

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of an
Investigation of
North Plank Road Shoprite Plaza
by

AGREEMENT

INDEX NUMBER: W3-0797-97-08

C/S Associates Limited Partnership I,
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.

2. A. C/S Associates Limited Partnership I ("Volunteer") is a limited partnership with offices at 1660 L Street, NW Suite 910, Washington, DC 20036.

B. The property subject to this Agreement is located at State Highway # 300, 206 North Plank Road, Town of Newburgh, Orange County, New York, and is identified on the Town of Newburgh Tax Map Identifier as # 334600 77-2-2.1 (the "Site"). A map of the Site showing its general location is attached to this Agreement as Exhibit "A."

C. Volunteer operates an existing commercial retail shopping center at the Site.

D. 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 the owner of the Site and is responsible under law to remediate contamination existing at the Site as of the effective date of this Agreement.

E. Volunteer, without the Department's approval or oversight, previously performed an investigation and conducted remedial measures at the Site to address environmental concerns. Copies of data from the Volunteer's investigation and remediation have been provided to the Department. The investigation currently proposed by the attached work plan is intended to provide the Department with missing data from the previous investigation performed at the Site which has been provided to the Department.

3. The Department has the power, inter alia, to provide for the prevention and

4. 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 solely 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.

5. 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.

6. 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 INVESTIGATED THE SITE 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 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 access to a telephone at the Site, 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 not to exceed Thirty Thousand (\$ 30,000.00) Dollars in the aggregate 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 work performed at the Site to date, as well as 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

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 "C," with the Orange 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. 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:

Melissa Mastro
New York State Department of Environmental Conservation
Division of Environmental Remediation
21 South Putt Corners Road
New Paltz, New York 12561

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

Edward F. Devine
New York State Department of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road, 5th Floor
Tarrytown, New York 10591-5805

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

- Four copies (one unbound) to Melissa Mastro
- Two copies to Dr. Carlson
- One copy to Edward F. Devine

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

Ivy Yates
C/S Associates Limited Partnership I
1660 L Street, NW Suite 910
Washington, D 20036

Lawler Matusky & Skelly, LLP
Environmental Science & Engineering Consultants
One Blue Hill Plaza
Pearl River, NY 10965

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 members, 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.

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 have the right to obtain split and/or duplicate samples of all original substances and materials sampled by the Department. 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 members, partners, 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 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 members, 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 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.

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 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 Melissa Mastro and to Edward F. Devine.

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


L. 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.

M. Volunteer and Volunteer's members, partners, officers, 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.

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

DATED: OCT - 1 1997

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

Handwritten signature of John P. Cahill in cursive, written over a horizontal line.

By:

Handwritten signature of Glen G. Davis in cursive, written below the 'By:' line.

Senior Deputy Commissioner

CONSENT BY VOLUNTEER

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: [Signature]
[name & title] Conrad Cafritz, President
TCG-I Assoc, Inc.
Date: 9-2-97 General Partner

~~STATE OF~~)
District of Columbia) S.S.:
~~COUNTY OF~~)

On this 2nd day of September, 1997, before me personally came, Conrad Cafritz, to me known, who being duly sworn, did depose and say that he resides in Washington DC; that he is President of Corp GP, the limited partnership described in and which executed the foregoing instrument; and that Conrad Cafritz signed his name on behalf of CK Associates Limited Partnership and was authorized to do so.

[Signature]
Notary Public
ERLINDA A. OLYMPIA
Notary Public, District of Columbia
My Commission Expires March 31, 2001

EXHIBIT "A"

Map of Site



Map source
USGS 7.5-minute Quadrangle Map
Newburgh, NY 1985

NEW YORK
STATE
QUADRANGLE
LOCATION

2000 ft 1000 ft 0 2000 ft

APPROXIMATE SCALE

1 in. = 2000 ft

ShopRiteNewburgh.dwg



Lawler, Matusky & Skelly Engineers LLP
One Blue Hill Plaza • Pearl River, New York 10955

ENVIRONMENTAL SCIENCE & ENGINEERING CONSULTANTS

Site Location

Shop Rite Plaza • Newburgh, NY

Figure
1-1

EXHIBIT "B"

Department-Approved Work Plan

Exhibit "C"

NOTICE OF AGREEMENT

This Notice is made as of the _____ day of _____, 1997 by C/S Associates Limited Partnership I, the fee owner of a parcel of real property located at 206 North Plank Road, Town of Newburgh, County of Orange, State of New York as more particularly described on Appendix "A" attached hereto (the "Property"); and

WHEREAS, C/S Associates Limited Partnership I, by authorized signature, entered into an administrative Agreement with the Department, Index #W3-0797-97-08 (the "Agreement"), concerning the investigation of the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____, 1997; and

WHEREAS, pursuant to the Agreement, C/S Associates Limited Partnership I 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 Orange County Clerk,

NOW, THEREFORE, C/S Associates Limited Partnership I, 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 C/S Associates Limited Partnership I, or its successors and assigns, of a termination of notice of Agreement.

IN WITNESS WHEREOF, C/S Associates Limited Partnership I has executed this Notice of Agreement by its duly authorized representative.

C/S Associates Limited Partnership I

Dated: _____, 1997

By: _____

Its: _____

[acknowledgement]