

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of a Remedial Program for  
Paragon Paint and Varnish Corp.  
under Article 27, Title 14 of the  
Environmental Conservation Law  
by Volunteer  
549 46<sup>th</sup> Avenue LLC

BROWNFIELD SITE  
CLEANUP AGREEMENT

Index #W2-1119-08-03  
Site #C241108

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**WHEREAS**, the Brownfield Cleanup Program 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 29, 2007, 549 46<sup>th</sup> Avenue LLC with an address at 94 Joralemon Street (3), Brooklyn, New York submitted a request to participate in the Brownfield Cleanup Program relative to two separate properties located at 549 46<sup>th</sup> Avenue and 45-28 Vernon Boulevard in Long Island City, County of Queens, New York; by written notice dated August 24, 2007, 549 46<sup>th</sup> Avenue LLC sought to withdraw the approximately 0.124 acre property located at 45-28 Vernon Boulevard (a/k/a the Wolf Property) from participation in the Brownfield Cleanup Program; the Department has accepted the application for the approximately 0.759 acre real property located at 549 46<sup>th</sup> Avenue in Long Island City, County of Queens, New York and identified on the Queens County Tax Map as Section No. 1, Block No. 26, Lot No. 4 (the "Site"). A map of the Site showing its general location is attached as Exhibit "A"; and

**WHEREAS**, the Site was developed for industrial purposes and was operated by Paragon Paint and Varnish Corp. for approximately 68 years commencing in or about the 1930's. The Site is currently vacant but the intended use is commercial; and

**WHEREAS**, an opportunity for public comment on 549 46<sup>th</sup> Avenue LLC'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, additional information and communications submitted on behalf of 549 46<sup>th</sup> Avenue LLC and the certifications made by 549 46<sup>th</sup> Avenue LLC, as well as any public comment received, that 549 4<sup>th</sup> Avenue LLC 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. Citizen Participation Plan

Within twenty (20) Days after the effective date of this Agreement, Volunteer shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 and 6 NYCRR 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

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, 6 NYCRR 375-1.6(a), 375-3.6, and 375-6, 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 and emanating from such 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 and contamination that has emanated from such Site;
3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or
4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) Days after the effective date of this Agreement. Thereafter, the Volunteer can submit such other and additional work plans as it deems appropriate.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR 375-3.6(b) 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 deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii) If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR 375-1.6(d)(3) shall apply.

iii) If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR 375-1.6(d)(4) shall apply.

3. A Site Management 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 conducted under a Department-approved Work Plan, Volunteer shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Volunteer shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL 27-1411(1) and 6 NYCRR 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Volunteer shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 and 6 NYCRR 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Volunteer shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL 27-1419(1) and (2) and 6 NYCRR 375-1.6(c). The Department shall review such Report, the submittals made pursuant to this 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 ECL 27-1419, 6 NYCRR 375-1.9 and 6 NYCRR 375-3.9.

3. 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.

D. 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 reason for its disapproval and may request Volunteer to modify or expand the submittal. Within fifteen (15) 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.

E. 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)(f). 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 recorded an Environmental Easement in accordance with 6 NYCRR 375-1.8(h).

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 modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3) and 6 NYCRR 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Volunteer agrees to negotiate appropriate modifications to. 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.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Volunteer shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

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 as described at 6 NYCRR 375-1.5(b)(4) provided Volunteer complies with the requirements set forth therein.

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 as provided by 6 NYCRR 375-1.5 (b)(3)(i).

B. Personal service costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). 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. Invoices shall be sent to Volunteer at the following address:

549 46<sup>th</sup> Avenue LLC  
94 Joralemon Street (3)  
Brooklyn, New York 11201  
Attention: Donald Rattner

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, New York 12233-7012

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

F. If Volunteer objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply.

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 and to the provisions of 6 NYCRR 375-1.9 and 375-3.9.

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 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 accordance with the provisions of 6 NYCRR 375-1.11(d). 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.E.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 and 6 NYCRR 375-1.8(h)(2). 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), which shall be deemed to be incorporated into this Agreement.

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 10<sup>th</sup> 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, by hand delivery, or by electronic mail.

1. Communication from Volunteer shall be sent to:

Moses Ajoku  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
47-40 21<sup>st</sup> Street  
Long Island City, New York 11101  
mxajoku@gw.dec.state.ny.us

Note: three hard copies (one unbound) of work plans are required, as well as one electronic copy.

Gary Litwin  
Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180-2216  
Gal09@health.state.ny.us

Note: two copies of work plans are required, and

Alali M. Tamuno  
Office of General Counsel  
New York State Department of Environmental Conservation  
100 Hillside Avenue, Suite 1W  
White Plains, New York 10603-2860

Correspondence only

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

549 46<sup>th</sup> Avenue LLC  
94 Joralemon Street (3)  
Brooklyn, New York 11201  
Attention: Donald Rattner

Stroock, Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038  
Attention: Gail Suchman

AKRF, Inc.  
440 Park Avenue South, 7<sup>th</sup> Floor  
New York, New York 10016  
Attention: Michelle Lapin

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 or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Subparagraph XII.A.

XIV. Dispute Resolution

In the event disputes arise under this Agreement, Volunteer may, within fifteen (15) Days after Volunteer knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

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. By entering into this Agreement, Volunteer agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1, 375-3 and 375-6; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this



Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

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 in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

D. 1. Volunteer shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Volunteer's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Volunteer's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Volunteer shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Volunteer in obtaining same.

2. 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 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Volunteer's inability to obtain such interest.

E. 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.

F. 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). 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, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XII.A.1.

ii. If Volunteer seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XII.A.1.

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.

G. 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.G.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.

H. Volunteer shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

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

J. 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.

K. 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.

L. 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.

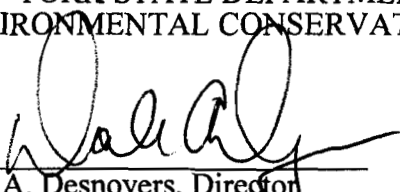
M. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

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

DATED: SEP 4 2008

ALEXANDER B. GRANNIS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

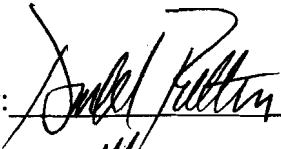
By:

  
Dale A. Desnoyers, Director  
Division of Environmental Remediation

CONSENT BY VOLUNTEER

Volunteer, **549 46<sup>th</sup> Avenue 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.

**549 46<sup>th</sup> Avenue LLC**

By: 

Title: Manager

Date: 4.4.08

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF KINGS    )

On the 4<sup>th</sup> day of April in the year 2008, before me, the undersigned,  
personally appeared DONALD M. RATNER,  
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at  
94 JORDAN ST B BROOKLYN, NY 11201  
(Full mailing address)

and that he/she/they is (are) the Manager  
(President or other officer or director or attorney in fact duly appointed)  
of the 549 46<sup>th</sup> Avenue LLC,  
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

  
Notary Public, State of New York

KAMAL P. SONI  
Notary Public, State of New York  
No. 01SO6089949  
Qualified in Kings County  
Commission Expires March 31, 2011

**EXHIBIT "A"**

**Map**