

Mitc  
Lesson

LAW OFFICES

# LEVENE GOULDIN & THOMPSON, LLP

P.O. BOX F-1706

BINGHAMTON, NY 13902-0106

SAMUEL K. LEVENE  
DAVID M. GOULDIN  
MICHAEL H. ZUCKERMAN  
JOHN J. CARLIN  
JOHN H. HARTMAN\*  
SHARON L. DYER  
PAUL R. HOFFMANN  
HOWARD M. RITTBERG  
LAWRENCE J. SCHORR  
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MICHAEL R. WRIGHT  
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JOHN G. GRALL

PATRICIA M. CURTIN  
CAROLINE A. VADALA\*\*  
ALBERT B. KUKOL  
KATHRYN GRANT MADIGAN  
JEFFREY A. LOEW††  
DAVID L. NIEFER  
GARY W. FARNETI††††  
MICHAEL E. OSBURN\*\*\*  
CYNTHIA ANN K. MANCHESTER

**FORMER PARTNERS OF  
CHERNIN & GOLD, LLP.**

RICHARD N. MATTIES\*  
JOHN P. RITTINGER  
ROBERT G. BULLIS  
DORIAN D. AMES\*\*  
SAM P. MONACHINO  
MARGARET J. FOWLER

PHONE: (607) 763-9200  
FAX: (607) 763-9212

**MAIN OFFICE**

450 PLAZA DRIVE  
VESTAL, NY 13850

\*ALSO ADMITTED IN FLORIDA  
\*\*ALSO ADMITTED IN PENNSYLVANIA  
\*\*\*ALSO ADMITTED IN MASSACHUSETTS  
\*\*\*\*ALSO ADMITTED IN MASSACHUSETTS & FLORIDA  
†ALSO ADMITTED IN WASHINGTON D.C.  
††ALSO ADMITTED IN GEORGIA  
†††ALSO ADMITTED IN ILLINOIS & MISSOURI  
††††ALSO ADMITTED IN CONNECTICUT

E-MAIL:  
DIRECT DIAL NUMBER:

SUSAN K. DANIEL†††  
HEATHER M. CORNELL\*\*\*\*  
KEVIN T. WILLIAMS  
JOHN H. SNYDER  
EDMOND F. MORREALL  
MICHAEL T. BAKER\*\*  
GREG S. CATARELLA  
JASON M. CARLTON  
STACEE S. VAIKNESS  
NICHOLAS J. SCARANTINO

**OF COUNSEL**

CARLTON F. THOMPSON  
GEORGE PETER KEYES  
HAROLD R. CLARK  
JOHN E. MURRAY  
SANFORD P. TANENHAUS  
DONALD M. FLANAGAN  
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BRUNO COLAPIETRO  
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WILLIAM S. YAUS  
JOHN F. ARTMAN\*\*  
JAMES R. PEDUTO†

† FORMER JUDGE  
NEW YORK STATE COURT OF CLAIM

April 11, 2002

Thomas Suozzo

New York State Department of Environmental Conservation

1679 New York State Route 11

Kirkwood, New York 13795

**Re: Property formerly owned by Overview Realty, Inc. - Voluntary Cleanup Agreement executed April 16, 1996**  
**Cleanup Agreement Case No.; V7-00002-96-01**  
**Current Owner: MIKA of Broome County, L.L.C.**  
**Premises: 7 Cherry Lane, Village of Greene, Chenango County, New York (the "Premises")**

Dear Tom:

The above Premises were subject to a Voluntary Cleanup Agreement and Plan executed in 1996. Copies of the Cleanup Agreement, the Release Letter dated May 10, 1996 and a Clarification Letter dated May 20, 1996 are enclosed for your review. Also enclosed is a copy of the Deed to the current owner which contains the restriction on the use of the property as required by the New York State Department of Environmental Conservation (the "DEC"). Raymond Corporation which is the proposed tenant for the property, would like to confirm that its proposed use does not violate the restriction which states that the Premises shall not be used for any purpose other than industrial/manufacturing is not without the express written waiver of such prohibition of the DEC.

Raymond Corporation proposes to use the Premises as a training center for the use of the equipment which it manufactures in its main facility in Greene, New York. The building will contain classrooms, in which classes will be held for dealer technicians. In addition, there will be a fleet of fork lifts on the Premises for training purposes. It is also possible that Raymond may also relocate its printing operation to the Premises.

BINGHAMTON OFFICE  
71 STATE STREET  
BINGHAMTON, NY 13901  
FAX: (607) 723-0634

MAIN OFFICE  
450 PLAZA DRIVE  
VESTAL, NY 13850-3657  
FAX: (607) 763-9212

NEW HARTFORD OFFICE  
605 FRENCH ROAD  
NEW HARTFORD, NY 13413  
PHONE: (315) 732-8661

Thomas Suozzo

2

April 12, 2002

Please confirm that the above activities will fall within the industrial use requirements as set forth in the Deed and that such use will not be in violation of the restriction contained therein.

Please call if you have any questions.

Thank you very much.

Very truly yours,

LEVENE GOULDIN & THOMPSON, LLP

A handwritten signature in blue ink, appearing to read "H.M. Rittberg", is written over the printed name.

Howard M. Rittberg, Esq.

HMR/ljl  
Enclosures

Cc: Lou Callea (w/o Enclosures, Via Facsimile)

valley ok  
New York State Department of Environmental Conservation  
Region 7 Headquarters  
615 Erie Boulevard West  
Syracuse, New York 13204-2400  
(315) 426-7403



Michael D. Zagata  
Commissioner

May 10, 1996

Re: Overview Realty, Inc.  
Voluntary Cleanup Agreement executed April 16, 1996

To whom it may concern:

The Department is pleased to report that the Department is satisfied that the Department-approved Work Plan has been successfully implemented at the parcel of land located at the former Page Print facility at 7 Cherry Lane in the Village of Greene, Chenango County, New York, a map of which is attached hereto as Appendix "A." So long as no information has been withheld from the Department or mistake made as to the hazard posed by any site-related compound or analyte of concern, the Department believes that no further investigation or response will be required at such property for any contamination existing as of April 16, 1996 to render that property safe for use as an industrial facility.

**Assignable Release and Covenant Not To Sue by Department:**

The Department, therefore, hereby releases, covenants not to sue, and forbears from bringing any action, proceeding, or suit against the current or future owners and operators of such property or any interest in that property, including Overview Realty, Inc. ("Volunteer"), the Volunteer's lessees, sublessees, successors, and assigns, and their respective secured creditors, for the further investigation or remediation of the site, or for natural resource damages, based upon the release or threatened release at such property of cadmium, chromium, zinc, lead, arsenic, barium, mercury, selenium, 2-butanone(MEK), toluene, and m & p-xylene present or existing in, on, at, or under the property as of April 16, 1996 ("Existing Contamination"); provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement dated April 16, 1996, between the Department and the Volunteer continue to be or have been made to the Department, and (b) the Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved post-response operation and maintenance plan, if any.

Nevertheless, the Department hereby reserves all of its rights concerning, and such forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

i. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan; or



ii. due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the Response Program performed under this Agreement is not sufficiently protective of human health for the reasonably anticipated industrial uses of the Site by Volunteer or its lessees, sublessees, successors, and assigns; or

iii. due to Volunteer's failure to implement this Agreement to the Department's satisfaction; or

iv. due to fraud committed by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer or any of Volunteer's lessees, successors, or assigns who causes or suffers the release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]) after April 16, 1996; or who causes or suffers the use of the Site to change from the reasonably anticipated industrial use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health; or who is otherwise a party responsible under law for the remediation of the Existing Contamination.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

Notwithstanding any other provision in this release, if with respect to the property there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, **nothing** in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

In conclusion, the Department is pleased to be part of this effort to return the subject property to an industrial use of benefit to the entire community.

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION  
Michael D. Zagata, Commissioner

By:



Daniel J. Palm

Regional Director, Region 7

Appendix "A"

Map of the Site

New York State Department of Environmental Conservation  
Region 7 Headquarters  
615 Erie Boulevard West  
Syracuse, NY 13204-2400  
(315) 426-7400



Michael D. Zagata  
Commissioner

IMMEDIATE ATTENTION

TO: Kate Fitzgerald, Esq. ROOM #: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_  
FROM: Jennifer Powell  
REGION 7, SYRACUSE OFFICE  
DATE: 5/10/96

MESSAGE: Overview release letter -  
original to follow, with cover  
letter.  
Thanks - Jlu

NUMBER OF PAGES 3 PLUS COVER SHEET.

OUR TELECOPIER PHONE NUMBER IS (315) 426-7402.

IF YOU EXPERIENCE ANY PROBLEMS RECEIVING THIS TRANSMISSION,  
PLEASE CALL (315) 426-7400.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X  
In the Matter of the  
Development and Implementation  
of a Response Program  
for the Page Print Facility by

CLEANUP  
AGREEMENT  
Case No. V7-0002-96-01

Overview Realty, Inc.

Volunteer.

-----X  
CONSIDERING,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL"). This Agreement is entered into pursuant to the Department's authority under that law.
2. Overview Realty, Inc. ("Volunteer") is a New York corporation with offices located at 7 Cherry Lane in the Village of Greene, New York. Volunteer intends to remediate under Department oversight property generally described as the Page Print Facility, located at 7 Cherry Lane in the Village of Greene, Chenango County, New York ("the Site"). Exhibit "A" of this Agreement is a map of the Site showing its general location.
3. Volunteer owns the Site and leases it to Valley Brook Co. Ltd, which operates a paint shop and silk screening operation at the Site. Volunteer intends to sell the Site to a purchaser which will continue to operate it as a commercial office site.
4. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.
5. A. Based on test results to date, the Department alleges that the Site may be an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, based on the presence of cadmium, chromium, zinc, lead, arsenic, barium, mercury, selenium, 2-butanone(MEK), toluene, and m & p-xylene, which may constitute hazardous waste (hereinafter "Existing Contamination.")  
  
B. ECL 27-1313.3 provides that the Department shall be responsible for inactive hazardous waste disposal site remedial programs, except as provided in Section 1389-b of the Public Health Law. ECL 27-1313.3.a provides that whenever the Commissioner of Environmental Conservation finds that hazardous wastes at an inactive hazardous waste disposal site constitutes a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to



develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order.

C. The regulations implementing ECL Article 27, Title 13 authorize at 6 NYCRR 375-1.2(e)(2)(ii) the proponents of any activity to demonstrate to the Department that such activity will not have the effect described in 6 NYCRR 375-1.2(e)(2)(i) by such demonstration as the Department may find acceptable.

D. Volunteer wishes to enter into this Agreement in order to ensure, and the Department hereby determines that this Agreement constitutes a demonstration, that the response action undertaken under this Agreement will be in compliance with the ECL and will not:

1. prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or

2. expose the public health or the environment to a significantly increased threat of harm or damage.

6. A. Volunteer also wishes to enter into this Agreement in order to resolve its potential liability for remediating the Existing Contamination as an owner and/or operator under ECL Article 27, Title 13. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

B. Volunteer, desirous of implementing a response program acceptable to the Department sufficient to allow Volunteer to proceed with its plans to use the Site for the contemplated use, consents to the terms and conditions of this Agreement.

7. The Department and Volunteer agree that the goals of this Agreement are:

- A. for Volunteer to (i) implement a Department-approved Response Program for the Site ("Response Program"), and (ii) reimburse the State's administrative costs as provided in this Agreement; and

- B. for the Department and the Trustee of New York State's natural resources (the "Trustee") to release Volunteer and its successors and assigns, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings (including but not limited to any claims for State administrative costs) by the Department or by the Trustee, which may arise under any applicable law as a result of the Existing Contamination.



8. Volunteer agrees to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

IT IS AGREED THAT:

I. Performance and Reporting of the Response Program

A. Within 21 days after the effective date of this Agreement, the Department shall publish a notice in the Environmental Notice Bulletin to inform the public of the execution of this Agreement and of the public's opportunity to submit comments to the Department on the Response Program Work Plan attached to this Agreement and made part of it as Exhibit B; and shall mail an equivalent notice to the Village of Greene, the Town of Greene, and Chenango County. If, as a result of its review of the comments received, the Department determines that the Work Plan must be revised due to substantive and significant information received during such public comment period, then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the Work Plan accordingly. If after good faith negotiations, revisions to the Work Plan cannot be agreed upon, this Agreement shall terminate upon the Department's so informing Volunteer in writing. In such event, both parties reserve whatever rights they may have had before the execution of this Agreement with respect to remediation of the Site. If both parties agree to a revised Work Plan, the revised Work Plan shall be attached to this Agreement as Exhibit B-1, and Volunteer shall implement that Work Plan instead of the one contained in Exhibit B; consequently, all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit B-1.

B. Within 30 days after the effective date of this Agreement, Volunteer shall commence the Response Program in accordance with the Response Program work plan (the "Work Plan") attached to this Agreement and made part of it as Exhibit "B."

C. Volunteer shall perform the Response Program in accordance with the Work Plan. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any Department-approved modification to the Work Plan, or any Department-approved detailed document or specification prepared by or on behalf of Volunteer pursuant thereto and shall not modify any obligation unless first approved by the Department.

D. During implementation of all construction activities identified in the Work Plan, Volunteer shall have on-Site a full-time representative who is qualified to supervise the work done.

E. In accordance with the schedule contained in the Work Plan, Volunteer shall submit to the Department a final report. The final report shall include a detailed

post-remedial operation and maintenance plan ("O&M Plan"), to the extent necessary; "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that the Response Program was implemented and all construction activities were completed in full accordance with the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement. The O&M Plan, if any, "as built" drawings, final report, and certification must be prepared, signed, and sealed by a professional engineer or other party acceptable to the Department.

F. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteer shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

G. 1. Within 60 days after receipt of the final report and certification, the Department shall notify Volunteer in writing whether the Department is satisfied that the Response Program was completed in compliance with the Work Plan and Department-approved design.

2. Once the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached, the Department and the Trustee shall, except for the reservations identified below, forbear from bringing any action, proceeding, or suit against Volunteer for the further investigation and remediation of the Site, or for natural resources damages, based on the release or threatened release of any Existing Contamination that Volunteer did not itself place, or suffer to be placed, at the Site, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, and (b) Volunteer and/or its lessees, sublessees, successors, or assigns **promptly** commence and diligently pursue to completion the Department-approved post-response operation **and** maintenance plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

i. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan;

ii. due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the Response Program performed under this Agreement is not sufficiently protective of human health for the reasonably anticipated industrial and commercial uses of the Site by Volunteer or its lessees, successors, or assigns;

iii. due to Volunteer's failure to implement this Agreement to the Department's satisfaction; or



iv. due to fraud committed by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any further investigation or abatement it deems necessary to be undertaken in the event that Volunteer causes or suffers the release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]) after the effective date of this Agreement; or that Volunteer causes or suffers the use of the Site to change from the reasonably anticipated industrial and commercial uses of the Site to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health.

3. Notwithstanding any other provision in this Agreement, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

H. If the Department is satisfied that the Response Program was completed in compliance with the Work Plan and Department-approved design, the Department shall provide Volunteer with a separate written "clean site notification" letter derived from the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "C".

I. 1. Notwithstanding any other provision of this Agreement, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.G or in a "clean site notification" letter issued under Subparagraph I.H of this Agreement, shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

2. Except as above provided in Subparagraph I.G of this Agreement and in the "clean site notification" letter issued under Subparagraph I.H of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.G and in the "clean site notification" letter issued under Subparagraph I.H of this Agreement shall not extend to parties that were responsible under law before the effective date of this Agreement to address the Existing Contamination.



## II. Progress Reports

A. If advised by Department staff that such reports are needed, Volunteer shall submit to the parties identified in Subparagraph XI.A.1 in the numbers specified therein copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;
2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;
3. identify all work plans, reports, and other deliverables required by this Agreement that were completed and submitted during the previous month;
4. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under the Agreement, and efforts made to mitigate those delays or anticipated delays;
6. include any modifications to any work plans that Volunteer has proposed to the Department or that the Department has approved.

B. Volunteer shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the Release.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

## III. Review of Submittals

A. The Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this

Agreement and generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

B. 1. If the Department disapproves a submittal, except with respect to the final engineering report and certification (in which case the period shall be 60 days), it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days after its receipt of the submittal and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion is within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal, the Department shall notify Volunteer in writing within 30 days of its approval or disapproval. If the Department disapproves the revised submittal, the Department and the Volunteer may pursue whatever remedies may be available at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

#### IV. Enforcement

A. This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because 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 ("force majeure event"). Volunteer shall, within five working days of when it obtains knowledge of any such force majeure event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer 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 is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B.



V. Entry upon Site

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the Remedial Program for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and job meetings.

VI. Payment of State Costs

Within thirty 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 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 this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.G.1 of this Agreement. Such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Hazardous Waste Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, NY 12233-7010

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.

VII. Department Reservation of Rights

A. Except as provided in Subparagraphs I.G and I.H of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights with respect to any party other than Volunteer.



B. Nothing contained in this Agreement shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with this Agreement or if environmental conditions unknown or unforeseen at the effective date of this Agreement are encountered at the Site.

C. Nothing contained in this Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteer fails to comply substantially with this Agreement's terms and conditions.

#### VIII. Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns.

#### IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, Volunteer shall file a Notice of Agreement derived from the model letter which is attached to this Agreement as Exhibit "D," with the Chenango County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement.

B. Volunteer has notified the Department in writing that it proposes to convey the whole of its ownership interest in the Site, as follows:

1. Identity of transferee: David Jones  
c/o Levene, Gouldin & Thompson, LLP  
PO Box F-1706  
Binghamton, New York 13902-1706
2. Nature of proposed conveyance: Transfer of all assets including real estate
3. Date of proposed conveyance: March 31, 1996

Volunteer shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

X. Deed Restriction

Within 30 days after the completion of the Response Program described in the Work Plan and Department-approved detailed documents and specifications prepared by or on behalf of Volunteer pursuant thereto--which are designed to allow the safe human use of the Site for purposes of a manufacturing facility, Volunteer shall record an instrument with the Chenango County Clerk, to run with the land, that shall prohibit the Site from ever being used for purposes other than of industrial manufacturing use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department. Such instrument also will include a provision prohibiting the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department. Volunteer shall provide the Department with a copy of such instrument certified by the Chenango County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Chenango County Clerk.

XI. 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:

Thomas S. Suozzo, P.E.  
New York State Department of Environmental Conservation  
1679 NY Route. 11  
Kirkwood, New York 13795-1602

with copies to:

G. Anders Carlson, Ph.D.  
Director, Bureau of Environmental  
Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

Jennifer L. Powell, Esq.  
New York State Department of Environmental Conservation  
615 Erie Boulevard West  
Syracuse, New York 13204-2400

Copies of work plans and reports shall be submitted as follows:

- Four copies (one unbound) to Mr. Suozzo
- Two copies to Dr. Carlson
- One copy to Ms. Powell

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

Katherine A. Fitzgerald, Esq.  
Hinman, Howard & Kattell, LLP  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, New York 13901-3490

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph XI.

## XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that it has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's officers, directors, employees, contractors, and agents which relates in any way to the contamination existing on the effective date of this Agreement or any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site and to their application for this Agreement. Volunteer also certifies that it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at or from the Site.

2. If the Department determines that information Volunteer provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void, and the Department shall reserve all rights that it may have.

B. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to

perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.



C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteer, and the Department also shall have the right to take its own samples. Volunteer shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteer with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteer shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement.

E. 1. Subject to Subparagraph XII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform the Volunteers's obligations under this Agreement.

2. In implementing the Response Program, Volunteer shall be exempt from the requirement to obtain any Department permit for any activity that is conducted on the Site and that satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer, Volunteer's officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status 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. Volunteer's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or Volunteer's contractors 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.

H. All references to "professional engineer" in this Agreement are to 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.

I. All references to "days" in this Agreement are to calendar days unless otherwise specified.

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

K. 1. The terms of this Agreement shall constitute the complete and entire Agreement between the Department and Volunteer concerning the remediation of the Site. 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 regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application, signed by the Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. Suozzo and to Ms. Powell.

L. This Agreement constitutes an exercise of the Department's enforcement discretion and accordingly, the remedial activities required herein shall be exempt from the provisions of the State Environmental Quality Review Act. Volunteer is also exempt from any Department permitting requirement in the implementation of the Response Program and is authorized to undertake the foregoing programs under the authority of this Agreement.

M. In undertaking the work required under this Agreement, Volunteer and its officers, directors, employees, representatives, agents, contractors and subcontractors are deemed for the purpose of ECL 27-1313.3 and any other similar provision of state or federal law, to be performing services related to cleanup or restorative work which is conducted pursuant to a contract with the Department.

N. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 USC 9613 and any other applicable law, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the alleged contamination which is the subject matter of this Agreement. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 USC 9613(f)(3) shall apply.

O. Volunteer and Volunteer's employees, servants, agents, lessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

P. The effective date of this Agreement shall be the date it is signed by the Commissioner or his designee.

DATED: Albany, New York  
04/16, 1996

MICHAEL D. ZAGATA  
Commissioner  
New York State Department of Environmental Conservation



A handwritten signature in cursive script, appearing to read "M. Zagata", is written over a horizontal line.



CONSENT BY VOLUNTEER

Overview Realty, Inc. hereby consents to the issuing and entering of this Agreement, waives its right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

By: David L. Vandermark

Title: PRESIDENT

Date: March 19, 1996.

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

On this 19th day of March, 1996 before me personally came David L. Vandermark, to me known, who being duly sworn, did depose and say that (s)he resides in Vestal, New York that (s)he is the President of Overview Realty, Inc., the corporation described in and which executed the foregoing instrument; and that (s)he signed (his)(her) name on behalf of the board of directors of said corporation and was authorized to do so.

Katherine A. Fitzgerald  
Notary Public

KATHERINE A. FITZGERALD  
No. 02F14732192  
Notary Public, State of New York  
Residing in Broome County  
My commission expires April 30, 1996

## **EXHIBIT "B"**

### **Department-Approved Work Plan**

Volunteer shall:

1. Remediate contaminated soil in the drainage ditch located on the east side of the facility by removal and appropriate disposal of the contaminated soil. The remediation would be consistent with a cleanup level to be determined in consultation with the Department based on a risk assessment following confirmational sampling performed after digging up the areas of known contamination.
2. Remediation of the MEK detected in the soil at the loading dock-concrete pad area on the southeast corner of the facility. Remediation would be performed again by soil removal, confirmational sampling and remediation to an extent determined by consultation with the Department pursuant to an appropriate risk assessment for the site.
3. Testing for any impact to the groundwater by placement of two to three geoprobes, placement to be determined by consultation with the Department.

## EXHIBIT "C"

### Assignable Release and Covenant Not To Sue by Department

[On Department Letterhead]

[Insert Date]

To whom it may concern:

The Department is pleased to report that the Department is satisfied that the Department-approved Work Plan has been successfully implemented at the parcel of land located at **describe location** in the --- of ---, a map of which is attached hereto as Appendix "A." So long as no information has been withheld from the Department or mistake made as to the hazard posed by any site-related compound or analyte of concern, the Department believes that no further investigation or response will be required at such property for any contamination existing as of **[insert effective date of this Agreement]** to render that property safe for use as **[identify the use]**.

#### Assignable Release and Covenant Not To Sue by Department:

The Department, therefore, hereby releases, covenants not to sue, and forbears from bringing any **action**, **proceeding**, or suit against, the current or future owners and operators of such property or any interest in that property, including **name the Volunteer** ("Volunteer"), the Volunteer's lessees, sublessees, successors, and assigns, and their respective secured creditors, for the further investigation or remediation of the site, or for natural resource damages, based upon the release or threatened release at such property of **identify the known contaminants: take from Subparagraph 2.B.2** present or existing in, on, at or under the property as of **[insert effective date of this Agreement]** ("Existing Contamination"); provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement dated **[insert effective date of this Agreement]**, between the Department and the Volunteer continue to be or have been made to the Department, and (b) the Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved post-response operation and maintenance plan, if any.

Nevertheless, the Department hereby reserves all of its rights concerning, and such forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

i. **add, if Existing Contamination includes petroleum:** due to offsite migration of petroleum contaminants that was not addressed by the Site's Response Program; if the Volunteer is the Site's sole or only viable PRP, include the following if the



remedial program the Volunteer undertakes under the agreement does not address offsite impacts- due to offsite migration of contaminants that was not addressed by the Site's Response Program;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan; or

iii. due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the Response Program performed under this Agreement is not sufficiently protective of human health for the reasonably anticipated identify the use(s), as:

**commercial/industrial/recreational** uses of the Site by Volunteer or its lessees, sublessees, successors, and assigns;

iv. due to Volunteer's failure to implement this Agreement to the Department's satisfaction; or

v. due to fraud committed by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer or any of Volunteer's lessees, if Volunteer is a lessee, add: sublessees, successors, or assigns who cause a, or suffer the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]) after [insert the effective date of this Agreement]; who cause a, or suffer the use of the Site to, change from the reasonably anticipated identify the use(s), as: **commercial/industrial/recreational** use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health; or who are otherwise parties responsible under law for the remediation of the Existing Contamination.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

add, if Existing Contamination includes petroleum: Notwithstanding any other provision in this release, if with respect to the property there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

In conclusion, the Department is pleased to be part of this effort to return the subject property to **identify the use(s), as: commercial/industrial/recreational** use of benefit to the entire community.

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

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

Its: \_\_\_\_\_

**Appendix "A"**

**(to Exhibit "C")**

**Map of the Site**



## Exhibit D

### NOTICE OF AGREEMENT

This Notice is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 1995 by **name of Volunteer**, the fee owner of a parcel of real property located at **address** as more particularly described on Appendix "A" attached hereto (the "Property"); and

**WHEREAS**, there is presently located on the Property **identify the known contaminants: take from Subparagraph 2.B.2**; and

**WHEREAS**, the **Volunteer's name**, by signature of \_\_\_\_\_, entered into an administrative Agreement with the Department, Index #--, ( the "Agreement") concerning the remediation of the Property, which Agreement was signed by the Commissioner of the New York State Department of Environmental Conservation on \_\_\_\_\_, 1995; and

**WHEREAS**, in return for the remediation of **the Property** pursuant to the Agreement to the satisfaction of the Department, the Department has provided **Volunteer's name**, and its successors, assigns, lessees and sublessees, including their respective secured creditors, with a release and covenant not to sue or bring any action, proceeding, or suit related to the further investigation or remediation based upon the release or threatened release of any hazardous substances, pollutants, wastes and/or contaminants present or existing in, on, at or under the Property as of the date of the Agreement, subject to certain reservations set forth in the Agreement; and

**WHEREAS**, pursuant to the Agreement, **Volunteer's name** agreed that it would give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the --- County Clerk,

**NOW, THEREFORE**, [**Volunteer's name**], for itself, its successors and its assigns declares that:

1. Notice of the Agreement is, hereby, given to all parties who may acquire any interest in the Property.
2. This Notice shall terminate upon the filing by **Volunteer's name**, or its successors and assigns, of a termination of notice of Agreement.

IN WITNESS WHEREOF, Volunteer's name has executed this Notice of Agreement  
by its duly authorized representative.

Volunteer's name

Dated: \_\_\_\_\_, 1996

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

Its: \_\_\_\_\_

[acknowledgement]

**Appendix "A"**

**(to Exhibit "D")**

**Map of the Property**





# This Indenture,

June

Nineteen Hundred and

Made the 7th  
Ninety-six

day of

Between

OVERVIEW REALTY, INC., with offices at 7 Cherry Lane, Greene, New York 13778,  
a corporation organized under the laws of the State of New York,

party of the first part, and

MIKA OF BROOME COUNTY, L.L.C., a New York limited liability company with  
offices at 817 Overbrook Drive, Vestal, New York 13850, party of the second part,

Witnesseth that the party of the first part, in consideration of

One and no/100-----Dollar (\$1.00-----)  
lawful money of the United States, and other good and valuable consideration  
paid by the party of the second part, does hereby grant and release unto the party  
of the second part, its successors and assigns forever, all

See Schedule A Attached

Together with the appurtenances and all the estate and rights of the party  
of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the  
second part, its successors and assigns forever.

And the party of the first part covenants as follows:

First, That the party of the second part shall quietly enjoy the said premises;  
Second, That the party of the first part will forever Warrant the title to said  
premises.

Third, That, in Compliance with Sec. 13 of the Lien Law, the grantor will receive  
the consideration for this conveyance and will hold the right to receive such consideration as a  
trust fund to be applied first for the purpose of paying the cost of the improvement and will  
apply the same first to the payment of the cost of the improvement before using any

## SCHEDULE A

### PARCEL I

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Greene, Town of Greene, County of Chenango and State of New York, bounded and described as follows:

Beginning at a 5/8 inch iron pin with cap set in the easterly boundary of lands now or formerly owned by Mason and Louise Seymour as recorded in the Chenango County Clerk's Office in Liber 440 at page 421, and at the northwesterly corner of lands owned by the grantor herein; thence through the lands now or formerly owned by Page Seed Co., the following courses and distances:

N 53 degrees 28 minutes 16 seconds E a distance of 200.00 feet to a 5/8 inch iron pin with cap set;

Thence S 52 degrees 5 minutes 8 seconds E a distance of 90.53 feet to a 5/8 inch iron pin with cap set in the northerly boundary of lands owned by the grantor and the southerly boundary of lands owned now or formerly by Page Seed Co.;

Thence S 74 degrees 43 minutes 16 seconds W a distance of 240.64 feet to the point or place of beginning.

Containing 8,721 square feet (0.201 acres) of land, as surveyed by Paul B. Koerts, licensed land surveyor, N.Y.S., Lic. No. 49850, dated July 15, 1987, revised on October 27, 1987 and further revised on April 26, 1988.

Subject to an existing right of way to Greene Street and also subject to any utility easements and restrictions of record.

### PARCEL II

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Greene, Town of Greene, County of Chenango and State of New York, bounded and described as follows:

Seed Company and runs eastwardly to the demised premises, which right of way is to be maintained by the owner of the demised premises.

Together with the right to cross the property of Page Seed Company for the purpose of installing a water connection with the water main at the hydrant and repairing the same if and when necessary.

The Grantor hereby assigns all its right, title and interest to a right of way and easement across the property of Graydon D. Furman as reserved in a deed from The Page Seed Co. to the said Furman dated October 26, 1987 and recorded October 27, 1987 in the Chenango County Clerk's Office in Liber 682 of Deeds at page 345. The Page Seed Co. conveyed their interest in the right of way and easement to Page Print, Ltd. by Warranty Deed dated December 1, 1987 and recorded December 9, 1987 in Liber 686 of Deeds at page 88.

Together with a right of way set forth in an agreement between Page Seed Co. and Page Print, Ltd., dated November 25, 1987 and recorded December 7, 1987 in the Chenango County Clerk's Office in Liber 685 of Deeds at page 308.

Being the same premises conveyed to the grantor herein by deed from Pageprint, Ltd., recorded January 20, 1992 in the Chenango County Clerk's Office in Book 757 of Deeds at page 104.

The above referenced premises shall be subject to the following restrictions, which shall run with the land: The premises shall not be used for any purpose other than that of industrial manufacturing use without the express written waiver of such prohibition by the New York State Department of Environmental Conservation ("the Department"), or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department.

In addition, the groundwater underlying the premises may not be used for drinking water or industrial purposes without treatment rendering it safe for such purpose, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department.