



Department of  
Environmental  
Conservation

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

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

#### 1. Check the appropriate box(es) below based on the nature of the amendment modification requested:

Amendment to modify the existing BCA: [check one or more boxes below]

- Add applicant(s)
- Substitute applicant(s)
- Remove applicant(s)
- Change in Name of applicant(s)

Amendment to reflect a transfer of title to all or part of the brownfield site

1a. A copy of the recorded deed must be provided. Is this attached?  Yes  No

1b.  Change in ownership  Additional owner (such as a beneficial owner)

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)

#### 2. Required: Please provide a brief narrative on the nature of the amendment:

The portion of the 1st BCA Amendment dated 10/21/21 incorrectly contained the wrong lot numbers for the Site and these incorrect lot numbers were recorded in the original environmental easement dated 11/2/21 and recorded in the Erie County Clerk's Office on 11/12/21 in Liber 11390, Page 8819. The four parking lot parcels that make up a portion of the 610 Ohio Street property were merged on 11/22/22 (See Ex. A LOT LINE MERGER PROOF FROM CITY OF BUFFALO) and assigned new lot number Section 122.14, Block 3, Lot 11.221 and new address of 4 Lot Lines (See Ex. B City Email Confirming the New Lot Number and Address). Since there were no changes to the 139 Buffalo River lot, the lot number on that lot and address stayed exactly the same as it had been before (i.e. Section 122.14, Block 3, Lot 2). Therefore, the BCP Site consists of a 4.138-acre 139 Buffalo River Parcel 1- Tax Lot ID No. 122.14, Block 3, Lot 2, and a 2.091-acre portion of the parcel now known as 4 Lot Lines, Parcel 2 - Tax Lot ID No. Section 122.14, Block 3, Lot 11.221. An Environmental Easement Amendment has been executed to reflect these correct lot numbers and the one change of address.

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

**\*Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment involves more than an insignificant change in acreage, applicants are encouraged to consult with the DEC project team prior to submitting this application.\***

<b>Section I. Current Agreement Information</b>			
BCP SITE NAME: Silo City Phase I Project		BCP SITE NUMBER: C915361	
NAME OF CURRENT APPLICANT(S): Silo City Phase I LLC			
INDEX NUMBER OF AGREEMENT: C915361-07-20		DATE OF ORIGINAL AGREEMENT: 07/17/2020	
<b>Section II. New Requestor Information</b> (complete only if adding new requestor or name has changed)			
NAME			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
1. Is the requestor authorized to conduct business in New York State (NYS)? <input type="checkbox"/> Yes <input 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			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
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)			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
2. 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"/> Yes <input type="checkbox"/> No			
3. Describe Requestor's Relationship to Existing Applicant:			

**Section III. Current Property Owner/Operator Information (only include if new owner/operator)**  
**Owner below is:**  Existing Applicant  New Applicant  Non-Applicant

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.

**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.**

12. Requestor's Relationship to Property (check one):

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

13. 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)**

1. Property information on current agreement:

ADDRESS 139 Buffalo River and Portion of former 610 Ohio Street (n/k/a 4 Lot Lines)

CITY/TOWN Buffalo, Erie County, New York

ZIP CODE 14203

TAX BLOCK AND LOT (SBL)

TOTAL ACREAGE OF CURRENT SITE: 6.229

Parcel Address	Section No.	Block No.	Lot No.	Acreage
139 Buffalo River Parcel	122.14	3	65	4.138
Portion of Former 610 Ohio Street Parcel n/k/a 4 Lot Lines	122.14	3	64	2.091

2. Check appropriate boxes below:

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

2a. PARCELS ADDED:

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

Total acreage to be added: \_\_\_\_\_

Reduction of property

2b. PARCELS REMOVED:

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

Total acreage to be removed: \_\_\_\_\_

Change to SBL (e.g. merge, subdivision, address change)

2c. NEW SBL INFORMATION:

Parcel Address	Section No.	Block No.	Lot No.	Acreage
139 Buffalo River Parcel	122.14	3	2	4.138
Portion of 4 Lot Lines Parcel	122.14	3	11.221	2.091

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.

3. TOTAL REVISED SITE ACREAGE: \_\_\_\_\_

**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 checked="" 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
<b>From ECL 27-1405(31):</b>	
<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**

<b>Existing Agreement Information</b>	
BCP SITE NAME: Silo City Phase I Project	BCP SITE NUMBER: C915361
NAME OF CURRENT APPLICANT(S): Silo City Phase I LLC	
INDEX NUMBER OF AGREEMENT: C915361-07-20	
EFFECTIVE DATE OF ORIGINAL AGREEMENT: 07/17/2020	

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)**

(Individual)

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.

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

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

(Entity)

I hereby affirm that I am (title \_\_\_\_\_) of (entity \_\_\_\_\_); 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.

\_\_\_\_\_ 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: \_\_\_\_\_

**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 Authorized Signatory (title) of Silo City Phase I LLC (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. W. Marvin Wilmoth, Jr.'s signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 1/18/2023 Signature: W. Marvin Wilmoth, Jr.

Print Name: W. Marvin Wilmoth, Jr.

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

Please see the following page for submittal instructions.

**NOTE: Applications submitted in fillable format will be rejected.**

Status of Agreement:

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 contamination.

Effective Date of the Original Agreement: 07/17/2020

Signature by the Department:

DATED: 2/8/23

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: Janet Brown for

Andrew Guglielmi, Director  
Division of Environmental Remediation



**SUBMITTAL REQUIREMENTS:**

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in final, non-fillable 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

- **NOTE: Applications submitted in fillable format will be rejected.**

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**FOR DEPARTMENT USE ONLY**

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

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

# **EXHIBIT A**

CITY OF BUFFALO DEPARTMENT OF ASSESSMENT & TAXATION  
 CITY HALL, ROOM 101, 65 NIAGARA SQUARE, BUFFALO, NEW YORK 14202

SCANNED

**PRE-APPROVAL FOR COMBINATION OR DIVISION OF PARCELS**

To request a combination, complete this form. List all parcels to be combined, have all liens checked and return this form to the above address

DATE  CLERK  DISTRICT  COM  RES   
(Check Appropriate Item)

Silo City Phase I Housing Dev.

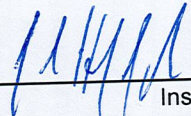
TITLE ON DEED (MUST BE EXACT FOR ALL PARCELS TO BE COMBINED)

**PARCEL ADDRESSES**

	Hse #	Street Name	SBL Number	Bill Number	Class Code	Exempt Code
1	4	Lot Lines	122.14-3-13	00328500	340	
2	6	Lot Lines	122.14-3-11.22	00373329	340	
3	10	Lot Lines	122.14-3-11.122	00328572	340	
4	77	Lot Lines	122.14-3-14	00328600	340	
5						
6						
7						
8						
9						
10						
11						
12						

Contact Phone # and Email (Required): Adebare Ogunleye- 716-800-8738, 718-200-8193, Aogunleye@chwattys.com

PARCEL COMBINATIONS REQUIRE PRE-APPROVAL BY  
 PERMIT & INSPECTION SERVICES OFFICE, ROOM 301 CITY HALL  
 RETURN SIGNED PRE-APPROVAL FORM TO  
 ASSESSOR'S OFFICE, ROOM 101 CITY HALL

  
 Inspector's Signature

109  
 Badge Number

11/22/22  
 Approval Date

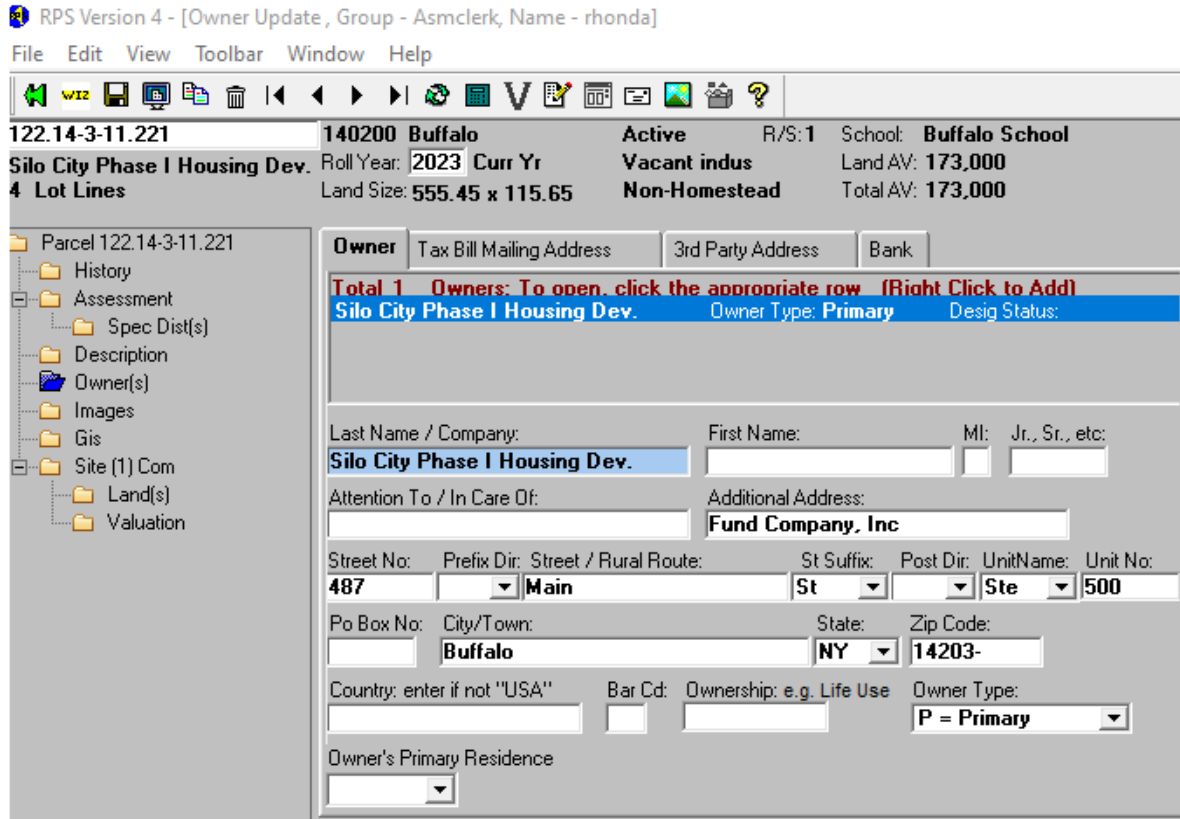
John Muffnagle  
 Inspector's Printed Signature

# **EXHIBIT B**

**From:** COBAssessor <COBAssessor@ch.ci.buffalo.ny.us>  
**Sent:** Tuesday, November 29, 2022 2:49 PM  
**To:** Adebare Ogunieye <AOgunleye@chwattys.com>  
**Cc:** Kamery,Ian W. <ikamery@ch.ci.buffalo.ny.us>; Robinson,Moses <mrobinson@ch.ci.buffalo.ny.us>  
**Subject:** RE: Silo City - Lot Confirmation

**[EXTERNAL SENDER]** DO NOT CLICK links or attachments unless you recognize the sender's email address and know the content is safe.

Mr. Ogunley: This will serve as written proof that the parcels assessed as 4, 6, 10 and 77 Lot Lines have been combined into a new parcel assessed as 4 Lot Lines, with new SBL # 122.14-3-11.221, for fiscal year 2023/24. The new parcel will appear for the first time on the December 1, 2022, Tentative Assessment Roll for the city's fiscal year 2023/24. Shown below is a screen capture from our real property database. Following publication of the Tentative Assessment Roll on December 1<sup>st</sup>, a formal Notice of Change pursuant to NYS Real Property Tax Law, Section 510, will be mailed.



Rhonda J. Zloty, Administrative Assistant  
 Department of Assessment and Taxation  
 101 City Hall, 65 Niagara Square  
 Buffalo, New York 14202  
 Telephone 716-851-5739  
 Facsimile: 716-851-5730

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**From:** Adebare Ogunleye <[AOgunleye@chwattys.com](mailto:AOgunleye@chwattys.com)>

**Sent:** Tuesday, November 29, 2022 2:18 PM

**To:** COBAssessor <[COBAssessor@ch.ci.buffalo.ny.us](mailto:COBAssessor@ch.ci.buffalo.ny.us)>

**Subject:** Silo City - Lot Confirmation

You don't often get email from [aogunleye@chwattys.com](mailto:aogunleye@chwattys.com). [Learn why this is important](#)

**ATTENTION: This email came from an external source. Do not open attachments. NEVER click on links YOU DON'T KNOW where its taking you. Copy, Paste, Inspect, Decide.**

Good afternoon:

Following up on our call, could you kindly confirm the following addresses and SBL numbers are correct?

139 Buffalo River Road Parcel

139 Buffalo River Place, Buffalo, York 14210

SBL: 122.14-3-2

4 Lot Lines, 6 Lot Lines, 10 Lot Lines and 77 Lot Lines have all been combined (approved form attached hereto), with a new address of 4 Lot Lines, SBL #: 122.14-3-11.221

Thank you,

Adebare.

Adebare Ogunleye

Associate

Cannon Heyman & Weiss, LLP

direct: 716-800-8738

mobile: [718-200-8193](tel:718-200-8193)

main: 888-CHW-ATTY (249-2889)

email: [AOgunleye@chwattys.com](mailto:AOgunleye@chwattys.com)



CANNON HEYMAN & WEISS, LLP

Please visit us on the web at: <https://chwattys.com>

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# **EXHIBIT C**

## WRITTEN CONSENT

The undersigned, being a Member of Silo City Phase I LLC does hereby certify as follows:

1. Silo City Phase I LLC is the prospective Brownfield Cleanup Program Volunteer for the Silo City Phase I Site located at the following addresses: 139 Buffalo River Road, 610 Ohio Street, 77 Lot Line, 10 Lot Lines, 4 Lot Lines, in the City of Buffalo NY, 14203 (Tax parcel Identification Nos. 122.14-3-2, 122.14-3-13, P/O 122.14-3-11.12, 122.14-3-14, P/O 122.14-3-11.2 respectively; hereinafter "Site").

2. The following person, W. Marvin Wilmoth Jr., as the 51% owner and Manager of Generation Development Group, LLC, which is the Manager of Generation Ventures, LLC, which is the Manager of Silo City Phase I MM LLC, which is the Majority and Managing Member of Silo City Phase I LLC, has been authorized to execute any documents required by the New York State Department of Environmental Conservation in the Brownfield Cleanup Program on behalf of Brownfield Site Volunteer Silo City Phase I LLC.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on this 1st day of April 2020.



W. Marvin Wilmoth Jr., Member  
Manager of Generation Development Group, LLC  
a Managing Member of Generation Ventures, LLC  
a Managing Member of Silo City Phase I MM LLC  
a Majority Member of Silo City Phase I LLC