

# 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

Mr. John Daly  
O'Dalaigh Real Estate LLC  
1585 Hertel LLC  
330 Depew Avenue  
Buffalo, New York 14214

DEC 28 2018

Re: Certificate of Completion  
1585 Hertel Avenue  
City of Buffalo, Erie County  
Site No.C915328

Dear Mr. Daly:

Congratulations on having satisfactorily completed the remedial program at the 1585 Hertel Avenue 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. 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

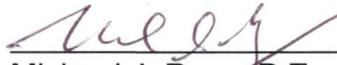


Department of  
Environmental  
Conservation

- 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 announcing the issuance of the COC and describing the institutional and engineering controls (IC/ECs), if any, that 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 Damianos T. Skaros at (716) 851-7220.

Sincerely,



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Michael J. Ryan, P.E.

Director

Division of Environmental Remediation

ec w/ enclosure:

C. Vooris, NYSDOH

C. Bethoney, NYSDOH

A. Ghosh, NYSDOH

Damianos T. Skaros, [Damianos.skaros@dec.ny.gov](mailto:Damianos.skaros@dec.ny.gov)

Craig A. Slater, [cslater@cslaterlaw.com](mailto:cslater@cslaterlaw.com)

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Matt Gokey, [matthew.gokey@tax.ny.gov](mailto:matthew.gokey@tax.ny.gov)

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ec w/o enc.:

Chad Stanisewski, NYSDEC

Michael Cruden, NYSDEC

Jennifer Dougherty, NYSDEC

Kelly Lewandowski, NYSDEC

Dolores Tuohy, NYSDEC

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

**CERTIFICATE HOLDER(S):**

<b>Name</b>	<b>Address</b>
1585 Hertel LLC	330 Depew Avenue, Buffalo, NY 14214
O'Dalaigh Real Estate LLC	330 Depew Avenue, Buffalo, NY 14214

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 5/1/18    **Agreement Execution:** 5/1/18    **Agreement Index No.:**C915328-03-18  
**Application Approval Amendment:** 11/19/18    **Agreement Execution Amendment:** 11/19/18

**SITE INFORMATION:**

**Site No.:** C915328 **Site Name:** 1585 Hertel Avenue  
**Site Owner:** O'Dalaigh Real Estate LLC  
**Street Address:** 1585 Hertel Avenue  
**Municipality:** Buffalo **County:** Erie    **DEC Region:** 9  
**Site Size:** 0.180 Acres  
**Tax Map Identification Number(s):** 78.74-3-1  
**Percentage of site located in an EnZone:** 0 - 49 %

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 15%. Comprised of 10% Base, 5% Track 1 Cleanup.

Dependent upon the project being developed in a manner consistent with the requirements of Section 21(a)(5)(B) of the New York State Tax Law, additional rate increases may be available if the site is developed as affordable housing (5%), if the Certificate Holder receives a separate Determination of Conformance with the Brownfield Opportunity Area (BOA) from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%), not to exceed a maximum total Tangible Property Credit Rate of 24 %.

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 6 NYCRR 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 6 NYCRR 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:  Date: 12/28/13  
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation

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

*1585 Hertel Avenue, Site ID No. C915328*  
*1585 Hertel Avenue, Buffalo, New York 14216*  
*Buffalo, Erie County, Tax Map Identification Number(s) 78.74-3-1*

**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 1585 Hertel LLC and O'Dalaigh Real Estate LLC for a parcel approximately 0.180 acres located at 1585 Hertel Avenue 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.

**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.

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

*1585 Hertel Avenue, C915328, 1585 Hertel Avenue, Buffalo, NY 14216*

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

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

O'Dalaigh Real Estate 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:**  
1585 Hertel LLC  
330 Depew Avenue  
Buffalo, NY 14214

# Exhibit A

✓ Metes & Bounds Description

SCHEDULE A

PARCEL A

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 No. 69, Township 11, Range 8 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the point of intersection of the easterly line of Parkside Avenue with the southerly line of Hertel Avenue (as a street 100 feet wide); running thence southerly along the easterly line of Parkside Avenue 30.82 feet; thence easterly parallel with Hertel Avenue, 115.75 feet; thence northerly parallel with Parkside Avenue, 30.82 feet to the southerly line of Hertel Avenue and thence westerly along the southerly line of Hertel Avenue, 115.75 feet to the easterly line of Parkside Avenue at the point or place of beginning.

PARCEL B

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Sublots Nos. 246 and 247, Block "G", as shown on a map filed in Erie County Clerk's Office under Cover No. 613 and being part of Lot No. 69, Township 11, Range 8 of the Holland Land Company's Survey and more particularly described in accordance with a survey prepared by Herthe and Sonnenberger, Engineers and Surveyors, Buffalo, New York, dated November 9 1951 as follows:

BEGINNING at a point in the easterly line of Parkside Avenue (100 feet wide) distant South  $00^{\circ} 44'$  West 30.82 feet from the intersection of the said easterly line of Parkside Avenue and the southerly line of Hertel Avenue (100 feet wide); extending thence (1) South  $89^{\circ} 21'$  East along a line parallel with Hertel Avenue 115.75 feet to a point; thence (2) South  $00^{\circ} 44'$  West along lands now or late of Gertrude Rose, 35 feet to an iron pipe; thence (3) North  $89^{\circ} 21'$  West along lands now or late of Myrtle A. Conrad, 115.75 feet to an iron pipe in the said easterly line of Parkside Avenue; thence (4) North  $00^{\circ} 44'$  East along said easterly side of Parkside Avenue 35 feet to the place of beginning.

1585 Hertel Avenue  
Site #: C915328

COC Package – Track 1  
December 2018

# Exhibit B

✓ Tax Parcel Figure

