

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of a **Voluntary Cleanup Agreement**

for: National Plating Company, Inc.

by: D.J.H. Realty Corp., BMH Liquidation, Inc., Dennis J. Hile, and Barbara M. Hile,
"Volunteers"

Site #: V-00264-7

Index #: A7-0493-0903

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, Volunteers represent, and the Department relied upon such representations in entering into this Agreement, that Volunteers' involvement with the Site is limited to the following: D.J.H. Realty Corp. is the current owner of the Site. BMH Liquidation, Inc., is the former operator of a metal finishing facility located at the Site. Dennis J. Hile is the principal shareholder of D.J.H. Realty Corp. Barbara M. Hile is the principal shareholder of BMH Liquidation, Inc.

WHEREAS, the parties are entering into this Agreement in order to set forth a process through which the Department will approve and the Volunteers 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": Use restricted to industrial or commercial uses excluding day care, child care and medical care uses.

B. "Existing Contamination": According to Department records, testing performed in 1987 by O'Brien & Gere identified cadmium, chromium, cyanide, nickel and zinc in soils at the Site. Although National Plating commenced operations at the Site in the mid 1950s, there is no documentation of waste disposal practices prior to the 1980s. An August 1997 report entitled "Site Summary Report, Revision 1," prepared for the Department by TAMS Consultants, Inc., contains an evaluation of data generated at and in the vicinity of the Site. 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": The Site is an approximately 1.4 acre parcel of real property located at 1501 Brewerton Road in the City of Syracuse, Onondaga County, with a ZIP code of 13208-1403. The Site is located at a Latitude of 43.09079331 and a Longitude of 76.14983203. The Site has a County Tax Map Identifier Number of 073.-01-04.0. Exhibit "A" of this Agreement is a map of the Site showing its general location.

D. "Volunteers": D.J.H. Realty Corp., the current owner of the Site, is a corporation doing business in the State of New York with an address of: c/o Dennis J. Hile, 747 West Manlius Street, East Syracuse, New York 13057. BMH Liquidation, Inc., the former operator of the Site, is a corporation doing business in the State of New York, with an address of: c/o Barbara M. Hile, 747 West Manlius Street, East Syracuse, New York 13057. Dennis J. Hile, an individual domiciled in New York State, is the principal shareholder of D.J.H. Realty Corp. Barbara M. Hile, an individual domiciled in New York State, is the principal shareholder of BMH Liquidation, Inc. Both individuals are located at the following address: 747 West Manlius Street, East Syracuse, New York 13057. Volunteers are Potentially Responsible Party Volunteers.

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. The first proposed Work Plan to be submitted under this Agreement shall be submitted within forty (40) Days after the effective date of this Agreement. Thereafter, the Volunteers 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, Volunteers 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, Volunteers 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 Volunteers 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 Volunteers invoke 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, Volunteers 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 Volunteers 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 Volunteers to modify or expand the submittal. Within twenty (20) Days after receiving written notice that Volunteers' submittal has been disapproved, Volunteers 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 Volunteers submit a revised submittal and it is disapproved, the Department and Volunteers 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, Volunteers shall submit such additional Work Plans as they propose 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 Volunteers, 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, Volunteers 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

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 Volunteers 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, Volunteers 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 Volunteers 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, Volunteers 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 Volunteers elect 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 Syracuse. The Department shall timely notify Volunteers 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, Volunteers agree 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 Paragraph XII. 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) Volunteers are 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) Volunteers have complied, if required, with Paragraph X, the Department shall timely provide Volunteers 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, Volunteers 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. Volunteers shall file such annual report until the Department determines that the Site can be closed out and so notifies Volunteers 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. Volunteers 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, Volunteers 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. Volunteers 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

Volunteers shall submit a written progress report of their 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 Volunteers 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. Volunteers shall not suffer any penalty or be subject to any proceeding or action if they cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided they notify the Department in writing within ten (10) Working Days of when they obtain knowledge of any such event. Volunteers 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. Volunteers 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. Volunteers hereby consent, 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 Volunteers, 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 Volunteers's compliance with this Agreement. Upon request, Volunteers 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 Volunteers 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 Volunteers.

VI. Payment of State Costs

A. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Volunteers shall pay to the Department a sum of money which shall represent reimbursement for State Costs for work performed at or in connection with the Site prior to the effective date of this Agreement, as well as for negotiating this Agreement, and all costs associated with this Agreement, through and including 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. 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 Volunteers at the following address:

Wendy A. Marsh, Esq.
Hancock & Estabrook, LLP
1500 Mony Tower I
P.O. Box 4976
Syracuse, New York 13221-4976

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. Volunteers may contest, in writing, invoiced costs under Subparagraph VI.A if they believe (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 Volunteers object to an invoiced cost, Volunteers 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 Volunteers of the obligation to pay invalid costs. Within forty-five (45) Days of the Department's determination of the objection, Volunteers shall pay to the Department the amount which the BPM Director or the BPM Director's designee determines Volunteers are 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 Volunteers written notice of such failure of collection, and (ii) the Department does not receive from Volunteers 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 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 Volunteers.

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 Volunteers or Volunteers' 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, Volunteers specifically reserve all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Volunteers, and further reserve 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 Volunteers' compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Volunteers, 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, Volunteers reserve such rights as they may have to seek and obtain contribution, indemnification, and/or any other form of recovery from their 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

Volunteers shall indemnify and hold the Department, 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 Volunteers 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 Volunteers 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, Volunteers 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 Volunteers advise the Department of the status of its efforts to obtain same within thirty (30) Days), Volunteers 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. Volunteers may terminate such Notice on or after the Termination Date of this Agreement.

B. If Volunteers propose to convey the whole or any part of Volunteers' ownership interest in the Site, or becomes aware of such conveyance, Volunteers 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 Volunteers 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, Volunteers 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." Volunteers 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. Volunteers 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 Volunteers advise the Department of the status of its efforts to obtain same within such 30 Day period).

B. Volunteers 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 Respondent shall be sent to:

Region VII Regional Hazardous Waste Remediation Engineer
New York State Department of Environmental Conservation
615 Erie Boulevard West
Syracuse, New York 13204-2400

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

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

Dolores A. Tuohy, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
625 Broadway, 14th Floor
Albany, New York 12233-5500

2. Communication to be made from the Department to Respondent shall be sent to:

Wendy A. Marsh, Esq.
Hancock & Estabrook, LLP
1500 Mony Tower I
P.O. Box 4976
Syracuse, New York 13221-4976

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication upon 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. Volunteers 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 Volunteers' 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 Volunteers fail 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 Volunteers.

XIII. Dispute Resolution

A. If Volunteers disagree 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 Volunteers' assertion of a Force Majeure Event, Volunteers 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 Volunteers to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Volunteers 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 Volunteers' 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 Volunteers notify the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that they invoke the dispute resolution provisions provided under Subparagraph XIII.B.

B. 1. Volunteers 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 Volunteers rely (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 Volunteers' Statement of Position.

3. Volunteers 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 Volunteers shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Volunteers notify 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. Volunteers shall be in violation of this Agreement if they fail 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 Volunteers seek judicial review, Volunteers shall be in violation of this Agreement if they fail 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 Volunteers' 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 Volunteers 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. Volunteers hereby certify that all information known to Volunteers and all information in the possession or control of Volunteers 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 Volunteers' application for the Voluntary Cleanup Program.

2. If the information provided and certifications made by Volunteers 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, Volunteers submit information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete.

B. Volunteers 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 Volunteers to allow the Department to attend portions of meetings where privileged matters are discussed.

C. Volunteers 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 Volunteers' obligations under this Agreement, except that the Department may exempt

Volunteers 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 Volunteers' 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 Volunteers in writing that additional access beyond that previously secured is necessary, Volunteers shall promptly notify the Department, and shall include in that notification a summary of the steps Volunteers have taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Volunteers 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 Volunteers 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. Volunteers shall not be considered operators of the Site solely by virtue of having executed and/or implemented this Agreement.

E. Volunteers 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. Volunteers or their contractor(s) shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteers shall nonetheless be responsible for ensuring that Volunteers' 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 Volunteers 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 Volunteers of Volunteers' 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." Volunteers consent to and agree 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 Volunteers desire that any provision of this Agreement be changed, other than a provision of a Work Plan or a time frame, Volunteers 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 "Volunteers" 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 Volunteers to carry out the obligations under this Agreement.

2. If Volunteers are 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, Volunteers shall be deemed to have resolved their 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 Volunteers, including reimbursement of State Costs pursuant to this Agreement. Furthermore, to the extent authorized under 42 U.S.C. Section 9613(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the response action and/or for some or all of the costs of such action, Volunteers are entitled to seek contribution from any person except those who are entitled to contribution protection under 42 U.S.C. Section 9613(f)(2).

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

K. All activities undertaken by Volunteers 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. Volunteers’ 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.

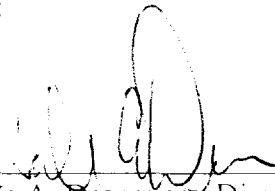
O. Volunteers and Volunteers’ employees, servants, agents, lessees, sublessees, grantees, successors, and assigns hereby waive any right to pursue reimbursement of monies expended by Volunteers prior to the Termination Date as against the State or the Spill Fund, and agree to indemnify and hold harmless 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 Volunteers’ 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: MAR 12 2004

ERIN M. CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

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

Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY VOLUNTEER
D.J.H. REALTY CORP.

Volunteer hereby consent 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.

D.J.H. REALTY CORP.

By: Dennis J. Hile

Title: PRESIDENT

Date: 02/02/04

~~FLORIDA~~
STATE OF NEW YORK)
 COLLIER) ss:
COUNTY OF ~~ONONDAGA~~

On the 3rd day of March, in the year 2004, before me, the undersigned, personally appeared Dennis J. Hile, 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.

Karen Gudknecht

Signature and Office of individual
taking acknowledgment



CONSENT BY VOLUNTEER
BMH LIQUIDATION, INC.

Volunteer hereby consent 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.

BMH LIQUIDATION, INC.

By: Barbara M. Hile

Title: President

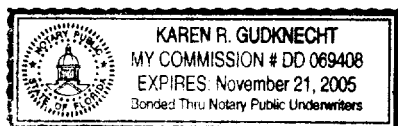
Date: 3-3-04

FLORIDA
STATE OF ~~NEW YORK~~)
COLLIER) ss:
COUNTY OF ~~ONONDAGA~~

On the 3rd day of March, in the year 2004, before me, the undersigned, personally appeared Barbara M. Hile, 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.


Karen R. Gudknecht

Signature and Office of individual
taking acknowledgment



CONSENT BY VOLUNTEER
DENNIS J. HILE

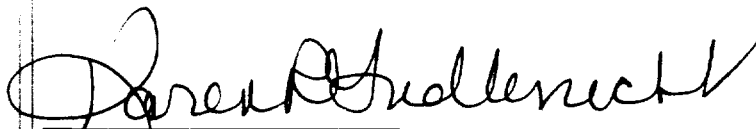
Volunteer hereby consent to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.


Dennis J. Hile

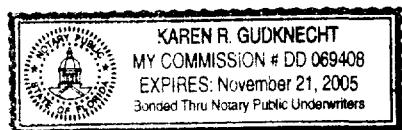
Date: 03/03/04

FLORIDA
STATE OF ~~NEW YORK~~)
 COLLIER) ss:
COUNTY OF ~~ONONDAGA~~)

On the 3rd day of March, in the year 2004, before me, the undersigned, personally appeared Dennis J. Hile, 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



CONSENT BY VOLUNTEER
BARBARA M. HILE

Volunteer hereby consent 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.

Barbara M. Hile
Barbara M. Hile

Date: 3/3/04

~~FLORIDA~~
STATE OF ~~NEW YORK~~)
COLLIER) ss:
COUNTY OF ~~ONONDAGA~~)

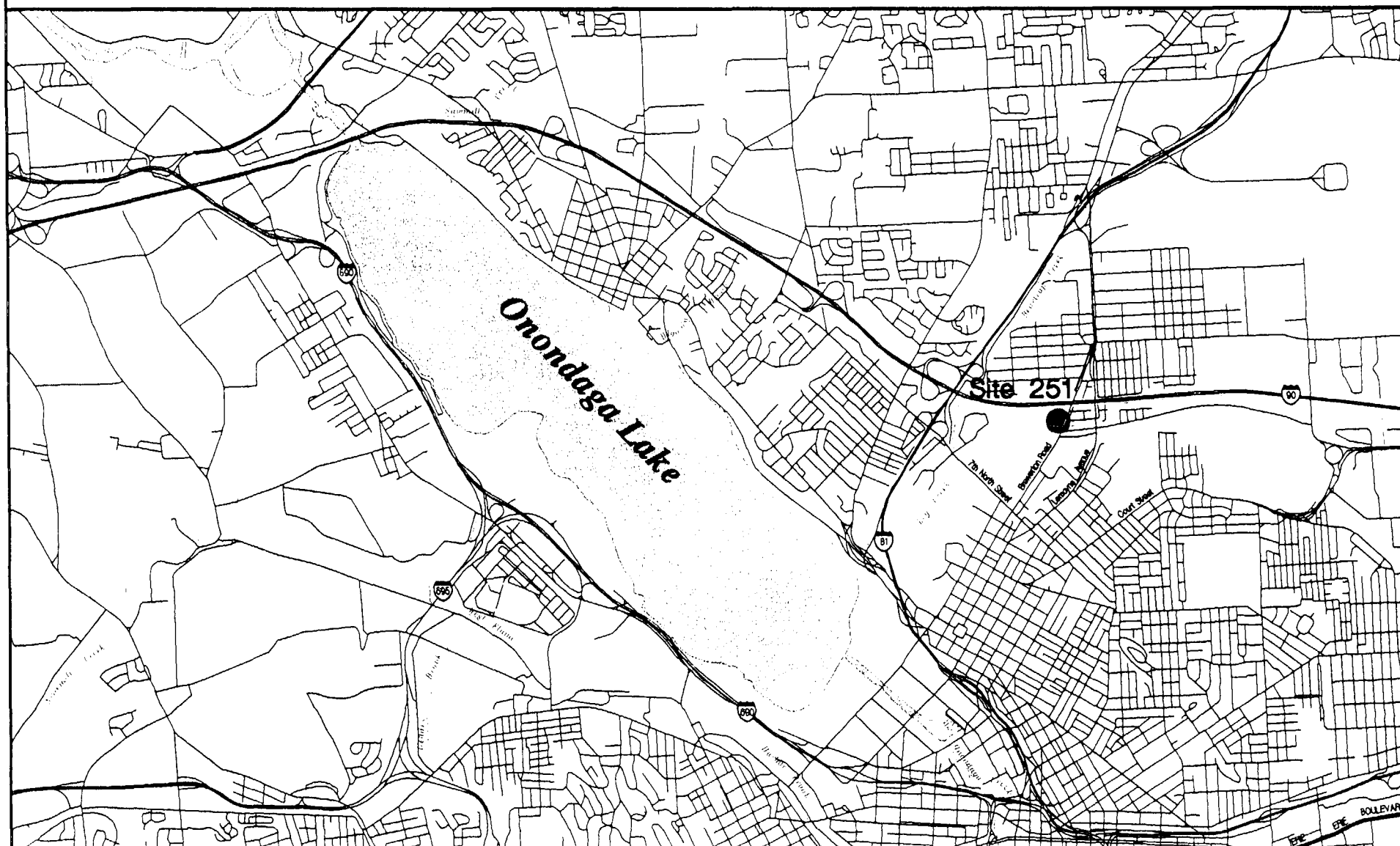
On the 3RD day of March, in the year 2004, before me, the undersigned, personally appeared Barbara M. Hile personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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.

Karen R. Gudknecht

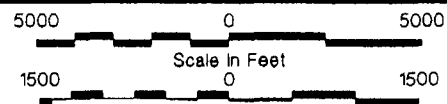
Signature and Office of individual
taking acknowledgment



Site Location: National Plating, Inc.



Site Location



TAMS

Exhibit "A"

EXHIBIT “B”

Department-Approved Work Plan(s)

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 _____ ("Volunteers"), 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, therefore, hereby releases and covenants 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 Volunteers and Volunteers' lessees and sublessees, grantees, successors, and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, 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) Volunteers and/or their lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Work Plan providing for OM&M, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release and covenant not to sue shall not extend to natural resource damages or to any further investigation or remedial action the Department deems necessary:

- due to migration off-Site of contaminants resulting in impacts that are not inconsequential to environmental resources, to human health, or to other biota and 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 Volunteers's failure to implement the Agreement to the Department's satisfaction; or

- due to fraud committed by Volunteers in entering into or implementing this Agreement.

Additionally, the Department hereby reserves all of its rights concerning, and any such release and covenant not to sue shall not extend to Volunteers nor to any of Volunteers' 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 Volunteers' 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, 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 the Agreement, nothing contained in this letter or the Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteers;
- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Volunteers fail 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; and

- 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 Volunteers fail 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

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 _____, 2003, by D.J.H. Realty Corp., BMH Liquidation, Inc., Dennis J. Hile, and Barbara M. Hile regarding a parcel of real property located at 1501 Brewerton Road in the City of Syracuse, Onondaga County, bearing Tax Map Number 073.-01-04.0 (the "Property"); and

WHEREAS, D.J.H. Realty Corp., BMH Liquidation, Inc., Dennis J. Hile, and Barbara M. Hile ("Volunteers"), entered into an agreement with the Department of Environmental Conservation, Index #A7-0493-0903 (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 Volunteers and their 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, Volunteers agreed to cause the filing of a notice of the Agreement with the Onondaga 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, Volunteers, for themselves and for their successors and assigns, declare 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, Volunteers have executed this Notice of Agreement by its duly authorized representative.

Dated:

By: _____

STATE OF NEW YORK

)

) ss:

COUNTY OF ONONDAGA

)

On the _____ day of _____, in the year 2003, 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 is 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 Department 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 industrial or commercial uses excluding day care, child care and medical care uses 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 consent to enforcement by the Relevant Agency of the prohibitions and restrictions that Paragraph X of the Agreement require to be recorded, and hereby covenant 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 Volunteers'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.

“USEPA”: the United States Environmental Protection Agency.

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