

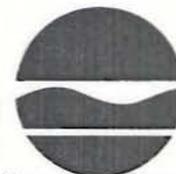
# New York State Department of Environmental Conservation

## Division of Environmental Remediation, 12<sup>th</sup> Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 • FAX: (518) 402-9020

Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Alexander B. Grannis  
Commissioner

OCT 05 2010

Mr. Timothy Fournier, President and CEO  
Erie Harbor, LLC  
183 East Main Street, Sixth Floor  
Rochester, NY 14604

Re: Certificate of Completion  
River Park Commons – Townhouses Site  
City of Rochester, Monroe County  
Site Number C828125

Dear Mr. Fournier:

Congratulations on having satisfactorily completed the remedial program at the River Park Commons – Townhouses Site. Enclosed please find an original, signed Certificate of Completion. The New York State Department of Environmental Conservation (Department) 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. 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 Department-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 the Department in February of 2012; 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 Kelly Cloyd, at (585) 226-5351.

OCT 8 2010

Sincerely,

Dale A. Desnoyers  
Director  
Division of Environmental Remediation

ec w/ enclosure:

- S. Bates – NYSDOH
- J. Kenney – NYSDOH
- L. Shaw

ec w/o enc.:

- B. Conlon
- J. White
- B. Putzig
- K. Cloyd

It is noted that the information provided in the attached documents is for informational purposes only and does not constitute an offer of insurance or any other financial product. The information is provided for your information only and should not be used as a basis for any investment decision. The information is provided for your information only and should not be used as a basis for any investment decision. The information is provided for your information only and should not be used as a basis for any investment decision.

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NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)

*CERTIFICATE OF COMPLETION*

**CERTIFICATE HOLDER(S):**

Name	Address
ERIE HARBOR, LLC	183 East Main St., Sixth Floor, Rochester, NY 14604

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 9/24/04 **Agreement Execution:** 12/2/04 **Agreement Index No.:** B8-0673-04-08S

**Application Approval Amendment:** none **Agreement Execution Amendment:** none

**SITE INFORMATION**

**Site No.:** C828125 **Site Name:** River Park Commons - Townhouses

**Site Owner:** Erie Harbor, LLC

**Street Address:** 205-405 Mt. Hope Avenue

**Municipality:** Rochester **County:** Monroe **DEC Region:** 8

**Site Size:** 6.02Acres

**Tax Map Identification Number(s):** 121.55-01-059.001

**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:** Restricted-Residential, 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 20 %.

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 18 %.

Tangible Property Credit Component Rate is 18 %.

0105 20 130

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 Monroe County as 201009090719.

#### **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.

Alexander B. Grannis  
Commissioner  
New York State Department of Environmental Conservation

By:   
Dale A. Desnoyers, Director  
Division of Environmental Remediation

Date: **OCT 05 2010**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Site Management Form

9/28/2010



SITE DESCRIPTION

SITE NO. C828125

SITE NAME River Park Commons - Townhouses

SITE ADDRESS: 205-405 Mt. Hope Avenue ZIP CODE: 14620

CITY/TOWN: Rochester

COUNTY: Monroe

ALLOWABLE USE: Restricted-Residential, Commercial, and Industrial

SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES: YES NO

IC/EC Certification Plan

Monitoring Plan

Operation and Maintenance (O&M) Plan

Periodic Review Frequency: 1 year

First Periodic Review Date: February 12, 2012

Description of Institutional Control

Erie Harbor, LLC

205-405 Mt. Hope Avenue

Environmental Easement Block: 01 Lot: 059.0 Sublot: 001 Section: 121 Subsection: 55

S\_B\_L Image: 121.55-01-059.001

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

O&M Plan

Site Management Plan

Description of Engineering Control

Erie Harbor, LLC

205-405 Mt. Hope Avenue

Environmental Easement

Block: 01 Lot: 059.0 Sublot: 001 Section: 121 Subsection: 55

S\_B\_L Image: 121.55-01-059.001

Vapor Mitigation

## NOTICE OF CERTIFICATE OF COMPLETION

### Brownfield Cleanup Program

#### 6 NYCRR Part 375-1.9(d)

**River Park Commons – Townhouses, Site ID No. C828125,  
205-405 Mount Hope Avenue, City of Rochester, Monroe County**

**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 Erie Harbor, LLC for a parcel approximately 6.02 acres located at the 205-405 Mount Hope Avenue in the City of Rochester, Monroe 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 6NYCRR 375-1.8(g)(2)i.
- Restricted Residential Use, as set forth in 6NYCRR 375-1.8(g)(2)ii.
- Commercial Use, as set forth in 6NYCRR 375-1.8(g)(2)iii.
- Industrial Use, as set forth in 6NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

**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 Monroe County as Document number 201009090719.

**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.

**River Park Commons - Townhouses, Site #C828125, 205-405 Mt. Hope**

**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.

**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 8 located at 6274 East Avon-Lima Rd., Avon New York, by contacting the Regional Environmental Remediation Engineer.

**WHEREFORE**, the undersigned has signed this Notice of Certificate

(Applicant)

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:**  
Erie Harbor, LLC  
183 East Main Street, Sixth Floor  
Rochester, NY 14604

EXHIBIT "A"

SCHEDULE "A" PROPERTY DESCRIPTION

PARCEL A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Rochester, County of Monroe, State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the westerly right-of-way of Mt. Hope Avenue (66 feet wide), said point being located north 28 41' 31" east, 142.00 feet from the northerly end of a 170.44 foot radius junction curve formed by the northerly right-of-way of Clarissa Street and the aforesaid right-of way of Mt. Hope Avenue; thence

- (1) north 60 38' 29" west a distance of 199.91 feet to a point; thence
- (2) south 45 21' 31" west, a distance of 8.24 feet to a point; thence
- (3) north 54 21' 30" west, a distance of 37.90 feet to a point; thence
- (4) north 41 08' 15" east, a distance of 334.06 feet to a point; thence
- (5) northeasterly, on a curve to the left, having a radius of 2,010.08 feet, a distance of 321.82 feet to a point; thence
- (6) north 26 52' 15" east, a distance of 761.09 feet to a point; thence
- (7) north 35 38' 30" east, a distance of 179.66 feet to a point; thence
- (8) south 54 21' 30" east, a distance of 175.00 feet to a point; thence
- (9) south 36 08' 10" west, a distance of 22.57 feet to a point; thence
- (10) north 54 22' 20" west, a distance of 8.47 feet to a point; thence
- (11) southwesterly on a curve to the right, having a radius of 6875.50 feet a distance of 181.92 feet to a point; thence
- (12) southwesterly on a curve to the right, having a radius of 11,459.27 feet a distance of 174.00 feet to a point; thence
- (13) south 54 21' 30" east a distance of 119.99 feet to a point; thence
- (14) south 35 38' 30" west, along the aforesaid right of way of Mt. Hope Avenue, a distance of 234.46 feet to a point; thence
- (15) south 30 00' 19" west along the aforesaid right of way of Mt. Hope Avenue, a distance of 628.07 feet to a point; thence
- (16) south 28 41' 31" west along the aforesaid right of way of Mt. Hope Avenue, a distance of 321.80 feet to the first mentioned point or beginning.

PARCEL II

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Rochester, County of Monroe, State of New York being more particularly bounded and described as follows:

BEGINNING at a point on the westerly right-of-way of Mt. Hope Avenue (66 feet wide), said point being located north 28 41' 31" east, 463.80 feet; thence north 30 00' 19" east, 628.07 feet; thence north 35 38' 30" east, 234.46 feet from the northerly right-of-way of Clarissa Street and the aforesaid right-of-way of Mt. Hope Avenue; thence

- (1) north 54 21' 30" west, a distance of 119.99 feet to a point; thence
- (2) northeasterly, on a curve to the left, having a radius of 11,459.27 feet a distance of 174.00 feet to a point; thence

- (3) northeasterly, on a curve to the left, having a radius of 6,875.50 feet, a distance of 181.92 feet to a point; thence
- (4) south 54 22' 20" east, a distance of 8.47 feet to a point; thence
- (5) north 36 08' 10" east, a distance of 22.57 feet to a point; thence
- (6) north 54 21' 30" west, a distance of 175.00 feet to a point; thence
- (7) south 35 38' 30" west, a distance of 179.66 feet to a point; thence
- (8) north 26 52' 15" east, a distance of 32.79 feet to a point; thence
- (9) north 35 38' 30" east, a distance of 150.25 feet to a point; thence
- (10) south 54 21' 30" east, a distance of 249.90 feet to a point; thence
- (11) south 35 38' 30" west, along the westerly right-of-way line of Mt. Hope Avenue, a distance of 379.07 feet to the point of beginning.

PARCEL III

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Rochester, County of Monroe, State of New York and being more particularly bounded and described as follows:

BEGINNING at a point on the westerly right-of-way of Mt. Hope Avenue (66 feet wide), said point being located north 28 41' 31" east, 111.78 feet from the northerly end of a 170.44 foot radius junction curve formed by the northerly right-of-way of Clarissa Street and the aforesaid right-of-way of Mt. Hope Avenue; thence

- (1) north 54 21' 30" west, a distance of 203.76 feet to a point; thence
- (2) north 45 21' 31" east, a distance of 8.24 feet to a point; thence
- (3) south 60 38' 29" east, a distance of 199.91 feet to a point; thence
- (4) south 28 41' 31" west, along the aforesaid right-of-way of Mt. Hope Avenue, a distance of 30.22 feet to the first mentioned point or place of beginning.

EXCEPTING AND RESERVING ALL that tract or parcel of land, situated in the City of Rochester, County of Monroe, State of New York, and being more particularly described as follows:

BEGINNING on the westerly right-of-way of Mt. Hope Avenue, (66' row), at the Southeasterly property corner of Tax Account No. 121.55-01-058;

RUNNING THENCE south 34 degrees 59 minutes 13 seconds West, along said right-of-way, a distance of 196.00 feet to a point;

RUNNING THENCE North 55 degrees 00 minutes 47 seconds West, a distance of 242.84 feet to a point;

RUNNING THENCE North 34 degrees 59 minutes 13 seconds East, a distance of 150.25 feet to a point;

RUNNING THENCE South 55 degrees 00 minutes 47 seconds East, a distance of 249.90 feet to the point of beginning.

