

5. "Settling Respondent" shall mean \_\_\_\_\_.

6. "Site" shall mean the [Superfund] Site, encompassing approximately \_\_\_\_\_ acres, located at [address or description of location] in [name of city, county, and State], and depicted generally on the map attached as Exhibit 2. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located [provide a more specific definition of the Site where possible; may also wish to include within Site description structures, USTs, etc].

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

### III. Statement of Facts

8. [Include only those facts relating to the Site that are relevant to the covenant being provided the prospective purchaser. Avoid adding information that relates only to actions or parties that are outside of this Agreement.]

9. The Settling Respondent represents, and for the purposes of this Agreement EPA [and the state] relies on those representations, that Settling Respondent's involvement with the Property and the Site has been limited to the following: [Provide facts of any involvement by Settling Respondent with the Site, for example performing an environmental audit, or if Settling Respondent has had no involvement with the Site so state.].

### IV. Payment

10. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein [and Removal of Lien in Section XXI herein if that is part of the consideration for the agreement], Settling Respondent agrees to pay to EPA the sum of \$\_\_\_\_\_, within \_\_\_\_\_ days of the effective date of this Agreement. [A separate section should be added if the consideration is work to be performed.] The Settling Respondent 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, EPA Docket number, and Site/Spill ID#\_\_\_\_\_ [insert 4-digit no.; first 2 numbers represent Region, second 2 numbers are Region's Site/Spill ID no.], [DOJ case number \_\_\_\_\_, if applicable] and name and address of Settling Respondent. [insert Regional Superfund Lockbox address where payment should be sent]. Notice of payment shall be sent to those persons listed in Section XV (Notices

and Submissions) and to EPA Region \_\_\_\_\_ Financial Management Officer [insert address].

11. 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.

[\_\_\_\_\_] [Work To Be Performed]

[Include this section and other appropriate provisions relating to performance of the work, such as financial assurance, agency approvals, reporting, etc., where work to be performed is the consideration for the Agreement.

\_\_\_\_\_. Statement of Work attached as Exhibit 3.]

### V. Access/Notice to Successors in Interest

12. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA [and the state] its authorized officers, employees, representatives, and all other persons performing response actions under EPA [or state] 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 Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Site under federal [and state] law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901, ("RCRA") *et seq.*, and any other applicable statute or regulation, including any amendments thereto.

13. Within 30 days after the effective date of this Agreement, the Settling Respondent shall record a certified copy of this Agreement with the Recorder's Office [or Registry of Deeds or other appropriate office], \_\_\_\_\_ County, State of \_\_\_\_\_. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

14. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement [and where appropriate, Section \_\_\_\_\_ (Work to be Performed)].

### VI. Due Care/Cooperation

15. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent 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, or any other law, immediately notify EPA of such release or threatened release.

### VII. Certification

16. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA [and the state] all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees,