

10

REMEDIAL INVESTIGATION

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Implementation of a Remedial  
Response Program for the  
**25 Melville Park Road Site**  
by

AGREEMENT

INDEX NUMBER: **W1-0778-96-11**

**WHCS Melville, L.L.C.,**

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 and constitutes an administrative settlement for purposes of 42 USC 9613(f).
2. A. WHCS Melville, L.L.C. ("WHCS" or "Volunteer") is the holder of a Note given by Delco Development Company, which is the owner of the real property subject to this Agreement. Said Note is secured by a first mortgage lien on the real property, which is located at 25 Melville Park Road, Village of Melville, Town of Huntington, Suffolk County, New York (hereinafter referred to as the "Site"). The Tax Designation for the Site is District 0400, Section 268, Block 01, Lot 04. The Site is also known as New York Twist Drill. A two story office building is located on the Site. Exhibit "A" of this Agreement is a Site Location Map and Property Description of the Site showing its location.  
  
B. Several environmental investigations have been performed at the Site over the last two years. These studies have found that the groundwater at the Site is contaminated with PCE, TCA, TCE and dichloroethene in excess of New York State standards. Volatile Organic Compounds ("VOCs") have also been detected in soil at the Site. Petroleum has also been found at the Site. The identity and concentration of the contaminants at the Site are more particularly described in the October 1997 "Remedial Investigation Report For Voluntary Clean-Up" (Exhibit "E" of this Agreement) prepared by Camp Dresser & McKee, and approved and amended by the Department on December 4, 1997, as such Report is subsequently amended and supplemented under the direction of the Department. All the above are collectively referred to as the "Existing Contamination."

C. Volunteer is a Limited Liability Company formed in the State of Delaware, and has offices at 600 E. Las Colinas Blvd., Suite 1900, Irving, Texas 75039.

D. Volunteer intends to utilize the property as an office building or other commercial facility ("Contemplated Use").

E. 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 holder of a Note given by Delco Development Company, the current Site owner. Said Note is secured by a first mortgage lien on the property. The property is presently in receivership and the Volunteer has not yet taken title to the Site, has not previously owned or operated the Site, and is not otherwise responsible under law to remediate the Existing Contamination. Volunteer intends to foreclose and take title to the Site. It is expressly understood that this Agreement is contingent upon WHCS taking title to the Site. If at any time after the date of this Agreement WHCS determines that it will not take title to the Site, due to another entity taking title in any foreclosure sale or for any other reason, then this Agreement will be terminated and WHCS will have absolutely no further obligations or liabilities pursuant to this Agreement. The Agreement will terminate automatically upon written notification to the Department by WHCS that it will not take title to the Site.

3. 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.

4. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2.

5. A. 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.

B. 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.

C. 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 clean up 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 and its members' and managers' potential liability for remediating the Existing Contamination as an operator (and, in the event that Volunteer takes title to the Site, as an owner) under ECL Article 27, Title 13 and the Navigation Law, under the conditions set forth in this Agreement. 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 remedial 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 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; 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 members, managers, and their respective successors and assigns, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings by the Department or by the Trustee, which may arise under any applicable law as a result of the Existing Contamination.

10. Volunteer's obligations under this Agreement are limited to conditions occurring on the Site, and Volunteer shall not be responsible for the investigation or remediation of off-Site conditions. However, pursuant to Subparagraph II.F.2.i. of this Agreement, the Department and Trustee reserve all their respective rights to any further investigation or remedial action the Department deems necessary due to the off-Site presence of petroleum, as that term is defined in Navigation Law § 172[15], that may have migrated off-Site from an on-Site source, 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 presence.

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. Oxidation Pilot Test Work Plan

A. 1. Within 10 days after the effective date of this Agreement, Volunteer shall submit an Oxidation Pilot Test Work Plan to the Department.

2. Within 30 days after Department approval of the final form of the Pilot Test Work Plan, Volunteer shall commence implementation of the Pilot Test Work Plan in accordance with its provisions.

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

2. Volunteer shall notify the Department of any significant difficulties that are encountered in implementing the Pilot Test Work Plan, or any conditions which suggest that the Pilot Test Work Plan should be modified. Volunteer shall not modify any obligation of the Pilot Test Work Plan unless first approved by the Department.

C. 1. Within 60 days after Volunteer receives the laboratory results from the last follow-up groundwater sample scheduled in the Pilot Test Work Plan, Volunteer shall submit for the Department's review and approval a detailed draft remedial work plan to remediate the Existing Contamination to a level that is sufficiently protective of human health and the environment for the Contemplated Use.

2. Within 30 days of Volunteer's receipt of the Department's written comments, Volunteer shall submit to the Department the final remedial work plan for the Site. The Department-approved remedial work plan (the "Work Plan") will be attached to this Agreement and made a part of it as Exhibit "B."

## II. Performance and Reporting of the Remedial Work Plan

A. 1. Within 21 days after the Department notifies Volunteer in writing that it has approved the Work Plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the execution of this Agreement and of the public's opportunity to submit comments to the Department by no later than 30 days after the issue of the Environmental Notice Bulletin in which such notice shall appear on the Work Plan attached to this Agreement and made a part of it as Exhibit "B," and shall mail an equivalent notice to the Village of Melville, Town of Huntington and Suffolk County. If, as a result of its review of the comments received, the Department determines that the Work Plan must be revised:

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

ii. due to information received, in whole or in part, after the execution of this Agreement, 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,

then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the Work Plan, and, if necessary, other components of this Agreement accordingly. However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the Work Plan, then, except with respect to Volunteer's obligations under Paragraphs VII and IX of this Agreement and the Department's right to enforce such obligations under Paragraph V of this Agreement, this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop acceptable revisions to 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 any remedial activities were commenced; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement. If both parties agree to a revised Work Plan, the revised Work Plan shall be attached to this Agreement as Exhibit "B-1;" Volunteer shall implement that Work Plan instead of the one contained in Exhibit "B;" and, unless revised as provided in Subparagraph II.B.2 of this Agreement, all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-1."

2. Within 30 days after the determination of the final form of the Work Plan after completion of public comment, Volunteer shall commence its implementation in accordance with its provisions.

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 on-Site contamination previously unknown or inadequately characterized is encountered during the Work Plan's implementation and that such modification(s) shall appear in Exhibit "B-1" and all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-1." However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon modifications to the Work Plan, then except with respect to Volunteer's obligations under Paragraphs VII and IX of this Agreement and the Department's right to enforce such obligations under Paragraph V. 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 to 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 previously described in this sentence, 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.

3. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any Department-approved modification to the Work Plan, or any Department-approved detail, 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 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, 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.

F. 1. i. 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 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.

ii. Within 60 days after completion of the Department-approved O&M Plan, if any, Volunteer shall submit to the Department a final engineering report and certification that the post-remedial operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The Department shall notify Volunteer whether it is satisfied with the O&M Plan's implementation.

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 release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteer for the further investigation and remediation of the Site or off-Site areas and 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 VII 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 X and XI of this Agreement, and (c) 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:

i. due to the off-Site presence of petroleum, as that term is defined in Navigation Law § 172[15], that may have migrated off-Site from an on-Site source, 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 presence.

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 indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

iii. due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

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

v. due to fraud committed, or mistake made, 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.

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



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

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 II.F or in a "no further action" letter issued under Subparagraph II.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 II.F of this Agreement and in the "no further action" letter issued under Subparagraph II.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, the Trustee, or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph II of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph II.F and in the "no further action" letter issued under Subparagraph II.G of this Agreement shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

### III. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph XII.A.1 in the numbers specified in that Subparagraph copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;

2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;

3. identify all work plans, reports, and other deliverables required by this Agreement that were completed and submitted during the previous month;

4. describe all actions, including, but not limited to, data collection and implementation of 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 this 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; and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph II.F.2 of this Agreement approving Volunteer's final engineering report and certification concerning the Work Plan's implementation. 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 inspection, and final inspection and meeting.

#### IV. 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 with 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. i. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 60 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 60 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

#### V. 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, an act of God, 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 V.B of this Agreement.

#### VI. 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 matters addressed in 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.

#### VII. Payment of State Costs

Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph II.F.2 of this Agreement of its approval of the final engineering report and certification pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Volunteer's obligation under this Paragraph to reimburse the State for State expenses incurred in any one year shall not exceed \$35,000.00 during the construction phase and shall not exceed \$6,000.00 during the operation and maintenance (O&M) phase; however, the Department may aggregate its billing for more than one year. Notwithstanding the foregoing, Volunteer shall not be required to pay in excess of \$15,000.00 over the course of any 90 day period. 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.

#### VIII. Department Reservation of Rights

A. Except as provided in Subparagraph II.F.2 of this Agreement and in any "no further action" letter issued under Subparagraph II.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 if 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.

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.

#### IX. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, 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, other than claims, suits, actions, damages, or costs relating to or arising from any unlawful, willful, negligent, grossly negligent, or malicious act or omission on the part of the Department, the State of New York, or their representatives, agents, contractors, or employees.

X. 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 "D," with the Suffolk County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement and shall provide the Department with evidence of such filing. Volunteer may terminate the Notice when the Department notifies Volunteer in writing pursuant to Subparagraph II.F.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached and that the O&M Plan has been successfully implemented.

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.

C. At any time after the effective date of this Agreement, Volunteer may assign all of its rights and obligations under this Agreement to a purchaser of the Site that is not a party responsible under law to investigate or remediate the Existing Contamination as of the effective date of this Agreement. However, Volunteer shall remain jointly and severally liable with the assignee to implement the approved Work Plan to the Department's satisfaction.

XI. Deed Restriction

A. Within 30 days of its receipt of the Department's notification pursuant to Subparagraph II.F.2 of this Agreement approving Volunteer's final engineering report and certification concerning the Work Plan, Volunteer shall record an instrument with the Suffolk County Clerk, to run with the land, that:

1. shall prohibit the Site from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

2. shall prohibit the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

3. shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement 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, of the prohibitions and restrictions that this Paragraph XI requires to be recorded, and hereby covenants not to contest such enforcement.

B. Volunteer shall provide the Department with a copy of such instrument certified by the Suffolk County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Suffolk County Clerk.

## XII. 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:

Robert Becherer, P.E.  
Regional Remediation Engineer  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
Region 1 Office  
SUNY Campus  
Loop Road, Building 40  
Stony Brook, New York 11790-2356

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

John F. Byrne, Esq.  
Senior Attorney  
Division of Environmental Enforcement  
Eastern Field Unit  
New York State Department of Environmental Conservation  
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

Robert Becherer, P.E.  
Regional Remediation Engineer  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
Region 1 Office  
SUNY Campus  
Loop Road, Building 40  
Stony Brook, New York 11790-2356

- Two 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

- One copy to:

John F. Byrne, Esq.  
Senior Attorney  
Division of Environmental Enforcement  
Eastern Field Unit  
New York State Department of Environmental Conservation  
200 White Plains Road  
5th Floor  
Tarrytown, New York 10591-5805

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

Shawn E. O'Hara, Environmental Specialist  
Archon Group L.P./WHCS Melville, L.L.C.  
600 E. Las Colinas Blvd.  
Suite 1900  
Irving, Texas 75039



Paul Douglas  
Archon Group L.P./WHCS Melville, L.L.C.  
1275 K Street, NW  
Suite 900  
Washington, D.C. 20005

Christopher McKenzie, Esq.  
Beveridge & Diamond, P.C.  
477 Madison Avenue  
15th. Floor  
New York City, New York 10022

David J. Keil  
Camp, Dresser & McKee  
100 Crossways Park West  
Woodbury, New York 11797

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 XII.

### XIII. 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 Existing Contamination on the effective date of this Agreement or any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site and to their application for this Agreement. Volunteer also certifies that it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at, or from, the Site.

2. If the Department determines that information Volunteer provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void ab initio except with respect to the provisions of Paragraphs VII and IX and except with respect to the Department's right to enforce those obligations under this Agreement, 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. The Department shall make available to Volunteer the results of all such samples and/or tests. 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 XIII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform 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 the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer, Volunteer's managers, agents, servants, and employees (only in the performance of their designated duties on behalf of Volunteer, and not in their individual capacity), 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 managers, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

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

Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

H. All references to "professional engineer" in this Agreement are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

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

J. The 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 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:

Robert Becherer, P.E.  
Regional Remediation Engineer  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
Region 1 Office  
SUNY Campus  
Loop Road, Building 40  
Stony Brook, New York 11790-2356

and

John F. Byrne, Esq.  
Senior Attorney  
Division of Environmental Enforcement  
Eastern Field Unit  
New York State Department of Environmental Conservation  
200 White Plains Road  
5th Floor  
Tarrytown, New York 10591-5805

L. The Department as lead agency determined on November 21, 1997 pursuant to Part 617 of the Implementing Regulations of Article 8 of the New York State Environmental Conservation Law, State Environmental Quality Review Act (SEQRA), that 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 officers, directors, 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. In relation to Existing Contamination consisting of contaminants other than petroleum or petroleum constituents, to the extent authorized under 42 U.S.C. 9613 and other applicable law, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the Existing Contamination. In any further 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.

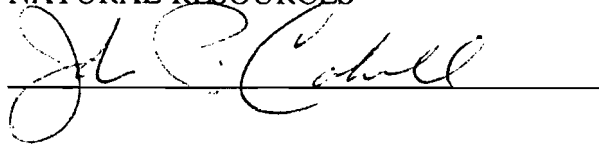
O. Volunteer and Volunteer's employees, servants, agents, lessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental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

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

Q. The attachment to this Agreement of work plans or any other document subsequent to the execution of this Agreement, including but not limited to those documents specified in Subparagraphs I.C.2, II.A.1, II.B.2, and IV.A shall not modify the duties and obligations of Volunteer under this Agreement, except as explicitly provided in the attachment itself.

DATED: 1/13/98

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

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

CONSENT BY VOLUNTEER

WHCS Melville, L.L.C.

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.

WHCS Melville, L.L.C.

By: WHCS Real Estate Limited Partnership, Manager

By: WHCS Gen-Par, Inc., a Delaware corporation, General Partner

By: G.D. Gunn

Title: G. Douglas Gunn  
Vice President

Date: 12/19/97

STATE OF TEXAS                    )  
  ) s.s.:  
COUNTY OF DALLAS            )

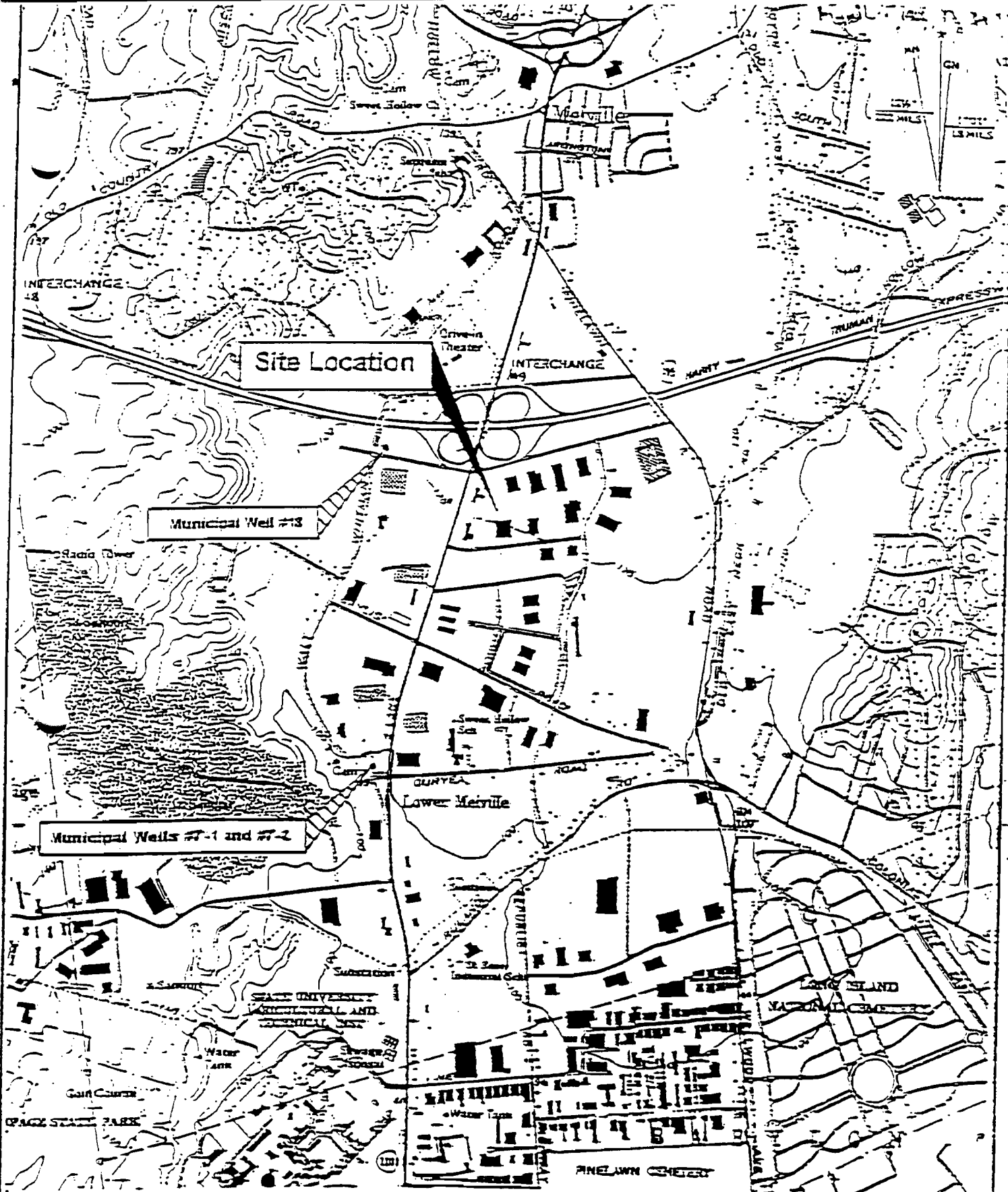
On this 19th day of December, 1997, before me personally came G. Douglas Gunn, to me known, who being duly sworn, did depose and say that he/she resides in Dallas, Texas; that he/she is the Vice President of WHCS Gen-Par, Inc., the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name on behalf of WHCS Gen-Par, Inc. and was authorized to do so.

Patricia A. Shady  
Notary Public



**EXHIBIT "A"**

**Site Location Map and Property Description**



**FPI**  
 47 W. Street - East Hartford, Connecticut 06108

Photorevision Date: 1979  
 Scale - 1:24,000  
 Base Map - U.S.G.S. Quadrangle 18  
 Huntington, New York



25 Merville Park Road  
 Merville, New York  
 Project No: 752-88

# **SITE LOCATION MAP**

Figure  
**1**



EXHIBIT A

PROPERTY DESCRIPTION

All that certain plot, piece or parcel of land, situate, lying and being at Melville, Town of Huntington, County of Suffolk and State of New York, known and designated on a certain map entitled, "Map of Melville Industrial Park, Section No. 4", and filed in the office of the Clerk of Suffolk County on 3/22/66, as Map No. 4596, and by Lot No. 20, more particularly bounded and described as follows:

BEGINNING at a point on the northerly side of Melville Park Road distant 571.19 feet easterly measured along the northerly side of Melville Park Road, from the easterly end of the curve connecting the northerly side of Melville Park Road and the easterly side of Broad Hollow Road;

RUNNING THENCE North 6 degrees 29 minutes West, 555.00 feet

THENCE North 83 degrees 31 minutes East, 265.79 feet

THENCE South 47 degrees 41 minutes 18 seconds East, 172.14 feet

THENCE North 76 degrees 40 minutes 26 seconds East, 172.98 feet

THENCE South 6 degrees 29 minutes East 517.57 feet to the northerly side of Melville Park Road;

THENCE along the northerly side of Melville Park Road South 83 degrees 31 minutes West 488.35 feet to the point or place of BEGINNING;

FOR INFORMATIONAL PURPOSES ONLY:

Premises known as 25 Melville Park Road, Melville, New York  
Tax Designation: District 0400, Section 268, Block 01, Lot 04.

**EXHIBIT "B"**

**Department-Approved Work Plan**

## **EXHIBIT "C"**

### **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 WHCS Melville, L.L.C. ("Volunteer"), Index No.W1-0778-96-11 (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 25 Melville Park Road, Village of Melville, Town of Huntington, in the County of Suffolk, with the following Tax Designation: District 0400, Section 268, Block 01, Lot 04, 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, Volunteer's members, managers, and Volunteer's and its members' and managers' respective successors and assigns, and Volunteer's lessees and sublessees, and their respective secured creditors, for the further investigation and remediation of the Site or off-Site areas, and 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 VII 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 X and XI of the Agreement, and (c) 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 petroleum, as that term is defined in Navigation Law § 172[15], 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 committed, or mistake made, 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 members, managers, 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 as of the effective date of the Agreement, 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, covenant not to sue and forbearance 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, covenant not to sue, and forbearance,

- 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.
- except as provided in Subparagraph II.F of the Agreement and in this letter, nothing contained in the Agreement or in this letter 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.
- nothing contained in this letter 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 the Agreement or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

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.

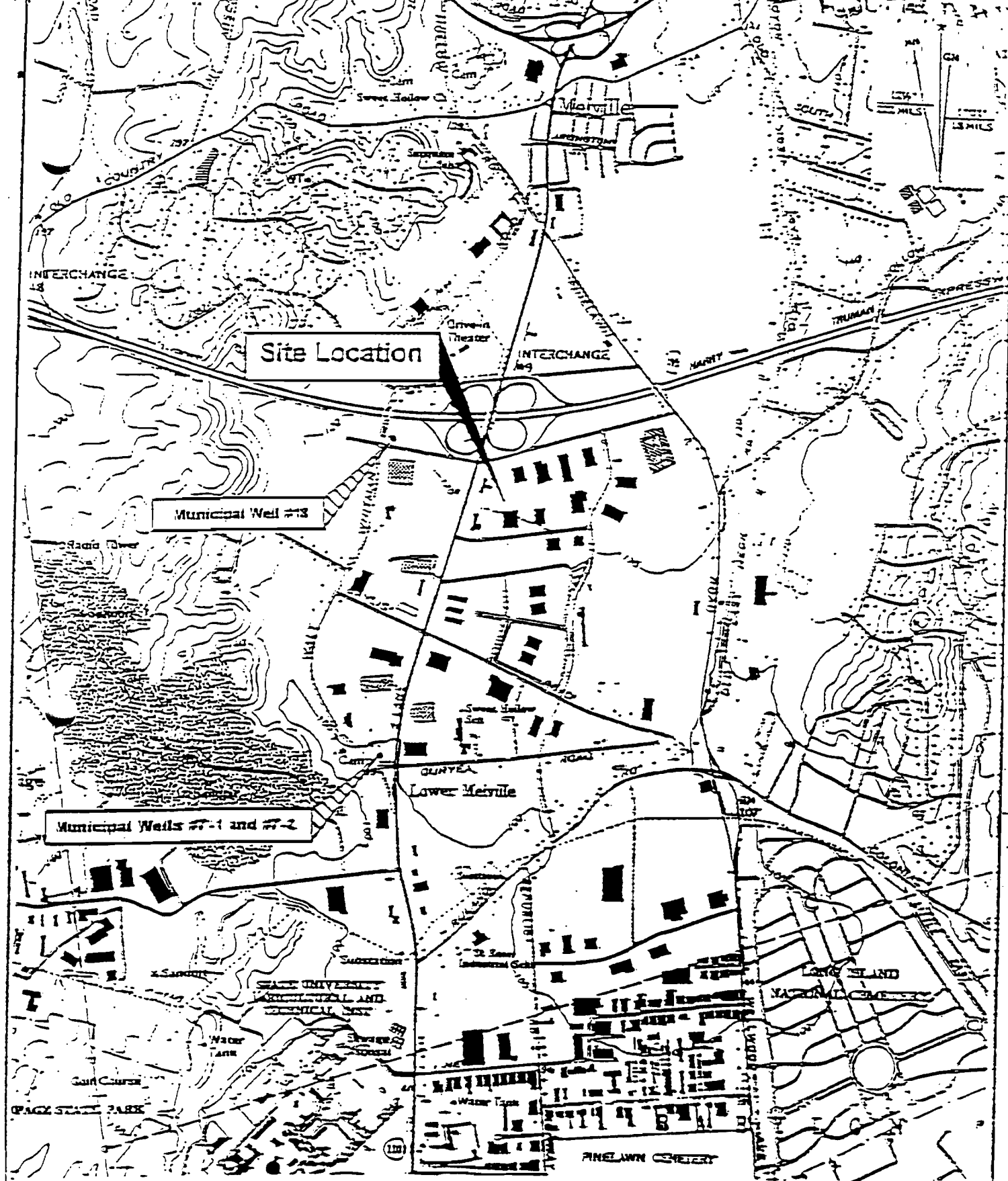
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION AND TRUSTEE  
OF NEW YORK STATE'S NATURAL RESOURCES

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

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

## **Appendix "A"**

### **Site Location Map and Property Description**



**FRI**  
 17 1/2" x 22" - 1/4" Scale - 1/4" Contour Interval - 1/4" Contour Interval

Photorevised Date: 1973  
 Scale: 1:24,000  
 Base Map: U.S.G.S. Quadrange(s):  
 Huntington, New York



25 Mervile Park Road  
 Mervile, New York  
 Project No: TSC-28

**SITE LOCATION MAP**

Figure  
**1**



EXHIBIT A

PROPERTY DESCRIPTION

All that certain plot, piece or parcel of land, situate, lying and being at Melville, Town of Huntington, County of Suffolk and State of New York, known and designated on a certain map entitled, "Map of Melville Industrial Park, Section No. 4", and filed in the office of the Clerk of Suffolk County on 3/22/66, as Map No. 4596, and by Lot No. 20, more particularly bounded and described as follows:

BEGINNING at a point on the northerly side of Melville Park Road distant 571.19 feet easterly measured along the northerly side of Melville Park Road, from the easterly end of the curve connecting the northerly side of Melville Park Road and the easterly side of Broad Hollow Road;

RUNNING THENCE North 6 degrees 29 minutes West, 555.00 feet;

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THENCE South 6 degrees 29 minutes East 517.57 feet to the northerly side of Melville Park Road;

THENCE along the northerly side of Melville Park Road South 83 degrees 31 minutes West 488.35 feet to the point or place of BEGINNING;

FOR INFORMATIONAL PURPOSES ONLY:

Premises known as 25 Melville Park Road, Melville, New York.  
Tax Designation: District 0400, Section 268, Block 01, Lot 04.

## **Exhibit "D"**

### **NOTICE OF AGREEMENT**

**This Notice** is made as of the \_\_\_\_ day of \_\_\_\_\_, 1997 by WHCS Melville, L.L.C., the holder of a Note given by Delco Development Company, the fee owner, which Note is secured by a first mortgage lien on the real property located at 25 Melville Park Road, Village of Melville, Town of Huntington, Suffolk County, New York, with the following Tax Designation: District 0400, Section 268, Block 01, Lot 04, as more particularly described on Appendix "A" attached hereto (the "Property"); and

**WHEREAS**, WHCS Melville, L.L.C., by authorized signature, entered into an administrative Agreement with the Department, Index # W1-0778-96-11 (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 WHCS Melville, L.L.C. and its members, managers, 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, WHCS Melville, L.L.C. 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 Suffolk County Clerk,

**NOW, THEREFORE**, WHCS Melville, L.L.C., 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 WHCS Melville, L.L.C., 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**, WHCS Melville, L.L.C. has executed this Notice of Agreement by its duly authorized representative.

WHCS Melville, L.L.C.

Dated: \_\_\_\_\_, 199

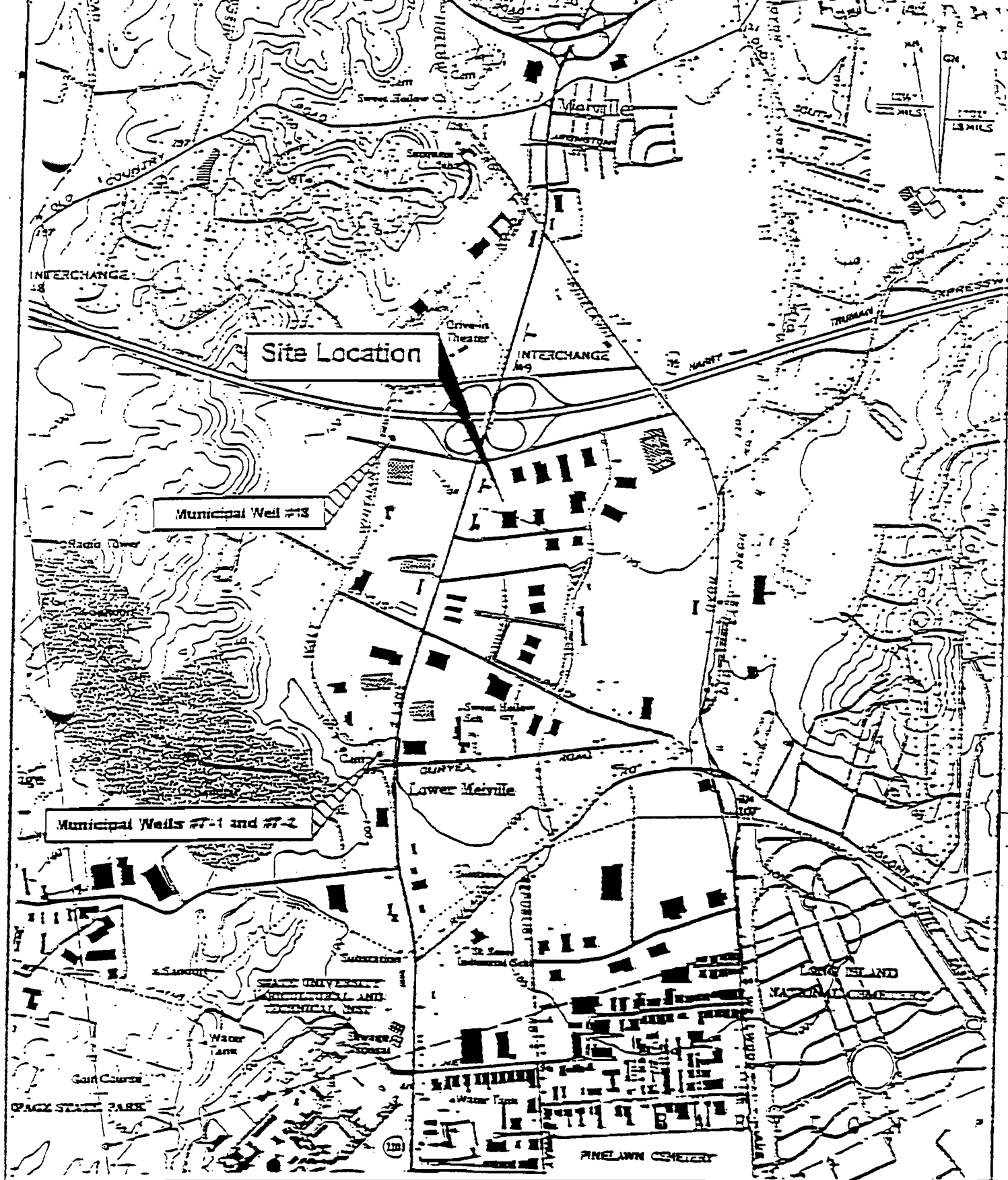
By: \_\_\_\_\_

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

[acknowledgment]

## **Appendix "A"**

### **Map of the Property**



**F.P.I.**  
 17 16 Street - Long Island City, New York 11101

Photorevised Date: 1979  
 Scale - 1:24,000  
 Base Map: U.S.G.S. Quadrangle(s):  
 -unimproved, New York



25 Meville Park Road  
 Meville, New York  
 Project No: 750-88

**SITE LOCATION MAP**

Figure  
**1**

EXHIBIT A

PROPERTY DESCRIPTION

All that certain plot, piece or parcel of land, situate, lying and being at Melville, Town of Huntington, County of Suffolk and State of New York, known and designated on a certain map entitled, "Map of Melville Industrial Park, Section No. 4", and filed in the office of the Clerk of Suffolk County on 3/22/66, as Map No. 4596, and by Lot No. 20, more particularly bounded and described as follows:

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FOR INFORMATIONAL PURPOSES ONLY:

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Tax Designation: District 0400, Section 268, Block 01, Lot 04.

**EXHIBIT "E"**

**Remedial Investigation Report For Voluntary Clean-Up**