

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of a Remedial Program for the  
**Flushing Industrial Park (Western Waterfront) Parcel 3**  
College Point Avenue and 40<sup>th</sup> Road, Queens,  
under Article 27, Title 14 of the Environmental  
Conservation Law by Volunteer,  
**C.E. Flushing, LLC**

AMENDED  
BROWNFIELD SITE  
CLEANUP AGREEMENT

Index No. W2-1029-04-10  
Site No. C241079

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**WHEREAS**, C.E. Flushing, LLC, with offices located at 118-35 Queens Boulevard, Forest Hills, New York 11375, is currently participating in the Brownfield Cleanup Program relative to 13.48 acres of real property located NW Corner of College Point Avenue and 40<sup>th</sup> Road, Flushing, Queens County, 11375, at latitude 40.7574E and longitude -73.8337E, and designated Tax Block 5066, Lots 1, 79, and 91 (the "Property"); and

**WHEREAS**, the Site will be developed as four parcels, as designated on the map attached Exhibit "A" as Parcels "1", "2", "3", and "4"; and

**WHEREAS**, Brownfield Site Cleanup Agreement, Index No. W2-1029-04-10, for Site No. C241079, dated December 23, 2004 (the "BCA" or the "Agreement") is applicable to Parcel 3. A metes and bounds description of Site No. C241079 is attached as Exhibit "B"; and

**WHEREAS**, the BCA was amended on June 14, 2005 to add C.E. Flushing Promenade, LLC as a Volunteer; and

**WHEREAS**, a certified application was submitted to the Department on January 8, 2007 to a Flushing Town Center III, LP and Allied Flushing Corporation, both are newly-formed affiliate entities of C.E. Flushing, LLC with a mailing address c/o Muss Development Corp., 11835 Queens Boulevard, Forest Hills, New York 11375, as additional Volunteers to the BCA; 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 applications to add the Additional Applicants, that such Additional Applicants are eligible to participate in the BCP 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:

1. Flushing Town Center III, LP, and Allied Flushing Corporation are added as Volunteers to the BCA; and
2. The Agreement, the June 14, 2005 Amendment, and this Amendment to the

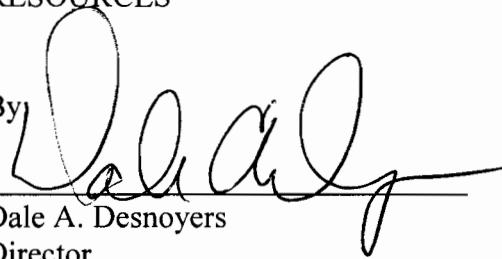
Agreement shall constitute the entire Agreement between the parties with all the terms and conditions of the Agreement, except as provided herein, remaining in full force and effect; and

3. The effective date of the Amended Brownfield Site Cleanup Agreement shall be the date it is executed by the Commissioner or the Commissioner's designee.

DATED: APR 27 2007

ALEXANDER B. GRANNIS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION AND  
TRUSTEE OF THE STATE'S NATURAL  
RESOURCES

By

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

Dale A. Desnoyers

Director

Division of Environmental Remediation

CONSENT BY VOLUNTEER

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

**C.E. Flushing, LLC**

By: \_\_\_\_\_

Joshua L. Muss

Title: \_\_\_\_\_

Manager

Date: \_\_\_\_\_

4/12/07

STATE OF NEW YORK )

) s.s.:

COUNTY OF QUEENS )

On the 12<sup>th</sup> day of April, in the year 2007, before me, the undersigned, personally appeared JOSHUA L. MUSS, 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.

Diana Niemec

Signature and office of individual  
taking acknowledgment

DIANA NIEMES  
Notary Public, State of New York  
No. 01N16125276  
Qualified in Queens County  
Commission Expires April 11, 20 09

## CONSENT BY VOLUNTEER

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

**C.E. Flushing Promenade, LLC**


By: Joshua L. Muss

Title: Manager.

Date: 7/12/07

[illegible]

On the 12<sup>th</sup> day of April, in the year 2007, before me, the undersigned, personally appeared JOSHUA L. MILES, 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

DIANA NIEMES  
Notary Public, State of New York  
No. 01NI6125276  
Qualified in Queens County  
Commission Expires April 11, 2061

CONSENT BY VOLUNTEER

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

**Flushing Town Center III, LP**

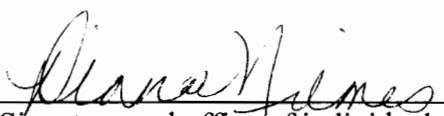
By:   
Joshua L. Muss

Title: - Manager

Date: 4/12/07

STATE OF NEW YORK     )  
  ) s.s.:  
COUNTY OF QUEENS     )

On the 12<sup>th</sup> day of April, in the year 2007, before me, the undersigned, personally appeared JOSHUA L. MUSS, 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

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

**Allied Flushing Corporation**

By: \_\_\_\_\_

Joshua L. Muss

Title: \_\_\_\_\_

President

Date: \_\_\_\_\_

4/12/07

STATE OF NEW YORK )

) s.s.:

COUNTY OF QUEENS )

On the <sup>12th</sup> day of April, in the year 2007, before me, the undersigned, personally appeared JOSHUA L. MUSS, 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.

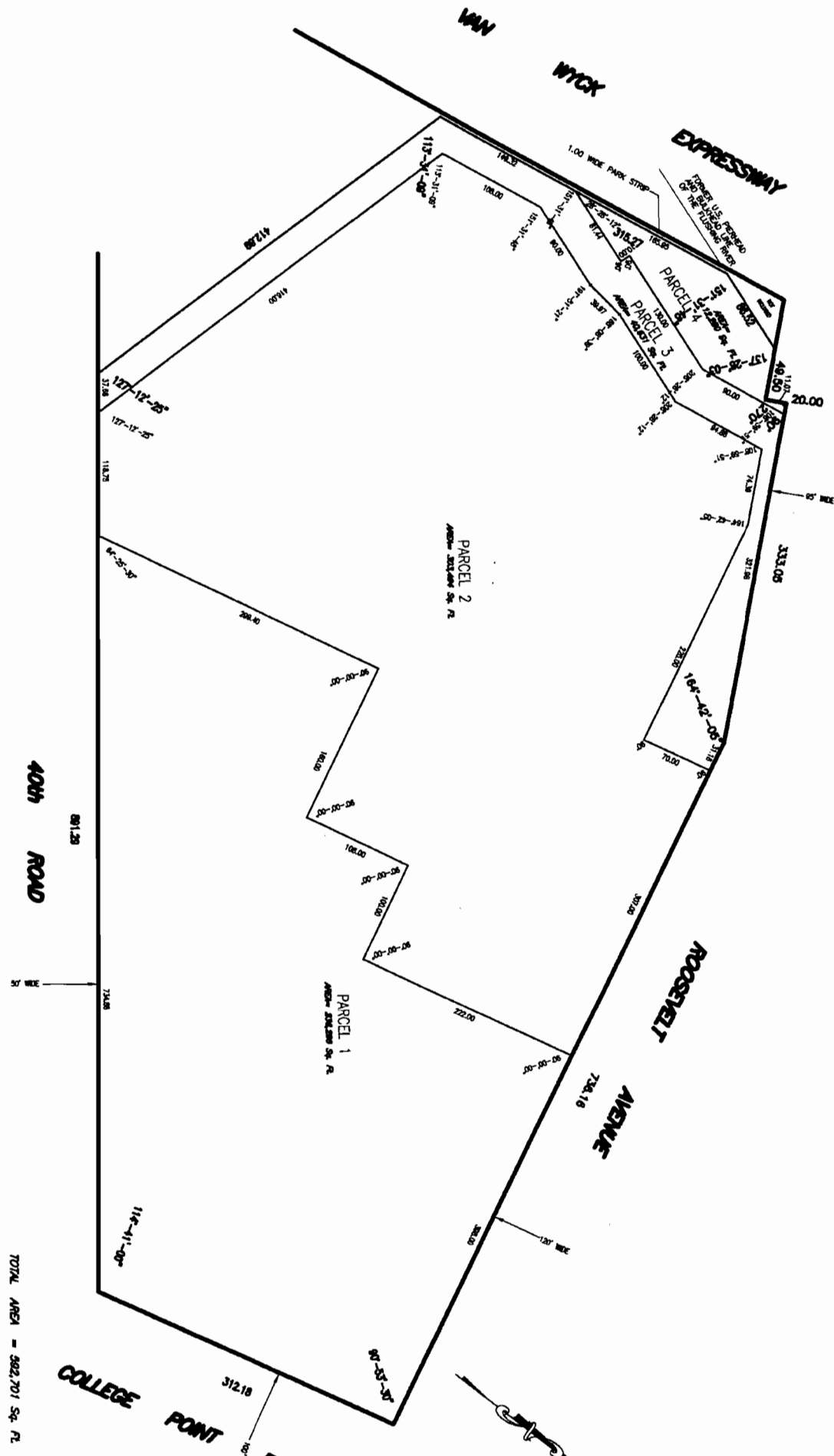
Diana Niemes

Signature and office of individual  
taking acknowledgment

DIANA NIEMES  
Notary Public, State of New York  
No. 01Ni6125276  
Qualified in Queens County  
Commission Expires April 11, 2009

## **Exhibit “A”**

### **Map**





**Exhibit “B”**

**Metes and Bounds**

**Flushing Industrial Park (Western Waterfront), Parcel 3**  
**BCP Site No. C241079**  
**Metes and Bounds Description**

There follows a suggested technical description of part of the property shown on map # 38448-F prepared by Wohl & O'Mara, LLP.

Beginning at a point on the northwesterly side of 40<sup>th</sup> Road (50.0 feet wide); distant 853.63 feet, as measured along said northwesterly side of 40<sup>th</sup> Road, from the point formed by the intersection of said northwesterly side of 40<sup>th</sup> Road with the westerly side of College Point Boulevard (100.00 feet wide).

- 1) Running thence northwesterly forming an interior angle of 127 degrees 12 minutes 25 seconds and a distance of 416.00 feet to a point.
- 2) Thence northerly forming an interior angle of 113 degrees 31 minutes 09 seconds and a distance of 108.00 feet to a point.
- 3) Thence northeasterly forming an interior angle of 151 degrees 31 minutes 48 seconds and a distance of 90.00 feet to a point.
- 4) Thence northerly forming an exterior angle of 191 degrees 51 minutes 21 seconds and a distance of 39.97 feet to a point.
- 5) Thence northeasterly forming an interior angle of 168 degrees 08 minutes 39 seconds and a distance of 100.00 feet to a point.
- 6) Thence northerly forming an exterior angle of 208 degrees 28 minutes 12 seconds and a distance of 94.88 feet to a point.
- 7) Thence easterly forming an interior angle of 108 degrees 59 minutes 51 seconds and a distance of 74.39 feet to a point.
- 8) Thence easterly forming an interior angle of 164 degrees 42 minutes 05 seconds and a distance of 225.00 feet to a point.
- 9) Thence northerly and perpendicular to Roosevelt Avenue 70.00 feet to a point on the southerly side of Roosevelt Avenue (120.00 feet wide).
- 10) Thence westerly along said southerly side of Roosevelt Avenue 31.16 feet to an angle point therein.
- 11) Thence southwesterly along said southerly side of Roosevelt Avenue (95.0 feet wide) 321.98 feet to a point.

- 12) Thence southerly forming an interior angle of 108 degrees 59 minutes 51 seconds and a distance of 90.00 feet to a point.
- 13) Thence southwesterly forming a exterior angle of 208 degrees 28 minutes 12 seconds and a distance of 130.00 feet to a point.
- 14) Thence southeasterly forming an interior angle of 90 degrees 00 minutes 00 seconds and a distance of 10.00 feet to a point.
- 15) Thence southwesterly forming an interior angle of 90 degrees 00 minutes 00 seconds and a distance of 81.44 feet to a point.
- 16) Thence southerly forming an interior angle of 151 degrees 31 minutes 48 seconds and a distance of 149.32 feet to a point.
- 17) Thence southeasterly forming an interior angle of 113 degrees 31 minutes 09 seconds and a distance of 412.89 feet to a point on the said northwesterly side of 40<sup>th</sup>. Road.
- 18) Thence northeasterly along said northwesterly side of 40<sup>th</sup> Road a distance of 37.66 feet to the point or place of beginning.