

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director  
625 Broadway, 12th Floor, Albany, New York 12233-7011  
P: (518) 402-9706 | F: (518) 402-9020  
www.dec.ny.gov

NOV 20 2015

Mr. John A. Ciminelli  
Highland Park Village, LLC  
2421 Main Street  
Buffalo, NY 14214

Re: Certificate of Completion  
Site Name: 129 Holden Street Redevelopment  
Site No. C915261  
City of Buffalo, Erie County

Dear Mr. Ciminelli:

Congratulations on having satisfactorily completed the remedial program at the 129 Holden Street Redevelopment site. Enclosed please find an original, signed Certificate of Completion (COC). The New York State Department of Environmental Conservation (DEC) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the 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 copy of the recorded notice should be provided to DEC's project manager. 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 the notice of the COC to the Document Repositories within 10 days of issuance of the COC. DEC will develop a fact sheet describing the institutional and engineering controls (IC/EC) that are required at the site and distribute it to the County Listserv within 10 days;
- 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 DEC in a Periodic Review



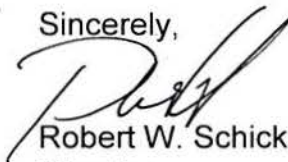
Department of  
Environmental  
Conservation

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 by May 1, 2017; 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 DEC project manager for this site, Jaspal S. Walia, at (716) 851-7220.

Sincerely,



Robert W. Schick, P.E.

Director

Division of Environmental Remediation

Enclosures

cc: Krista Anders, DOH  
Matthew Forcucci, DOH  
Craig Slater, Esq., ([cslater@cslaterlaw.com](mailto:cslater@cslaterlaw.com))  
James Richert, ([J.Richert@palmertongroup.com](mailto:J.Richert@palmertongroup.com))  
Michael Ryan, DEC  
Michael Cruden, DEC  
Jaspal S. Walia, DEC  
Chad Staniszewski, DEC  
Jennifer Dougherty, DEC

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)  
*CERTIFICATE OF COMPLETION*

**CERTIFICATE HOLDER(S):**

<b>Name</b>	<b>Address</b>
Highland Park Village, LLC	2421 Main Street, Buffalo, NY 14214

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 1/31/12    **Agreement Execution:** 2/9/12    **Agreement Index No.:** C915261-01-12

**Application Approval Amendment:** 8/26/13                      **Agreement Execution Amendment:** 10/31/13

**SITE INFORMATION:**

**Site No.:** C915261    **Site Name:** 129 Holden Street Redevelopment  
**Site Owner:** Highland Park Village, LLC  
**Street Address:** 129 Holden Street  
**Municipality:** Buffalo    **County:** Erie    **DEC Region:** 9  
**Site Size:** 27.100 Acres  
**Tax Map Identification Number(s):** 90.29-2-43.1  
**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 28 %.  
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 28 %.  
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 Erie County as 2015203065 and BK/PG 11286/1863.

#### **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.

Basil Seggos  
Acting Commissioner  
New York State Department of Environmental Conservation

By:

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

Date: NOVEMBER 20, 2015



**NOTICE OF CERTIFICATE OF COMPLETION**  
**Brownfield Cleanup Program**  
**6 NYCRR Part 375-1.9(d)**

**129 Holden Street Redevelopment, Site ID No. C915261**  
**129 Holden Street, City of Buffalo, Erie County**  
**Tax Map Identification Number(s): 90.29-2-43.1**

**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 Highland Park Village, LLC for a parcel approximately 27.1 acres located at the 129 Holden Street in the City of Buffalo, Erie 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):

- ☐ Unrestricted Use, as set forth in 6 NYCRR 375-1.8(g)(1)i
- ☐ 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.

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 Erie County as File: 2015203065, BK/PG D 11286/1863.

**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 DEC, 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.

**129 Holden Street Redevelopment, C915261, Buffalo, NY**

**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.

**PLEASE TAKE NOTICE**, the Certificate may 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 9 located at 270 Michigan Avenue, Buffalo, NY 14203, by contacting the Regional Environmental Remediation Engineer.

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

John A. Ciminelli

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:**

John A. Ciminelli  
Highland Park Village, LLC  
2421 Main Street  
Buffalo, NY 14214



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Site Management Form  
11/13/2015



SITE DESCRIPTION

SITE NO. C915261

SITE NAME 129 Holden Street Redevelopment

SITE ADDRESS: 129 Holden Street ZIP CODE: 14214

CITY/TOWN: Buffalo

COUNTY: Erie

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: once a year

Periodic Review Report Submitted Date: 05/01/2017

Description of Institutional Control

Highland Park Village, LLC

2421 Main Street

129 Holden Street

Environmental Easement

Block: 2

Lot: 43

Sublot: 1

Section: 90

Subsection: 29

S\_B\_L Image: 90.29-2-43.1

Ground Water Use Restriction

Landuse Restriction

Site Management Plan

Soil Management Plan

Description of Engineering Control

Highland Park Village, LLC

2421 Main Street

**129 Holden Street**

Environmental Easement

Block: 2

Lot: 43

Sublot: 1

Section: 90

Subsection: 29

S\_B\_L Image: 90.29-2-43.1

Cover System



**Exhibit A**  
**Site Description**

**SCHEDULE "A" PROPERTY DESCRIPTION**

**Environmental Easement Description**  
**For 129 Holden Street Redevelopment Site**  
**BCP Site No. C915261**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot 44, Township 11, Range 8 of the Holland Land Company's Survey, and more particularly bounded and described as follows:

Beginning at a point on the westerly line of Manhattan Avenue, being 66.0 feet wide, 504.50 feet south of the southerly line of East Amherst Street, being 60.0 feet wide;

Thence southerly along the westerly line of said Manhattan Avenue, a distance of 33.50 feet to northeast corner of lands conveyed to Manhattan Square LLC., by deed recorded in Erie County Clerk's Office in Liber 11205 of Deeds at Page 3747;

Thence westerly along the northerly line of said lands conveyed to Manhattan Square LLC., a distance of 432.056 feet to the northwest corner of said lands;

Thence southerly along the westerly line of said lands conveyed to Manhattan Square LLC., and lands conveyed to The United States Postal Service by deed recorded in Erie County Clerk's Office in Liber 8720 of Deeds at Page 379, a distance of 516.46 feet, to the southwest corner of said lands conveyed to The United States Postal Service;

Thence easterly along the south line of said lands conveyed to The United States Postal Service, a distance of 432.056 feet, to a point in the westerly line of said Manhattan Avenue;

Thence southerly along the westerly line of said Manhattan Avenue, a distance of 261.59 feet, to a point on the northerly line of lands conveyed to the City of Buffalo by a deed recorded in Erie County Clerk's Office in Liber 6064 of deeds at Page 444, (also known as Central Park Avenue, being 30.0 feet wide);

Thence westerly along the northerly line of said lands conveyed to the City of Buffalo by Liber 6064 of deeds at Page 444, a distance of 1740.94 feet, to a point on the easterly line of Holden Avenue, being 66.0 feet wide;

Thence northerly along the easterly line of said Holden Avenue, a distance of 801.41 feet, to a point that is 504.50 feet south of the southerly line of said East Amherst Street;

Thence easterly parallel with the southerly line of said East Amherst Street, a distance of 835.44 feet, to the southwest corner of Hill Street, being 60.0 feet wide;

Thence northerly along the west line of said Hill Street, a distance of 16.5 feet to a point;

Thence westerly at right angles to the last described line, a distance of 60.00 feet to a point on the easterly line of said Hill Street;

Thence southerly along the easterly line of said Hill Street, a distance of 16.50 feet, to the southeast corner of said Hill Street;

Thence easterly parallel with the southerly line of said East Amherst Street, a distance of 843.71 feet to the Point of beginning. Containing 27.1 acres of land, more or less.



**Exhibit B**  
**Site Survey**



422. 7. 49. 1.