

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program for the
19th Street Development Site, located at
80 11th Avenue, New York City, New York County,
under Article 27, Title 14 of the Environmental
Conservation Law by
Georgetown 19th Street Development, LLC,
HTRF Ventures, LLC,
IAC/Georgetown 19th Street, LLC,
Georgetown 19th Street Phase I, LLC, and
IAC 19th Street Holdings,

Volunteers.

**BROWNFIELD SITE
CLEANUP AGREEMENT**

Index No. W2-1012-04-07
Site No. C231017

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 ("BCP") contained in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, Georgetown 19th Street Development, LLC with offices located at c/o The Georgetown Company, LLC, 667 Madison Avenue, New York, N.Y. 10021 is currently participating in the Department's Voluntary Cleanup Program ("VCP") relative to property located at 80 11th Avenue, New York City, New York County, described as Tax Block 690, Lots 12 and 54 ("Property" and/or "Site") under Voluntary Cleanup Agreement Site No. V-00624-2, Index No. W2-0948-03-02; and

WHEREAS, by certified application dated March 31, 2004 (and supplemented May 3, 2004) Georgetown 19th Street Development, LLC requested transition from the VCP to the BCP for completion of the remedial program for the Site, and HTRF Ventures, LLC, with offices located at c/o InterActive Corp., 152 West 57th Street, New York, N.Y. 10019; IAC/Georgetown 19th Street, LLC with offices located at c/o The Georgetown Company, LLC, 667 Madison Avenue, New York, N.Y.; Georgetown 19th Street Phase I, LLC with offices located at c/o The Georgetown Company, LLC, 667 Madison Avenue, New York, N.Y. 10021; IAC 19th Street Holdings, LLC, with offices located at c/o The Georgetown Company, LLC, 667 Madison Avenue, New York, N.Y. 11021, (collectively, the "Applicant" or "Volunteer"), requested participation in the BCP, with the understanding that the terms and conditions of the VCA will remain in effect until the BCA is fully executed or otherwise terminated and for the time period from the date of its execution until superseded by the BCA; and

WHEREAS, the property's prior use was commercial, specifically a truck storage garage, is currently vacant, and is intended to be redeveloped for commercial use; and

WHEREAS, Georgetown 19th Street Development, LLC had submitted and received approval for a Remedial Action Work Plan, a Community Air Monitoring Plan, a Health and Safety Plan, a Soil Erosion and Sediment Control Plan, a Construction Quality Assurance Plan and an Operations Plan, which documents are consistent with the intended use for the Site; 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 consideration of the original application for the VCP, 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 BCP as a Volunteer as defined in ECL 27-1405(1)(b) with prior approval of work plans remaining in effect.

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

I. Citizen Participation Plan

Within twenty (20) Days after the effective date of this Agreement, Volunteer shall submit a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 that, at a minimum (i) updates the names and addresses of the interested public and includes a brownfield site contact list; (ii) identifies major issues of public concern related to the Site; (iii) includes a description of citizen participation activities already performed; and (iv) includes a description and schedule of public participation activities that are either specifically required by law or are needed to address public concerns related to the Site. The Citizen Participation Plan shall be attached to and incorporated into this Agreement as Exhibit "A."

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14 and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site;
2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site;
3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or
4. "OM&M Work Plan" if the Work Plan provides for operation, maintenance, and/or monitoring.

B. Submission/Implementation of Work Plans

1. The Remedial Action Work Plan has been submitted and approved. The Volunteer can submit such other and additional work plans as it deems appropriate.

2. Proposed Work Plans 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. The Department shall use best efforts to approve, modify, or reject a proposed Work Plan within forty-five (45) Days from its receipt or within fifteen (15) Days from the close of the comment period, if applicable, whichever is later.

i) 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 as Exhibit "C" and shall be implemented in accordance with the schedule contained therein.

ii) If the Department modifies a Work Plan, the reasons for such modification shall be provided in writing. Within twenty (20) Days after receiving written notice of such disapproval, Volunteer shall elect in writing to (a) implement the Work Plan as modified; (b) implement any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Paragraph XIII.

iii) If the Department disapproves a Work Plan, the reasons for such disapproval shall be provided in writing. In the event the Department disapproves a Work Plan, within twenty (20) Days after receiving written notice of such disapproval, Volunteer shall elect in writing to (a) modify or expand it within thirty (30) Days of receipt of the written disapproval notice; (b) complete any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Subparagraph XIII.

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

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

C. Revisions to Work Plans

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

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Volunteer shall submit a Final Report that 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.

i) The Final Report for an Investigation Work Plan shall comply with the requirements set forth at ECL 27-1411(1) and 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. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track I, Volunteer shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 that supports such determination.

ii) A Final Engineering Report certifying that remediation of the Site has been performed in accordance with this Agreement shall be prepared by a Professional Engineer (or other expert approved by the Department) with primary responsibility for the day to day performance of the activities under this Agreement. The Report shall be prepared in accordance with the requirements of ECL 27-1419(1) and (2) and shall contain a certification that all such activities were performed in accordance with the Department approved Work Plan. The Department shall review such Report, the submittals made pursuant to the Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with the requirements of ECL 27-1419. Such Certificate of Completion may be modified or revoked, after notice and an

opportunity for hearing, upon a finding that (a) Volunteer failed to comply with this Agreement; (b) Volunteer made a misrepresentation of material fact in connection with its Application or its certification that cleanup levels required by this Agreement were reached; or (c) good cause exists for such modification or revocation.

iii) Unless otherwise requested by the Volunteer, the Certificate of Completion referred to in Subparagraph II.D.1(ii) shall not be issued until on or after January 1, 2006.

iv) All other Work Plan Final Reports shall contain a certification 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. Within sixty (60) Days of the Department's approval of a Final Report, Volunteer shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Volunteer, result in the termination of this Agreement pursuant to Paragraph XIII.

E. Review of Submittals other than Work Plans

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

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the submittal. Within twenty (20) Days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall elect in writing to either (i) modify or expand it within thirty (30) Days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIV; or (iv) terminate this Agreement pursuant to Paragraph XIII. If Volunteer submits a revised submittal and it is disapproved, the Department and Volunteer may pursue whatever remedies may be available under this Agreement or under law.

F. Department's Determination of Need for Remediation

The Department shall 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 for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL 27-1417(3)(e). The Department shall provide timely notification to the Volunteer of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Volunteer shall cause to be filed an Environmental Easement in accordance with Paragraph X within sixty (60) Days of receipt of the Department's determination.

3. If the Department determines that remediation, or additional remediation, is needed, Volunteer may elect to submit for review and approval a proposed Remedial Work Plan (or a revision to an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(e) and the Citizen Participation Plan developed pursuant to Paragraph I of this Agreement. If the Department determines following the close of the public comment period that revisions are needed, Volunteer agrees to negotiate revisions to the proposed Remedial Work Plan in accordance with Paragraph II.C. If Volunteer elects not to develop a Work Plan under this Subparagraph or if either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XIII.

G. Submission of Annual Reports, if required

In the event that the remedy for the Site, if any, or any Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Volunteer shall file a report annually (unless a different frequency is specified in an approved Work Plan) on the 1st day of the month following the anniversary of the start of the OM&M and continuing until the Department notifies Volunteer in writing that such report may be discontinued. Such report shall be signed by a Professional Engineer or by an expert approved by the Department to perform that function and certified under penalty of perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved OM&M Plan. Volunteer shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Volunteer shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the report required by this Subparagraph as well as in any

progress reports required by Paragraph XI. Volunteer can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer or other expert approved by the Department stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

III. Enforcement

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

IV. Entry upon Site

A. Volunteer hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL 27-1431.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement.

V. Payment of State Costs

A. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for State Costs for negotiating this Agreement, and all costs associated with this Agreement up to and including the date upon which the Certificate of Completion is issued, the Department approves the Final Report relative to OM&M, or this Agreement is terminated pursuant to Paragraph XIII, whichever is later.

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

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

Joseph Rose
Georgetown 19th Street Development, LLC
667 Madison Avenue
New York, N.Y. 10021

D. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, Albany, NY 12233-7012

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

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

G. In the event any instrument for the payment of any money due under this Agreement fails of collection, such failure of collection shall constitute a violation of this Agreement, provided (i) the Department gives Volunteer written notice of such failure of collection, and (ii) the Department does not receive from Volunteer a certified check or bank check within fourteen (14) Days after the date of the Department's written notification.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Volunteer shall be entitled to the Liability Limitation set forth at ECL 27-1421, subject to the terms and conditions stated therein. A Notice of the Liability Limitation shall be filed with the recording officer of the county in which the Site is located within thirty (30) Days of (i) the

effective date of the Certificate of Completion or (ii) the date Volunteer acquires title to the Site, whichever is later.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Volunteer reserves 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 Volunteer, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Volunteer's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Volunteer hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Volunteer may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall provide Volunteer with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Volunteer shall notify the Department at least sixty (60) Days in advance of any change of use, as defined in ECL 27-1425, which is proposed for the Site. In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Volunteer of such determination within forty-five (45) Days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) Days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within thirty (30) Days after the Department's determination pursuant to Subparagraph II.F.2 that additional remediation is not needed based upon use restrictions, Volunteer shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36. The submittal shall be substantially similar to Exhibit "B." Volunteer shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) Days after the Department's approval of such instrument. Volunteer shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) Days of such recording (or such longer period of time as may be required to obtain a certified copy provided Volunteer advises the Department of the status of its efforts to obtain same within such thirty (30) Day period).

B. Volunteer or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Volunteer shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XII.A.1 by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Volunteer in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and 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.

XII. Communications

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

1. Communication from Volunteer shall be sent to:

Joseph Moloughney, P.E.
Project Manager
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7017

Note: three copies of work plans are required to be sent, one electronic, and two paper copies, one bound and one unbound.

Geoffrey Laccetti
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

Denise J. D'Ambrosio
Project Attorney
New York State Department of Environmental Conservation
200 White Plains Road, 5th Floor
Tarrytown, New York 10591-5805

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

Joseph Rose
Georgetown 19th Street Development, LLC
667 Madison Avenue
New York, N.Y. 10021

Mark Chertok, Esq.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, N.Y. 10022

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

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

XIII. Termination of Agreement

Volunteer may terminate this Agreement at any time by providing written notification to the parties listed in Subparagraph XII.A.1. The Department may terminate this Agreement at any time pursuant to Subparagraph XV.A or in the event Volunteer fails to substantially comply with

the Agreement's terms and conditions. The Department shall provide written notification to Volunteer setting forth the basis for termination of the Agreement. The termination shall be effective the 5th day after the non-terminating party's receipt of such written notification, except that such termination shall not affect the provisions contained in Paragraphs V, VII.B, and VIII.

XIV. Dispute Resolution

A. In the event disputes arise regarding any notice of disapproval of a submittal, proposed Work Plan or Final Report, or during the implementation of any Work Plan, Volunteer may, within thirty (30) Days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. The Department and Volunteer shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIV.B. The period for informal negotiations shall not exceed thirty (30) Days from Volunteer's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Volunteer notifies the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XIV.B.

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

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

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

4. The OH&M shall prepare and submit a report and recommendation to the DER Director who shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Volunteer notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Volunteer shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within sixty (60) 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 sixty (60) Day period provided. In the event that Volunteer seeks judicial review, Volunteer shall be in violation of

this Agreement if it fails to comply with the final Court Order or settlement within thirty (30) Days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

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

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

7. Nothing in this Paragraph XIV 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.

XV. Miscellaneous

A. If the information provided and any certifications made by Volunteer are not materially accurate and complete, this Agreement, except with respect to Volunteer's obligations pursuant to Paragraphs V, VII.B, and VIII, 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 XIV, whichever is later, unless Volunteer submits information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

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

C. The Department may exempt Volunteer from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement that (i) is conducted on the Site or on different premises that are under common control or contiguous to or physically connected with the Site and such activity manages exclusively hazardous waste and/or petroleum from such Site, and (ii) satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit, as determined by the Department.

D. Volunteer shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Volunteer's obligations under this Agreement. If, despite Volunteer's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained, Volunteer shall promptly notify the Department, and include a summary of the steps taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Volunteer in obtaining same. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Volunteer to modify the Work Plan pursuant to Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

E. All approved Work Plans, Final Reports, and other documents required under this Agreement shall be submitted to the Department in an electronic format acceptable to the Department within thirty (30) Days of approval. If any document cannot be converted into electronic format, Volunteer shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

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

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

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

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

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

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Volunteer promptly.

I. 1. If there are multiple parties signing this Agreement, the term "Volunteer" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Volunteer to implement any obligations under this Agreement shall not affect the obligations of the remaining Volunteer(s) under this Agreement.

2. If Volunteer is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XV.I.1 and 2, if multiple parties sign this Agreement as Volunteers but not all of the signing parties elect to implement a Work Plan, 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 Liability Limitation referenced in Paragraph VI.

J. Volunteer shall be entitled to contribution protection to the extent authorized by ECL 27-1421(6).

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

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

M. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder 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 its 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.

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

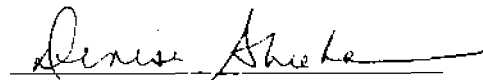
O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

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

DATED: July 14, 2004

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

By:




Denise Sheehan
Executive Deputy Commissioner

CONSENT BY VOLUNTEERS

Volunteers **HTRF Ventures, LLC** and **IAC 19th Street Holdings, LLC** hereby consent to the issuing and entering of this Agreement, waive Volunteers' right to a hearing herein as provided by law, and agree to be bound by this Agreement.

VOLUNTEERS:

By: 

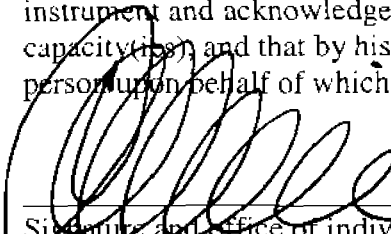
Title: Vice President and Treasurer

Date: JULY 8, 2004

STATE OF NEW YORK)

) ss.:
COUNTY OF New York

On the 8th day of July, in the year 2004, before me, the undersigned, personally appeared Bret Myers 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.




TANYA M. STANICH
Notary Public, State of New York
No. 02ST6080809
Qualified in New York County
Commission Expires 09/23/2008

Signature and office of individual
taking acknowledgment

CONSENT BY VOLUNTEERS

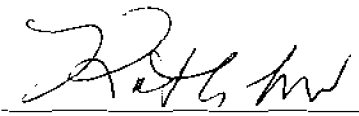
Volunteers **IAC/Georgetown 19th Street, LLC; Georgetown 19th Street Phase I, LLC; and Georgetown 19th Street Development, LLC** hereby consent to the issuing and entering of this Agreement, waive Volunteers' right to a hearing herein as provided by law, and agree to be bound by this Agreement.

VOLUNTEERS:

By: 
Title: Authorized Signatory
Date: 7/8/04

STATE OF NEW YORK)
) ss.:
COUNTY OF New York)

On the 8th day of July, in the year 2004, before me, the undersigned, personally appeared Joseph B. Rose, 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

KATHY SHUM *(S.W.)*
NOTARY PUBLIC, State of New York
No. 5003846
Qualified In New York County
My Commission Expires November 2, 18 2006

Glossary of Terms

The following terms shall have the following meanings:

"Day": a calendar day. In computing any period of time under this Agreement, if 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.

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

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

"OM&M": operation, maintenance, and monitoring.

"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.

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

"Termination Date": the date upon which (i) the Department issues the Certificate of Completion or approves the Final Report relative to the OM&M at the Site, whichever is later, or (ii) the Agreement terminates pursuant to Paragraph XIII or Subparagraph XV.A.

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

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

EXHIBIT "A"

Citizen Participation Plan

EXHIBIT "B"

**Environmental Easement
(DRAFT/SUBJECT TO REVISION)**

**ENVIRONMENTAL EASEMENT GRANTED
PURSUANT TO TITLE 36 OF ARTICLE 71 OF THE ENVIRONMENTAL
CONSERVATION LAW**

This environmental easement agreement is made this ____ day of _____, 200_, between Name of title owner(s) of the site residing at (or having an office at) Title owner's address - no PO Boxes, hereinafter referred to as the "Grantor", and the State of New York, acting through the New York State Department of Environmental Conservation with its headquarters located at 625 Broadway, Albany, New York 12233, hereinafter referred to as the "Grantee."

WHEREAS the Grantor, owner in fee of real property located in the Town of _____, _____ County, New York known and designated on the tax map of the Town of _____ as insert tax map information, being the same as that Property conveyed to Grantor by deed on _____, and recorded in the Land Records of the _____ County Clerk at insert Liber and page or computerized system tracking/ identification number, comprised of approximately # acres, and more particularly described in Exhibit A attached hereto and incorporated herein by reference, hereinafter known as the "Property"; and; Attach an adequate legal description of the property subject to the easement, or reference a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor, or if the easement encumbers the entire property described in a deed of record, the description in such deed may be incorporated by reference. If the easement is on only a part of a parcel of land which is not subdivided into encumbered and unencumbered portions, a legal description needs to be created by a survey bearing the seal and signature of a licensed land surveyor.

WHEREAS the Legislature of the State of New York has declared that it is in the public interest to create environmental easements because such easements are necessary for the protection of human health and the environment; to achieve the requirements for remediation established at contaminated sites by providing a means to ensure the performance of operation, maintenance, and monitoring; and to ensure the enforcement potential restriction of future uses of the land; and

WHEREAS the Property is a contaminated site which has undergone an environmental remediation project which has left residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to be effective, or which requires groundwater use restrictions; and

WHEREAS the Grantor has furnished documentation to the Grantee to enable the Grantee to determine that this Environmental Easement is enforceable; and

WHEREAS Grantor has entered into Brownfield Site Cleanup Agreement Index No. _____ (the "Agreement") for the Property, Site No. _____. Pursuant to Paragraph X of the Agreement Grantor has agreed to record an Environmental Easement to run with the land in favor of the State which complies with the requirements of Environmental Conservation Law ("ECL") Article 71, Title 36; and

WHEREAS the Grantee agrees to accept this environmental easement for the protection of human health and the environment.

NOW THEREFORE, Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Agreement and other valuable consideration, does hereby give, grant, covenant and declare in favor of the Grantee, pursuant to ECL Article 71 Title 36, that the Property shall be subject to this environmental easement; and with respect to the Property, does give, grant, and convey to the Grantee with general warranties of title the perpetual right to enforce this environmental easement which shall be of the nature and character, and to the extent set forth herein.

1. Purpose. It is the purpose of this environmental easement to convey to the Grantee real property rights, which will run with the land, to achieve the requirements for remediation established for the Property and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. Restrictions. The following restrictions specifically apply to the property, run with the land and are binding on the Grantor:

- a. Unless prior written approval by the Grantee 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.
- b. 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 Grantee, by capping the Property with another material.
- c. The owner of the Property shall prohibit the Property from ever being used for purposes other than for **[the intended use as set forth in the approved remedial work plan]** without the express written waiver of such prohibition by the Grantee.
- d. 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 Grantee.

e. 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 Grantee. These controls include [list specific controls required for this Property].

f. Any lease, license, or other instrument granting a right to use the Property shall incorporate, either in full or by reference, this environmental easement.

3. Right to Enter and Inspect. To assure compliance with the restrictions contained herein, the Grantee, its agents, employees, or other representatives of the State may enter and inspect the Property at reasonable times in a reasonable manner.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights accruing from its ownership of the Property, including, without limitation, the right to sell, transfer or encumber the Property, as owner, subject to the restrictions and covenants set forth in this environmental easement; and the right to engage in, or permit others to engage in, all uses of the property that are not expressly prohibited herein and are not inconsistent with the purposes of this environmental easement.

5. Enforcement. This environmental easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this environmental easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

6. Revocation of Certificate of Completion. If any person intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Section 27-1419 with respect to the Property.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of Grantee's approval of the language contained herein, in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Deed and Subsequent Instruments of Conveyance. The Property deed and all subsequent instruments of conveyance, including without limitation, transfer of title or mortgage, relating to the Property shall state in at least fifteen-point bold-faced type the following language until such time as the environmental easement is extinguished:

This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

Such deed and instrument shall reference, by book and page number or control number, the environmental easement and shall also specify that the property is subject to the restrictions contained in such easement.

9. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

11. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

12. Costs and Liabilities. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage.

13. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority.

14. Successors. The term "Grantor", wherever used herein, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor's Name

By: _____

Title: _____

Date: _____

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 200_, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

This instrument is accepted this ____ day of _____, 200_.

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

By:

Dale A. Desnoyers, Director
Division of Environmental Remediation

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 200_, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

EXHIBIT "C"

Approved Work Plans

- March 2003 (revised), Site Investigation Work Plan: West 19th Street Development Site, New York, New York, prepared by Blasland, Bouck & Lee, Inc.
- December 2003, Remedial Action Work Plan: West 19th Street Development Site, New York, New York, prepared by Blasland, Bouck & Lee, Inc. Approved by NYSDEC by letter dated January 13, 2004. As amended by letters from Georgetown 19th Street Development, LLC to the Department, dated May 6, 2004 and May 28, 2004, and the June 24, 2004, Site Operations Plan: West 19th Street Development Site, New York, New York, prepared by Roux Associates, Inc.

EXHIBIT "D"

Cost Summary

(Intentionally omitted)