

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a
Response Program for
New Paltz Plaza by

AGREEMENT
(INDEX NUMBER W3-0782-97-10)

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

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 and constitutes an administrative settlement for purposes of 42 USC 9613(f)

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

B The Site includes a dry cleaning business located within the New Paltz Plaza Shopping Center at which dry cleaning solvents have been used and which has an estimated size of .05 acres As a result of an oil spill from the "Great American" supermarket located at the Plaza, a groundwater monitoring plan was implemented in 1991 at the Site In addition, by an Order dated February 24, 1995, New Paltz Plaza Associates (hereinafter the "Prior Owner") agreed to conduct a Focused Remedial Investigation ("FRI") and an Interim Remedial Measure ("IRM") at the Site To date, the prior owner has completed the FRI but has not completed the IRM

C During the period 1991 through and including 1997, the Department, the Prior Owner and Volunteer-LP conducted extensive investigation of the Site and its surrounding areas The results of the various investigations are summarized in reports submitted to the Department, including those listed or otherwise referenced in Exhibit B In addition to the oil spill referenced in Subparagraph 2 B above, according to the investigations, elevated concentrations of tetrachloroethene (PCE) and trichloroethene (TCE) were found in the groundwater and in soils in and around the Site The contamination noted in the reports submitted to the Department is hereinafter denoted as the "Existing Contamination" The Existing Contamination is primarily attributable to Revonak (a k a Royal) Dry Cleaners

3 A New Paltz Plaza Properties, L P is a limited partnership existing under the laws of the State of New York that was created for the purpose of

purchasing the New Paltz Plaza Shopping Center New Paltz Plaza, Inc is the general partner in New Paltz Plaza Properties, L P New Paltz Plaza Properties, L P and New Paltz Plaza, Inc are collectively referred to herein as the "Volunteer" and individually referred to as Volunteer-LP and Volunteer-Inc , respectively Volunteer's address is c/o The Kempner Corporation, 257 Mamaroneck Avenue, White Plains, New York 10605

B Volunteer intends to 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-LP became the owner of the Site on March 21, 1997, Volunteer-Inc was the lessee of the Site, neither Volunteer-LP nor Volunteer-Inc is responsible for causing the contamination on the Site and neither has done anything to exacerbate the existing contamination Prior to March 21, 1997, Volunteer had not previously owned the Site, and had not otherwise had legal rights or obligation as lessee of the New Paltz Plaza Shopping Center to remediate the pre-existing contamination at the Site A copy of the Lease agreement, as amended, has been provided to the Department together with an application for a Voluntary Agreement

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

5 A The Department alleges that a portion of the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301 2, based upon the presence of PCE and TCE

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 constitute 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 Navigation Law § 173 prohibits the unpermitted "discharge" of "petroleum" as those terms are defined under Article 12 of the Navigation Law and an investigation conducted by the Department at the Site has revealed that petroleum has been discharged at the Site

7 Navigation Law § 176 permits, upon approval by the Commissioner, any person to cleanup and remove a discharge of petroleum without admission of responsibility for such discharge

8 A Volunteer also wishes to enter into this Agreement in order to resolve its potential liability for remediating the Existing Contamination as operator and owner under ECL Article 27, Title 13 and the Navigation Law. 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

9 The Department published a notice of the Proposed Remedial Work Plan for the Site and the proposed entry into this Agreement in the April 23, 1997 issue of the Department's Environmental Notice Bulletin and provided written notice to the Village of New Paltz, the Town of New Paltz, the County of Ulster, and the individuals on the Revonak Site Citizen Participation contact list of the Proposed Remedial Work Plan and the proposed entry of this Agreement and solicited comments from the public and from those local governments on the Proposed Remedial Work Plan and this Agreement. The Department received no comments from the public, however, the Department's technical staff had comments and the work plan was modified accordingly

10 The Department and Volunteer agree that the goals of this Agreement are

A for Volunteer to (i) implement the Department-approved remedial work plan pertaining to the Site attached to this Agreement and made part of it as Exhibit "C" (hereinafter "Work Plan"), 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 lessees, sublessees, officers, directors, partners, secured creditors, 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

11 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 enter into 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 RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEER AGREES TO THE FOLLOWING

I Performance and Reporting of the Work Plan

A Within 30 days after the effective date of this Agreement, Volunteer shall commence the implementation of the Work Plan.

B 1 Volunteer shall carry out the Work Plan in accordance with its terms.

2 The parties agree that the Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during the Work Plan's implementation, which renders the Work Plan insufficient to allow Volunteer to proceed with its plans to use the Site for the contemplated use. Any such modification(s) shall appear in Exhibit "C-1". However, if after good faith negotiations, Volunteer and the Department cannot agree upon modifications to the Work Plan, then except with respect to Volunteer's obligations under Paragraphs VI and VIII of this Agreement, this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification of the Work Plan. Volunteer shall not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before remedial activities were commenced, and (except with respect to the Department's right to enforce the obligations of Volunteer under Paragraphs VI and VIII of this Agreement as set forth above, which it may enforce under this Agreement) both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement. Notwithstanding the above, Volunteer is not responsible under Paragraph VI for reimbursing the State for expenses or costs incurred after the termination date of this Agreement.

3 Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any modifications to the Work Plan or to the 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

C During implementation of all construction activities identified in the Work Plan, Volunteer may 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, as may be modified by agreement between the parties, Volunteer shall submit to the Department a final engineering report. The final engineering 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 all activities were completed in full accordance with the Work Plan, any Department-approved modification to 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, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer

E 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 and shall cease such O&M as provided therein

F 1 Within 60 days after receipt of the final engineering report and certification, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of the Approved Remedial Work Plan and Department-approved design

2 Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with the Work Plan have been reached, the Department shall notify Volunteer in writing of its satisfaction and except for the reservations identified below, the Department and the Trustee shall release, covenant not to sue and shall forbear from bringing any action, proceeding, or suit against Volunteer for response costs and for the further investigation and remediation of the Site or liability for damages (including response costs), or for natural resources damages, based upon the release or threatened release of any Existing Contamination, 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, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Approved O&M Plan, if any. Nonetheless, the Department and the Trustee hereby reserves

all of their respective rights concerning, and such release, covenant not to sue, and such forbearance shall not extend to, any further investigation or remedial action the Department deems necessary

i due to offsite migration of an on-Site petroleum discharge that was not addressed by the Work Plan,

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 which indicates that Site conditions are not sufficiently protective of human health and the environment for the reasonably anticipated commercial use of the Site,

iii due to information received after the Department's approval of the final engineering report and certification, which indicates with respect to the Existing Contamination that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the reasonably anticipated commercial use of the Site,

iv due to Volunteer's failure to implement this Agreement in accordance with its material terms and conditions, or

v due to fraud committed by Volunteer in demonstrating that the Work Plan has been completed in accordance with this Agreement

While the parties anticipate that the Work Plan will sufficiently protect human health and the environment for the reasonably anticipated commercial use of the Site, this Agreement is not intended to release the Prior Owner, the Respondent, from any of its remaining obligations under the Order on Consent for the Revonak Inactive Hazardous Waste Site, Index # W3-0667-93-11, effective February 24, 1995, nor is it intended to release any other party responsible under the law to remediate the Revonak Site. Volunteer has no obligations under said Order on Consent. Additionally, the Department and Trustee hereby reserve all of their rights concerning, and any such forbearance shall not extend to, any further investigation or abatement the Department 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 U S C 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]) after the effective date of this Agreement, or Volunteer causes a, or suffers the use of the Site to, change from the reasonably anticipated commercial use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment

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 (the "Spill Fund") against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim. As of

the effective date of this Agreement, the Department is not aware of any such claim by the Spill Fund

G If the Department is satisfied with the implementation of the Work Plan and with the implementation of, if any, the Department-approved design, the Department shall provide Volunteer with a separate written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "D "

H 1 Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I F or in a "no further action" letter issued under Subparagraph I G 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 F of this Agreement and in the "no further action" letter issued under Subparagraph I G 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 Releasee under 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 F and in the "no further action" letter issued under Subparagraph I G of this Agreement shall not extend to parties that were responsible under law before March 21, 1997 to address the Existing Contamination

I This Agreement shall constitute the resolution of liability to the Department in an administratively approved settlement within the meaning of §113 of CERCLA. The commitment herein is given in good faith and this Agreement shall be deemed to fully satisfy the requirements for such relief as set forth in any and all applicable federal and State law, including (but not limited to) CERCLA and the New York General Obligations Law §15-108(b)

II Progress Reports

A Volunteer shall submit to the parties identified in Subparagraph XI A 1 in the numbers specified therein copies of written quarterly progress reports that

1 describe the actions which have been taken toward achieving compliance with this Agreement during the previous quarter,

2 include all results of sampling and tests and all other data received by Volunteer or Volunteer's contractors or agents in the previous quarter,

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 quarter,

4 describe all actions, including, but not limited to, data collection and implementation of the Work Plan, that are scheduled for the next quarter 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 any work plans, including 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 thirteenth day of every calendar quarter following the effective date of this Agreement and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph I F of this Agreement. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements

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 final inspection and meeting

III Review of Submittals

A 1 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

2 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 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.

ii 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.

B Within 30 days after the Department's approval of the final engineering report and certification, Volunteer shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals. Such submission shall be made to

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

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 Work Plan 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

A 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 E 1 of 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, New York 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) shall be documented by expenditure reports. Volunteer's obligation under this paragraph to reimburse the State for the expenses incurred in any one year shall not exceed \$20,000.00, however, the Department may aggregate its billing for more than one year.

VII Department Reservation of Rights

A Except as provided in Subparagraph I F of this Agreement and in any "no further action" letter issued under Subparagraph I G 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 or Trustee's rights (including but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.

B Nothing contained in this Agreement shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with this Agreement or contamination other than Existing Contamination is 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 provided the Department has provided the Respondent with sixty (60) days written notice and an opportunity to cure such default and such default is either not cured or substantial progress is not made to cure such default during the notice period

E Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses Volunteer may have under applicable law respecting any Departmental assertion of remedial liability against Volunteer, and reserves all rights Volunteer may have respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteer's compliance with this Agreement shall not be construed as an admission of liability, fault, or wrongdoing 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

VIII Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all third party 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 the Notice of Agreement, which is attached to this Agreement as Exhibit "E," with the Ulster County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement

B 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 Deed Restriction

Within 30 days of receipt of the Department's notification pursuant to Subparagraph I F 1 of this Agreement approving Volunteer's final engineering report and certification, Volunteer shall record an instrument with the Ulster County Clerk, to run with the land, that shall prohibit the Site from ever being used for other than commercial purposes 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 requisite 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. Such instrument also will include a provision requiring Volunteer and Volunteer's successors and assigns to continue in full force and effect any institutional controls required by the Work Plan or the Department-approved O&M Plan. Volunteer shall provide the Department with a copy of such instrument certified by the Ulster County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Ulster 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

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
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
Young & Rowe
Executive Woods
Three Atrium Drive
Albany, New York 12205

Mr Peter Kempner
The Kempner Corporation
257 Mamaroneck Avenue
White Plains, NY 10605

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, 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. For purposes of the certification herein, Volunteer asserts that the Prior Site Owner is not a contractor or agent of Volunteer.

2 If the Department reasonably determines that information Volunteer provided prior to and upon executing this Agreement is 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 orally 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, 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 Approved Remedial Work Plan including the Department-approved O&M Plan, the Department may exempt Volunteer from the requirement to obtain any Department permit for any activity that is conducted at the Site and that satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit

F 1 The obligations of Volunteer-LP and Volunteer-Inc are joint and several. In the event of the insolvency or other failure of either to implement the requirements of this Agreement, the remaining one shall complete all such requirements

2 Volunteer-LP and Volunteer-Inc and their respective partners, officers, directors, agents servants, and employees (in the performance of their designated duties on behalf of the respective Volunteer), and their respective successors and assigns shall be bound by this Agreement. Any change in ownership or partnership status of Volunteer-LP or Volunteer-Inc including, but not limited to, any transfer of assets or real or personal property shall in no way alter Volunteer's respective responsibilities under this Agreement. Volunteer-LP and Volunteer-Inc are obligated to ensure that their respective officers, directors, partners, employees, servants, and agents comply with the relevant provisions of

this Agreement in the performance of their designated duties on behalf of Volunteer-LP or Volunteer-Inc

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 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 of the provisions of this Agreement.

K 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 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. Such relief will not be unreasonably denied. Nothing in Subparagraph XII K.2 of this Agreement shall preclude the Department's project manager from authorizing field changes in which case such field change shall be deemed a Department-approved modification.

L The Department as lead agency, has determined on March 7, 1997 that pursuant to Part 617 of the Implementing Regulations of Article 8 of the Environmental Conservation Law, State Environmental Quality Review Act, the proposed action will not have a significant effect on the environment, therefore a negative declaration has been prepared.

M 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

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 U S C 9613, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the non-petroleum Existing Contamination 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 U S C 9613(f)(3) shall apply with regard to non-petroleum contamination

O Volunteer and Volunteer's employees servants, agents, lessees, and successors, and assigns hereby affirmatively waives any right it has, had or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site, and further release 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 Volunteer 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 _____, New York

DEC 17 1997

JOHN P. CAHILL, COMMISSIONER
NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION
AND TRUSTEE OF THE STATE'S
NATURAL RESOURCES



CONSENT BY VOLUNTEER

New Paltz Properties, L.P.

Volunteer-LP 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.

~~New Paltz Properties, L.P.~~

By: 

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

Date: 11/7/97

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

On this 7th day of November, 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

ANNE C PITTINGER
Notary Public, State of New York
No 44-4795929
Qualified in Rockland County 99
Commission Expires March 30, 1999

CONSENT BY VOLUNTEER

New Paltz Plaza, Inc.

Volunteer-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.

New Paltz Plaza, Inc.

By:


Peter K. Kempner, President

Date:

11/7/97

STATE OF NEW YORK)

COUNTY OF WESTCHESTER) s.s.:

On this 7th day of November, 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 corporation described in and which executed the foregoing instrument; and that he signed his name on behalf of New Paltz Plaza, Inc. and was authorized to do so.

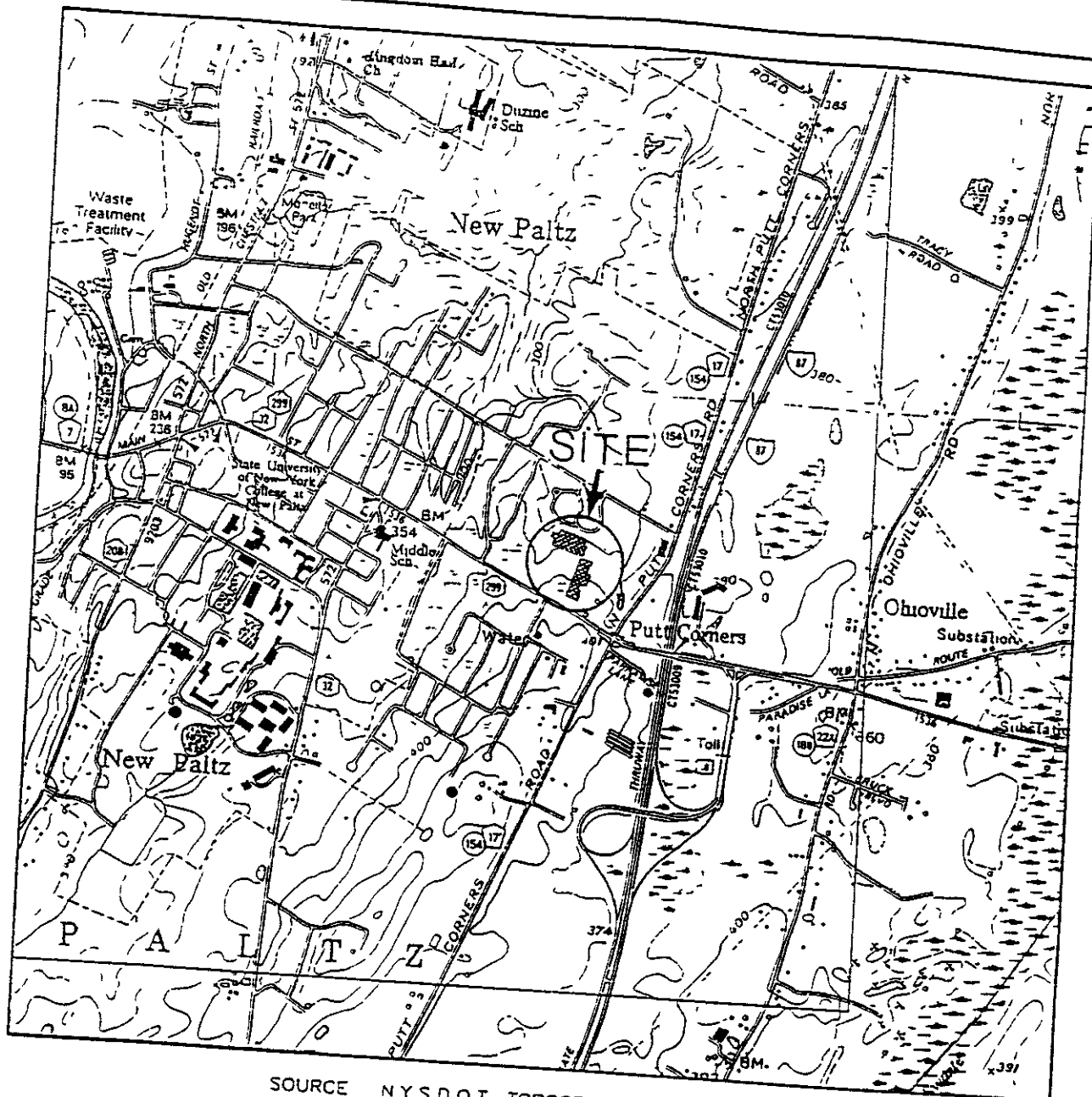


Notary Public

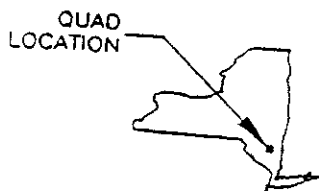
ANNE C. PITTINGER
Notary Public, State of New York
No 44-4795929
Qualified in Rockland County
Commission Expires March 30, 1999

Exhibit "A"

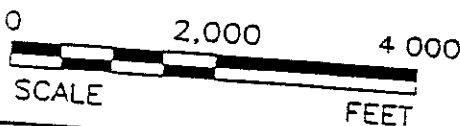
EXHIBIT A



SOURCE NYS DOT TOPOGRAPHIC QUADRANGLES
ROSENDALE AND
CLINTONDALE QUADRANGLES
7.5 MINUTE SERIES
DATE 1989



SCALE 1 24 000



GROUNDWATER
TECHNOLOGY

1245 KINGS ROAD
SCHENECTADY NY 12303
(518) 370-5631

DESIGNED
WCL
DETAILED
DEO
CHECKED

SITE LOCATION MAP

CLIENT
NEW PALTZ PLAZA ASSOCIATES

LOCATION
ROUTE 299
NEW PALTZ, NEW YORK

DRAWING DAT
12/17/9

FIGURE

Exhibit "B"

EXHIBIT B

Exhibit B includes, by reference, any and all documents in the files of the New York State Department of Environmental Conservation (the "Department"), received as of October 30, 1997, regarding Spill No 91-02195 and the Revonak Dry Cleaners Inactive Hazardous Waste Site in New Paltz, NY (Site # 3-56-021), including but not limited to

<u>Date</u>	<u>Document</u>
4/11/94	Focused Remedial Investigation Plan, prepared by Groundwater Technology Inc (GTI) and approved by NYSDEC
8/94	Citizen Participation Plan, Revonak Dry Cleaners Inactive Hazardous Waste Site, New Paltz, New York.
2/24/95	Order on Consent between the Department and New Paltz Plaza Associates (Index No W3-0667-93-11)
3/95	NYS DEC Region 3, Fact Sheet No. 1
3/95 - 5/96	Monthly project progress reports from GTI to the Department
12/20/96	Voluntary Cleanup Program Application, attached Voluntary Cleanup Site Assessment Report, attached list of prior owners and operators, attached Lease dated 8/19/92 and amendments dated 1/11/93, 5/14/93, and 8/20/96
1/97	Agreement between the Department and New Paltz Plaza Properties L.P re Implementation of an Investigation of New Paltz Plaza by New Paltz Plaza Properties LP (Index # W3-0782-96-12)
4/97	NYSDEC Region 3, Fact Sheet No. 2, corrected as of April 29, 1997

Exhibit "D"

Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

To whom it may concern:

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Volunteer's name ("Volunteer"), Index No.----- (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Department-approved Work Plan to implement a response program at the parcel of land located at **describe location** in the --- of ---, **Tax Map Parcel No./Tax Section, block, and lot no.**, a map of which is attached hereto as Appendix "A" (the "Site") has been successfully implemented. 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 the Site respecting the Existing Contamination to render the Site safe to be used for the Contemplated Use.

Assignable Release and Covenant Not To Sue:

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees and Volunteer's successors and assigns and their respective secured creditors, for the further investigation and remediation of the Site, or for natural resources damages, based upon the release or threatened release of Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of the Agreement, and Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of contaminants other than petroleum resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential

and to off-Site migration of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site migration;

- due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;
- 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 activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- due to fraud or mistake 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 and the Trustee hereby reserve all of their respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

- Volunteer if it causes a, 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]), other than Existing Contamination; or if it causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to
- any of Volunteer's lessees, sublessees, successors, or assigns who causes a, 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]), other than Existing Contamination, after the effective date of the Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from the Agreement's execution.

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 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 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 Site to productive use of benefit to the entire community.

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION AND TRUSTEE OF NEW YORK STATE'S
NATURAL RESOURCES**

By: _____

Its: _____

Exhibit "E"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 1997 by **Volunteer's name**, the fee owner of a parcel of real property located at **address; also include Tax Map Parcel No./Tax Section, block, and lot no** as more particularly described on Appendix "A" attached hereto (the "Property"), and

WHEREAS, Volunteer's name, by authorized signature, entered into an administrative Agreement with the Department, Index #-- (the "Agreement"), concerning the remediation of contamination present on the Property and characterized to determine its nature and extent (the "Existing Contamination"), which Agreement was signed by the Commissioner of Environmental Conservation on _____, 1997, and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide **Volunteer's name** and its lessees and sublessees and its successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation based upon the release or threatened release of Existing Contamination, 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 This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property, and that

2 This Notice shall terminate upon the filing by **Volunteer's name**, or its successors and assigns, of a termination of notice of Agreement after having first received approval to do so from the New York State Department of Environmental Conservation

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

Volunteer's name

Dated _____, 1997

By _____

Its _____

[acknowledgment]

Appendix "A"
(to Exhibit "E")
Map of the Property