

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of a
Remediation of 58 Christie Place,
Scarsdale, New York by

AGREEMENT
INDEX NUMBER:

HAUSMAN REALTY COMPANY, INC.,
Volunteer.

Q3-0001-00-05

DEFINITIONS

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

- A. "Contemplated Use": Unrestricted
- 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": Soil and concrete contaminated with chlorinated volatile organic compounds, , as described in the March 23, 1999 limited Subsurface Investigation Report by The Chazen Companies. The term also includes contamination encountered during the course of the Remediation Work Plan's implementation, the nature and extent of which were unknown at the time the Remediation Work Plan was submitted to the Department for approval.
- 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, approximately 0.06 acres in size, located at 58 Christie Place, within Section 2, Block 5, Lot 12. Exhibit "A" of this Agreement is a map of the Site showing its general location.
- J. "Trustee": the Trustee of New York State's natural resources.
- K. "Volunteer": Hausman Realty Company, Inc., a New York corporation, c/o Kurzman & Eisenberg, One North Broadway, White Plains, 10601 New York.
- L. "Owner": Christie-Spencer Corporation, 304 Harwood Building, Scarsdale, New York 10583.

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: ground lease of a shopping center located at 58 Christie Place, Scarsdale, New York pursuant to a ground lease between Christie-Spencer Corporation and Hausman Realty Company, Inc., expiring on December 31, 2012. Volunteer is not otherwise responsible under law to remediate the Existing Contamination.
- 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, 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 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 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, if Necessary

A. Within 21 days after the effective date of this Agreement, the Department shall 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 (annexed hereto as Exhibit "B") and shall mail an equivalent notice to the Village of Scarsdale and County of Westchester. 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:

1. 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

2. due to information received, in whole or in part, after the Department's approval of the 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 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

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

4. 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

5. the Department's right to enforce the obligations described in Subparagraphs I.B.3 and I.B.4 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.

B. 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.

C. 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 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

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

2. 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

3. the Department's right to enforce the obligations described in Subparagraphs I.C.1 and I.C.2 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 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.

D. 1. 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.

2. A professional engineer must prepare, sign, and seal any post-monitoring O&M Plan, "as built" drawings, final engineering report, and certification.

E. 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 objectives in the Remediation Work Plan have been reached (exclusive of any post-remediation O&M Plan), 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, and (b) appropriate notices and deed restrictions, if any are necessary, 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 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 objectives 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]), 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.

F. 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 the Owners of the Site, subsequent owners of the Site (and to the secured creditors and lenders of such subsequent owners) and each such copy shall have the force and effect as if an original;

G. 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.E or in a "no further action" letter issued under Subparagraph I.F of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable to Covered Contamination.

2. Except as above provided in Subparagraph I.E of this Agreement and in the "no further action" letter issued under Subparagraph I.F 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.E and in the "no further action" letter issued under Subparagraph I.F of this Agreement and the forbearance described in Subparagraphs I.E.2 and I.E.3 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.

H. 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 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 be timely and 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.E.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 in a timely manner. 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 Remediation Work Plan. The Department agrees to promptly meet with the 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 (subject to Paragraph XII of this Agreement) 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, judicial decree, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("*force majeure* event"). Volunteer shall, within five working days of when it obtains knowledge of any such *force majeure* event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph 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 Remediation 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 permit 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.E.2 of this Agreement of its approval of the final engineering report pertaining to the implementation of the Remediation 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 Thousand (\$8,000) Dollars. 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.E.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.F 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 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.

G. 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, subject to the notice and opportunity to cure pursuant to Paragraph VII.E of this Agreement and the Dispute Resolution provisions of Paragraph XII of this Agreement.

E. Prior to any termination of this Agreement by the Department, the Department must provide Volunteer with written notice of Volunteer's alleged failure to substantially comply with any term or provision of this Agreement and afford Volunteer fifteen (15) days from Volunteer's receipt of such notice to cure the alleged non-compliance; and further provided that if such non-compliance is not reasonably susceptible to a cure within this period of time and Volunteer is making good faith efforts to cure the alleged non-compliance the Department shall not terminate this Agreement.

F. 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.

G. 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 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 Conveyance

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

1. file the Notice of Agreement, which is attached to this Agreement as Exhibit "E," with the Westchester 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.E.2 of this Agreement that the Department is satisfied that the Site-specific objectives identified in, or to be identified in accordance with, the Remediation Work Plan have been reached. The Department agrees to execute promptly on request such documents as may be required by the Westchester County Clerk to effectuate termination of the Notice.

B. If Volunteer proposes to convey the whole or any part of Volunteer's property 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.E.2 of this Agreement, Volunteer shall, subject to Paragraph X.C of this Agreement, cause to be recorded an instrument with the Westchester County Clerk, to run with the land, that:

1. 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;

2. 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

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

B. Within 30 days after Volunteer's receipt of the Department's notification pursuant to Subparagraph I.E.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 Westchester County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Westchester County Clerk.

C. In the event Volunteer cannot cause such instrument described in Paragraph X.A of this Agreement to be recorded with the Westchester County Clerk, the Department may, subject to the notice and opportunity to cure pursuant to Paragraph VII.E of this Agreement and the Dispute Resolution provisions of Paragraph XII of this Agreement, terminate this Agreement.

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:

Kathleen McCue
New York State Department of
Environmental Conservation

50 Wolf Road
Albany, NY 12233

with copies to:

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

Dale Desnoyers, Esq.
New York State Department 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 Kathleen McCue
- Two copies to Dr. Carlson

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

Hausman Realty Corporation
c/o Kurzman & Eisenberg
One North Broadway
White Plains, New York 10601
Attn: Nancy Blumenthal

with copies to:

Mark A. Chertok, Esq.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, New York 10022

and

Joel Lever, Esq.
Kurzman & Eisenberg, LLP
One North Broadway, 10th Floor
White Plains, New York 10601

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. Dispute Resolution

In the event of a dispute between the Department and Volunteer regarding Paragraphs I.E., I.F, III, VIII or XIII.A.2 of this Agreement, the parties shall first attempt to resolve the dispute informally between them. If informal discussions and negotiations do not appear to be resolving the dispute, within thirty (30) days of Volunteer's receipt of the notice of the Department's disapproval of a submittal or Volunteer's alleged non-satisfaction or assertion of non-compliance with a provision or term of this Agreement or the Remediation Work Plan or request for indemnification ("Notice"), Volunteer shall be entitled to invoke this subparagraph to resolve the issues in dispute.

A. Within 30 days of the date on which Volunteer receives the Department's Notice, Volunteer shall be entitled to request an appointment of an Administrative Law Judge ("ALJ") to resolve the dispute.

B. An appeal to the ALJ shall consist of delivering a written statement of the issues in dispute along with the relevant facts upon which the dispute is based and the factual data, analyses or opinions supporting Volunteer's position, and all other supporting documentation on which Volunteer relies ("Statement of Position").

C. The Department shall deliver its Statement of Position to the ALJ and to Volunteer no later than fifteen (15) business days after receipt of Volunteer's Statement of Position.

D. Volunteer may file a response to the Department's Statement of Position ("Response") within 10 business days within receipt thereof.

E. The Department shall compile an administrative record of any dispute pursuant to this subparagraph. The record shall be available for review to all parties and to the public.

F. Upon review of the administrative record, the ALJ shall issue a final decision and order resolving the dispute, which decision shall constitute a final agency action for CPLR Article 78 purposes. Volunteer shall have the burden of proving that the Department's position should not prevail under the standards of Article 78 of the Civil Practice Laws and Rules of the State of New

York ("CPLR"). Volunteer shall have those rights available pursuant to Article 78 of the CPLR, provided that a petition under Article 78 is filed within 30 days of receipt of the decision and order issued by the ALJ.

G. The invocation of the procedures stated in this subparagraph shall not extend, postpone, or modify Volunteer's obligations under this Agreement with respect to any undisputed items. Volunteer shall not be in violation of this Agreement for failure to perform tasks or obligations which are directly related to the issues in dispute or which may be altered or revised in the resolution of the issues in dispute. The invocation of the procedures provided in this subparagraph shall constitute an election of remedies by the party initiating the proceedings, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise have been available to the party regarding the issue in dispute.

XIII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that Volunteer has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's 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. 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 Lawler, Matusky & Skelly, Engineers, LLP 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 practicable, in which case Volunteer will provide the Department with as much advance notice as is practicable under the circumstances.

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

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

F. Volunteer, Volunteer's officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's officers 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 Kathleen McCue and 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. Except as provided in subparagraph XIII.L of this Agreement, 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.

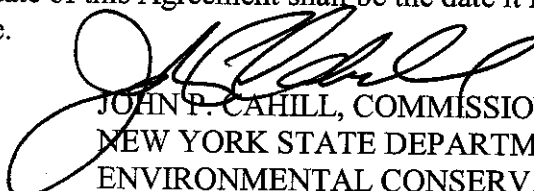
L. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or 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, 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: ~~May 26~~ 2000

June



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

CONSENT BY VOLUNTEER

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

HAUSMAN REALTY CO., INC.

By: Nancy D. Blumenthal, Pres.
Nancy Blumenthal

Dated: 4/21/02

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

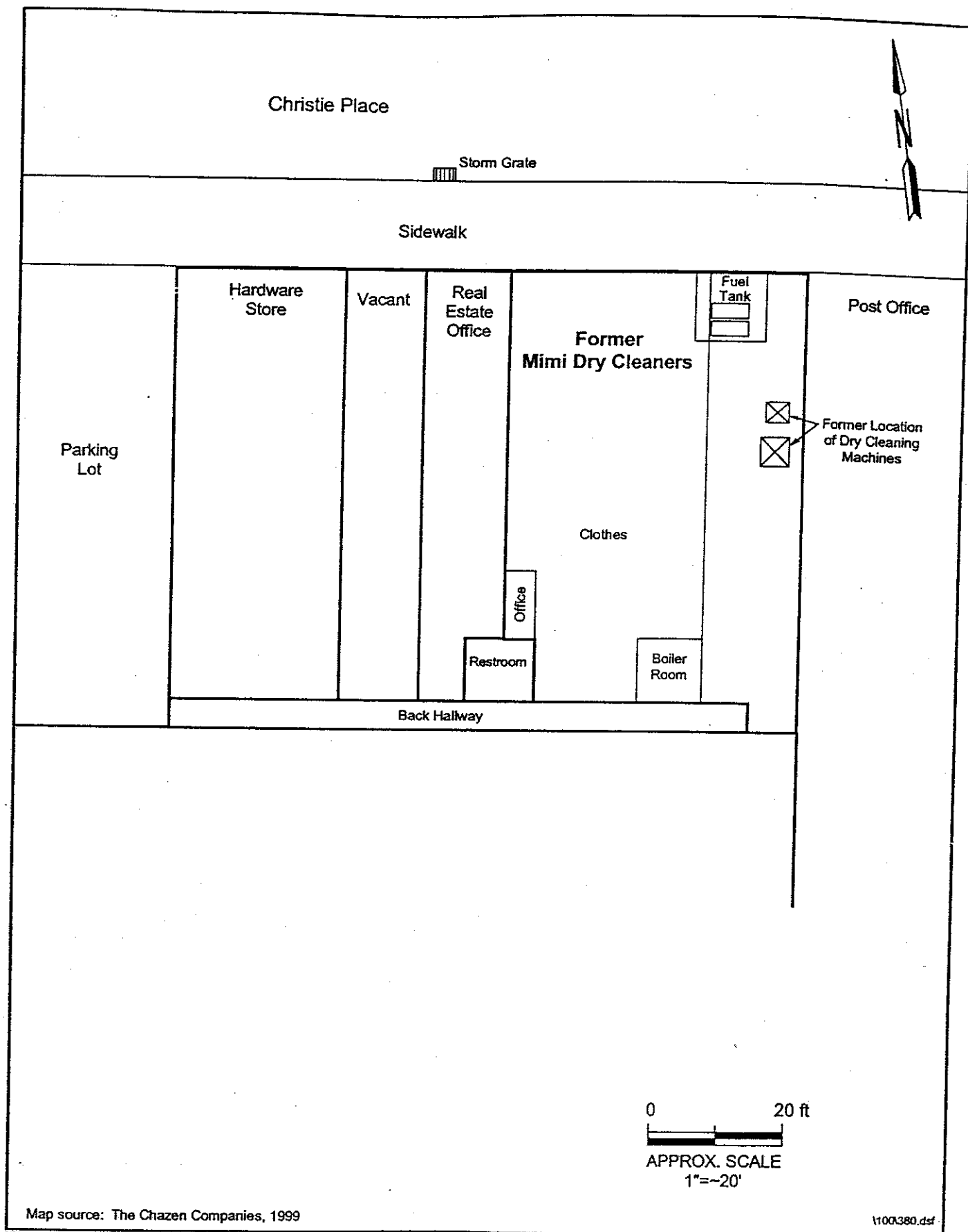
On the 21st day of April, in the year 2000, before me, the undersigned, personally appeared, Nancy S. Blumenthal, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

WACEL
Notary Public

MARK A. CHERTOK
NOTARY PUBLIC, State of New York
No. 0625696
Qualified in Westchester County
Certificate filed in New York County
Commission Expires Sept. 30, 13
8/6/02

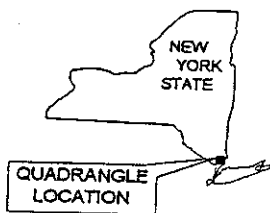
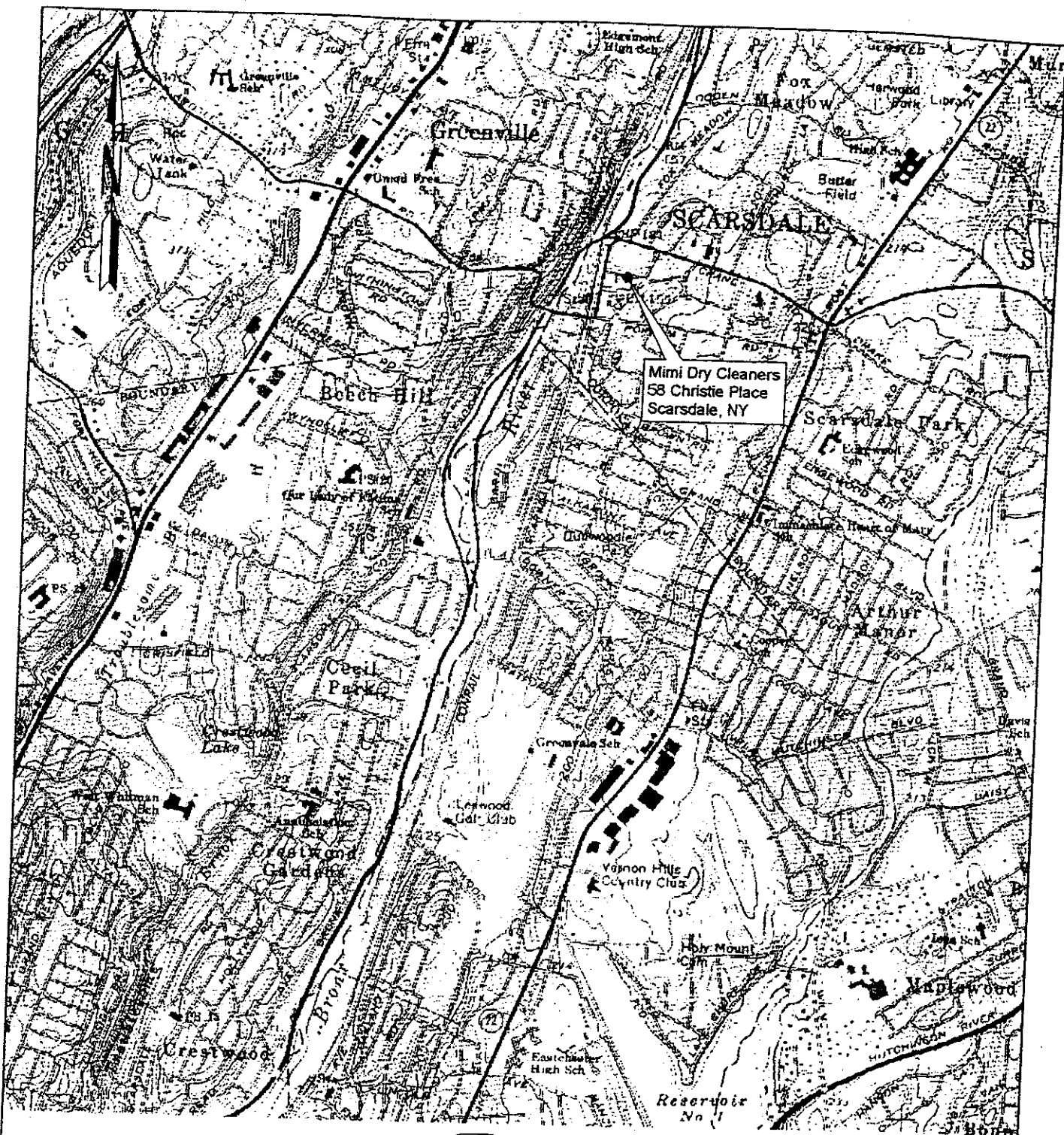
EXHIBIT "A"

Map of Site

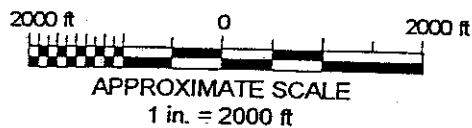


Map source: The Chazen Companies, 1999

1100380.dsf



Map source:
USGS 7.5-minute Quadrangle Map,
Printed from TOPO! ©1998 Wildflower Productions Software



V100380.dsf

LMS Lawler, Matusky & Skelly Engineers LLP
One Blue Hill Plaza - Pearl River, New York 10965
ENVIRONMENTAL SCIENCE & ENGINEERING CONSULTANTS

Former Mimi Dry Cleaners

Site Location

Scarsdale, NY

Figure
1-1

EXHIBIT "B"

Remediation Work Plan

EXHIBIT "B-1"

Final Remediation Work Plan Revision

EXHIBIT "C"

Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

Hausman Realty Company, Inc.
c/o Kurzman & Eisenberg
One Main Street
White Plains, New York 10601
Attn: Nancy Blumenthal

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Hausman Realty Company, Inc. ("Volunteer"), Index No. _____ (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan, covering the remediation of the Site, located at 58 Christie Place, in the Village of Scarsdale, Section 2, Block 5, Lot 12, has been successfully implemented.

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees and Volunteer's successors and assigns and their respective secured creditors, for the further investigation and remediation of the Site, and for natural resources damages, based upon the release or threatened release of Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate notices have been recorded in accordance with Paragraph IX of the Agreement, and (c) Volunteer and/or Volunteer's lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

- due to the 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;
- due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not

sufficiently protective of human health and the environment for the Contemplated Use;

- due to information received, in whole or in part, after the Department's approval of the final engineering report, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- due to fraud committed, or material mistake made, by Volunteer in demonstrating that the Site-specific cleanup activities identified in, or to be identified in accordance with, the Work Plan were completed.

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 causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to
- any of Volunteer's lessees, sublessees, successors, or assigns who causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of the Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the

State of New York from recovering such claim.

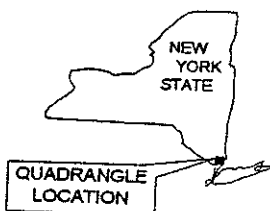
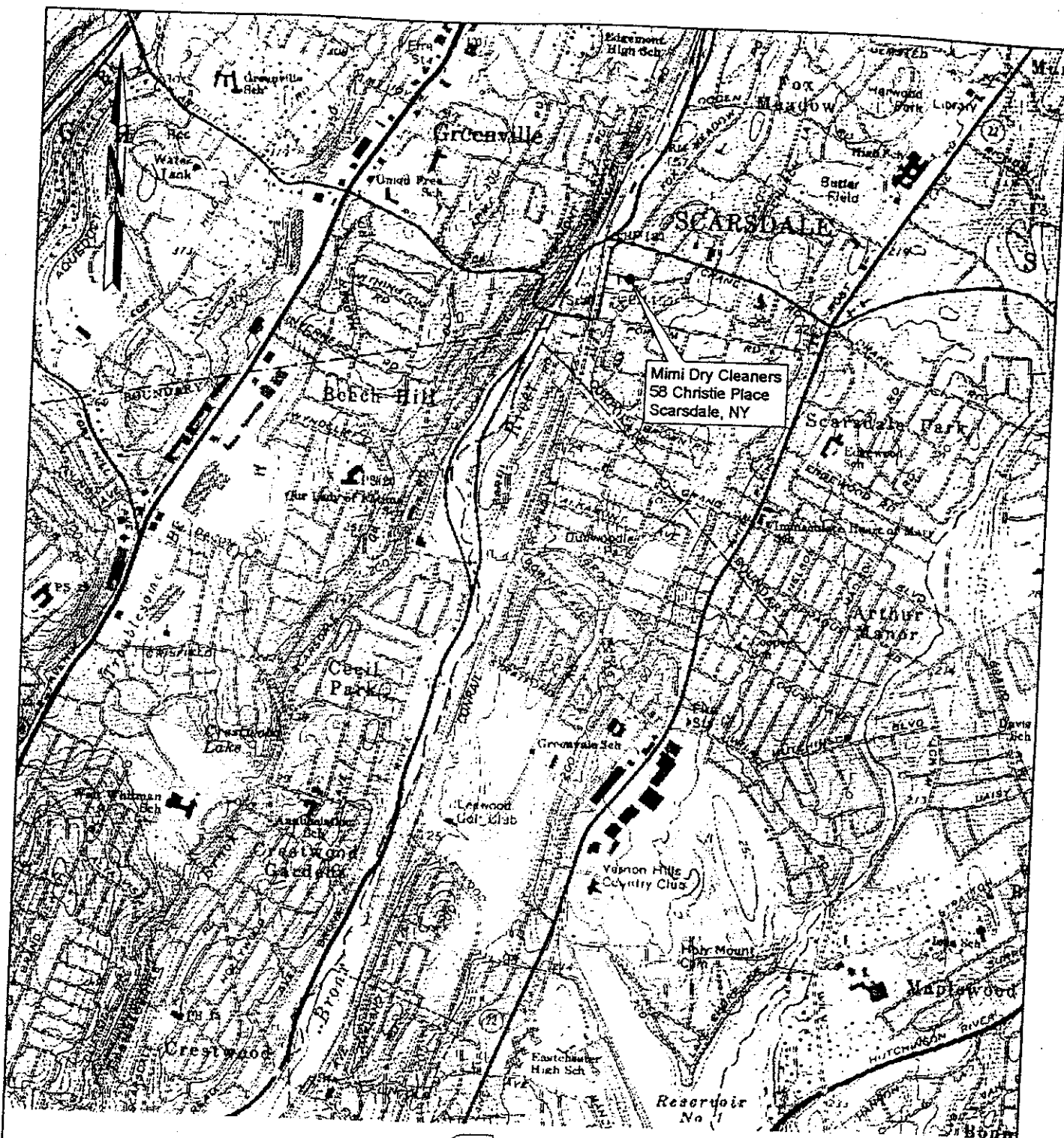
- except as provided in Subparagraph I.G of the Agreement and in this release and covenant not to sue, nothing contained in the Agreement or in this release and covenant not to sue shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this release and covenant not to sue shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination or Covered Contamination is encountered at the Site.
- nothing contained in this release and covenant not to sue shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this release and covenant not to sue shall be construed to affect the Department's right to terminate the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION AND TRUSTEE OF NEW YORK STATE'S
NATURAL RESOURCES

By: _____

Appendix "A"
(to Exhibit "C")
Map of the Site



Map source:
USGS 7.5-minute Quadrangle Map,
Printed from TOPO! ©1998 Wildflower Productions Software

2000 ft 0 2000 ft

APPROXIMATE SCALE
1 in. = 2000 ft

1100380.dsr

LMS Lawler, Matusky & Skelly Engineers LLP
One Blue Hill Plaza - Pearl River, New York 10965
ENVIRONMENTAL SCIENCE & ENGINEERING CONSULTANTS

Site Location

Former Mimi Dry Cleaners

Scarsdale, NY

Figure
1-1

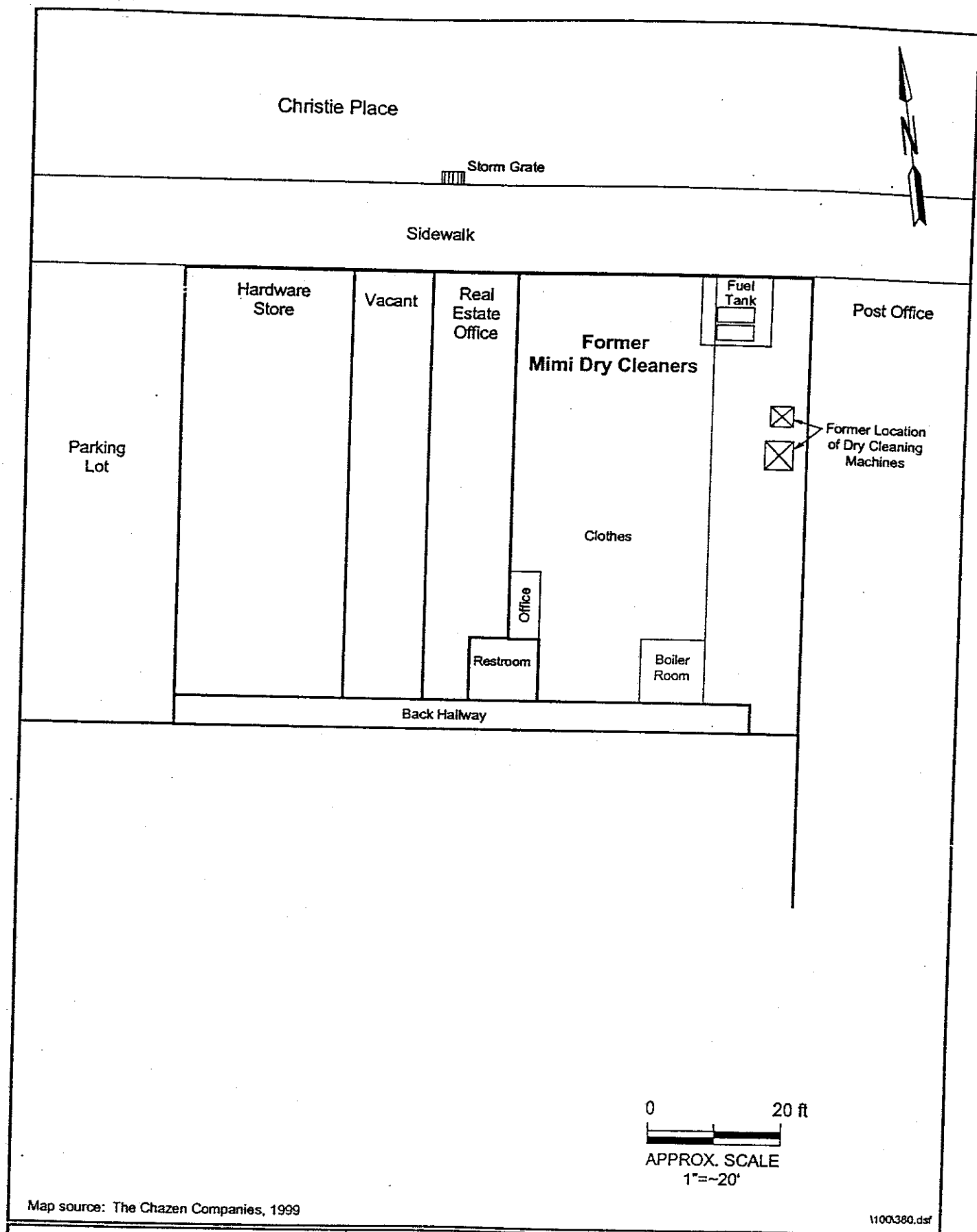


Exhibit "D"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 19-- by Hausman Realty Co., Inc., the ground lessee of a parcel of real property located at 58 Christie Place, Scarsdale, New York, Section 2, Block 5, Lot 12 as more particularly described on Appendix "A" attached hereto (the "Property"); and

WHEREAS, Hausman Realty Company, 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 _____, 2000; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Hausman Realty Co., Inc., Volunteer, Volunteer's successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Hausman Realty Co., 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 Westchester County Clerk,

NOW, THEREFORE, Hausman Realty Co., 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 Hausman Realty Co., Inc., its successors and assigns or the Owner 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, Hausman Realty Co., Inc. has executed this Notice of Agreement by its duly authorized representative.

HAUSMAN REALTY CO., INC.

Dated:

By: _____

Its: _____

[acknowledgment]

2979\volag6