

COPY

HARRIS BEACH PLLC
ATTORNEYS AT LAW

October 20, 2005

LARKIN AT EXCHANGE
726 EXCHANGE STREET, SUITE 1000
BUFFALO, NEW YORK 14210
(716) 200-5224 FAX

DIRECT: (716) 200-5180

Via Overnight Delivery

Ms. Kelly Lewandowski
Chief, Site Control Section
New York State Dept. of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233

Re: Brownfield Cleanup Program (BCP) Application of 9505 Main Street, LLC
under Environmental Conservation Law § 27-1407

Dear Ms. Lewandowski:

On behalf of our client, 9505 Main Street, LLC, we hereby apply for a determination that 9505 Main Street, LLC (the "LLC") is eligible to participate as a volunteer in the Brownfield Cleanup Program under Section 27-1407 of the New York Environmental Conservation Law.

The LLC is making this application, attached hereto along with the binder and exhibits, for purposes of developing an approximately 90,000 square foot manufacturing facility on 12 acres of land at the Buffalo Lakeside Commerce Park (formerly know as the Union Ship Canal) (the "Site").

By way of background, please note that the Site comprises portions of two parcels (Parcel 1 and Parcel 2) at the Buffalo Lakeside Commerce Park, each of which is subject to the Voluntary Cleanup Program ("VCP") and a Voluntary Cleanup Agreement ("VCA") with Downtown Development, Inc., as the Volunteer thereunder. The site number for Parcel 1 is V00319-9, the VCA index number is B9-0568-99-12(A), and the VCA is attached hereto as Exhibit B. The site number for Parcel 2 is V00435-9, the VCA index number is B9-0568-99-12(B), and this VCA is attached hereto as Exhibit C.

Please note that on July 16, 2004, the New York State Department of Environmental Conservation and Krog USC Associates I, LLC, executed a Brownfield Site Cleanup Agreement for the parcel of property located immediately adjacent to the real property that is the subject of the LLC's Brownfield Cleanup Program Application. It is contemplated that the LLC will mimic processes that Krog USC Associates I, LLC utilized in obtaining acceptance into and compliance with the Brownfield Cleanup Program from application submission through remediation and construction.

In support of this application, the following documents are enclosed:

1. Fully executed Brownfield Cleanup Program Application Form (the "Application") and Power of Attorney;
2. Exhibit A: Contract for Sale of Land and Assignment of Contract;
3. Exhibit B: VCP Agreement: Index #: B9-0568-99-12(A);
4. Exhibit C: VCP Agreement: Index #: B9-0568-99-12(B);
5. Exhibit D: Erie County Tax Map;
6. Exhibit E: Metes and Bounds Description;
7. Exhibit F: Site Map and USGS Quad Map;
8. Exhibit G: "Historical Summary and Archival Photographs of the Hanna Furnace Corporation and the Union Ship Canal", November 2002, PanAmerican Consultants, Inc.;
9. Exhibit H: "Final Generic Environmental Impact statement for the Development of the Union Ship Canal District", January 2002, Ecology and Environment, Inc.;
10. Exhibit I: "Hanna Furnace Site: Characterization of the Former Railroad Yard", June 1999 and Revised October 1999, Malcolm Pirnie, Inc.;
11. Exhibit J: "Supplemental Investigation Report: Hanna Furnace Site – The Former Railroad Yard Area (Subparcel 1), July 2000 and Revised January 2001, Malcolm Pirnie, Inc.;
12. Exhibit K: "Site Investigation Report, Hanna Furnace – Parcel 2", June 2002, O'Brien & Gere Engineers, Inc.;
13. Exhibit L: "Remedial Action Work Plan, Hanna Furnace Site, The Former Railroad Yard Area (Subparcel 1)", February 2002, Malcolm Pirnie, Inc.;
14. Exhibit M: "Remedial Action Work Plan, Hanna Furnace Site: Subparcel 2, Buffalo, New York", November 2002, O'Brien & Gere Engineers, Inc.;
15. Exhibit N: Site Contact List

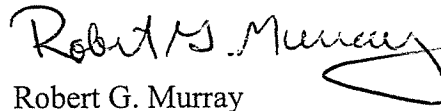
Please note that Exhibits G through M are separately bound reports that are attached to this application, but separate from the separately bound application, attachments, and Exhibits A through F and N.

Also please note that I have enclosed a copy of the letter to the Dudley Branch Library, located at 2010 South Park Avenue, Buffalo, New York, confirming that this branch will serve as the document repository with respect to this Application.

Upon review by your office of the foregoing, we request that LLC enter into a Brownfield Cleanup Agreement ("BCA") as soon as practicable so that costs incurred after execution thereof are eligible for purposes of claiming the BCP Brownfield Redevelopment Tax Credit. It is understood that the BCA will supercede and replace the VCA for Parcel 1 and the VCA for Parcel 2 only with respect to the Site.

If you need further information in connection with this application, or are considering a determination inconsistent with the above request, please contact me at 716-200-5180.

Very truly yours,


Robert G. Murray

October 20, 2005

COPY

HARRIS BEACH ^{PLLC}
ATTORNEYS AT LAW

LARKIN AT EXCHANGE
726 EXCHANGE STREET, SUITE 1000
BUFFALO, NEW YORK 14210
(716) 200-5224 FAX

DIRECT: (716) 200-5180

Susan LoPatriello
Branch Manager
Dudley Branch Library
2010 South Park Avenue
Buffalo, New York 14220

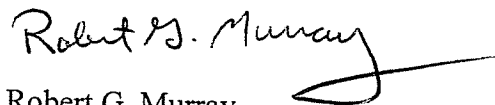
Re: Document Repository for Brownfield Cleanup Program (BCP) Application of
9505 Main Street, LLC

Dear Susan:

Thank you for authorizing the Dudley Branch Library to serve as the document repository with respect to the aforementioned Brownfield Cleanup Program Application. I will follow up with you at the appropriate time with respect to document delivery.

Should you have any questions or concerns, please feel free to contact me at 200-5180.

Very truly yours,



Robert G. Murray

RGM:mar



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION

ECL ARTICLE 27 / TITLE 14

DEPARTMENT USE ONLY
BCP SITE #: _____

07/05

| Section I. Requestor Information | | | |
|---|------------------|--------------------------------|--|
| NAME 9505 Main Street, LLC | | | |
| ADDRESS 9505 Main Street | | | |
| CITY/TOWN Clarence NY | | ZIP CODE 14031 | |
| PHONE 716-759-2350 | FAX 716-759-1693 | E-MAIL | |
| NAME OF REQUESTOR'S REPRESENTATIVE Robert G. Murray, Esq. | | | |
| ADDRESS Harris Beach PLLC, 726 Exchange Street, Suite 1000 | | | |
| CITY/TOWN Buffalo, NY | | ZIP CODE 14210 | |
| PHONE 716-200-5180 | FAX 716-200-5224 | E-MAIL bmurray@harrisbeach.com | |
| NAME OF REQUESTOR'S CONSULTANT Kent McManus | | | |
| ADDRESS Malcolm Pirnie, 40 Centre Drive | | | |
| CITY/TOWN Orchard Park, NY | | ZIP CODE 14127 | |
| PHONE 716-667-0900 | FAX | E-MAIL kmcmanus@Pirnie.com | |
| NAME OF REQUESTOR'S ATTORNEY Robert G. Murray, Esq. | | | |
| ADDRESS Harris Beach PLLC, 726 Exchange Street, Suite 1000 | | | |
| CITY/TOWN Buffalo, NY | | ZIP CODE 14210 | |
| PHONE 716-200-5180 | FAX 716-200-5224 | E-MAIL bmurray@harrisbeach.com | |
| <p>THE 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:</p> <div><div><input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum 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 hazardous waste or discharge of petroleum.</div><div><input checked="" type="checkbox"/> 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, the requestor 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; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.</div></div> | | | |
| Requestor Relationship to Property (check one): <input type="checkbox"/> Previous Owner <input type="checkbox"/> Current Owner <input checked="" type="checkbox"/> Potential /Future Purchaser <input type="checkbox"/> Other _____ | | | |
| If requestor is not the site owner, requestor will have access to the property throughout the BCP project. (Note: proof of site access must be submitted for non-owners) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | | |

Section II: Site Information Summary Sheet

SITE /PROPERTY NAME: Buffalo Lakeside Commerce Park **

ADDRESS/LOCATION 1818 Fuhrman Blvd. CITY/TOWN Buffalo NY ZIP CODE 14024

MUNICIPALITY(If MORE THAN ONE, LIST ALL):

City of Buffalo

COUNTY Erie SITE SIZE (ACRES) 12.3

LATITUDE (degrees/minutes/seconds) 42° 49' 58.85"N LONGITUDE (degrees/minutes/seconds) 78° 50' 59.74"W

HORIZONTAL COLLECTION METHOD: Field Survey TOPCON HORIZONTAL REFERENCE DATUM: NAD83

FOR EACH PARCEL, FILL OUT THE FOLLOWING TAX MAP INFORMATION (if more than three parcels, attach additional information)

| Parcel Address | Parcel No | Section No | Block No | Lot No. | Acreage |
|--------------------|-----------|------------|----------|-------------|---------|
| Ship Canal Parkway | 1 | 132.19 | 1 | Part of 5.2 | 2.667 |
| Ship Canal Parkway | 2 | 132.19 | 1 | Part of 5.2 | 5.184 |
| Ship Canal Parkway | 3 | 132.19 | 1 | Part of 5.2 | 4.398 |

1. Do the site boundaries correspond to tax map metes and bounds? See Exhibit D ☐ Yes ☒ No

If no, please attach a metes and bounds description of the site. See Exhibit E

2. Is the required site map attached to the application? (application will not be processed without site map) ☒ Yes ☐ No

3. Is the site part of a designated En-zone pursuant to Tax Law § 21(b)(6)? ☐ Yes ☒ No

For more information go to:

http://www.nylovesbiz.com/Productivity_Energy_and_Environment/BrownField_Redevelopment/default.asp

If yes, identify area (name) _____

☐ 50% ☐ 100% of the site is in the En-zone (check one)

SITE DESCRIPTION NARRATIVE:

See attachment

See also Exhibits G and H

List of Existing Easements (type here or attach information) See attachment

| Easement Holder | Description |
|-----------------|-------------|
| | |

List of Permits Relating to the Proposed Site (type here or attach information)

| Type | Issuing Agency | Description |
|--|-----------------|--------------------------|
| Storm Water Discharge Permit for Construction Activity | NYSDEC | Section 402 SPDES Permit |
| Indirect Discharge Permit | Erie County DEP | Sewer Discharge Permit |

Initials of each Requestor: PQC _____

Section III. Current Site Owner/Operator Information

OWNER'S NAME (if different from requestor) Buffalo Urban Development Corporation

ADDRESS 275 Oak Street

CITY/TOWN Buffalo, New York

ZIP CODE 14203

PHONE

FAX

E-MAIL

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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Requestor Eligibility Information (Please refer to ECL § 27-1407)

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? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the site subject to an existing order for the contamination? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Has the requestor violated any provision of ECL Article 27? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Has the requestor been previously denied entry to the BCP? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Has the requestor committed a negligent or intentionally tortuous act regarding hazardous waste or petroleum? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 7. Has the requestor been convicted of a criminal offense that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 8. Has the requestor knowingly falsified statements or concealed material facts in a matter related to the Department? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 9. Has the requestor, based on the provisions of ECL Article 27-1407 (or a similar provision of federal or state law), committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Section V. Site Eligibility Information (Please refer to ECL § 27-1405)

- | | | |
|--|------------------------------|--|
| 1. Is the site listed on the National Priorities List? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the site listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites? If yes, please provide: Site # _____ Class # _____ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the site subject to a permit under ECL article 27, title 9, other than an Interim Status facility? If yes, please provide: Permit type: _____ EPA ID Number: _____ Date permit issued: _____ Permit expiration date: _____ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the site subject to a cleanup order under navigation law Article 12 or ECL Article 17 Title 10? If yes, please provide: Order # _____ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the site subject to a state or federal enforcement action related to hazardous waste or petroleum? If yes, please provide explanation as an attachment. | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Section VI. Project Description

Please attach a description of the project which includes the following components:

- Purpose and scope of the project
 - Estimated project schedule
- See attachment.

Section VII. Site's Environmental History

To the extent that existing information/studies/reports are available to the requestor, please attach the following:

1. Environmental Reports

A phase I environmental site assessment report prepared in accordance with ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), and all environmental reports related to contaminants on or emanating from the site. See Exhibits I, J, K

If a final investigation report is included, indicate whether it meets the requirements of ECL Article 27-1415(2): ☒ Yes ☐ No

2. Sampling Data: Indicate known contaminants and the media which are known to have been affected: **

| Contaminant Category | Soil | Groundwater | Surface Water | Sediment | Soil Gas |
|----------------------|------|-------------|---------------|----------|----------|
| Petroleum | X | X | | | |
| Chlorinated Solvents | | | | | |
| Other VOCs | | | | | |
| SVOCs | X | | | | |
| Metals | X | X | | | |
| Pesticides | | | | | |
| PCBs | | | | | |
| Other* | X | X | | | |

*Please describe: pH

3. Suspected Contaminants: Indicate suspected contaminants and the media which may have been affected:

| Contaminant Category | Soil | Groundwater | Surface Water | Sediment | Soil Gas |
|----------------------|------|-------------|---------------|----------|----------|
| Petroleum | | | | | |
| Chlorinated Solvents | | | | | |
| Other VOCs | | | | | |
| SVOCs | | | | | |
| Metals | | | | | |
| Pesticides | | | | | |
| PCBs | | | | | |
| Other* | | | | | |

*Please describe: _____

4. INDICATE KNOWN OR SUSPECTED SOURCES OF CONTAMINANTS:

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Above Ground Pipeline or Tank | <input type="checkbox"/> Lagoons or Ponds | <input checked="" type="checkbox"/> Underground Pipeline or Tank | <input type="checkbox"/> Surface Spill or Discharge |
| <input checked="" type="checkbox"/> Routine Industrial Operations | <input checked="" type="checkbox"/> Dumping or Burial of Wastes | <input type="checkbox"/> Septic tank/lateral field | <input type="checkbox"/> Drums or Storage Containers |
| <input type="checkbox"/> Adjacent Property | <input type="checkbox"/> Seepage Pit or Dry Well | <input type="checkbox"/> Foundry Sand | <input type="checkbox"/> Electroplating |
| <input type="checkbox"/> Coal Gas Manufacture | <input checked="" type="checkbox"/> Industrial Accident | <input type="checkbox"/> Unknown | |

Other: _____

5. INDICATE PAST LAND USES:

- | | | | | | |
|---|--|---|--------------------------------------|---|-------------------------------------|
| <input type="checkbox"/> Coal Gas Manufacturing | <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Agricultural Co-op | <input type="checkbox"/> Dry Cleaner | <input type="checkbox"/> Salvage Yard | <input type="checkbox"/> Bulk Plant |
| <input type="checkbox"/> Pipeline | <input type="checkbox"/> Service Station | <input type="checkbox"/> Landfill | <input type="checkbox"/> Tannery | <input type="checkbox"/> Electroplating | <input type="checkbox"/> Unknown |

Other: Industrial - heavy steel making

6. Owners

A list of previous owners with names, last known addresses and telephone numbers (describe requestor's relationship, if any, to each previous owner listed. If no relationship, put "none"). See attachment

7. Operators

A list of previous operators with names, last known addresses and telephone number (describe requestor's relationship, if any, to each previous operator listed. If no relationship, put "none"). See attachment

Dan King
Regional Spill Engineer

Section VIII. Contact List Information

Please attach, at a minimum, the names and addresses of the following: **See attachment**

1. The chief executive officer and zoning board chairperson of each county, city, town and village in which the site is located.
2. Residents, owners, and occupants of the site and properties adjacent to the site.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the site is located.
5. Any person who has requested to be placed on the site contact list. **See Exhibit N**
6. The administrator of any school or day care facility located on or near the site.
7. The location of a document repository for the project (e.g., local library). In addition, attach a copy of a letter sent to the repository acknowledging that it agrees to act as the document repository for the site.

Section IX. Land Use Factors (Please refer to ECL § 27-1415(3))

Current Use: ☐ Residential ☐ Commercial ☒ Industrial ☒ Vacant ☐ Recreational (check all that apply)

Intended Use: ☐ Unrestricted ☐ Residential ☒ Commercial ☒ Industrial

Please check the appropriate box and provide an explanation as an attachment if appropriate. Provide a copy of the local zoning classifications, comprehensive zoning plan designations, and/or current land use approvals.

Yes No

1. Do current historical and/or recent development patterns support the proposed use? (See #12 below re: discussion of area land uses)

☒ ☐

2. Is the proposed use consistent with applicable zoning laws/maps?

☒ ☐

3. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, designated Brownfield Opportunity Area plans, other adopted land use plans?

☒ ☐

4. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)).

☐ ☒

5. Are there any federal or State land use designations relating to this site?

☐ ☒

6. Do the population growth patterns and projections support the proposed use?

☒ ☐

7. Is the site accessible to existing infrastructure?

☒ ☐

8. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site? **See Exhibit G**

☐ ☒

9. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site?

☐ ☒

10. Are there floodplains proximate to the site?

☐ ☒

11. Are there any institutional controls currently applicable to the site? **See Exhibits L and M**

☐ ☒

12. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. **See Exhibits G and H**

13. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. **See Exhibits I, J, K, L, and M**

14. Describe on attachment the geography and geology of the site. **See Exhibits G and H**

Statement of Certification and Signatures

(By requestor who is an 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.

Date: _____ Signature: _____ Print Name: _____

(By an requestor other than an individual)

I certify that I am MEMBER (title) of 9505 Main St LLC (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.

Date: 10/10/05 Signature: Robert J. Cattle Print Name: ROBERT J. CATTLE

SUBMITTAL INFORMATION

Three (3) complete copies are required.

- Two (2) copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) on a CD or diskette, 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
- One (1) hard copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/der/index.html>

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ LEAD OFFICE: _____

**Attachment to Brownfield Cleanup Program Application
9505 Main Street, LLC**

Section II: Site Description Narrative:

The project site is located in the Buffalo Lakeside Commerce Park, formerly known as the Buffalo Union Ship Canal District, which is located within South Buffalo's historic industrial area. The site was formerly used by heavy steel-making companies and related supporting industries. The area currently consists of vacant industrial land adjacent to the Union ship Canal (former slip for bulk cargo carriers that is connected to Lake Erie) and currently provides no employment or tax base.

As stated within the materials contained in Exhibits I, J, K, L, and M, there are several surface soil, subsurface soil, and groundwater conditions that are consistent with the historic industrial use of the project site. Semi-volatile organic compounds, PAHs, and various heavy metals are the most prevalent constituents found on-site. Volatile organic compounds and PCBs have also been sporadically detected within the project area. Although the magnitude of the impact of the aforementioned constituents is considered to be minimal, it has already been determined that the entire site must, at a minimum, be covered with clean fill (or asphalt for roadways and parking lots, and concrete for sidewalks and buildings) to reduce potential exposure risks associated with direct contact with the soil.

The project site is located within the Buffalo Urban Renewal Area and the Buffalo Empire Zone. Empire Zones are state designated highly distressed areas, wherein such a designation is intended to stimulate investment and economic growth and employment in return for state tax credits and exemptions.

Section II: List of Existing Easements:

Notice of Agreement with respect to the New York State Voluntary Cleanup Program made by Development Downtown, Inc. (predecessor in interest to Buffalo Urban Development Corporation) with the New York State Department of Environmental Conservation.

Utility easements exist within a twenty (20) foot wide permanent easement (inside and along the entire northerly and easterly boundaries of the Property) for Niagara Mohawk Power Corporation, Verizon New York, Inc., and National Fuel Gas Distribution Corporation the installation, maintenance, repair and replacement of any and all types of underground utility lines.

A roadway right of way easement is held by Erie County.

Attachment to Brownfield Cleanup Program Application
9505 Main Street, LLC

Section VI: Project Description:

9505 Main Street, LLC (the "LLC") intends to develop an approximately 90,000 square foot manufacturing facility (the "Facility") on approximately 12 acres of land located at the Buffalo Lakeside Commerce Park in Buffalo, New York (the "Park"). The land on which the Facility will be constructed is currently vacant. The cost of site acquisition, environmental remediation, and construction is estimated at approximately \$10 million. The Facility will be occupied by Cobey, Inc. ("Cobey"), a manufacturing company that has outgrown its existing facilities and that will consolidate its current operations, presently located at two different facilities within Erie County, New York, at the Park. Cobey will employ approximately 20 employees at the Facility and anticipates creating 50 new jobs over the next five years.

This Facility will be located within the Buffalo Urban Renewal Area, and has only been made financially possible because of the beneficial land conveyance principals under New York Urban Renewal Law, tax benefits made available to the LLC under the New York State Empire Zone Program and the New York State Brownfield Cleanup Program, the tax and other benefits made available to the LLC and Cobey through the Erie County Industrial Development Agency, and by the environmental liability protection afforded to the LLC under the New York State Brownfield Cleanup Program.

It is anticipated that remediation and construction activities will take approximately six months and that the Facility will be in operation by the middle to the end of 2006.

Section VII: Site's Environmental History

6. Owners: The LLC is not related to any prior Site owner. Former Site owners and the current Site owner are listed below in chronological order:

- Hanna Furnace Corporation
- Shenango Furnace Company
- Jordan & Foster Scrap & Recycling Corporation
- City of Buffalo, 65 Niagara Square, Buffalo, NY 14202, 716 851-4200
- Buffalo Urban Development Corporation, 275 Oak Street, Buffalo, New York 14203 (f/k/a/ Downtown Development Inc., 617 Main Street, Buffalo, NY 14203, 716 856-6525

7. Operators: The LLC is not related to any former Site operator. Former Site operators are listed below in chronological order:

Hanna Furnace Corporation
Shenango Furnace Company
Jordan & Foster Scrap & Recycling Corporation

Attachment to Brownfield Cleanup Program Application
9505 Main Street, LLC

VIII. Contact List Information:

1. Chief Executive Officers and Zoning Board Chairpersons Addresses:

Erie County Executive Joel A. Giambra, Edward A. Rath County Building, 95
Franklin Street, Room 1600, Buffalo NY 14202.

Mayor Anthony Masiello, 65 Niagara Square, Buffalo NY 14202.

James Lewis, III, Chairman, Zoning Board of Appeals, 1801 City Hall, Buffalo
NY 14202.

2. Residents, owners, and occupants of the Site and properties adjacent to the Site:

South Buffalo Railroad
1200-C Scottville Road
Suite 200
Rochester, NY

CSX Transportation Inc.
500 Water Street
Jacksonville, FL 32202

Downtown Development Inc.,
617 Main Street
Buffalo, NY 14203

Sherland Corporation, Inc.
134 Cranewood Drive
West Seneca, NY 14224

3. Local News Media:

The Buffalo News
One News Plaza
P.O. Box 100
Buffalo, NY 14240

Business First
465 Main St.
Buffalo, NY 14203-1793

Attachment to Brownfield Cleanup Program Application
9505 Main Street, LLC

4. Public Water Supplier:

City of Buffalo Water Division
City Hall
65 Niagara Square
Buffalo NY 14202

5. Persons who have requested to be placed on the Site contact list:

See Exhibit N.

6. School Facilities on/near site: N/A

7. Document Repository:

Dudley Branch Library
2010 South Park Avenue
Buffalo, NY 14220

9505 Main Street, LLC
c/o Robert J. Castle
9505 Main Street
Clarence, New York 14031

October 10, 2005

Chief, Site Control Section
New York State Dept. of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233

RE: Brownfield Cleanup Program (BCP) Application of 9595 Main Street, LLC under
Environmental Conservation Law § 27-1407:

As a Member of 9505 Main Street, LLC, (the "Company"), I hereby appoint Robert G. Murray, Esq., as attorney with Harris Beach, PLLC, with an office located at 726 Exchange Street, Suite 1000, Buffalo, New York 14210, to represent the Company for any and all purposes with respect to the Brownfield Cleanup Program application, and as the person with whom all officials from the New York State Department of Environmental Conservation will communicate with respect to all questions and matters relating to the application.

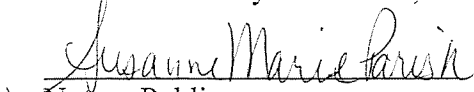
Mr. Murray can be reached 1-716-200-5180. If you have any questions, please contact me at (716) 759-2350.

Very Truly Yours,



Robert J. Castle
Member-9505 Main St LLC

Dated this 10 day of October, 2005


Notary Public

SUSANNE MARIE PARISH
Notary Public, State of New York
No. 01PA6082091
Qualified in Niagara County
Commission Expires Oct. 21, 2006

EXHIBIT A

Contract for Sale of Land and Assignment of Contract

PART I OF STANDARD FORM OF CONTRACT FOR
SALE OF LAND FOR PRIVATE REDEVELOPMENT

PART I
OF
CONTRACT FOR
SALE OF LAND FOR PRIVATE REDEVELOPMENT
BY AND BETWEEN
BUFFALO URBAN DEVELOPMENT CORPORATION ("BUDC")

AND

COBEY, LLC
REDEVELOPER

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LIST OF SCHEDULES

SCHEDULE

- A-1. PROPERTY DESCRIPTION/MAPS
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**CONTRACT FOR
SALE OF LAND FOR PRIVATE REDEVELOPMENT**

AGREEMENT, consisting of this Part I and also Part II annexed hereto and made a part hereof (which Part I and Part II are together hereinafter called "Agreement"), made on or as of the 13 th day of September 2005, by and between Buffalo Urban Development Corporation, formerly known as Development Downtown, Inc., a New York not for profit corporation (hereinafter called "BUDC") having its office at 275 Oak Street, Suite 150, Buffalo, New York 14203 in the City of Buffalo, (hereinafter called "City"), State of New York,

AND

COBEY, LLC. (hereinafter called "Redeveloper"), having an office for the transaction of business at c/o John Obey and or Robert Castle, Members, 9505 Main Street, Clarence, New York 14031.

WITNESSETH

WHEREAS, in furtherance of the mission of BUDC, BUDC has undertaken a program for the clearance and reconstruction or rehabilitation of certain properties in the City, and in this connection is engaged in carrying out a redevelopment project known as "**The Union Ship Canal Redevelopment Project at Buffalo Lakeside Commerce Park**" (hereinafter called "Project") in an area (hereinafter called "Project Area") located in the City; and

WHEREAS, prior to the date of this Agreement there has been prepared an Urban Renewal Plan for the Project, said Urban Renewal Plan having been approved by the Common Council of the City of Buffalo (a copy of the Urban Renewal Plan is attached hereto and made a part hereof as **Schedule A-2**) as it hereafter may be amended from time to time; and

WHEREAS, BUDC has offered to sell and Redeveloper is willing to purchase approximately 12.3 acres of real property located in the Project Area, being situate approximately as shown on and more particularly described in Schedule A-1 annexed hereto and made part hereof (which property as so described is hereinafter called "Property"), and to redevelop the Property for and in accordance with the uses specified in the Urban Renewal Plan and the provisions of this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

SEC. 1 SALE: PURCHASE PRICE.

Subject to all the terms, covenants, and conditions of this Agreement, BUDC will sell the Property to Redeveloper, and Redeveloper will purchase the Property from BUDC and pay the amount of **Four Hundred and Seventy Five Dollars (\$475,000.00)** (hereinafter called "Purchase Price"), of which \$25,000.00 (the "Deposit") has on the date of this Agreement been paid to BUDC on account, the receipt of which is hereby acknowledged, and the balance shall be paid by Redeveloper to BUDC by bank cashier's check upon delivery of the deed to the Property.

Notwithstanding anything contained in this Agreement to the contrary with respect to the \$25,000.00 Deposit, the following shall apply:

1. The Redeveloper shall have the right to cancel this Agreement between the date hereof and December 1, 2005 in which event the entire \$25,000.00 Deposit shall be refundable.
2. If BUDC and or Redeveloper cancels this Agreement at any time after December 1, 2005, the entire \$25,000.00 shall be non-refundable.

The parties to this Agreement acknowledge and agree that the public sector sources of funding for the placement of infrastructure (roads, utilities, etc.) at the Project Area require replenishment in order to keep the Project Area and its extended infrastructure progressing. Redeveloper also acknowledges and agrees that the Purchase Price for the Property was arrived at by BUDC and Redeveloper based upon an express agreement and understanding that the Redeveloper will enter into arrangements acceptable to BUDC in connection with the real property taxation mechanisms available for the improved Property. Real property taxing mechanisms available for the improved Property which are acceptable to BUDC and which will facilitate replenishment of the funding pool utilized for ongoing and future infrastructure needs at the Project Area are those as are set forth in that certain "Buffalo Lakeside Commerce Park Development and PILOT Redistribution Agreement" dated as of July 1, 2005 by and among the City of Buffalo, the County of Erie, the Erie County Industrial Development Agency and Buffalo Urban Development Corporation.

SEC. 2 CONVEYANCE OF PROPERTY.

(A) **Conditions Precedent:** Redeveloper and BUDC understand and agree that all of the following events are conditions precedent to BUDC's obligation to convey the Property to Redeveloper and Redeveloper's obligation to purchase the Property:

- (i) BUDC's approval of the Construction Plans (as defined in Section 301 of Part II of this Agreement);
- (ii) BUDC's approval of the lease (the "Lease") to be entered into between the Redeveloper and Cobey Inc.;
- (iii) Redeveloper obtaining a satisfactory commitment for mortgage financing for the development of the Property and the approval of same by BUDC;
- (iv) The Erie County Industrial Development Agency agreeing to assist in the financing of the development of the Property to include:
 - (a) Sales tax abatement for Redeveloper and Cobey Inc.
 - (b) Mortgage tax abatement

(c) PILOT Agreement:

(A) If Redeveloper qualifies for Empire Zone real estate tax credits then the PILOT would be 100% of the real estate taxes on an "as if owned" basis;

(B) If Redeveloper does not qualify for Empire Zone real estate tax credits then the PILOT would provide for the "standard" fifteen year phase in of real estate taxes on improvements to the Property;

- (v) The project being included in the Brownfield Cleanup Program;
- (vi) BUDC's determination that Redeveloper will be willing and able to enter into arrangements satisfactory to BUDC in connection with the real property taxation mechanisms available for the improved Property.

If all of the conditions precedent have not been satisfied by December 1, 2005, then either party may terminate this Agreement.

(B) CONDITIONS SUBSEQUENT: Conveyance of the title to the Property shall be subject to the conditions subsequent as provided for in Section 704 of Part II hereof.

(C) Form of Deed: BUDC shall convey title to the Property to Redeveloper by Quit Claim Deed (hereinafter called "Deed"). Such conveyance and title shall be subject to all easements, conditions, covenants, and restrictions as are approved by Redeveloper. The Deed shall contain the required references to the provisions contained in the Declaration of Covenants and Restrictions recorded on January 8, 2004 in the Erie County Clerks Office in Liber 11066 of Deeds at pages 3018 and 3024 as amended. BUDC shall not be obligated to spend in excess of \$5,000.00 in the aggregate to address, resolve, cure and or satisfy any title concerns, objections and or defects whatsoever. In the event that \$5,000.00 is not enough to resolve Redeveloper's title concerns, objections and or defects; and in the further event that BUDC remains unwilling to make the required additional expenditure, Redeveloper shall have the right to proceed to closing or immediately cancel this Agreement and receive a refund of the \$25,000.00 deposit. Upon such cancellation, neither party hereto shall any further rights under this Agreement other than as relates to Redeveloper's indemnity and insurance obligations to BUDC. The Deed shall contain a Right of First Refusal in favor of BUDC. The Right of First Refusal shall cover a five (5) year period beginning on the date the Deed is delivered to Redeveloper. The provisions of the Right of First Refusal shall be subordinate to permissible mortgage financing. The Right of First Refusal shall provide that in the event Redeveloper receives a bona fide offer from a 3rd party to purchase any portion of subplot 3, and or all of subplot 3 of the Property and Redeveloper wishes to accept such bona fide offer, then Redeveloper shall provide written notice of such offer together with a copy of such offer (the "Offer Notice") to BUDC. BUDC shall have the right, but not the obligation, within fifteen (15) business days following receipt by BUDC of the Offer Notice to notify Redeveloper of BUDC's intention to purchase that portion of the Property which is the subject of the Offer Notice. If BUDC elects to proceed to close on the purchase, BUDC shall have the right to purchase said property for the lesser of (I) the

amount contained in the bona fide 3rd party purchase offer, or (II) the same price on a pro rated square foot basis as Redeveloper paid to BUDC for the property under this Agreement. Closing shall occur within forty-five (45) days of BUDC's election to proceed to closing. If BUDC does not within said fifteen (15) business days elect to proceed to closing, then Redeveloper shall have the right to sell the property to the 3rd party who made the bona fide purchase offer. The Right of First Refusal shall not be operative in the case where Redeveloper receives an offer to purchase the entire Property.

(D) Time and Place for Delivery of Deed: BUDC shall deliver the Deed to the Property to Redeveloper on or before **December 15, 2005**, or on such other date as the parties hereto may mutually agree in writing. Conveyance shall be made at the principal office of BUDC. Redeveloper shall accept such conveyance. If for any reason whatsoever the delivery of the Deed has not occurred by **February 1, 2006**, then either party to this Agreement shall have the right to cancel this Agreement and the \$25,000.00 Deposit shall be retained by BUDC. Notwithstanding the foregoing, if delivery of the Deed has not occurred by February 1, 2006 due to BUDC's default, the \$25,000.00 Deposit shall be refunded to Redeveloper.

(E) Apportionment of Taxes: City and County taxes, if any, and sewer rentals allocable to the land and improvements, if any, shall be adjusted as of the date of delivery of the Deed.

(F) Recordation of Contract and Deed: Redeveloper shall promptly record this Agreement and the Deed in the Erie County Clerk's Office. Redeveloper shall pay all costs (including but not limited to the cost of transfer tax deed stamps on the Deed) for recording the Deed and this Agreement.

(G) Evidence of Title: BUDC shall furnish Redeveloper with a copy of BUDC's survey of the Property (and more) and a copy of BUDC's existing fee title insurance policy relating to the Property and adjoining property. Redeveloper shall order and pay for a boundary survey of the Property, it being agreed that the final survey and legal description are subject to the approval of BUDC and Redeveloper. In the event that Redeveloper or its lender requires title insurance, Redeveloper shall obtain the title insurance at Redeveloper's sole cost and expense.

SEC. 3 LIQUIDATED DAMAGES. Prior to delivery of the Deed, in the event Redeveloper shall fail or refuse to complete or perform any term, covenant, condition, agreement, provision, or stipulation under this Agreement, BUDC, at its option, shall have the right to declare this Agreement terminated and void, and in such event BUDC shall be released from any obligation to convey Property to Redeveloper, and BUDC shall have the right to retain the \$25,000.00 Deposit as liquidated damages and not as a penalty.

SEC. 4 TIME FOR COMMENCEMENT AND COMPLETION OF IMPROVEMENTS. The construction of the Improvements defined below and referred to in Section 301 of Part II hereof shall be commenced on or before April 1, 2006 and completed on or before October 1, 2007. The Improvements are hereby defined as an approximately 90,000 square foot building (with potential for future building expansion or development) with on-site parking and all necessary related improvements. The term

"Improvements" is further defined in Section 301 of Part II of this Agreement. Redeveloper agrees that for the first five (5) years after the date of the Deed it shall not use or permit the Property to be used for any purpose other than for manufacture, assemblage, development, maintenance, repair, sales, and or distribution and related activities in connection with oil and water pumps and related systems for the petrochemical industry.

SEC. 5 Omitted

SEC. 6 EXTENSIONS OF PERFORMANCE TIME. Any extensions of the time in which Redeveloper has to fulfill its obligations under this Agreement shall be subject to the following conditions:

(i) Redeveloper shall request in writing from BUDC an extension of no more than six (6) months. Such extension shall be granted at the sole discretion of the President of BUDC. The granting of the extension by the President of BUDC must be in writing and no course of conduct, implicit or explicit, and no failure to act by BUDC or any of its officers or employees shall be deemed a granting of such extension. Any additional time extension must be approved by BUDC, upon such terms and conditions as may be acceptable to BUDC in BUDC's sole discretion. Additional extensions shall be granted or refused in BUDC's sole discretion but with reference to the totality of Redeveloper's efforts, progress and expenditures.

SEC. 7 PERIOD OF DURATION OF COVENANT ON USE. The covenant pertaining to the uses of the Property, set forth in Section 401 of Part II hereof, shall remain in effect from the date of the Deed until February 1, 2056.

SEC. 8 NOTICES AND DEMANDS. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(i) In the case of Redeveloper, is addressed to or delivered personally to Redeveloper, and

(ii) In the case of BUDC, is addressed to and delivered personally to 275 Oak Street, Suite 150, Buffalo, New York 14203, attention: President, (with a copy to David Stebbins at the same address and another copy to John V. Heffron, Esq. at 1100 City Hall, Buffalo, NY 14202) or at such other address with respect to either party as that party may from time to time designate in writing.

SEC. 9 SPECIAL PROVISIONS.

(A) Early Entry Agreement: In the event Redeveloper is desirous of commencing construction on the Property prior to transfer of title of the Property to Redeveloper, BUDC agrees to permit Redeveloper to enter upon the Property, providing the parties hereto each hereby covenant and agree with the other as follows:

FIRST: Redeveloper agrees that the redevelopment permitted under this Section of the Agreement shall be done pursuant to Construction Plans approved in writing by BUDC.

SECOND: Redeveloper agrees that all construction shall be done in a good and workmanlike manner and that Redeveloper shall take all appropriate precautions to safeguard against injury to persons and damage to property.

THIRD: Redeveloper agrees to comply with all Federal, State, County and City laws, rules, regulations which are applicable to the redevelopment of the Property.

FOURTH: Redeveloper agrees, without limitation and at no cost to BUDC or the City of Buffalo, to defend, indemnify and hold harmless BUDC from any and all damages, claims, suits, actions, and costs because of bodily injury or sickness, including death, sustained by any person or persons and from damage to or loss of property, including the loss of use thereof, caused directly or indirectly as a result of the redevelopment work performed on the Property.

FIFTH: Prior to Redeveloper entering upon the Property as herein provided, it shall secure and deliver to BUDC a Certificate of Insurance evidencing General Liability Insurance and property damage coverage naming BUDC, the City of Buffalo and ECIDA as insured. Said insurance coverage shall be maintained by Redeveloper at its expense for the duration of this Early Entry Agreement in an amount of not less than **FIVE MILLION DOLLARS (\$5,000,000.00)** for each occurrence and in the aggregate for injuries or death sustained by any one or more persons and not less than **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** for property damage; to protect BUDC, their agents and employees from any and all claims and damages for personal injuries, or death, or from damage to any property arising from any cause resulting from or proximately caused by Redeveloper's entrance upon and/or work performed by Redeveloper pursuant to this Section of this Agreement. BUDC reserves the right to insist upon ECIDA and/or the City of Buffalo to also be named as insureds under the Certificate of Insurance, all at Redeveloper's sole expense.

SIXTH: Each Certificate of Insurance shall contain a provision providing for fifteen (15) days prior written notice to BUDC of Redeveloper's or insurance company's intention to cancel or materially change said policies.

SEVENTH: In the event that Redeveloper fails to accept title to the Property pursuant to this Agreement or the Redeveloper otherwise abandons its efforts to proceed with the redevelopment of the Property, then Redeveloper shall, at no cost to BUDC, restore the Property to its former condition and either remove any structure, or part thereof, which it constructed on the Property or reimburse BUDC for the cost of removing said structure.

EIGHTH: Any and all manner of claim, mechanics lien, encumbrance, liability and damage arising or resulting from any of the work performed by or for Redeveloper shall be satisfied by Redeveloper, at no cost to BUDC, by vacating or bonding same within thirty (30) days of the filing date thereof.

NINTH: Under no circumstances shall BUDC be obligated to complete the construction of any Improvements commenced by Redeveloper.

TENTH: The unrestricted right to enter upon the Property at any time for any reason is reserved to BUDC.

ELEVENTH: This Section of the Agreement shall terminate upon the transfer of title to the Property to Redeveloper pursuant to this Agreement. Any extension hereof shall be upon mutual agreement of the parties hereto.

TWELFTH: All conditions referred to in Section 2 (A) (i) (a), (b) and (c) must be received and approved by BUDC prior to commencement of any construction under this Section 9.

(B) **Omitted**

(C) **Statements and Representations:** The parties shall not be liable or bound by any verbal or written statements, representations, real estate brokers "set ups" or information pertaining to Property furnished by any real estate broker, agent, employee, servant, or any other person, unless the same are specifically set forth in writing signed by the parties. The parties further acknowledge that neither party nor any agent or representative of either party has made, and that BUDC is not liable for or bound in any manner by, any express or implied warranties, guarantees, promises, statements, inducements or representations of information pertaining to the Property.

(D) **Indemnification:** Redeveloper agrees to defend and indemnify BUDC against the claims of any broker arising as a result of any negotiations had by Redeveloper with any broker in connection with this Agreement. Redeveloper further agrees, at BUDC's option, to provide legal counsel, representation and litigation expenses to BUDC, at no cost to BUDC, or to pay all legal fees of an attorney of BUDC's choosing and all other costs of litigation for any litigation that may result from any claims that may be brought by any broker against BUDC in connection with this Agreement. Notwithstanding the foregoing, if and when the sale of the Property to Redeveloper under this Agreement actually closes, BUDC shall pay Larry Brassel of Brassel Commercial Realty, Inc. a broker commission in the amount of 5% of the Purchase Price actually paid to BUDC.

SEC. 10 PROHIBITION AGAINST ASSIGNMENT OF AGREEMENT.

Notwithstanding anything to the contrary contained in this Agreement, Redeveloper shall not assign this Agreement in whole or in part to any other party, corporation, partnership or other legal entity without the prior written approval of BUDC. BUDC shall have the right to grant or deny approval in BUDC's sole discretion.

SEC. 11 PROJECT SIGNS AND PUBLICITY. Redeveloper agrees to construct and install a minimum of two (2) project signs containing the names of BUDC and such other development agencies and governmental entities and officials as are directed by BUDC.

Project signs shall be weatherproof and shall be carefully maintained, until the Project has been completed.

Signs shall have a background of red, white and blue in three (3) equal horizontal segments. Size and number of signs shall be appropriate to the site and adequate to mark it. Signs shall not be smaller than 4'x 6' or larger than 8'x 8', except to meet special or local requirements.

Redeveloper shall submit a sample of the proposed sign to the President of BUDC for approval prior to sign production, construction and installation.

BUDC shall have the unrestricted right to publicize this Agreement.

SEC. 12 COUNTERPARTS. This Agreement may be executed in up to six (6) counterparts, each of which shall constitute one and the same instrument.

SEC. 13 REMEDIAL ACTION WORK PLANS ("RAWPS") AND VOLUNTARY CLEANUP AGREEMENTS ("VCAS"). Redeveloper has read the RAWPS and the VCAS related to the Property and agrees to comply with all of the provisions contained in the RAWPS and in the VCAS (including but not limited to the provisions contained in the Soil Fill Management Plans and the Operation, Monitoring and Maintenance Work Plans as contained in the RAWPS) during construction and during Redeveloper's ownership of the Property. Redeveloper agrees and acknowledges that Redeveloper's agreement to this provision is a material inducement to BUDC to enter into this Agreement with Redeveloper and that Redeveloper's default and or non-compliance with this provision and or the provisions of the VCAS and or the RAWPS shall trigger BUDC's rights to obtain injunctive relief, an order or orders for specific performance, an award of costs and or consequential damages and or other damages. The foregoing rights shall not limit any other rights BUDC has at law or in equity. A copy of each of the VCAS and RAWPS are attached hereto and made a part hereof as Schedule A-3. These provisions are intended specifically to run with the land and the Property and be binding upon Redeveloper and all Redeveloper's successors and or assigns as well as binding upon future owners of the Property. In the event that any work performed violates the RAWPS and or the VCAS, Redeveloper agrees to indemnify and hold BUDC harmless from any and all costs, damages and claims that may be made against BUDC and or Redeveloper as a result of such violation.

The Redeveloper may elect to participate in the Brownfield Cleanup Program and if approved for inclusion in the Brownfield Cleanup Program by the New York State Department of Environmental Conservation, the BUDC and Redeveloper agree as follows:

- (a) To amend this Agreement to provide as follows:
 - (i) References in this Section 13 of Part I of this Agreement to VCAS and RAWPS will be changed to refer to the Brownfield Cleanup Agreement, to the Remedial Work Plan and OM & M Work Plan referred to in the Brownfield Cleanup Agreement and the fourth sentence of this Section 13 will be deleted.
 - (ii) Section 201 (b) (v) of Part II of this Agreement will be modified to provide that references to "RAWPS" and "VCAS" shall be deemed to refer to the Brownfield Cleanup Agreement.
- (b) To modify the Deed to be delivered pursuant to this Agreement as follows:
 - (i) Subparagraph (v) under the section of the Deed entitled "Reservation of Easements" will be amended to provide that any reference to "RAWPS" and "VCAS" will be deemed a reference to the Brownfield Cleanup Agreement.
 - (ii) The section of the Deed entitled "Remedial Action Work Plans ("RAWPS") and Voluntary Cleanup Agreements ("VCAS")" will

be amended to replace references to RAWPS and VCAS with references to the Brownfield Cleanup Agreement, the Remedial Work Plan and the OM & M Work Plan referred to in the Brownfield Cleanup Agreement.

- (c) To terminate the Notices of Agreements referred to in the Voluntary Cleanup Agreements with respect to the Property.
- (d) To subordinate this Contract for Sale of Land for Private Development to the Environmental Easement to be given by the Redeveloper to the New York State Department of Environmental Conservation in connection with the Brownfield Cleanup Agreement.
- (e) To subordinate the provisions in the Deed to be given by BUDC to the Redeveloper pursuant to this Agreement to the Environmental Easement to be given by the Redeveloper to the New York State Department of Environmental Conservation pursuant to the terms of the Brownfield Cleanup Agreement.
- (f) To release the Property from the Declarations of Covenants and Restrictions recorded in the Erie County Clerk's Office in Liber 11066 of Deeds at Page 3018 and in Liber 11066 of Deeds at Page 3024.

All of the foregoing documentation shall be prepared by counsel for the Redeveloper and signed by the BUDC with consideration being paid by the Redeveloper to BUDC in the form of reimbursement for BUDC staff review time and reasonable legal counsel time compensation all not to exceed \$10,000.00 in total.

IN WITNESS WHEREOF, BUDC has caused this Agreement to be duly executed in its name and behalf by its Vice President and the Redeveloper has caused this Agreement to be duly executed in its name and behalf by its Members, on or as of the first day above written.

BUFFALO URBAN DEVELOPMENT CORPORATION

BY: David A. Stebbins
David A. Stebbins, Vice President

COBEY, LLC

BY: John Obey
John Obey, Member


BY: Robert Castle
Robert Castle, Member

STATE OF NEW YORK)

: ss.

COUNTY OF ERIE)

On the 13 day of September in the year 2005, before me, the undersigned, personally appeared David A. Stebbins, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Peter S. Gilfillan

Notary Public Erie Co


My Commission Exp 11/30/05

STATE OF NEW YORK)

: ss.

COUNTY OF ERIE)

On the 13 day of September in the year 2005, before me, the undersigned, personally appeared John Obey and Robert Castle, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and they acknowledged to me that they executed the same in their capacity, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Peter S. Gilfillan

Notary Public Erie Co

My Commission Exp 11/30/05

TERMS & CONDITIONS
PART II
OF
CONTRACT FOR
SALE OF LAND FOR PRIVATE REDEVELOPMENT

BY AND BETWEEN
BUFFALO URBAN DEVELOPMENT CORPORATION ("BUDC")

AND
COBEY, LLC
("REDEVELOPER")

PART II
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ARTICLE I PREPARATION OF PROPERTY FOR REDEVELOPMENT

SEC. 101. Property Preparation. BUDC has taken action to prepare the Property for redevelopment. Redeveloper accepts the Property in an "as is" condition with no representations and/or warranties whatsoever being made by BUDC. BUDC has installed roadways and utilities infrastructure as shown on Schedule A-1 attached hereto and made a part hereof.

SEC. 102. Waiver of Claims and Joining in Petitions by Redeveloper. The Redeveloper hereby waives (as the purchaser of the Property under this Agreement and as the owner after the conveyance of the Property provided for in this Agreement) any and all claims to awards of damages, if any, to compensate for the dedication, closing, vacation, or change of grade of any street, alley, or other public right-of-way within or fronting or abutting on, or adjacent to, the Property which is to be dedicated, closed or vacated, or the grade of which is to be changed, and shall upon the request of BUDC subscribe to and join with BUDC in any petition or proceeding required for such vacation, dedication, change of grade, and, to the extent necessary, rezoning, and execute any waiver or other document in respect thereof.

ARTICLE II. RIGHTS OF ACCESS TO PROPERTY

Section 201 - Easements

(a) (i) The Deed conveying the Property to the Redeveloper shall include rights to an appurtenant non-exclusive easement permitting vehicular and pedestrian access between the Property and Commerce Street in the locations situate approximately as shown on Schedule A-5 attached hereto and made a part hereof (the "Roadway"). Upon dedication and acceptance of the Roadway by the City of Buffalo as a public street this easement shall automatically terminate. BUDC reserves the right to unilaterally modify the Roadway easement area description by executing at any time a document dated subsequent to the date hereof which more precisely and/or particularly describes the area covered by the Roadway easement. BUDC shall have the unilateral right to relocate the Roadway easement area for any reason at BUDC's expense so long as access to the Property is not interrupted or adversely affected. Redeveloper agrees to indemnify and hold BUDC harmless on account of any injury to persons or persons or property arising out of the exercise of Roadway easement rights by Redeveloper, its employees, contractors, agents, tenants, guests and or invitees. Redeveloper shall provide insurance in the form and in the amounts specified below to back-up the foregoing indemnity. Notwithstanding the foregoing provisions of this Section 201 (a) (i), it is expected that the Roadway will have been formally dedicated as city streets by the time of closing under this Agreement and in such event the Roadway easement shall not be necessary.

(ii) Said insurance coverage shall be maintained by Redeveloper at Redeveloper's expense for the duration of the Roadway easement in an amount of not less than FIVE

MILLION DOLLARS (\$5,000,000.00) for each occurrence and in the aggregate for injuries or death sustained by any one or more persons and not less than **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** for property damage; to protect BUDC, their agents and employees from any and all claims and damages for personal injuries, or death, or from damage to any property arising from any cause resulting from or proximately caused by Redeveloper's or its agents', guests', invitees' or other related use of the Roadway easement. An insurance certificate evidencing said coverage shall be provided to BUDC. BUDC reserves the right to have ECIDA and/or the City of Buffalo added, at Redeveloper's expense, to said insurance coverage.

(b) The Deed conveying the Property to the Redeveloper shall reserve to BUDC a twenty (20) foot wide permanent easement (inside and along the entire northerly and easterly boundaries of the Property) in the location shown or to be shown on Schedule A-6 for the installation, maintenance, repair and replacement of any and all types of underground utility lines (the "Utility Easement"). The reserved easement rights shall be freely assignable by BUDC to the appropriate utility companies or other utility authority responsible for each respective utility. After delivery of the Deed, Redeveloper agrees to execute a recordable non-exclusive easement or easements to the appropriate utility company or companies or other utility authority to effectuate the intent of facilitating utilities through the reserved Utility Easement area. BUDC shall have the right after the date of this Agreement and before delivery of the Deed to grant easements to utility companies or other utility authorities in the Utility Easement area on the Property near the Roadway. The twenty (20) feet wide Utility Easement area shall be enlarged to thirty (30) feet in width on a temporary basis upon the work commencing for installation of underground utilities and or upon commencement of inspection, repair, upgrade, maintenance and or replacement work. In addition to below ground utility lines and facilities, BUDC shall be entitled to above ground easement area pads measuring 5 feet by 5 feet for transformers, pedestals and other above ground facilities to be located in areas not to be of interference with Redeveloper's use of or access to and or from the Property. In exercising BUDC's rights under the Utility Easements, BUDC agrees as follows:

- (i) No work shall be performed unless thirty (30) days prior written notice is given to the Redeveloper. Notwithstanding the foregoing, only five (5) days prior written notice shall be required in connection with work being performed in the Utility Easement area near the Roadway. No advance written notice to Redeveloper shall be required to be given in emergency situations.
- (ii) To indemnify and hold the Redeveloper harmless on account of any injury to persons or property arising out of the exercise of Utility Easement rights by BUDC, its employees, contractors or agents. Prior to entry on the Utility Easements area for installation, inspection, repair, upgrades, maintenance and or replacement work, BUDC shall use its best efforts (at no expense to BUDC) to cause the pertinent utility company

and or contractor(s) to provide commercially reasonable general liability and property damage insurance coverage to Redeveloper with certificates of insurance evidencing such coverage naming Redeveloper as additional insured as to such work,

(iii) Not to interfere with the use or occupancy of the Property by the Redeveloper or its tenants,

(iv) To repair any damage to the Property done by BUDC or its employees, contractors or agents.

(v) To comply with the RAWPS and VCAS. Prior to performing any work for the Utility Easements on the Property BUDC shall provide the Redeveloper with a complete set of plans and specifications for the work to be performed and a report from an environmental engineering firm of BUDC's choice reasonably satisfactory to Redeveloper and the New York State Department of Environmental Conservation (the "DEC") that the work to be performed does not violate the RAWPS and VCAS. Upon completion of the work BUDC must provide the Redeveloper and the DEC with a certification from the environmental engineering firm that the work performed was performed in compliance with RAWPS and VCAS. In the event that any work performed violates the RAWPS and/or the VCAS, BUDC agrees to indemnify and hold the Redeveloper harmless from any and all costs, damages and claims that may be made against it as a result of such violation.

(c) BUDC agrees, at its expense, to install clay dams at the point of entry of each utility line and or lateral coming into the Utility Easement area along the northerly and easterly boundary lines of the Property under an order made by or on behalf of BUDC. Redeveloper agrees to install clay dams at Redeveloper's expense at the point of entry of each utility line and or lateral coming in to the Property from the Utility Easement area on Redeveloper's Property along the Roadway. The detail of the required clay dams is set forth on Schedule A-4 attached hereto and made a part hereof.

SEC. 202. Redeveloper Not to Construct Over Utility Easements. The Redeveloper shall not construct any building or other structure (other than paving, landscaping and or curbing) on, over, or within the boundary lines of any utility easement unless such construction has been first approved in writing by BUDC. If approval for such construction is requested by the Redeveloper, BUDC shall use its best efforts to assure that such approval shall not be withheld unreasonably.

SEC 203. Access to Property. Prior to the conveyance of the Property by BUDC to the Redeveloper, BUDC shall permit representatives of the Redeveloper to have access to any part of the Property at all reasonable times for the purpose of obtaining data and making various tests concerning the Property which are desired or necessary for Redeveloper to carry out this Agreement. After the conveyance of the Property by BUDC to the Redeveloper, the Redeveloper shall permit the representatives of BUDC and the City access to the Property at all reasonable times for the purposes of inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by any party for

the access provided for in this Section. After completion of the Improvements, Redeveloper shall also permit BUDC and or the City of Buffalo access to the Property for purposes of monitoring Redeveloper's compliance with the provisions of the RAWPS and the VCAS.

ARTICLE III. CONSTRUCTION PLANS; CONSTRUCTION OF IMPROVEMENTS; CERTIFICATE OF COMPLETION

SEC. 301. Plans for Construction of Improvements. Plans and specifications with respect to the construction of the Improvements on the Property shall be in conformity with the Urban Renewal Plan and all applicable State and local laws and regulations. As promptly as possible after the date of this Agreement, the Redeveloper shall submit to BUDC, for approval by BUDC, the plans, drawings and specifications (which plans, drawings and specifications together with any and all changes therein that may thereafter be made and submitted to BUDC and approved by BUDC as herein provided are herein collectively called "Construction Plans") with respect to the Improvements to be constructed by the Redeveloper on the Property. BUDC shall, if the Construction Plans originally submitted conform to the provisions of the Urban Renewal Plan and all applicable state and local laws and regulations, approve in writing such Construction Plans and no further filing by the Redeveloper or approval by BUDC thereof shall be required except with respect to any material change. Notwithstanding the foregoing, in the event that any material change is made to the Construction Plans, BUDC shall be given written notice thereof. Such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by BUDC, in whole or in part, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of their receipt by BUDC. If BUDC so rejects the Construction Plans in whole or in part as not being in conformity with the Urban Renewal Plan and all applicable state and local laws and regulations, the Redeveloper shall submit new or corrected Construction Plans which are in conformity with the Urban Renewal Plan and all applicable state and local laws and regulations after written notification to the Redeveloper of the rejection. The provisions of this Section relating to approval, rejection, and resubmission of corrected Construction Plans hereinabove provided with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by BUDC. All work with respect to the Improvements to be constructed by the Redeveloper on the Property shall be substantially in conformity with the Construction Plans as approved by BUDC. The term "Improvements" as used in this Agreement, shall be deemed to have reference to the improvements as provided and specified in the Construction Plans as so approved. The delivery of the Deed by BUDC to Redeveloper shall be conclusive evidence that BUDC has approved the Construction Plans as to the Improvements.

SEC. 302. Changes in Construction Plans. If the Redeveloper desires to make any material change in the Construction Plans after their approval by BUDC, the Redeveloper shall, prior to implementation of the change, submit the proposed change to BUDC for BUDC's approval which approval shall not be unreasonably withheld or

delayed so long as such changes are in accordance with the requirements of this Agreement and the Urban Renewal Plan.

SEC. 303. Omitted

SEC. 304. Omitted

SEC. 305. Commencement and Completion of Construction of Improvements.
The Deed shall contain covenants on the part of the Redeveloper for itself and its successors and assigns, that the Redeveloper, and its successors and assigns, shall promptly begin and complete the construction of the Improvements within the periods specified in Section 4. It is intended and agreed, and the Deed shall so expressly provide, that such Agreements and covenants shall be covenants running with the land and that they shall be enforceable by BUDC against the Redeveloper and its successors and assigns to or of the Property or any part thereof or any interest therein.

SEC. 306. Progress Reports. Subsequent to conveyance of the Property, or any part thereof, to the Redeveloper, and until construction of the Improvements has been completed, the Redeveloper shall make reports, in such detail and at such times as may reasonably be requested by BUDC, as to the actual progress of the Redeveloper with respect to such construction.

SEC. 307. Certificate of Completion.

(a) Promptly after completion of the Improvements in accordance with those provisions of this Agreement relating to the obligations of the Redeveloper to construct the Improvements (including the dates for beginning and completion thereof), BUDC will furnish the Redeveloper with an appropriate instrument so certifying. Such certification by BUDC shall be (and it shall be so provided in the Deed and in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the Improvements and the dates for the beginning and completion thereof.

(b) Each certification provided for in this Section shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property, including the Deed. If BUDC shall refuse or fail to provide any certification in accordance with the provisions of this Section, BUDC shall, within ten (10) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what

respects the Redeveloper has failed to complete the Improvements in accordance with the provisions of this Agreement and what measures or acts will be necessary for the Redeveloper to take or perform in order to obtain such certification.

ARTICLE IV. RESTRICTION UPON USE OF PROPERTY

SEC. 401. Restriction on use. The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of the Redeveloper for itself, and such successors and assigns, that the Redeveloper, and such successors and assigns, shall:

- (a) Devote the Property to, and only to and in accordance with, the uses specified in the Urban Renewal Plan as permissible at the Property; and
- (b) Not discriminate upon the basis of race, color, creed, or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

SEC. 402. Covenants: Binding Upon Successors in Interest; Period of Duration. The Deed shall provide that the agreements and covenants provided in Section 401 hereof shall be covenants running with the land and that they shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, BUDC, its successors and assigns. The covenants shall be enforceable against the Redeveloper, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that all the provisions of this Agreement and the covenant provided in Subdivision (a) of Section 401 hereof shall run with the land and remain in effect until the date referred to in Section 7 of Part I hereof (at which time this Agreement and said covenant shall terminate) and that the agreements and said covenants provided in Subdivision (b) of Section 401 hereof shall remain in effect without limitation as to time.

SEC. 403. BUDC and United States Rights to Enforce. It is intended and agreed that BUDC and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Article IV, and the United States shall be deemed a beneficiary of the covenant provided in Subdivision (b) of Section 401 hereof. BUDC shall have the right, in the event of any breach of any of the agreements or covenants provided in this Article IV, and the United States shall also have the right in the event of any breach of the covenant provided in Subdivision (b) of Section 401 hereof, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of any breach of such agreement or covenant, to which it may be entitled.

ARTICLE V. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

SEC. 501. Representations As to Redevelopment. The Redeveloper warrants, represents and agrees that its purchase of the Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of redevelopment of the Property and not for speculation in land holding. The Redeveloper further recognizes that in view of:

- (a) The importance of the redevelopment of the Property to the general welfare of the community;
- (b) The substantial financing and other public aids that have been made available by law and by the Federal, State and local governments for the purpose of making such redevelopment possible; and
- (c) The fact that a transfer of the stock ownership interests in the Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in significant change in the ownership or distribution of such ownership or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, is for practical purposes a transfer or disposition of the Property then owned by the Redeveloper,

The qualifications and identity of the Redeveloper, and its members, principals, employees, officers and or managers are of particular concern to BUDC. The Redeveloper further recognizes that it is because of such qualifications and identity that BUDC is entering into this Agreement with the Redeveloper, and in so doing, is further willing to accept and rely on the obligations of the Redeveloper for the faithful performance of all undertakings and covenants in this Agreement.

SEC. 502. Prohibition Against Transfer of Membership Interests in Redeveloper Prior To Issuance of Certificate of Completion: Binding Upon Members Individually. For the foregoing reasons, the Redeveloper represents and agrees for itself, and for its members, respectively, that: Prior to completion of the Improvements as certified by BUDC as provided in Section 307 hereof, and without the prior written approval of BUDC, that except for transfer upon death (a) there shall be no transfer by any party owning 10 percent or more of the membership interests in the Redeveloper (which term shall be deemed for the purposes of this and related provisions to include successors in interest of such membership interests or any part thereof or interest therein), (b) nor shall any such owner suffer any such transfer to be made, (c) nor shall there be or be suffered to be such transfer by the Redeveloper, or by any owner of 10 percent or more of the membership interests therein, any other similarly significant change in the ownership of such membership interests or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, by any other method or means, whether by increased capitalization, merger with another entity, organizational document amendments or other amendments, issuance of additional or new membership interests or otherwise. With respect to this provision, the Redeveloper and the parties signing this Agreement on behalf of the Redeveloper represent that they

have the authority of all of its existing members to agree to this provision on their behalf and to bind them with respect thereto.

SEC. 503. Prohibition Against Transfer of Property and or Assignment of Agreement Prior to Issuance of Certificate of Completion. Also, for the foregoing reasons the Redeveloper warrants, represents and agrees for itself, and its successors and assigns, that:

(a) Except only (1) by way of security for, and only for, (i) the purpose of obtaining financing necessary to enable the Redeveloper to perform its obligations with respect to making the Improvements under this Agreement, and (ii) any other purpose authorized by this Agreement, and, or (2) the Lease, the Redeveloper has not made or created, and Redeveloper shall not, prior to the completion of the Improvements as certified by BUDC as provided in Section 307 hereof, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of BUDC. Provided, that prior to the issuance by BUDC of the certificate of completion provided for in Section 307 hereof, the Redeveloper may enter into any agreement to sell, lease or otherwise transfer, after the issuance of such certificate of completion, the Property or any part thereof or interest therein, which agreement shall not provide for payment of or on account of the purchase price or rent for the Property, or the part thereof or the interest therein to be so transferred, prior to the issuance of such certificate of completion.

(b) BUDC shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, as determined by BUDC, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part),

(2) Any proposed transferee, by instrument in writing satisfactory to BUDC and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of BUDC, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall, whatever the reason, not have

assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the agreement or agreed to in writing by BUDC) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit BUDC of or with respect to any rights or remedies or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Property or any part thereof, or any interest therein, however, consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit BUDC of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that BUDC would have had, had there been no such transfer or change,

(3) There shall be submitted to BUDC for review all instruments and other legal documents involved in effecting the proposed transfer; and if approved by BUDC, its approval shall be indicated to the Redeveloper in writing,

(4) The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Redeveloper of the Property (or allocable to the part thereof or interest therein transferred) and the Improvements, if any, therefore made thereon by it; it being the intent of this provision to preclude assignment of this Agreement or transfer of the Property (or any parts thereof other than those referred to in this Section) for profit prior to the completion of the Improvements and to provide that in the eventuality that such assignment or transfer is made (and is not canceled), BUDC shall be entitled to increase the Purchase Price to the Redeveloper by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized, pursuant to this Subdivision, and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to BUDC, and

(5) The Redeveloper and its transferee shall comply with such other conditions as BUDC may find desirable in order to achieve and safeguard the purposes of this Agreement, the Project Area and the Urban Renewal Plan.

Provided, that in the absence of specific written agreement by BUDC to the contrary, no such transfer or approval by BUDC thereof shall be deemed to relieve the Redeveloper,

or any other party bound in any way by the Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

SEC. 504. Information As To Members. In order to assist in the effectuation of the purposes of this Article and BUDC objectives generally, the Redeveloper agrees that during the period between execution of this Agreement and completion of the Improvements as certified by BUDC as provided in Section 307 hereof, (a) the Redeveloper will promptly notify BUDC of any and all changes whatsoever in the ownership of membership interests, legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership of such membership interests or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, of which it or any of its members have been notified or otherwise have knowledge or information; and (b) the Redeveloper shall, at such time or times as BUDC may request, furnish BUDC with a complete statement, subscribed and sworn to by the manager or other executive officer of the Redeveloper setting forth the names and addresses of each such member and the extent of their respective holdings, and in the event any other parties have a beneficial interest in such membership interests their names and addresses and the extent of such interest. Such lists, data and information shall in any event be furnished BUDC immediately prior to the delivery of the Deed to the Redeveloper and as a condition precedent thereto, and annually thereafter on the anniversary of the date of the Deed until the issuance of a certificate of completion for all the Property.

ARTICLE VI. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

SEC. 601. Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, as certified by BUDC as provided in Section 307 hereof, neither the Redeveloper nor any successor in interest to the Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property, except for the purposes of obtaining (a) funds only to the extent necessary for making the Improvements on the Property (including costs to obtain financing, closing costs such as title insurance, attorneys fees, mortgage tax, interest during construction and other soft costs relating to the project) and (b) such additional funds, if any, in an amount not to exceed the Purchase Price agreed upon to be paid by the Redeveloper to BUDC. The Redeveloper (or successor in interest) shall notify BUDC in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property, or any part thereof, and in any event it shall promptly notify BUDC of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Redeveloper or otherwise.

SEC. 602. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder (or holder's nominee) who obtains title

to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or such part from or through such holder or (b) any other purchaser at foreclosure sale (other than the holder of the mortgage itself) shall in no respect be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder. Provided, that nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in this Agreement.

SEC. 603. Copy of Notice of Default to Mortgagee. Whenever BUDC shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Agreement, BUDC shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of BUDC.

SEC. 604. Mortgagee's Option to Cure Defaults. After any breach or default referred to in Section 603 hereof, each such holder shall have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Property covered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its mortgage. Provided, that if the breach or default is with respect to construction of the Improvements, nothing contained in this Section or any other Section of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect Improvements or construction already made) without first having expressly assumed the obligation to BUDC, by written agreement satisfactory to BUDC, to complete, in the manner provided in this Agreement, the Improvements on the Property or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Improvements relating to the Property or applicable part thereof shall be entitled, upon written request made to BUDC, to a certification or certifications by BUDC to such effect in the manner provided in Section 307 of this Agreement, and any such certification shall, if so requested by such holder, mean and provide that any remedies or rights with respect to recapture of or reversion or revesting of title to the Property that BUDC shall have or be entitled to because of failure of the Redeveloper or any successor in interest to the Property, or any part thereof, to cure or remedy any default with respect to the construction of the Improvements on other parts or parcels of the Property, or because of any other default in or breach of this Agreement by the Redeveloper or such successor, shall not apply to the part or parcel of the Property to which such certification relates.

SEC. 605. BUDC's Option to Pay Mortgage Debt or Purchase Property. In any case where the holder of any mortgage on the Property or part thereof declares such

mortgage to be in default, BUDC shall (and every mortgage instrument made prior to completion of the Improvements with respect to the Property by the Redeveloper or its successors in interest shall be subjected automatically to this provision) have the option (said option having a 30 day "decision" period during which BUDC evaluates the situation) of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage without recourse and the debt secured thereby, or, in the event ownership of the Property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, BUDC shall be entitled, at its option, within 30 days following the date the holder or its nominee obtains title to the Property, to a conveyance to it of the Property upon payment to such holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent ownership and or management of the Property; (iv) the costs of any Improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

SEC. 606. BUDC's Option To Cure Mortgage Default. In the event of a default or breach prior to the completion of the Improvements by the Redeveloper, or any successor in interest, in or of any of its obligations under, and to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Property or part thereof, BUDC may at its option cure such default or breach, in which case BUDC shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Redeveloper or successor in interest of all costs and expenses incurred by BUDC in curing such default or breach and to a lien upon the Property (or the part thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement. Provided, that any such lien shall be subject always to the lien of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages on the Property authorized by this Agreement.

ARTICLE VII. REMEDIES

SEC. 701. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, complete the cure within sixty (60) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

SEC. 702. Termination by Redeveloper Prior to Conveyance. In the event that the conditions precedent set forth in Section 2(A) of this Agreement are not satisfied by December 1, 2005, then this Agreement shall, at the option of either BUDC or the Redeveloper, be terminated by written notice thereof to the other party hereunder and, neither BUDC nor the Redeveloper shall have any further rights against or liability to the other under this Agreement.

SEC. 703. Termination by BUDC Prior to Conveyance. In the event that

(a) prior to conveyance of the Property to the Redeveloper and in violation of this Agreement

(i) the Redeveloper (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein, or in the Property, or

(ii) there is any change in the ownership or distribution of the membership interests in the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or the degree thereof; or

(b) the Redeveloper does not pay the Purchase Price and take title to the Property upon tender of conveyance by BUDC pursuant to this Agreement, and if any default or failure referred to in this Subdivision (b) of this Section shall not be cured within thirty (30) days after the date of written demand by BUDC,

then this Agreement, and any rights of the Redeveloper, or any assignee or transferee, in this Agreement, or arising therefrom with respect to BUDC or the Property, shall, at the option of BUDC, be terminated by BUDC, in which event, the Deposit shall be retained by BUDC as liquidated damages and as its property without any deduction, offset, or recoupment whatsoever, and neither the Redeveloper (or assignee or transferee) nor BUDC shall have any further rights against or liability to the other under this Agreement.

SEC. 704. Revesting Title in BUDC Upon Happening of Event Subsequent to Conveyance to Redeveloper. In the event that subsequent to conveyance of the Property to the Redeveloper and prior to the issuance of a Certificate of Completion for the Improvements in accordance with Section 307 of this Agreement,

(a) the Redeveloper (or successor in interest) shall default in or violate its obligations with respect to the construction of the Improvements (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months (six (6) months, if the default is with respect to the date for completion of the Improvements) after written demand by BUDC so to do; or

(b) the Redeveloper (or successor in interest) shall fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanic's lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to BUDC made for such payment; removal; or discharge, within ninety (90) days after written demand by BUDC so to do; or

(c) there is any transfer or assignment of the Property or any part thereof, or any change in the ownership or distribution of the shareholder interests in the Redeveloper, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, and such violation shall not be cured within sixty (60) days after written demand by BUDC to the Redeveloper,

then BUDC shall have the right to re-enter and take possession of the Property and to terminate (and revert in BUDC) the estate conveyed by the Deed to the Redeveloper, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Property to the Redeveloper shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Redeveloper specified in Subdivisions (a), (b), and or (c) of this Section, failure on the part of the Redeveloper to remedy, end, or abrogate such default, failure, violation, or subdivisions, BUDC at its option shall have the right to declare a termination in favor of BUDC of the title, and of all the rights and interests in and to the Property conveyed by the Deed to the Redeveloper, and that such title and all rights and interests of the Redeveloper, and any assigns or successors in interest to and in the Property, shall revert to BUDC. Provided, that such condition subsequent and any reversioning of title as a result thereof in BUDC

(1) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by this Agreement, and (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages; and

(2) shall not apply to individual parts or parcels of the Property (or, in the case of parts or parcels leased, the leasehold interest) on which the Improvements to be constructed thereon have been completed in accordance with this Agreement and for which a certificate of completion is issued therefor as provided in Section 307 hereof.

In addition to, and without in any way limiting BUDC's right to reentry as provided for in the preceding sentence, BUDC shall have the right to retain the Deposit, as provided in Section 3 of Part 1 hereof without any deduction, offset or recoupment whatsoever, in the

event of default, violation or failure of the Redeveloper as specified in the preceding sentences.

SEC. 705. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in BUDC of title to the Property or any part thereof as provided in Section 704 hereof, BUDC shall use its best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests as in Section 704 hereof set forth and provided) as soon and in such manner as BUDC shall find feasible and consistent with the objectives of such law and of the Urban Renewal Plan to a qualified and responsible party or parties (as determined by BUDC) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to BUDC and in accordance with the uses specified for such Property or part thereof in the Urban Renewal Plan. Upon such resale of the Property, the proceeds thereof shall be applied;

(a) First, to reimburse BUDC for all costs and expenses incurred by BUDC, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the Property or part thereof (but less any income derived by BUDC from the Property or part thereof in connection with such management); all taxes, assessments, PILOT payments and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by BUDC, an amount, if paid, equal to such taxes, assessments, PILOT payments or charges (as determined by the City assessing official) as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in BUDC or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property or part thereof; and any amounts otherwise owing BUDC by the Redeveloper and its successors or transferee; and

(b) Second, to reimburse the Redeveloper, its successor or transferee, up to the amount equal to (1) the sum of the Purchase Price paid by it for the Property (or allocable to the part thereof) and the cash actually invested by it in making any of the Improvements on the Property or part thereof, less (2) any gains or income withdrawn or made by it from this Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by the BUDC as its property.

SEC. 706. Other Rights and Remedies of BUDC: No Waiver by Delay. BUDC shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title, and interest of the Redeveloper, and (except, if applicable, for such individual parts or parcels upon which construction of that part of the Improvements required to be constructed thereon has been completed, in accordance with this Agreement, and for which a certificate of completion as provided in Section 307 hereof is to be delivered, and the subject to such mortgage liens and leasehold interests as provided in Section 704 hereof) its successors in interest and assigns, in the Property, and the reversioning of title thereto in BUDC. Provided, that any delay by BUDC in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that BUDC should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by BUDC with respect to any specific default by the Redeveloper under this Section be considered or treated as a waiver of the rights of BUDC with respect to any other defaults by the Redeveloper under this Section or with respect to the particular default except to the extent specifically waived in writing.

SEC. 707. Enforced Delay in Performance for Causes Beyond Control of Redeveloper. For the purposes of any of the provisions of this Agreement, the Redeveloper shall not be considered in breach of, or default in, its obligations with respect to the beginning and completion of construction of the Improvements, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God, acts of public enemy, acts of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such unforeseeable delay, the time or times for performance of the Redeveloper with respect to construction of the Improvements, shall be extended for the period of the unforeseeable delay as determined by BUDC.

SEC. 708. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, of any obligation of the other party shall be deemed a waiver with respect to a particular obligation of the other party or condition beyond those expressly waived in writing and only to the extent thereof, or a waiver in any respect in

regard to any other rights of the party making the waiver of any other obligations of the other party.

ARTICLE VIII. MISCELLANEOUS

SEC. 801. Conflict of Interests; BUDC Representatives Not Individually Liable. No member, official, or employee of BUDC shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of BUDC shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by BUDC or for any amount which may become due to the Redeveloper or successor or on any obligations under the terms of this Agreement.

SEC. 802. Equal Employment Opportunity. The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Improvements provided for in this Agreement:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Redeveloper will ensure that applicants are employed, and are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following; employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the labor union or worker's representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Redeveloper will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Redeveloper's books, records, and accounts by BUDC, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Redeveloper's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Redeveloper may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Redeveloper will include the provisions of Paragraphs (a) through (g) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or vendor, as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or purchase order as BUDC or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Redeveloper becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by BUDC or the Department of Housing and Urban Development, the Redeveloper may request the United States to enter into such litigation to protect the interests of the United States. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of the Section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:", and the term "Redeveloper" shall be changed to "Contractor".

SEC. 803. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from BUDC to the Redeveloper or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement. The provisions and covenants of this Agreement shall run with the land and shall be binding upon the Redeveloper and its successors and or assigns.

SEC. 804. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SEC. 805. Survival of Contract Provisions After Issuance of Certificate of Completion. After BUDC has issued a Certificate of Completion pursuant to Section 307, all of the provisions of this Agreement (Part I and Part II) shall be deemed to be satisfied and no longer applicable except that the following provisions shall continue in full force and effect: Part I – Section 4 (last sentence only), Section 7, Section 9(D), Section 13; Part II – Sections 401, 402, 403 and 701.

ASSIGNMENT OF CONTRACT

THIS ASSIGNMENT is made on or as of the 18th day of October, 2005, by and between COBEY, I.L.C., having an office for the transaction of business at c/o Robert J. Castle, 9505 Main Street, Clarence, New York 14031 (hereinafter referred to as "Assignor"), and 9505 MAIN STREET, LLC, having an office for the transaction of business at c/o Robert J. Castle, 9505 Main Street, Clarence, New York 14031 (hereinafter referred to as "Assignee").

WHEREAS, Assignor and Buffalo Urban Development Corporation (hereinafter referred to as "BUDC") entered into a Contract for Sale of Land For Private Redevelopment (the "Contract") on the 13th day of September, 2005 for approximately 12.3 acres of real property located in The Union Ship Canal Redevelopment Project at Buffalo Lakeside Commerce Park in Buffalo, New York. The purchase price of the real property is \$475,000 (hereinafter referred to as the "Contract"); and

WHEREAS, the Assignor wishes to assign the Contract and all Assignor's rights in the Contract to the Assignee and Assignee wishes to accept said assignment; and

WHEREAS, the Assignor will continue to be bound by the Contract and all of Assignor's obligations under the Contract;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor hereby assigns to the Assignee the Contract and all Assignor's right, title and interest in and unto the Contract. Assignee hereby accepts the assignment.

IN WITNESS WHEREOF, the Assignor and Assignee have caused this Assignment to be duly executed on the date first above written.

COBEY, I.L.C.

By: Robert J. Castle
Robert J. Castle, Member

9505 MAIN STREET, LLC

By: Robert J. Castle
Robert J. Castle, Member

EXHIBIT B

VCP Agreement: Index #: B9-0568-99-12(A)

VCA

(A)

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| NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION | |
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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation
of a Voluntary Cleanup Agreement
for Hanna Furnace Former Railroad Yard
by Development Downtown, Inc., "Volunteer"

Site #: V00319-9

Index #: B9-0568-99-12 (A)

WHEREAS, the Department is responsible for enforcement of the ECL and the NL and such laws provide the Department authority to enter into this Agreement;

WHEREAS, the Department has established a Voluntary Cleanup Program to address the environmental, legal and financial barriers that hinder the redevelopment and reuse of contaminated properties;

WHEREAS, Volunteer represents, and the Department relied upon such representations in entering into this Agreement, that Volunteer's involvement with the Site is limited to the following: Volunteer is a not-for-profit corporation which anticipates acquiring title to this Site but does not presently hold title, has not previously owned or operated the Site, and is not otherwise responsible under law to remediate the Existing Contamination;

WHEREAS, the parties are entering into this Agreement in order to set forth a process through which the Department will approve and the Volunteer will implement activities designed to address in whole or in part environmental contamination at the Site; and

WHEREAS, the Department has determined that it is in the public interest to enter into this Agreement as a means to address environmental issues at the Site with private funds while ensuring the protection of human health and the environment;

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

I. Site Specific Definitions

For purposes of this Agreement, the terms set forth in the Glossary attached to, and made a part of, this Agreement shall have the meanings ascribed to them in that Glossary. In addition, for purposes of this Agreement, the following terms shall have the following meanings:

A. "Contemplated Use": restricted industrial use/restricted commercial use excluding use for daycare, child care and medical care.

B. "Existing Contamination": those concentrations of chemical compounds or

constituents associated with the residuals of a former rail yard identified during the investigation of the Site which have been characterized as to their nature and extent to the satisfaction of the Department and which have been designated for remediation or removal. Compounds or constituents of concern for this Site include, without limitation or exclusion, volatile organic compounds, semi-volatile organic compounds, pesticides, and metals as further documented in the following reports:

1. Inactive Hazardous Waste Disposal Site Report, DEC 1983.
2. Preliminary Evaluation of Chemical Migration to Groundwater and the Niagara River from Selected Waste Disposal Sites, USEPA 1985.
3. Site Characterization and Environmental Assessment - Hanna Furnace, Buffalo, New York - Volumes I and II, RECRA Environmental, Inc., August 1988, prepared for the NYS DOT
4. Unpublished Field Notes and Sample Data for Hanna Furnace - Shenango Steel Site, Buffalo, New York, NYS DEC, May - June 1994
5. Preliminary Site Assessment prepared by ABB Environmental Services, November 1995
6. Hanna Furnace Site - Characterization of the Former Railroad Yard, Malcolm Pirnie, revised October 1999
7. Supplemental Investigation Report - Hanna Furnace Site - The Former Railroad Yard (Subparcel 1), Malcolm Pirnie, revised January 2001
8. Letter report, Investigation of High pH in Groundwater, Malcolm Pirnie, June 6, 2001

Existing Contamination does not include materials brought on Site from off Site sources to be used as cover or fill. The term also includes contamination identified during the implementation of this Agreement, the nature and extent of which were unknown or insufficiently characterized as of the effective date of this Agreement, but which shall have been fully characterized and addressed to the Department's satisfaction.

C. "Site": that parcel of real property known as Hanna Furnace -Former Railroad Yard which is an approximately 42.5 acre parcel located at 2 Fuhrman Boulevard in South

Buffalo, New York, approximately 1/4 mile east of U.S. Route 5 and 1/2 mile south of Tiff Street and which is more particularly outlined on Exhibit "A" which includes a parcel location map and a legal description of the Site. For purposes of Subparagraph II.H the term "Site" shall be construed to mean (i) the entire Site or (ii) a subparcel of the Site.

D. "Volunteer": Development Downtown, Inc. (DDI) is a not-for-profit corporation concerned with local development located at 617 Main Street, Buffalo, New York. For the sole purposes of the Voluntary Cleanup Program, the Volunteer is considered a Non-PRP Volunteer.

II. Development, Performance and Reporting of Work Plans

A. Work Plan Labels

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be captioned as follows:

1. "Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination at the Site;
2. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;
3. "Remedial Action Work Plan" if the Work Plan provides for the Site's remediation to cleanup levels sufficient to allow for the Contemplated Use of the Site. A Department-approved Remedial Action Work Plan, February 2002, is found in Exhibit "B."
4. "OM&M Work Plan" if the Work Plan provides for post-remedial construction operation, monitoring and/or maintenance. An OM&M Plan is Appendix D to the Remedial Action Work Plan found in Exhibit "B."

B. Submission/Implementation of Work Plans

1. The first Work Plan to be performed under this Agreement is contained in Exhibit "B." Thereafter, the Volunteer can submit such other and additional work plans it deems appropriate.
2. A proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. A Professional Engineer must prepare, sign, and seal all Work Plans other than an Investigation Work Plan. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Agreement and shall be implemented in accordance with the schedule contained therein. Within 20 Days after receiving written notice that Volunteer's Work Plan has been disapproved, Volunteer shall elect in writing to: (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke the dispute resolution provisions of this

Agreement pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to the provisions set forth in Subparagraph XII.A.

3. During all field activities, Volunteer shall have on-Site a representative who is qualified to supervise the activities undertaken and who may be a consultant retained by Volunteer to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Volunteer invokes the dispute resolution provisions of this Agreement pursuant to Paragraph XIII, either party may terminate this Agreement pursuant to Subparagraph XII.A.

D. Submission of Final Reports

In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report with a cover page containing the caption of that Work Plan as set forth in Subparagraph II.A of this Agreement. The final report pertaining to that Work Plan's implementation shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the final report for an Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan, and all other final reports must contain such certification made by a Professional Engineer with primary responsibility for the day to day performance of the activities under this Agreement.

An OM&M Work Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Action Work Plan.

E. Review of Submittals other than Work Plans

1. The Department shall timely notify Volunteer in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this subparagraph, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the

submittal. Within 20 Days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall elect in writing to either (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke the dispute resolution provisions of this Agreement pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to the provisions set forth in Subparagraph XII.A. If the Volunteer submits a revised submittal and it is disapproved, the Department and Volunteer may pursue whatever remedies may be available under this Agreement or under law.

3. Within 60 Days of the Department's approval of a final report, the Volunteer shall submit such additional Work Plans that it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by the Volunteer, result in the termination of this Agreement pursuant to Subparagraph XII.B.

4. All approved final reports shall be submitted to the Department in an electronic format acceptable to the Department within 30 days of approval of such final report.

F. Department's Determination of Need for Remediation

The Department will determine upon its approval of each final report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed to allow the Site to be used for the Contemplated Use.

1. If the Department determines that remediation, or additional remediation, is not needed to allow the Site to be used for the Contemplated Use, the Department shall provide Volunteer with the Release described in Subparagraph II.H.

2. If the Department determines that remediation, or additional remediation, is needed to allow the Site to be used for the Contemplated Use, Volunteer may elect to submit for review and approval a proposed Work Plan (or a revision to an existing Remedial Action Work Plan for the Site) which addresses the remediation of Existing Contamination. Such proposed Work Plan shall include, among other requirements, an evaluation of the proposed remedy considering the factors set forth in 6 NYCRR 375-1.10(c)(1) through (c)(6), excluding consideration of cost-effectiveness. At a minimum, the remedial activities contemplated by the proposed Work Plan must eliminate or mitigate all significant threats to the public health and/or the environment and must result in the Site being protective of public health and the environment for the Site's Contemplated Use. The Department will notice a proposed Work Plan addressing the Site's remediation for public comment in accordance with Subparagraph II.G of this Agreement. If Volunteer elects not to develop a Work Plan under this Subparagraph or either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XII.A

G. Notice of Proposed Work Plan for the Site's Remediation

Whenever a Work Plan for the Site's remediation (other than an IRM Work Plan) is proposed, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the opportunity to submit comments on the proposed Work Plan within 30 Days after the date of the issue in which the notice appears. The Department shall mail an equivalent notice to the City of Buffalo and County of Erie. The Department will notify Volunteer following the close of the public comment period whether the proposed Work Plan needs to be revised. If the Department determines that revisions are necessary for the Site conditions to be protective of public health or the environment based upon the Contemplated Use, Volunteer agrees to negotiate revisions to the proposed Work Plan in accordance with Paragraph II.C. If the Department determines that no revisions are required, then the Work Plan shall be attached hereto as Exhibit "B."

H. Release and Covenant Not To Sue

Upon the Department's determination that i) Volunteer is in compliance with the Agreement; ii) no requirements other than those remedial actions already conducted at the Site, if any, are necessary to assure that Site conditions are protective of public health and the environment based upon the Contemplated Use; and iii) Volunteer has complied, if required, with Paragraph X, the Department shall provide Volunteer with the Release and Covenant Not to Sue attached hereto as Exhibit "C," subject to the terms and conditions stated therein.

III. Progress Reports

Volunteer shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XI.A.1 by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous month and those anticipated for the next month; all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents, whether under this Agreement or otherwise, in the previous month, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays.

IV. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Volunteer shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within 10 business days of when it obtains knowledge of any such event. Volunteer shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or

modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event qualifies as a defense to compliance pursuant to this Paragraph.

V. Entry upon Site

Volunteer hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the matters addressed in a Department-approved Work Plan, and any agent, consultant, contractor or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site. Upon request, Volunteer shall permit the Department full access to all non-privileged records relating to matters addressed by this Agreement. Raw data is not considered privileged and that portion of any privileged document containing raw data must still be provided to the Department.

VI. Payment of State Costs

A. Within 45 Days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses for negotiating this Agreement and all costs associated with this Agreement, but not including any expenses incurred by the State after the Termination Date.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs.

C. Such invoice shall be sent to the Volunteer at the following address:

Peter Cammarata
Development Downtown, Inc.
617 Main Street
Buffalo, New York 14203

D. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to: Bureau of Program Management, Division of Environmental Remediation, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7012.

E. Each party shall provide written notification to the other within 90 days of any change in the foregoing addresses.

F. The Volunteer may contest, in writing, invoiced costs if it believes (1) the cost documentation contains clerical, mathematical or accounting errors, or (2) the costs are not related to the State's activities reimbursable under this Agreement. If Volunteer objects to an invoiced cost, Volunteer shall pay all costs not objected to. Within ten (10) days of its receipt of an invoice, Volunteer shall identify in writing all costs objected to and identify the basis of the objection. This objection shall be filed with the Division of Environmental Remediation's Director of the Bureau of Program Management. The Director or Director's designee shall have the authority to relieve Volunteer of the obligation to pay invalid costs. Within thirty (30) days of the Department's determination of the objection, Volunteer shall pay to the Department the amount which the Director or Director's designee determines Volunteer is obligated to pay.

VII. Reservation of Rights

A. 1. Except as provided in the Release and Covenant Not to Sue (Exhibit "C") after its issuance and except as provided in Subparagraphs VII.A.2, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or the Trustee's rights including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any party, including Volunteer.

2. Except for the Department's right to take any investigatory or remedial action deemed necessary as a result of a significant threat resulting from the Existing Contamination or to exercise summary abatement, the Department shall not take any enforcement action under ECL Article 27, Title 13, under CERCLA, under the Navigation Law, or under comparable statutory or common law theories of remedial liability with respect to the Existing Contamination, to the extent that such contamination is being addressed under the Agreement, against Volunteer or Volunteer's grantees, successors or assigns during the implementation of this Agreement, provided such party is in compliance with the terms and provisions of this Agreement, including without limitation the requirements of all Work Plans and amendments thereto.

B. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses under applicable law respecting any Departmental assertion of remedial liability against Volunteer, and further reserves all rights respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteer's compliance with it shall not be construed as an admission of liability, fault or wrongdoing by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

C. Except as provided in Subparagraph XIV.L, Volunteer reserves such rights as it may have to seek and obtain contribution, indemnification and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response/cleanup costs or such other costs or damages arising from the contamination at the Site as provided under applicable State and Federal law.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement prior to the Termination Date except for liability arising from willful, wanton or malicious acts or acts constituting gross negligence by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall send the Volunteer a written notice pursuant to Paragraph XI of its intention to exercise its rights prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Public Notice

A. Within 30 Days after the effective date of this Agreement Volunteer shall cause to be filed a Department-approved Notice of Agreement, which Notice shall be substantially similar to the Notice of Agreement attached to this Agreement as Exhibit "D," with the Erie County Clerk to give all parties who may acquire interest in the Site notice of this Agreement. Within such 30 Days Volunteer shall also provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy. Volunteer may terminate such Notice on or after the Termination Date of this Agreement.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 Days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease or any other right accruing to a person not affiliated with Volunteer to secure the repayment of money or the performance of a duty or obligation by a person.

X. Declaration of Covenants & Restrictions

Within 60 Days after the effective date of this Agreement Volunteer shall, unless otherwise authorized by the Department in writing, cause to be recorded a Department-approved instrument to run with the land with the Erie County Clerk which is substantially similar to Exhibit "E" attached to this Agreement, and shall provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy. The Volunteer or the owner of the Site may petition the Department to terminate the Declaration of Covenants and Restrictions filed pursuant to this Paragraph when the Site is protective of human health and the environment for residential uses without reliance upon the restrictions set forth in such instrument. The Department will not unreasonably withhold its approval of such petition.

XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

David Locey
Project Manager
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

Note: four copies (one unbound) of work plans are required to be sent.

Andrew English
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7017

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Note: two copies of work plans are required to be sent, and

Maura C. Desmond
Senior Attorney
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

2. Communication from the Department to Volunteer shall be sent to:

Development Downtown, Inc.,
617 Main Street
Buffalo, New York 14203

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other.

XII. Termination of Agreement

A. 1. Volunteer may elect in writing to terminate this Agreement without cause while the Department may only elect to terminate this Agreement for cause, which shall be established so long as the Department's stated reason is not arbitrary and capricious. The Department shall include in its notice of termination the basis for its election to terminate this Agreement.

2. In the event of either party's election to terminate this Agreement, this Agreement shall terminate effective the 5th Day after the non-terminating party's receipt of the written notification terminating this Agreement, except that such termination shall not affect the provisions contained in Paragraphs IV, VI and VIII and in Subparagraph XIV.L, nor Volunteer's obligation to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any activities were commenced under this Agreement, which provisions and obligation shall survive the termination of this Agreement.

B. Notwithstanding Subparagraph XII.A, this Agreement shall terminate without notice in the event that the Volunteer fails to submit additional Work Plans in accordance with Subparagraph II.E, unless other Work Plans are under review by the Department or being implemented by the Volunteer.

XIII. Dispute Resolution

Volunteer may commence dispute resolution in writing within 20 Days of Volunteer's receipt of the Department's notice of disapproval of a submittal or proposed Work Plan, disapproval of a final report, or termination of this Agreement pursuant to Subparagraph XIV.A.2. Disputes regarding Work Plan development and revision shall be heard by the Director of the Bureau of Remedial Action, Division of Environmental Remediation, for the region within which the Site is located. All other disputes subject to dispute resolution shall be heard by the Assistant Division Director of the Division of Environmental Remediation. Volunteer shall serve upon the Department a request for dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all supporting documentation upon which Volunteer relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position no later than 20 Days after receipt of Volunteer's Statement of Position. Volunteer shall have the burden of proving that the Department's position should not prevail. A meeting or telephone conference can be scheduled if it will promote a resolution of the issues. A final decision resolving the dispute will be issued in a timely manner. The final decision shall constitute a final agency action and Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR if Volunteer commences such proceeding no later than 30 Days after receipt of a copy of the decision. The invocation of dispute resolution shall not extend, postpone or modify Volunteer's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a court determines otherwise. The Department shall keep an administrative record which shall be available consistent with Article 6 of the Public Officers Law.

XIV. Miscellaneous

A. 1. Volunteer hereby certifies that all information known to Volunteer and all information in the possession or control of Volunteer and its agents which relates in any way to the contamination existing at the Site on the effective date of this Agreement, and to any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site, and to its application for this Agreement, has been fully and accurately disclosed to the Department in conjunction with the Volunteer's application for the Voluntary Cleanup Program.

2. If the information provided and certifications made by Volunteer are not materially accurate and complete, this Agreement, except with respect to the provisions of Paragraphs IV, VI and VIII and Subparagraph XIV.L, at the sole discretion of the Department, shall be null and void *ab initio* 15 Days after the Department's notification of such inaccuracy or incompleteness and the Department shall reserve all rights that it may have, unless, however, Volunteer submits information within that 15 Day time period indicating that the information provided and the certifications made were materially accurate and complete.

B. Each party shall have the right to take samples and to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party. The Department shall make the results of all sampling under this Subparagraph available to Volunteer and Volunteer shall make the results available pursuant to its reporting obligations.

C. Volunteer shall allow the Department to attend and shall notify the Department at least 5 business days in advance of any field activities to be conducted pursuant to this Agreement as well as any prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

D. Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement, except that the Department may exempt Volunteer from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest can not be obtained, then the Department may require that the Volunteer modify the Work Plan pursuant to Subparagraph II.C of this Agreement.

E. Volunteer shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

F. Volunteer shall provide a copy of this Agreement to each contractor and subcontractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site. Further, Volunteer shall require all contracts entered into in order to carry out the obligations identified in this Agreement to be in compliance with the terms of this Agreement.

G. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

H. 1. The terms of this Agreement shall constitute the complete and entire Agreement between the Department and Volunteer concerning the implementation of the work plan(s) attached to this Agreement. No term, condition, understanding or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such

formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "B." Volunteer consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. Except as set forth herein, if Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A and the Commissioner or the Commissioner's designee shall timely respond. This Subparagraph shall not extend to revisions to any Work Plan or to a change in any time frame contained in this Agreement. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement. Changes to a time frame set forth in this Agreement shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing.

I. If there are multiple parties, the term "Volunteer" shall be read in the plural where required to give meaning to this Agreement. Further, the obligations of the Volunteers under this Agreement are joint and several and the "bankruptcy" or inability to continue by any Volunteer shall not affect the obligations of the remaining Volunteer(s) to carry out the obligations under this Agreement.

J. Except as provided in Subparagraph XIV.L, and to the extent authorized under 42 U.S.C. Section 9613 and any other applicable law, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the alleged contamination which is addressed under this Agreement. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provisions of 42 U.S.C. Section 9613(f)(3) shall apply.

K. Volunteer, Volunteer's grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement.

L. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, grantees, successors, and assigns hereby waive any right to pursue reimbursement of monies expended by Volunteer prior to the Termination Date as against the State or the Spill Fund, and agree to indemnify and hold harmless the Spill Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

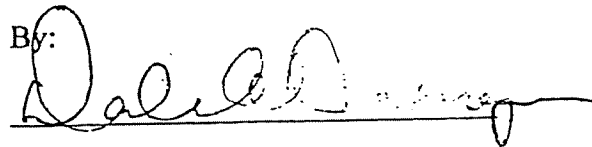
M. The effective date of this Agreement shall be the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

Jan -6 2003

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

By:



Dale A. Desnoyers
Acting Director
Division of Environmental Remediation

| | | | |
|------------------------------|--------------|-------------|--------------|
| NATURE SAVER™ FAX MEMO 01616 | | Date 11.6.3 | # of pages 2 |
| To Peter C. | From Hoffman | | |
| Co./Dept. | Co. | | |
| Phone # | Phone # | | |
| Fax # | Fax # | | |

CONSENT BY VOLUNTEER

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

Development Downtown, Inc.

J.A. By: David A. Stebbins

Title: INTERIM PRESIDENT

Date: 12-13-02

STATE OF NEW YORK)
COUNTY OF Eric) ss:

On the 13 day of Dec, in the year 2002, before me, the undersigned, personally appeared DAVID A. STEBBINS, 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.

John W. Hoff
Signature and Office of individual
taking acknowledgment

JOHN W. HOFF, ATTORNEY
New York State
My Comm. Expires 2006

EXHIBIT "A"

Map and Legal Description of Site

PROPOSED DESCRIPTION
FOR PARCEL NO. 1
UNION SHIP CANAL REDEVELOPMENT PROJECT

All that piece or parcel of property designated as Parcel No. 1, situate in Lot No. 18, in the Ogden Gore Tract, Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York bounded and described as follows:

PARCEL NO. 1

Commencing at a point on the easterly boundary of existing Commerce Street as delineated on Parcel No. 360 of Map No. 327 and acquired by The People of The State of New York for the former construction of Fuhrmann Boulevard – Hamburg Turnpike by Liber 10082 of Deeds at Page 121, at its intersection with the southerly boundary of the City Of Buffalo, also being the northerly right of way line of the South Buffalo Railway Company; thence easterly forming an angle in the northeast quadrant of $107^{\circ} 13' 58''$ and along the southerly boundary of the City of Buffalo and the northerly right of way line of the South Buffalo Railway Company a distance of 640.00 feet to the Point of Beginning; thence through the property of the City of Buffalo the following six (6) courses and distances: (1) northerly at an interior angle of $90^{\circ} 00' 00''$ a distance of 287.18 feet to a point; thence (2) northeasterly at an interior angle of $111^{\circ} 14' 43''$ a distance of 1,504.53 feet to a point; thence (3) northerly at an exterior angle of $125^{\circ} 42' 10''$ a distance of 610.16 feet to a point; thence (4) easterly at an interior angle of $90^{\circ} 00' 00''$ a distance of 550.00 feet to a point; thence (5) southeasterly at an interior angle of $157^{\circ} 08' 12''$ a distance of 340.00 feet to a point; thence (6) southerly at an interior angle of $154^{\circ} 01' 12''$ a distance of 436.60 feet to a point on the northwesterly right of way line of the South Buffalo Railway Company at a distance of 79.0 feet northwesterly of, measured at right angles to, the center line of said Railway Company's right of way; thence along the said Railway Company's right of way the following five (5) courses and distances: (1) southwesterly at an interior angle of $105^{\circ} 33' 24''$ a distance of 250.02 feet to a point of curvature; thence continuing southwesterly on a curve to the right, having a radius of 1,831.08 feet, an arc distance of 447.42 feet to the point of tangency; thence southerly along a line radial to the last mentioned curve a distance of 35.00 feet to a point of curvature; thence southwesterly and westerly on a curve to the right, having a radius of 1,866.08 feet, an arc distance of 920.62 feet to the point of tangency; thence southerly along a line radial to the last mentioned curve a distance 11.00 feet to a point on the said southerly boundary of the City of Buffalo, also being the northerly right of way line of the South Buffalo Railway Company; thence westerly along the southerly boundary of the city Of Buffalo and the northerly right of way line of the South Buffalo Railway Company a distance of 1,139.11 feet to the point of beginning, being 42.542 acres of land more or less.

Subject to the rights of others as granted by The Hanna Furnace Corporation to Shenango Incorporated by virtue of Liber 8636 of Deeds at Page 586 for a 20.00-foot wide sanitary sewer easement.

EXHIBIT "B"

Department-Approved Work Plan(s)

**REMEDIAL ACTION WORK PLAN
HANNA FURNACE SITE**

THE FORMER RAILROAD YARD AREA (SUBPARCEL 1)

**DEVELOPMENT DOWNTOWN, INC.
BUFFALO, NEW YORK**

FEBRUARY 2002

MALCOLM PIRNIE, INC.

**P. O. Box 1938
Buffalo, New York 14219**

EXHIBIT "C"

Release and Covenant Not to Sue

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Cleanup Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Development Downtown, Inc. ("Volunteer"), Index No. B9-0568-99-12(A)(the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan(s) relative to the Site (or subparcel of the Site), located at _____ has been successfully implemented.

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law, the Navigation Law or the State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against Volunteer and Volunteer's lessees and sublessees, grantees, successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, and for natural resource damages, based upon the release or threatened release of Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate deed restrictions remain recorded in accordance with Paragraph X of the Agreement, and (c) Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Work Plan providing for OM&M. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum;
- due to environmental conditions or information related to the Site which were unknown at the time this Release and Covenant not to Sue was issued and which indicate that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- due to fraud committed by Volunteer in entering into or implementing this Agreement.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer nor to any of Volunteer's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined

at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or cause or allow the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Volunteer's lessees, sublessees, successors, or assigns who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of this release, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this letter shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this letter and in the Agreement, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it deems necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement under the terms of the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION AND TRUSTEE OF NEW YORK STATE'S
NATURAL RESOURCES

By: _____

Date: _____

Appendix "A"

(to Exhibit "C")

Map of the Site

Exhibit "D"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 200__ by _____ regarding a parcel of real property located at _____ bearing Tax Map Number _____ (the "Property"); and

WHEREAS, _____ ("Volunteer"), entered into an agreement with the Department of Environmental Conservation, Index # _____ (the "Agreement"), concerning contamination which is or may be present on the Property, which Agreement was executed on behalf of the Department on _____; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Volunteer and its lessees and sublessees, grantees, successors, and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Volunteer agreed to cause the filing of a notice of the Agreement with the _____ County Clerk in accordance with Paragraph IX of the Agreement to give all parties who may acquire any interest in the Property notice of the Agreement.

NOW, THEREFORE, Volunteer, for itself and for its successors and assigns, declares that:

1. This Notice of Agreement is hereby given to all parties who may acquire any interest in the Property; and
2. This Notice shall terminate upon the filing of a Notice of Termination of this Agreement after having first received approval to do so from the New York State Department of Environmental Conservation or having terminated the Agreement pursuant to its Paragraph XII.

IN WITNESS WHEREOF, Volunteer has executed this Notice of Agreement by its duly authorized representative.

Dated:

By: _____

STATE OF NEW YORK

)

) ss:

COUNTY OF

)

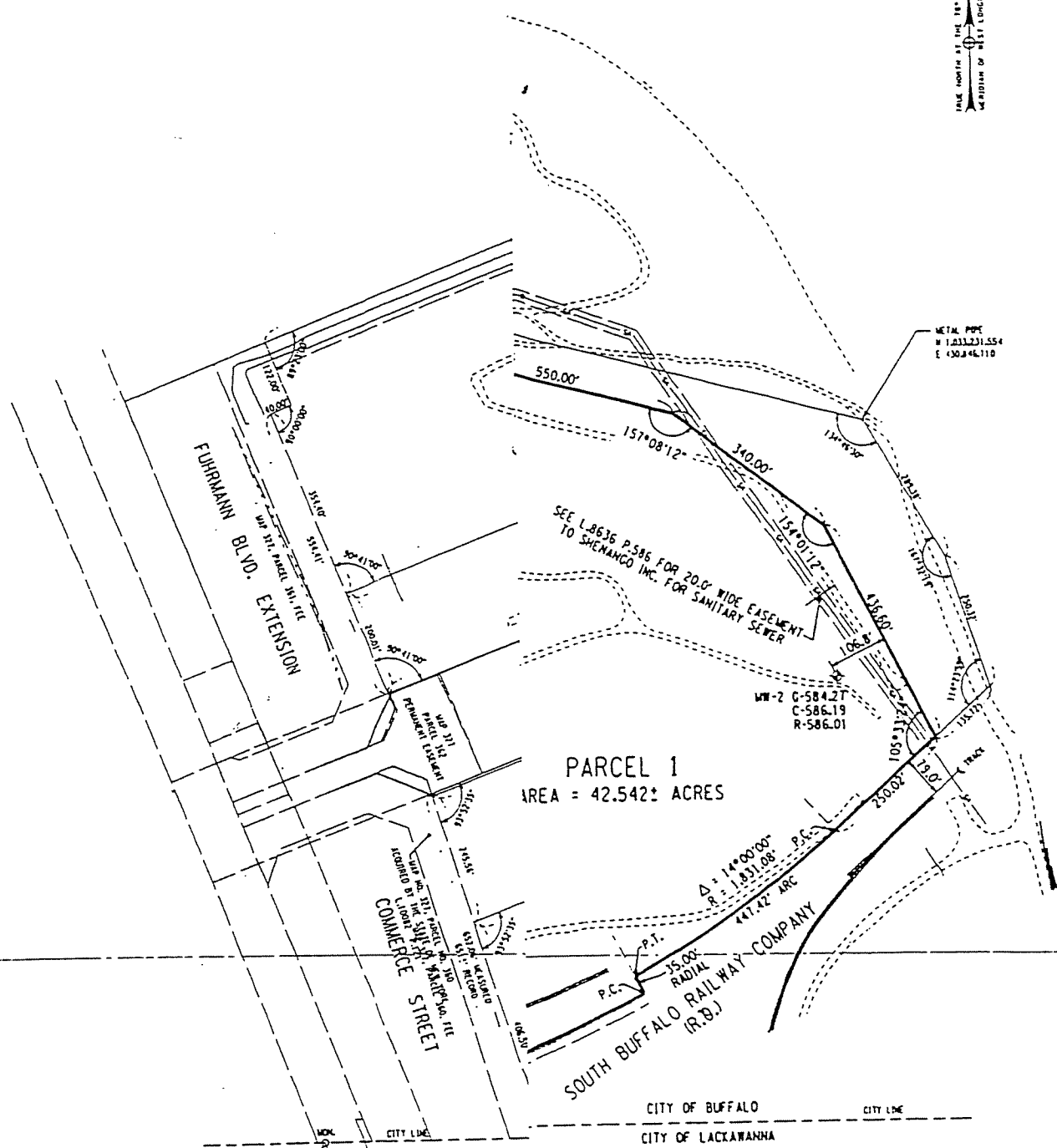
On the _____ day of _____, in the year 200__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed 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

Appendix "A"

(to Exhibit "D").

Map of the Property



ALIMENT EASEMENT
ALD SLAC CO. INC.
DRAINAGE

- NOTES:
1. MAP COMPILED FROM VARIOUS SURVEYS AND RECORD DOCUMENTS.
 2. SEE L.7459 P.119 FOR RIGHT OF WAY TO BROCKLEY GAS CORPORATION.

| REVISIONS | | | |
|--|---|------------|-------------|
| NO. | DESCRIPTION | DATE | BY |
| 1 | ADDED OFFSETS TO MW - PARCEL NOW ADDED TITLE DATA | 3/02 | FJC |
| <p>PARCEL LOCATION MAP</p> <p>SOUTH BUFFALO REDEVELOPMENT PROJECT</p> <p>PARSONS TRANSPORTATION GROUP DESIGNERS • ENGINEERS • ARCHITECTS 200 W. WYOMING ST. • PITTSBURGH, PA 15222-3000</p> | | | |
| FILE NAME | SCALE | DATE | DRAWING NO. |
| DDP001.DWG | AS SHOWN | JUNE, 2001 | P-1 |

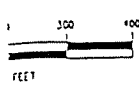


Exhibit "E"

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT, made the ___ day of _____ 200 __, by _____ a [natural person residing at _____ /partnership organized and existing under the laws of the State of _____ / corporation organized and existing under the laws of the State of _____]and having an office for the transaction of business at _____:

WHEREAS, _____ is the subject of a Voluntary Agreement executed by _____ as part of the New York State Department of Environmental Conservation's (the "Department's") Voluntary Cleanup Program, namely that parcel of real property located on _____ in the _____ of _____, County of _____, State of New York, which is part of lands conveyed by _____ to _____ by deed dated _____ and recorded in the _____ County Clerk's Office on _____ in Book _____ of Deeds at Page _____ and being more particularly described in Appendix "A," attached to this declaration and made a part hereof, and hereinafter referred to as "the Property"; and

WHEREAS, the Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property and such remedy requires that the Property be subject to restrictive covenants.

NOW, THEREFORE, _____, for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions, is as shown on a map attached to this declaration as Appendix "B" and made a part hereof, and consists of [insert metes and bounds description]

Second, unless prior written approval by the New York State Department of Environmental Conservation or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property, which threatens the integrity of the soil cap, or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall maintain the cap covering the Property by maintaining its grass cover or, after obtaining the written approval of the Relevant Agency, by capping the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for restricted industrial use and/or restricted commercial use which excludes use for day care, child care and medical care without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

Sixth, the owner of the Property shall continue in full force and effect any institutional and engineering controls required under the Agreement and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner, and its successors and assigns, consents to enforcement by the Relevant Agency of the prohibitions and restrictions that Paragraph X of the Agreement requires to be recorded, and hereby covenants not to contest the authority of the Relevant Agency to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

[acknowledgment]

Glossary of Terms

The following terms shall have the following meanings:

"ALJ": Administrative Law Judge.

"Covered Contamination": the concentrations of Existing Contamination remaining on the Site on the date that the Department issues the Release set forth in Exhibit "C."

"ECL": the Environmental Conservation Law.

"Force Majeure Event": an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control.

"Day": a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday or State holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next working day.

"Department": the New York State Department of Environmental Conservation.

"IRM": an interim remedial measure which is a discrete set of activities which can be undertaken without extensive investigation and evaluation to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site.

"NL": the Navigation Law.

"Professional engineer": an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

"Spill Fund": the New York State Environmental Protection and Spill Compensation Fund.

"State Costs": all the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, and administering this Agreement. Approved agency fringe benefit and indirect cost rates will be applied.

"Termination Date": the date upon which (i) the Release (Exhibit "C") is issued or the Department approves the final report relative to the OM&M at the Site, whichever is later; or (ii) the Agreement terminates pursuant to Paragraph XII or Subparagraph XIV.A.2.

"Trustee": the Trustee of New York State's natural resources.

"Work Plan": a Department-approved work plan, as may be modified, pertaining to the Site that Volunteer shall implement and that is attached to this Agreement.

EXHIBIT C

VCP Agreement: Index #: B9-0568-99-12(B)

VC4

(B)

PAGE 2

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of a Voluntary Cleanup Agreement

for: Hanna Furnace Former Production Area (Subparcel 2) by: Development Downtown, Inc.

"Volunteer"

Site #: V00435-9

Index #: B9-0568-99-12(B)

WHEREAS, the Department is responsible for the enforcement of the ECL and the NL and such laws provide the Department authority to enter into this Agreement;

WHEREAS, the Department has established a Voluntary Cleanup Program to address the environmental, legal, and financial barriers that hinder the redevelopment and reuse of contaminated properties;

WHEREAS, this Voluntary Cleanup Agreement is the product of a pilot project entitled, "ReBuild Now-NY" in which an effort was undertaken by the New York State Department of Economic Development, in partnership with the New York State Department of Environmental Conservation and the Governor's Office of Regulatory Reform to reduce uncertainties associated with properties exhibiting indications of environmental contamination and to characterize the level of risk involved in developing such properties with the goal of promoting and enhancing the development of brownfield properties suitable for the location of new businesses or the expansion of existing businesses.

WHEREAS, Volunteer represents, and the Department relied upon such representations in entering into this Agreement, that Volunteer's involvement with the Site is limited to the following: Volunteer is a not-for-profit corporation which anticipates acquiring title to the Site but does not presently hold title, has not previously owned or operated the site and is not otherwise responsible under law to remediate the existing contamination;

WHEREAS, the parties are entering into this Agreement in order to set forth a process through which the Department will approve and the Volunteer will implement activities designed to address in whole or in part environmental contamination at the Site; and

WHEREAS, the Department has determined that it is in the public interest to enter into this Agreement as a means to address environmental issues at the Site with private funds while ensuring the protection of human health and the environment;

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

I. Site Specific Definitions

RECEIVED

MAR 29 2004

MALCOLM PIRNIE

BUFFALO

DATE:

For purposes of this Agreement, the terms set forth in the Glossary attached to, and made a part of, this Agreement shall have the meanings ascribed to them in that Glossary. In addition, for purposes of this Agreement, the following terms shall have the following meanings:

A. "Contemplated Use": restricted industrial use/restricted commercial use excluding use for day care, child care and medical care.

B. "Existing Contamination": includes contaminants associated with former iron-making operations at the site including metals (e.g., chromium and lead), petroleum hydrocarbons and polycyclic aromatic hydrocarbons (PAHs, e.g., benzo(a)anthracene, benzo(k)fluoranthene, and chrysene). Studies have also found areas of site groundwater with high pH levels and low levels of polychlorinated biphenyls (PCBs) in soils. Existing contamination is further described in a site investigation report prepared by O'Brien & Gere Engineers, Inc. (November 2002).

The term also includes contamination identified during the implementation of this Agreement, the nature and extent of which were unknown or insufficiently characterized as of the effective date of this Agreement, but which shall have been fully characterized and addressed to the Department's satisfaction.

C. "Site": that parcel of real property known as Hanna Furnace Former Production Area (Subparcel 2) which is an approximately 28.97 acre parcel located on the former Hanna Furnace Corporation property and which is more particularly outlined in Exhibit "A". Exhibit "A" of this Agreement includes a parcel location map and a legal description of the Site. For purposes of Subparagraph II.H the term "Site" shall be construed to mean (i) the entire Site or (ii) a subparcel of the Site.

D. "Volunteer": Development Downtown, Inc. (DDI) is a not-for-profit corporation concerned with local development located at 617 Main Street, Buffalo, New York. For the sole purpose of the Voluntary Cleanup Program, the Volunteer is considered a Non-PRP Volunteer.

II. Development, Performance and Reporting of Work Plans

A. Work Plan Labels

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be captioned as follows:

1. "Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination at the Site;
2. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;
3. "Remedial Action Work Plan" if the Work Plan provides for the Site's remediation to cleanup levels sufficient to allow for the Contemplated Use of the Site; or

4. "OM&M Work Plan" if the Work Plan provides for post-remedial construction operation, maintenance, and/or monitoring.

B. Submission/Implementation of Work Plans

1. A Department-approved Remedial Action Work Plan, "Remedial Action Work Plan, Hanna Furnace Site: Subparcel 2, Buffalo, New York" November 2002, is attached to and incorporated into this Agreement in Exhibit "B"; Hereafter, the Volunteer can submit such other and additional work plans it deems appropriate.

2. A proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. A Professional Engineer must prepare, sign, and seal all Work Plans other than an Investigation Work Plan. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Agreement and shall be implemented in accordance with the schedule contained therein. If the Department disapproves a Work Plan, the reasons for such disapproval shall be provided in writing. In the event the Department disapproves a Work Plan, within twenty (20) Days after receiving written notice of such disapproval, Volunteer shall elect in writing to: (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Subparagraph XII.A.

3. During all field activities, Volunteer shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Volunteer to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and which shall be enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Volunteer invokes dispute resolution pursuant to Paragraph XIII, either party may terminate this Agreement pursuant to Subparagraph XII.A.

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report which includes the caption of that Work Plan on the cover page. The final report pertaining to that Work Plan's implementation shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of

the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the final report for an Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan, and all other Work Plan final reports must contain such certification made by a Professional Engineer with primary responsibility for the day to day performance of the activities under this Agreement that all such activities were performed in full accordance with the Department approved Work Plan.

2. An OM&M Work Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Action Work Plan.

E. Review of Submittals other than Work Plans

1. The Department shall timely notify Volunteer in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this subparagraph, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the submittal. Within twenty (20) Days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall elect in writing to either (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Subparagraph XII.A. If Volunteer submits a revised submittal and it is disapproved, the Department and Volunteer may pursue whatever remedies may be available under this Agreement or under law.

3. Within sixty (60) Days of the Department's approval of a final report, Volunteer shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Volunteer, result in the termination of this Agreement pursuant to Subparagraph XII.B.

4. All approved final reports shall be submitted to the Department in an electronic format acceptable to the Department within thirty (30) Days of approval of such final report. If any document cannot be converted into electronic format, Volunteer shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

F. Department's Determination of Need for Remediation

Volunteer will remediate the Site in accordance with the Department-approved Remedial Action Work Plan, "Remedial Action Work Plan, Hanna Furnace Site: Subparcel 2, Buffalo, New York" November, 2002". In addition, the Department will determine upon its approval of each final report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed to allow the Site to be used for the Contemplated Use.

1. The Department shall timely notify Volunteer if it determines that remediation, or additional remediation, is not needed to allow the Site to be used for the Contemplated Use. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Volunteer shall cause to be filed a Declaration of Covenants and Restrictions in accordance with Paragraph X within sixty (60) Days of receipt of the Department's determination. Upon receipt of a copy of such instrument, the Department will provide Volunteer with the Release described in Subparagraph II.H.

2. If the Department determines that additional remediation, is needed to allow the Site to be used for the Contemplated Use, Volunteer may elect to submit for review and approval a proposed Work Plan (or a revision to an existing Remedial Action Work Plan for the Site) which addresses the remediation of Existing Contamination. Such proposed Work Plan shall include, among other requirements, an evaluation of the proposed remedy considering the factors set forth in 6 NYCRR 375-1.10(c)(1) through (c)(6), excluding consideration of cost-effectiveness. At a minimum, the remedial activities contemplated by the proposed Work Plan must eliminate or mitigate all significant threats to the public health and/or the environment and must result in the Site being protective of public health and the environment for the Contemplated Use. The Department will notice a proposed Work Plan addressing the Site's remediation for public comment in accordance with Subparagraph II.G of this Agreement. If Volunteer elects not to develop a Work Plan under this Subparagraph or either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XII.A

G. Notice of Proposed Work Plan for the Site's Remediation

Whenever a Work Plan for the Site's remediation (other than an IRM Work Plan) is proposed, the Department will timely publish a notice in the Environmental Notice Bulletin to inform the public of the opportunity to submit comments on the proposed Work Plan within thirty (30) Days after the date of the issue in which the notice appears. The Department shall timely mail an equivalent notice to the City of Buffalo and County of Erie. The Department shall timely notify Volunteer following the close of the public comment period whether the proposed Work Plan needs to be revised. If the Department determines that revisions are necessary for Site conditions to be protective of the public health or the environment based upon the Contemplated Use, Volunteer agrees to negotiate revisions to the proposed Work Plan in accordance with Paragraph II.C. If either party concludes that such revisions cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XII. If the Department determines that no revisions are required, then the Work Plan shall be attached

hereto as Exhibit "B." The "Remedial Action Work Plan, Hanna Furnace Site: Subparcel 2, Buffalo, New York" November, 2002, shall be subject to public comment as described in this Paragraph.

H. Release and Covenant Not to Sue

Upon the Department's determination that (i) Volunteer is in compliance with the Agreement; (ii) no requirements other than those remedial actions, exclusive of OM&M activities, already conducted at the Site, if any, are necessary to assure that Site conditions are protective of the public health and the environment based upon the Contemplated Use; and (iii) Volunteer has complied, if required, with Paragraph X, the Department shall timely provide Volunteer with the Release and Covenant Not to Sue attached hereto as Exhibit "C," subject to the terms and conditions stated therein.

I. Submission of Annual Reports, if required

In the event that the remedy for the Site, if any, or any Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Volunteer shall cause the filing of an annual report by the 1st Day of the month following the anniversary of the start of the OM&M. Volunteer shall file such annual report until the Department determines that the Site can be closed out and so notifies Volunteer in writing. Such annual report shall be signed by a Professional Engineer and shall contain a certification that any institutional and engineering controls put in place pursuant to this Agreement are still in place, have not been materially altered, and are still effective in achieving their objectives. Volunteer shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Volunteer shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the annual report required by this Subparagraph as well as in any progress reports required by Paragraph III. Volunteer can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer stating that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

III. Progress Reports

Volunteer shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XI.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum,

include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Volunteer in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays, and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

IV. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Volunteer shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) Working Days of when it obtains knowledge of any such event. Volunteer shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

V. Entry upon Site

A. Volunteer hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the matters addressed in a Department-approved Work Plan, and by any agent, consultant, contractor or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for (i) inspecting, sampling, and copying records related to the contamination at the Site; (ii) implementing the activities under this Agreement; and (iii) testing and any other activities necessary to ensure Volunteer's compliance with this Agreement. Upon request, Volunteer shall (i) provide the Department with suitable office space at the Site, including access to a telephone, to the extent available; and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Agreement. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Volunteer shall have the right to obtain samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of all sampling and scientific measurements taken under this Subparagraph available to Volunteer.

VI. Payment of State Costs

A. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for State Costs for negotiating this Agreement, and all costs associated with this Agreement, through and including the Termination Date. The costs payable pursuant to this Paragraph shall be those incurred by the State commencing on the effective date of this Agreement.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Such invoice shall be sent to Volunteer at the following address:

Peter Cammarata
Development Downtown, Inc.
617 Main Street
Buffalo, New York 14203

D. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to: Bureau of Program Management, Division of Environmental Remediation, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7012.

E. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

F. Volunteer may contest, in writing, invoiced costs under Subparagraph VI.A if it believes (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities reimbursable under this Agreement; or (iii) the Department is not otherwise legally entitled to such costs. If Volunteer objects to an invoiced cost, Volunteer shall pay all costs not objected to within the time frame set forth in Subparagraph VI.A and shall, within thirty (30) Days of receipt of an invoice, identify in writing all costs objected to and identify the basis of the objection. This objection shall be filed with the BPM Director. The BPM Director or the BPM Director's designee shall have the authority to relieve Volunteer of the obligation to pay invalid costs. Within forty-five (45) Days of the Department's determination of the objection, Volunteer shall pay to the Department the amount which the BPM Director or the BPM Director's designee determines Volunteer is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

G. In the event any instrument for the payment of any money due under this Agreement fails of collection, such failure of collection shall constitute a violation of this

Agreement, provided (i) the Department gives Volunteer written notice of such failure of collection, and (ii) the Department does not receive from Volunteer a certified check or bank check within fourteen (14) Days after the date of the Department's written notification.

VII. Reservation of Rights

A. 1. Except as provided in the Release and Covenant Not to Sue (Exhibit "C") after its issuance and except as provided in Subparagraph VII.A.2, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or the Trustee's rights or authorities, including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Volunteer.

2. Except for the Department's right to take any investigatory or remedial action deemed necessary as a result of a significant threat resulting from the Existing Contamination or to exercise summary abatement powers, the Department shall not take any enforcement action under ECL Article 27, Title 13, under CERCLA, under the NL, or under comparable statutory or common law theories of remedial liability with respect to the Existing Contamination, to the extent that such contamination is being addressed under the Agreement, against Volunteer or Volunteer's grantees, successors, or assigns during the implementation of this Agreement, provided such party is in compliance with the terms and provisions of this Agreement, including, without limitation, the requirements of all Work Plans and amendments thereto.

B. Except as otherwise provided in this Agreement, Volunteer specifically reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any actions, proceedings, allegations, assertions, determination, or order of the Department, including any assertion of remedial liability by the Department against Volunteer, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Volunteer's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

C. Except as provided in Subparagraph XIV.O, Volunteer reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers, for past or future response and/or cleanup costs or such other costs or damages arising from contamination at the Site as provided under applicable law.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted

fulfillment of this Agreement by Volunteer prior to the Termination Date except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) from willful, wanton, or malicious acts or omissions, or acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall provide Volunteer with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Agreement, Volunteer shall cause to be filed a Department-approved Notice of Agreement, which Notice shall be substantially similar to the Notice of Agreement attached to this Agreement as Exhibit "D," with the County Clerk in the county in which the Site is located (or the City Register if the Site is located in Manhattan, Bronx, Kings or Queens County) to give all parties who may acquire any interest in the Site notice of this Agreement. Within thirty (30) Days of such filing (or such longer period of time as may be required to obtain a certified copy provided Volunteer advises the Department of the status of its efforts to obtain same within thirty (30) Days), Volunteer shall provide the Department with a copy of such instrument certified by such County Clerk (or the City Register) to be a true and faithful copy. Volunteer may terminate such Notice on or after the Termination Date of this Agreement.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, or becomes aware of such conveyance, Volunteer shall, not fewer than forty-five (45) Days before the date of conveyance or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Volunteer to secure the repayment of money or the performance of a duty or obligation.

X. Declaration of Covenants and Restrictions

A. Within thirty (30) Days after the Department's approval of a Work Plan which relies upon one or more institutional controls, or within thirty (30) Days after the Department's determination pursuant to Subparagraph II.F.1 that additional remediation is not needed based upon use restrictions, Volunteer shall submit to the Department for approval a Declaration of Covenants and Restrictions to run with the land which provides for covenants and restrictions consistent with the Work Plan. The submittal shall be substantially similar to Exhibit "E." Volunteer shall cause such instrument to be recorded with the County Clerk (or the City Register) in the county in which the Site is located within thirty (30) Days after the Department's approval of such instrument. Volunteer shall provide the Department with a copy of such instrument certified by the County Clerk (or the City Register) to be a true and faithful copy within thirty (30) Days of such recording (or such longer period of time as may be required to obtain a certified copy provided Volunteer advises the Department of the status of its efforts to obtain same within such 30 Day period).

B. Volunteer or the owner of the Site may petition the Department to modify or terminate the Declaration of Covenants and Restrictions filed pursuant to this Paragraph at such time as it can certify that the Site is protective of human health and the environment for residential uses without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer. The Department will not unreasonably withhold its consent.

XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

James Malcolm
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7017
Note: four copies (one unbound) of work plans are required to be sent.

Andrew English
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7017

Peter Buechi
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, New York 14203

Maura C. Desmond
New York State Department of Environmental Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Note: two copies of work plans are required to be sent, and

2. Communication from the Department to Volunteer shall be sent to:

Development Downtown, Inc.
617 Main Street
Buffalo, New York 14203

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses listed in this Paragraph XI or in Paragraph VI.

XII. Termination of Agreement

A. 1. Volunteer may elect in writing to terminate this Agreement without cause while the Department may only elect to terminate this Agreement for cause, which shall be established so long as the Department's stated reason is not arbitrary and capricious. The Department shall include in its notice of termination the basis for its election to terminate this Agreement.

2. In the event of either party's election to terminate this Agreement, this Agreement shall terminate effective the 5th Day after the non-terminating party's receipt of the written notification terminating this Agreement, except that such termination shall not affect the provisions contained in Paragraphs IV, VI and VIII and in Subparagraph XIV.O, nor Volunteer's obligation to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any activities were commenced under this Agreement, which provisions and obligation shall survive the termination of this Agreement.

B. Notwithstanding Subparagraph XII.A, this Agreement shall terminate without notice in the event that Volunteer fails to submit additional Work Plans in accordance with Subparagraph II.E, unless other Work Plans are under review by the Department or being implemented by Volunteer.

XIII. Dispute Resolution

A. If Volunteer disagrees with the Department's notice of disapproval of a submittal or a proposed Work Plan, disapproval of a final report, nullification of this Agreement pursuant to Subparagraph XIV.A.2, or rejection of Volunteer's assertion of a Force Majeure Event, Volunteer may, within thirty (30) Days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Volunteer to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Volunteer shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIII.B. The period for informal negotiations shall not exceed thirty (30) Days

from Volunteer's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Volunteer notifies the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XIII.B.

B. 1. Volunteer shall file with the "OH&M" a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Volunteer relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director and to the parties listed under Subparagraph XI.A.1.

2. The Department shall serve its Statement of Position no later than twenty (20) Days after receipt of Volunteer's Statement of Position.

3. Volunteer shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Volunteer notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Volunteer shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within forty-five (45) Days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the forty-five (45) Day period provided. In the event that Volunteer seeks judicial review, Volunteer shall be in violation of this Agreement if it fails to comply with the final Court Order or settlement within thirty (30) Days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Volunteer's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph XIII shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Volunteer regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph XIII which shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph XIII shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or Section 375-2.1.

XIV. Miscellaneous

A. 1. Volunteer hereby certifies that all information known to Volunteer and all information in the possession or control of Volunteer and its agents which relates in any way to the contamination existing at the Site on the effective date of this Agreement, and to any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site, and to its application for this Agreement, has been fully and accurately disclosed to the Department in conjunction with the Volunteer's application for the Voluntary Cleanup Program.

2. If the information provided and certifications made by Volunteer are not materially accurate and complete, this Agreement, except with respect to the provisions of Paragraphs IV, VI and VIII and Subparagraph XIV.O, at the sole discretion of the Department, shall be null and void *ab initio* fifteen (15) Days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) Days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, and the Department shall reserve all rights that it may have, unless, however, Volunteer submits information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete.

B. Volunteer shall allow the Department to attend, and shall notify the Department at least seven (7) Working Days in advance of, any field activities to be conducted pursuant to this Agreement, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; nothing in this Agreement shall be construed to require Volunteer to allow the Department to attend portions of meetings where privileged matters are discussed.

C. Volunteer shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Volunteer's obligations under this Agreement, except that the Department may exempt Volunteer from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If, despite Volunteer's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained within forty-five (45) Days after the effective date of this Agreement or within forty-five (45) Days after the date the Department notifies Volunteer in writing that additional access beyond that previously secured is necessary, Volunteer shall promptly notify the Department, and shall include in that notification a summary of the steps Volunteer has taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Volunteer in obtaining access. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Volunteer to modify the Work Plan pursuant to Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

D. Volunteer shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

E. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and shall condition all contracts entered into to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or its contractor(s) shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

F. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

G. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Volunteer concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "B." Volunteer consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Volunteer desires that any provision of this Agreement be changed, other than a provision of a Work Plan or a time frame, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement.

iii. Changes to a time frame set forth in this Agreement shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing. The Department's decision relative to a request for a time frame change shall be subject to dispute resolution pursuant to Paragraph XIII.

H. 1. If there are multiple parties signing this Agreement, the term "Volunteer" shall be read in the plural where required to give meaning to this Agreement. Further, the obligations of Volunteers under this Agreement are joint and several and the insolvency of or failure by any Volunteer to implement any obligations under this Agreement shall not affect the obligations of the remaining Volunteer(s) to carry out the obligations under this Agreement.

2. If Volunteer is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Agreement and to pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency or other failure of any one or more of the general partners to implement the requirements of this Agreement, the remaining general partners shall complete all such requirements.

3. Notwithstanding the foregoing Subparagraphs XIV.H.1 and 2, if multiple parties sign this Agreement as Volunteers but not all of the signing parties elect, pursuant to Subparagraph II.F.2, to implement a Work Plan, then all Volunteers are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Volunteers electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Volunteers electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue as provided under Subparagraph II.H.

I. Except as provided in Subparagraph XIV.O, and to the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law Section 15-108, and any other applicable law, Volunteer shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2) for "matters addressed" pursuant to and in accordance with this Agreement. "Matters addressed" in this Agreement shall mean all response actions taken to implement this Agreement for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Agreement, which costs have been paid by Volunteer, including reimbursement of State Costs pursuant to this Agreement.

J. Volunteer, Volunteer's grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement.

K. All activities undertaken by Volunteer pursuant to this Agreement shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations, and guidance documents.

L. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Agreement or in the attached Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

M. Volunteer's obligations under this Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

N. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

O. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, grantees, successors, and assigns hereby waive any right to pursue reimbursement of monies expended by Volunteer prior to the Termination Date as against the State or the Spill Fund, and agree to indemnify and hold harmless the Spill Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

P. The effective date of this Agreement is the 10th Day after the date it is signed by the Commissioner or the Commissioner's designee.

DATED: JAN - 2 2003

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

By:


Dale Desnoyers

Acting Director

Division of Environmental Remediation

CONSENT BY VOLUNTEER

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

Development Downtown, Inc.

J.H. By: David A. Stabbin

Title: INTERIM PRESIDENT

Date: DEC 13, 2002

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 13 day of DEC, in the year 2002, before me, the undersigned, personally appeared DAVID A. STABBIN, 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.

John V. Haffner
Signature and Office of individual
taking acknowledgment

JOHN V. HAFFNER
Notary Public for the State of New York
My Comm. Exp. 12/31/2006

EXHIBIT "A"


Map and Legal Description of Site

TRUE NORTH AT THE 78° 33' 00"



| REVISIONS | | | |
|-----------|---------|------------------------------------|--------|
| REV. | DATE | DESCRIPTION | BY |
| 1 | 9-28-01 | ADDED TITLE AND RECORD SERVER DATA | F.J.G. |

PARCEL LOCATION MAP
SOUTH BUFFALO REDEVELOPMENT PROJECT



PARSONS
TRANSPORTATION GROUP

MEMBERS • ENGINEERS • LANDSCAPE ARCHITECTS

DE. LEUNG, CATHY • STEINHAUS • BARTON ARCHITECT

SCHEDULE A

DESCRIPTION

FOR PARCEL NO. 2

UNION SHIP CANAL REDEVELOPMENT PROJECT

All that piece or parcel of property designated as Parcel No. 2, situate in Lot No. 18, in the Ogden Gore Tract, Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York bounded and described as follows:

PARCEL NO. 2

Beginning at a point on the easterly boundary of existing Commerce Street as delineated on Parcel No. 360 of Map No. 327 and acquired by The People of The State of New York for the former construction of Fuhrmann Boulevard - Hamburg Turnpike by Liber 10082 of Deeds at Page 121, at its intersection with the southerly boundary of the City Of Buffalo, also being the northerly right of way line of the South Buffalo Railway Company; thence northerly forming an interior angle of $107^{\circ} 13' 58''$ and along the easterly boundary of the said Parcel No. 360 of Map No. 327 being the easterly boundary of said existing Commerce Street a distance of 406.50 feet to a point; thence through the property of the City of Buffalo the following two (2) courses and distances: (1) easterly at an interior angle of $93^{\circ} 52' 35''$ and parallel to the southerly boundary of the existing Union Ship Canal a distance of 2,117.70 feet to a point; thence (2) northerly at an interior angle of $270^{\circ} 00' 00''$ and parallel with the easterly boundary of the said canal a distance of 514.92 feet to a point on the southwesterly line of land conveyed to Sherland Incorporation by Liber 10022 of Deeds at Page 218; thence southeasterly at an interior angle of $54^{\circ} 26' 00''$ and along the said southwesterly line of land conveyed by said Liber 10022 of Deeds at Page 218 a distance of 1,447.23 feet to a point on the westerly right of way line of Consolidated Rail Corporation; thence southerly at an interior angle of $134^{\circ} 46' 30''$ and along the westerly right of way line of Consolidated Rail Corporation a distance of 289.38 feet to an angle point; thence continuing southerly at an interior angle of $167^{\circ} 32' 19''$ and along the westerly right of way line of Consolidated Rail Corporation a distance of 250.32 feet to a point on the northwesterly right of way line of Consolidated Rail Corporation; thence southwesterly at an interior angle of $114^{\circ} 23' 59''$ and along the northwesterly right of way line of Consolidated Rail Corporation a distance of 135.72 feet to a point; thence through the property of the City of Buffalo the following six (6) courses and distances: (1) northerly at an exterior angle of $105^{\circ} 33' 24''$ a distance of 436.60 feet to a point; thence (2) northwesterly at an exterior angle of $154^{\circ} 01' 12''$ a distance of 340.00 feet to a point; thence (3) westerly at an exterior angle of $157^{\circ} 08' 12''$ a distance of 550.00 feet to a point; thence (4) southerly at an exterior angle of $90^{\circ} 00' 00''$ a distance of 610.16 feet to a point; thence (5) southwesterly at an interior angle of $125^{\circ} 42' 10''$ a distance of 1,504.53 feet to a point; thence (6) southerly at an exterior angle of $111^{\circ} 14' 43''$ a distance of 287.18 feet to a point on the said southerly boundary of the City of Buffalo, also being the northerly right of way line of the South Buffalo Railway Company; thence westerly along the said southerly boundary of the City of Buffalo and the northerly right of way line of the South Buffalo Railway Company a distance of 640.00 feet to the point of beginning, being 28.971 acres of land more or less.

EXHIBIT "B"

Department-Approved Work Plan(s)

Work Plan

**Remedial Action Work Plan
Hanna Furnace Site: Subparcel 2
Buffalo, New York**

New York State Department of
Environmental Conservation
ReBuild Now - New York

November 2002



O'BRIEN & GERE
ENGINEERS, INC.

EXHIBIT "C"

Release and Covenant Not to Sue

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Cleanup Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and _____ ("Volunteer"), Index No. _____ (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan(s) relative to the Site, located at _____ has been successfully implemented.

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release and covenant not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law, the NL or the State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against Volunteer and Volunteer's lessees and sublessees, grantees, successors, and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, and for natural resource damages, based upon the release or threatened release of Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate deed restrictions remain recorded in accordance with Paragraph X of the Agreement, and (c) Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Work Plan providing for OM&M, if any. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release and covenant not to sue shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum;
- due to environmental conditions or information related to the Site which were unknown at the time this Release and Covenant Not to Sue was issued and which indicate that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction;
or
- due to fraud committed by Volunteer in entering into or implementing this Agreement.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release and covenant not to sue shall not extend to Volunteer nor to any of Volunteer's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or cause or allow the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Volunteer's lessees, sublessees, successors, or assigns who are otherwise responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this letter shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this letter and in Agreement, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it deems necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement under the terms of the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION AND TRUSTEE OF NEW YORK STATE'S
NATURAL RESOURCES

By: _____

Date: _____

Appendix "A"

(to Exhibit "C")

Map of the Site

Exhibit "D"

NOTICE OF AGREEMENT

This Notice is made as of the _____ day of _____, 200__ by _____ regarding a parcel of real property located at _____ bearing Tax Map Number _____ (the "Property"); and

WHEREAS, _____ ("Volunteer"), entered into an agreement with the Department of Environmental Conservation, Index # _____ (the "Agreement"), concerning contamination which is or may be present on the Property, which Agreement was executed on behalf of the Department on _____; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Volunteer and its lessees and sublessees, grantees, successors, and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Volunteer agreed to cause the filing of a notice of the Agreement with the _____ County Clerk in accordance with Paragraph IX of the Agreement to give all parties who may acquire any interest in the Property notice of the Agreement.

NOW, THEREFORE, Volunteer, for itself and for its successors and assigns, declares that:

1. This Notice of Agreement is hereby given to all parties who may acquire any interest in the Property; and
2. This Notice shall terminate upon the filing of a Notice of Termination of this Agreement after having first received approval to do so from the New York State Department of Environmental Conservation or having terminated the Agreement pursuant to its Paragraph XII.

IN WITNESS WHEREOF, Volunteer has executed this Notice of Agreement by its duly authorized representative.

Dated:

By: _____

STATE OF NEW YORK

)

) ss:

COUNTY OF

)

On the _____ day of _____, in the year 200__, 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

Appendix "A"

(to Exhibit "D")

Map of the Property

Exhibit "E"

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT, made the ___ day of _____, 200___, by _____
a [natural person residing at _____/partnership organized and existing under
the laws of the State of _____/ corporation organized and existing under the
laws of the State of _____] and having an office for the transaction of business
at _____:

WHEREAS, _____ is the subject of a Voluntary Agreement
executed by _____ as part of the New York State Department of Environmental
Conservation's (the "Department's") Voluntary Cleanup Program, namely that parcel of real
property located on _____ in the _____ of _____, County of
_____, State of New York, which is part of lands conveyed
by _____ to _____ by deed dated _____ and recorded in the
_____ County Clerk's Office on _____ in Book _____ of Deeds at Page _____
and being more particularly described in Appendix "A," attached to this declaration and made a
part hereof, and hereinafter referred to as "the Property"; and

WHEREAS, the Department approved a remedy to eliminate or mitigate all
significant threats to the environment presented by the contamination disposed at the Property
and such remedy requires that the Property be subject to restrictive covenants.

NOW, THEREFORE, _____, for itself and its successors and/or
assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions, is as
shown on a map attached to this declaration as Appendix "B" and made a part hereof, and
consists of [insert metes and bounds description]

Second, unless prior written approval by the New York State Department of
Environmental Conservation or, if the Department shall no longer exist, any New York State
agency or agencies subsequently created to protect the environment of the State and the health of
the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, there shall
be no construction, use or occupancy of the Property that results in the disturbance or excavation
of the Property, which threatens the integrity of the soil cap, or which results in unacceptable
human exposure to contaminated soils.

Third, the owner of the Property shall maintain the cap covering the Property by
maintaining its grass cover or, after obtaining the written approval of the Relevant Agency, by
capping the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for restricted industrial use/restricted commercial use excluding use for day care, child care and medical care without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

Sixth, the owner of the Property shall continue in full force and effect any institutional and engineering controls required under the Agreement and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner, and its successors and assigns, consents to enforcement by the Relevant Agency of the prohibitions and restrictions that Paragraph X of the Agreement requires to be recorded, and hereby covenants not to contest the authority of the Relevant Agency to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

[acknowledgment]

Glossary of Terms

The following terms shall have the following meanings:

"BPM Director": the Director of the Bureau of Program Management within the Division of Environmental Remediation.

"CERCLA": the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

"Covered Contamination": the concentrations of Existing Contamination remaining on the Site on the date that the Department issues the Release set forth in Exhibit "C."

"CPLR": the Civil Practice Law and Rules, as amended.

"Day": a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday or State holiday. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next working day.

"Department": the New York State Department of Environmental Conservation.

"Director": the Division Director, Division of Environmental Remediation.

"ECL": the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended.

"Force Majeure Event": an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control.

"Interim Remedial Measure" or "IRM": an interim remedial measure which is a discrete set of activities, including removal activities, to address both emergency and non-emergency Site conditions, which can be undertaken without extensive investigation or evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site.

"NL": the Navigation Law, as amended.

"OH&M": the Office of Hearings and Mediation Services.

"OM&M": post-construction operation, maintenance, and monitoring; the last phase of a remedial program, which continues until the remedial action objectives for the Site are met.

"Professional Engineer": an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

"Spill Fund": the New York State Environmental Protection and Spill Compensation Fund as established by Article 12, Part 3 of the NL.

"State Costs": all the State's response expenses related to the Site, including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, overseeing, and administering this Agreement, and any other

response costs as defined under CERCLA. Approved agency fringe benefit and indirect cost rates will be applied.

"Termination Date": the date upon which (i) the Release (Exhibit "C") is issued or the Department approves the final report relative to the OM&M at the Site, whichever is later; or (ii) the Agreement terminates pursuant to Paragraph XII or is nullified pursuant to Subparagraph XIV.A.2.

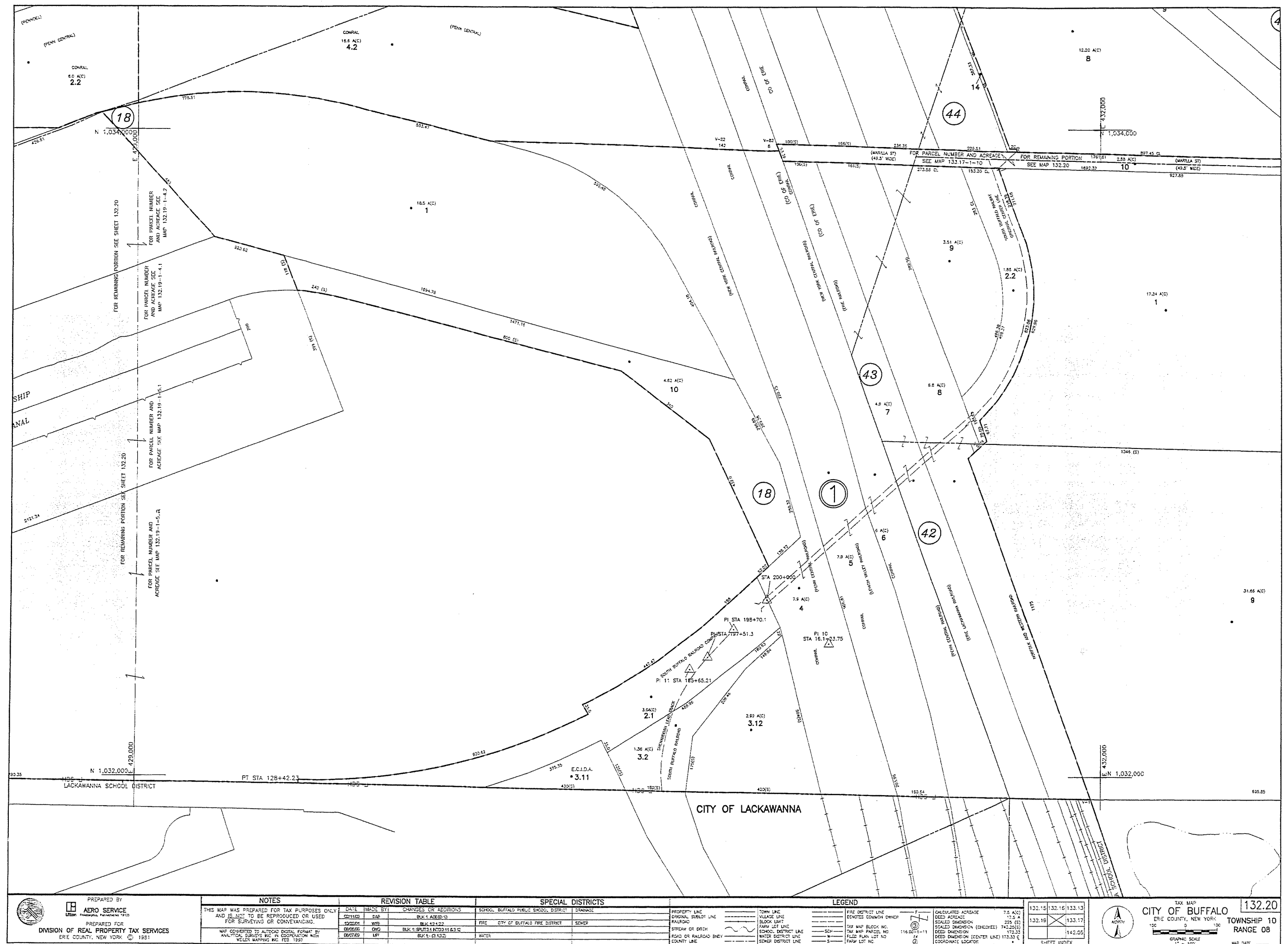
"Trustee": the Trustee of New York State's natural resources.

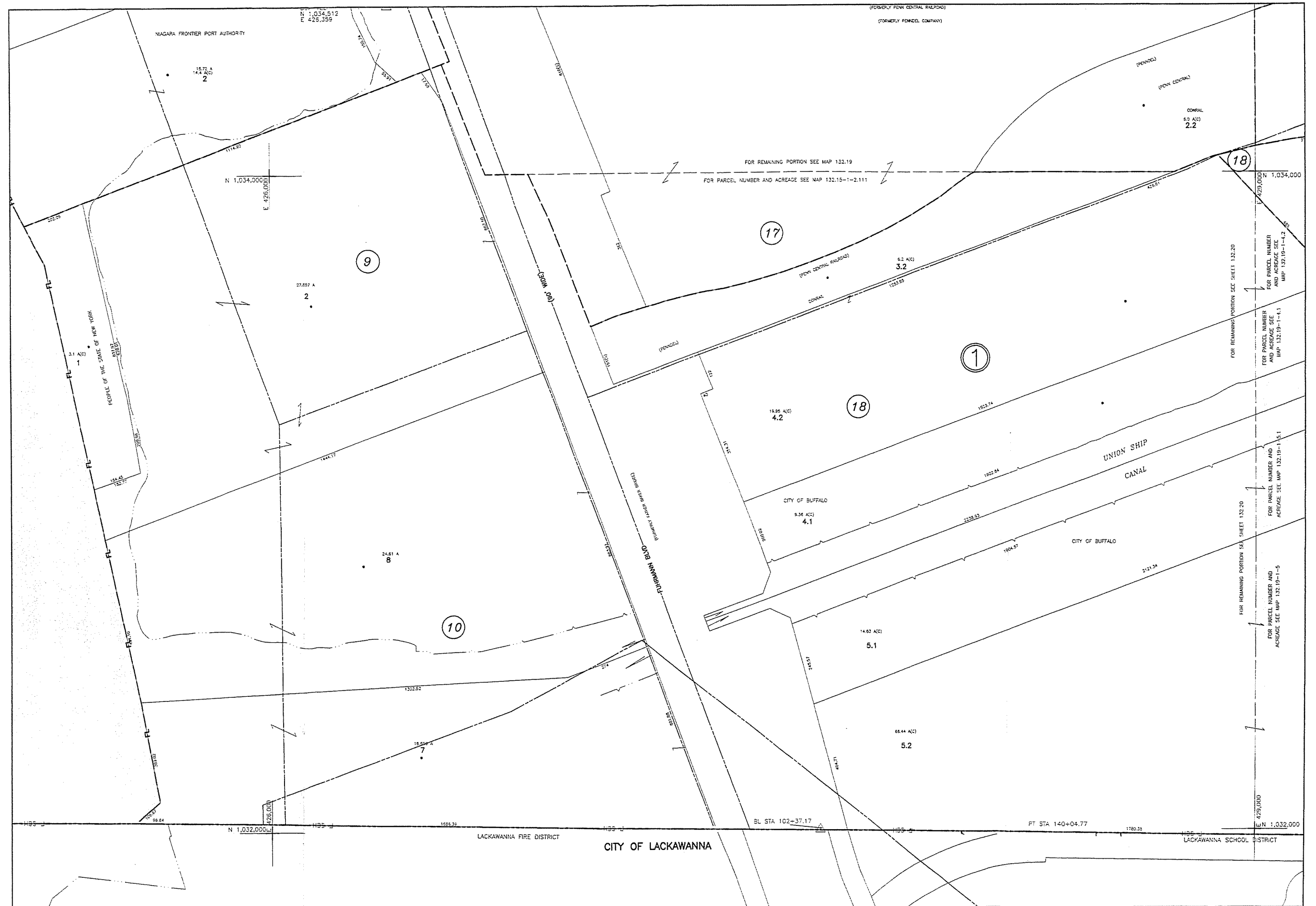
"USEPA": the United States Environmental Protection Agency.


"Work Plan": a Department-approved work plan, as may be modified, pertaining to the Site, that Volunteer shall implement and that is attached to this Agreement.

EXHIBIT D

Erie County Tax Map







PREPARED BY
AERO SERVICE
Buffalo, New York 14203
PREPARED FOR
DIVISION OF REAL PROPERTY TAX SERVICES
ERIE COUNTY, NEW YORK © 1991

NOTES

THIS MAP WAS PREPARED FOR TAX PURPOSES ONLY AND IS NOT TO BE REPRODUCED OR USED FOR SURVEYING OR CONVEYANCING.

MAP CONVERTED TO AUTOCAD DIGITAL FORMAT BY ANALYTICAL SURVEYING INC. IN COOPERATION WITH WEISS MAPPING INC. FEB. 1993

| REVISION TABLE | |
|----------------|-------------------------------|
| DATE | CHANGES OR ADDITIONS |
| 02/11/93 | 04-B BLK 1 ADDED 41.42 & 1.52 |
| 07/15/91 | W-A BLK 1 DELETED 3.1 |
| 02/14/93 | W-B BLK 1, 3, 12 |

SPECIAL DISTRICTS

| SCHOOL | BUFFALO PUBLIC SCHOOL DISTRICT |
|--------|--------------------------------|
| FIRE | CITY OF BUFFALO FIRE DISTRICT |
| WATER | |

LEGEND

| PROPERTY LINE | TOWN LINE | PIPE DISTRICT LINE |
|-----------------------|----------------------|-----------------------|
| ORIGINAL SUBLOT LINE | VILLAGE LINE | COASTERS COMMON OWNER |
| RAILROAD | BLOCK UNIT | |
| STREAM OR DITCH | FARM LOT LINE | TAX MAP BLOCK NO. |
| ROAD OR RAILROAD BNDY | SCHOOL DISTRICT LINE | SCH |
| COUNTY LINE | WATER DISTRICT LINE | W |
| | SEWER DISTRICT LINE | S |
| | | FARM LOT NO. |

115.00-1-11
1/4
2

CALCULATED ACREAGE
DEED ACREAGE 7.5 A/C
SCALED DIMENSION 225.193
DEED DIMENSION (CHECKED) 743.568
DEED DIMENSION (CENTER LINE) 173.33 C
COORDINATE LOCATOR

SHEET INDEX

| 132.14 | 132.15 |
|--------|--------|
| 132.18 | 132.20 |

CITY OF BUFFALO
ERIE COUNTY, NEW YORK
TOWNSHIP 10
RANGE 08
MAP DATE

GRAPHIC SCALE
1" = 100'

EXHIBIT E

Metes and Bounds Description

BUFFALO LAKESIDE COMMERCE PARK – PHASE 1 SUBDIVISION

PROPOSED DESCRIPTION PARCEL 'B'

(REVISED OCTOBER 4, 2004)

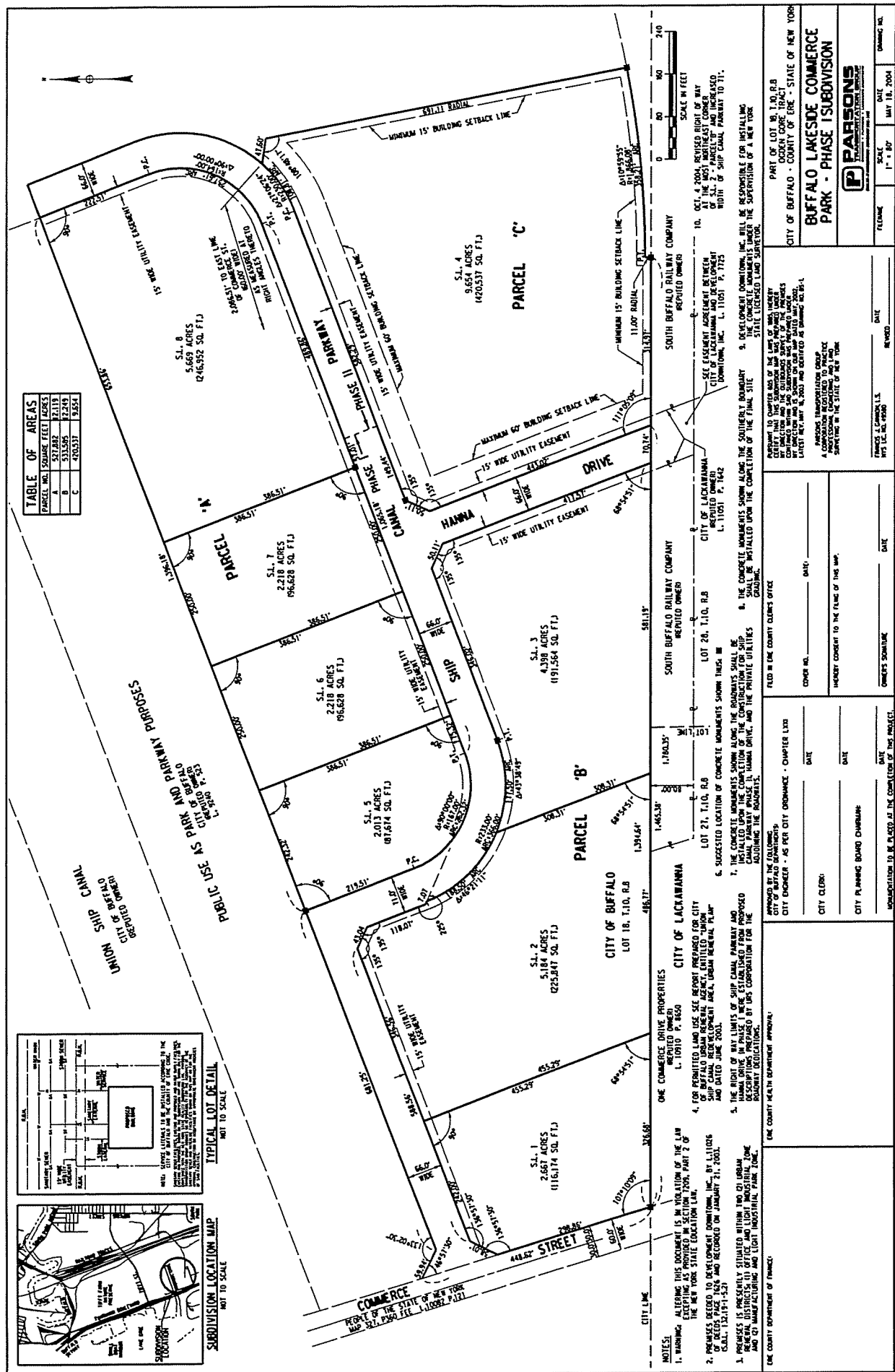
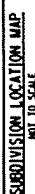
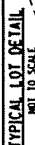
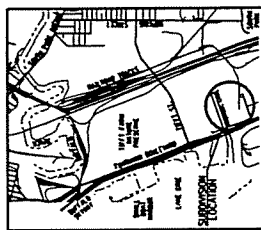
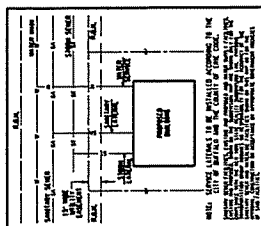
All that piece or parcel of property, situate in Lot No. 18 in the Ogden Gore Tract and in Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York bounded and described as follows:

Beginning at a point on the easterly boundary of existing Commerce Street, 60.00 feet wide, as delineated on Parcel No. 360 of Map No. 327 and acquired by The People of The State of New York for the former construction of Fuhrmann Boulevard – Hamburg Turnpike by Liber 10082 of Deeds at Page 121, at its intersection with the southerly boundary of the City of Buffalo and the northerly boundary of the City of Lackawanna; thence northerly along the said easterly boundary of existing Commerce Street as delineated on said Parcel No. 360 and forming an interior angle of $107^{\circ} 10' 09''$, a distance of 298.86 feet to a point on the southeasterly boundary of proposed Ship Canal Parkway; thence northeasterly along the last mentioned boundary of proposed Ship Canal Parkway and forming an interior angle of $136^{\circ} 57' 30''$, a distance of 58.01 feet to a point on a southerly boundary of proposed Ship Canal Parkway, 66.00 feet wide; thence along the last mentioned boundary of proposed Ship Canal Parkway the following six (6) courses and distances: (1) easterly and forming an interior angle of $136^{\circ} 57' 30''$, a distance of 588.56 feet to a point on a southwesterly boundary of proposed Ship Canal Parkway; thence (2) southeasterly along the last mentioned boundary of proposed Ship Canal Parkway and forming an interior angle of $135^{\circ} 00' 00''$, a distance of 43.04 feet to a point on a westerly boundary of proposed Ship Canal Parkway, 71.00 feet wide; thence (3) southerly along the last mentioned boundary of proposed Ship Canal Parkway, a distance of 118.07 feet to a point on a southwesterly boundary of proposed Ship Canal Parkway; thence (4) southeasterly along the last mentioned boundary of proposed Ship Canal Parkway and forming an interior angle of $225^{\circ} 00' 00''$, a distance of 7.07 feet to a point; thence (5) southerly and southeasterly on a curve to the left, having a radius of 233.00 feet, an arc distance of 366.00 feet to a point of tangency on a southerly boundary of proposed Ship Canal Parkway, 66.00 wide; thence (6) easterly and along the last mentioned boundary of proposed Ship Canal Parkway, a distance of 346.02 feet to a point on the southwesterly boundary of proposed Hanna Drive; thence southeasterly along the last mentioned boundary of proposed Hanna Drive and forming an interior angle of $135^{\circ} 00' 00''$, a distance of 50.11 feet to a point on the westerly boundary of proposed Hanna Drive, 66.00 feet wide; thence southerly along the last mentioned boundary of proposed Hanna Drive and forming an interior angle of $135^{\circ} 00' 00''$, a distance of 417.57 feet to a point on the said southerly boundary of the City of Buffalo and the said northerly boundary of the City of Lackawanna; thence westerly along the said southerly boundary of the City of Buffalo and the said northerly boundary of the City of Lackawanna and forming an interior angle of $68^{\circ} 54' 51''$, a distance of 1,394.64 feet to the point of beginning, being 533,585 square feet or 12.249 acres more or less.

EXHIBIT F

Site Map and USGS Quad Map

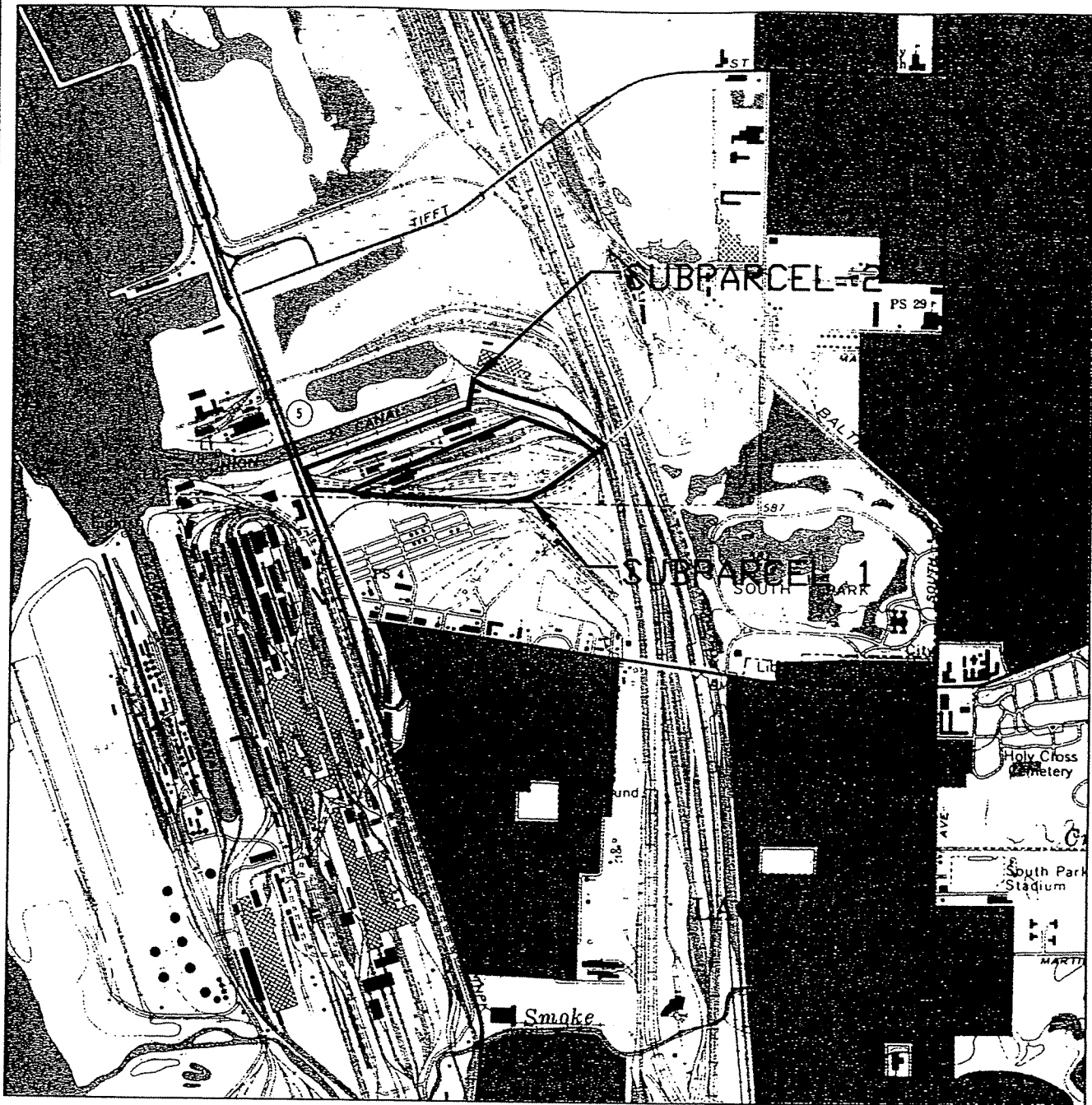
| TABLE OF AREAS | | |
|----------------|-------------|--------|
| PARCEL NO. | SQUARE FEET | ACRES |
| A | 527,882 | 12.119 |
| B | 533,585 | 12.245 |
| C | 470,537 | 9.654 |



\\Property\SubdivisionMap.dgn 10/08/2004 10:43:50 AM

* proposed Brownfield site boundary consists of the parcel B boundary

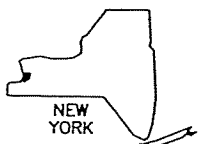
FIGURE 1-1



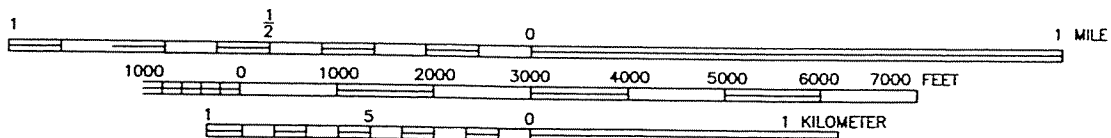
ADAPTED FROM: BUFFALO SE, NY USGS QUADRANGLE

HANNA FURNACE SITE-SUBPARCEL 2
REBUILD NOW-NEW YORK
EMPIRE STATE DEVELOPMENT

SITE LOCATION MAP



QUADRANGLE LOCATION



FILE NO. 10569.25466
AUGUST 2002

APPROXIMATE SCALE: 1:24000



| Name | Address | Phone Number |
|-----------------------------|--|---------------------|
| Alessi, P.E., Charles (Mr.) | County of Erie Division of Sewerage Management 95 Franklin Street, Room 1034 Buffalo, New York 14202 | |
| Anderson, Sara (Ms.) | 40 Lawrence Drive Building 3, Suite 150 Buffalo, New York 14202 | 716-852-3211 x 256 |
| Berg, Theodore (Mr.) | Community Development Department City Planning Board, City Hall Buffalo, New York 14202 | |
| Brown, Harold J. (Mr.) | Division Administrator Federal Highway Administration Division Office HAD-NY Leo W. O'Brien Federal Building, 9 th Floor Albany, New York 12207 | |
| Byron, Sue (Ms.) | 332 Pennsylvania Buffalo, New York 14201 | 716-882-3887 |
| Cantill, John (Mr.) | U.S. Environmental Protection Agency Marine & Wetlands Protection Branch 26 Federal Plaza New York, New York 10278 | |
| Diina, Rocco (Mr.) | City of Buffalo Police Department 74 Franklin Buffalo, New York 14202 | |
| DiMascio, Frank (Mr.) | City of Buffalo Buffalo Sewer Authority Room 1038, City Hall Buffalo, New York 14202 | |

| <u>Name</u> | <u>Address</u> | | <u>Phone Number</u> |
|---------------------------------|---|--|----------------------------|
| Doleski, Steve (Mr.) | NYS Department of Environmental Conservation 270 Michigan Avenue Buffalo, New York 14218 | | |
| Edwards, Karl (Mr.) | PO Box 292 Orchard Park, New York 14127 | | |
| Giambra, Joseph (Mr.) | City of Buffalo Department of Public Works Room 502, City Hall Buffalo, New York 14202 | | |
| Gordon, Marjorie (Ms.) | 26 Lincoln Woods Buffalo, New York | | |
| Higgins, Brian (Congressman) | Larkin Building 726 Exchange Street, Suite 601 Buffalo, New York 14210 | | 716-852-3501 |
| Kavanaugh, Barbara (Ms.) | Attorney General's Office Statler Towers 107 Delaware Avenue Buffalo, New York 14202-3473 | | |
| Keane, Cornelius (Mr.) | City of Buffalo Fire Department Room 601, City Hall Buffalo, New York 14202 | | |
| Kocharski, Tom (Mr.) | Erie County Industrial Development Agency Suite 300 Liberty Building 424 Main Street Buffalo, New York 14202 | | |
| Lattuca, Chuck (Mr.) | Assistant Director of State Operation Executive Chamber State Capital, Room 248 Albany, New York 12224 | | |
| Leuchner, Paul (Mr.) | Army Corp. of Engineers 1776 Niagara Street Buffalo, New York 14207 | | |

| <u>Name</u> | <u>Address</u> | <u>Phone Number</u> |
|-------------------------|--|----------------------------|
| McGee, Michael J. (Mr.) | 538 Jewett Holmwood Road East Aurora, New York 14052 | 716-655-4631 |
| McGurn, Raymond (Mr.) | City of Buffalo Department of Permit and Inspection Services Room 301, City Hall Buffalo, New York 14202 | |
| Mikoll, Gerry (Mr.) | NYS Department of Environmental Conservation 270 Michigan Avenue Buffalo, New York 14203 | |
| Millington, Kevin (Mr.) | New York State Department of State 41 State Street Albany, New York 12231 | |
| Monafo, Nicholas (Mr.) | Director, Lackawanna Economic Development Zone 714 Ridge Road Lackawanna, New York 14218 | |
| Nanula, Anthony (Mr.) | City of Buffalo, Comptroller Room 1225, City Hall Buffalo, New York 14202 | |
| Palmeano, Dominic (Mr.) | 63 Barker Buffalo, New York 14209 | |
| Pohle, David (Mr.) | U.S. Environmental Protection Agency Region 2 Marine & Wetlands Protection Board 290 Broadway – 24 th Floor New York, New York 10007 | |
| Poloncarz, Mark (Mr.) | 17 Whitehall Avenue Buffalo, New York | 716-845-6000 |
| Raetsch, Paul M. (Mr.) | U.S. Department of Commerce USEPA The Curtis Center, Suite 140 South Independence Square West Philadelphia, Pennsylvania 19106 | |

| <u>Name</u> | <u>Address</u> | <u>Phone Number</u> |
|----------------------------|--|---------------------|
| Rich, Lewis D. (Mr.) | Empire State Development Corp. Liberty Building, 420 Main Street Suite 711 Buffalo, New York 14202 | |
| Rowback, Brian (Mr.) | New York State Department of Transportation 125 Main Street Buffalo, New York 14203 | |
| Roz, James (Mr.) | 92 West Winspear Avenue Buffalo, New York 14214 | 716-837-0486 |
| Rubin, Lawrence (Mr.) | County of Erie, Department of Environment & Planning 95 Franklin Street Buffalo, New York 14202 | |
| Rutkowski, Edward J. (Mr.) | New York State Office of Parks, Rec. & Historic Preservation Niagara Region P.O. Box 1132 Niagara Falls, New York 14303-0132 | |
| Ryan, Joseph (Mr.) | Community Development Department Division of Development Buffalo Urban Renewal Agency City Hall Buffalo, New York 14202 | |
| Ryan, Joseph (Mr.) | Community Development Department Office of Strategic Planning City Hall Buffalo, New York 14202 | |
| Sikorsky, Rich (Mr.) | 8 Warsaw Buffalo, New York 14218 | 716-822-1682 |

| <u>Name</u> | <u>Address</u> | <u>Phone Number</u> |
|------------------------|---|----------------------------|
| Stillwell, David (Mr.) | Fish & Wildlife Service U.S. Department of Interior 3817 Luker Road Cortland, New York 13045 | |
| Swarts, David (Mr.) | County of Erie Legislature, County Clerk 25 Delaware Avenue Buffalo, New York 14202 | |
| Woods, Thomas (Mr.) | 26 Wildwood Place Buffalo, New York 14210 | |