

**MOHAWK TANNERY SITE  
ENVIRONMENTAL RESPONSE TRUST AGREEMENT**

**BY AND AMONG**

**Blaylock Holdings, LLC  
as Settlor,**

**Greenfield Environmental Mohawk Tannery Trust LLC,  
not individually but solely in its representative capacity  
as Trustee,**

**AND**

**THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
as Beneficiary**

**As of \_\_\_\_\_, 2025**

## TABLE OF CONTENTS

<b>ARTICLE I DEFINITIONS.....</b>	<b>4</b>
1.1    Definitions .....	4
<b>ARTICLE II THE TRUST.....</b>	<b>6</b>
2.1    Creation of and Transfer of Assets to the Trust.....	6
2.2    Objective and Purpose.....	8
2.3    Holder of Trust Assets.....	8
2.4    Management of Trust Assets.....	9
2.5    Disbursements by the Trust .....	9
2.6    Investment and Safekeeping of Trust Assets .....	9
2.7    Access and Deed Restrictions .....	10
2.8    Accounting.....	10
2.9    Property Disposition .....	10
2.10   Exemption from Rule Against Perpetuities .....	10
<b>ARTICLE III DISTRIBUTIONS.....</b>	<b>10</b>
3.1    Trust Accounts .....	10
3.2    Payments by the Trust.....	11
<b>ARTICLE IV THE TRUSTEE .....</b>	<b>11</b>
4.1    Appointment.....	11
4.2    Generally .....	12
4.3    Powers .....	12
4.4    Other Professionals.....	12
4.5    Limitation of the Trustee’s Authority .....	12
4.6    Reliance by the Trust Parties.....	12
4.7    Compensation of the Trustee.....	13
4.8    Liability of Trust Parties .....	13
4.9    Exculpation and Indemnification .....	14
4.10   Termination, Resignation, Replacement, and Removal of the Trustee. ....	15
4.11   Appointment of Successor Trustee(s) .....	15
<b>ARTICLE V BENEFICIARIES .....</b>	<b>16</b>
5.1    Beneficiaries.....	16
5.2    Identification of Beneficiaries .....	16
<b>ARTICLE VI DISPUTE RESOLUTION.....</b>	<b>16</b>
6.1    Resolution of Disputes .....	16
<b>ARTICLE VII REPORTING AND TAXES.....</b>	<b>17</b>
7.1    Annual Reports .....	17
7.2    Other.....	17
7.3    Taxes .....	71
<b>ARTICLE VIII MISCELLANEOUS PROVISIONS.....</b>	<b>17</b>
8.1    Amendments and Waivers.....	17
8.2    Tax Treatment.....	17

8.3	Cooperation.....	18
8.4	Situs of the Trust .....	18
8.5	Severability .....	18
8.6	Consistency of Agreements and Construction.....	18

**MOHAWK TANNERY SITE  
ENVIRONMENTAL RESPONSE TRUST AGREEMENT**

This Environmental Response Trust Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2025 (the “Effective Date”), by and among Blaylock Holdings, LLC and its successors and assigns (“Blaylock” or “Settlor”), Greenfield Environmental Mohawk Tannery Trust LLC, not individually but solely in its representative capacity as Trustee (defined herein) of the Mohawk Tannery Site Environmental Response Trust established hereby (the “Trust”), and the Beneficiary (defined herein). Blaylock’s successors and assigns are the Master Developer and the Master Association as set forth in the Financial Assurance Memorandum attached as Appendix B. Once the Master Developer and the Master Association are formed, as Blaylock’s successors and assigns, they shall be bound by this Agreement.

**RECITALS:**

WHEREAS, in \_\_\_\_\_ 2025, Settlor and the United States on behalf of the United States Environmental Protection Agency (“EPA”) entered into that certain Administrative Settlement Agreement for Removal Action (CERCLA Docket No. 01-2020-0063), including the First Modification to the Administrative Settlement Agreement for Removal Action (the “Blaylock BFPPA”) regarding, among other things, the ±30-acre Mohawk Tannery Site in Nashua, New Hampshire (the “Site”);

WHEREAS, Blaylock has applied for and obtained an eligibility determination from the State of New Hampshire Department of Environmental Services pursuant to New Hampshire RSA 147-F, the State’s Brownfields Program (“State Brownfield Program”), in order to obtain applicable liability protections afforded by the State Brownfields Program and to perform a State Approved Remedial Action Plan (“State ARAP”) with respect to Mohawk Tannery Site and the Containment Parcel, consistent with N.H. RSA 147-F and all applicable statutes and administrative regulations. As part of the State Brownfields Program, all successor owners of lots upon which there is a State ARAP and a State Covenant Not to Sue issued pursuant to RSA 147-F must comply with the terms and conditions of the State Covenant Not to Sue, the State ARAP, and RSA 147-F in order to benefit from the liability protections described therein. RSA 147-F:17. Together, any Covenant Not to Sue and the State ARAP along with RSA 147-F and the applicable administrative rules shall be known herein as the “State Brownfields Requirements;”

WHEREAS, the Blaylock BFPPA allows for, and EPA has agreed to, the transfer of the Site’s containment area (the “Containment Parcel”) to the Trust to be administered by the Trustee pursuant to this Agreement; such transfer of the Containment Parcel to the Trustee will be completed within ninety (90) days after EPA has issued to Blaylock a final Notice of Completion of Work, or whatever alternate date the parties may agree upon, in accordance with Section XXVIII of the Blaylock BFPPA;

WHEREAS, consistent with the Blaylock BFPPA, the Trust is established for the purposes of owning the Containment Parcel, carrying out administrative and property management functions related to the Containment Parcel, managing and/or funding implementation of Post-Removal Site Controls (defined below) at and around the Containment Parcel, and fulfilling other obligations as set forth in the ERT PPA and the State Brownfields Requirements (defined below);

WHEREAS, consistent with the goals and objectives of the Blaylock BFPPA, the Trustee (as the prospective purchaser of the Containment Parcel) and the United States have entered into that certain Administrative Settlement Agreement for CERCLA Response Actions by Prospective Purchaser (the “ERT PPA”);

WHEREAS, the Blaylock BFPPA and the ERT PPA provide that the Settlor and Trustee shall provide assurance that funds will be available as and when needed for performance of the Work (defined below) required under the ERT PPA;

WHEREAS, in order to provide such funding, Settlor has agreed to establish and fund the Trust created by this Agreement;

WHEREAS, the Settlor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder;

WHEREAS, the Trust is to be funded, both initially and over time, as set forth in this Agreement;

WHEREAS, this Agreement and the ERT PPA govern the Trust, which is created pursuant to section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under section 468B of the Internal Revenue Code (the “QSF Regulations”);

WHEREAS, presuming that the Trust qualifies as a “qualified settlement fund” within the meaning of the QSF Regulations, to the extent permitted by law, the Settlor may elect to treat the Trust as a grantor trust pursuant to QSF Regulations; and

WHEREAS, the Trust shall be the exclusive holder of the assets described herein for purposes of the ERT PPA and this Agreement under 31 U.S.C. § 3713(b);

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and in the ERT PPA, the Parties hereby agree as follows:

## ARTICLE I DEFINITIONS

### 1.1 Definitions.

The following terms as used in this Agreement shall have the definitions given below:

1.1.1 “Agreement” has the meaning as given in the preamble.

1.1.2 “Beneficiary” means the United States Environmental Protection Agency.

1.1.3 “Blaylock” or “Settlor” has the meaning as given in the preamble and includes any successor entity that it establishes or its assignee, including any Master

Developer or Master Association, subject to EPA's and the Trustee's prior written approval of any such successor or assignee, which approval shall not be unreasonably withheld.

1.1.4 "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended.

1.1.5 "Containment Parcel" shall have the meaning given in the recitals.

1.1.6 "Effective Date" has the meaning as given in the preamble.

1.1.7 "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

1.1.8 "ERT PPA" has the meaning given in the recitals.

1.1.9 "Fund" has the meaning given in Section 2.1.1 hereof.

1.1.10 "Initial Funding" has the meaning given in Section 2.1.3 hereof.

1.1.11 "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

1.1.12 "Parties" means the Settlor, the Trustee, and the Beneficiary.

1.1.13 "Post-Removal Site Controls" means actions necessary to ensure the effectiveness and integrity of the removal action relative to the Containment Parcel to be performed pursuant to the ERT PPA consistent with Sections 300.415(l) and 300.5 of the National Contingency Plan and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990) as well as the actions set out in State Brownfields Requirements.

1.1.14 "State Brownfields Requirements" means any State of New Hampshire Covenant Not to Sue issued pursuant to RSA 147-F and any State Approved Remedial Action Plan related to the Mohawk Tannery Site as well as N.H. RSA 147-F and applicable New Hampshire administrative regulations.

1.1.15 "Trust" means the trust established pursuant to this Agreement.

1.1.16 "Trust Account" has the meaning given in Section 2.1.5 hereof.

1.1.17 "Trust Assets" means (a) those assets and properties, including the Funds and the Containment Parcel, to be transferred to the Trust and (b) such other assets acquired, earned, or held by the Trust from time to time pursuant to this Agreement or the ERT PPA.

1.1.18 "Trust Parties" means, collectively, the Trust, the Trustee, and the

Trustee's, and its corporate member's, shareholders, officers, directors, employees, and managers of the Trustee; for the avoidance of doubt, "Trust Parties" shall not include environmental, engineering, or technical consultants and contractors, and other third-party professionals retained by the Trustee to assist it in carrying out its responsibilities under this Agreement and the ERT PPA.

1.1.19 "Trustee" means the entity appointed to be the trustee of the Trust consistent with the ERT PPA and this Agreement.

1.1.20 "United States" means the United States of America on behalf of EPA.

1.1.21 "Work" shall have the meaning assigned thereto in the ERT PPA and any State Brownfields Requirements.

1.1.22 "Work Takeover" shall have the meaning assigned thereto in the ERT PPA.

All Capitalized terms not defined above shall have the meanings provided in the ERT PPA.

## ARTICLE II THE TRUST

### 2.1 Creation of and Transfer of Assets to the Trust

2.1.1 The Settlor and the Trustee hereby establish a trust (the "Trust"), for the benefit of EPA (the "Beneficiary"), to ensure that funds are available to pay for performance of the Work in accordance with the terms of the ERT PPA and any State Brownfields Requirements. The Settlor and the Trustee intend that no third party shall have access to Trust Assets except as expressly provided herein. The Trust is established initially as consisting of cash and/or cash equivalents in the amount of \$10.00, which is acceptable to the Trustee and described in Schedule A attached hereto. As of the Effective Date of the ERT PPA, the Settlor shall pay into the Trust the Initial Funding. Such funds, along with any other cash and/or cash equivalents hereafter deposited into the Trust, and together with all earnings and profits thereon, are referred to herein collectively as the "Fund." The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided.

2.1.2 As contemplated by the Blaylock BFPPA and in accordance with the ERT PPA, the Parties hereby establish, on behalf of the Beneficiary named herein, and the Settlor hereby transfers, assigns, and delivers to the Trustee, not individually but solely in its representative capacity as Trustee, on behalf of the Beneficiary, all of Settlor's right, title and interest in and to the Trust Assets. The transfer of ownership by Settlor of the Containment Parcel shall occur as of the Effective Date of the ERT PPA, and shall be a transfer of all of the Settlor's right, title and interests therein, with all conveyance documents to be agreed to in form by the Settlor and the Trustee. Settlor will cooperate with the EPA and the Trustee to deliver to the title company (which will cause to be recorded in the appropriate real property records) the transfer documents as soon as

reasonably practicable. Settlor shall pay the recording costs and transfer fees relating to the title transfer, as well as all escrow fees, survey and title commitment costs, title insurance premiums, transfer taxes or revenue stamps, and real property taxes and assessments then due and relating to the Containment Parcel on or before the Effective Date of the ERT PPA. Settlor shall pay all real property taxes due and relating to the Containment Parcel through the Effective Date of the ERT PPA. As of the Effective Date of the ERT PPA, the Trustee shall be responsible for paying all real property taxes first coming due following such date relating to the Containment Parcel. For the avoidance of doubt, title to the Containment Parcel must be transferred free and clear of any claims, liens, encumbrances, and matters of record title that are not otherwise approved by Trustee, not including any activity and use restrictions and restrictive covenants or other State Brownfields Requirements required as part of the Work.

2.1.3 Transfer of Funding to the Trustee. Settlor will transfer to the Trust, and the Trust will hold, sufficient Funds, including reserves, to enable the Trust to perform the Work under the ERT PPA, the State Brownfields Requirements, and administrative and property management functions related to the Containment Parcel without interruption.

2.1.3.1 Initial Funding. As of the Effective Date of the ERT PPA, the Settlor shall cause to be transferred to or at the direction of the Trustee cash in the amount of \$100,000, which constitutes the estimated costs for the first calendar year of operating costs for the Trust (the “Initial Funding”). This Initial Funding amount will be revised in accordance with final costs obtained from a third-party contractor as an estimate for the Work, to be obtained by the Trustee, together with a one-year estimate of the Trustees’ administrative costs, with reasonable approval by the Settlor, prior to transfer of the Containment Parcel to the Trust. The Initial Funding, and all future funding necessary for the Trust to comply with its obligations hereunder and pursuant to the ERT PPA and State Brownfields Requirements, shall be paid by the Settlor consistent with the provisions of the Financial Assurance Memorandum, (Appendix B).

2.1.3.2 Annual Budget and Annual Funding. At least sixty (60) days prior to the end of each calendar year, the Trustee shall provide the Settlor, with a copy to EPA, with the Trustee’s proposed Annual Budget for the upcoming calendar year. The Annual Budget prepared by the ERT will be based on the expected costs to be incurred under the ERT PPA, including the Post-Removal Site Controls, the State Brownfields Requirements, this Trust Agreement, and administrative and property management functions expected to be performed by the ERT in the upcoming year, plus a reasonable contingency in accordance with the Financial Assurance Memorandum (Appendix B). On or before December 31 of each calendar



year, the Settlor shall pay to the Trust an amount sufficient to fund the Annual Budget for the upcoming calendar year.

2.1.3.3 Additional Required Funding. In the event that additional funds are needed to satisfy the Trustee's Post-Removal Site Control under the ERT PPA obligations and State Brownfields Requirements, including around the Effective Date of the ERT PPA consistent with the Financial Assurance Memorandum, the Trustee shall invoice Settlor for payments to the Trust at least sixty (60) days prior to the due date stated on the invoice (the "Invoice Due Date"), with a copy to EPA.

2.1.3.4 Additional Financial Assurance. As of the Effective Date of the ERT PPA, Settlor will procure the Financial Assurance Mechanism pursuant to the terms of Paragraph 9 of the Financial Assurance Memorandum (Appendix B).

2.1.3.5 Remedies Upon Any Settlor Payment Default(s). If Settlor fails, in whole or in part, to make a required payment to the Trust, the Trustee shall follow applicable procedures to obtain funds for the Trust as set forth in the Financial Assurance Memorandum.

2.1.3.6 Funding Dispute. In the event that Settlor disputes any request for additional funding, such dispute shall be subject to the Dispute Resolution Clause in Article VI, below.

2.1.4 Upon transfer of the Containment Parcel and the Initial Funding on the Effective Date of the ERT PPA, the Settlor shall have no interest in any Trust Assets other than those set forth in the reservation of rights in the deed of conveyance of the Containment Parcel from Settlor to the Trustee of the Trust ("Reservation of Rights") (Appendix A).

2.1.5 Creation of the Trust Account. Upon receipt of the Containment Parcel and the Funds, the Trustee shall create a trust account (the "Trust Account") for the Containment Parcel for the purpose of holding funds for (a) performance of the Work required under the ERT PPA and State Brownfields Requirements, and (b) administering the Trust (e.g., to fund the payment of real estate taxes, income taxes to the extent applicable, maintain tax treatment (provided in Section 2.1.5.2 below), insurance, maintenance costs, and other similar fees, costs, and expenses). Subject to Section 2.6, the income, gains, and losses from any investment of the Trust Assets shall be allocated, paid and credited to, and/or deducted from, such Trust Account.

2.1.5.1 The Trust Account may be divided into such number of trust subaccounts dedicated for specific uses as may be deemed necessary in the sole discretion of the Trustee (each, a "Trust Subaccount") to comply with the terms of and implement, the

ERT PPA, State Brownfields Requirements, and this Agreement.

2.1.5.2 For all federal income tax purposes, the Trustee and Settlor shall treat the transfer of the Trust Assets by the Settlor to the Trust as a transfer to a qualified settlement fund pursuant to section 468B of the Internal Revenue Code and the QSF Regulations. The Trustee shall at all times seek to have the Trust treated as a “qualified settlement fund” as that term is defined in the QSF Regulations. The Trustee shall cause taxes, if any, imposed on the earnings of the Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Trust under applicable tax laws. The Trustee shall be the “administrator” of the Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). To the extent the Settlor elects to treat the Trust as a grantor trust pursuant to Treasury Regulation section 1.468B-1(k)(1), the Trustee will reasonably cooperate with such election at the Settlor’s cost.

## 2.2 Objective and Purpose

2.2.1 The exclusive purposes and functions of the Trust are to: (i) own the Containment Parcel; (ii) carry out administrative and property management functions related to the Containment Parcel to the extent not implemented by the Settlor pursuant to the Reservation of Rights, including the collection of funds necessary to implement the Work and the State Brownfields Requirements; (iii) implement Post-Removal Site Controls approved by EPA with respect to the Containment Parcel and implement the State Brownfields Requirements applicable to the Containment Parcel with respect to the removal work and long term ownership, operation, and maintenance and (iv) fulfill other obligations as set forth in the ERT PPA and the State Brownfields Requirements. The Trustee’s performance of its duties under this Agreement shall not be considered to be the Trustee’s engaging in a trade or business.

2.2.2 The Trust is established pursuant to this Agreement and consistent with the Blaylock BFPPA and ERT PPA, for the sole purpose of holding title to the Containment Parcel and performing all Work pursuant to the ERT PPA and State Brownfields Requirements. The Trust satisfies all the requirements of, and is intended by the Parties to be classified as, a qualified settlement fund pursuant to the QSF Regulations.

## 2.3 Holder of Trust Assets

The Trustee of the Trust shall be the exclusive owner of the Trust Assets and holder of the Trust Account described herein for purposes of 31 U.S.C. § 3713(b).

## 2.4 Management of Trust Assets

Consistent with this Agreement and to fulfill its obligations under the ERT PPA, the Trustee shall use the Trust Account to fund, to the extent of available funding, (a) implementation of the Trust's obligations under the ERT PPA and the State Brownfields Requirements and (b) administrative and property management functions related to the Containment Parcel to the extent not implemented by the Settlor pursuant to the Reservation of Rights set forth in the deed from Settlor to the Trustee.

## 2.5 Disbursements by the Trust

Payments from the Trust shall be made as provided in accordance with this Agreement.

## 2.6 Investment and Safekeeping of Trust Assets

The Trust Assets shall be held in trust and segregated. In investing, reinvesting, exchanging, selling, and managing the Trust Assets, the Trustee shall discharge its duties with respect to the Trust Assets solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims. The Trustee shall have no liability for interest or producing income on any moneys received by the Trust hereunder and held for distribution or payment as provided in this Agreement, except as such interest or amounts shall actually be received by the Trust.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with directions which the Settlor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the Trust solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) securities, notes, and other obligations of any person or entity shall not be acquired or held by the Trustee with monies comprising the Fund, unless they are securities, notes, or other obligations of the United States federal government or any United States state government or as otherwise permitted in writing by EPA;

(b) the Trustee is authorized to invest the Fund in time or demand deposits to the extent such deposits are insured by an agency of the United States federal or any United States state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

## 2.7 Access and Deed Restrictions

The Trustee shall provide the United States and the State of New Hampshire (collectively, the “Governments”) and their representatives and contractors access to all portions of the Containment Parcel at all reasonable times for the purposes of conducting environmental actions at or near the Containment Parcel. The Trustee shall implement any institutional controls or deed restrictions requested by the Governments with respect to the Containment Parcel that have not already been implemented by Blaylock pursuant to the Blaylock BFPPA. The Trustee shall execute and record with the appropriate recorder’s office any easements or deed restrictions requested by the Governments for restrictions on use of the Containment Parcel in order to protect public health, welfare or safety or the environment or ensure non-interference with or protectiveness of any action that have not already been executed and recorded by Blaylock pursuant to the Blaylock BFPPA. Any existing easements or deed restrictions of record as to the Containment Parcel prior to the Effective Date shall survive the ERT PPA. The Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record as to the Containment Parcel; however, nothing herein shall create any personal liability for Trustee’s failure to abide by any institutional controls of which Trustee is unaware.

The Trustee shall provide access to the Containment Parcel to the Settlor and owners, tenants and guests of designated residential units in accordance with the Settlor’s Reservation of Rights as set forth in the Deed of the Containment Parcel from Settlor to the Trustee.

## 2.8 Accounting

The Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Trust, and the assets and liabilities of the Trust in such detail and for such period of time as may be necessary to enable the Trustee to make full and proper accounting in respect thereof in accordance with Article VII below and to comply with applicable provisions of law and good accounting practices. The Beneficiary and the Settlor shall have the right upon fourteen (14) days’ prior written notice delivered to the Trustee to inspect such books and records.

## 2.9 Property Disposition

The United States, the State of New Hampshire, a local government, the Settlor, or a prospective purchaser may at any time propose in writing to take ownership of the Containment Parcel or any part thereof. Any such proposed transfer and the terms thereof (including the distribution of proceeds) are subject to approval in writing by the Beneficiary and the Settlor.

## 2.10 Exemption

This Trust is exempt from any rule against perpetuities pursuant to NH RSA 564-B:4-402A.

## ARTICLE III DISTRIBUTIONS

### 3.1 Trust Account

The Trustee shall establish, maintain and hold the Trust Account consistent with Section 2.1 of this Agreement, to administer the Trust Assets and distributions therefrom.

### 3.2 Payments by the Trust

At least sixty (60) days before the Effective Date of the ERT PPA in the first year and thereafter at least 60 days before the end of each calendar year, the Trustee shall provide the Beneficiary, the State of New Hampshire, and the Settlor with balance statements (except in the first year) and proposed budgets in connection with the administration of the Trust (e.g., to fund the payment of real estate taxes, income taxes to the extent applicable, insurance, maintenance costs, and other similar fees, costs, and expenses) and the implementation of the Work required under the ERT PPA and the State Brownfields Requirements (the “Annual Budget”). The Trustee shall not pay any expense that has not been provided for in an Annual Budget (including revisions thereto) approved by the Settlor and not objected to by the Beneficiary (no response serves the same purpose as a non-objection); provided, however, that pending approval of the Annual Budgets, the Trust may enter into contracts or incur expenditures to continue ongoing Work and administrative and property management functions relative to the Containment Parcel if such costs are in the Trust’s proposed budget and have not been objected to by the Settlor or Beneficiary in writing; provided, further, that the Trustee may incur or pay ongoing or recurring expenses approved in the prior year’s budget that occur between the time a proposed Annual Budget is submitted and the time it is approved.

If, at any time during the term of this Agreement, EPA implements a “Work Takeover” pursuant to the terms of the ERT PPA and intends to direct payment of monies from the Fund to pay for performance of Work during the period of such Work Takeover, EPA shall notify the Trustee in writing of EPA’s commencement of such Work Takeover. Upon receiving such written notice from EPA, the distribution procedures shall immediately be suspended for costs of Work taken over by EPA, and the Trustee shall thereafter make payments from the Fund only to such person(s) as the EPA may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the ERT PPA. If EPA ceases such a Work Takeover in accordance with the terms of the ERT PPA, EPA may so notify the Trustee in writing and, upon the Trustee’s receipt of such notice, the distribution procedures shall be reinstated.

## ARTICLE IV THE TRUSTEE

### 4.1 Appointment

Greenfield Environmental Mohawk Tannery Trust LLC, not individually but solely in its representative capacity as Trustee, is hereby appointed to serve as the initial Trustee to administer the Trust and the Trust Account, in accordance with this Agreement and as contemplated by the

Blaylock BFPPA and the ERT PPA, and the Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Effective Date of this Agreement. Subject to the provisions of Section 4.10 herein, the term of the Trustee shall be for ten years at which time the Trustee may resign, be reappointed, or terminated, provided that (with prior written approval of the Beneficiary and Settlor [or solely the Beneficiary if the Settlor ceases to exist]) the Trustee may at any time assign its rights and obligations under this Agreement and the ERT PPA to the Master Association (or a related entity). Any successor Trustee shall be proposed by the Beneficiary and Settlor, and appointed in accordance with Section 4.11 of this Agreement. If the Trustee is not reappointed and no successor Trustee is appointed by the expiration of the Trustee's term, the Trustee shall continue to serve in its capacity until the reappointment is finalized, a successor Trustee is appointed, or the Trustee resigns in accordance with Section 4.10.1.

#### 4.2 Generally

The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Trust, the ERT PPA, the State Brownfields Requirements, and not otherwise. The Trustee shall have the authority to bind the Trust, and any successor Trustee, or successor or assign of the Trust, but shall for all purposes hereunder be acting in its representative capacity as Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Trustee believes in good faith such action or omission is not consistent with the Trustee's fiduciary duties. The Trustee shall have no obligations to perform any activities for which the Trust Account lacks sufficient funds.

#### 4.3 Powers

In connection with the administration of the Trust, except as otherwise set forth in this Agreement or the ERT PPA, the Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Trust. No person dealing with the Trust shall be obligated to inquire into the authority of the Trustee in connection with the protection, conservation or disposition of Trust Assets. The Trustee is authorized to execute and deliver all documents on behalf of the Trust to accomplish the purposes of this Agreement, the ERT PPA, and the State Brownfields Requirements.

#### 4.4 Other Professionals

After consultation with the Settlor, and consistent with the ERT PPA, the Trustee is authorized to retain on behalf of the Trust and pay third-party professionals as the Trustee (in accordance with a budget approved pursuant to Section 3.2 above) may deem necessary or appropriate to assist the Trustee in carrying out its powers and duties under this Agreement and the ERT PPA, including, without limitation, contractors that the Trustee plans to hire to perform Work in accordance with the ERT PPA and the State Brownfields Requirements, legal counsel, public accounting firms, investment advisors, custodians, security personnel, and insurance specialists.

#### 4.5 Limitation of the Trustee's Authority

The Trust and the Trustee shall not and are not authorized to engage in any trade or business with respect to the Trust Assets or any proceeds therefrom except as and to the extent the same is deemed in good faith by the Trustee to be reasonably necessary or proper for the conservation or protection of the Trust Assets, or the fulfillment of the purposes of the Trust. The Trust and the Trustee shall not take any actions that would cause the Trust to fail to qualify as a qualified settlement fund under the QSF Regulations.

#### 4.6 Reliance by the Trust Parties

Except as may otherwise be provided herein: (a) the Trust Parties may rely on, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, or other electronic or paper document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Trust Parties may consult with legal counsel, financial or accounting advisors and other professionals and shall not be personally liable for any action taken or not taken in accordance with the advice thereof; and (c) persons dealing with the Trust Parties shall look only to the Trust Assets to satisfy any liability incurred by the Trust Parties to such person in carrying out the terms of this Agreement, and the Trust Parties shall have no personal obligations to satisfy any such liability other than as provided in Section 4.9.1.

#### 4.7 Compensation of the Trustee

The Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Trustee for the actual reasonable out-of-pocket fees, costs, and expenses to the extent incurred by the Trustee in connection with the Trustee's duties hereunder and in accordance with an annual budget approved pursuant to Section 3.2 above. The Trustee, and employees of the corporate parent of the Trustee who perform services for the Trust, shall be entitled to receive reasonable compensation for services rendered on behalf of the Trust, and reimbursement of actual out-of-pocket expenses, in accordance with an annual budget approved pursuant to Section 3.2 above, all to be paid from the Trust Assets, provided, however, that the Trustee shall have minimal duties and shall be entitled to minimal compensation, if any, for time periods in which the Trustee does not make payments from the Fund for Work performed under the ERT PPA.

#### 4.8 Liability of Trust Parties

4.8.1 In no event shall any of the Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party, including the Settlor, or any other Trust Party. The liability of the Trust Parties shall be limited as provided in the ERT PPA, and the Trust Parties shall, further, be indemnified and exculpated in accordance with Section 4.9 of this Agreement. For the avoidance of doubt, the Trustee shall not be deemed in breach of its duties or responsibilities on account of the insufficiency of funds.

4.8.2 As provided in Sections XIV and XV of the ERT PPA, the Trust Parties are deemed to have resolved their civil liability under CERCLA to the United States, and have protection from contribution actions or claims as provided by Sections 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2) or similar state law for matters addressed in the ERT PPA. The Trust Parties shall have the benefits of the covenants not



to sue as set forth in Section XIV of the ERT PPA, of the provisions as set forth in Section XV of the ERT PPA, and of contribution protection as set forth in Section XVI of the ERT PPA. Nothing in this Agreement is intended to, or should be construed as, in any way limiting the covenants and protections conferred on the Trust Parties pursuant to the ERT PPA and other applicable law.

4.8.3 No provision of this Agreement or the ERT PPA shall require the Trustee to expend or risk its own personal funds or otherwise incur any personal financial liability in the performance of any of its duties or the exercise of any of its authorities as Trustee hereunder. Notwithstanding the foregoing, the Trustee shall satisfy from its own funds any liability imposed by a court of competent jurisdiction on account of Trustee's breach of its fiduciary duties and/or fraud or willful misconduct or criminal conduct.

#### 4.9 Exculpation and Indemnification

##### 4.9.1 Exculpation

None of the Trust Parties shall be personally liable unless a court of competent jurisdiction, by a final order, finds that it committed acts that constitute a breach of its fiduciary duties and/or fraud or willful misconduct or criminal conduct after the Effective Date in relation to the Trustee's duties. There shall be an irrebuttable presumption that any action taken or not taken with the approval of EPA (through work plans or otherwise) does not constitute a breach of its fiduciary duties and/or fraud or willful misconduct. Any judgment against a Trust Party and any costs of defense relating to any Trust Party shall be paid from and limited to funds from the Trust Account without the Trust Party having to first pay from its own funds for any personal liability or costs of defense unless a final order of a court of competent jurisdiction, that is not reversed on appeal, determines that it committed a breach of its fiduciary duties and/or fraud or willful misconduct or criminal conduct in relation to the Trust Party's duties.

4.9.2 The Trust Parties are exculpated by all persons, including without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability arising out of the ownership of Trust Assets and the discharge of the powers and duties conferred upon the Trust and/or Trustee by the ERT PPA or this Agreement. No person, including without limitation, holders of claims and other parties in interest, will be allowed to pursue any claims or cause of action against any Trust Party for any claim against the Settlor or prior owner or operator of the Containment Parcel, for making payments in accordance with the ERT PPA or this Agreement, or for implementing the provisions of the ERT PPA or this Agreement. Nothing in this Paragraph or this Agreement shall preclude EPA and Settlor, from enforcing the terms of this Agreement or the ERT PPA against the Trust Parties. Notwithstanding anything in this Section 4.9.2 or elsewhere in this Agreement to the contrary, nothing in this Agreement shall be construed to exculpate the Trust Parties from any liability resulting from any act or omission constituting a breach of its fiduciary duties and/or fraud, willful misconduct, or criminal conduct.

##### 4.9.3 Indemnification



The Trust shall indemnify, defend and hold harmless (without the Trust Parties having to first pay from their personal funds) the Trust Parties from and against any and all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorneys' fees) and any other assertion of liability arising out of or in relation to the discharge of the Trustee's powers and duties, to the fullest extent permitted by applicable law, provided that such indemnification, and any related recovery, shall be limited to funds in the Trust Account. Without limiting the foregoing, any such judgment against a Trust Party and any such costs of defense relating to any Trust Party shall be paid by the Trust consistent with the terms and conditions of this Section 4.9.3. Notwithstanding the foregoing, to the extent a breach of its fiduciary duties and/or fraud or willful misconduct or criminal conduct of any Trust Party is alleged and a court of competent jurisdiction finds, by a final order, that such Trust Party committed a breach of its fiduciary duties and/or fraud or willful misconduct or criminal conduct after the Effective Date in relation to the Trustee's duties, there shall be no indemnification, of that Trust Party, for any judgments arising from such allegations. It shall be an irrebuttable presumption that any action taken, or inaction, consistent with EPA approval (through work plans or otherwise) shall not constitute a breach of its fiduciary duties and/or willful misconduct or fraud or criminal conduct.

#### 4.10 Termination, Resignation, Replacement, and Removal of the Trustee.

##### 4.10.1 Termination or Resignation

Subject to the right of the Parties to amend this Agreement, the Trust shall continue until terminated at the written agreement of the Settlor, Trustee, and Beneficiary, or by the Trustee and Beneficiary if the Settlor ceases to exist. Termination of the Trust shall not occur until a successor entity responsible for owning the Containment Parcel and performing all Work required by EPA and the State Brownfields Requirements is identified and has taken ownership of the Containment Parcel and is obligated to perform the Work required by EPA and the State Brownfields Requirements. Upon termination of the Trust, subject to Section 3.2, all remaining Trust Assets, less any administrative and/or wind-down expenses, shall be distributed by the Trustee to the Settlor. The Trustee may resign by giving not less than 120 days prior written notice thereof to the Beneficiary and Settlor; provided, however, that this Section and Sections 4.6, 4.8 and 4.9 above shall survive such replacement.

##### 4.10.2 Replacement

The Trustee may be replaced upon completion of any ten-year term; provided, however, that this Section and Sections 4.6, 4.8 and 4.9 above shall survive such replacement.

##### 4.10.3 Removal

The Trustee may be removed upon agreement by the Beneficiary and the Settlor for cause at any time; provided, however, that this Section and Section 4.6, 4.8 and 4.9 above shall survive the removal of the Trustee.

#### 4.11 Appointment of Successor Trustee(s)

Any successor Trustee shall be proposed, and appointed, by the Beneficiary and the Settlor. Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Trust records. Any resigning, replaced, or removed Trustee shall cooperate and assist in the transition of the Trust administration to a successor Trustee, as reasonably requested by the successor Trustee or the Beneficiary.

### ARTICLE V BENEFICIARY

#### 5.1 Beneficiary

Beneficial interests in the Trust shall be held by the Beneficiary.

#### 5.2 Identification of Beneficiary

5.2.1 In order to determine the actual names and addresses of the authorized representative(s) of the Beneficiary, the Trust and the Trustee shall be entitled to rely conclusively on the name and address of the authorized representative(s) for the Beneficiary listed below, who may from time to time provide additional or replacement names and addresses of authorized representatives, or listed in any written notice provided to the Trustee in the future by an authorized representative of the Beneficiary.

Authorized representative and party to receive all notices:

EPA: Regional Counsel, USEPA Region 1, 5 Post Office Square, Boston, MA

5.2.2 The Trustee shall send copies of all reports, budgets, annual balance statements, and other documents that the Trustee is required to submit to the Beneficiary under the ERT PPA and this Agreement, and related implementation documents including any unilateral administrative orders, consent decrees, or administrative orders on consent to the person(s) listed in this Agreement as applicable.

### ARTICLE VI DISPUTE RESOLUTION

#### 6.1 Resolution of Disputes.

Any disputes arising under or in connection with this Agreement shall be resolved by third party mediation of the dispute and, failing that, by binding arbitration, to be held in Manchester, New Hampshire, in accordance with the rules and procedures of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Settlor shall bear all costs of the mediation, arbitration or litigation, except that the Trustee shall pay all such costs if the mediator or arbitrator determines that the

Trustee's actions were fraudulent or demonstrated willful misconduct.

## ARTICLE VII REPORTING AND TAXES

### 7.1 Annual Reports

As soon as practicable after the end of each calendar year, beginning with the year ended after assets are first received by the Trustee and ending as soon as practicable upon termination of the Trust, the Trustee shall submit to the Beneficiary and the Settlor a statement confirming the value of the Trust.

### 7.2 Other

The Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Trust, that are required by any applicable governmental unit.

### 7.3 Taxes

The Trustee shall be the "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of the Trust. Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Trustee shall file tax returns and pay applicable taxes, if any, with respect to the Trust in a manner consistent with the provisions of the QSF Regulations. All such taxes shall be paid from the Trust Administrative Account, except that taxes, if any, on gains to the Trust Environmental Cost Account shall be paid from the Trust Environmental Cost Account. Settlor may make an election to treat the Trust as a grantor trust pursuant to Treasury Regulation section 1.468B-1(k)(1). To the extent Settlor makes such an election, (a) the Trustee will provide, at Settlor's expense, reasonable cooperation to Settlor as needed to facilitate such election, (b) the Trustee will file any returns or reports required by the QSF Regulations or Treasury Regulation section 1.671-4, and (c) the Trustee will provide the Settlor, as transferor to the Trust, with any statements or reports required by the QSF Regulations or Treasury Regulation section 1.671-4, in order to enable the Settlor to calculate its share of the Trust's tax obligations and attributes. For the avoidance of doubt, any grantor trust election is for tax purposes only and shall in no way affect the substantive rights and obligations of the Parties under the ERT PPA, the Settlement Agreement, or this Agreement.

## ARTICLE VIII MISCELLANEOUS PROVISIONS

### 8.1 Amendments and Waivers

Any provision of this Agreement may be amended or waived by mutual written consent of the Trustee, the Settlor and the Beneficiary.

### 8.2 Tax Treatment

The Trust created by this Agreement is intended to be treated as a qualified settlement fund

eligible to elect grantor trust classification pursuant to the QSF Regulations for federal income tax purposes, and to the extent provided by law, this Agreement shall be governed and construed in all respects consistent with such intent.

### 8.3 Cooperation

Settlor represents that it has provided, or has provided access to, and will continue to provide on a post-Effective Date basis, all relevant documents and other information in its possession.

### 8.4 Situs of the Trust

The situs of the Trust herein established is New Hampshire, and, except to the extent other federal law is applicable, the rights, duties, and obligations arising under this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire, without giving effect to the principles of conflict of law thereof.

### 8.5 Severability

If any provision of this Agreement or application thereof to any person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

### 8.6 Consistency of Agreements and Construction

To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the ERT PPA. Where the provisions of this Agreement are irreconcilable with the provisions of the ERT PPA, the provisions of the ERT PPA shall prevail. For provisions of this Agreement not addressed by the ERT PPA, for example Article IV (the Trustee) and Section 1.1.17 (the Trust Parties' definition), this Agreement controls.

[Signature pages to follow]

Signature Page for Blaylock Holdings LLC, and its successors and assigns (Settlor)

**IT IS SO AGREED:**

IT IS SO AGREED:

BLAYLOCK HOLDINGS, LLC, on behalf of itself and its successors and assigns (SETTLOR)

BY:

\_\_\_\_\_  
Bernard N Plante, Manager, but not Individually

Date

\_\_\_\_\_  
Lloyd Geisinger, Manager, but not Individually

Date

Signature Page for Mohawk Tannery Site Environmental Response Trust

IT IS SO AGREED:

Dated

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Greenfield Environmental Mohawk Tannery Trust LLC,  
not individually but solely in its representative capacity as  
Trustee of the Mohawk Tannery Site Environmental Response  
Trust

By: Greenfield Environmental Trust Group, Inc., Member  
By: Cynthia Brooks, President  
11 Flagg Street, Unit #1, Cambridge, MA 02138

Signature Page for U.S Environmental Protection Agency

**IT IS SO AGREED:**

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Bryan Olson, Director  
Superfund and Emergency Management Division  
Region 1

Appendix A – Deed of Containment Parcel including Settlor’s Reservation of Rights  
Appendix B – Near-Final/Draft Financial Assurance Memorandum