



SDMS DocID

246410

Superfund Record Card
 SITE: Industri-Plex
 EPCRA: 1
 OTHER: None

SDMS # 246410

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION I

IN THE MATTER OF:

Dayton Hudson Corporation and
 National Development Associates
 of New England, Inc.

Docket No. CERCLA I-93-1009

UNDER THE AUTHORITY OF THE
 COMPREHENSIVE ENVIRONMENTAL
 RESPONSE, COMPENSATION, AND
 LIABILITY ACT OF 1980, 42 U.S.C.
 § 9601, et. seq., as amended.

) AGREEMENT AND COVENANT
) NOT TO SUE
) Re: Industri-Plex
) Superfund Site --
) Parcel A

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA"), National Development Associates of New England, Inc. ("NDAI") and Dayton Hudson Corporation ("Target") (NDAI and Target are each a "Settling Respondent" for purposes of this Agreement) (EPA and the Settling Respondents together are the "Parties").

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et. seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. NDAI is a Massachusetts corporation. Target is a Minnesota corporation. Subject to this Agreement, NDAI and Target intend to develop and operate a retail shopping complex on a portion of the Industri-Plex Superfund Site ("the Site").

4. The Site covers approximately 245 acres in the City of Woburn, Middlesex County, Massachusetts. In the past, portions of the Site were used for industrial and manufacturing operations. Currently, part of the Site is used for a variety of commercial activities and part is unused land.

5. One parcel of property within the Site is known as the "retail parcel -- Parcel A"; it consists of approximately 28.4 acres, more or less, located in Woburn, Massachusetts, as more specifically set forth on Exhibit 1 attached hereto and made a part of this Agreement (hereinafter referred to as the "Property"). Actionable levels of soil contamination have not been detected at the Property. EPA's investigation of the groundwater contamination at the Property and the Site has not been finalized.

6. 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 reservations and limitations contained in Sections VII, VIII, IX, X, and XII, the potential liability of the Settling Respondents for the Existing Contamination which would otherwise result from the Settling Respondents becoming the owners or operators of all or any portion of the Property. The Parties agree that each Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondents. The resolution of this potential

liability, in exchange for provision by the Settling Respondents to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

7. 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.

(a) "Consent Decree" shall mean the consent decree, dated December 14, 1988, and entered by the United States District Court on April 24, 1989, in United States v. Stauffer Chemical Company, et. al., No. 89-0196-MC (D. Mass.).

(b) "Custodial Trust" shall mean the Industri-Plex Site Interim Custodial Trust, created under a declaration of trust dated as of May 9, 1989, recorded with the Middlesex County Registry of Deeds in Book 19866, Page 190, and filed for registration with the Middlesex County Registry District of the Land Court as Documents Nos. 800447 and 799550, and its successors and assigns.

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

(d) "Existing Contamination" shall mean (i) any hazardous substances, pollutants or contaminants, present or existing on or under the Property as of the effective date of this Agreement including any resulting physical or chemical breakdown of these hazardous substances, pollutants or

contaminants ("the Existing Contaminant Source(s)"); and (ii) any hazardous substances, pollutants, or contaminants that have migrated or will migrate from any Existing Contaminant Source(s).

(e) "Institutional Controls" shall mean such covenants, conditions, and restrictions and other equivalent requirements and controls developed pursuant to the Consent Decree and the Record of Decision for soil remediation dated September 30, 1986, and/or pursuant to any future record of decision or action memoranda for the Site to ensure the integrity and effectiveness of the response actions at or pertaining to the Site.

(f) "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

(g) "Parties" shall mean EPA and the Settling Respondents.

(h) "Property" shall mean that portion of the Site which property is currently owned by the Custodial Trust and which property contains approximately 28.4 acres located in Woburn, Massachusetts, and which property is known as "Retail Parcel A," and which property is more particularly described in Exhibit 1 attached hereto and made a part of this Agreement.

(i) "Section" shall mean a portion of this Agreement identified by a roman numeral.

(j) "Settling Respondents" shall mean (i) NDAI and Target; and (ii) any person or entity to whom the rights, benefits and obligations of this Agreement have been assigned or transferred pursuant to Section XI (Parties Bound/Transfer of Covenant) of this Agreement.

(k) "Site" shall mean the Industri-Plex Superfund Site, as that term is defined in the Consent Decree, encompassing approximately 245 acres, located in Woburn, Middlesex County, Massachusetts, depicted generally on the map attached hereto as Exhibit 2, and described in more detail in the paragraph attached hereto as Exhibit 3. The Site includes the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have been released.

(l) "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

8. The 245 acre Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

9. Portions of the Site, not including the Property, contain soil contaminated with hazardous substances such as arsenic, chromium and lead. The soil at the Site, not including the Property, is currently being remediated as part of the remediation for the Site, as described in EPA's Record of Decision ("ROD") for soil remediation, dated September 30, 1986. The remediation work is being performed under the terms of the Consent Decree. Portions of the Site, including the Property,

may also be underlain with contaminated groundwater. The groundwater is currently being remediated by interim groundwater response measures as part of the ROD for soil remediation. EPA is conducting an investigation of the groundwater to determine if it is necessary to conduct further remediation of the groundwater underlying the Site, including groundwater underlying the Property.

10. The Consent Decree directs the Custodial Trust to sell all saleable land associated with the Site and to distribute the sale proceeds to the three beneficiaries of the Custodial Trust: (i) the City of Woburn (in settlement and satisfaction of past due taxes); (ii) the Remedial Trust (to help defray the costs of settlement); and (iii) the EPA and the Massachusetts Department of Environmental Protection ("DEP") (to be used to reimburse response costs and for the protection of public health and the environment).

11. Settling Respondents intend to purchase the Property from the Custodial Trust and to develop a retail shopping complex on the Property, including related improvements and parking.

12. Each Settling Respondent is a prospective "owner" or "operator" of a facility within the meaning of Section 107(a)(1) of CERCLA. 42 U.S.C. § 9607 (a)(1).

13. Each Settling Respondent represents, and for the purposes of this Agreement EPA relies upon those representations, that each Settling Respondent's involvement with the Property and the Site has been limited to the following:

- (a) Evaluating the Property for purposes of purchasing the Property;
- (b) Negotiating to purchase the Property; and
- (c) Communicating with the Massachusetts Highway Department and local authorities with respect to the design and planning of transportation improvement projects, including a new I-93 interchange which will provide direct highway access to the Site, and various permitting issues.

Each Settling Respondent represents that none of the activities listed in subparagraphs (a) through (c) of this paragraph has caused or contributed to the release or threatened release of a hazardous substance at the Property under Section 107 of CERCLA, 42 U.S.C. § 9607.

IV. PAYMENT BY SETTLING RESPONDENTS AND OTHER CONSIDERATION

14. In consideration of and in exchange for the United States' covenant not to sue in Section VIII herein, Settling Respondents agree to pay to EPA the sum of \$30,000, plus Interest accrued from the earliest date of Settling Respondents' signature of this Agreement. Such payment shall be made within 30 days of the effective date of this Agreement. The Settling Respondents 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, Docket number, and Site/Spill ID# 0107, and DOJ case number 90-11-2-228-D. Settling Respondents shall forward the certified check(s) to EPA

Region I, Attn: Superfund Accounting, P.O. Box 360197 M, Pittsburgh, PA 15251. Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions).

15. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall continue to accrue Interest up until the date of full satisfaction of all amounts due and owing pursuant to the terms of this Agreement.

16. In addition to the payment(s) required pursuant to Paragraphs 14 and 15 of this Agreement, pursuant to Section IX.D. of the Consent Decree, the Custodial Trust is obligated to deposit the "Net Value" (as defined in the Consent Decree) realized from the sale of any Custodial Trust property (including the Property) into an interest-bearing escrow account (the "Escrow") for the benefit of the beneficiaries of the Custodial Trust, including EPA. The Custodial Trust currently estimates that, at the time of the closing of the sale of the Property to the Settling Respondents, at least \$700,000 will be deposited into the Escrow for the benefit of EPA in accordance with the Consent Decree.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST/INSTITUTIONAL CONTROLS/TRANSFER OF INTEREST

17. On the day that it acquires title to the Property, and continuing each day thereafter, each Settling Respondent shall grant to EPA, and the Commonwealth of Massachusetts, their authorized officers, employees, representatives, and all other persons performing response actions under EPA or Commonwealth

oversight, an irrevocable right of access at all reasonable times to the Property and, to the extent access to such other property is controlled by such Settling Respondent, to any other property to which access is required for the implementation, or operation and maintenance, of response actions at the Site, for the purposes of performing and overseeing response actions at the Site under federal law and/or state law. When practicable, EPA agrees to provide reasonable notice to each Settling Respondent of the timing of non-emergency response actions to be undertaken at the Property.

18. Notwithstanding any provision of this Agreement, EPA retains all of its access 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, et. seq., and any other applicable statute or regulation.

19. Within 15 days after the effective date of this Agreement, the Settling Respondents shall record a certified copy of this Agreement with the Registry of Deeds, Middlesex County, Massachusetts. 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).

20. Prior to any transfer of any interest in the Property by any Settling Respondent, such Settling Respondent shall ensure

that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation as is required by this Agreement.

21. Prior to the conveyance of any interest in the Property, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Respondent conveying such interest shall give written notice of this Agreement and the Institutional Controls to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of this Agreement and Institutional Controls was given to the grantee. In the event of any such conveyance, the obligations of the Settling Respondent conveying such interest to provide or secure access pursuant to Section V (Access and Institutional Controls) shall continue to be met by the Settling Respondent conveying such interest to the extent the Settling Respondent retains any interest in or control over the Property. To the extent set forth in Paragraph 41 of this Agreement, the conveyance or transfer of any interest in the Property shall not release or otherwise affect the liability of the Settling Respondent conveying or transferring such interest in the Property to comply with all provisions of this Agreement.

22. Pursuant to this Agreement, each Settling Respondent shall take such actions as the United States directs to secure, modify, and/or implement Institutional Controls on the Property as required by the Consent Decree and/or the Record of Decision

for the Site for soil remediation dated September 30, 1986, and/or pursuant to any future Record of Decision or Action Memoranda for the Site for implementation of response actions (including, without limitation, design, construction, operation, maintenance, monitoring, and use restrictions) for or pertaining to the Site.

23. Each Settling Respondent's securing, modification, and/or implementation of Institutional Controls shall require the approval of EPA and include, without limitation, the filing and recordation in the Registry of Deeds, Middlesex County, Commonwealth of Massachusetts, declaration(s) or modification(s) of declaration(s) of covenants, conditions and restrictions that run with the Property, setting forth the Institutional Controls applicable thereto. All such declaration(s), or modification(s) of such declaration(s), shall be enforceable by the United States and the Commonwealth of Massachusetts, and shall provide that these persons have the right to inspect the Property to determine whether the declaration(s), or modification(s) to the declaration(s), are being complied with. In accordance with Section 104(j) of CERCLA, 42 U.S.C. §9604(j), the United States' interest in the declaration(s), or modification(s) to such declaration(s), shall terminate at such time as EPA determines that the remedial action for the Site is complete.

24. Declaration(s), or modification(s) to such declaration(s), required to be filed pursuant to this Agreement shall conform with local and state law in order to create an

enforceable property restriction that runs with the land. If a question arises as to the enforceability of a declaration, or modification to a declaration, under state or local law after it has been filed, the United States may require Settling Respondents to secure an amended declaration, or an amended modification to a declaration, that is enforceable under state and local law.

VI. DUE CARE/COOPERATION

25. Each 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. Each Settling Respondent shall also comply with all obligations needed to maintain the Institutional Controls, and any future Institutional Controls as well as all obligations under this Agreement relating to response actions.

26. Each Settling Respondent recognizes that the implementation of response actions at the Site may interfere with a Settling Respondent's use of the Property, may require modification of a Settling Respondent's construction design and/or modification of a Settling Respondent's construction plans and schedules, and may require temporary closure of a Settling Respondent's operations or a part thereof. Each Settling Respondent agrees to fully cooperate with EPA, and all other persons performing response actions at the Site under EPA oversight, 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 each of the Settling Respondent's operations by such entry and response.

27. In the event a Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of a hazardous substance, pollutant or contaminant at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, such 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

28. By entering into this Agreement, each Settling Respondent certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to EPA all information known to such Settling Respondent and all information in the possession or control of its principals, officers, directors, employees, contractors, shareholders, partners, members, and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. Each Settling

Respondent also certifies that to the best of its knowledge and belief it has not disposed of hazardous substances at the Site or otherwise caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by a Settling Respondent is not materially accurate and complete, the United States' covenant not to sue in Section VIII, within the sole discretion of the United States, shall be null and void with respect to that Settling Respondent, and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

29. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount(s) specified in Section IV (Payment) of this Agreement, the United States on behalf of EPA covenants not to sue or take any other civil or administrative action against any Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. § 9606 or 9607(a), with respect to (i) the Existing Contamination at the Property; (ii) any hazardous substances, pollutants or contaminants presently existing at or under the Site that may migrate onto or under the Property from the Site through no act or omission of the Settling Respondent; and (iii) any hazardous substances, pollutants or contaminants presently existing at or under any portion of the Site other than the Property, but only to the extent that such liability is based

solely on the Settling Respondent's status as an owner or operator of the Property.

IX. RESERVATION OF RIGHTS

30. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves, and the Agreement is without prejudice to, all rights against any Settling Respondent with respect to all other matters, including but not limited to, the following:

- (a) claims based on a failure by any Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest/Institutional Controls), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs);
- (b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Property caused or contributed to by any Settling Respondent, its successors, assignees, lessees or sublessees;
- (c) any liability resulting from exacerbation by any Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;
- (d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the effective date of this Agreement, not within the definition of Existing Contamination, provided that this subparagraph shall not apply to any hazardous substances, pollutants, or contaminants

presently existing at or under the Site that may migrate, through no act or omission of the Settling Respondent, onto or under the Property from the Site and so long as Settling Respondent exercises due care;

- (e) criminal liability;
- (f) liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss;
- (g) liability for violations of local, state or federal law or regulations; and
- (h) liability for the Site, excluding liability for the Property as set forth in Section VIII (United States' Covenants Not to Sue).

31. With respect to any claim or cause of action asserted by the United States, each Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

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

33. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to compel parties other than the Settling Respondents 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 in exercising its authority under federal law. Each Settling Respondent acknowledges that it is purchasing property where response actions may be required.

X. EACH SETTLING RESPONDENT'S COVENANT NOT TO SUE

34. In consideration of the United States' covenant not to sue in Section VIII of this Agreement, each Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to:

(a) any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through Sections 106(b)(2), 111, 112, 113 of CERCLA, or any other provision of law;

(b) any claims under CERCLA Sections 107 or 113 related to the Site;

(c) any claims under the United States Constitution or the Tucker Act, 28 U.S.C. § 1491, including claims based on EPA's oversight of response actions or approval of plans for such response activities;

(d) any claims arising out of response activities at the Site, including claims based on EPA's selection of response

actions, oversight of response activities, or approval of plans for such activities, provided, however that each Settling Respondent shall have the right to participate in any administrative process respecting response activities at the Site to the extent each Settling Respondent is not otherwise barred by any of Settling Respondent's covenants;

(e) any claims or causes of action for interference with contracts, business relations or economic advantage; or

(f) any claims for costs, attorneys fees, other fees, or expenses incurred in this action, including claims under 28 U.S.C. § 2412 (including claims under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412(d)).

35. Each Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing herein 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).

XI. PARTIES BOUND/TRANSFER OF COVENANT

36. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on each Settling Respondent, its officers, directors, employees, members,

partners, and agents. 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.

37. The United States' covenant not to sue as set forth in Section VIII is non-transferable except pursuant to this Section.

38. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon the Settling Respondents under this Agreement may be assigned or transferred to any person or entity, including future owners of all or any portion of the Property, with the prior written consent of EPA in its sole discretion. Any assignee, transferee, affiliate, successor or foreclosure purchaser approved by EPA pursuant to this Paragraph shall become a Settling Respondent to this Agreement. To the extent that any one Settling Respondent fails to comply with the terms of this Agreement, the consequences of that failure as set forth in this Agreement shall only apply to that Settling Respondent.

39. (a) Notwithstanding any other provision of this Agreement, a successor owner of all or any portion of the Property shall automatically be assigned the rights, benefits and obligations under this Agreement, so long as such successor owner (i) agrees in writing to be bound by all of the terms of this agreement, (ii) affirmatively adopts the certification set out in Section VII (Certification) of this Agreement, (iii) submits to EPA an executed signature page using the form attached hereto as

Exhibit 4, (iv) submits to EPA a "Description of Proposed Activities" using the form attached hereto as Exhibit 5, and (v) answers "NO" to questions 8(a)-(h) in said "Description of Proposed Activities" (collectively the "Successor Owner's Transfer Requirements"). In order to satisfy the Successor Owner's Transfer Requirements, all required documents must be submitted to EPA via certified mail - return receipt requested in accordance with Section XV (Notices and Submissions). Satisfaction of the Successor Owner's Transfer Requirements does not by itself remove or waive the statutory protections afforded by Sections 101(20) and 107(n) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(n).

(b) Notwithstanding any other provision of this Agreement, a tenant leasing all or any portion of the Property shall automatically be assigned the rights, benefits and obligations under this Agreement, so long as such tenant (i) agrees in writing to be bound by all of the terms of this Agreement, (ii) affirmatively adopts the certification set out in Section VII (Certification) of this Agreement, (iii) submits to EPA an executed signature page using the form attached hereto as Exhibit 4, (iv) submits to EPA a "Description of Proposed Activities" using the form attached hereto as Exhibit 5, and (v) answers "NO" to questions 8(a)-(h) in said "Description of Proposed Activities" (collectively the "Tenant's Requirements"). In order to satisfy the Tenant's Requirements, all required documents must be submitted to EPA via certified mail - return receipt requested

in accordance with Section XV (Notices and Submissions).

40. The Settling Respondents agree to pay the reasonable costs incurred by EPA to review any requests for consent to assign or transfer the Property or any portion thereof.

41. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except that, (i) if a Settling Respondent no longer possesses any interest in the Property, it shall have no further obligations under Paragraphs 17, 19, 26 and 27; and (ii) EPA and the assignor or transferor may agree otherwise and modify this agreement in writing, accordingly. Prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the covenant not to sue in Section VIII to be available to that party. The covenant not to sue in Section VIII shall not be effective with respect to any successors, assignees or transferees who fail both to provide such written consent to EPA and to comply with all the terms of this Agreement.

XII. DISCLAIMER

42. 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 or the Site nor does it

constitute any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

43. Each Settling Respondent agrees to retain and make available to EPA for ten years following the effective date of this Agreement (i) all site studies and investigations relating to environmental conditions at the Property; (ii) all filings made pursuant to the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001-11050, the Massachusetts Toxics Use Reduction Act, Mass. Gen Laws Chapter 21I, or any other statute that requires keeping records of the storage or use of hazardous substances; (iii) all business and operating records, contracts and documents relating to the use and/or disposal of hazardous substances at the Property, not including documents regarding the retail sale of products for household use which products contain hazardous substances. At the end of ten years, each Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA. EPA shall have 180 days within which to notify the Settling Respondent that it wants to copy such documents. Such documents may be retained on microfilm, CD-rom, or computer disc, or in their original form. In the event that records are maintained in a format other than their original form, each Settling Respondent shall certify that the documents are true and accurate embodiments of the originals.

XIV. PAYMENT OF COSTS

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

XV. NOTICES AND SUBMISSIONS

45. Whenever, under the terms of this Agreement, written notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing.

As to EPA:

EPA Remedial Project Manager
Industri-Plex Superfund Site, Woburn, Massachusetts
United States Environmental Protection Agency
Region I
JFK Federal Building
Boston, MA 02203

Daniel Winograd
Assistant Regional Counsel
United States Environmental Protection Agency
Region I
JFK Federal Building (RCU)
Boston, MA 02203

As to NDAI

National Development Associates of New England, Inc.
Attn: Mr. Thomas M. Alperin, President
2310 Washington Street
Newton Lower Falls, MA 02162

As to Target

Target Stores
Attn: Property Administrator
33 South Sixth Street, CC40C
Minneapolis, MN 55402

with a copy to:

Patricia Perry CC20E
Target Stores
33 South Sixth Street
Minneapolis, MN 55402

XVI. PUBLIC COMMENT

46. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVII. EFFECTIVE DATE

47. The effective date of this Agreement shall be the later of the date upon which both of the following conditions have been satisfied (i) EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and response to any public comments received; and (ii) Target or NDAI acquires title to the Property. Notwithstanding the foregoing, this Agreement shall (i) not become effective with respect to Target until such time as Target acquires title to the Property, and (ii) not become effective with respect to NDAI until such time as NDAI acquires title to the Property.

XVIII. TERMINATION

48. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations.

XIX. CONTRIBUTION PROTECTION

49. With regard to claims for contribution against any Settling Respondent based solely on such Settling Respondent's status as an owner or operator of the Property, the Parties hereto agree that each Settling Respondent is entitled to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and all costs incurred or to be incurred by the United States or any other person for any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Agreement including any resulting physical or chemical breakdown of these hazardous substances, pollutants or contaminants.

50. Each Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such

suit or claim.

51. Each Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XX. EXHIBITS

52. Exhibit 1 shall mean the legal description of the Property which is the subject of this Agreement.

53. Exhibit 2 shall mean a map depicting the Site.

54. Exhibit 3 shall mean a written description of the Site.

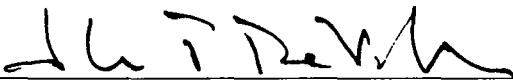
55. Exhibit 4 shall mean a model signature page for successor Settling Respondents.

56. Exhibit 5 shall mean a model description of proposed activities for successor Settling Respondents.

IT IS SO AGREED:

UNITED STATES OF AMERICA

BY:


John P. DeVillars
Regional Administrator, Region I
U.S. Environmental Protection Agency
J.F.K. Building
Boston, MA 02203

Date:

11 | 24 | 97

In the matter of Target and NDAI Agreement and Covenant not to
Sue, Docket Number CERCLA _____.

IT IS SO AGREED:

THE UNITED STATES OF AMERICA

BY: _____

Lois J. Schiffer
Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

Date: _____

12/7/97

In the matter of Target and NOAI Agreement and Covenant not to
Sue, Docket Number _____ CERCLA _____.

IT IS SO AGREED:

NATIONAL DEVELOPMENT ASSOCIATES OF NEW ENGLAND, INC.

BY: Thomas M. Alperin
Thomas M. Alperin
President
2310 Washington Street
Newton Lower Falls, MA 02162

Date: September 28, 1997

In the matter of Target and NDAI Agreement and Covenant not to
Sue, Docket Number CERCLA _____.

IT IS SO AGREED:
DAYTON HUDSON CORPORATION

BY: Bob McMahon

name Bob McMahon
title Sr. Vice President -- Target Stores
address 33 South Sixth Street, Minneapolis, MN 55402

Date: 10/08/97

EXHIBIT 1
LEGAL DESCRIPTION OF THE PROPERTY

The Property shall mean Proposed Parcel "A" shown on plan entitled "Exhibit Plan Of Land in Woburn, Massachusetts, Prepared By: Vanasse Hangen Brustlin, Inc., Dated: June 27, 1995 attached as Exhibit A to Declaration of Restrictive Covenant dated December 4, 1995 recorded at the Middlesex South Registry of Deeds in Book 25872, Page 120.

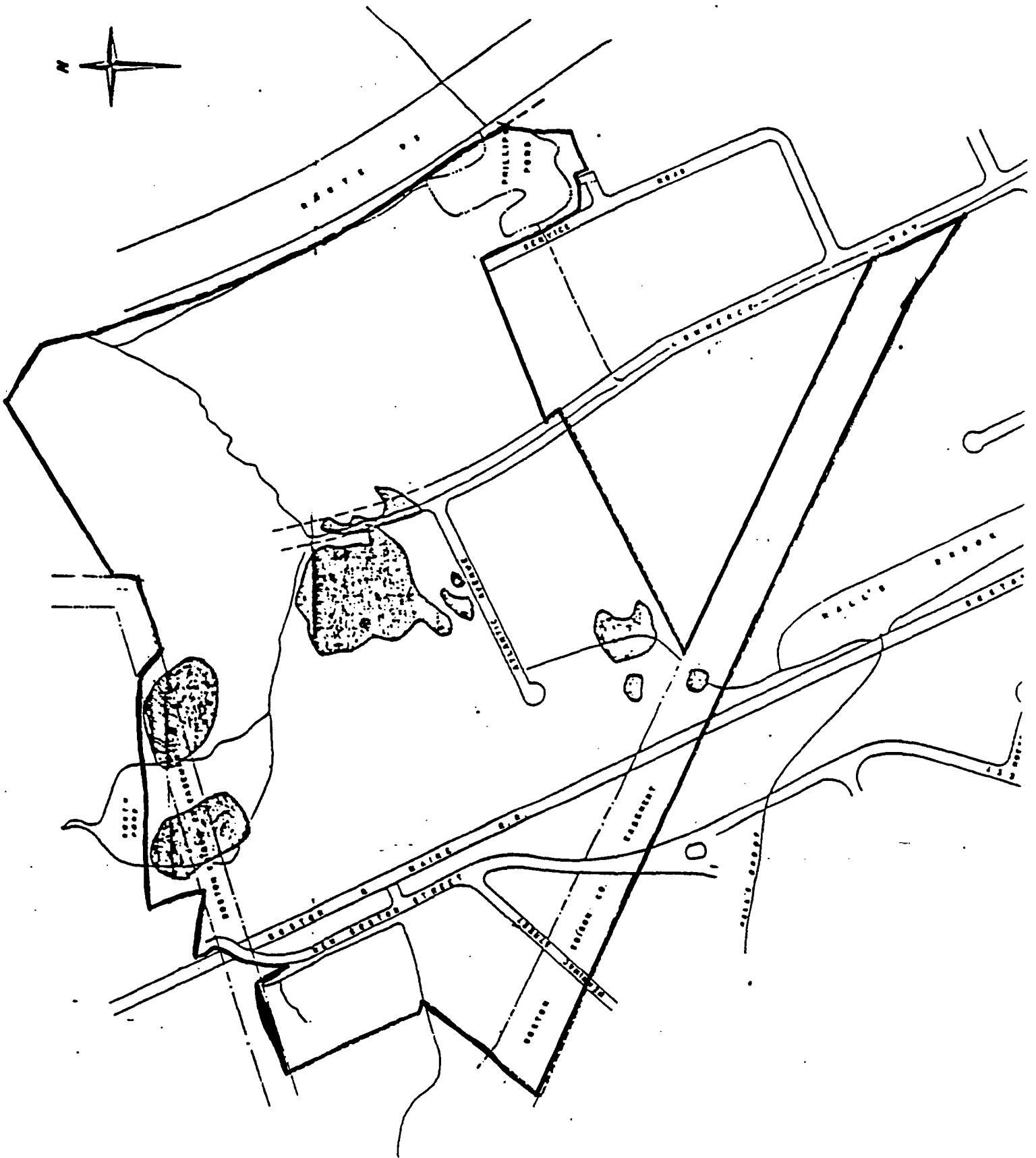


EXHIBIT 3

[Description of the Site]

Site shall mean the Industri-Plex Superfund Site in Woburn, Massachusetts, encompassing approximately 245 acres, in the vicinity of New Boston Street, Atlantic Avenue, Commerce Way, and Interstate Route 93, as described in the Record of Decision relating to the Site (signed on September 30, 1986 by the Regional Administrator, EPA Region I) and depicted on Attachment E to that certain Remedial Design/Remedial Action Plan ("RD/AP") relating to the Site.

Notwithstanding the Site boundaries depicted on Attachment E to the RD/AP, the Site includes (1) all areas north of the Mark-Phillip Trust property and north of the East and West Hide Piles up to and including the site security fence as it is to be relocated, the approximate location of which is shown on Attachment E to the RD/AP, on the property now or formerly owned, occupied, or controlled by Augustine Sheehy d/b/a Dundee Park Properties, and (2) Right of Way No. 9 of the Boston Edison Company as it extends from the southwest portion of the Site to Commerce Way.

EXHIBIT 4

In the matter of Target and NDAI Agreement and Covenant not to
Sue, Docket Number CERCLA _____.

SIGNATURE PAGE FOR SETTLING RESPONDENTS

THE UNDERSIGNED PARTY enters into the Agreement and Covenant Not
to Sue:

FOR _____
Name of Corporation

BY: _____

NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____

EXHIBIT 5
Description of Activities
of Settling Respondent

In the matter of Target and NDAI Agreement and Covenant Not To Sue, Docket Number CERCLA_____.

1. Name of Settling Respondent: _____
2. Name of Contact Person: _____
3. Address: _____
4. Telephone Number: _____
5. Nature of Interest in the Property: _____

6. Description of Activities that Settling Respondent will conduct on the Property: _____

7. Will Settling Respondent conduct any of the following activities at the Property?
 - (a) Yes/No Use or handle hazardous substances other than in the normal course of retail trade, office use or restaurant use.
 - (b) Yes/No Use cleaning materials other than in the normal course.
 - (c) Yes/No Use tractor trailer trucks upon the Property except at designated routes of ingress and egress, including at established loading docks.
 - (d) Yes/No Penetrate the surface of the Property.
 - (e) Yes/No Conduct on-site dry cleaning operations.
 - (f) Yes/No Operate an underground storage tank.
 - (g) Yes/No Conduct automobile maintenance or repair activities.
 - (h) Yes/No Conduct manufacturing activities.