

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a
Modification to an Existing
Brownfield Site Cleanup Agreement for
Buffalo Urban Renewal West Property, Buffalo, New York
by: Duke HN New York and QLT Buffalo LLC
for the Purpose of Substituting

Brownfield Site Cleanup
Agreement
Modification

BCP#C915195
Index No. B9-0695-05-06(B)

257 W. Genesee, LLC

for the Existing Volunteers

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

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

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

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

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

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

of this Modification.

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

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

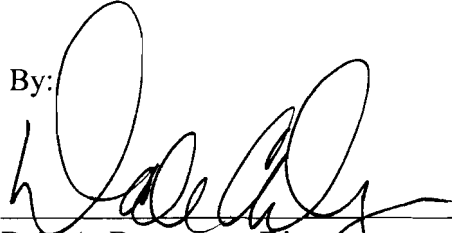
IV. No term, condition, understanding or agreement purporting to modify this Modification shall be binding unless subscribed to by both parties in accordance with the terms of the Agreement.

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

DATED: MAY 31, 2006

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

By:


Dale A. Desnoyers, Director

Division of Environmental Remediation

Exhibit "A"

Exhibit "B"

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program for
Buffalo Urban Renewal Agency West Property,
Fourth and West Genesee Streets, Buffalo, New York
under Article 27,
Title 14 of the Environmental Conservation Law
by Duke HN New York, LLC and
QLT Buffalo LLC

BROWNFIELD SITE
CLEANUP AGREEMENT

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

Site # C915195

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

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

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

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

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

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