



Department of  
Environmental  
Conservation

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site?  Yes  No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

**Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

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

Applicant will be conveying title to the BCP site to Ludlow Commons Housing Development Fund Corporation and Ludlow Commons Limited Partnership (as beneficial owner pursuant to a nominee agreement) to facilitate section 202 financing from HUD.

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

<b>Section I. Existing Application Information</b>		
BCP SITE NAME: Ludlow Commons		BCP SITE NUMBER: C360079
NAME OF CURRENT APPLICANT(S): Westhab, Inc.		
INDEX NUMBER OF EXISTING AGREEMENT: C360079-07-13		DATE OF EXISTING AGREEMENT: 09/19/13
<b>Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)</b>		
NAME Ludlow Commons Housing Development Fund Corporation and Ludlow Commons Limited Partnership		
ADDRESS 8 Bashford Street		
CITY/TOWN Yonkers, NY		ZIP CODE 10701
PHONE (914) 345-2800 x118	FAX	E-MAIL richard.nightingale@westhab.org
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul>		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Richard Nightingale		
ADDRESS 8 Bashford Street		
CITY/TOWN Yonkers, New York		ZIP CODE 10701
PHONE (914) 345-2800 ext. 118	FAX	E-MAIL richard.nightingale@westhab.org
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) n/a		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) n/a		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Describe Requestor's Relationship to Existing Applicant:		
The existing applicant, Westhab, is the project Sponsor that created the Ludlow Commons Housing Development Fund Corporation (HDFC) and controls the HDFC through its power to appoint the Ludlow Commons HDFC Board. The General Partner of the Ludlow Commons Limited Partnership is the Ludlow Commons Business Corporation whose sole shareholder is the Ludlow Commons HDFC.		

**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor) Westhab, Inc.

ADDRESS 8 Bashford Street

CITY/TOWN Yonkers, NY

ZIP CODE 10701

PHONE (914) 345-2800 ext. 113

FAX

E-MAIL ken.spillberg@westhab.org

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site?  Yes  No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?  Yes  No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?  Yes  No  
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment.  Yes  No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information.  Yes  No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants?  Yes  No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?  Yes  No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?  Yes  No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?  Yes  No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order?  Yes  No
11. Have all known bulk storage tanks on-site been registered with DEC?  Yes  No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

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

VOLUNTEER  
 A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

Requestors have performed an AAI-compliant phase 1.  
**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**

Requestor's Relationship to Property (check one):

Prior Owner  Current Owner  Potential /Future Purchaser  Other \_\_\_\_\_

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?  Yes  No

Note: a purchase contract does not suffice as proof of access.

Section V. Property description and description of changes/additions/reductions (if applicable)					
ADDRESS					
CITY/TOWN				ZIP CODE	
TAX BLOCK AND LOT (TBL) (in existing agreement )					
Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Check appropriate boxes below:

- Changes to metes and bounds description or TBL correction
- Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: \_\_\_\_\_

**ADDITIONAL PARCELS:**

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

- Reduction of property

Approximate acreage removed: \_\_\_\_\_

**PARCELS REMOVED:**

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

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

**Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.**

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From 6 NYCRR 375- 3.2(a) as of July 1, 2015:</b></p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that sets affordable units aside for tenants at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

<b>Existing Agreement Information</b>	
BCP SITE NAME: Ludlow Commons	BCP SITE NUMBER: C360079
NAME OF CURRENT APPLICANT(S): Westhab Inc.	
INDEX NUMBER OF EXISTING AGREEMENT: C360079-07-13	
EFFECTIVE DATE OF EXISTING AGREEMENT: September 19, 2013	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

**Statement of Certification and Signatures: New Requestor(s) (if applicable)**

(Individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

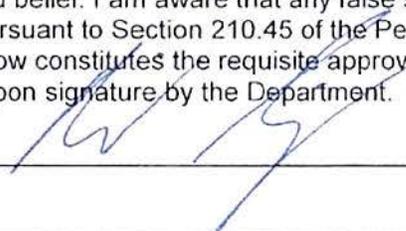
Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am (title Vice President) of (entity Ludlow Commons Housing Development Fund Corporation); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

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

Date: 12/11/2015 Signature: 

Print Name: Richard Nightingale

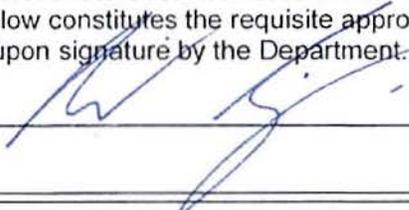
**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

<b>Existing Agreement Information</b>	
BCP SITE NAME: Ludlow Commons	BCP SITE NUMBER: C360079
NAME OF CURRENT APPLICANT(S): Westhab Inc.	
INDEX NUMBER OF EXISTING AGREEMENT: C360079-07-13	
EFFECTIVE DATE OF EXISTING AGREEMENT: September 19, 2013	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

<b>Statement of Certification and Signatures: New Requestor(s) (if applicable)</b>	
(Individual)	
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.	
Date: _____	Signature: _____
Print Name: _____	
(Entity)	
I hereby affirm that I am (title <u>Secretary-Treasurer</u> ) of (entity <u>Ludlow Commons Business Corporation - the General Partner of the Ludlow Commons Limited Partnership</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.	
<u>Richard Nightingale's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.	
Date: <u>12/1/2015</u>	Signature: 
Print Name: <u>Richard Nightingale</u>	

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am President & CEO (title) of Westhab, Inc. (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Richard Nightingale's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 12/1/2015 Signature: \_\_\_\_\_

Print Name: Richard Nightingale

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: September 19, 2013

Signature by the Department:

DATED:

DEC 04 2015

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

Robert W. Schick  
Robert W. Schick, P.E., Director  
Division of Environmental Remediation

**SUBMITTAL INFORMATION:**

- **Two (2) copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:**

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

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**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

**BROWNFIELD CLEANUP PROGRAM (BCP)  
INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION**

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.**

**SECTION II NEW REQUESTOR INFORMATION**

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

**SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.**

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

**SECTION IV NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

**SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)**

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.