

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a
Remediation of

132-20 Merrick Blvd.,
Springfield Gardens, New York

by

FC Springfield Associates, LLC,
Volunteer.

AGREEMENT
INDEX NUMBER:

NYS DEC REGION 2
RECEIVED

DEFINITIONS

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

A. "Contemplated Use": Unrestricted; provided, however, that (i) construction of any new building other than on the slab foundation for the existing building (as shown on the Map of Site attached as Exhibit A hereto) shall include a vapor barrier between the underlying soils and the lowest level floor or slab, and (ii) indoor air sampling shall be conducted, under a plan approved by the Department, for the "Existing Contamination" (i.e., tetrachloroethene and its degradation products), and the results reported to the Department, prior to use of any new building constructed on the Site (including substantial reconstruction or replacement of the building on the existing slab).

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

C. "ECL": the Environmental Conservation Law.

D. "Day": a calendar day unless otherwise specified.

E. "Department": the New York State Department of Environmental Conservation.

F. The Site's "Existing Contamination": Tetrachloroethene in the shallow upper glacial unit, as described in the Phase II Environmental Assessment prepared by AKRF, Inc. (March 1999) and the reports of prior studies referred to therein. 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. "Professional engineer": an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

H. "Remediation Work Plan": the Department-approved Remediation 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, 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.

I. "Site": that property located between Merrick Blvd., 137th Avenue, Belknap St. and the right of way of the Long Island Railroad in the Fourth Ward, Borough of Queens, City and State of New York, having the address 132-20 Merrick Blvd., also known as 135-01 Belknap St., Tax Map No.: Block 12999, Lots 44, 54, 74 and 94. Exhibit "A" of this Agreement is a map of the Site showing its general location. A metes and bounds description of the Site is annexed to Exhibit "A".

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

K. "Volunteer": FC Springfield Associates, LLC, a New York limited liability company with offices located at One MetroTech Center North, Brooklyn, New York 11201.

CONSIDERING

1. The Department is responsible for enforcement of the ECL. This Agreement is entered into pursuant to the Department's authority under that law and constitutes an administrative settlement for purposes of 42 USC 9613(f).
2. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with the facility on that Site is limited to the following: Volunteer acquired the Site on or about September 14, 1999 and was neither an owner or operator of the Site prior thereto.
3. The Department has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.
4. A. Volunteer wishes to enter into this Agreement in order to ensure and the Department hereby determines that this Agreement constitutes a demonstration 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 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 a remedial 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 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 and the Trustee to release, covenant not to sue, and forbear from bringing any action, proceeding, or suit against Volunteer for the Site's further investigation or remediation.

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

I. Performance and Reporting of the Remediation 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 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 Borough of Queens. If, as a result of its review of the comments received, the Department determines that the proposed Remediation 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 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 "B" 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.A.1.iii and I.A.1.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 "B" and made a part of this Agreement.

2. Volunteer shall commence implementation of, and implement, the final Remediation Work Plan contained in Exhibit "B" in accordance with its terms. However, the parties agree that the final Remediation Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during implementation of the final Remediation Work Plan unless after good faith negotiations, Volunteer and the Department cannot agree upon modifications to the final Remediation Work Plan. In such event, 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.A.2.i and I.A.2.ii of this Agreement and under Paragraph IV of this Agreement,

this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the final 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.

B. In accordance with the schedule contained in Exhibit "B," as may be modified by agreement between the parties and which modifications shall appear in Exhibit "B-1" 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.

C. 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 "B" (and, as appropriate, "B-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 and the Trustee release, covenant not to sue,

and shall forbear from bringing any action, proceeding, or suit against, Volunteer for the further investigation and remediation of the Site, and for natural resources damages, based upon the release or threatened release of any Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions, if they are necessary, have been recorded in accordance with Paragraphs IX and X of this Agreement. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

i. due to the off-Site presence of petroleum 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 material 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 and the Trustee hereby reserve all of their respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer if Volunteer causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or if Volunteer constructs, uses, or allows the use of, new buildings on the Site without complying with the requirements set forth in the definition of "Contemplated Use" (Definition A; requirements (i) and (ii)) set forth above; 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 constructs, uses, or allows

the use of, new buildings on the Site without complying with the requirements set forth in the definition of "Contemplated Use" (Definition A; requirements (i) and (ii)) set forth above; 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.

D. 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 "C" which Volunteer and its successors may copy and provide to subsequent owners of the Site (and to the lessees, secured creditors and lenders of Volunteer and of such subsequent owners) and each such copy shall have the force and effect as if an original.

E. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.C or in a "no further action" letter issued under Subparagraph I.D 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.C of this Agreement and in the "no further action" letter issued under Subparagraph I.D of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department, the Trustee, or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.C and in the "no further action" letter issued under Subparagraph I.D 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.

F. During implementation of all activities conducted on the Site under the Remediation Work Plan, Volunteer shall

1. have on-site a full-time representative who is qualified to supervise the activities undertaken; and

2. notify the Department of any significant difficulties that may be encountered in implementing the Remediation Work Plan, any Department-approved modification to it, or any Department-approved detailed document or specification prepared by or on behalf of Volunteer pursuant to it, 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.1 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 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 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.C.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 other than meetings (or portions of meetings) which include Volunteer's counsel and during which matters subject to the attorney-client privilege, work product privilege or other applicable privilege are to be discussed; provided, however, that if circumstances are such as to prevent Volunteer from providing the Department with such advance notice, Volunteer will provide as much advance notice as possible under the circumstances..

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 in writing of its approval or disapproval of the submittal within 30 days of its receipt. 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 in a timely manner and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. The Department agrees to promptly meet with Volunteer to explain and clarify its disapproval and attempt to resolve any areas of disagreement. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved and meeting with the Department to attempt to resolve any areas of disagreement, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

ii. After receipt of the revised submittal, the Department shall notify Volunteer in writing in a timely manner of its approval or disapproval and the reasons for any disapproval. 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 provided that Volunteer shall not be required to submit a microfilm copy of any report which the Department agrees in writing does not need to be submitted in such form. 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, litigation or governmental directive, or any other fact or circumstance beyond Volunteer's reasonable control ("*force majeure* event"). Volunteer shall, within ten working days of when it obtains knowledge of any such *force majeure* event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

V. Entry upon Site

Subject to conditions which may be prescribed in the Site's Health and Safety Plan, 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 upon such advance notice as is reasonable under the circumstances 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 full access to all records relating to matters addressed by this Agreement and to job meetings.

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 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.C.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; provided, however, that Volunteer's obligation to reimburse the Department under this Paragraph VI of this Agreement 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. Reservation of Rights

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

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

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

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

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.

F. Volunteer specifically reserves all of its rights, and the existence of this Agreement shall not be construed as barring, diminishing, adjudicating or in any way affecting Volunteer's rights with respect to the liability of any other party regarding the Existing Contamination.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns; provided, however, that Volunteer shall not indemnify the Department, the State of New York, and their representatives and employees in the event that such claim, suit, action, damages or costs relate to or arise from any unlawful, willful, grossly negligent or malicious acts or omissions on the part of the Department, the State of New York or their representatives or employees.

IX. Notice of Sale or Conveyance

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

1. file the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Queens County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement and

2. provide the Department with evidence of such filing.

Volunteer may terminate the Notice when the Department notifies Volunteer in writing pursuant to Subparagraph I.C.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. The Department agrees to execute promptly on request such documents as may be required by the Queens County Clerk to effectuate termination of the Notice.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

X. Deed Restriction

A. If the Department so requires, within 30 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.C.2 of this Agreement, Volunteer shall record an instrument with the Queens County Clerk, to run with the land, that:

1. shall require (i) that construction of any new building other than on the slab foundation for the existing building (as shown on the Map of Site attached as Exhibit A hereto) shall include a vapor barrier between the underlying soils and the lowest level floor or slab, and (ii) that indoor air sampling shall be conducted, under a plan approved by the Department, for the "Existing Contamination" (i.e., tetrachloroethene and its degradation products), and the results reported to the Department, prior to use of any new building constructed on the Site (including substantial reconstruction or replacement of the building on the existing slab) unless an express written waiver of such requirements is given 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 Volunteer and Volunteer's successors and assigns to continue in full force and effect any and all institutional and engineering controls required by the Remediation Work Plan unless a written waiver from such controls is obtained from the Department; 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.C.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall provide the Department with a copy of such instrument certified by the Queens County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Queens County Clerk.

XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

Thomas Lang, P.E.
NYS Dept. of Environmental Conservation
47-40 21st St.
Long Island City, NY 11101

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanagan Square
547 River Street -- Room 300
Troy, New York 12180-2216

Dale Desnoyers, Esq.
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, NY 12233-5000

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:

Mr. John Cournoyer
FC Springfield Associates, LLC
c/o Forest City Ratner Companies
One MetroTech Center North
Brooklyn, NY 11201

with copies to:

Eric Bregman, Esq. and Mark Chertok, Esq.
Sive, Paget & Riesel, P.C.
460 Park Ave. - 10th Fl.
New York, NY 10022

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 material information known to Volunteer and all information in the possession or control of Volunteer's members, partners and employees, and to the best of its knowledge its contractors and agents, which relates in any way to the contamination existing on the effective date of this Agreement, and to any past or potential future release of hazardous substances, pollutants, or contaminants, at or from the Site and to their application for this Agreement. Volunteer also certifies that Volunteer has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at, or from, the Site.

2. If the Department determines that information Volunteer provided and certifications made are not materially accurate and complete, this Agreement, within the 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. 1. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

2. The Department acknowledges that AKRF Engineering, P.C. is an acceptable engineering firm to assist Volunteer in carrying out the terms of this Agreement.

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. Volunteer shall have the right to obtain split samples and/or a copy of the analytical results of all substances and material samples obtained or taken by or on behalf of the Department.

D. Volunteer shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement except where such advance notice is not possible, in which case Volunteer will provide the Department with as much advance notice as is possible under the circumstances.

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

G. 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 Thomas Lang, P.E. and to Dale Desnoyers, Esq.

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

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

L. 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. To the extent authorized under 42 USC 9613 and any other applicable law, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the Existing Contamination. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 USC 9613(f)(3) shall apply.

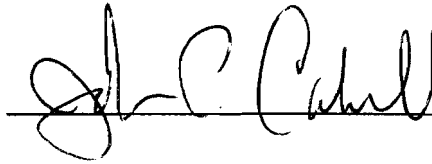
M. Volunteer and Volunteer's employees, servants, agents, lessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim against the State and/or the New York State Environmental Protection and Spill Compensation Fund pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action,

or demands whatsoever that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

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

DATED: 12/7/99

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

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

p:\1597\EB0975

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.

FC Springfield Associates, LLC

By: RRG Springfield, Inc.

By:

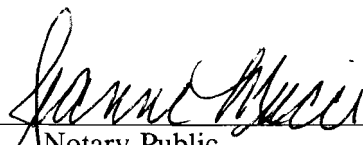

David Berliner, Senior Vice President

Date:

November 9, 1999

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

On this 9 day of November, 1999, before me personally came David Berliner, to me known, who being duly sworn, did depose and say that he resides in New York, New York; that he is the Senior Vice President of RRG Springfield, Inc., which is a member of FC Springfield Associates, LLC., the Limited Liability Company described in and which executed the foregoing instrument; and that he signed his name on behalf of FC Springfield Associates, LLC. and was authorized to do so.


Notary Public

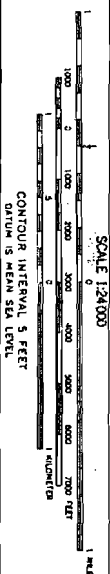
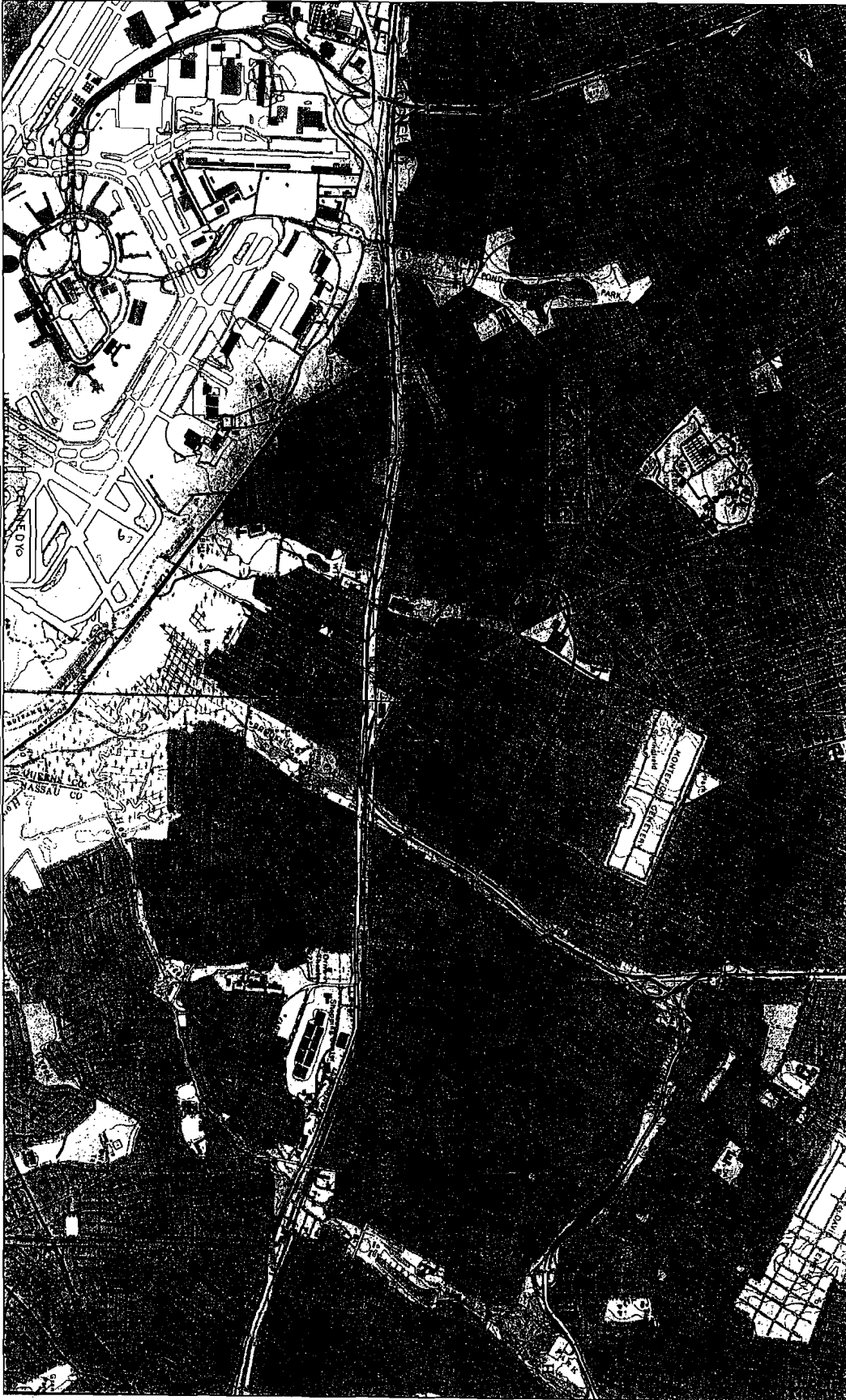
1597/EB0975

JEANNE MUCCI
Notary Public, State of New York
No. 30-4834577
Qualified in Nassau County
Commission Expires March 30, 1999
2001

EXHIBIT "A"

Map of Site

Source: USGS Topographic Map - Jamaica Quadrangle, New York
 Dated 1986. Photorevised 1979. Contour interval 10 feet.
 Datum: North American Vertical Datum of 1929.



132-20 MERRICK BOULEVARD
 SPRINGFIELD GARDENS, NEW YORK

PROJECT SITE LOCATION
 CLOSEST WELLS TO SITE

AKRF, Inc.

Environmental Consultants
 117 East 29th Street New York, N.Y. 10018

DATE
 8/25/99

SCALE

PROJECT NO.
 30079

FIGURE NO.

1

MERRICK BLVD.

LONG ISLAND RAILROAD TRACKS

134 AVE.

BELKNAP STREET

135 AVE.

136 AVE.



Legend:

BUILDING LINE

137 AVENUE



132-20 MERRICK BOULEVARD
SPRINGFIELD GARDENS, NEW YORK

SITE PLAN

AKRF, Inc.

Environmental Consultants
117 East 29th Street New York, N.Y. 10016

DATE
8/25/99

SCALE
1"=80'

PROJECT NO.
30079

FIGURE NO.

2

Title No.: 98NYQ7629

Policy No.: G32-063881 (Acquisition Loan Mortgage)

SCHEDULE A DESCRIPTION

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Merrick Boulevard, 100 feet wide, with the easterly side of Belknap Street, 60 feet wide;

RUNNING THENCE easterly along the southerly side of Merrick Boulevard, along an arc of a circle bearing to the left having a radius of 717.793 feet, a distance of 428 feet (deed) (428.14 feet on survey) to a point;

THENCE still easterly along the southerly side of Merrick Boulevard, north 79 degrees 45 minutes 26 seconds east, 9.37 feet to the westerly line of land of the Long Island Railroad Co.;

THENCE southerly along the westerly line of land of the Long Island Railroad Co. and parallel with the easterly side of Belknap Street, 920.36 feet to a point;

THENCE south 78 degrees 37 minutes 00 seconds west, 190 feet to a point;

THENCE north 11 degrees 23 minutes 00 seconds west, parallel with the easterly side of Belknap Avenue, 100 feet;

THENCE south 78 degrees 37 minutes 00 seconds west, parallel with the northerly side of 137th Avenue, 220 feet to the easterly side of Belknap Street;

THENCE along the easterly side of Belknap Street, north 11 degrees 23 minutes 00 seconds west, 952.56 feet to the corner, the point or place of BEGINNING.

Title No.: 98NYQ7629

Policy No.: G32-063881 (Acquisition Loan Mortgage)

**SCHEDULE A
DESCRIPTION
(Continued)**

The aforesaid premises being also described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Fourth Ward, Borough of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Merrick Boulevard, 100 feet wide, with the easterly side of Belknap Street, 60 feet wide;

RUNNING THENCE easterly along the southerly side of Merrick Boulevard, along an arc of a circle bearing to the left having a radius of 717.793 feet, a distance of 428 feet to a point;

THENCE still easterly along the southerly side of Merrick Boulevard 9.37 feet to the westerly line of land of the Long Island Railroad Co.;

THENCE southerly along the westerly line of land of the Long Island Railroad Co. and parallel with the easterly side of Belknap Street, 920.36 feet to the northerly side of 137th Avenue, 80 feet wide;

THENCE westerly along the northerly side of 137th Avenue, 190 feet;

THENCE northerly and parallel with the easterly side of Belknap Avenue, 100 feet;

THENCE westerly and parallel with the northerly side of 137th Avenue, 220 feet to the easterly side of Belknap Street;

THENCE northerly along the easterly side of Belknap Street, 952.56 feet to the corner, the point or place of BEGINNING.

END OF SCHEDULE A