

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Second

Modification to a

Voluntary Cleanup Agreement

for: Hanna Furnace Former Railroad Yard

Voluntary Cleanup

Agreement Modification

by:

Buffalo Urban Development Corporation

(formerly known as Development Downtown, Inc.,)

"Volunteer"

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

Site #: V00319-9

WHEREAS, The New York State Department of Environmental Conservation (the "Department") and Development Downtown, Inc. (now known as Buffalo Urban Development Corporation) (the "Volunteer") entered into Voluntary Cleanup Agreement, Index # B9-0568-99-12(A), with the Department on January 6, 2003 relative to property at the location of the former Hanna Furnace Corporation facility, in the City of Buffalo, County of Erie, which Voluntary Cleanup Agreement was subsequently amended by the Voluntary Cleanup Agreement Modification ("First Modification") dated August 23, 2005 (the Voluntary Cleanup Agreement and the First Modification are hereinafter referred to as the "Voluntary Agreement");

WHEREAS, Subparagraph I.C of the Voluntary Agreement reads as follows

C. "Site": that parcel of real property known as Hanna Furnace Former Railroad Yard which is located on the former Hanna Furnace Corporation facility property 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 Tifft Street, excepting the property conveyed to Krog USC Associates -I, LLC, on July 14, 2004, recorded in Liber 11079 of Deeds at Page 4450. Exhibit "A" of this Agreement includes parcel location maps 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.

WHEREAS, Volunteer will convey part of its ownership interest in the Site to 9505 Main St., LLC, and 9505 Main St., LLC entered into Brownfield Site Cleanup Agreement B9-0710-05-12 with the Department on March 21, 2006 for the Cobey - Buffalo Lakeside Commerce Park Site ("Cobey Site") which is the property to be conveyed, and therefore, the Voluntary Agreement needs to be further modified to exclude the Cobey Site from the Site description;

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

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL

COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Subparagraph I.C. of the Voluntary Agreement is hereby modified to read as follows:

C. "Site": that parcel of real property known as Hanna Furnace Former Railroad Yard which is located on the former Hanna Furnace Corporation facility property 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 Tifft Street, excepting certain property as described in the attached legal description of the Site. Exhibit "A" of this Agreement includes parcel location maps 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.

II. Exhibit "A" to this Second Modification includes a legal description of the redefined Site which shall replace the legal description in Exhibit "A" to the Voluntary Agreement. Exhibit "A" to this Second Modification also includes a map of the parcel which is excepted from the Site and which shall be read together with the map in Exhibit "A" to the Voluntary Agreement.

III. This Second Modification shall control to the extent of a conflict between the provisions hereof and those of the Voluntary Agreement. Except as provided in this Second Modification, the Voluntary Agreement and the documents related thereto shall continue in full force and effect

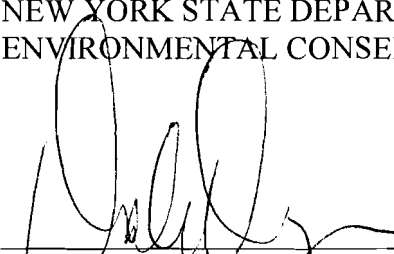
IV. No term, condition, understanding or agreement purporting to modify this Second Modification shall be binding unless subscribed to by both parties in accordance with the terms of the Voluntary Agreement.

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

DATED: MAY - 9 2006

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

By:



Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY VOLUNTEER

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

Buffalo Urban Development Corporation
(formerly known as Development Downtown, Inc.)


By: David A. Stebbins

Title: Vice-President

Date: May 1, 2006

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

On the 1st day of May, in the year 2006, 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.



Signature and Office of individual
taking acknowledgment

DAVID W. KERCHOFF
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires May 12, 2008

Exhibit “A”

EXHIBIT A

Legal Description and Map

AMENDED LEGAL DESCRIPTION FOR PARCEL NO. 1 OF THE 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.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL AS MUCH THEREOF AS IS CONTAINED IN THE FOLLOWING DESCRIBED PARCEL:

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 southwesterly line of land conveyed to Sherland Incorporated by Liber 10022 of Deeds at page 218 at its intersection with the westerly right of way line of Consolidated Rail Corporation and the easterly line of land conveyed to Jordan & Foster Scrap Corporation by Liber 9240 of Deeds at page 523, in Parcel IX (Parcel No. 1); thence along the said westerly right of way line of Consolidated Rail Corporation and the said easterly line of lands conveyed in Liber 9240 of Deeds at page 523 the following three courses and distances: (1) southerly forming an interior angle of $135^{\circ} 26' 18''$, a distance of 290.89 feet to an angle point; thence (2) continuing southerly forming an interior angle of $165^{\circ} 58' 34''$ as surveyed ($166^{\circ} 44' 00''$ by deed), a distance of 250.32 feet to an angle point, said point being 79.00 feet distant northwesterly from, measured at right angles to, the center line of the track of the South Buffalo Railroad; thence (3) southwesterly forming an interior angle of $115^{\circ} 15' 30''$ and parallel with the center line of the track of the South Buffalo Railway a distance of 187.74 feet to a point on the northwesterly right of way line of the South Buffalo Railway Company; thence along the said South Buffalo Railway Company's right of way the following four courses and distances: (1) continuing southwesterly, a distance of 198.00 feet to a point of curvature; (2) 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 (3) southerly along a line radial to the last mentioned curve a distance of 35.00 feet to a point of curvature; thence (4) southwesterly and westerly on a curve to the right, having a radius of 1,866.08 feet, an arc distance of 562.41 feet to a point; thence through the property of Development Downtown Inc. by deed recorded in Liber 11026 of Deeds, at page 7626, the following six courses and distances: (1) northerly along a line radial to the last mentioned curve a distance of 691.11 feet to a point; thence (2) northwesterly forming an exterior angle of $108^{\circ} 48' 17''$ a distance of 47.60 feet to a point on the southeasterly boundary of a proposed road, said point being 2,086.51 feet distant northeasterly from existing Commerce Street, 60.0 feet wide, as measured at right angles thereto; thence (3) northeasterly and northerly along the southeasterly boundary of the said proposed road and on a curve to the left, having a radius of 230.00 feet, an arc distance of 252.47 feet to a point of tangency; thence (4) continuing northerly and along the easterly boundary of the said proposed road a distance of 12.53 feet to a point; thence (5) southeasterly forming an exterior angle of $120^{\circ} 07' 21''$ a distance of 113.54 feet to a point; thence (6) northeasterly forming an exterior angle of $134^{\circ} 13' 46''$ a distance of 693.41 feet to a point on the said southwesterly line of land conveyed in Liber 10022 of Deeds at page 218; thence southeasterly and along the said southwesterly line of lands conveyed in Liber 10022 of Deeds at page 218 a distance of 424.51 feet to the point of beginning.

AND FURTHER EXCEPTING FROM THE ABOVE DESCRIBED PARCELS AS MUCH THEREOF AS IS CONTAINED IN THE FOLLOWING DESCRIBED PARCEL:

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 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.

FOUNDATION LOCATION: 04-19-06 05J2-0700A/2	
SURVEY FOR THE KROG CORP.	
PART OF LOT(S) IS "GARDEN GORE TRACT"	
TOWNSHIP 10 RANGE 8	
CITY OF BUFFALO	
COUNTY OF ERIE	
STATE OF NEW YORK	
3556 Lake Shore Road Buffalo, New York 14214-1494 (716) 827-8000 www.musssbauer.com	
MUSSSBAUER & CLARK, INC.	
SHEET NO. 1	
REV.	DRAWN BY: M.J.E.
JOB NO. 05J2-0700A	DATE: 11-01-05
DWG. NO. SC-3307A	SCALE: 1" = 50'

NOTE: AUTHORIZED ALTERATIONS OR ADDITIONS TO ANY SURVEY, DRAWING, DESIGN, SPECIFICATION, PLAN, OR REPORT IS A VIOLATION OF SECTION 2000, PROVISION 2 OF THE NEW YORK STATE EDUCATION LAW.
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NOTE:
SANTARY SEWER LINES AND EASEMENTS TO COUNTY OF FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK TITLE NO. 3051-110227, DATED SEPTEMBER 30, 2005
REFERENCE:
EXHIBITS IN SAID DEEDS.
IS SHOWN APPROXIMATELY ON THIS SURVEY AS SHOWN ON ERIE AS RECORDED IN L11004, P.164 AND L11003, P.154

