) from the Upstate Regional Blueprint Fund, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

* * *

Exhibit 8 p. 19

EXHIBIT 9

BUFFALO PRESERVATION BOARD LETTER dated December 12, 2012

Paul McDonnell to Brendan R. Mehaffey

1 page

BUFFALO PRESERVATION BOARD LETTER dated March 8, 2013

Paul McDonnell to Brendan R. Mehaffey

1 page



City of Buffalo

BUFFALO PRESERVATION BOARD
Byron W. Brown, *Mayor*

Paul McDonnell AIA *Chair*

Brendan R. Mehaffey, Executive Director
Office of Strategic Planning
920 City Hall
Buffalo, New York 14202

December 12, 2012

Dear Mr. Mehaffey,

I am writing you to inquire about the progress the City of Buffalo is making in filling the Senior Planner position for the Buffalo Preservation Board. As you know Michele Brozek resigned from this position in November 2011. This has left the Board without a "preservation specialist" for over one year. I am in receipt of a civil service posting dated March 5, 2012 for Senior Planner (Historic Preservation) (Provisional) with a deadline for application of March 19, 2012. When can we expect a person to be hired? Angela, Tom, Marty, and Pam have done a wonderful job of servicing the board, applicants and the public but they do not have the background or technical experience to address unique preservation issues only a person with Michele's expertise could.

Specifically we are in dire need of someone to fulfill the responsibilities of managing a Certified Local Government (CLG) granted by the New York State Historic Preservation Office. This includes nominating buildings for local landmark status, applying for CLG grants and providing the Board with technical knowledge necessary for our decisions.

There are literally hundreds if not thousands of buildings that are endangered in Buffalo and the Board does not have a resource to proactively nominate them for protection through local landmarking. The Board has been frustrated numerous times because we have no jurisdiction over potential historic buildings being significantly altered or demolished. A review of the City of Buffalo charter lists many responsibilities we are unable to fulfill because of the technical expertise we are missing.

Buffalo has been marketing itself as a bastion of wonderful historic buildings and the City of Buffalo has a responsibility to protect them. We have a dedicated Board that is committed and we need the City provide the same dedication.

We ask you to work expeditiously in hiring a Senior Planner.

Sincerely,


Paul McDonnell AIA
Chairperson

cc Mayor Byron Brown
Julian Adams NYSSHPO

Exhibit 9 p.1



City of Buffalo

BUFFALO PRESERVATION BOARD
Byton W. Brown, *Mayor*

Paul McDonnell AIA *Chair*

Brendan R. Mehaffey, Executive Director
Office of Strategic Planning
920 City Hall
Buffalo, New York 14202

March 8, 2013

Dear Mr. Mehaffey,

On December 12, 2012 I wrote to you inquiring about the status of the Senior Planner position for the Buffalo Preservation Board, a position that has been vacant since November 2011. The original posting date for the position was March 5, 2012 and a full year has now passed. As stated in my December letter, which I have attached, this has left the board without the expertise to fulfill the responsibilities of managing a Certified Local Government (CLG) granted by the NYS Historic Preservation Office.

We again ask that this position be filled as soon as possible and that the Board is kept updated on the progress.

Sincerely,


Paul McDonnell AIA
Chairperson

cc Mayor Byron Brown
Julian Adams NYSSHPO

Exhibit 9 p.2

EXHIBIT 10

OFFICE OF THE STATE COMPTROLLER LETTER
dated November 5, 2009
Brian E. Mason to Nancy L. Zimpher
5 pages

Thomas P. DiNapoli
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 5, 2009

Nancy L. Zimpher, Ph.D.
Chancellor
State University of New York
State University Plaza
Albany, New York 12246

Re: Report 2009-F-33

Dear Chancellor Zimpher:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the State University of New York (SUNY) to implement the recommendations contained in our audit report, *Oversight of Campus-Related Foundations* (Report 2006-S-96).

Background, Scope and Objective

SUNY's campus-related entities include not-for-profit foundations established to support fundraising and to enhance the educational, research and public service missions of the campuses. The foundations provide integral support to campus programs. Among their primary roles, the foundations receive and manage gifts from alumni and other benefactors and make gifts available to the campuses for approved programs and activities. The foundations are overseen by boards of directors composed primarily of private citizens, senior campus officials, and faculty. SUNY's 28 campus foundations had net assets totaling about \$1.1 billion at the end of the 2007-08 year.

SUNY System Administration provides general oversight of all SUNY operations, including campus foundations. System Administration uses a model contract to govern the relationship between campuses and the foundations.

Traditionally, the Office of the State Comptroller (OSC) audited the SUNY campus foundations when it audited individual campuses under its constitutionally provided audit authority. However, in 1983, SUNY System Administration requested that OSC suspend its audits of campus foundations. Officials explained that they had the means, including audits, to provide appropriate oversight of the foundations. OSC officials agreed with this request and indicated that OSC would periodically audit System Administration's oversight of the foundations.

Exhibit 10 p.1

Our initial audit report, which was issued on September 17, 2008, examined whether SUNY's System Administration provided sufficient oversight of campus-related foundations. Our report concluded that oversight of campus foundations by System Administration was accomplished primarily through the activities of the Office of the University Auditor (OUA) and the Office of the University Comptroller (OUC). Our audit also concluded that the oversight provided by the OUA and the OUC should be improved to help ensure that SUNY complies fully with the 1983 agreement, with particular regard to certain financial-related matters at the foundations. The objective of our follow-up was to assess the extent of implementation as of September 29, 2009 of the eight recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

SUNY officials made significant progress in addressing the matters we identified in the initial report. Of the report's eight recommendations, we determined that six recommendations have been implemented, and two recommendations have been partially implemented.

Follow-up Observations

Recommendation 1

Have the OUA consider our audit findings and update its risk assessment to help ensure that all campus foundations are audited within reasonable time frames, considering available audit resources and overall audit priorities.

Status - Implemented

Agency Action - The OUA conducted a risk assessment of campus-related foundations for fiscal year 2009-10. Further, as a result of that risk assessment, the OUA included audits of certain foundations in its Audit Plan for the 2009-10 year. The objectives of the OUA's audits were to assess compliance with the University's Campus-Related Foundation Guidelines (Guidelines) and to ensure that expenditures were properly documented and appropriate. Since August 9, 2007, the OUA has issued six audits of campus-related foundations.

Recommendation 2

Ensure that the OUC executes contracts in a timely manner with the foundations.

Status - Partially Implemented

Agency Action - As a result of our audit, the SUNY's Vice-Chancellor for Finance and Administration sent SUNY campus presidents a memo informing them of the foundation contract requirements. OUC officials continue to notify campuses when contracts with their related foundation are due to expire. Nine months prior to the end of the contract, OUC sends a notification letter which includes the contract expiration date and the steps required to execute the contract renewal in a timely manner. A copy of the model contract is provided with the notification letter. At the time of our follow-up review, SUNY

campuses had active contracts for 31 of the 32 foundations. Further, efforts were underway to complete a contract renewal for the remaining foundation whose contract had expired.

Recommendation 3

Ensure that OUC documents its review of foundation financial statements and any follow up steps taken to monitor foundations operations and financial activity.

Status - Implemented

Agency Action - OUC officials developed and use a checklist to document their reviews of the foundations' financial statements. We reviewed OUC's financial statement reviews for the 32 foundations for 2008 and found that OUC staff completed a checklist for each campus. The OUC further monitors foundation operations and financial activity by reviewing any management letter comments submitted by the public accounting firms that audit the foundations' statements. We reviewed all foundation management letters for 2008 and found that all campuses prepared a corrective action plan for each issue identified in the letters. The action plans were provided to the OUC for inclusion in its formal reviews.

Recommendation 4

Ensure that all foundations have policies that address all of the areas specified in the guidelines that the Board of Trustees approved for investments.

Status - Implemented

Agency Action - In 2008, SUNY officials issued the Campus-Related Foundation Management Guidelines and Best Practices Resource Book (Resource Book) to each of the foundations. The Resource Book includes a copy of the Guidelines as well as examples of investment policies. In addition, OUA audits of the foundations assessed compliance with the Guidelines prescribed policies and practices for investment programs. We reviewed OUA's six most recent foundation audits (issued between August 9, 2007 and April 7, 2009) and determined that each of them addressed investment policies. Moreover, two of the audits cited opportunities to improve investment policies.

Recommendation 5

Require all foundation investment committee members to sign a disclosure statement regarding any conflicts of interest with their responsibilities to the investment committee.

Status - Partially Implemented

Agency Action - The Guidelines require each campus-related foundation to develop, administer, and communicate written policies and procedures, which include conflict of interest policies for certain key business functions. An example of a conflict of interest policy for

members of an investment committee was included in the Resource Book that was distributed to all foundations. The policy required a committee member to disclose in writing any material relationship or interest the member had with an investment under consideration. The policy did not, however, include a provision requiring a member to sign such a disclosure.

Recommendation 6

Obtain and review the investment and disbursement policies of all foundations. Identify best practices that the foundations could include in their policies.

Status - Implemented

Agency Action - A SUNY task force, created in July 2007, examined and reviewed the policies of SUNY's campus-related foundations and identified best practices. The best practices were compiled in the aforementioned Resource Book which was distributed to foundation officials in 2008. The Resource Book includes policies and best practices pertaining to foundation investment and disbursement functions.

Recommendation 7

Advise foundation business offices to maintain adequate documentation supporting the business need for all disbursements.

Status - Implemented

Agency Action - The OUA provided the foundations with guidance addressing the propriety of expenditures and the adequacy of the corresponding supporting documentation. The guidance emphasized the need to document the business purpose and/or benefit to the campus for each expense.

Recommendation 8

Ensure that the foundations cited in the report for combining payment requests and approvals take steps to separate these incompatible duties. Advise all foundations to make sure their internal controls separate these incompatible duties.

Status - Implemented

Agency Action - Pursuant to guidance from the OUA, the foundations in question had taken steps to separate duties pertaining to the submission of payment requests and their formal approval. The OUA also advised all foundations to clearly document their payment approval processes, including requirements to separate the payment request and approval functions. In addition, this matter was addressed through the best practices included in the Resource Book that was distributed to the foundations.

Major contributors to this report were William Clynes and Jessica Turner.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of SUNY for the courtesies and cooperation extended to our auditor during this process.

Very truly yours,

Brian E. Mason
Audit Manager

cc: Mr. Thomas Lukacs, DoB
Mr. Michael Abbott, SUNY