

# 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

December 29, 2017

1360 Niagara Street Owner, LLC  
Attn: Mr. Paul Ciminelli  
350 Essjay Road  
Williamsville, NY 14221

Re: Certificate of Completion  
1360 Niagara Street  
Buffalo, Erie County  
Site No. C915302

Dear Mr. Ciminelli:

Congratulations on having satisfactorily completed the remedial program at the 1360 Niagara Street Site. Enclosed please find an original, signed Certificate of Completion (COC). The New York State Department of Environmental Conservation (Department) 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 the Department'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.



Department of  
Environmental  
Conservation

Please return the proof of recording to:

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

- Provide the notice of the COC to the Document Repositories within 10 days of issuance of the COC. The Department will develop a fact sheet indicating no institutional or engineering controls (IC/EC) are required at the site and distribute it to the County Listserv within 10 days.

If you have any questions regarding any of these items, please contact Anthony Lopes at (716) 851-7220.

Sincerely,



Michael J. Ryan, P.E.  
Assistant Director  
Division of Environmental Remediation

ec w/ enclosure:

- A. Lopes
- J. Dougherty
- P. Ciminelli – 1360 Niagara Street Owner, LLC, [pciminelli@ciminelli.com](mailto:pciminelli@ciminelli.com)
- D. Riker – C&S Engineers; [driker@cscos.com](mailto:driker@cscos.com)
- C. Slater – Slater Law Firm; [cslater@cslaterlaw.com](mailto:cslater@cslaterlaw.com)

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

**Name**

1360 Niagara Street Owner, LLC

**Address**

350 Essjay Road, Williamsville, NY 14221

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 5/20/16   **Agreement Execution:** 12/15/16   **Agreement Index No.:** C915302-04-16

**Application Approval Amendment:** 10/16/17

**Agreement Execution Amendment:** 10/16/17

**SITE INFORMATION:**

**Site No.:** C915302 **Site Name:** 1360 Niagara Street

**Site Owner:** 1360 Niagara Street Owner, LLC

**Street Address:** 1336, 1340 and 1360 Niagara Street

**Municipality:** Buffalo **County:** Erie   **DEC Region:** 9

**Site Size:** 1.804 Acres

**Tax Map Identification Number(s):** 88.81-1-6, 88.81-1-7, 88.81-1-8

**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:** Unrestricted, Residential, Restricted-Residential, Commercial, and Industrial  
**Cleanup Track:** Track 1: Unrestricted use

**Tax Credit Provisions:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 50 %.

Tangible Property Credit Component Rate is 20%. Comprised of 10% Base, 5% EnZone, 5% Track 1 Cleanup.

Additional rate increases may be available if: the site is developed as affordable housing; if the Certificate Holder at a site within a certified Brownfield Opportunity Area (BOA) receives a separate Determination of Conformance from the Secretary of State, or; if the site is used primarily for manufacturing activities.

No Environmental Easement has been granted pursuant to ECL Article 71, Title 36 as there are no use restrictions and there is no reliance on the long-term employment of institutional controls.

#### **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.

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 is not 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  
Commissioner  
New York State Department of Environmental Conservation

By: Michael J. Ryan Date: 12/29/17  
Michael J. Ryan, R.E., Assistant Director  
Division of Environmental Remediation

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

**1360 Niagara Street, Site ID No. C915302**  
**1336, 1340, & 1360 Niagara Street, Buffalo, NY, 14213**  
**Buffalo (C), Erie County, Tax Map Identification Numbers 88.81-1-8, 88.81-1-7, 88.81-1-6**

**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 1360 Niagara Street Owner, LLC for a parcel approximately 1.804 acres located at the 1336, 1340, & 1360 Niagara 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.

**PLEASE TAKE NOTICE**, provided that the Certificate is 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.

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

**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.



*1360 Niagara Street, C915302*  
*1336, 1340, & 1360 Niagara Street, Buffalo, NY, 14213*

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

**PLEASE TAKE NOTICE**, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 office located at 270 Michigan Avenue, Buffalo, NY 14203, by contacting the Regional Environmental Remediation Engineer.

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

1360 Niagara Street Owner, LLC

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:**  
1360 Niagara Street Owner, LLC  
Attn: Paul Ciminelli  
Ciminelli Real Estate Corporation  
350 Essjay Road  
Williamsville, NY 14221

# **Exhibit A**

**Exhibit A**  
**For 1360 Niagara Street Site**  
**BCP Site No. C915302**

**SURVEYORS DESCRIPTION 0.894± Ac. PARCEL**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, and being part of Lots 6 and 7 of the Stevens Survey, bounded and described as follows:  
BEGINNING AT A POINT on the west line of Niagara Street at the northeast corner of lands conveyed to Angelo Montante by deed recorded in the Erie County Clerk's Office in Liber 6415 of Deeds at Page 387;  
RUNNING THENCE: Westerly, along the north line of said Montante lands, a distance of 88.01 feet to the northwest corner thereof;  
RUNNING THENCE: Southerly, at an interior angle of 269°-23'-48" with the last described line and along the west line of said Montante lands, a distance of 47.27 feet to a point on the south line of Lot 6;  
RUNNING THENCE: Westerly, at an interior angle of 89°-08'-30" with the last described line and along the south line of Lot 6 a distance of 126.55 feet to a point on the east line of Conrail, formerly Penn Central Railroad Company, New York Central and Hudson River Railroad;  
RUNNING THENCE: Northerly, at an interior angle of 85°-25'-19" with the last described line and along the east line of said Conrail lands, a distance of 210.89 feet to a point on the south line of Brace Street;  
RUNNING THENCE: Easterly, at an exterior angle of 85°-25'-53" with the last described line and along the south line of Brace Street, a distance of 197.00 feet to a point on the west line of Niagara Street;  
RUNNING THENCE: Southerly, at right angles to the last described line and along the west line of Niagara Street, a distance of 160.69 feet to the POINT OR PLACE OF BEGINNING, containing 0.894 Acre, be the same, more or less.

**SURVEYORS DESCRIPTION 0.910± Ac. PARCEL**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, and being part of Lots 9, 10 and 11 of the Stevens Survey, bounded and described as follows:  
COMMENCING AT A POINT on the west line of Niagara Street at the northeast corner of lands conveyed to Angelo Montante by deed recorded in the Erie County Clerk's Office in Liber 6415 of Deeds at Page 387;  
RUNNING THENCE: Northerly, along the west line of Niagara Street, a distance of 178.15 feet to an angle point therein;  
RUNNING THENCE: Northerly, at an angle of 177°-17'-48" in the northwest and southwest quadrants with the last described line, a distance of 54.31 feet to the Point or Place of Beginning of the parcel herein described, said Point of Beginning also being on the north line of Brace Street;  
RUNNING THENCE: Westerly, at an exterior angle of 89°-51'-03" with the last described line and along the north line of Brace Street, a distance of 153.69 feet to a point;  
RUNNING THENCE: Northerly, at right angles to the last described line, a distance of 33.75 feet to a point;  
RUNNING THENCE: Westerly, parallel with the north line of Brace Street, a distance of 31.60 feet to a point on the east line of Conrail, formerly Penn Central Railroad Company, New York Central and Hudson River Railroad;  
RUNNING THENCE: Northerly, at an exterior angle of 97°-25'-38" with the last described line and along the east line of said Conrail lands, a distance of 201.35 feet to a point;  
RUNNING THENCE: Easterly, at an interior angle of 97°-16'-41" with the last described line, a distance of 159.87 feet to a point on the west line of Niagara Street;  
RUNNING THENCE: Southerly, at right angles to the last described line and along the west line of Niagara Street, a distance of 233.00 feet to the POINT OR PLACE OF BEGINNING, containing 0.910 Acre, be the same, more or less.  
SUBJECT to easements, rights of way and restrictions of record.  
BEING AND INTENDED TO BE a portion of Parcel B of lands conveyed to 1360 Niagara Street Owner, LLC by deed recorded in the Erie County Clerk's Office in Liber 11291 of Deeds at Page 9036.

This parcel contains 1.804 Acres of land more or less.



# **Exhibit B**

[illegible][illegible]

CON: RAIL

(SOLICIT - PERS OFFICIAL BUILDING COMPANY  
OF NEW YORK CITY AND WASHINGTON FIELD ROAD)

NOTES.

1) INTERVIEW MAP - SURVEY MAP PREPARED BY RICHARD E. SEIDL  
LICENSED LAND SURVEYOR DATED JAN. 6, 1938  
JAN. 26, 1938 AND IDENTIFIED AS JOB NO. 1938

2) BLS - 1015 OF BUREAU TAX MAP NO. 88-B-1 - 6 T & 6

3) FOR REFERENCE SEE RAILROAD VALUATION MAP FOR NEW YORK CENTRAL  
RAILROAD, NIAGARA BRANCH, V61/3

4) NO FURTHER WORK WAS DONE FOR THE BLS MAP REVISIONS

...C ROAD)

3-5

NAGARA  
STREET

POINT OF COMMENCING  
0.9104 AC. PARCEL  
POINT OF BEGINNING  
0.1024 AC. PARCEL  
SURVEYORS DESCRIPTION

GRAPHIC SCALE

GRAPHIC SCALE

1 240

1 240  
NYS DEC SITE NO. C915302 BCP BOUNDARY - AMENOWMENT 1  
SITE ADDRESS: 1338, 1340 & 1360 NIAGARA STREET  
MCINTOSH & MCINTOSH, P.C.  
ATTORNEYS

ADDRESS: 1330, 1340 & 1350  
MONTOSH & MONTOSH, P.C.  
CONSULTING ENGINEERS, LAND SURVEYORS, PLANNERS  
LOCKPORT, NEW YORK BUFFALO, NEW YORK  
PHONE 434-2138 PHONE 825-8360

CONSULTING ENGINEER  
LOCKPORT, NEW YORK  
PHONE 434-2138

BUFFALO, NEW YORK  
PHONE 825-8360

PART OF LOTS - 8, 7, 6, 9, 10 & 11 STEVENS SURVEY  
CITY OF BUFFALO, ERIE COUNTY, NEW YORK

DATE: NOVEMBER 2, 2015

SCALE: 1" = 20'	DATE: NOVEMBER 2, 2010
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DATE	1-1-19
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