

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a  
Modification to an Existing  
Brownfield Site Cleanup Agreement for  
Former Buffalo Service Center, Buffalo, New York  
by: Duke HN New York and QLT Buffalo LLC  
for the Purpose of Substituting

Brownfield Site Cleanup  
Agreement  
Modification

BCP#C915194  
Index No. B9-0695-05-06(A)

257 W. Genesee, LLC

for the Existing Volunteers

---

**WHEREAS**, the New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law ("ECL") and such law provides the Department authority to enter into this Brownfield Site Cleanup Agreement Modification ("Modification");

**WHEREAS**, the Department, Duke HN New York, LLC ("Duke") and QLT Buffalo, LLC ("QLT") entered into a Brownfield Site Cleanup Agreement ("Agreement") for performance of a remedial program at property known as Former Buffalo Service Center Site, located at 249 West Genesee Street in the City of Buffalo, which property is described as Parcel "A" on the map attached to this Modification as Exhibit "A" (the "Site"). The Agreement dated August 8, 2005 is attached as Exhibit "B" and is incorporated into this Modification;

**WHEREAS**, 257 W. Genesee, LLC, by a certified Application for Amendment to Brownfield Cleanup Agreement ("Application") dated April 3, 2006, submitted a request to participate in the Brownfield Cleanup Program relative to the Site as a Volunteer, and together with Duke and QLT are jointly seeking Department approval to substitute 257 W. Genesee, LLC, as the Volunteer under the Agreement in place of Duke and QLT;

**WHEREAS**, the Department made a determination, based upon the information contained in the Application and the certifications made by the Applicant, that Applicant is eligible to participate in the Brownfield Cleanup Program as a Volunteer as defined in ECL 27-1405(1)(b).

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

I. Brownfield Site Cleanup Agreement, Index #B9-0695-05-06(A) is hereby modified and amended to substitute 257 W. Genesee, LLC, as the Volunteer replacing Duke and QLT for all purposes under the Agreement, and 257 W. Genesee, LLC, shall assume all duties and obligations as Volunteer under the Agreement after the effective date

of this Modification.

II. 257 W. Genesee, LLC, agrees to be bound by the terms of the Agreement and this Modification and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce the Agreement and this Modification, and agrees not to contest the validity of either document.

III. Except as provided in this Modification, the Agreement shall continue in full force and effect.

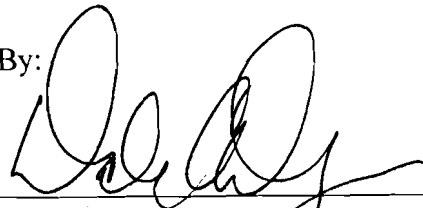
IV. No term, condition, understanding or agreement purporting to modify this Modification shall be binding unless subscribed to by both parties in accordance with the terms of the Agreement.

IV. The effective date of this Modification shall be the date the Commissioner or the Commissioner's designee signs it.

DATED: , 2006

DENISE M. SHEEHAN, COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION AND TRUSTEE OF THE  
STATE'S NATURAL RESOURCES

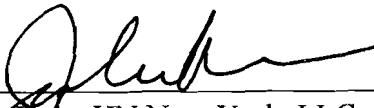
By:

A handwritten signature in black ink, appearing to read 'Dale A. Desnoyers', written over a horizontal line.

Dale A. Desnoyers, Director  
Division of Environmental Remediation

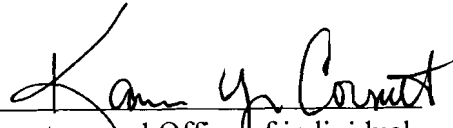
CONSENT BY VOLUNTEER

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

By:   
Duke HN New York, LLC  
Title: **John R. Gaskin**  
**Senior Vice President**  
Date: May 10, 2006

STATE OF Georgia )  
 ) s.s.:  
COUNTY OF Gwinnett )

On the 10<sup>th</sup> day of May, in the year 2006, before me, the undersigned, personally appeared John R. Gaskin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as Senior Vice President, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Signature and Office of individual  
taking acknowledgment

KAREN Y. CORNETT  
NOTARY PUBLIC, GWINNETT COUNTY, GEORGIA  
MY COMMISSION EXPIRES JULY 23, 2007

CONSENT BY VOLUNTEER

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

By: James P. Bulman  
QLA Buffalo, LLC

Title: MANAGER

Date: 4/28/06

STATE OF Virginia )  
COUNTY OF Fairfax ) s.s.:

On the 28th day of April, in the year 2006, before me, the undersigned, personally appeared James P. Bulman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as Manager, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

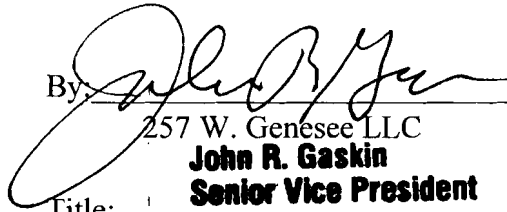
Regina M. Buhrman

Signature and Office of individual  
taking acknowledgment

**Regina M. Buhrman**  
**NOTARY PUBLIC**  
**Commonwealth of Virginia**  
**My Commission Expires 8-31-09**

CONSENT BY VOLUNTEER

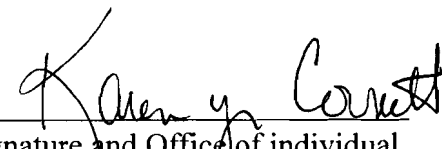
Volunteer hereby consents to the issuing and entering of this Brownfield Site Cleanup Agreement Modification, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Modification.

By:   
257 W. Genesee LLC  
**John R. Gaskin**  
Title: **Senior Vice President**

Date: May 10, 2006

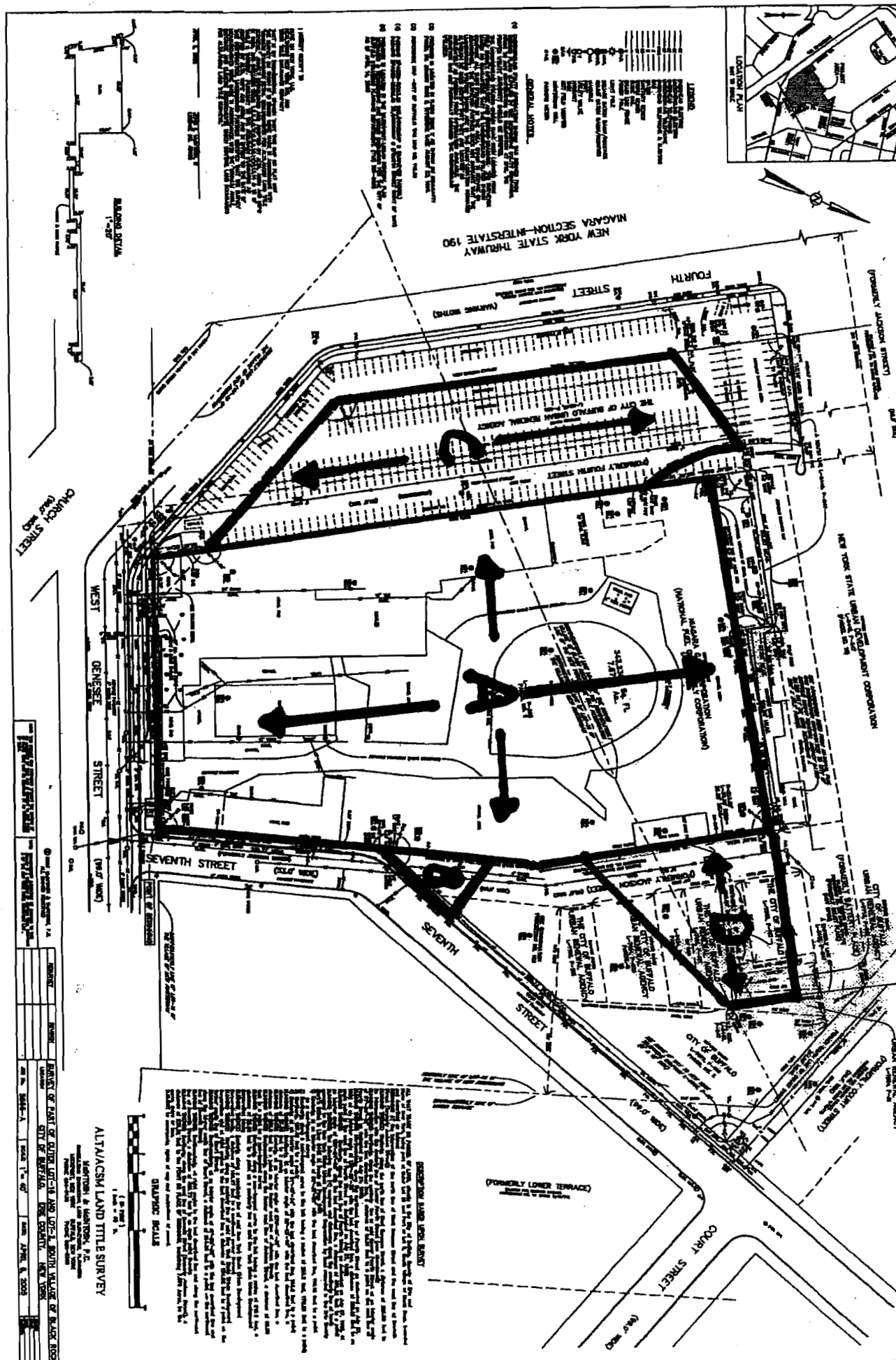
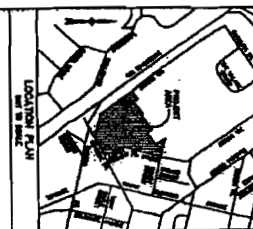
STATE OF Georgia )  
 ) s.s.:  
COUNTY OF Gwinnett )

On the 10<sup>th</sup> day of May, in the year 2006, before me, the undersigned, personally appeared John R. Gaskin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as Senior Vice President, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Signature and Office of individual  
taking acknowledgment

KAREN Y. CORNETT  
NOTARY PUBLIC, GWINNETT COUNTY, GEORGIA  
MY COMMISSION EXPIRES JULY 23, 2007

**Exhibit “A”**



**Exhibit “B”**



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

In the Matter of a Remedial Program for  
Former Buffalo Service Center,  
249 West Genesee Street, Buffalo, New York  
under Article 27,  
Title 14 of the Environmental Conservation Law  
by Duke HN New York, LLC and  
QLT Buffalo LLC

BROWNFIELD SITE  
CLEANUP AGREEMENT

Index # B9-0695-05-06(A)

Site # C915194

---

**WHEREAS**, the Brownfield Cleanup Program Act was enacted to encourage the voluntary remediation of brownfield sites for reuse and redevelopment so as to advance the policy of the State of New York to conserve, improve, and protect its natural resources and environment, and control water, land, and air pollution; and

**WHEREAS**, the Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program contained in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

**WHEREAS**, by a certified application dated June 3, 2005, Applicant Duke HN New York, LLC, 600 East 96<sup>th</sup> Street, Suite 100, Indianapolis, Indiana, a foreign limited liability company organized and existing under the laws of the State of Indiana and QLT Buffalo LLC, 11911 Freedom Drive, Suite 900, Reston, Virginia, a foreign limited liability company organized and existing under the laws of the State of Virginia submitted a request to participate in the Brownfield Cleanup Program relative to property located at 249 West Genesee Street in the City of Buffalo, County of Erie; the Department has accepted the application for the real property described as Parcel "A" on the map attached to this Agreement in Exhibit "D."

**WHEREAS**, the current use of the property is former industrial. The intended use of the property is commercial; and

**WHEREAS**, an opportunity for public comment on Applicant's request to participate in the Brownfield Cleanup Program was provided and the Department duly considered all comments received; and

**WHEREAS**, upon consideration of the factors enumerated in ECL 27-1407(8) and (9), the Department made a determination, based upon the information contained in the application and the certifications made by the Applicant, as well as any public comment received, that Applicant is eligible to participate in the Brownfield Cleanup Program as a Volunteer as defined in ECL 27-1405(1)(b).