

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of an
Investigation, and, if needed,
Remediation of 100 East Mineola Avenue,
Valley Stream, New York by

AGREEMENT

INDEX NUMBER: W1-0809-98-03

Sid Harvey Industries, Inc.

Volunteer.

Site # 1-30-087

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. Sid Harvey Industries, Inc. ("Volunteer") is a New York Corporation which operates a manufacturing and office facility at 100 East Mineola Avenue, Village of Valley Stream, Town of Hempstead, Nassau County, New York (the "Site"). The facility was constructed during the 1940s. Pumps, motors and controls for oil-fired boilers are reconditioned or rebuilt at the facility. The Tax Map Numbers for the Site are Section 37, Block 75, Lots 20-30 and 49-51. Exhibit "A" of this Agreement is a map of the Site showing its general location.

B. Previously until 1993, the facility used 1,1,1 Trichloroethane (TCA) as a degreaser to clean parts. Underground storage tanks that contained fuel oil were removed under the oversight of the Nassau County Department of Health. Volunteer conducted an Environmental Site Assessment Report and Work Plan in May 1997, which revealed that the soil and groundwater had been contaminated by volatile organic compounds ("VOCs") and hydrocarbons at varying concentrations (the "Existing Contamination"), the nature and extent of which is more fully set forth in the Environmental Site Assessment Report and Work Plan dated May 1997. The Existing Contamination also includes any contamination discovered during the course of the implementation of the Work Plans, the nature and extent of which was not characterized or inadequately characterized in the Environmental Site Assessment Report and Work Plan dated May 1997.

C. The Site's "Covered Contamination" is the concentrations of Existing Contamination to which the Existing Contamination shall have been remediated in accordance with the requirements of the Work Plan.

3. A. Volunteer intends to continue to operate the manufacturing and office facility at the Site (the "Contemplated Use").

B. The Site has been designated by the Department as a Potential ("P") inactive hazardous waste disposal site with Site # 1-30-087.

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 as follows: Volunteer operates a manufacturing and office facility at the Site where pumps, motors and controls for oil-fired boilers are reconditioned and rebuilt.

4. The Department has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. Navigation Law § 173 prohibits the unpermitted "discharge" of "petroleum" as those terms are defined under Article 12 of the Navigation Law, and an Environmental Site Assessment Report and Work Plan conducted by the Volunteer in May 1997 has revealed that petroleum has been discharged at the Site.

6. 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.

7. 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.

8. A. Volunteer also wishes to enter into this Agreement in order to resolve its potential liability as a party responsible for the investigation and remediation of the Site under ECL Article 27, Title 13 and the Navigation Law, based upon Volunteer's investigation and if necessary, remediation 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 and, if necessary, 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, without admitting any liability.

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

A. for Volunteer to (i) implement a Department-approved investigation program for the Site ("Investigation Program") as detailed in the investigation work plan for the Site attached to this Agreement as Exhibit "B" and made a part of this Agreement (the "Investigation Work Plan"), and, if necessary, develop and implement a Department-approved remediation work plan for the Site (the "Remedial Work Plan") with Site specific cleanup standards consistent with the Contemplated Use described herein; and (ii) reimburse the State's administrative costs as provided in this Agreement, and

B. In accordance with the terms of this Agreement, for the Department to release, covenant not to sue, and forbear from bringing any action, proceeding, or suit against Volunteer for the Site's further investigation or remediation.

10. 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. This shall not prohibit Volunteer from enforcing any of its rights to the Agreement.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Investigation Work Plan and Development and Implementation of the Remedial Work Plan, if Necessary

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

B. Volunteer shall perform the Investigation Program in accordance with the Investigation Work Plan. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Investigation Work Plan or any Department-approved modification to the Investigation Work Plan and shall not modify any obligation unless first approved by the Department.

C. During implementation of all investigation activities identified in the Investigation 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 Investigation 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 Investigation 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 Investigation 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.

F. 1. After its acceptance of the final investigation report submitted under Subparagraph I.D of this Agreement, the Department shall determine whether it has sufficient information respecting the nature and extent of the contamination on the Site.

i. If the Department determines that it does not have sufficient information respecting the nature and extent of the Site's contamination, it will so inform

Volunteer in writing. Volunteer shall collect such additional data under a Department-approved revision of the Investigation Work Plan, which shall be attached to this Agreement as Exhibit "B-1" and made a part of this Agreement, unless within 10 days after receipt of the Department's written notification, Volunteer elects not to collect such additional data, in which event, Volunteer's obligations under this Agreement (except those under Paragraphs VI and VIII of this Agreement) shall terminate effective the date of Volunteer's written notification and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement. 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 investigative activities were commenced.

ii. If the Department determines that it has sufficient information respecting the nature and extent of the Site's contamination, it will so inform Volunteer in writing, and the Department will inform it in that communication whether the Department believes that remediation of contamination on the Site is needed to allow the Site to be used for a manufacturing and office facility (the "Contemplated Use").

2. If the Department determines that no remediation is needed to allow the Site to be used for the Contemplated Use, it shall so state in writing and shall provide Volunteer with the forbearance, release and covenant not to sue described in Subparagraph I.K of this Agreement and with the no further action letter described in Subparagraph I.L of this Agreement.

3. If the Department determines that remediation is needed to allow the Site to be used for the Contemplated Use, it shall so state in writing. After receipt of such writing, the parties will develop a proposed Remedial Work Plan. The proposed Remedial Work Plan shall provide, *inter alia*, that if during the Remedial Work Plan's implementation, contamination is discovered that was not discussed in the final investigation report, Volunteer shall investigate the nature and extent of such newly discovered contamination, and the Remedial Work Plan will be revised to have Volunteer remediate such newly discovered contamination in the event that this remediation is needed to allow the Contemplated Use to proceed. However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the Remedial Work Plan, then, except with respect to Volunteer's obligations under Paragraphs VI and VIII of this Agreement and the Department's right to enforce such obligations under Paragraph IV 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 Remedial 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.

4. Upon development of a proposed Remedial Work Plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the execution of this Agreement and to inform the public of the public's opportunity to submit

to the Department by no later than 30 days after the date of the issue of the Environmental Notice Bulletin in which the notice shall appear, comments on the proposed Remedial Work Plan attached to this Agreement and made part of it as Exhibit "C," and shall mail an equivalent notice to the Village of Valley Stream, Town of Hempstead and Nassau County. If, as a result of its review of the comments received, the Department determines that the proposed Remedial 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 Remedial 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 Remedial 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 Remedial Work Plan, then, except with respect to Volunteer's obligations under Paragraphs VI and VIII of this Agreement and the Department's right to enforce such obligations under Paragraph IV 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 Remedial 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 Remedial Work Plan, the revised Remedial Work Plan shall be attached to this Agreement as Exhibit "C-1;" Volunteer shall implement that Remedial Work Plan instead of the one contained in Exhibit "C;" and, unless revised as provided in Subparagraph I.G.2 of this Agreement, all references to "Remedial Work Plan" in this Agreement shall refer to the one contained in Exhibit "C-1."

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

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

2. The parties agree that the Remedial Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during the Remedial Work Plan's implementation and that such modification(s) shall appear in Exhibit "C-2" and all references to "Remedial Work Plan" in this Agreement shall refer to

the one contained in Exhibit "C-2." However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon modifications to the Remedial Work Plan, then except with respect to Volunteer's obligations under Paragraphs VI and VIII of this Agreement and the Department's right to enforce such obligations under Paragraph IV 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 Remedial 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 Remedial Work Plan, any Department-approved modification to the Remedial 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.

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

I. In accordance with the schedule contained in the Remedial 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 Remedial 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.

J. 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.

K. 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 Remedial Work Plan, any Department-approved modification to the Remedial 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 construction 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 Remedial Work Plan have been reached, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteer for the further investigation and remediation of the Site based upon the release or threatened release of any Covered 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 Department-approved O&M Plan, if any. Nonetheless, the Department reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages nor to any further investigation or remedial action the Department deems necessary:

i. due to the off-Site presence of contaminants, other than petroleum, that may have migrated off-Site from an on-Site source resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to the off-Site presence of petroleum 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 Remedial 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 Remedial 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 Remedial 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, provided that the Department first notifies Volunteer in writing of its intent to exercise this reservation of right and provides Volunteer with an opportunity to cure any such failure within 10 days of said notice; 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 Remedial Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer 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 Covered 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 Covered 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.

L. If the Department is satisfied with the implementation of the Remedial Work Plan and Department-approved design, 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 "D;"

M. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.K or in a "no further action" letter issued under Subparagraph I.L of this Agreement shall bear the

burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

2. Except as above provided in Subparagraph I.K of this Agreement and in the "no further action" letter issued under Subparagraph I.L of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.K and in the "no further action" letter issued under Subparagraph I.L 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.

II. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph XI.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 fifteenth 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 I.K.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; provided, however, that nothing in this Agreement shall afford the Department the right to attend or to have notice of any internal, informal or strategy meetings, any meetings attended by legal counsel or any meetings at which privileged communications are anticipated to be discussed.

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 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 30 days (60 days, in the case of the final engineering report and certification) 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 ten 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

Upon reasonable notice under the circumstances presented, 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. Volunteer shall not be required under this Agreement to submit any portions of records and/or information that would disclose privileged mental impressions, conclusions, opinions, or legal theories, as provided for by applicable New York law.

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 reasonably incurred during the implementation of this Agreement with respect to the Existing Contamination, 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 the effective date of this Agreement, 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, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.K.2 of this Agreement of its approval of the final engineering report and certification pertaining to the implementation of the Remedial Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. 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.

B. Reimbursement by Volunteer of past State costs incurred by the New York State Departments of Environmental Conservation and Health up to and including the effective date of this Agreement, as defined in Subparagraph XII.O of this Agreement, is capped at Five Thousand (\$5,000.00) Dollars. Reimbursement by Volunteer of future State costs incurred by the New York State Departments of Environmental Conservation and Health after the effective date of this Agreement, as defined in Subparagraph XII.O of this Agreement, is capped at Ten Thousand (\$10,000.00) Dollars per calendar year. Furthermore, the Department may aggregate its billing of these future State costs for more than one year.

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.K.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.L 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 (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 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 authorized by law.

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.

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, excluding liability arising out of any unlawful, willful, wanton or malicious acts or acts constituting gross negligence, by the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Agreement.

IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, Volunteer shall:

1. file the Notice of Agreement, which is attached to this Agreement as Exhibit "E," with the Nassau County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement; and
2. provide the Department with evidence of such filing.

Volunteer may terminate the Notice when the Department notifies Volunteer in writing pursuant to Subparagraph I.K.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 leasehold interest in the Site before the Department has notified Volunteer that it is satisfied that the Remedial Program was completed in accordance with the Remedial Work Plan, Volunteer shall, not fewer than 30 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

A. Within 30 days of its receipt of the Department's notification pursuant to Subparagraph I.K.2 of this Agreement approving Volunteer's final engineering report and certification concerning the Work Plan, Volunteer shall record an instrument with the Nassau 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; and

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 X requires to be recorded, and hereby covenants not to contest such enforcement.

B. Within 30 days after Volunteer's receipt of the Department's notification pursuant to Subparagraph I.K.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall provide the Department with a copy of such instrument certified by the Nassau County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Nassau 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:

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
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:

Kevin S. Law, Esq.
Nixon, Hargrave, Devans & Doyle LLP
990 Stewart Avenue
Garden City, New York 11530-4838

Nicholas A. Andrianas, P.E.
MAC Consultants, Inc.
515 Route 111
Hauppauge, New York 11788

H. James Otto
Senior Vice President
Sid Harvey Industries, Inc.
100 East Mineola Avenue
Valley Stream, New York 11580

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

XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that it has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's officers, directors, employees, contractors, and agents which relates in any way to the contamination existing on the effective date of this Agreement or any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site and to their application for this Agreement.

2. If the Department determines that information Volunteer provided and certifications made are not materially accurate and complete, and if Volunteer, after receiving written notice from the Department fails to cure said incompleteness within 10 days of said notice, this Agreement, within the sole discretion of the Department, shall be null and void *ab initio* except with respect to the provisions of Paragraphs VI and VIII 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. Volunteer shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteer with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

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

E. 1. Subject to Subparagraph XII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform 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 officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

G. Volunteer shall provide a copy of this Agreement to the consultant 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 consultant shall provide written notice of this Agreement to all contractors and/or 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

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. That portion of this Agreement concerning the Site's investigation is not subject to review under the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations, 6 NYCRR Part 617 and 6 NYCRR 617.5(c)(18). That portion of this Agreement concerning the Site's remediation constitutes an exercise of the Department's prosecutorial discretion and accordingly, is not subject to review under the State Environmental Quality Review Act and its implementing regulations. ECL 8-0105.5(i), 6 NYCRR 617.5(c)(29).

M. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs. 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.

N. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, 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. This provision shall not prohibit Volunteer from pursuing any claims that it may have against any other entity, person or party.

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

DATED: *Sept. 8, 1998*

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

A handwritten signature in dark ink, appearing to read "John P. Cahill", is written over a horizontal line.

CONSENT BY VOLUNTEER

Sid Harvey Industries, Inc.

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: 1st Jms Otto

Title: SVP

Date: 8-3-98

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

On this 3rd day of August, 1998, before me personally came Henry James Otto, to me known, who being duly sworn, did depose and say that he/she resides in Suffolk County, New York; that he/she is the Senior Vice President of Sid Harvey Industries, Inc., the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name on behalf of Sid Harvey Industries, Inc. and was authorized to do so.

DONNA M. CIONI
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01C15028199
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES MAY 23, 2000

Donna M. Cioni
Notary Public

EXHIBIT "A"

Map of Site

LOCATION MAP

FIGURE 1



EXHIBIT "B"

Department-Approved Investigation Work Plan

EXHIBIT "B-1"

Revised Department-Approved Investigation Work Plan

(If Necessary)

EXHIBIT "C"

Proposed Remedial Work Plan

EXHIBIT "C-1"

Revised Remedial Work Plan Following Public Comment

(If Necessary)

EXHIBIT "C-2"

**Revised Remedial Work Plan Following Implementation
and Discovery of Previously Unknown Contamination**

(If Necessary)

EXHIBIT "D"

Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

[name and address of Volunteer's contact]

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 Sid Harvey Industries, Inc. ("Volunteer"), Index No. W1-0809-98-03 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Department-approved Remedial Work Plan to implement a response program at the parcel of land located at 100 East Mineola Avenue, Village of Valley Stream, Town of Hempstead, Nassau County, New York, with Tax Map Numbers Section 37, Block 75, Lots 20-30 and 49-51, 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, therefore, hereby releases, covenants 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, based upon the release or threatened release of Covered 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 (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 hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages nor 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 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 hereby reserves all of its 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 Covered 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 Covered 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, 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 Covered 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 I.K 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 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 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 or Covered 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

By: _____

Its: _____

Appendix "A"

(to Exhibit "D")

Map of the Site

LOCATION MAP

FIGURE 1



Exhibit "E"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 1998 by **Sid Harvey Industries, Inc.**, the operator of a facility on a parcel of real property located at 100 East Mineola Avenue, Village of Valley Stream, Town of Hempstead, Nassau County, New York, Tax Map Numbers Section 37, Block 75, Lots 20-30 and 49-51, as more particularly described on Appendix "A" attached hereto (the "Property"); and

WHEREAS, Sid Harvey Industries, Inc., by authorized signature, entered into an administrative Agreement with the Department, Index # W1-0809-98-03 (the "Agreement"), concerning the investigation and, if necessary, 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 _____, 1998; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide **Sid Harvey Industries, Inc.** and its 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 Covered Contamination, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, **Sid Harvey Industries, Inc.** 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 Nassau County Clerk,

NOW, THEREFORE, Sid Harvey Industries, Inc., for itself and for its successors and 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 **Sid Harvey Industries, Inc.**, 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, Sid Harvey Industries, Inc. has executed this Notice of Agreement by its duly authorized representative.

Sid Harvey Industries, Inc.

Dated:

By: _____

Its: _____

[acknowledgment]

Appendix "A"

(to Exhibit "E")

Map of the Property

LOCATION MAP

FIGURE 1

