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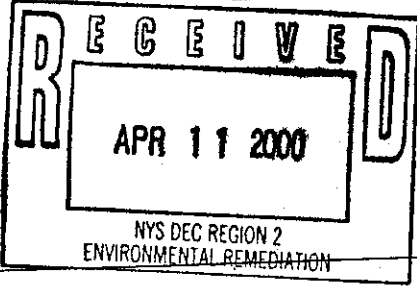
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the  
Implementation of an  
Investigation and, if needed,  
Remediation of 121<sup>st</sup> Street and  
and 5th Avenue, College Point,  
Queens, New York,  
by

College Point Properties, Inc,  
Volunteer.

AGREEMENT  
INDEX NUMBER:

*D2-0001-00-03*



DEFINITIONS

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

- A. "Contemplated Use": The Volunteer intends to develop the Site for multi family residential use. However, Volunteer may elect a use other than residential provided such use does not require a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment (e.g. industrial or commercial uses), provided Volunteer provides notice to the Department of such change of use as required by this Agreement.
- B. The Site's "Covered Contamination": the concentrations of Existing Contamination to which the Existing Contamination shall have been remediated, if such remediation has been deemed necessary, 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. The Site's "Existing Contamination": that contamination set forth in the following reports:
  - a. Data Summary Package, dated April 2, 1999. Prepared by AquaTerra;
  - b. Phase II Subsurface Investigation, dated April 13, 1998. Prepared by AquaTerra;
  - c. Phase 1, 2, and 3, Environmental Planning and Management, Inc. , June 1990

It includes, but is not limited to, the following contamination. *In the soil* - BTEX (benzene, toluene, ethylbenzene, xylene) on the area of about 125 by 150 feet. Benzene - up to 4.9 ppm (0.06 ppm cleanup guideline), toluene - up to 35 ppm (1.5 ppm cleanup guideline), ethylbenzene - up to 16.5 ppm (5.5 ppm cleanup guideline), xylene - up to 84.5 ppm (1.2 ppm cleanup guideline). PAHs (polynuclear aromatic hydrocarbons) are present in the soil throughout the entire site: benzo(a)anthracene - up to 43 ppm (0.224 ppm cleanup guideline); benzo(a)pyrene - up to 41 ppm (0.061 ppm cleanup guideline); benzo(b)fluoranthene - up to 45 ppm (1.1 ppm cleanup guideline); chrysene - up to 47 ppm (0.4 ppm cleanup guideline); naphthalene - up to 640 ppm (13 ppm cleanup guideline); phenanthrene - up to 220 ppm (50 ppm cleanup guideline); pyrene - up to 170 ppm (50 ppm cleanup guideline). *In the groundwater* - lead up to 6,500 ppb (25 ppb - standard for Class GA groundwater Part 703-705), total PCBs - up to 61 ppb (0.09 ppb - standard for Class GA groundwater Part 703-705). LNAPL (light non-aqueous phase liquid) is present on the surface of the groundwater table in the area of BTEX contamination.

The term also includes contamination encountered during the course of the Work Plan's implementation, the nature and extent of which were unknown or inadequately characterized at the time the Work Plan was submitted to the Department for approval but shall have been fully characterized to the Department's satisfaction.

G. "Investigation Work Plan": the Department-approved Investigation Work Plan pertaining to 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 is an enforceable part of this Agreement.

H. "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.

I. "Remediation Work Plan": the Department-approved Remediation Work Plan pertaining to the Site that Volunteer shall implement and that will be attached to this Agreement as Exhibit "C", 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.

J. "Site": that property located at 5th Avenue and 121st Street College Point, County of Queens, State of New York. The Site is located immediately to the west of the intersection of College Place, (a/k/a 121<sup>st</sup> Street) and 5th Avenue (a/k/a North Boulevard). The Site is currently undeveloped, quasi rectangular in shape and approximately 8 acres in size. The site is bordered to the north and west by the East River, 5th Avenue to the south, and a residential complex to the east. The Site has been zoned for residential use. The Site's Tax Map Identifier number(s) is Block 3916, Lots 1, 8, 12, 18 and Block 3914, Lot 100. Exhibit "A" of this Agreement is a map of the Site showing its general location.

K. "Volunteer": College Point Properties Inc., a corporation organized under the laws of the State of Delaware with offices at 450 Lexington Avenue, Suite 1600, New York, NY 10017.

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 is limited to the following: Volunteer acquired the property on June 10, 1997 and is the current owner of the Site. Volunteer is fully authorized to enter into this agreement and conduct any necessary remedial action undertaken under this agreement.
3. The Department has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL3-0301.1.1.
4. A. Volunteer wishes to enter into this Agreement in order to ensure and the Department hereby determines that any remedial 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.
- B. Volunteer also wishes to enter into this Agreement in order to resolve its potential liability as a party responsible for the investigation and remediation of the Site under ECL Article 27, Title 13 based upon Volunteer's investigation and, if necessary, remediation of the Site. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.
- C. Volunteer, desirous of implementing an investigation program acceptable to the Department, consents to the terms and conditions of this Agreement.
5. The Department and Volunteer agree that the goals of this Agreement are
  - A. for Volunteer to,
    1. implement the Investigation Work Plan and, if necessary, develop and implement a Department-approved Remediation Work Plan for the Site and

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

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

6. Volunteer and the Department agree to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

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

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

A. Within 30 days after the effective date of this Agreement, Volunteer shall commence implementation of the Investigation Work Plan and implement it in accordance with its terms.

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

C. In accordance with the schedule contained in the Investigation Work Plan, Volunteer shall submit to the Department a final investigation report. The final investigation shall:

1. include all data generated and all other information obtained during the investigation;

2. provide all of the assessments and evaluations identified in the Investigation Work Plan;

3. identify any additional data that must be collected; and

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the investigation that all activities that comprised the investigation were performed in full accordance with the Investigation Work Plan.

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



i. If the Department determines that it does not have sufficient information respecting the nature and extent of the Site's contamination, it will so notify Volunteer in writing. Volunteer shall collect such additional data under a Department-approved revision to the Investigation Work Plan, which shall be attached to this Agreement as Exhibit "B-1" and made a part of this Agreement. However, if within 10 days after receipt of the Department's written notification, Volunteer elects in writing not to collect such additional data or if within that period the Department and Volunteer cannot agree upon revisions to the Investigation Work Plan, then, except with respect to

a. Volunteer's obligations under Paragraphs VI and VIII of this Agreement; and

b. 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 investigative activities were commenced; and

c. The Department's right to enforce the obligations described in Subparagraphs I.D.1.i.a and I.D.1.i.b of this Agreement under Paragraph IV of this Agreement, this Agreement shall terminate effective the tenth day after Volunteer's receipt of the Department's written notification; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

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

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

3. If the Department determines that remediation is necessary to allow the Site to be used for the Contemplated Use, it shall so state in writing; and both parties shall develop a proposed Remediation Work Plan that shall be noticed for public comment in accordance with Subparagraph I.D.4 of this Agreement. If within 10 days after receipt of the Department's written determination, Volunteer elects not to develop a Remediation Work Plan; or, in the event that the Department concludes that a mutually acceptable Remediation Work Plan cannot be successfully negotiated, then, except with respect to

i. Volunteer's obligations under Paragraphs VI and VIII 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.D.3.i and I.D.3.ii of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

The proposed Remediation Work Plan shall provide, *inter alia*, that if during the Remediation Work Plan's implementation, contamination is discovered that was not discussed in the final investigative report, Volunteer shall investigate the nature and extent of such newly discovered contamination, and the Remediation Work Plan will be revised to have Volunteer remediate such new discovered contamination in the event that remediation of such contamination is needed to allow the Contemplated Use to proceed. In the event the Volunteer elects in writing within 15 days of the discovery of such new contamination not to agree to remediate such newly discovered contamination, then, except with respect to

iv. Volunteer's obligations under Paragraphs VI and VIII of this Agreement; and

v. 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

vi. the Department's right to enforce the obligations described in Subparagraphs I.D.3.iv and I.D.3.v of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

4. Upon development of a proposed Remediation Work Plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the public's opportunity to submit to the Department by no later than 30 days after the date of the issue of the Environmental Notice Bulletin in which the notice shall appear, comments on the proposed Remediation Work Plan and shall mail an equivalent notice to the Queen's Borough President's Office and Community Board # 7. If, as a result of its review of the comments received, the Department determines that the proposed Remediation Work Plan to implement the Department-approved remedial activities for the Site 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 proposed Remediation Work Plan; or

ii. due to information received, in whole or in part, after the Department's approval of the proposed Remediation Work Plan, which indicates that the activities carried out in accordance with it are not sufficiently protective of human health and the environment for the Contemplated Use, then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the proposed Remediation Work Plan accordingly. If the Department and Volunteer agree upon revisions to the proposed Remediation Work Plan, the revised proposed Remediation Work Plan shall become the final Remediation Work Plan, and shall be attached to this Agreement as Exhibit "C" and made a part of this Agreement. However, if after good faith negotiations, Volunteer and the Department cannot agree upon revisions to the proposed Remediation Work Plan, then, except with respect to

iii. Volunteer's obligations under Paragraphs VI and VIII 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.D.4.iii and I.D.4.iv of this Agreement (under Paragraph IV of this Agreement.)

this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable Remediation 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, following the 30 day comment period, the Department determines that the proposed Remediation Work Plan to implement the Department-approved remedial activities for the Site does not need to be revised then the proposed Remediation Work Plan shall become the final Remediation Work Plan and shall be attached to this Agreement as Exhibit "C" and made a part of this Agreement.

5. Volunteer shall commence implementation of, and implement, the final Remediation Work Plan contained in Exhibit "C" in accordance with its terms.

E. 1. In accordance with the schedule contained in Exhibit "C," as may be modified by agreement between the parties and which modifications shall appear in Exhibit "C- I" of this Agreement, 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 Remediation Work Plan, any Department-approved modification to the Remediation 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 deemed necessary by the Department, along with the final engineering report. However, if after good faith negotiations, Volunteer and the Department cannot agree on the scope of an O & M Plan, this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable scope of an O & M Plan; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement, except with respect to

- i. Volunteer's obligations under Paragraphs VI and VIII of this Agreement and
- ii. Volunteer's obligations, 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.E.2.i and I.E.2.ii of this Agreement.

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

F. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, except as otherwise provided herein, Volunteer shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

G. 1. After receipt of the final engineering report, the Department shall notify Volunteer in writing whether the Department is satisfied that the Remediation Work Plan was satisfactorily implemented in compliance with Exhibit "C" (and, as appropriate "C- 1") and the Department-approved design, which notification shall not be unreasonably withheld.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan have been reached, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department shall release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteer, and its successors and assigns for the further investigation and remediation of the Site based upon the release or threatened release of any Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or 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 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 Volunteer and the Department at the time of the development of the Remediation 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 Remediation 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, which indicates that the activities carried out in accordance with the Remediation Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

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

v. due to fraud committed, or mistake made, by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer if 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[151]), other than Covered Contamination, 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 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.

H. If the Department is satisfied with the implementation of the Remediation 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 substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "D."

I. 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.G or in a "no further action" letter issued under Subparagraph I.H 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.G of this Agreement and in the "no further action" letter issued under Subparagraph I.H 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.G and in the "no further action" letter issued under Subparagraph I.H 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.

J. During implementation of all activities conducted on the Site under either the Investigation Work Plan or the Remediation Work Plan, Volunteer shall

1. have on-site a representative in connection with the installation phase of the bioremediation who is qualified to supervise the activities undertaken; and

2. notify the Department of any significant difficulties that may be encountered in implementing the Investigative Work Plan, the Remediation Work Plan, any Department-approved modification to either of them, or any Department-approved detailed document or specification prepared by or on behalf of Volunteer pursuant to either, and shall not modify any obligation unless first approved by the Department, which approval shall not be unreasonably withheld.

## II. Progress Reports

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

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

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

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

4. describe all actions, including, but not limited to, data collection and implementation of the Investigation Work Plan or the Remediation Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;

5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under the Agreement, and efforts made to mitigate those delays or anticipated delays; and

6. include any modifications to the Investigation Work Plan or the Remediation 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.G.2 of this Agreement approving Volunteer's final engineering report concerning the Remediation Work Plan's implementation. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting. Volunteer's obligation under this Paragraph 11.C shall terminate upon receipt of the written notification pursuant to Paragraph I.G.3 of this Agreement except as may be required in conjunction with an O&M Plan, if any, for the Site.

### 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 generally accepted technical and scientific principles. The Department shall notify Volunteer within a reasonable time, 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 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 relevant 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. If the Department disapproves the revised submittal, 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. 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. The failure to so notify the Department shall result in the waiver of this Subparagraph IV.B. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

#### V. Entry upon Site

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or



agent of the Department or any State agency having jurisdiction with respect to the 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 to the extent that office space currently exists on the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings except to the extent that such records are privileged pursuant to applicable statutes and common law.

VI. Payment of State Costs

Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money 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.G.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. Volunteer's obligation to reimburse the Department for costs under this Paragraph VI shall not exceed \$15,000. 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.G.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.H of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.

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

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

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

E. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses Volunteer may have under applicable law respecting any Departmental assertion of remedial liability against Volunteer; and reserves all rights Volunteer may have respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteer's compliance with this Agreement shall not be construed as an admission of liability, fault, or wrongdoing by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

#### VIII. Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns.

#### IX. Notice of Sale or Conveyance

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

1. file the Notice of Agreement, which is attached to this Agreement as Exhibit " E, " with the Office of the Registrar of the City of New York, Queens County, 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.G.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 Remediation Work Plan have been reached and that the O&M Plan has been successfully implemented.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 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 Volunteer's receipt of the Department's notification pursuant to Subparagraph I.G.2 of this Agreement approving Volunteer's final engineering report concerning the Remediation Work Plan, Volunteer shall record an instrument with the Office of the Registrar of the City of New York, Queens County, 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. The Department acknowledges that the Site is presently serviced by a public water supply system.

3. shall require Volunteer and Volunteer's successors and assigns to continue in full force and effect the institutional and engineering controls the Agreement requires Volunteer to put into place and maintain; and

4. shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

B. Within 30 days after Volunteer's receipt of the Department's notification pursuant to Subparagraph I.G.2 of this Agreement approving Volunteer's final engineering report concerning the Remediation Work Plan, Volunteer shall provide the Department with a copy of such instrument certified by the Office of the Registrar of the City of New York, Queens County, 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 Volunteer shall be sent to:

Thomas Lang, P.E.  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
47-40 21<sup>st</sup> 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  
Flanigan Square  
547 River Road  
Troy, New York 12180-2216

Dale A. Desnoyers, Esq.  
New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
50 Wolf Road, Room 410A  
Albany, New York 12233-5550

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

Four copies (one unbound) to Thomas Lang, P. E.

Two copies to Dr. Carlson

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

to:

Marc Porosoff  
College Point Properties, Inc.  
450 Lexington Avenue  
Suite 1600  
New York, New York 10017

Charles D. Silver, Ph.D.  
Director of Environmental Services  
AquaTerra Environmental Services Corp.  
49 West 23rd Street, 6th Floor  
New York, NY 10010

Linda S. Agnew, Esq.  
Jaspan Schlesinger Hoffman LLP  
300 Garden City Plaza  
Garden City, New York 11530-3324 and

Harold D. Berger, Esq.  
Jaspan Schlesinger Hoffman LLP  
300 Garden City Plaza  
Garden City, New York 11530-3324

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

## XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that 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 officers, directors, 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.

2. If the Department reasonably determines that information Volunteer provided and certifications made are not materially accurate and complete, this Agreement, (within the sole discretion of the Department) shall be null and void *ab initio* except with respect to the provisions of Paragraphs 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, however, the Department shall notify Volunteer and provide 15 days for Volunteer to respond prior to terminating the Agreement pursuant to this Subparagraph XII.A.2. If, after considering Volunteer's response, the department determines that information provided by Volunteer and certifications made by Volunteer were not materially accurate and complete, which determination shall be exercised reasonably.

B. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department, which acceptance shall not be unreasonably withheld, to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

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

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

E. 1. Subject to Subparagraph XII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement.

2. In carrying out the activities identified in the Work Plan, the Department may exempt Volunteer from the requirement to obtain any Department permit for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

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

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

H. 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.

I. 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 Mr. Lang and to Mr. Desnoyers.

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

K. 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.

L. 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.

M. Volunteer may commence, at its sole option, development on portions of the Site simultaneously with the execution of this Agreement, provided, however, that such development will not commence in areas which are being investigated or remediated under the terms of this Agreement.

N. Volunteer and the Department agree:

That if the contamination resulting from an off-Site source creates a situation which makes the cost of cleanup prohibitive for the volunteer, the volunteer may advise the Department of its decision not to proceed with the investigation and remediation and the Department will agree to such request, providing:

i. The volunteer fulfills the obligations under paragraphs VI and VIII of the Agreement; and

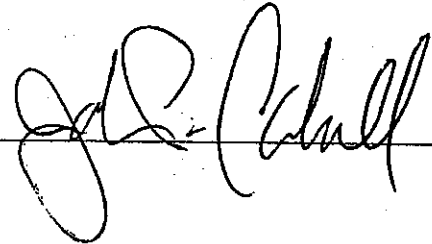
ii. Volunteer's obligation, here incurred, to ensure that it does not leave the site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any investigative activities were commenced; and

iii. The Department's right to enforce the obligations described in subparagraphs XI.N.i and XI.N.ii of this Agreement under Paragraph IV of this Agreement, this Agreement shall terminate effective the tenth day after Volunteer's receipt of the Department's written notification; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

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

DATED: *April 6, 2000*

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

  
\_\_\_\_\_



**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.

**College Point Properties, Inc.**

By:

Russel S. Bernard  
Russel S. Bernard  
President

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

Date:

March 8, 2000

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

On the 8<sup>th</sup> day of March, 2000 before me personally came Russel Bernard, to me known, who being duly sworn, did depose and say that he has an address at 450 Lexington Avenue, New York, NY 10017 and is the President of College Point Properties, Inc. the corporation described in and which executed the foregoing instrument; and that he signed his name on behalf of College Point Properties, Inc. and was authorized to do so.

Notary Public

Stephanie F. Schulman

**STEPHANIE F. SCHULMAN**  
**NOTARY PUBLIC, State of New York**  
**No. 029C5047831**  
**Qualified in Westchester County**  
**Commission Expires August 14, 2002**

**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.

**College Point Properties, Inc.**

By: \_\_\_\_\_  
Russel S. Bernard  
President

By: *[Signature]*  
Kenneth Liang  
Vice President & Assistant Secretary

Date: \_\_\_\_\_

STATE OF CALIFORNIA)  
                                  )ss:  
COUNTY OF LOS ANGELES)

On the 8<sup>th</sup> day of March, 2000 before me personally came Kenneth Liang, to me known, who being duly sworn, did depose and say that he has an address at 333 South Grand Avenue, 28<sup>th</sup> Floor, Los Angeles, CA 90071 and is the Vice President and Assistant Secretary of College Point Properties, Inc. the corporation described in and which executed the foregoing instrument; ad that he signed his name on behalf of College Point Properties, Inc. and was authorized to do so.

Notary Public

*Judith A. Buendia*

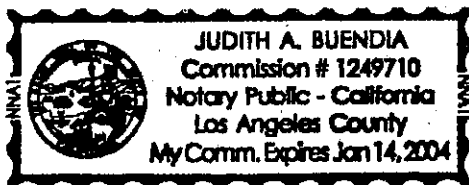


EXHIBIT "C-1"  
Final Remediation Work Plan Revision

Appendix "A"

(to Exhibit "D")

Map of the Site

Exhibit "E"

NOTICE OF AGREEMENT

This Notice is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2000 by College Point Properties, Inc., the fee owner of a parcel of real property located at address; also include Tax Map Parcel No./Tax, Block 3916, and lot nos. 1, 8, 12, 18 and Block 3914, Lot 100 as more particularly described on Appendix "A" attached hereto (the "Property"); and

**WHEREAS**, College Point Properties, Inc., by authorized signature, entered into an agreement with the Department, Index #-- (the "Agreement"), concerning the remediation of contamination present on the Property, which Agreement was signed by the Commissioner of Environmental Conservation on \_\_\_\_\_; and

**WHEREAS**, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide College Point Properties, Inc. and College Point Properties Inc's lessees and sublessees and College Point Properties Inc'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 Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

**WHEREAS**, pursuant to the Agreement, College Point Properties, Inc. agreed that it would give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the Office of the Registrar of the City of New York, Queens County,

**NOW, THEREFORE**, College Point Properties, Inc. for itself and for its successors and assigns, declares that:

1. This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property; and that
2. This Notice shall terminate upon the filing by College Point Properties, Inc. or its successors and assigns, of a termination of notice of Agreement after having first received approval to do so from the New York State Department of Environmental Conservation.

IN WITNESS WHEREOF, College Point Properties, Inc. has executed this Notice of Agreement by its duly authorized representative.

College Point Properties, Inc.

Dated:

By:

Its:

[acknowledgement]

Appendix "A"  
(to Exhibit "E")



V. Brevdo  
New York State Department of Environmental Conservation

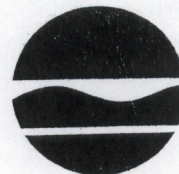
Division of Environmental Enforcement

Bureau of State Superfund and Voluntary Cleanup, Room 410A

60 Wolf Road, Albany, New York 12233-5550

Phone: (518) 457-4347 • FAX: (518) 457-7819

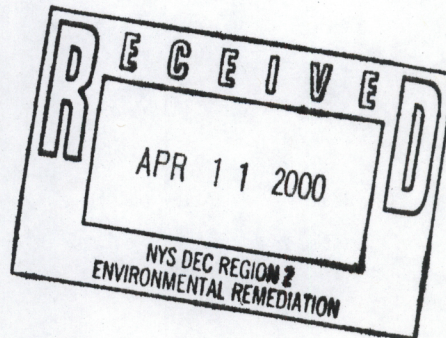
Website: www.dec.state.ny.us



John P. Cahill  
Commissioner

April 8, 2000

Linda S. Agnew, Esq.  
Jaspan Schlesinger Hoffman LLP  
300 Garden City Plaza  
Garden City, New York 11530-3324



Re: College Point Properties  
Voluntary Cleanup Program

Dear Ms. Agnew:

Enclosed please find one fully executed Voluntary Cleanup Agreement. The Commissioner executed the Agreement on the 6<sup>th</sup> day of April, 2000. Thank you for all your courtesies during this negotiation.

Cordially,

Dale A. Desnoyers  
Chief, State Superfund and Voluntary  
Cleanup Bureau

c: V. Brevdo