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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a Remedial
Response Program for
Operable Unit 1 for
333 Smith Street, Farmingdale
(a.k.a. 50 Marcus Drive, Melville)
by

AGREEMENT
(INDEX NUMBER: W1-0819-99-08)

Reckson Operating Partnership, L.P.,
Volunteer.

DEFINITIONS

For purposes of this Agreement, the following terms have the following definitions:

- A. "Contemplated Use": the continued use of the Site for commercial/industrial uses.
- B. The Site's "Covered Contamination": the concentrations of Existing Contamination in Operable Unit 1 to which such Existing Contamination shall have been remediated in accordance with the requirements of the Work Plan.
- C. "ECL": the Environmental Conservation Law.
- D. "Day": a calendar day unless otherwise specified.
- E. "Department": the New York State Department of Environmental Conservation.
- F. "Existing Contamination": that contamination in Operable Unit 1: Although the investigation of the Site is not concluded, the following contamination has been identified in Operable Unit 1 of the Site: 1) Tetrachloroethene (PCE) contamination is present in the soils under the northwestern portion of the building. Some of the impacted soils are contained in a subsurface concrete tank. A preliminary delineation of the affected area is illustrated by Figure 2-1 of the Work Plan; 2) PCE, trichloroethene (TCE), and cis-1,2-dichloroethene (cis-1,2-DCE) contamination has been detected in DW-20. This dry well is also impacted by several polynuclear aromatic hydrocarbons (PAHs); 3) The abandoned leaching pool which was sampled by geoprobe boring GP-8 is contaminated by PCE and cis-1,2-DCE. This leaching pool also has levels of antimony, above typical background concentrations; 4) DW-21, DW-22, DW-23, DW-24, and DW-25 are impacted by antimony and PAHs. Some of these dry wells also contain concentrations of lead, cadmium, chromium, copper, zinc, and nickel, above typical background concentrations; 5) The leaching pool which was sampled by geoprobe boring GP-3 is impacted by PAHs,

chromium, and antimony. Antimony and chromium have been detected above typical background concentrations; 6) DW-1, DW-4, DW-5, DW-6, DW-9, DW-12, DW-14, DW-16, DW-19, and DW-26 are impacted by PAHs. The term also includes contamination encountered in the interconnected structures which are to be investigated under the Work Plan.

G. "Professional engineer": 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.

H. "Site": that property located in Suffolk County which is bisected by the border of the Towns of Huntington and Babylon with that part located in the Town of Babylon identified as 333 Smith Street, Farmingdale (Tax Map No. Dist. 0100, Section 5.00, Block 1.00, and Lots 2.3 and 4.1) and with that part located in the Town of Huntington identified as 50 Marcus Drive, Melville (Tax Map No. Dist. 0400, Section 267.00, Block 02.00, Lots 22.1 and 32.0). Exhibit "A" of this Agreement is a map of the Site which indicates the components of Operable Unit 1.

I. "Operable Unit 1": Those contaminated soils and dry well sediments on the Site addressed by this Agreement. Operable Unit 1 includes: 1) Dry Well ("DW")-20 and the leaching pool sampled by boring GP-8 and any leaching pool interconnected with DW-20 or the leaching pool sampled by boring GP-8 which is impacted. - These leaching structures are impacted primarily with tetrachloroethene (PCE); 2) DW-1, DW-4, DW-5, DW-6, DW-9, DW-12, DW-14, DW-16, DW-19, and DW-26 - These leaching structures are primarily impacted by polynuclear aromatic hydrocarbons (PAHs). (Interconnected pools, if any, are not included.); 3) DW-21, DW-22, DW-23, DW-24, and DW-25 and any interconnected leaching pool which is impacted - These leaching pools are all impacted by antimony. Some of these pools are also impacted by PAHs and other heavy metals such as cadmium, chromium, and/or lead; 4) The leaching pool sampled by GP-3 will be remediated for chromium, antimony, and chrysene contamination. (Interconnected pools are not included under this operable unit.); 5) An area roughly defined by Figure 2-1 of the Remedial Work Plan will be remediated for PCE contamination. (Any piping in this area will be traced.) See Exhibit "A" of this Agreement.

J. "Trustee": the Trustee of New York State's natural resources.

K. "Volunteer": Reckson Operating Partnership, L.P. ("Volunteer") is a limited partnership organized and existing under the laws of the State of Delaware and has offices at 225 Broadhollow Road, Melville, New York 11747.

L. "Work Plan": the Department-approved remedial work plan pertaining to

Operable Unit 1 for the Site that Volunteer shall implement and that is attached to this Agreement as Exhibit "B", as may be modified under the terms of this Agreement and, as a result, may appear in such other identified exhibit in this Agreement as this Agreement may provide, and is an enforceable part of this Agreement.

CONSIDERING

1. The Department is responsible for enforcement of the 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. 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 acquired title to the Site in February, 1998. Prior to that time, Volunteer did not previously own or operate the Site, and was not otherwise responsible under the law to remediate contamination existing at the Site as of the effective date of this Agreement.
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. 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
 1. to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and
 2. 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 for Operable Unit 1 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.

5. A. Volunteer also wishes to enter into this Agreement in order to resolve Volunteer's potential liability for remediating the Existing Contamination in Operable Unit 1 under ECL Article 27, Title 13. 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 for Operable Unit 1 acceptable to the Department, consents to the terms and conditions of this Agreement.

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

A. for Volunteer to,

1. implement the Work Plan for Operable Unit 1; and

2. reimburse the State's administrative costs as provided in this Agreement, and

B. for the Department and the Trustee to release Volunteer and its 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 Covered Contamination in Operable Unit 1.

7. Volunteer agrees to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to 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 AND THE TRUSTEE'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Work Plan

A. 1. Within 21 days after the effective date of this Agreement, 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; and shall mail an equivalent notice to the Towns of Huntington and Babylon and the County of Suffolk. 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 Operable Unit 1 of 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 after the Site's complete remedial program is implemented,

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 good faith negotiations, Volunteer and the Department cannot agree upon revisions to the Work Plan, then, except with respect to:

iii. Volunteer's obligations under Paragraphs VII and IX of this Agreement; and

iv. Volunteer's obligation, here incurred, to ensure that it does 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

v. the Department's right to enforce the obligations described in Subparagraphs I.A.1.iii and I.A.1.iv of this Agreement 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; 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 I.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 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 good faith negotiations, Volunteer and the Department cannot agree upon revisions to the Work Plan, then, except with respect to

i. Volunteer's obligations under Paragraphs VII and XI of this Agreement; and

ii. Volunteer's obligation, here incurred, to ensure that it does 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

iii. the Department's right to enforce the obligations described in Subparagraphs I.B.2.i and I.B.2.ii of this Agreement 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; and 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. 1. In accordance with the schedule contained in the Work Plan, as may be modified by agreement in writing between the Department and Volunteer, Volunteer shall submit to the Department a final engineering report that shall include "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.

2. Respondent shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("O&M Plan"), if needed, along with the final engineering report.

3. A professional engineer must prepare, sign, and seal the O&M Plan, "as built" drawings, final engineering report, and certification.

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, 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 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 for Operable Unit 1 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 Operable Unit 1, and for natural resources damages, based upon the release or threatened release of any Covered 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 Volunteer's 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 presence of petroleum outside the boundaries of

Operable Unit 1 that may have migrated from a source within the boundaries of Operable Unit 1, 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 petroleum presence;

ii. due to environmental conditions related to Operable Unit 1 that were unknown to the Department at the time of its approval of the Work Plan which indicate that Operable Unit 1 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 for Operable Unit 1, 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 for Operable Unit 1 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 Volunteer 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 for Operable Unit 1; or if Volunteer 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 this 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 in Operable Unit 1 independent of any obligation that party may have respecting same established resulting solely from this 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, any Department-approved modification to the Work Plan, and Department-approved details, documents, and specifications prepared by or on behalf of Volunteer pursuant thereto, the Department shall provide Volunteer with a written "no further action" letter for Operable Unit 1 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 regarding Operable Unit 1 set forth in Subparagraph I.F or in a "no further action" letter for Operable Unit 1 issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

2. Except as above provided in Subparagraph I.F of this Agreement and in the "no further action" letter for Operable Unit 1 issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department, 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 I of this Agreement, the forbearance, covenant not to sue, and release for Operable Unit 1 described in Subparagraph I.F and in the "no further action" letter for Operable Unit 1 issued under Subparagraph I.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.

II. 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 of Operable Unit 1 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 I.F.2 of this Agreement approving Volunteer's final engineering report 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: job progress meetings, substantial completion meeting and inspection, and final inspection and meeting relating to the implementation of the Work Plan.

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 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 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, unless Volunteer requests an opportunity to respond to the Department's objections pursuant to the dispute resolution procedure set forth in Paragraph IV, the Department and 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, 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. Dispute Resolution

If the Department disapproves a revised submittal, terminates the Agreement pursuant to Subparagraphs VIII.D or XIII.A, or disapproves any part of the petition of Volunteer pursuant to Subparagraph XI.C, Volunteer may within 10 days of receipt of the Department's notice of disapproval, notice of termination, or determination pursuant to Subparagraph XI.C, serve upon the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Volunteer relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than ten (10) business days after receipt of Volunteer's Statement of Position. Volunteer shall have ten (10) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Volunteer serves such a reply, the Department shall have ten (10) business days after receipt of Volunteer's reply to the Department's Statement of Position within which to serve upon Volunteer the Department's reply to Volunteer's reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Position and replies may cause delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Volunteer.

An administrative record of any dispute under this Paragraph shall be maintained by the Department. The record shall include the Statement of Position of each party served pursuant to this Paragraph, and any relevant information. The record shall be available for review by all parties and, consistent with the Freedom of Information Law (New York Public Officers Law Article 6), the public. Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall issue a final decision and order resolving the dispute.

In the event that the dispute involves a submittal, Volunteer shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time in which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute. After receipt of the revised submittal, the Department shall notify the Volunteer in writing of its approval or disapproval of the revised submittal. If the revised submittal fails to address the Department's specific

comments, as modified, and the Department disapproves the revised submittal for this reason, 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.

In review by the ALJ of any dispute pursued under this Paragraph, Volunteer shall have the burden of proving that the Department's position should not prevail.

With respect to the final decision of the ALJ, Volunteer shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules of New York (CPLR), provided that the petition is filed within sixty (60) days of Volunteer's receipt of the final decision and order being issued by the ALJ.

The invocation of the procedures stated in this Paragraph shall not extend, postpone, or modify Volunteer's obligation under this Agreement with respect to any items not in dispute, unless and until the Department agrees or a court determines otherwise.

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, 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

Upon notice which is reasonable 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 scheduled job progress meetings. Volunteer shall also permit the Department full access to all records containing data and factual information pertaining to the environmental conditions at or in the vicinity of the Site, including, but not limited to, sampling and analytical data, monitoring reports, and hydrogeologic, scientific, chemical and engineering data. Volunteer shall have no obligation to provide the Department with any records, or portions thereof, that are privileged, pursuant to applicable statute or common law. Volunteer acknowledges that raw data and factual information are not privileged.

VII. Payment of State Costs

Within forty-five days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.F.2 of this Agreement of its approval of the final engineering report pertaining to the implementation of the 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.

VIII. Reservation of Rights

A. Except as provided in Subparagraph I.F.2 of this Agreement and in any "no

further action" letter for Operable Unit 1 issued under Subparagraph I.G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.

B. Nothing contained in this Agreement shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it may deem necessary.

C. Nothing contained in this Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteer fails to comply substantially with this Agreement's terms and conditions; provided, however, that prior to any such termination the Department must provide Volunteer with written notice of Volunteer's alleged failure to substantially comply with any term or provision of this Agreement and afford Volunteer fifteen (15) days from Volunteer's receipt of such notice to cure the alleged non-compliance; and further provided that if such non-compliance is not reasonably susceptible to a cure within this period of time and Volunteer is making good faith efforts to cure the alleged non-compliance the Department shall not terminate this Agreement. Volunteer may submit the issue of failure to substantially comply to Dispute Resolution under Paragraph IV.

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. However, Volunteer shall not be required to indemnify the Department, the State of New York, and/or their representatives and employees regarding any liability arising from willful,

wanton or malicious act or acts constituting gross negligence by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement.

X. 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 "D," with the Suffolk 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.F.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels for Operable Unit 1 identified in, or to be identified in accordance with, the Work Plan have been reached and that the O&M Plan, if any, 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.

XI. Deed Restriction

A. 1. Within 30 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall record, subject to the provisions of Subparagraph XI.C, an instrument with the Suffolk County Clerk, to run with the land, that shall prohibit digging and/or excavation on Operable Unit 1 without first obtaining the written 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.

2. Within 30 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall, subject to the provisions of Subparagraph XI.C, record an instrument with the Suffolk County Clerk, to run with the land, that:

i. 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;

ii. shall require Volunteer and Volunteer's successors and assigns to continue in full force and effect any institutional and engineering controls required pursuant to this Agreement;

3. Additionally, each deed restriction shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the right of 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 right of enforcement. Nothing contained herein shall be deemed as waiving, barring, diminishing or adjudicating any right that Volunteer, and/or its successors and assigns, may have to defend any future action brought by any person, including, without limitation, the Department to enforce any prohibitions or restrictions established pursuant to this Paragraph XI.

B. Within 30 days after Volunteer's receipt of the Department's notification, 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.

C. Notwithstanding the provisions in this Paragraph XI, Volunteer shall have the right to petition the Department within 90 days after the Volunteer's receipt of the notification pursuant to Subparagraph I.F.2 requesting that, based upon the cleanup levels achieved, the Department either: i) not require a deed restriction or ii) that the scope and extent of the deed restriction be modified. The Department's determination of this petition shall be subject to dispute resolution under Paragraph IV of this Agreement.

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 Stewart
New York State Department of Environmental Conservation
Division of Environmental Remediation, Region 1
SUNY Campus
Loop Road, Building 40

Stony Brook, NY 11790-2356

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
Troy, NY 12180

Robert Seyfarth
Suffolk County Department of Health Services
15 Horseblock Place
Farmingdale, NY 11738-1220

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

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

- Four copies (one unbound) to Robert Stewart
- One copy to Dr. Carlson
- One copy to Robert Seyfarth

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

Louis A. Evans, Esq.
Brown & Wood LLP
One World Trade Center
New York, New York 10048

with copy to:

Phillip J. Fallon, Jr.
Vice President of Environmental Affairs
Reckson Associates Realty Corp.
225 Broadhollow Road

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 Volunteer has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's members, partners, employees, contractors, and agents which relates in any way to the contamination existing on the effective date of this Agreement, and to 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 Volunteer 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 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. The Department's determination that information provided and certifications made are not materially accurate and complete shall be subject to the dispute resolution provisions in Paragraph IV.

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. Volunteer has the right to change consultants subject to the Department's acceptance.

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. In the event that the Department elects to take its own samples, Volunteer shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the

Department. The Department shall provide Volunteer with copies of laboratory analysis reports pertaining to any split, duplicate or other samples collected and analyzed by, or on behalf of, the Department.

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 members, partners, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's members, partners, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

G. Neither the execution of this Agreement, nor any of the terms, provisions and conditions hereof, shall be deemed or construed to be an admission of liability or responsibility on the part of Volunteer, its members, partners, employees, servants, agents, successors or assigns with respect to the Site, or to any environmental conditions at, on, under or in the vicinity of the Site.

H. 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.

I. The paragraph headings set forth in this Agreement are included for

convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

J. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application, signed by the Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Robert Stewart and to Rosalie K. Rusinko, Esq.

K. This Agreement constitutes an exercise of the Department's prosecutorial discretion and accordingly, the remedial activities to be undertaken under the terms of this Agreement are not subject to review under the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations, 6 NYCRR Part 617.

L. In undertaking the work required under this Agreement, Volunteer and its members, partners, employees, representatives, agents, contractors and subcontractors are deemed for the purpose of ECL 27-1321.3 and any other similar provision of state or federal law, to be performing services related to cleanup or restorative work which is conducted pursuant to a contract with the Department.

M. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs on Operable Unit 1. To the extent authorized under 42 USC 9613 and any 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 on Operable Unit 1. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 USC 9613(f)(3) shall apply.

N. 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.

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

DATED:

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

CONSENT BY VOLUNTEER

Volunteer hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Reckson Operating Partnership, L.P.

By: Reckson Associates Realty Corp.
General Partner

By: _____
Gregg Rechler, Executive Vice President
and Co-Chief Operating Officer

Date: _____

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

On this _____ day of _____, 20____, before me, the undersigned, personally appeared Gregg Rechler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

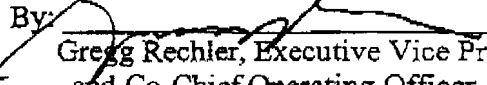
Notary Public

CONSENT BY VOLUNTEER

Volunteer hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Reckson Operating Partnership, L.P.

By: Reckson Associates Realty Corp.
General Partner

By: 
Gregg Rechler, Executive Vice President
and Co-Chief Operating Officer

Date: 1/20/00

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

On this 20th day of January, 2000, before me, the undersigned, personally appeared Gregg Rechler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

KAREN J. POLLINGER
Notary Public, State of New York
No. 52-4929520
Qualified in Suffolk County
Commission Expires May 2, 2002

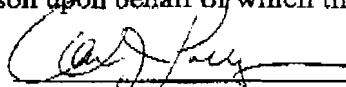
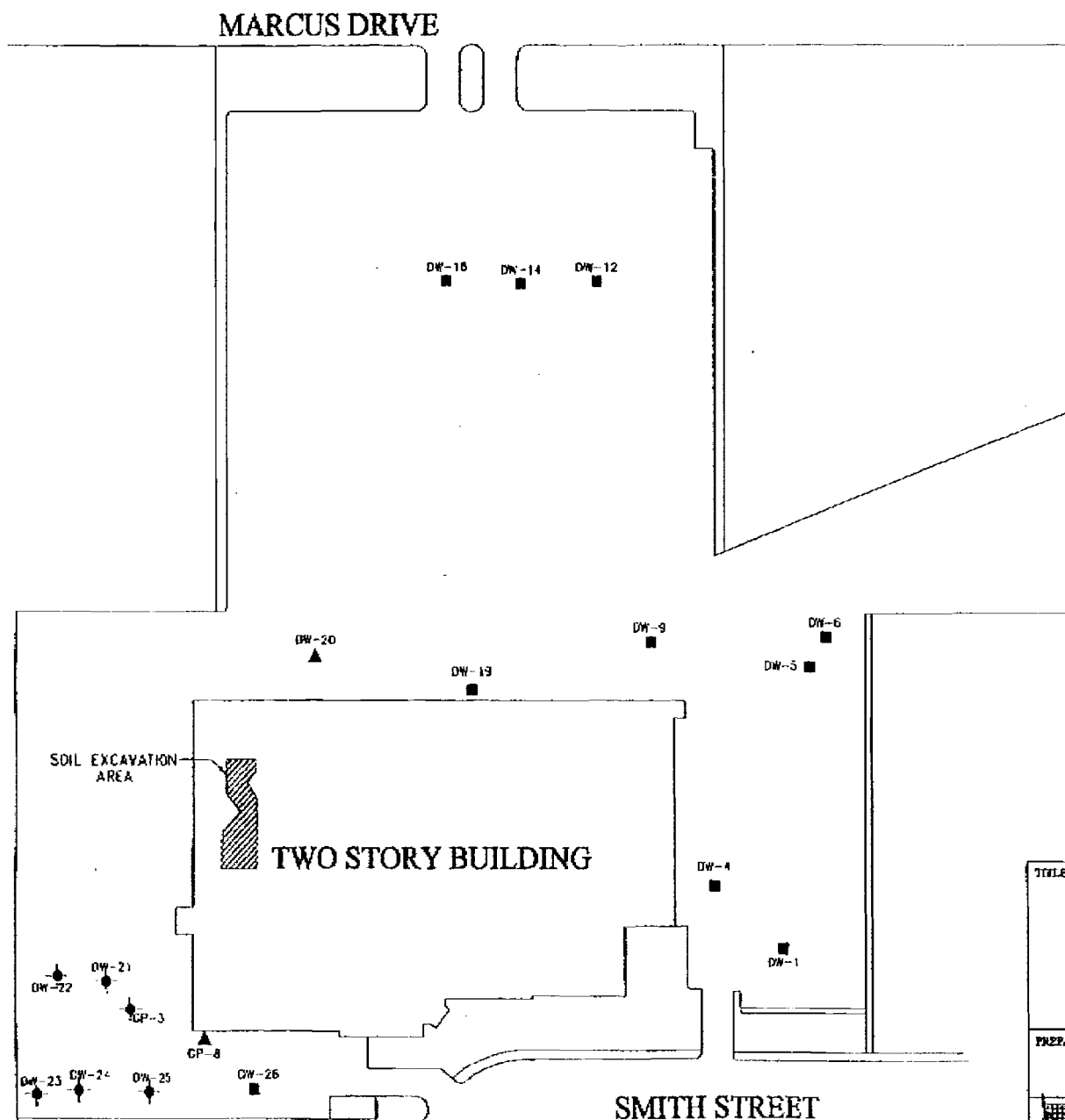

Notary Public

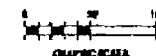
EXHIBIT "A"

Map of Site Which Indicates the Components of Operable Unit 1



LEGEND

- ▲ PCE IMPACTED DRY WELLS
- PAH IMPACTED DRY WELLS
- ◆ ANTIMONY IMPACTED DRY WELLS




<p>TITLE</p> <p align="center">SITE MAP 333 SMITH STREET COMPONENTS OF OPERABLE UNIT NO.1 INDICATED</p>			
<p>PREPARED FOR</p> <p align="center">RECKSON ASSOCIATES</p>			
 ERM	<p>Environmental Resources Management</p>		<p>SCALE</p> <p>GRAPHICK</p>
	<p>DRAWN</p> <p>Y.S.</p>	<p>JOB NO:</p> <p>76002 01</p>	<p>FILE NAME:</p> <p>76002001</p>

EXHIBIT "B"

Department-Approved Work Plan

EXHIBIT "C"

Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

Louis A. Evans, Esq.
Brown & Wood LLP
One World Trade Center
New York, New York 10048

Unless otherwise specified in this letter, all terms used in this letter 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 Reckson Operating Partnership, L.P. ("Volunteer"), Index No. W1-0819-99-08 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan covering the remediation of Operable Unit 1 of the Site, located in Suffolk County which is bisected by the border of the Towns of Huntington and Babylon with that part located in the Town of Babylon identified as 333 Smith Street, Farmingdale (Tax Map No. Dist. 0100, Section 5.00, Block 1.00, and Lots 2.3 and 4.1) and with that part located in the Town of Huntington identified as 50 Marcus Drive, Melville (Tax Map No. Dist. 0400, Section 267.00, Block 02.00, Lots 22.1 and 32.0), has been successfully implemented. A map of the Site which delineates the areas which comprise Operable Unit 1 is attached as Appendix "A."

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees and Volunteer's successors and assigns and their respective secured creditors, for the further investigation and remediation of Operable Unit 1, and for natural resources damages, based upon the release or threatened release of Covered 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 Volunteer's 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 the presence of petroleum outside the boundaries of Operable Unit 1 that may have migrated from a source within the boundaries of Operable Unit 1, 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 Operable Unit 1 that were unknown to the Department at the time of its approval of the Work Plan which indicate that Operable Unit 1 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 for Operable Unit 1, 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 Operable Unit 1 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 Volunteer 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 for Operable Unit 1; or if Volunteer 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 in Operable Unit 1 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 for Operable Unit 1 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.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.
- 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 phase in the 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"

(to Exhibit "C")

Map of the Site Which Indicates the Components of Operable Unit 1

Exhibit "D"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 19__ by Reckson Operating Partnership, L.P., the fee owner of a parcel of real property located at located in Suffolk County which is bisected by the border of the Towns of Huntington and Babylon with that part located in the Town of Babylon identified as 333 Smith Street, Farmingdale (Tax Map No. Dist. 0100, Section 5.00, Block 1.00, and Lots 2.3 and 4.1) and with that part located in the Town of Huntington identified as 50 Marcus Drive, Melville (Tax Map No. Dist. 0400, Section 267.00, Block 02.00, Lots 22.1 and 32.0) as more particularly described on Appendix "A" attached hereto (the "Property"); and

WHEREAS, Reckson Operating Partnership, L.P., by authorized signature, entered into an agreement with the Department, Index # W1-0819-98-07 (the "Agreement"), concerning the remediation of contamination present in Operable Unit 1 on the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____; and

WHEREAS, in return for the remediation of Operable Unit 1 of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Reckson Operating Partnership, L.P. and Volunteer's lessees and sublessees and Volunteer's 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 further investigation or remediation of Operable Unit 1, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Reckson Operating Partnership, L.P. 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, Reckson Operating Partnership, L.P., 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 Reckson Operating Partnership, L.P., 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, Reckson Operating Partnership, L.P. has executed

this Notice of Agreement by its duly authorized representative.

Reckson Operating Partnership, L.P.

Dated:

By: _____

Its: _____

[acknowledgment]

Appendix "A"

(to Exhibit "D")

Map of the Property Which Indicates the Components of Operable Unit 1

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a Remedial
Response Program for
Operable Unit 1 for
333 Smith Street, Farmingdale
(a.k.a. 50 Marcus Drive, Melville)
by

AGREEMENT
(INDEX NUMBER: W1-0819-99-08)

Reckson Operating Partnership, L.P.,
Volunteer.

deemed for the purpose of ECL 27-1321.3 and any other similar provision of state or federal law, to be performing services related to cleanup or restorative work which is conducted pursuant to a contract with the Department.

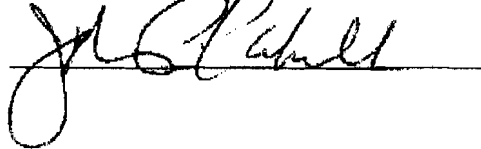
M. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs on Operable Unit 1. To the extent authorized under 42 USC 9613 and any 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 on Operable Unit 1. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 USC 9613(f)(3) shall apply.

N. 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.

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

DATED: 2/14/00

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




CONSENT BY VOLUNTEER

Volunteer hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Reckson Operating Partnership, L.P.

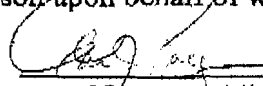
By: Reckson Associates Realty Corp.
General Partner

By: 
Gregg Rechler, Executive Vice President
and Co-Chief Operating Officer

Date: 1/20/00

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

On this 20th day of January, 2000, before me, the undersigned, personally appeared Gregg Rechler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KAREN J. POLLINGER
Notary Public, State of New York
No. 52-4929520
Qualified in Suffolk County
Commission Expires May 2, 2000