

**New York State Department of Environmental Conservation
Division of Environmental Remediation**

Office of the Director, 12th Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 • **Fax:** (518) 402-9020

Website: www.dec.ny.gov

DEC 19 2012



Joe Martens
Commissioner

Mr. Michael J. Falcone
Auburn Community Hotel, L.P.
333 West Washington Street
Syracuse, New York 13202

Re: Certificate of Completion
Auburn Community Hotel Project
Auburn, New York
Site No. C706017

Dear Mr. Falcone:

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

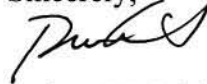
Please note that you are required to perform the following tasks

- If you are the site owner, you must record a notice of the COC in the recording office for the County (or Counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record a notice of the COC within 30 days of the date that you acquire the site. If you are a non-owner, you must work with the owner to assure the notice of COC is recorded within the time frame specified. A standard notice form is attached to this letter;
- Provide a notice of the COC and a fact sheet describing the institutional and engineering controls (IC/EC) that are required at the site to the Brownfield Site Contact list within 10 days of issuance of the COC;
- Implement the DEC-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and you must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC Certifications. The site IC/ECs are identified on the attached Site Management Form. The first PRR including the certification of the IC/ECs is due to DEC in April of 2014, and

- You and your lessees must submit an annual report to the New York State Department of Taxation and Finance within one year and for each of the following eleven years after the execution of the Brownfield Site Cleanup Agreement. The Report must provide the information required by Chapter 390 of the Laws of 2008, Tax Law Section 171-s.

If you have any questions regarding any of these items, please contact the project manager, Kevin Kelly, at (315) 426-7421.

Sincerely,



Robert W. Schick, P.E.

Director

Division of Environmental Remediation

cc w/ enclosure:

K. Anders, NYSDOH

R. Jones, NYSDOH

M. Caruso, DEC

K. Kelly, DEC

H. Warner, DEC

W. Daigle, DEC

M. Sheen, DEC

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)
CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name

Auburn Community Hotel, L.P.

Address

333 West Washington Street, Syracuse, NY 13202

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 11/9/10 **Agreement Execution:** 12/15/10 **Agreement Index No.:** C706017-11-10

Application Approval Amendment: none

Agreement Execution Amendment: none

SITE INFORMATION

Site No.: C706017 **Site Name:** Auburn Community Hotel Project

Site Owner: Auburn Real Estate Company, Inc.
Auburn Community Hotel, LP

Street Address: 74 State St.

Municipality: Auburn **County:** Cayuga **DEC Region:** 7

Site Size: 2.659 Acres

Tax Map Identification Number(s): 115.52-1-81

Percentage of site located in an EnZone: 100 %

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

CERTIFICATE ISSUANCE

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

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

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

Allowable Uses under the BCP: Commercial and Industrial

Cleanup Track: Track 4: Restricted use with site-specific soil cleanup objectives

Tax Credit Provisions for Entities Taxable Under Article 9, 9-A, 32, and 33:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 25 %.
Tangible Property Credit Component Rate is 20 %.

Tax Credit Provisions for Entities Taxable Under Article 22 & S Corporations:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 25 %.
Tangible Property Credit Component Rate is 18 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Cayuga County as 00129488.

LIABILITY LIMITATION

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

CERTIFICATE TRANSFERABILITY

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

CERTIFICATE MODIFICATION/REVOCATION

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

(1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;

(2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;

(3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;

(4) there is good cause for such modification or revocation;

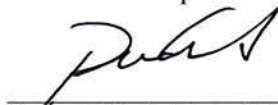
(5) either the Applicant or the Applicant's successors or assigns failed to manage the controls or monitoring in full compliance with the terms of the remedial program;

(6) the terms and conditions of the environmental easement have been intentionally violated or found to be not protective or enforceable.

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

Joseph J. Martens
Commissioner
New York State Department of Environmental Conservation

By:



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

Date: December 19, 2012

NOTICE OF CERTIFICATE OF COMPLETION

Brownfield Cleanup Program

6 NYCRR Part 375-1.9(d)

Auburn Community Hotel Project, Site ID No. C706017

74 State Street, Auburn, NY 13021

City of Auburn, Cayuga County Tax Map Identification Number 115.52-1-81

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to Auburn Community Hotel, LP for a parcel approximately 2.65 acres located at the 74 State Street in the City of Auburn and Cayuga County.

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

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

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

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Cayuga County as 00129488 [see Book 1491 of Deeds at Page 47, October 23, 2012.]

PLEASE TAKE NOTICE, the Environmental Easement requires that the approved site management plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

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

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

PLEASE TAKE NOTICE, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

Auburn Community Hotel Project, C706017, 74 State St. Auburn NY 13021

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

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

PLEASE TAKE NOTICE, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 7 located at 615 Erie Boulevard West, Syracuse, NY 13204, by contacting the Regional Environmental Remediation Engineer.

WHEREFORE, the undersigned has signed this Notice of Certificate

Auburn Community Hotel, L.P.

By: _____

Title: _____

Date: _____

STATE OF NEW YORK) SS:
COUNTY OF)

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

Signature and Office of individual
taking acknowledgment

Please record and return to:
Auburn Community Hotel, L.P.
Michael J. Falcone
333 West Washington Street
Syracuse, New York 13202

12/03/09

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Auburn, County of Cayuga and State of New York, bounded and described as follows:

BEGINNING at the intersection of the east line of State Street with the south line of Water Street;

1) Thence N 29° 29' 28" W, along the east line of State Street being the west end of this part of Water Street, a distance of 87.61 feet to the north line of Water Street;

2) Thence N 29° 29' 28" W, along the east line of State Street, a distance of 71.30 feet to a point;

3) Thence N 60° 53' 31" E, a distance of 99.92 feet to a point;

4) Thence N 29° 06' 29" W, a distance of 28.55 feet to the south line of the west bound lane of New York State Route 5 and U.S. Route 20;

5) Thence N 79° 45' 01" E, along said south line, a distance of 172.10 feet to the lands of the City of Auburn;

6) Thence S 57° 23' 18" E, along said City lands, a distance of 285.30 feet to the lands of the State of New York Department of Transportation;

7) Thence S 13° 05' 43" W, along said State lands, a distance of 113.65 feet to the northerly line of the east bound lane of New York State Route 5 and U.S. Route 20;

Thence along said northerly line,

8) S 72° 10' 23" W, and along the apparent east end of said Water Street, a distance of 125.52 feet to a point;

9) S 12° 46' 41" W, a distance of 31.64 feet to a point;

10) S 65° 10' 42" W, a distance of 53.24 feet to a point;

11) S 84° 41' 24" W, a distance of 39.63 feet to a point; and

12) S 61° 32' 37" W, a distance of 85.79 feet to the east line of State Street;

13) Thence N 29° 29' 10" W, along said east line of State Street, a distance of 181.67 feet to the point of beginning.

