

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a Remedial
Response Program for
88 Ingraham Street,
Brooklyn, New York by

AGREEMENT

INDEX NUMBER: W2-0813-98-06

88 Ingraham Realty Corp., and
Popular Hand Laundry and Cleaners of
Richmond Hill, Inc.,

Volunteers.

CONSIDERING,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL"). This Agreement is entered into pursuant to the Department's authority under that law and constitutes an administrative settlement for purposes of 42 USC 9613(f).
2.
 - A. The Site is located at 88 Ingraham Street, Brooklyn, Kings County State of New York. The section, lot and block numbers for this site are 10, 2998 and 19, respectively. Exhibit "A" of this Agreement is a map of the Site showing its general location.
 - B. As of the effective date of this Agreement, the Site contained contamination due to releases from the Site's former dry cleaning operation including but not limited to chlorinated volatile organic contaminants in site soils at concentrations above TAGM 4046 recommended cleanup objectives and chlorinated volatile organic contaminants in site groundwater at concentrations significantly above NYSDEC Class GA groundwater standards, herein after referred to as the "Existing Contamination."
 - 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. 88 Ingraham Realty Corp. and Popular Hand Laundry and Cleaners of Richmond Hill, Inc., are the Site owner and Site operator, respectively, both with offices at 88 Ingraham Street, Brooklyn, New York, (the "Volunteers").
 - B. Volunteers intend for the use of the Site to continue as a commercial facility, excluding any primary or secondary educational facility, child care facility or any residential

or commercial facility which would require a level of environmental remediation more stringent than that specified in the Department-approved workplan (the "Contemplated Use").

C. Volunteers represent, and for the purposes of this Agreement, the Department relies on those representations, that Volunteers involvement with the Site and with the facility on that Site is limited to the following: the Volunteers are the respective owner and operator of the Site and are responsible under law to remediate the Existing Contamination.

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. 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. Volunteers wish to enter into this Agreement in order to ensure, and the Department hereby determines that this Agreement constitutes a demonstration, that the response action undertaken under this Agreement will be in compliance with the ECL and will not:

1. prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or

2. expose the public health or the environment to a significantly increased threat of harm or damage.

6. A. Volunteers also wish to enter into this Agreement in order to resolve their potential liability for remediating the Existing Contamination as owners' and operators' under ECL Article 27, Title 13.

B. Volunteers, desirous of implementing a remedial program acceptable to the Department sufficient to allow Volunteers to proceed with their plans to use the Site for the Contemplated Use, consents to the terms and conditions of this Agreement.

7. The Department and Volunteers agree that the goals of this Agreement are:

A. For Volunteers to, (i) implement the Department-approved remedial work plan pertaining to the Site; and (ii) reimburse the State's administrative costs as provided in this Agreement, and

B. For the Department to release Volunteers and their successors and assigns, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings by the Department, which may arise under any applicable law as a result of the Covered Contamination.

C. For the Department, under the conditions set forth in this Agreement, to forbear from bringing any and all claims, actions, suits, and proceedings against a party not responsible under any applicable law for the Covered Contamination and for natural resource damages who may acquire title to the Site after the Department releases the Volunteers, their respective successors and assigns, from any and all claims, actions, suits and proceedings by the Department, under the terms of this Agreement.

8. Volunteers agree to be bound by the terms of this Agreement. Volunteers consent to and agree not to contest the authority or jurisdiction of the Department to enter into or enforce this Agreement, and agree not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEERS AGREE 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 remedial work plan (the "Work Plan") attached to this Agreement and made part of it as Exhibit "B"; and shall mail an equivalent notice to the County of Kings Borough Presidents Office. If, as a result of its review of the comments received, the Department determines that the Work Plan must be revised:

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

unknown to the Department at the time of its approval of the Work Plan; or

ii. due to information received, in whole or in part, after the execution of this Agreement, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use,

then the Department will so notify Volunteers and will immediately commence negotiations with Volunteers to revise the Work Plan and, if necessary, other components of this Agreement accordingly. However, if after good faith negotiations, Volunteers and the Department cannot agree upon revisions to the Work Plan, then, except with respect to Volunteers' 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 Volunteers that negotiations have failed to develop acceptable revisions to the Work Plan; Volunteers 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 all parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement. If all parties agree to a revised Work Plan, the revised Work Plan shall be attached to this Agreement as Exhibit "B-1;" Volunteers 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, Volunteers shall commence their implementation in accordance with its provisions.

B. 1. Volunteers 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-2" and all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-2." However, if after goodfaith negotiations, Volunteers and the Department cannot agree upon modifications to the Work Plan, then except with respect to Volunteers' 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 Volunteers that negotiations have failed to develop an acceptable modification to the Work Plan; Volunteers 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

Volunteers previously described in this sentence, which it may enforce under this Agreement) all parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

3. Volunteers 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 Volunteers 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, Volunteers shall have on-Site a full-time representative who is qualified to supervise the work done.

D. In accordance with the schedule contained in the Work Plan, as may be modified by agreement among the parties, Volunteers shall submit to the Department a final engineering report. The final engineering report shall include a detailed post-remedial operation and maintenance plan ("O&M Plan"), to the extent necessary; "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that all activities were completed in full accordance with the Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteers pursuant thereto, and this Agreement. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteers shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

F. 1. i. Within 60 days after receipt of the final engineering report and certification, the Department shall notify Volunteers 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 Volunteers pursuant thereto, and this Agreement.

ii. Within 60 days after completion of the Department-approved O&M Plan, if any, Volunteers 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 Volunteers whether it is satisfied with the O&M Plan's implementation.

2. Upon being satisfied that the Site-specific cleanup levels identified in,

or to be identified in accordance with, the Work Plan have been reached, the Department shall notify Volunteers 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, Volunteers 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) Volunteers and/or their lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any, after the Department is satisfied that the Site specific cleanup levels identified in, or in accordance with the Work Plan, have been reached. 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:

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 Volunteers and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site presence;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

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

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

v. due to fraud committed, or mistake made, by Volunteers 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 Volunteers if either of them

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 either of them 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 Volunteers' 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.

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

H. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.F or in a "no further action" letter issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

2. Except as above provided in Subparagraph I.F of this Agreement and in the "no further action" letter issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department, or the State of New York may have against any person, firm, corporation, or other entity not a 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.F and in the "no further action" letter issued under Subparagraph I.G. of this Agreement shall not extend to parties (other than Volunteers) that

were responsible under law before the effective date of this Agreement to address the Existing Contamination.

II. Progress Reports

A. Volunteers 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 Volunteers or Volunteers' contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteers;
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 Volunteers' obligations under this Agreement, and efforts made to mitigate those delays or anticipated delays; and
6. include any modifications to the Work Plan that Volunteers have proposed to the Department and any that the Department has approved.

B. Volunteers shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement; and Volunteers' 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 Volunteers' final engineering report and certification concerning the Work Plan's implementation. However, Volunteers 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. Volunteers 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.

III. Review of Submittals

A. 1. The Department shall review each of the submittals Volunteers make 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 Volunteers 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 Volunteers 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 Volunteers 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 Volunteers' submittal has been disapproved, Volunteers 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 Volunteers in writing within 30 days of its approval or disapproval. If the Department disapproves the revised submittal, the Department and the Volunteers 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, Volunteers 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. Volunteers shall not suffer any penalty under this Agreement or be subject to any proceeding or action if either of them 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 Volunteers' reasonable control ("*force majeure* event"). Volunteers shall, within ten (10) working days of when it obtains knowledge of any such *force majeure* event, notify the Department in writing. Volunteers shall include in such notice the measures taken and to be taken by Volunteers to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteers 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 notice which is reasonable under the circumstances presented, Volunteers hereby consent to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteers during normal business hours 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 Volunteers' 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. Volunteers shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

VI. Payment of State Costs

A. Within thirty days after receipt of an itemized invoice from the Department, Volunteers 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 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.F.2 of this Agreement of its approval of the final engineering report and certification pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.F.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteers.

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 Volunteers fail to comply with this Agreement or if contamination other than Existing Contamination is encountered at the Site.

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

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteers fail to comply substantially with this Agreement's terms and conditions.

E. Except as otherwise provided in this Agreement, Volunteers specifically reserve all defenses Volunteers may have under applicable law respecting any Departmental assertion of remedial liability against Volunteers; and reserves all rights Volunteers 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 Volunteers' compliance with this Agreement shall not be construed as an admission of liability, fault, or wrongdoing by Volunteers, 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

Volunteers 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 Volunteers and/or any of Volunteers' directors, officers, employees, servants, agents, successors, and assigns.

However, Volunteers shall not be required to indemnify the Department, the State of New York, and their representatives and employees regarding any liability arising as a result of the gross negligence or reckless, wanton or intentional misconduct 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, Volunteers shall file the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Office of the Registrar of the City of New York to give all parties who may acquire any interest in the Site notice of this Agreement and shall provide the Department with evidence of such filing. Volunteers may terminate the Notice when the Department notifies Volunteers in writing pursuant to Subparagraph I.F.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached and that the O&M Plan has been successfully implemented.

B. If Volunteers propose to convey the whole or any part of Volunteers' ownership interest in the Site, Volunteers 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.F.2 of this Agreement approving Volunteers' final engineering report and certification concerning the Work Plan, Volunteers shall record an instrument with the Office of the Registrar of the City of New York, to run with the land, that:

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

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

3. shall require Volunteers and Volunteers' successors and assigns to continue in full force and effect any institutional and engineering controls the Department requires Volunteers to design, implement, and maintain; and

4. shall provide that Volunteers, 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. Volunteers shall provide the Department with a copy of such instrument certified by the Office of the Registrar of the City of New York to be a true and faithful copy of the instrument as recorded in the Office of the Registrar of the City of New York.

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 Volunteers shall be sent to:

Richard Gardineer, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
47-40 21st Street
Long Island City, New York 11101

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

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

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

- Four copies (one unbound) to Mr. Gardineer
- Two copies to Dr. Carlson
- One copy to Mr. Devine

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

John V. Soderberg, P.E., Esq.
Farrell Fritz, P.C.
EAB Plaza
Uniondale, New York 11556-0120

Thomas F. Maher
Dvirka & Bartlucci
330 Crossways Park Drive
Woodbury, NY 11797-2015

B. The Department and Volunteers 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. Dispute Resolution

A. If the Department disapproves a revised submittal, Volunteers shall be in violation of this Agreement unless, within 10 days of receipt of the Department's notice of disapproval, Volunteers serve on 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 Volunteers rely (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 Volunteers' Statement of Position. Volunteers' shall have five (5) 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 Volunteers serve such a reply, the Department shall have five (5) business after receipt of Volunteers' reply to the Department's Statement of Position within which to serve upon the Volunteers the Department's reply to the Volunteers reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Positions and replies may cause a delay in the work being performed under this Agreement, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by the Volunteers.

B. The Department shall maintain an administrative record of any dispute under this Paragraph XII. The record shall include the Statement of Position of each party served pursuant to the preceding subparagraph, and any relevant information. The record shall be available for review of all parties and the public.

C. Upon review of this administrative record as developed pursuant to this Paragraph XII, the ALJ shall issue a final decision and order resolving the dispute. Volunteers 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 within 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 Volunteers in writing of its approval or disapproval of the revised submittal.

D. In review by the ALJ of any dispute pursued under this Paragraph XII, the Volunteers shall have the burden of proving that there is no rational basis for the Department's position.

E. The invocation of the procedures stated in this Paragraph XII shall not extend, postpone or modify the Volunteers' obligation under this Agreement with respect to any of the disputed items, unless and until the Department agrees or a court determines otherwise. The invocation of the procedures stated in this Paragraph XII shall constitute an election of remedies by Volunteers, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to that party regarding the issue in dispute provided, however, that review of the ALJ's decision may be commenced no later than thirty (30) days after the ALJ's decision. The commencement of such a proceeding stated in this paragraph shall not extend, postpone or modify any obligation of the Volunteers under this Agreement.

XIII. Miscellaneous

A. 1. By entering into this Agreement, Volunteers certify that they have fully

and accurately disclosed to the Department all information known to Volunteers and all information in the possession or control of Volunteers' 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 Volunteers provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void *ab initio* except with respect to the provisions of Paragraphs 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. Volunteers 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 Volunteers shall rest solely with Volunteers.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteers, and the Department also shall have the right to take its own samples. Volunteers shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteers with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteers 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, Volunteers shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteers' obligations under this Agreement.

2. In carrying out the activities identified in the Work Plan, the Department may exempt Volunteers 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. Volunteers, Volunteers' officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteers), and Volunteers' lessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status of Volunteers including, but not limited to, any transfer of assets or real

or personal property, shall in no way alter Volunteers' responsibilities under this Agreement. Volunteers' 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 Volunteers.

G. Volunteers shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteers 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. Volunteers or Volunteers' contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteers shall nonetheless be responsible for ensuring that Volunteers' 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 Volunteers of Volunteers' obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteers desire that any provision of this Agreement be changed, Volunteers shall make timely written application, signed by the Volunteers, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. Gardineer and to Mr. Devine.

L. 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. 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 Volunteers otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteers' insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 USC 9613 and any other applicable law, Volunteers 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 future action brought by Volunteers 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. Volunteers and Volunteers' 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 Volunteers' entering into or fulfilling the terms of this Agreement with respect to the Site.

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

DATED: 9/22/98

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

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

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.

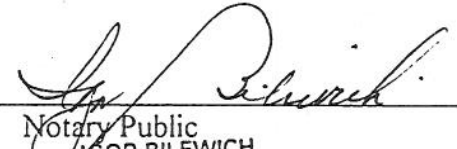
88 Ingraham Realty Corp.

By: 

Date: 9/3/98

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

On this 3rd day of September, 1998, before me personally came William Eisen, to me known, who being duly sworn, did depose and say that he resides in Jericho, N.Y.; that he is President of, the corporation described in and which executed the foregoing instrument; and that he signed his name on behalf of 88 Ingraham Realty Corp. and was authorized to do so.


Notary Public
IGOR BILEWICH
Notary Public, State of New York
No. 01B14617568
Qualified in Nassau County
Commission Expires June 30, 1999

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.

Popular Hand Laundry and Cleaners of Richmond Hill, Inc.

By: W H E M P

Date: 9/3/98

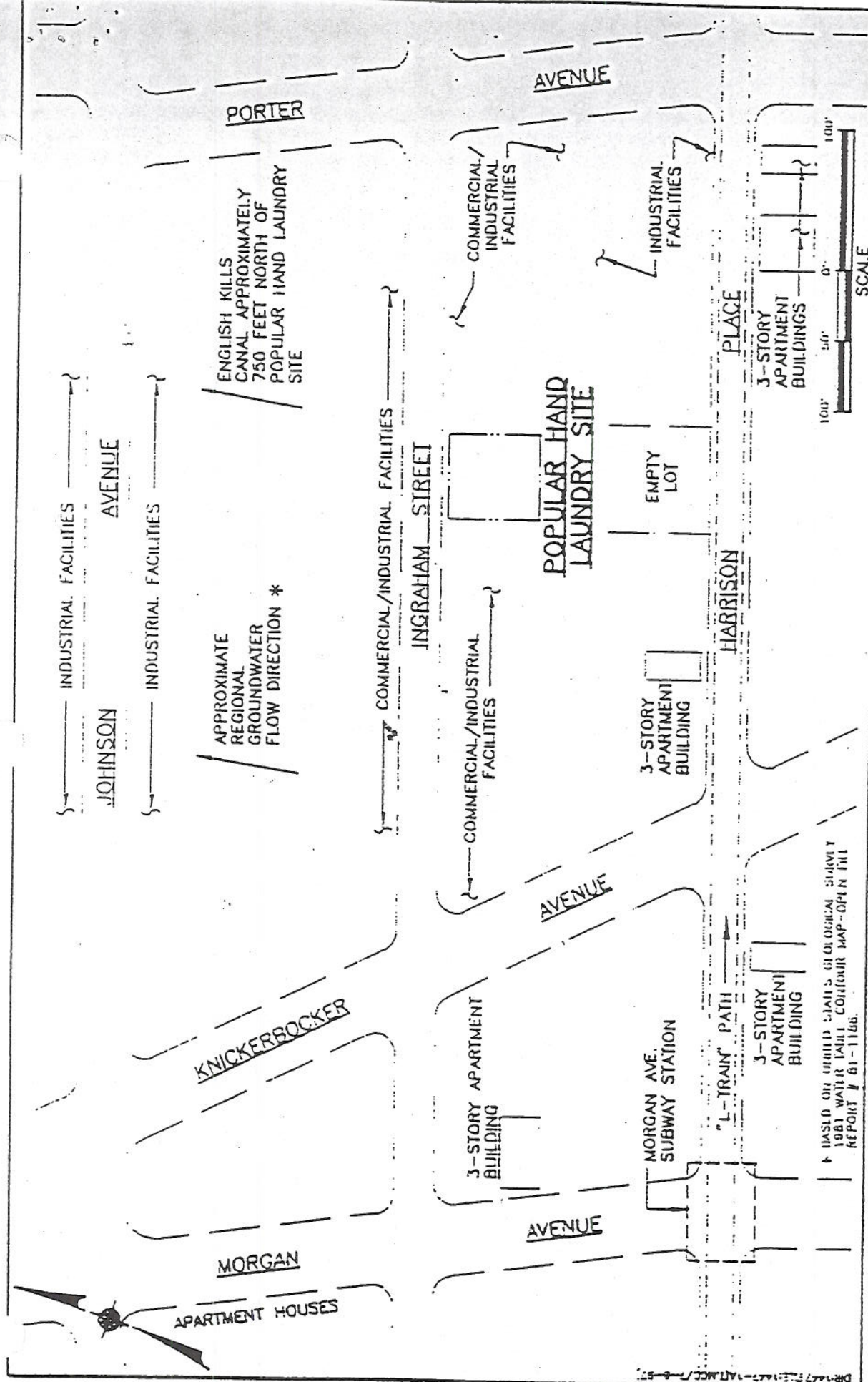
STATE OF NEW YORK)
) s.s.:
COUNTY OF NASSAU)

On this 3rd day of September, 1998, before me personally came William Eisen, to me known, who being duly sworn, did depose and say that he resides in Jericho, N.Y.; that he is President of, the corporation described in and which executed the foregoing instrument; and that he signed his name on behalf of Popular Hand Laundry and Cleaners of Richmond Hill., Inc. and was authorized to do so.

Igor Bilewich
Notary Public
IGOR BILEWICH
Notary Public, State of New York
No. 01B14617568
Qualified in Nassau County
Commission Expires June 30, 1999

EXHIBIT "A"

Map of Site



POPULAR HAND LAUNDRY SITE
BROOKLYN, NEW YORK

POTENTIAL RECEPTORS LOCATION MAP

do Deitko and Hartluecci
Consulting Engineers
A Division of William F. Connelley Associates, P.C.

FIGURE 1

EXHIBIT "B"

Department-Approved Work Plan

EXHIBIT "C"
Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

To whom it may concern:

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and 88 Ingraham Realty Corp. and Popular Hand Laundry and Cleaners of Richmond Hill, Inc. (the "Volunteers"), Index No. W2-0813-98-06 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Department-approved Work Plan to implement a response program at the parcel of land located at 88 Ingraham Street, Brooklyn, in the County of Kings, State of New York, Section, lot and block number 10, 2998 and 19 respectively, 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 Volunteers and Volunteers' lessees and sublessees and Volunteers' 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 Volunteers and/or their 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 respective 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 Volunteers 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 Volunteers' failure to implement the Agreement to the Department's satisfaction; or
- due to fraud committed, or mistake made, by Volunteers 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 respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

- Volunteers if either of them 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 either of them 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 Volunteers' 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 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 rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteers.
- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Volunteers fail 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 Volunteers fail 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 "C")

Map of the Site

Exhibit "D"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of ____, 1998 by 88 Ingraham Realty Corp., and Popular Hand Laundry and Cleaners of Richmond Hill, Inc., the fee owner and site operator respectively, of a parcel of real property located at 88 Ingraham Street, Brooklyn, County of Kings, New York, section block and lot number 10, 2998 and 19 respectively as more particularly described on Appendix "A" attached hereto (the "Property"); and

WHEREAS, 88 Ingraham Realty Corp., and Popular Hand Laundry and Cleaners of Richmond Hill, Inc., by authorized signature, entered into an administrative Agreement with the Department, Index # W2-0813-98-06 (the "Agreement"), concerning the remediation of contamination present on the Property and characterized to determine its nature and extent (the "Existing Contamination"), which Agreement was signed by the Commissioner of Environmental Conservation on ____, 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 88 Ingraham Realty Corp., and Popular Hand Laundry and Cleaners of Richmond Hill, Inc. and their lessees and sublessees and their 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, 88 Ingraham Realty Corp. and Popular Hand Laundry and Cleaners of Richmond Hill, Inc., agree that they would give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the Office of the Registrar of the City of New York,

NOW, THEREFORE, 88 Ingraham Realty Corp., and Popular Hand Laundry and Cleaners of Richmond Hill, Inc. for themselves and for their 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 88 Ingraham Realty Corp. and Popular Hand Laundry and Cleaners of Richmond Hill, Inc. or their 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, 88 Ingraham Realty Corp. and Popular Hand Laundry

and Cleaners of Richmond Hill, Inc. have executed this Notice of Agreement by its duly authorized representative.

88 Ingraham Realty Corp.

Dated:

By: _____

Its: _____

[acknowledgment]

Dated:

Popular Hand Laundry and Cleaners of
Richmond Hill, Inc.

By: _____

Its: _____

[acknowledgment]

Appendix "A"

(to Exhibit "D")

Map of the Property