

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Implementation of an  
Investigation of  
New Paltz Plaza by

AGREEMENT  
(INDEX NUMBER: W3-0782-96-12)

New Paltz Plaza Properties, L.P.,  
Volunteer.

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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. A. The New Paltz Plaza Shopping Center (the Site) is located on State Route 299 in the Town of New Paltz, County of Ulster, State of New York. Exhibit "A" of this Agreement is a map of the Site showing its general location.
3. A. New Paltz Plaza Properties, L.P. ("Volunteer") is a limited partnership existing under the laws of the State of New York which was created for the purpose of purchasing the New Paltz Plaza Shopping Center. New Paltz Plaza, Inc. is the general partner in the Volunteer. Volunteer's address is c/o The Kempner Corporation, 257 Mamaroneck Avenue, White Plains, New York 10605.  
  
B. Volunteer intends to renovate the buildings and continue to operate the Site as a shopping center.  
  
C. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with the facility on that Site is limited to the following: Volunteer is a contract vendee of the Site. Volunteer has not previously owned and has not yet taken title to the Site; however, Volunteer is the lessee of the Site. Volunteer maintains that contamination on the Site resulting from the oil spill at Victory Markets and the disposal of dry cleaning solvents by Revonak Dry Cleaners existed prior to its involvement with the Site. On August 19, 1992 Volunteer entered into a lease agreement containing a purchase option with the current owner. Under the original lease, the current owner of the Site retained the obligation to address the pre-existing contamination at the Site. A copy of the Lease agreement, as amended, has been provided to the Department.

4. The Department 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. Volunteer wishes to enter into this Agreement in order to resolve its potential liability as an operator under ECL Article 27, Title 13 based upon Volunteer's investigation of the Site. 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 an investigation program acceptable to the Department, consents to the terms and conditions of this Agreement.

6. The Department and Volunteer agree that the goals of this Agreement are for Volunteer to, (i) implement a Department-approved investigation program for the Site ("Investigation Program"); and (ii) reimburse the State's administrative costs as provided in this Agreement.

7. 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.

**IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S NOT CONSIDERING VOLUNTEER TO BE THE SITE'S OPERATOR MERELY FOR HAVING CARRIED OUT ITS OBLIGATIONS UNDER THE CIRCUMSTANCES SET FORTH IN THIS AGREEMENT, VOLUNTEER AGREES TO THE FOLLOWING:**

**I. Performance and Reporting of the Investigation Program**

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

B. Volunteer shall perform the Investigation 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 or any Department-approved modification to the Work Plan and shall not modify any obligation unless first approved by the Department.

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

D. In accordance with the schedule contained in the Work Plan, Volunteer

shall submit to the Department a final investigation report. The final investigation report shall:

1. include all data generated and all other information obtained during the investigation;
2. provide all of the assessments and evaluations identified in the Work Plan;
3. identify any additional data that must be collected; and
4. include a certification by the individual or firm with primary responsibility for the day to day performance of the investigation that all activities that comprised the investigation were performed in full accordance with the approved Work Plan.

E. The Department shall not consider Volunteer to be the Site's operator merely for having carried out its obligations under this Agreement to the Department's satisfaction.

## II. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph X.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 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 the Work Plan, 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; and

6. include any modifications to the Work Plan that Volunteer has proposed to the Department and any 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.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of any meeting relating to the Work Plan's implementation.

### 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, 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 are 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 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 of this Agreement.

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 Investigation 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 to 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. Each 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 Environmental 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 Subparagraph I.E 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.

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

If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

X. 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:

Ramanand Pergadia, P.E.  
Regional Engineer  
New York State Department of Environmental Conservation  
21 South Putt Corners Road  
New Paltz, New York 12561-1696

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

Rosalie K. Rusinko, Esq.  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
200 White Plains Road - 5th Floor  
Tarrytown, New York 10591

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

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

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

Kevin M. Young, Esq.  
Young & Rowe  
Executive Woods  
Three Atrium Drive  
Albany, New York 12205

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 X.

**XI. 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 partners, 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 during its tenancy.

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

2. In carrying out the activities identified in the Work Plan, the Department may exempt Volunteer 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 agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), Volunteer's partners and Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or partnership 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 partners, 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 "days" in this Agreement are to calendar days unless otherwise specified.

I. 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.

J. 1. 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 oral 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 written 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. Pergadia and to Ms. Rusinko.

K. This Agreement is not subject to review under the State Environmental Quality Review Act. 6 NYCRR 617.5(c)(18).

L. In undertaking the work required under this Agreement, Volunteer and its partners, employees, representatives, agents, contractors and subcontractors are deemed

for the purpose of ECL 27-1321.3 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.

M. 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.

N. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, successors, and assigns hereby affirmatively waive any right they have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site arising from the investigation of the Site under this Agreement, 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.

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

P. Nothing in this Agreement is intended to release the seller of the Site from any remaining obligations under the Order on Consent between the seller, New Paltz Associates and the Department for the Revonak Dry Cleaners Inactive Hazardous Waste Site No. 3-56-021 effective on February 24, 1995.

DATED: FEB 25 1997

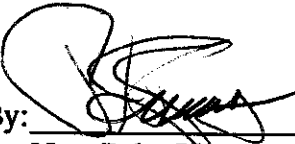
JOHN P. CAHILL  
ACTING COMMISSIONER  
NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

A handwritten signature in cursive script, reading "John P. Cahill", is written over a horizontal line.

CONSENT BY VOLUNTEER

New Paltz Properties, L.P.


Volunteer 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.

By:   
\_\_\_\_\_  
New Paltz Plaza Inc., General Partner  
by: Peter K. Kempner, President

Date: 1/17/97

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

On this 17 day of January, 1997, before me personally came Peter K. Kempner, to me known, who being duly sworn, did depose and say that he resides in Westchester County; that he is President of New Paltz Plaza, Inc., the general partner of New Paltz Properties, L.P., the limited partnership described in and which executed the foregoing instrument; and that he signed his name on behalf of New Paltz Properties, L.P. and was authorized to do so.

  
\_\_\_\_\_  
Notary Public

**SHERRIE R. DEANDA**  
Notary Public, State of New York  
No. 01DE506846  
Qualified in Westchester County  
Commission Expires December 2, 1998