



Department of  
Environmental  
Conservation

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site?  Yes  No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

**Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

This Amendment adds the County of Erie (the "County") to the Brownfield Cleanup Agreement for BCP Site Index No. C915197L (the "Site"). The Buffalo and Erie County Industrial Land Development Corporation (the "ILDC"), currently one of the existing parties to the aforementioned Brownfield Cleanup Agreement for the Site, conveyed fee title to the Site to the County on December 9, 2019.

**\*Please refer to the attached instructions for guidance on filling out this application\***

Section I. Existing Agreement Information			
BCP SITE NAME: Bethlehem Shoreline Trail		BCP SITE NUMBER: C915197L	
NAME OF CURRENT APPLICANT(S): Tecumseh Redevelopment, Inc. and Buffalo and Erie County Industrial Land Development Corporation			
INDEX NUMBER OF EXISTING AGREEMENT: C915197L-01-18		DATE OF EXISTING AGREEMENT: March 9, 2018	
Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)			
NAME County of Erie			
ADDRESS 95 Franklin Street			
CITY/TOWN Buffalo, New York		ZIP CODE 14202	
PHONE 716-858-8390	FAX	E-MAIL	
Is the requestor authorized to conduct business in New York State (NYS)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul>			
NAME OF NEW REQUESTOR'S REPRESENTATIVE County of Erie, c/o Commissioner of Environment & Planning			
ADDRESS 95 Franklin Street, 10th Floor			
CITY/TOWN Buffalo, New York		ZIP CODE 14202	
PHONE 716-858-8390	FAX 716-858-7248	E-MAIL Thomas.Hersey@erie.gov	
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Michael A. Siragusa, County Attorney			
ADDRESS 95 Franklin Street, Rm 1634			
CITY/TOWN Buffalo, New York		ZIP CODE 14202	
PHONE 716-858-2208	FAX	E-MAIL	
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input type="checkbox"/> See Exhibit A. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Describe Requestor's Relationship to Existing Applicant:			
The County purchased the Site from ILDC on December 9, 2019 and has no other relationship with ILDC and Tecumseh Redevelopment, Inc.			

**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site?  Yes  No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?  Yes  No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?  Yes  No  
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment.  Yes  No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information.  Yes  No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants?  Yes  No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?  Yes  No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?  Yes  No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?  Yes  No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order?  Yes  No
11. Are there any unregistered bulk storage tanks on-site which require registration?  Yes  No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste. See Exhibit B.

**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**

Requestor's Relationship to Property (check one):

Prior Owner  Current Owner  Potential /Future Purchaser  Other \_\_\_\_\_

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached?  Yes  No

**Note: a purchase contract does not suffice as proof of access.**

**Section V. Property description and description of changes/additions/reductions (if applicable)**

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (TBL) (in existing agreement )

Parcel Address

Parcel No. Section No. Block No. Lot No. Acreage

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Check appropriate boxes below:

Changes to metes and bounds description or TBL correction

Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: \_\_\_\_\_

**ADDITIONAL PARCELS:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Reduction of property

Approximate acreage removed: \_\_\_\_\_

**PARCELS REMOVED:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

**Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.**

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

Existing Agreement Information	
BCP SITE NAME: Bethlehem Shoreline Trail	BCP SITE NUMBER: C915197L
NAME OF CURRENT APPLICANT(S): Tecumseh Redevelopment, Inc. and Buffalo and Erie County Industrial Land Development Corporation	
INDEX NUMBER OF EXISTING AGREEMENT: C915197L-01-18	
EFFECTIVE DATE OF EXISTING AGREEMENT: March 9, 2018	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
<p>(Individual)</p> <p>I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: _____ Signature: _____</p> <p>Print Name: _____</p>
<p>(Entity)</p> <p>I hereby affirm that I am (title <u>Deputy County Executive</u>) of (entity <u>County of Erie</u>); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.</p> <p>My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: <u>12/10/19</u> Signature: <u>Maria Whyte</u></p> <p>Print Name: <u>Maria Whyte</u></p>

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am Assistant Treasurer (title) of Buffalo and Erie County Industrial Land Development (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 12/10/19 Signature: Karen M. Fiala

Print Name: Karen M. Fiala, Asst. Treasurer

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

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



**Statement of Certification and Signatures. Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am <sup>Vice President Environmental Affairs & Real Estate</sup> \_\_\_\_\_ (title) of <sup>Tecumseh Redevelopment, Inc.</sup> \_\_\_\_\_ (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. \_\_\_\_\_ My \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 12/10/19 Signature: 

Print Name: Keith A. Nagel

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

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

**SUBMITTAL INFORMATION:**

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

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

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**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

Exhibit A

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

CLERK'S OFFICE

*BUFFALO, N.Y., July 25, 2019*

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, *That at the 16th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the 25th day of July, 2019 A.D., a Resolution was adopted, of which the following is a true copy:*

WHEREAS, the County of Erie desires to remediate brownfield properties and clear former industrial sites for productive reuse; and

WHEREAS, the Buffalo and Erie County Industrial Land Development Corporation (ILDC), has as one of its goals and authorities, the ability to hold industrial property for management and improvement; and

WHEREAS, the ILDC has recently acquired approximately 150 acres of former Bethlehem Steel Site property (ILDC Property) from Tecumseh Redevelopment Inc. (Tecumseh) for redevelopment as a modern industrial park; and

WHEREAS, the Shoreline Trail is a walking and biking trail extending from the Niagara County line to the Buffalo/Lackawanna border immediately adjacent to the ILDC Property; and

WHEREAS, it is the goal of Erie County and New York State to continue the Shoreline Trail from the Buffalo/Lackawanna boarder to Dona Street in the City of Lackawanna and eventually to Woodlawn Beach State Park in the Town of Hamburg, said continuation to traverse along the ILDC Property within a certain fifty-foot wide right-of-way (Property) located within and upon the ILDC Property; and

WHEREAS, the ILDC land purchase agreement with Tecumseh that enabled the ILDC to take title to the ILDC Property as described above is subject to certain covenants and agreements set forth in the Declaration of Covenants (Declaration) that runs with the land and binds the ILDC and its successors and/or assigns requiring that all subsequent land owners be bound by the existing Brownfield Cleanup Program (BCP) and Brownfield Site Cleanup Agreement (BCA) affecting the both the ILDC Property and the Property; and

WHEREAS, real property subject to a BCA that is remediated in accordance with the BCP allows those entities that are parties to a BCA to obtain certain liability relief and protections from New York State; and

WHEREAS, to enable the continuation of the Shoreline Trail as described herein, Erie County must acquire title to the Property; and

WHEREAS, Erie County has completed construction of the Shoreline Trail upon the Property; and

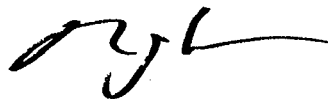
WHEREAS, the Property is enrolled with the BCP and currently subject to a BCA executed by and between the ILDC, Tecumseh, and the New York State Department of Environmental Conservation (DEC); and

WHEREAS, Erie County has previously approved of the purchase of the Property pursuant to that certain resolution adopted by the Erie County Legislature on October 5, 2017 and more particularly described as Resolution No. COMM. 17E-5(2017); and

WHEREAS, to comply with the Declaration, and to obtain the protections provided to parties that are bound by the BCA and the BCP, it is necessary that Erie County becomes a party to the BCA affecting the Property.

NOW, THEREFORE, BE IT

ATTEST



ROBERT M. GRABER

*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

CLERK'S OFFICE

*BUFFALO, N.Y., July 25, 2019*

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, *That at the 16th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the 25th day of July, 2019 A.D., a Resolution was adopted, of which the following is a true copy:*

RESOLVED, that the County Executive is authorized to negotiate and execute any and all documents and agreements with the ILDC, Tecumseh, and the DEC, including but not limited to, a BCP "Application to Amend Brownfield Cleanup Agreement and Amendment" currently affecting the Property, thereby permitting Erie County to become a party to the BCP and the BCA affecting the Property; and be it further

RESOLVED, that the County Executive, is authorized, on behalf of Erie County, to execute and submit any and all BCP related documents to the DEC to properly comply with the BCA and to obtain the protections of the BCP; and be it further

RESOLVED, that the Clerk of the Legislature be directed to send certified copies of this resolution to the County Executive; the Director of the Division of Budget and Management; the County Comptroller; the Director of Real Property Tax Services; the County Attorney; the Commissioner of the Department of Environment and Planning; and Christopher S. Pawenski in the Department of Environment and Planning.

REFERENCE:                    **COMM. 15E-43 (2019)**

ATTEST



ROBERT M. GRABER

*Clerk of the Legislature of Erie County*

Exhibit B

## **Brownfield Cleanup Program**

### **Application to Amend Brownfield Cleanup Program Agreement and Amendment**

#### Certification

Volunteer Certification: The County of Erie (the “New Requestor”) has appropriately answered “no” to all the eligibility questions within Section IV of this application and hereby certifies that it is a volunteer and that its liability arises solely as a result of ownership of the site subsequent to the disposal of hazardous waste or discharge of petroleum.

New Requestor acquired its fee title interest in the site on December 9, 2019. The site was purchased from the Buffalo and Erie County Industrial Land Development Corporation (the “ILDC”) who purchased the site from Tecumseh Redevelopment, Inc. (“Tecumseh”). Both the ILDC and Tecumseh are “volunteers” with respect to the current Brownfield Site Cleanup Agreement (the “BCA”) that is the subject of this Application to Amend Brownfield Cleanup Agreement and Amendment.

Note that on September 12, 2017, New Requestor was granted, from the ILDC, a non-exclusive, perpetual and assignable easement and right of way in, on, over and across the land constituting the site (the “Permanent Easement”). The conveyance of the Permanent Easement was made expressly subject to certain environmental easements affecting the site held by the New York State Department of Environmental Conservation as so recorded in the Erie County Clerk’s Office on July 15, 2014 in Liber 112665 of Deeds at pages 5436 and in Liber 11266 of Deeds at pages 5455 (collectively, the “Environmental Easement”) and subject to New Requestor’s covenant to utilize the site in accordance with the terms, conditions and requirements of said Environmental Easement. The Permanent Easement conveyance was also made subject to the covenants and agreements as set forth by New Requestor as contained within the Environmental Easement obligating New Requestor to, amongst other items, obtain a certificate of completion for the site and to comply with and perform and undertake all terms, conditions, responsibilities, requirements and obligations pursuant to the BCA applicable to the site including those contained within the site management plans relating to the site.

Immediately after taking both its interest in the Permanent Easement and, thereafter, title to the site, New Requestor has not and did not undertake any activity on the site resulting in soil disturbance or otherwise undertake any activity affecting the soil or groundwater contrary to the site management plan and the BCA affecting the site and has taken appropriate care to ensure that there are no continuing releases of contamination on the site and that there are no threatened future releases of contamination on the site and has prevented human, environmental, or natural resource exposure to any previously released contamination.

As such, New Requestor confirms that its liability arises solely as a result of its ownership and involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum, and affirms and confirms that New Requestor should be a “Volunteer” as that term is defined in Section 27-1405(1)(b) of the New York Environmental Conservation Law.