

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program for
Kirstein Building and Associated Parking Lot
under Article 27, Title 14 of the
Environmental Conservation Law
by 234-250 Andrews St. LLC

BROWNFIELD SITE
CLEANUP AGREEMENT
AMENDMENT

Index # B8-0692-05-04
Site # C828127

WHEREAS, The New York State Department of Environmental Conservation (the "Department") and 234-250 Andrews St. LLC, a New York limited liability company ("Volunteer"), entered into a Brownfield Site Cleanup Agreement Index #B8- 0692-05-04 (the "Agreement"), which Agreement was signed by the Commissioner of the Department on August 31, 2005 relative to property located at 37 Bittner Street in the City of Rochester, County of Monroe and having County of Monroe Tax Identification number 106.790-01-022 (the "Site");

WHEREAS, Volunteer has advised the Department that the intended use of the site will also include residential uses;

WHEREAS, Volunteer agrees to be bound by the terms of this Amendment and consents and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce this Amendment, and agrees not to contest the validity of this Amendment;

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. The fourth paragraph of the Agreement is hereby amended to read as follows:

WHEREAS, the current use of the property is restricted-commercial and the intended use is restricted-commercial and restricted-residential; and

II. This Amendment shall control to the extent of a conflict between the provisions hereof and those of the Agreement. Except as provided in the preceding sentence or elsewhere in this Amendment, the Agreement and the documents related thereto, shall continue in full force and effect. Any amendment or other modification of this Amendment must be in writing.

III. The effective date of this Amendment shall be the date on which it is signed by the Commissioner or the Commissioner's designee.

DATED:

DENISE M. SHEEHAN
ACTING COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

CONSENT BY VOLUNTEER

Volunteer hereby consents to the issuing and entering of this Amendment, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Amendment.

234-250 Andrews St. LLC

By: _____

Title: _____

Date:_____

[illegible]

On the _____ day of _____, in the year 2005, 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