

Ken Gray

From: Kiernan, Kevin (DEP) [Kevin.Kiernan@state.ma.us]
Sent: Tuesday, August 21, 2007 11:30 AM
To: Ken Gray
Subject: RE: Windfall Lien

You may want to talk to Addie Fiske at DOJ in Boston regarding Foxborough Land Partner LLC's acquisition of the Former Porter Estate property on Cocasset Street in Foxboro, MA. Addie can be reached at (617) 450-0444.

Kevin John Kiernan
Senior Regional Counsel
Department of Environmental Protection Southeast Regional Office
20 Riverside Drive
Lakeville, Massachusetts 02347
Phone: (508) 946-2814
Fax: (508) 947-6557

From: Superfund & Nat Res Damages Litigation [mailto:ENVIRON-SUPERFUND_NAT_RES@MAIL.ABANET.ORG]
On Behalf Of Ken Gray
Sent: Tuesday, August 21, 2007 10:35 AM
To: ENVIRON-SUPERFUND_NAT_RES@MAIL.ABANET.ORG
Subject: Windfall Lien

Has EPA asserted a Windfall Lien under CERCLA sec. 107(r)(2)? If you are aware, can you share with me the circumstances? (I am aware of the EPA Guidance and the EPA FAQ.) Please do not "Reply to All" unless you really intend to share your response with everyone on the list-serve.

Thank you.

Kenneth F. Gray, Esq.

Pierce Atwood LLP
One Monument Square
Portland, ME 04101
207-791-1212 direct
207-791-1350 fax
<mailto:kgray@pierceatwood.com>
<http://www.pierceatwood.com/bios/gray.html>

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8/21/2007

Ken Gray

From: Charles F. Helsten [chelsten@hinshawlaw.com]
Sent: Tuesday, August 21, 2007 11:59 AM
To: Ken Gray
Subject: Re: Windfall Lien

107(r)



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Ken: Region 5 threatened to assert one at a site just north of Rockford(where it had initiated some preliminary time critical and non-time critical removal activities) once my client (the ultimate owner/developer of the site) came into the picture after the site had been cleaned up by PRP's, and it looked like there might be a few extra \$'s laying around. However, we just advanced a number of defenses/exceptions to the Agency's ability to assert such a lien, and we never heard from them again. (The Agency had Statute of Limitations problems, "value/consideration given" problems, etc.).Hope this gives you some insight.

Chuck Helsten

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

Phone: 815-490-4906
Fax: 815-490-4901
chelsten@hinshawlaw.com

Ken Gray <kgray@PIERCEATWOOD.COM>
Sent by: Environmental Transactions and Brownfields
<ENVIRON-ETAB@MAIL.ABANET.ORG>

To ENVIRON-ETAB@MAIL.ABANET.ORG
cc
Subject Windfall Lien

08/21/2007 09:31 AM

Please respond to
Ken Gray <kgray@PIERCEATWOOD.COM>

Has EPA asserted a Windfall Lien under CERCLA sec. 107(r)(2)? If you are aware, can you share with me the circumstances? (I am aware of the EPA Guidance and the EPA FAQ.) Please do not "Reply to All" unless you really intend to share your response with all.

Thank you.

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Pierce Atwood LLP
One Monument Square
Portland, ME 04101
207-791-1212 direct

8/21/2007

Ken Gray

From: Tim Gablehouse [tgablehouse@gcglc.com]
Sent: Tuesday, August 21, 2007 12:43 PM
To: Ken Gray
Subject: RE: Windfall Lien

They have threatened it, but not done it that I am aware of. Primarily a ploy to extract some remedial work out of a client.

Tim

Timothy R Gablehouse
Gablehouse Calkins & Granberg LLC
410 17th St, Ste 1375
Denver CO 80202
303.572.0050
800.818.0050

From: Environmental Transactions and Brownfields [mailto:ENVIRON-ETAB@MAIL.ABANET.ORG] **On Behalf Of** Ken Gray
Sent: Tuesday, August 21, 2007 8:32 AM
To: ENVIRON-ETAB@MAIL.ABANET.ORG
Subject: Windfall Lien

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8/21/2007

Ken Gray

From: Manewitz, Mark [mmanewitz@herrick.com]
Sent: Tuesday, August 21, 2007 12:23 PM
To: Ken Gray
Subject: RE: Windfall Lien

I seem to recall Region 2 was talking about asserting a windfall lien. I'd call Eric Shaaf, the Region Counsel in Region 2. (212 637 3107) He is a good guy and a very good attorney. You can mention my name. He will probably know the answer and would not be reluctant to tell you, if he knows the answer. Mark

Mark L Manewitz
Herrick, Feinstein LLP
One Gateway Center
Newark, New Jersey 07102
Telephone: 973-274-2014 or
212-592-5925
Fax: 973-274-6431
Email: mmanewitz@herrick.com

From: Environmental Transactions and Brownfields [<mailto:ENVIRON-ETAB@MAIL.ABANET.ORG>] **On Behalf Of**
Ken Gray
Sent: Tuesday, August 21, 2007 10:32 AM
To: ENVIRON-ETAB@MAIL.ABANET.ORG
Subject: Windfall Lien

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Thank you.

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Ken Gray

From: Olson, Jeryl [JOlson@seyfarth.com]
Sent: Tuesday, August 21, 2007 12:19 PM
To: Ken Gray
Subject: RE: Windfall Lien

Ken - EPA threatened to assert a lien on a property one of our clients was considering for an acquisition 4 or 5 years ago, and we began the process of challenging the lien, including obtaining appraisals, etc., however we never completed the transaction (for environmental reasons) so the lien issue became moot for our client. To the best of my knowledge, the property remains undeveloped, and the lien issue unresolved. It was several years ago in Chicago (Region V) and the person with whom I was working in Region V was not very knowledgeable or sophisticated as to the windfall lien program or process at that time. If my limited experience would be helpful, please feel free to call. Regards - Jeryl Olson

Jeryl Olson
Seyfarth Shaw LLP
131 S. Dearborn Street, Suite 2400
Chicago, Illinois 60603
312-460-5802 (Direct)
312-460-7802 (Direct Fax)
jolson@seyfarth.com

-----Original Message-----

From: Environmental Transactions and Brownfields [mailto:ENVIRON-ETAB@MAIL.ABANET.ORG] **On Behalf Of** Ken Gray
Sent: Tuesday, August 21, 2007 9:32 AM
To: ENVIRON-ETAB@MAIL.ABANET.ORG
Subject: Windfall Lien

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Thank you.

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Ken Gray

From: Stephen Studer [sastuder@psrb.com]
Sent: Tuesday, August 21, 2007 12:15 PM
To: Ken Gray
Subject: RE: Windfall Lien

Not yet, but they have twice threatened. In both circumstances a municipality has had EPA perform an emergency removal and EPA's lawyers have said that when the municipalities later sold the property EPA wanted the amount of the removal action paid back. So far we have been able to convince them that with infrastructure costs, etc. the municipality will still be under water and there will not be a "windfall". The cities' motivation has been to redevelop brownfield sites and get them back onto the tax rolls, even though they lose money on the project. Best regards,

Stephen A. Studer
 Plews Shadley Racher & Braun LLP
 53732 Generations Drive
 South Bend, Indiana 46635
 574-273-1010
 574-271-2050 (fax)
www.psrb.com
sastuder@psrb.com

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 207-791-1350 fax
<mailto:kgray@pierceatwood.com>

8/21/2007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF:)	
San Gabriel Valley)	
Superfund Sites (Areas 1-4))	Docket Number R9 EPA #2003-01
)	Agreement for Release of Lien
)	CERCLA § 107(r)
UNDER THE AUTHORITY OF)	
THE COMPREHENSIVE RESPONSE,)	Industry Urban-Development Agency
COMPENSATION, AND LIABILITY)	
ACT, 42 U.S.C. §§ 9601, <i>et seq.</i>)	

I. INTRODUCTION

This Agreement for Release of Lien ("Agreement") is made and entered into by and between the Environmental Protection Agency ("EPA") and Industry Urban-Development Agency ("IUDA") (collectively "the Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*

IUDA is a public body, corporate and politic, organized and existing as a redevelopment agency under California law, with offices located at 15651 East Stafford Street, City of Industry, California 91744. IUDA has entered into an agreement with Utility Trailer Manufacturing Co., Inc. ("Utility Trailer") which, subject to certain terms and conditions, provides for the purchase by IUDA of the property located at 17300 Chestnut Street in the City of Industry, California, Tax Assessor Numbers 8264-024-001, 8264-025-013, and 8264-025-006 (the "Property").

The Property consists of approximately 17 acres of land and is within the area encompassed by the Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites, Areas 1-4. The San Gabriel Valley Superfund Sites were listed on the National Priorities List in 1984 due to the presence of extensive groundwater contamination.

The Property was undeveloped open space until the mid-1950s, when it was developed for industrial purposes. The Property has been occupied since its development by Utility Trailer for manufacturing of truck trailers, and related maintenance, storage and office activities. IUDA intends to demolish the existing structures on the Property, and to redevelop the Property for a new manufacturing, warehouse/distribution, or other industrial or commercial use.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to release, subject to reservations and limitations contained in Sections V, VI, and VII, the potential lien against the Property under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), which may arise when IUDA becomes owner of the Property. This Agreement is also intended to acknowledge the IUDA's status as a "Bona Fide Prospective Purchaser," as that term is defined in CERCLA Section 101(40), 42 U.S.C. § 9601(40), subject to the terms and conditions set forth in this Agreement.

The Parties agree that IUDA's entry into this Agreement, and the actions undertaken by IUDA in accordance with the Agreement, do not constitute an admission of any liability by IUDA.

The release of this lien, in exchange for provision by IUDA to EPA of payment and other consideration satisfactory to the EPA Administrator, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "Bona Fide Prospective Purchaser" shall mean a person as described in CERCLA

Section 101(40).

2. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

3. "Parties" shall mean EPA and the IUDA.

4. "Property" shall mean the parcel, encompassing approximately 17 acres, located at 17300 Chestnut Street in the City of Industry, in Los Angeles County, California, which is described in Exhibit 1, and shown on the map included as Exhibit 2, to this Agreement.

5. "Site" shall mean the San Gabriel Valley Superfund Sites (Area 1-4), including the Puente Valley Operable Unit.

6. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

7. The Property is located within an area which is primarily industrial and commercial in nature and is established and developed. The Property has recently been used for industrial purposes. The environmental condition of the soils and groundwater underlying the Property has been the subject of numerous investigations by Utility Trailer. Many, if not all, of these investigations were conducted for, and the information produced was shared with, EPA and/or the California Regional Water Quality Control Board - Los Angeles Region.

8. IUDA and the City of Industry are not, and have never been, named as potentially responsible parties ("PRPs") at the Site. Moreover, neither the IUDA nor the City of Industry is affiliated with Utility Trailer or with any other person or entity named as a potentially responsible party at the Site.

9. IUDA has informed EPA that:

a. IUDA has entered into an agreement with Utility Trailer to purchase the Property, and intend to redevelop the Property for a new industrial or commercial use, such as manufacturing or warehouse distribution.

b. The new use of the Property, after redevelopment, is expected to create more jobs, and generate more sales revenue and tax payments, than Utility Trailer's current use of Property.

10. IUDA has conducted a Phase I study of the Property, entitled "Phase I Environmental Site Assessment Report, 17300 East Chestnut Street and 942 Azusa Avenue, City of Industry, etc." (the "Phase I Report") and provided a copy of this report to EPA. This Phase I Report was conducted in conformance with applicable procedures of the American Society for Testing and Materials (E-1527-97) and CERCLA Section 101(35)(B), 42 U.S.C. § 9601(35)(B).

11. IUDA represents that, and for the purposes of this Agreement EPA relies on IUDA's representations that, IUDA's involvement with the Property prior to the effective date of this Agreement was limited to inspecting, auditing and performing environmental and other due diligence for the Property in connection with IUDA's purchase of the Property.

12. IUDA has provided EPA with a letter dated October 3, 2002 which describes the removal of soil contamination at the Property by Utility Trailer under the supervision of the California Regional Water Quality Control Board - Los Angeles Region. In this letter, the IUDA also provides assurances that: a) while conducting demolition activities, it will demolish structures and remove materials in accordance with all current laws and regulation; b) during demolition, grading and other redevelopment, it will inspect for areas of possible soil

contamination, and, if signs of such contamination are found, will conduct soil testing and have contaminated soil removed from the Property as appropriate; and c) the IUDA will relocate the groundwater monitoring wells that now exist on the Property to alternate places on or immediately adjacent to the Property. In entering into this Agreement, EPA has relied on, among other things, the information and assurances provided in IUDA's October 3, 2002 letter.

13. Based on information provided to EPA by Utility Trailer, and on IUDA's Phase I Report and appropriate inquiry for the Property, IUDA believes that all hazardous substances originating from the Property were disposed of before the date IUDA acquired ownership, and such disposal at the Property has ceased.

IV. PAYMENT

14. In consideration of and in exchange for EPA's release of any lien it has or may have under Section 107(r) of CERCLA, IUDA agrees, within thirty (30) days of the effective date of this Agreement, to pay to EPA the sum of \$100,000. IUDA shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region 9, EPA Docket # 2003-01, and Site/Spill ID # 09-8V, and name and address of payor. Payment should be sent to:

U.S. Environmental Protection Agency,
Attn: Superfund Accounting,
P.O. Box 360863M,
Pittsburgh, PA 15251

Notice of payment shall be sent to those persons listed in Section XI (Notices and Submissions) and to:

Donald Loi,
Financial Management Specialist (PMD-6),
U.S. EPA Region IX,
75 Hawthorne Street,
San Francisco, California 94105

The cash amount paid by IUDA pursuant to this Agreement shall be deposited into a Special Account and shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

15. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. RELEASE OF LIEN

16. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), EPA agrees to release the potential lien that it has on the Property under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by the United States responding to hazardous substances that were disposed of at the Site before IUDA acquired ownership of the Property.

VI. CERTIFICATION

17. By entering into this agreement, IUDA certifies that it intends to achieve and maintain status as a Bona Fide Prospective Purchaser for the Property which is the subject of this Agreement by complying with all requirements for Bona Fide Prospective Purchaser as set forth in CERCLA Section 101(40), 42 U.S.C. § 9601(40). Further, IUDA acknowledges the requirement of CERCLA that it exercise appropriate care by taking "reasonable steps" as set forth in Section 101(40), 42 U.S.C. § 9601(40), in order to maintain its status as a Bona Fide

Prospective Purchaser of the Property for so long as IUDA retains any ownership interest in the Property. IUDA also certifies that, to the best of its knowledge and belief, it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants from the Site.

VII. RESERVATION OF RIGHTS

18. The release of lien set forth in Section V above does not pertain to any matters other than those expressly specified in Section V (Release of Lien). EPA reserves and the Agreement is without prejudice to all rights against IUDA with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by IUDA to meet a requirement of this Agreement, including but not limited to Section IV (Payment) and Section VI (Certification);

(b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment;

(c) liability for violations of local, State or federal law or regulations;

(d) liability under CERCLA, including Sections 106 and 107(a) and (l), 42 U.S.C. §§ 9606 and 9607(a) and (l), which arises due to IUDA's failure to comply with Section 101(40), 42 U.S.C. § 9601(40), including the obligation to make "all appropriate inquiry" pursuant to Section 101(40)(B), the obligation to provide all legally required notices pursuant to Section 101(40)(C), the obligation to exercise "appropriate care" pursuant to Section 101(40)(D), the obligation to provide "full cooperation, assistance, and access" pursuant to Section 101(40)(E), the obligation to comply with any "land use restrictions" and "institutional controls" pursuant to Section 101(40)(F), the obligation to comply with any request for information pursuant to Section

101(40)(G) and all requirements of 107(r) of CERCLA for so long as IUDA retains any ownership interest in the Property; and

(e) liability under CERCLA, including Sections 106 and 107(a) and (l), 42 U.S.C. §§ 9606 and 9607(a) and (l), resulting from the disposal or threat of disposal of hazardous substances, pollutants or contaminants at the Property after IUDA acquires the Property.

19. With respect to any claim or cause of action asserted by the United States, IUDA shall bear the burden of proving by a preponderance of the evidence that it exercised "appropriate care" by taking "reasonable steps" as those terms are defined in CERCLA Section 101(40), 42 U.S.C. § 9601(40).

20. Nothing in this Agreement is intended as a release for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

21. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than IUDA to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA. IUDA acknowledges that it is purchasing a Property where response actions may be required.

VIII. PARTIES BOUND

22. This Agreement shall apply to and be binding upon EPA and IUDA. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

IX. DISCLAIMER

23. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Property is fit for any particular purpose.

X. PAYMENT OF COSTS

24. If IUDA fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), it shall be liable for all litigation and other enforcement costs incurred by the United States and the state to enforce this Agreement or otherwise obtain compliance.

XI. NOTICES AND SUBMISSIONS

25. All notices to IUDA and/or the City should be sent to:

Kevin Radecki
Executive Director
Industry Urban - Development Agency
P.O. Box 7089
City of Industry, California 91744

with a copy to:

James A. Geocaris, Esq.
20321 Acacia Street, Suite 200
Newport Beach, California 92660

and

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
Attn.: William Strausz, Esq.
Agency Counsel

All notices to the United States should be sent to:

William Keener
Assistant Regional Counsel (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

with a copy to:

Penelope R. McDaniel
Superfund Project Manager (SFD-7-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

XII. EFFECTIVE DATE

26. The effective date of this Agreement shall be the date upon which EPA issues written notice to IUDA that EPA has fully executed the Agreement.

XIII. ATTORNEY GENERAL APPROVAL

27. The Attorney General of the United States or his designee has issued prior written approval of the settlement embodied in this Agreement.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By:

1/2/2003

Laura Yoshii
Acting Regional Administrator

Date

IT IS SO AGREED:

INDUSTRY URBAN-DEVELOPMENT AGENCY

By:

10/29/2002

Kevin Radecki
Executive Director

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:)
) Agreement for Release and Waiver
) of Lien, CERCLA § 107(r)
MOSS SOAP & CHEMICAL COMPANY)
SUPERFUND SITE) Settling Purchaser's Name
MIAMI, FLORIDA)
)
UNDER THE AUTHORITY OF THE)
COMPREHENSIVE RESPONSE,)
COMPENSATION, AND LIABILITY ACT,)
42 U.S.C. §§9601, et. seq.)

I. INTRODUCTION

A. This Release and Waiver of Lien Agreement (“Agreement”) is made and entered into by and between the United States Environmental Protection Agency (“EPA”) and Meli Investments, Inc., (“MII”) collectively, the “Parties”.

B. This Agreement is entered into pursuant to the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601, et seq.

C. The property parcels which are the subject of this Agreement are located at 6890 NW 35th Avenue and 6900 NW 35th Avenue, Miami, Dade County, Florida (the “Property”). The Settling Purchaser is MII.

D. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to Section XII, Reservation of Rights, the lien against the Property under Section 107(r) of CERCLA, 42 U.S.C.

§ 9607(r).

E. The release and waiver of this lien, in exchange for the provision by the Settling Purchaser to EPA of consideration satisfactory to the Administrator, is in the public interest.

II. DEFINITIONS

1. "Bona Fide Prospective Purchaser" or "BFPP" shall mean a person as described in CERCLA § 101(40).
2. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
3. "Effective Date" shall be the effective date of this Agreement as provided in Section XXII.
4. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
5. "Parties" shall mean EPA and Settling Purchaser.
6. "Property" shall mean the parcels located at 6890 35th NW Avenue and 6900 35th NW Avenue, Miami, Dade County, Florida, which is further described in Exhibit 1.
7. "Settling Purchaser" shall mean Meli Investments, Inc.
8. "Signing Date" is the date that this Agreement is signed by both Parties.
9. "Site" shall mean the Moss Soap & Chemical Company Superfund Site.
10. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.
11. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of

CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

12. “Work” shall mean all activities Settling Purchaser is required to perform under this Agreement.

13. “Work Plan” shall mean the work plan for implementation of the Work and any modifications made thereto in accordance with this Agreement.

III. STATEMENT OF FACTS

14. The Moss Soap and Chemical Company Superfund Site (the “Site”) is a former industrial cleaning supplier and chemical blending operation. The Site consists of two parcels located at 6890 NW 35th Avenue and 6900 NW 35th Avenue, Miami, Dade County, Florida. The Moss Soap and Chemical Company manufactured industrial and janitorial cleaning supplies on the Site.

15. On February 21, 2002, EPA conducted a removal assessment at the Site. EPA discovered deteriorated and leaking drums, and water reactive chemicals exposed to rain through holes in the roof. The Dade County Department of Environmental Resources Management (“DERM”) directed the cleanup of the ground releases and monitored the condition of the facility.

16. On February 28, 2002, DERM and the Dade County Buildings Department conducted a follow-up inspection. After the inspection, the Dade County Buildings Department declared the building unsafe and ordered all operations of the Moss Soap & Chemical Company to cease.

17. On March 21, 2002, EPA began a removal action which included staging leaking containers, and the segregation and characterization of on-site wastes. In December 2002, EPA sampled the on-Site wastes in preparation for off-Site disposal. In July and August 2003, EPA returned to the Site to conduct further removal activities which included excavation of contaminated soil and the disposal of hazardous substances. EPA completed this phase of the cleanup on September 19, 2003. To date EPA has approximately \$556,638.28 in outstanding response costs.

18. Approximately 620 containers, some containing hazardous substances, remain on Site awaiting further cleanup response actions. The Settling Purchaser has agreed to complete the removal action on the Property in accordance with Section IV Work to be Performed and the Work Plan of this Agreement. Upon completion of the removal activities and construction work, Settling Purchaser proposes to redevelop the Property with the warehouse to be used for auto parts sales by Meli Investments, LLC or other related entity owned and operated by Luis Taveras. The Settling Purchaser has agreed to complete the removal action under EPA oversight in return for a waiver and release of any CERCLA § 107(r) lien which may be on the Property. The Settling Purchaser is acquiring the Site for approximately \$280,000. Regardless of the purchase price, in this case, the cost to the Settling Purchaser of completing the removal action is equal to the CERCLA § 107(r) lien that EPA would have perfected on the Property.

IV. WORK TO BE PERFORMED

19. In consideration of and in exchange for EPA's release and waiver of any lien it has or may have under Section 107(r) of CERCLA with respect to the Property, Settling Purchaser

agrees to perform all Work at the Property necessary to implement the Work Plan. Work to be performed at the Property by the Settling Purchaser shall be done in conformance with an approved Work Plan which the Settling Purchaser shall develop and submit to the EPA On-Scene Coordinator within forty-five (45) days of the Signing Date of this Agreement. The actions to be implemented generally include, but are not limited to, the following:

- a. Inventory all containers on-site, including sampling and analysis when necessary to determine the contents of the containers.
- b. Arrange for the proper disposal in compliance with all State and Federal regulations of all Waste Material discovered during the inventory.
- c. For items inventoried that will be recycled or reused, identify the recycling or reuse facility and identify the method of shipping or transportation. All material to be recycled or reused must be shipped to the identified recycler within 30 days of approval of the Work Plan. Containers leaving the Property must be DOT shippable.
- d. Provide for Property security during the removal action.
- e. Submit a Health and Safety Plan that provides for the protection of workers during the removal action.
- f. Submit a schedule of work to be performed as part of the work plan.

20. **Designation of Contractor.** Settling Purchaser shall retain one or more contractors to perform the Work under this Agreement and shall notify EPA of the names and qualifications of such contractor(s) within 7 days of the Signing Date of this Agreement. Settling Purchaser shall also notify EPA of the names and qualifications of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to commencement of Work. EPA retains the right to disapprove of any or all contractors and/or subcontractors retained by Settling Purchaser. If EPA disapproves of a selected contractor, Settling Purchaser shall retain a

different contractor and shall notify EPA of that contractor's name and qualification within 7 days of EPA's disapproval.

21. Designation of Project Coordinator. Within 7 days after the Signing Date of this Agreement, Settling Purchaser shall designate a Project Coordinator who shall be responsible for administration of all actions by Settling Purchaser required by this Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present or readily available during all removal activities. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Settling Purchaser shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 7 days following EPA's disapproval. Receipt by Settling Purchaser's Project Coordinator of any notice or communication from EPA relating to this Agreement shall constitute receipt by Settling Purchaser.

22. Designation of On-Scene Coordinator. EPA has designated Terry Stilman of the Emergency Response and Removal Branch, EPA, Region 4, as its Designated On-Scene Coordinator (OSC). Except as otherwise provided in this Agreement, Settling Purchaser shall direct all submissions required by this Agreement to the OSC at: Emergency Response and Removal Branch; Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8909. Terry Stilman can be reached at telephone number 404-562-8748.

23. EPA and Settling Purchaser shall have the right to change their respective designated OSC or Project Coordinator. Settling Purchaser shall notify EPA 7 days before such a change is

made, but EPA retains the right to disapprove of the Project Coordinator. If EPA disapproves of the replacement Project Coordinator, Settling Purchaser shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 7 days following EPA's disapproval. The initial notification may be made orally, but shall be promptly followed by a written notice.

24. **Work Plan.** The work to be performed by the Settling Purchaser must be done in accordance with an approved EPA Work Plan. Within 45 days of the Signing Date of this Agreement, Settling Purchaser shall submit a Work Plan to EPA for approval. The OSC shall have authority to approve the submitted Work Plan. If the OSC finds the submitted Work Plan to be deficient, the Settling Purchaser shall have 14 days from notice to correct those deficiencies. The actions to be implemented by the Work Plan generally include, but are not limited to, the following: proper identification and proper disposal of all Waste Material.

25. The Work Plan maybe modified by mutual agreement of EPA and Settling Purchaser. Once approved, any modification to the Work Plan shall be incorporated into and become fully enforceable under this Agreement.

26. Settling Purchaser shall not commence any Work except in conformance with the Work Plan and the terms of this Agreement.

27. **Health and Safety Plan.** The approved Work Plan shall include a Health and Safety Plan. The approved Health and Safety Plan shall be prepared in accordance with EPA Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the Health and Safety Plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The Health and Safety Plan

shall include a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and provisions for site control. EPA will not approve Settling Purchaser's Health and Safety Plan, but rather EPA will review it to ensure that all necessary elements are included, and that the Health and Safety Plan provides for the protection of human health and the environment. Settling Purchaser and its contractors shall comply with the Health and Safety Plan.

28. Quality Assurance and Sampling. All sampling and analyses performed pursuant to this Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Settling Purchaser shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Settling Purchaser shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Settling Purchaser shall use only laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

29. Upon request by EPA, Settling Purchaser shall fund and have such a laboratory

analyze samples submitted by EPA for QA monitoring. Settling Purchaser shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

30. Upon request by EPA, Settling Purchaser shall allow EPA and its authorized representatives to take split and/or duplicate samples. Settling Purchaser shall notify EPA in writing, not less than 4 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Settling Purchaser to take split or duplicate samples of any samples it takes as part of its oversight of Settling Purchaser's implementation of the removal activities.

31. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Settling Purchaser shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the National Contingency Plan ("NCP") and OSWER Directive No. 9360.2-02. Upon EPA approval, Settling Purchaser shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

32. Reporting. Settling Purchaser shall submit a written progress report to EPA concerning actions undertaken pursuant to this Agreement every 28th day from the Signing Date until EPA issues a written notice of completion of work as provided in Section XVII, Notice of Completion of Work, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period,

and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

33. Settling Purchaser shall submit to EPA copies of all plans, reports or other submissions required by this Agreement, and any approved work plan. Upon request by EPA, Settling Purchaser shall submit such documents in electronic form.

34. Final Report. Within 14 days after completion of all Work on the Property as required by this Agreement, Settling Purchaser shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Agreement. EPA will provide written notice to Settling Purchaser approving the Final Report. If EPA does not approve the Final Report, EPA will notify Settling Purchaser, provide a list of the deficiencies, and require that Settling Purchaser modify the Final Report to correct such deficiencies. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The Final Report shall include a good faith estimate of total costs incurred in complying with the Agreement, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate

inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

35. Off-Site Shipments. Settling Purchaser shall, prior to any off-site shipment of Waste Material from any of the Property to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility’s state and to the OSC. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Settling Purchaser shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Settling Purchaser shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship lead contaminated material and other commingled hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Settling Purchaser following the award of the contract for the removal action. Settling Purchaser shall provide the information required by Paragraph 32(a) and 32(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

Before shipping any hazardous substances, pollutants, or contaminants from the Property

to an off-site location, Settling Purchaser shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Settling Purchaser shall only send hazardous substances, pollutants, or contaminants from the Property to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

V. AUTHORITY OF ON-SCENE COORDINATOR

36. The OSC shall be responsible for overseeing Settling Purchaser's implementation of this Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

37. Settling Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by Settling Purchaser, for the purposes of performing and overseeing response actions at the Property under federal law. EPA agrees to provide reasonable notice to Settling Purchaser of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, and the

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901("RCRA"), *et seq.*

38. Settling Purchaser shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action.

39. For so long as the Settling Purchaser is an owner or operator of the Site, Settling Purchaser shall ensure that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Settling Purchaser shall ensure that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action.

40. Upon sale or other conveyance of the Property or any part thereof, Settling Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Settling Purchaser shall ensure that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action.

41. The Settling Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Signing Date of this Agreement.

42. Within 14 days of the Signing Date of this Agreement, Settling Purchaser shall submit to EPA for review and approval a notice to be filed with the Recorder's Office in Dade County, Florida, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA is performing performed a response action at the Site, and that EPA has released and waived its resulting Section 107(r) lien on the Property in this Agreement. The Settling Purchaser shall record the notice within 14 days of EPA's approval of the notice. The Settling Purchaser shall provide EPA with a certified copy of the recorded notice within 14 days of recording such notice.

VII. DUE CARE/COOPERATION

43. The Settling Purchaser shall exercise due care at the Property with respect to the Existing Contamination and shall comply with all applicable local, State, and federal environmental laws and regulations. The Settling Purchaser recognizes that the implementation of response actions at the Property may interfere with the Settling Purchaser's use of the Property. The Settling Purchaser agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with EPA response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Purchaser's use by such entry and response.

44. In the event the Settling Purchaser becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to

complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603 and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U. S. C. §11004, et seq., or any other law, immediately notify EPA of such release or threatened release.

45. In such event, Settling Purchaser shall also immediately notify the OSC, or in the event of his/her unavailability, the Regional Duty Officer in EPA Region 4's Emergency Planning and Response Center at (404) 562-8705 or the EPA National Response Center 24-hour telephone number at (800) 424-8802. In the event that Settling Purchaser fails to take appropriate actions as required by this Section, and EPA takes such actions instead, Settling Purchaser shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XX, Payment of Costs.

VIII. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Agreement. The Parties shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally.

47. If Settling Purchaser objects to any EPA action taken pursuant to this Agreement it shall notify EPA in writing of their objection(s) within 7 days of such action, unless the objection(s) has/have been resolved informally. EPA and Settling Purchaser shall have 7 days from EPA's receipt of Settling Purchaser's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

48. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Settling Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Settling Purchaser's obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Settling Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

IX. FORCE MAJEURE

49. Settling Purchaser agrees to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Settling Purchaser, or of any entity controlled by Settling Purchaser, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite Settling Purchaser's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

50. If any event occurs or has occurred that may delay the performance of any

obligation under this Agreement, whether or not caused by a *force majeure* event, Settling Purchaser shall notify EPA orally within 2 days of when Settling Purchaser first knew that the event might cause a delay. Within 5 days thereafter, Settling Purchaser shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Purchaser's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Purchaser, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Settling Purchaser from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

51. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Settling Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Settling Purchaser in writing of the length of

the extension, if any, for performance of the obligations affected by the *force majeure* event.

X. BFPP STATUS

52. Settling Purchaser shall take and maintain all steps necessary to achieve and maintain status as a "Bona Fide Prospective Purchaser" as that term is defined in Section 101(40) of CERCLA 42 U.S.C. § 9601(40), for the Property which is the subject of this Agreement, by complying with all of the requirements for a Bona Fide Prospective Purchaser as set forth in Section 101(40), including, without limitation, the exercise of "appropriate care" by taking "reasonable steps" as set forth in Section 101(40)(D), 42 U.S.C. § 9601(40)(D), and the implementation of and compliance with any land use restrictions and institutional controls as set forth in Section 101(40)(F), 42 U.S.C. § 9601(40)(F) for so long as Settling Purchaser retains any ownership interest in the Property.

XI. RELEASE AND WAIVER OF SECTION 107(R) LIEN

53. Subject to the Reservation of Rights in Section XII of this Agreement, upon full compliance with the terms in this Agreement, full performance of Work specified in Work Plan, and upon EPA issuing written notice pursuant to Section XXII, Effective Date, EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. §9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Property.

XII. RESERVATION OF RIGHTS

54. This Agreement does not release and waive or compromise any right of EPA or the United States other than the release and waiver by EPA of its right to assert or perfect a windfall lien pursuant to Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Property, subject to satisfactory completion of the Work as described in the Work Plan. EPA and the United States reserve, and this Agreement is without prejudice to, all rights against Settling Purchaser with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Purchaser, assignees, successors in interest or any lessees, sublessees or other parties with rights to use the Property to meet a requirement of this Agreement, including but not limited to Section VI, Access/Notice/Institutional Controls;

(b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;

(c) liability under CERCLA, including Sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, which arises due to failure of Settling Purchaser or assignees, successors in interest or any lessees, sublessees, or other parties with rights to use the Property to comply with Section 101(40), 42 U.S.C. § 9601(40); and

(d) liability under CERCLA resulting from the release or threat of release of hazardous substances that were disposed of at the Site after the Settling Purchaser acquired ownership of the Property.

55. Nothing in this Agreement is intended as a release and waiver for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, other than the release and waiver of the Section 107(r) lien in Section XI, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement. The United States reserves the right to compel potentially responsible parties to perform or pay for response actions at the Site.

56. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Purchaser acknowledges that it is purchasing Property where response actions may be required.

XIII. OTHER CLAIMS

57. By issuance of this Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Settling Purchaser. The United States or EPA shall not be deemed a party to any contract entered into by Settling Purchaser or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Agreement.

58. No action or decision by EPA pursuant to this Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIV. INDEMNIFICATION

59. Settling Purchaser shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or

omissions of Settling Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Agreement. In addition, Settling Purchaser agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Settling Purchaser, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Purchaser in carrying out activities pursuant to this Agreement. Neither Settling Purchaser nor any such contractor shall be considered an agent of the United States.

60. The United States shall give Settling Purchaser notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Settling Purchaser prior to settling such claim.

61. Settling Purchaser waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Purchaser shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Purchaser and any person for performance of Work on or relating to

the Site, including, but not limited to, claims on account of construction delays.

XV. INSURANCE

62. At least 7 days prior to commencing any on-site work under this Agreement, Settling Purchaser shall secure, and shall maintain for the duration of this Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, Settling Purchaser shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Agreement, Settling Purchaser shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Purchaser in furtherance of this Agreement. If Settling Purchaser demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Settling Purchaser need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVI. MODIFICATIONS

63. If Settling Purchaser seeks permission to deviate from any approved Work Plan or schedule, Settling Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Settling Purchaser may not proceed with the requested deviation until receiving oral or written approval from the OSC.

64. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted

by Settling Purchaser shall relieve Settling Purchaser of their obligation to obtain any formal approval required by this Agreement, or to comply with all requirements of this Agreement, unless it is formally modified.

XVII. NOTICE OF COMPLETION OF WORK

65. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Agreement, with the exception of any continuing obligations required by this Agreement, including post-removal site controls, EPA will provide written notice to Settling Purchaser. If EPA determines that any such Work has not been completed in accordance with this Agreement, EPA will notify Settling Purchaser, provide a list of the deficiencies, and require that Settling Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Settling Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Settling Purchaser to implement the approved modified Work Plan shall be a violation of this Agreement.

XVIII. PARTIES BOUND

66. This Agreement shall apply to and be binding upon EPA, and shall apply to and be binding upon the Settling Purchaser and Settling Purchaser's successors and assigns. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party. Any change in ownership or corporate status involving the Property addressed shall in no way alter the release and waiver of the lien under this Agreement.

XIX. WAIVER OF CLAIM FOR REIMBURSEMENT

67. Settling Purchaser waives and shall not assert any claim for reimbursement from the United States, including but not limited to any direct or indirect claim for reimbursement of such payment from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law, or from any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XX. PAYMENT OF COSTS

68. If the Settling Purchaser fails to comply with the terms of this Agreement it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XXI. DISCLAIMER

69. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor constitutes any representation by EPA that the Property is fit for any particular purpose.

XXII. EFFECTIVE DATE

70. The Effective Date of this Agreement, after EPA has determined that all Work has been fully performed in accordance with this Agreement, shall be the date upon which EPA issues written notice to the Settling Purchaser that all Work required under this Agreement have been successfully performed.

XXIII. ATTORNEY GENERAL APPROVAL

71. The Attorney General of the United States or his designee has issued prior written approval of the settlement embodied in this Agreement.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

J.I. PALMER, JR.

Regional Administrator

Date

Region 4

IT IS SO AGREED:

BY:

Name

Date

