



LEGEND

- BOUNDARY LINE
- RIGHT-OF-WAY
- LAND CLASS LINE
- GRID LINE
- SURVEY POINT DELINEATING ANGLE POINTS IN LAND CLASSES

CLASS A LAND
UNCONTAMINATED SOILS

CLASS B LAND
SOILS MAY CONTAIN CONTAMINANTS LESS THAN CONSENT DECREE ACTION LEVELS (NO COVER REQUIRED)

CLASS C LAND
SOILS MAY CONTAIN CONTAMINANTS GREATER THAN CONSENT DECREE ACTION LEVELS (COVER REQUIRED)

CLASS D LAND
"HOLE PILES"



Meridian Inc. <small>400 Commercial Street, Woburn, MA 01897-1100 978-935-1000 Fax 978-935-1100</small>					
PROJECT RECORD INSTITUTIONAL CONTROLS LAND CLASSIFICATIONS INDUSTRIAL-PLEX SITE REMEDIAL TRUST WOBURN, MASSACHUSETTS SCALE: 1" = 200' MAP # 2001					
DESIGNED BY: HGP	CHECKED BY: HGP	SHEET NO. A-3			
FILE: 20000203	PROJECT: 200000	PROJECT: 200000			
DATE: 08/01/00	DATE: 08/01/00	DATE: 08/01/00			
PROFESSIONAL SEAL AND SIGNATURE PROFESSIONAL DESIGNER					

30"x42" North Or.: Od

1 **GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT**
2 (42 U.S.C. §9601, *et seq.* and M.G.L. c. 21E)

3
4 *[Note: This instrument is established as an institutional*
5 *control for a federal Superfund site pursuant to a judicial*
6 *consent decree, as set forth below, and Section 104(j) of*
7 *CERCLA, 42 U.S.C. § 9604(j), and Section 6 of Chapter 21E,*
8 *M.G.L. c. 21E, §6, and contains a GRANT OF*
9 *ENVIRONMENTAL RESTRICTION AND EASEMENT*
10 *running to the UNITED STATES on behalf of its*
11 *ENVIRONMENTAL PROTECTION AGENCY and to the*
12 *MASSACHUSETTS DEPARTMENT OF*
13 *ENVIRONMENTAL PROTECTION.]*
14
15

16 Site Name: Industri-Plex Superfund Site
17 Site Location: Woburn, MA
18 EPA Site Identification Number: MAD076580950
19 DEP Release Tracking Number: 3-1731

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39		

W I T N E S S E T H :

1
2
3 WHEREAS, _____ [name of landowner] of
4 _____ [address of landowner], _____
5 County, Massachusetts (“Grantor”) **[note: modify for corporate grantor, as necessary]** is the
6 owner in fee simple of that [those] certain parcel[s] of [vacant] land located in the City of
7 Woburn, Middlesex County, Massachusetts[, with the buildings and improvements
8 thereon];
9

10 WHEREAS, said parcel[s] of land, known and/or numbered as
11 _____ which is [are] more particularly bounded and described in
12 Appendix II (“Legal Description of the Property”), attached hereto and made a part
13 hereof, (the “Property”) is [are] subject to the terms and conditions of this instrument.
14 The Property is shown on **[Note: for unregistered land add:]** a plan entitled
15 “_____” prepared by _____, dated
16 _____, recorded and/or registered in the Middlesex South Registry
17 of Deeds in Plan Book _____, Plan _____; **[Note: for registered land add:]** Land Court Plan
18 No. _____, [shown as Lot _____];
19

20 **[Note: The Grant must include a legal description of the Property that is subject to the**
21 **Grant and a reference to a surveyed plan of the Property (upon which the legal description is based).**
22 **If registered land, this plan shall be the existing Land Court Plan of the Property. If unregistered**
23 **land, unless this plan is already of record, it must be recorded prior to the Grant.]**
24

25 WHEREAS, those certain portions of the Property subject to restrictions have
26 each been designated a certain “class of land,” such classes of land being **[Note: delete any**
27 **of the following Classes of Land that are not situated within the Property.]** Class A Land, Class B
28 Land, Class C Land and Class D Land (collectively, all of the foregoing restricted areas
29 comprising the “Restricted Areas”), said Restricted Areas being identified on a certain
30 plan consisting of _____ sheets, entitled “Plan of Restricted Areas” prepared by
31 _____, dated _____, and recorded in the
32 Middlesex South Registry of Deeds in Plan Book _____, Plan _____;
33

34 WHEREAS, a legal description of the Restricted Areas by metes and bounds is
35 set forth in Appendix III (“Legal Description of the Restricted Areas”), attached here to
36 and made a part hereof;
37

38 WHEREAS, the Property and the Restricted Areas are subject to covenants,
39 restrictions, easements and other rights and obligations under the terms and conditions of
40 this instrument;
41

42 **[Note: Although certain provisions of the Grant will affect the entire Property (such as the**
43 **easements providing access and other rights), some portions of the Property may be subject to**

1 **different restrictions or rights under the Grant than other portions (such as the different classes of**
2 **land, defined below). In the latter situation, (i) the Grant must also include a legal description (by**
3 **metes and bounds) of each portion of the Property subject to the different restrictions (that is, the**
4 **different classes of land) and (ii) a surveyed plan must be prepared and Recorded showing the**
5 **boundaries of each such portion of the Property and, for registered land, referenced in or on the**
6 **Certificate of Title for the Property. (This plan should also show a perimeter survey of the Property,**
7 **for purposes of locating the different restricted portions, both within the larger parcel and relative to**
8 **adjacent properties.) All restricted areas, collectively, are referred to as the “Restricted Areas.”**
9 **This plan will also show the location of the Engineered Cover, the Equivalent Cover and the Clean**
10 **Corridors, as applicable.]**

11
12 WHEREAS, the United States Environmental Protection Agency, a duly
13 constituted agency organized under the laws of the United States of America and having
14 a regional office at One Congress Street, Suite 1100, Boston, Massachusetts 02114
15 (“EPA”), has identified a disposal site, known as the Industri-Plex Superfund Site located
16 in Woburn, MA (the “Site”), and placed the Site on the National Priorities List, set forth
17 at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September
18 8, 1983, pursuant to Section 105 of the Comprehensive Environmental Response,
19 Compensation, and Liability Act of 1980, 42 U.S.C. §9601, *et seq.*, as amended
20 (“CERCLA”), 42 U.S.C. §9605, as a result of the release or threatened release of
21 hazardous substances, as those terms are defined in CERCLA;

22
23 WHEREAS, the Massachusetts Department of Environmental Protection, a duly
24 constituted agency organized under the laws of the Commonwealth of Massachusetts,
25 having its principal office at One Winter Street, Boston, Massachusetts 02108 (“DEP”),
26 as a result of the release of oil and/or hazardous materials at the Site, as those terms are
27 defined in the Massachusetts Oil and Hazardous Materials Release, Prevention and
28 Response Act, M.G.L. c. 21E, as amended (“Chapter 21E”), has classified the Site as a
29 Tier IA disposal site and has assigned to the Site DEP Release Tracking Number 3-1731,
30 pursuant thereto;

31
32 WHEREAS, EPA regulates activities at disposal sites pursuant to CERCLA and
33 the National Contingency Plan, 40 C.F.R. 300.400, *et seq.*, as amended (the “NCP”); and
34 DEP regulates activities at disposal sites pursuant to Chapter 21E and the Massachusetts
35 Contingency Plan, 310 C.M.R. 40.0000, as amended (the “MCP”);

36
37 WHEREAS, EPA, with the concurrence of DEP, has specified certain response
38 actions for the Site in a Record of Decision dated September 30, 1986 (the “ROD”);
39 which response actions include and require institutional controls in the nature of deed
40 restrictions to ensure the long-term effectiveness of the Remedy by preventing certain
41 activities and uses in the Restricted Areas, and by requiring certain operations and
42 maintenance activities; and may select further response actions for the Site;

43

1 WHEREAS, EPA, pursuant to Section 104(j) of CERCLA, as amended, is
2 authorized to acquire an interest in real property necessary to conduct a remedial action,
3 provided that the State wherein the interest is located assures EPA that it will accept
4 transfer of the interest following completion of the remedial action;

5
6 WHEREAS, EPA has requested DEP to satisfy the CERCLA, Section 104(j)(2)
7 State assurance requirement by accepting the within grant as co-Grantee along with the
8 United States, thereafter to become sole Grantee following completion of the remedial
9 action, and affirms that in so doing DEP is acquiring an interest in real estate under
10 CERCLA, Section 104(j), and therefore benefits along with the United States from the
11 exemption from liability set forth in CERCLA, Section 104(j)(3);

12
13 WHEREAS, DEP, pursuant to Sections 3(a) and 6 of Chapter 21E, as amended,
14 respectively, is authorized to take all action appropriate to secure to the Commonwealth
15 the benefits of CERCLA and to acquire an interest in real property if necessary to carry
16 out the purposes of Chapter 21E, and is willing to serve as co-Grantee along with EPA;

17
18 WHEREAS, pursuant to that certain Consent Decree entered on April 24, 1989 by
19 the United States District Court for the District of Massachusetts in the matter styled
20 *United States v. Stauffer Chemical Company et al.*, Civil Action No. 89-0195-ML and
21 *Commonwealth of Massachusetts v. Stauffer Chemical Company et al.*, Civil Action No.
22 89-0196-ML, and recorded at the Middlesex South Registry of Deeds in Book 19837,
23 Page 476 (the "Consent Decree"), certain environmental remediation activities have been
24 and are being conducted at the Site; and said institutional controls are required to be
25 designed and implemented at the Site;

26
27 WHEREAS, pursuant to Attachment B ("Institutional Controls") of Appendix I
28 ("Remedial Design/Action Plan") of the Consent Decree, the paramount purpose of the
29 institutional controls is the preservation of the continued effectiveness of the remedial
30 actions in order to protect human health and the environment; and to the extent that it is
31 feasible to do so consistent with this paramount purpose, EPA and DEP may permit
32 designs of institutional controls that permit the greatest possible use and enjoyment of the
33 Site or parts of the Site;

34
35 WHEREAS, the Property is situated within the Site, which site contains Class A
36 Land, Class B Land, Class C Land, and Class D Land, so-called, as defined herein in
37 Appendix I ("Definitions");

38
39 WHEREAS, Grantor is a Settler, a trust established by the Consent Decree known
40 as the Custodial Trust, or successor in title to either, pursuant to the Consent Decree; and
41

1 WHEREAS, pursuant to the Consent Decree, all Settlers who are landowners, the
2 Custodial Trust, and their respective successors in title, are required to inaugurate these
3 institutional controls;

4
5 NOW, THEREFORE, pursuant to and in consideration of the terms of the
6 Consent Decree [note: if applicable, add:] [and EPA and DEP's approval of the transfer of
7 the Property pursuant to an approval letter from _____ to _____ dated
8 _____] [note: if applicable, add:] [and a certain Interim Grant recorded at
9 _____], the receipt and sufficiency of which consideration is hereby
10 acknowledged, and in accordance with CERCLA, Section 104(j) and Chapter 21E,
11 Section 6, GRANTOR hereby GIVES, GRANTS AND CONVEYS to the UNITED
12 STATES OF AMERICA and to the MASSACHUSETTS DEPARTMENT OF
13 ENVIRONMENTAL PROTECTION ("DEP") (collectively, "Grantees"), with
14 WARRANTY COVENANTS, those certain restrictions and easements as hereinafter set
15 forth, in, on, upon, through, over and under the Property, being more particularly
16 bounded and described as aforesaid.

17
18 (The foregoing grant being referred to herein as the "Grant of Environmental
19 Restriction and Easement," "Grant," "Industri-Plex Site Institutional Controls," or
20 "Institutional Controls.")

21
22 The terms and conditions of said Institutional Controls are set forth, below, and in
23 Appendix I ("Definitions"), Appendix II ("Legal Description of the Property"), Appendix
24 III ("Legal Description of the Restricted Areas"), Appendix IV ("Work Protocols"),
25 Appendix V ("Cover Inspection Plan"), Appendix VI ("Amendment Protocol") and
26 Appendix VII ("Subordination Agreement Form") to this instrument, all of which are
27 attached hereto and made a part hereof.

28
29 1. Definitions. The terms used in the Institutional Controls, including all
30 appendices, shall have the meanings set forth in Appendix I ("Definitions"), or if not
31 defined therein, then as ascribed to them in the Consent Decree, in Section 101 of
32 CERCLA, in the NCP, in Section 2 of Chapter 21E, and/or in the MCP, as applicable.

33
34 2. Restricted Activities and Uses. Except as otherwise provided in Paragraph 3
35 ("Permitted Activities and Uses") and Paragraph 5 ("Emergency Excavation"), Grantor
36 shall not perform, suffer, allow, or cause any person to perform any of the activities or
37 uses set forth below in, on, upon, through, over or under the following Restricted Areas,
38 or portions thereof, which are situated within the Property.

39
40
41 A. Class D Land. The prohibited activities and uses for Class D Land are:
42

1 i. excavating, drilling, or otherwise disturbing the Cover and/or
2 the soil underlying the Cover, unless in strict compliance with the Work
3 Protocols;

4
5 ii. extracting, pumping, consuming, exposing, or otherwise using
6 groundwater, unless in strict compliance with the Work Protocols;

7
8 iii. planting vegetation which would impair the effectiveness of
9 the Cover, including without limitation deep-rooted trees and other
10 vegetation the roots of which would likely grow to breach or otherwise
11 impair the geotextile or geomembrane portion of the Engineered Cover;

12 iv. commercial or industrial activity or use;

13 v. residential activity or use;

14 vi. agricultural activity or use; or

15 vii. any activity or use which would interfere with, or would be
16 reasonably likely to interfere with, the implementation, effectiveness,
17 integrity, operation or maintenance of the Remedy;

18
19
20
21
22
23 B. Class C Land. The prohibited activities and uses for Class C Land are:

24 i. excavating, drilling, or otherwise disturbing the Cover and/or
25 the soil underlying the Cover, unless in strict compliance with the Work
26 Protocols;

27 ii. extracting, pumping, consuming, exposing or otherwise using
28 groundwater, unless in strict compliance with the Work Protocols;

29 iii. planting vegetation which would impair the effectiveness of
30 the Cover, including without limitation deep-rooted trees and other
31 vegetation the roots of which would likely grow to breach or otherwise
32 impair the geotextile or geomembrane portion of the Engineered Cover;

33 iv. residential activity or use;

34 v. agricultural activity or use; or

1 vi. any activity or use which would interfere with, or would be
2 reasonably likely to interfere with, the implementation, effectiveness,
3 integrity, operation or maintenance of the Remedy.
4

5 C. Class B Land. The prohibited activities and uses for Class B Land are:

6 i. excavating, drilling, or otherwise disturbing the soil or ground
7 covering features, including building foundations, slabs and/or underlying
8 soils, unless in strict compliance with the Work Protocols;
9

10 ii. extracting, pumping, consuming, exposing or otherwise using
11 groundwater, unless in strict compliance with the Work Protocols;
12

13 iii. residential activity or use;

14 iv. agricultural activity or use; or
15

16 v. any activity or use which would interfere with, or would be
17 reasonably likely to interfere with, the implementation, effectiveness,
18 integrity, operation or maintenance of the Remedy.
19

20 D. Class A Land. The prohibited activities and uses for Class A Land are:
21

22 i. extracting, pumping, consuming, exposing or otherwise using
23 groundwater, unless in strict compliance with the Work Protocols; or
24

25 ii. any activity or use which would interfere with, or would be
26 reasonably likely to interfere with, the implementation, effectiveness,
27 integrity, operation or maintenance of the Remedy.
28
29

30 3. Permitted Activities and Uses. Grantor expressly reserves the right to perform,
31 suffer, or allow, or to cause any person to perform any activity or use in, on, upon,
32 through, over, or under the Property that is not restricted by the provisions of this Grant.
33 In addition, Grantor may perform, suffer, allow or cause any person to perform the
34 activities and uses set forth below, subject to the conditions set forth below, in, on, upon,
35 through, over or under the following Restricted Areas, or portions thereof, which are
36 situated within the Property.
37

38 A. Class C Land and Class D Land. The permitted activities and uses for
39 Class C Land and Class D Land are:
40
41

1 i. excavation or other disturbance of the Engineered Cover for the
2 limited purposes of landscaping and horticulture, using only herbaceous
3 and small woody, shallow-rooted plants which will not penetrate or
4 otherwise adversely affect the geotextile or geomembrane portion of the
5 Engineered Cover; and installing, maintaining and repairing fences,
6 irrigation systems and/or exterior lighting systems; subject to the
7 following conditions:
8

9 a. such excavation or other disturbance, if within twelve
10 (12) inches of the geotextile or geomembrane, shall be conducted
11 solely by hand (*i.e.*, without the use of any power equipment or
12 power tools);
13

14 b. such excavation or other disturbance shall not penetrate
15 the geotextile or geomembrane portion of the Engineered Cover;
16

17 c. such excavation or other disturbance, including any
18 associated temporary on-site storage of excavate, shall be
19 conducted in a timely manner;
20

21 d. any disturbed portion of such Engineered Cover shall be
22 restored to its original thickness or greater and to the same type of
23 Cover, both as shown on the As Built Records and/or Cover
24 Certification Report, immediately upon completion of the
25 excavation or other disturbance; and
26

27 e. each project involving work conducted under this
28 provision shall not exceed sixty (60) days in duration; and
29

30 ii. disturbance of the Cover for the purpose of performing Normal
31 Maintenance, subject to the following conditions:
32

33 a. such disturbance is capable of being conducted, and
34 shall be conducted, without exposing or coming into contact with
35 the soil or ground water underlying the Cover; and
36

37 b. such disturbance shall not result in a Permanent Cover
38 Modification; and
39

40 iii. extraction and use of groundwater for the purposes of sampling
41 monitoring wells, provided such extracted groundwater is disposed of in

1 accordance with applicable federal, State or local laws, regulations or
2 ordinances.

3
4 B. Class B Land. The permitted activities and uses for Class B Land are:

5
6 i. excavation and backfilling outside the boundaries of Clean
7 Corridors, including the removal of debris and accumulated soil and
8 sediment from drainage areas and structures (*e.g.*, culverts, channels,
9 basins); subject to the following conditions:

10
11 a. the total volume of material excavated anywhere within
12 the Property shall not exceed ten (10) cubic yards;

13
14 b. the depth of the excavation shall not exceed three (3)
15 feet;

16
17 c. such excavation shall only be permitted provided that no
18 soil is disposed of, or is required to be disposed of, off of the
19 Property; and

20
21 d. such excavation, including any associated temporary on-
22 site storage of excavate, shall be conducted in a timely manner; not
23 to exceed sixty (60) days in duration; and

24
25 ii. excavation and backfilling within the boundaries of Clean
26 Corridors, subject to the following conditions:

27
28 a. such excavation shall only be permitted within the
29 bounds of the geotextile or other material bounding the Clean
30 Corridors, and shall not penetrate such geotextile or other material
31 nor otherwise disturb the soil or other material outside such
32 bounds; and

33
34 b. such excavation, if within twelve (12) inches of the
35 geotextile, shall be conducted solely by hand (*i.e.*, without the use
36 of any power equipment or power tools); and

37
38 iii. extraction and use of groundwater for the purposes of sampling
39 monitoring wells, provided such extracted groundwater is disposed of in
40 accordance with applicable federal, State or local laws, regulations or
41 ordinances.
42

1 C. Class A Land. The permitted activities and uses for Class A Land are:

2
3 i. extraction and use of groundwater for the purposes of sampling
4 monitoring wells, provided such extracted groundwater is disposed of in
5 accordance with applicable federal, State or local laws, regulations or
6 ordinances.

7
8 D. The provisions of this Paragraph 3 (“Permitted Activities and Uses”)
9 shall not release Grantor or any other party from liability for releases of oil or
10 hazardous substances, nor shall this provision excuse Grantor or any other party
11 from complying with CERCLA, Chapter 21E, or any other applicable federal,
12 State or local laws, regulations or ordinances.

13
14 4. Obligations and Conditions. Grantor, at its sole cost and expense (except
15 where otherwise noted in the subparagraphs, below), affirmatively agrees to perform and
16 satisfy the following obligations and conditions.

17
18 A. Inspection, Inspection Report. Grantor shall engage an Independent
19 Professional or a Professional Engineer (P.E. Civil), who shall: (i) familiarize
20 himself with the Property and that portion of the Remedy situated on the Property
21 and on any abutting properties, including the restrictions on uses and activities
22 established in this Grant and any related construction plans and documentation
23 (including, if the Property contains any Class C Land or Class D Land, the As
24 Built Records and/or the Cover Certification Report); (ii) conduct periodic visual,
25 non-intrusive inspections of the Restricted Areas to ensure that Grantor is in
26 compliance with these restrictions; and, (iii) if the Property contains any Class C
27 Land or Class D Land, also conduct periodic visual, non-intrusive inspections of
28 the Cover in order to monitor its condition and protectiveness to ensure that it is
29 maintained in accordance with the As Built Records and/or the Cover
30 Certification Report, as the case may be.

31
32 i. All required inspections shall be conducted at least once every
33 calendar year during the three-month period beginning on March 1st and
34 ending on May 31st, or with such greater frequency as the Independent
35 Professional or Professional Engineer, Grantees, or Grantor may
36 determine is warranted taking into consideration the particular uses and
37 activities at the Property and, if applicable, the condition of the Cover;
38 and, if the Property contains any Class C Land or Class D Land, within
39 seven (7) days of receipt of written notice from Grantees of the occurrence
40 of a twenty-five (25) year, twenty-four (24) hour storm event; or, with the
41 written approval of Grantees, with such lesser frequency as Grantees, in

1 their sole discretion, may determine is warranted taking into consideration
2 the particular uses and activities at the Property.

3
4 ii. No later than fourteen (14) days after conducting each required
5 inspection, Grantor shall submit to Grantees, with a copy to Settlers, a
6 written inspection report, prepared by the Independent Professional or
7 Professional Engineer who performed the inspection, summarizing the
8 results of the inspection and stating whether Grantor is in compliance with
9 the restrictions and, if applicable, whether the Cover is in good condition
10 and repair, and including any supporting information upon which such
11 determinations are based, as applicable. Each such inspection report shall
12 include a written statement, signed by Grantor, stating that (a) Grantor has
13 personally reviewed the inspection report and that (b) the inspection report
14 is true, accurate and complete. If Grantor is a corporate entity, a duly
15 authorized officer of the corporation shall sign the inspection report on
16 behalf of Grantor.

17
18 iii. All inspections and reports required for Class C Land and
19 Class D Land pursuant to this subparagraph 4.A. shall be performed and
20 prepared, respectively, in accordance with the Cover Inspection Plan, set
21 forth in Appendix V (“Cover Inspection Plan”) to this Grant.

22
23 B. Normal Maintenance. The provisions of this subparagraph 4.B. shall
24 only apply if the Property contains Class C Land or Class D Land. Grantor shall
25 perform Normal Maintenance of Class C Land and Class D Land, in a timely
26 fashion as required to maintain the integrity and effectiveness of that portion of
27 the Remedy situated on the Property, and no later than ninety (90) days from the
28 time when Grantor first knows or reasonably should have known of the condition
29 requiring the performance of such Normal Maintenance. In determining whether
30 Normal Maintenance is needed, and in the performance of Normal Maintenance,
31 Grantor shall consider not only information that a landowner would ordinarily
32 possess, but also information contained in the Cover Certification Report and
33 obtained during the inspections performed at the Property pursuant to
34 subparagraph 4A. (“Inspection, Inspection Report”).

35
36 i. Provided, however, that in the event that Grantor believes that
37 such Normal Maintenance is needed as the result of a Defect in the
38 Remedy, then in lieu of performing such Normal Maintenance within the
39 required time period set forth above, Grantor may instead, within the same
40 time period, submit a written request to EPA for a determination under the
41 Consent Decree of whether such Normal Maintenance is needed as the
42 result of a Defect in the Remedy. Grantor shall provide a copy of such

1 submittal to both Grantees and Settlers. Grantor’s submittal shall include
2 a written statement by an Independent Professional asserting that, in his or
3 her professional opinion, the need for such Normal Maintenance is due to
4 a Defect in the Remedy, and explaining the basis for such opinion. This
5 statement must be signed by the Independent Professional, and must be
6 accompanied by his or her supporting analysis, and other documentation
7 as appropriate. The time period for this submittal may only be extended
8 with the prior, written approval of Grantees. Failure to fully comply with
9 the requirements of this provision shall automatically waive any right that
10 Grantor may otherwise possess to delay or excuse performance of the
11 required Normal Maintenance.

12
13 ii. If EPA determines, pursuant to the Consent Decree, that such
14 Normal Maintenance is needed as the result of a Defect in the Remedy,
15 then Grantor’s obligations to fund and perform such Normal Maintenance
16 shall be determined (along with those of other parties bound under Section
17 IV.A of the Consent Decree) pursuant to and in accordance with the terms
18 and provisions of the Consent Decree and its appendices, including
19 without limitation Sections VII.A, VII.B, VII.C(8) and X.D of the Consent
20 Decree and Section F.3.e of Appendix I (Remedial Design/Action Plan) of
21 the Consent Decree. Otherwise, Grantor shall fund and perform such
22 Normal Maintenance in accordance with the terms and provisions of this
23 Grant.

24
25 iii. Nothing herein is intended to impair or otherwise affect
26 whatever rights Grantor may possess pursuant to the Consent Decree, if
27 any, to pursue and obtain recovery from any other person or entity for
28 costs associated with Normal Maintenance.

29
30 C. Operation and Maintenance Plan. The provisions of this subparagraph
31 4.C. shall only apply if the Property contains Class C Land or Class D Land.
32 Grantor shall fund and implement the activities required by the Operation and
33 Maintenance Plan at the Property, in accordance with the terms and provisions of
34 the Consent Decree, including without limitation its appendices. The provisions
35 of this Grant shall not limit or modify any additional obligations to perform such
36 activities on the Property or elsewhere within the Site, to which Grantor may be
37 subject under the Consent Decree, including without limitation its appendices.

38
39 D. Remedy Failure: Preliminary Action, Notification and Repair. The
40 provisions of this subparagraph 4.D shall only apply if the Property contains Class
41 C Land or Class D Land.

1 i. In the event of any Remedy Failure, Grantor shall immediately
2 implement such preliminary action as is reasonably necessary to prevent
3 potential human exposure to, and/or releases of, soil and/or groundwater
4 due to the Remedy Failure.
5

6 ii. Unless the work necessary to repair the Remedy Failure falls
7 within the definition of Normal Maintenance, Grantor shall notify
8 Grantees and other Settlers of such Remedy Failure, orally no more than
9 twenty-four (24) hours from the time Grantor first knows or reasonably
10 should have known of such Remedy Failure, and in writing no more than
11 five (5) business days from the time that Grantor first knows or reasonably
12 should have known of such Remedy Failure.
13

14 iii. Grantor shall, within twenty-one (21) days of such written
15 notification, prepare and submit to Grantees, with a copy to Settlers, a
16 work plan for the repair of the Remedy Failure, in accordance with the
17 Work Protocols. After submittal of such work plan and any review and
18 approval required pursuant to the Work Protocols, Grantor shall promptly
19 conduct the repair in accordance with such work plan and otherwise
20 comply with all applicable requirements of the Work Protocols.
21

22 iv. Provided, however, that in the event that Grantor believes that
23 such Remedy Failure is the result of a Defect in the Remedy, then in lieu
24 of submitting such work plan within twenty-one (21) days of the date
25 when such written notification is due, Grantor may instead, within the
26 same time period, submit a written request to EPA for a determination
27 under the Consent Decree of whether such Remedy Failure is the result of
28 a Defect in the Remedy. Grantor shall provide a copy of such submittal to
29 both Grantees and Settlers. Grantor's submittal shall include a written
30 statement by an Independent Professional asserting that, in his or her
31 professional opinion, the Remedy Failure is the result of a Defect in the
32 Remedy, and explaining the basis for such opinion. This statement must
33 be signed by the Independent Professional, and must be accompanied by
34 his or her supporting analysis, and other documentation as appropriate.
35 The time period for this submittal may only be extended with the prior,
36 written approval of Grantees. Failure to fully comply with the
37 requirements of this provision shall automatically waive any right that
38 Grantor may otherwise possess to delay or excuse submittal of the work
39 plan for the repair of the Remedy Failure and to conduct such repair.
40

41 v. If EPA determines, pursuant to the Consent Decree, that such
42 Remedy Failure is the result of a Defect in the Remedy, then Grantor's

1 obligations to fund and perform response actions to cure the Remedy
2 Failure, beyond those response actions taken pursuant to subparagraph
3 4.D.i., above, shall be determined (along with those of other parties bound
4 under Section IV.A of the Consent Decree) pursuant to and in accordance
5 with the terms and provisions of the Consent Decree and its appendices,
6 including without limitation Sections VII.A, VII.B, VII.C(8) and X.D of
7 the Consent Decree and Section F.3.e of Appendix I (“Remedial
8 Design/Action Plan”) to the Consent Decree. Otherwise, Grantor shall
9 fund and perform response actions to cure such Remedy Failure in
10 accordance with the terms of this Grant.

11
12 vi. Nothing herein shall impair or otherwise affect whatever rights
13 Grantor may possess pursuant to the Consent Decree, if any, to pursue and
14 obtain recovery from any other person or entity for costs incurred to cure a
15 Remedy Failure.

16
17 E. Notification of Other Violations. Grantor shall timely notify Grantees
18 of any violation of this Grant of which Grantor becomes aware, except to the
19 extent otherwise required or waived in subparagraph 4.D, above.

20
21 F. Permit and Approval Related Notifications.

22
23 i. Grantor, at the time that it submits any application to obtain a
24 permit or approval from any governmental or other authority for any use
25 or activity within the Restricted Areas, shall provide that authority with a
26 copy of this Grant and with written notification of the nature and extent of
27 the restrictions on uses and activities established herein.

28
29 ii. Grantor, at the time that it submits any building permit
30 application for construction within the Restricted Areas to the City of
31 Woburn, shall submit to Grantees a copy of its building permit
32 application, and, upon receipt, a copy of any certificate of use and
33 occupancy or other final permit or approval issued in connection with its
34 building permit application.

35
36 5. Emergency Excavation. In the event that it becomes necessary to excavate a
37 portion of the Restricted Areas as part of a response to an emergency (*e.g.*, emergency
38 repair of utility lines, pipes, wires, conduits or related structures, or responding to a fire
39 or flood), then the activity and use restriction provisions of Paragraph 2 (“Restricted
40 Activities and Uses”), which would otherwise restrict such excavation, shall be
41 temporarily suspended with respect to such excavation for the duration of the response,
42 provided that Grantor satisfies the following requirements:

1
2 A. orally notifies the following persons of such emergency as soon as
3 possible but no later than two (2) hours after having learned of such emergency:
4

5 i. EPA Office of Emergency Planning and Response; and
6

7 ii. DEP Northeast Regional Office of Emergency Response
8 Section;
9

10 or such other persons as Grantees, respectively, may each identify in writing,
11 from time to time, to Grantor for such emergency response notifications;
12

13 B. notifies Grantees in writing of such emergency no later than five (5)
14 days after having learned of such emergency, with a copy to Settlers;
15

16 C. limits the actual disturbance involved in such excavation to the
17 minimum reasonably necessary to adequately respond to the emergency;
18

19 D. implements all measures necessary to limit actual or potential risk to
20 human health, safety, public welfare or the environment;
21

22 E. manages and disposes of any soils, sediments, and/or groundwater
23 removed in connection with such excavation in accordance with Paragraph 14
24 (“Materials Management and Sampling Protocol”) of the Work Protocols;
25

26 F. reinstates the Cover, if applicable, in accordance with Paragraph 15
27 (“Cover and Clean Corridors Protocol”) of the Work Protocols;
28

29 G. engages an Independent Professional to oversee the implementation of
30 the activities required in subparagraphs 5.C. through 5.F.; and
31

32 H. no later than thirty (30) days following the date of the emergency,
33 submits to Grantees a written emergency excavation report prepared by an
34 Independent Professional documenting that the excavation activity conducted as
35 part of the emergency response was conducted in compliance with this Paragraph
36 6 (“Emergency Excavation”). This report shall contain, at a minimum, the
37 following:
38

39 i. the name and address of Grantor, the Independent Professional
40 and, if different, the person that conducted the emergency response;
41

- 1 ii. a detailed description of the nature of the emergency, the
2 emergency response and the time frame within which it occurred;
3
4 iii. the address where the emergency response took place, and a
5 map illustrating the location of the emergency response;
6
7 iv. all monitoring data, sampling analytical results, disposal
8 location(s), and soil and groundwater volume estimates, if applicable,
9 obtained, used and/or developed in connection with the emergency
10 response. If the emergency response involved the disposal of
11 Contaminated Soil or Contaminated Groundwater off of the Site, then a
12 copy of the documentation evidencing the disposal facility's acceptance of
13 the media and all other transport manifest documentation;
14
15 v. the written opinion of an Independent Professional stating that
16 all of the requirements of subparagraphs 5.D., 5.E. and 5.F., above, if
17 applicable, have been satisfied.
18

19 **6. Grant of Easement.**

20
21 A. In establishing this Grant, Grantor hereby grants to Grantees, and to
22 their respective agents, contractors, subcontractors and employees, a perpetual
23 easement to pass and repass in, on, upon, through and, across, over and under the
24 Property; for the following purposes:

- 25
26 i. inspecting the Property and the Remedy to ensure compliance
27 with and fulfillment of, including enforcement of, the terms of this
28 Environmental Restriction and Easement;
29
30 ii. conducting surface and subsurface investigations;
31
32 iii. installing and sampling groundwater monitoring wells;
33
34 iv. conducting other intrusive and non-intrusive investigations and
35 activities consistent with CERCLA, the NCP, Chapter 21E and the MCP;
36
37 v. performing operations and maintenance activities for the
38 Remedy and/or as set forth in any operations and maintenance plan
39 developed pursuant to the Consent Decree;
40
41 vi. performing response actions in connection with the Remedy;
42 and

1
2 vii. conducting any other activity required by the Consent Decree
3 or future remedial actions.
4

5 B. The foregoing grant of easement is made subject to and conditioned
6 upon the following:
7

8 i. Grantor acknowledges that Grantees' exercise of their respective
9 rights granted hereunder may interfere with Grantor's use and enjoyment
10 of the Property, and/or may require temporary closure of a portion of the
11 Property;
12

13 ii. Grantor shall cooperate fully with Grantees in the exercise of
14 the foregoing easement rights, and shall not interfere with the actions
15 taken in furtherance of the exercise of the easement;
16

17 iii. Grantees, consistent with their responsibilities under applicable
18 law, shall use reasonable efforts to minimize interference with the
19 Grantor's operations on and/or use of the Property;
20

21 iv. Grantees shall make reasonable efforts to provide advance
22 notice to Grantor of any physically intrusive investigations and
23 remediation activities either intends to conduct at the Property pursuant to
24 their respective easements, unless such activities are conducted as part of
25 an emergency and/or enforcement activities, as Grantees, in their
26 respective sole discretions, may determine; and
27

28 v. Grantor shall have the right, upon timely request and at its own
29 cost and expense, to obtain a split sample of any sample obtained by
30 Grantees pursuant to the easement, unless such sample is obtained as part
31 of an emergency and/or enforcement activities, as Grantees, in their
32 respective sole discretions, may determine.
33

34 7. Construction and Severability.
35

36 A. This instrument shall be liberally construed in favor of the grant to
37 effect the purpose of this instrument and the policies and purposes of CERCLA
38 and/or Chapter 21E. If any provision of this instrument is found to be ambiguous,
39 an interpretation consistent with the purpose of this instrument that would render
40 the provision valid shall be favored over any interpretation that would render it
41 invalid.
42

1 B. In the event that any court or other tribunal determines that any
2 provision of this instrument is invalid or unenforceable, such provision shall be
3 deemed to have been modified automatically to conform to the requirements for
4 validity and enforceability as determined by such court or tribunal. In the event
5 that the provision invalidated is of such a nature that it cannot be so modified, the
6 provision shall be deemed deleted from this instrument as though it had never
7 been included herein. In either case, the remaining provisions of this instrument
8 shall remain in full force and effect.
9

10 8. Enforcement.
11

12 A. Grantees, their respective successors and assigns, shall have the right
13 to enforce the terms and conditions of this instrument, including without
14 limitation the right to enforce Grantor's obligation to perform its duties and
15 obligations hereunder. If Grantees, in their sole discretion, elect to perform
16 response actions they deem necessary to cure any violation of this Grant, all costs
17 and expenses for such response actions shall be assessed against Grantor, as
18 follows. Grantees shall submit an itemized bill for work performed to Grantor,
19 who shall remit payment therefor within thirty (30) days of receipt, unless another
20 time or schedule is agreed upon by both parties. Such costs may include the costs
21 and expenses to collect any repayment, together with Interest thereon, and all
22 costs and expenses of any related proceedings at law or in equity, including court
23 costs and attorney's fees plus Interest.
24

25 B. Grantor expressly acknowledges that a violation of the terms of this
26 instrument could result in the following:
27

28 i. the assessment of penalties, including without limitation
29 stipulated penalties pursuant to Paragraph 9 ("Stipulated Penalties"), and
30 other action by Grantees to enforce the terms of this Grant and the
31 Agreement, pursuant to CERCLA and/or M.G.L. c. 21E and their
32 implementing regulations, and other law and regulations, as applicable;
33 and/or
34

35 ii. upon a determination by a court of competent jurisdiction, the
36 issuance of criminal and civil penalties, and/or equitable remedies which
37 could include the issuance of an order to modify or remove any
38 improvements constructed in violation of the terms of this Grant at
39 Grantor's sole cost and expense, and/or to reimburse Grantees for any
40 costs incurred in modifying or removing any improvement constructed in
41 violation of the terms of this Grant.
42

1 C. All reasonable costs and expenses of Grantees, including but not
2 limited to, attorney's fees, incurred in any such enforcement action shall be borne
3 by Grantor, to the extent not inconsistent with CERCLA, Chapter 21E and/or any
4 other applicable law.
5

6 D. Notwithstanding any other provision of this instrument, all rights and
7 remedies (including without limitation sanctions and penalties) available
8 hereunder shall be in addition to, but not in lieu of, any and all rights and
9 remedies (including without limitation sanctions and penalties) at law or in equity,
10 including CERCLA or Chapter 21E, and/or pursuant to the Consent Decree,
11 which rights and remedies Grantees fully reserve. Enforcement of the terms of
12 this instrument, including without limitation Paragraph 9 ("Stipulated Penalties"),
13 shall be at the discretion of Grantees, and any forbearance, delay or omission to
14 exercise their respective rights under this instrument shall not be deemed to be a
15 waiver by Grantees of such term or any subsequent breach of the same or any
16 other term, or of any of the rights of Grantees under this instrument.
17

18 9. Stipulated Penalties.
19

20 A. In the event that Grantor violates a provision of the Grant, Grantor
21 shall pay to Grantees stipulated penalties in the following amounts for each day of
22 each and every such violation:
23

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 st through 7 th day	\$ 750.00
8 th through 14 th day	\$1,500.00
15 th through 28 th day	\$2,500.00
29 th through 60 th day	\$4,000.00
Beyond 60 days	\$8,000.00

30
31 One-half of the above amounts shall be payable to each Grantee, unless otherwise
32 instructed in writing by Grantees. In the event that either of the Grantees
33 terminates its interest in this instrument, then all of the above amounts shall be
34 payable as instructed in writing by the remaining Grantee.
35

36 B. Stipulated penalties shall begin to accrue on the day that performance
37 is due or noncompliance occurs, and shall continue to accrue through the final day
38 of correction of the noncompliance. Nothing herein shall prevent the
39 simultaneous accrual of separate penalties for separate violations of this Grant.
40

1 C. All penalties due to Grantees under this Paragraph shall be paid within
2 forty-five (45) days of receipt by Grantor of notification of noncompliance from
3 either Grantee. Interest shall begin to accrue on the unpaid balance at the end of
4 the 45-day period.

5
6 D. Stipulated penalties due to EPA shall be paid by certified check
7 payable to "EPA Hazardous Substances Superfund" and shall be submitted by
8 reliable overnight delivery service, delivered in hand or mailed by postage-paid
9 registered or certified mail, return receipt requested to:

10
11 EPA Superfund
12 P. O. Box 371003M,
13 Pittsburgh, PA 15251.

14
15 E. Stipulated penalties due to DEP shall be paid by certified check
16 payable to the Commonwealth of Massachusetts and shall be submitted by
17 reliable overnight delivery service, delivered in hand or mailed by postage-paid
18 registered or certified mail, return receipt requested to:

19
20 Office of the Attorney General
21 Chief, Environmental Protection Division
22 One Ashburton Place
23 Boston, MA 02108.

24
25 F. Each check in payment of stipulated penalties shall be marked with:

- 26
27 i. a reference to the Industri-Plex Site;
28
29 ii. Civil Action Number 89-0195-MC, if to the EPA; or Civil
30 Action Number 89-0196-MC, if to DEP; and
31
32 iii. shall state that it is for stipulated penalties pursuant to this
33 Grant.

34
35 G. EPA may, in its sole discretion, waive or suspend the accrual of any
36 stipulated penalties due to it under this Paragraph 9 ("Stipulated Penalties"). DEP
37 may, in its sole discretion, waive or suspend the accrual of any stipulated
38 penalties due to it under this Paragraph 9 ("Stipulated Penalties").
39

40 10. Compliance Status Requests. Grantor may submit a written request to
41 Grantees for a written statement of the status of Grantor's compliance with this Grant
42 based on information then in Grantees' possession, such as the inspection reports

1 submitted pursuant to subparagraph 4.A. Grantees shall make best efforts to respond to
2 up to two such requests per annum, within thirty (30) days of receipt.

3
4 11. Self-Executing. This instrument is intended, and is hereby declared to be
5 self-executing, and shall not be deemed or construed to be personal or executory (within
6 the meaning of any provision of the Federal Bankruptcy Code or similar law of any
7 jurisdiction whether now existing or hereafter arising).

8
9 12. Provisions to Run with the Land. The land use restrictions, obligations,
10 access rights and related rights, provided in this Grant, establish certain rights, liabilities,
11 agreements and obligations upon and subject to which the Property or any portion thereof
12 shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered or
13 conveyed. The rights, liabilities, agreements and obligations herein set forth shall run
14 with the Property for the term of this instrument, as applicable thereto, and any portion
15 thereof, and shall inure to the benefit of Grantees, their respective successors and assigns,
16 and be binding upon Grantor and all parties claiming by, through or under Grantor.
17 Grantor hereby covenants for himself and his heirs, successors and assigns, to stand
18 seized and hold title to the Property, or any portion thereof, subject to these land use
19 restrictions and access rights, and related rights; provided, however, that a violation of
20 these land use restrictions and access rights, and related rights, shall not result in a
21 forfeiture or reversion of Grantor's title to the Property.

22
23 13. Concurrence Presumed. It is agreed that:

24
25 A. Grantor and all parties claiming by, through or under Grantor shall be
26 deemed to be in accord with the provisions herein set forth; and

27
28 B. Grantor and all such parties agree for and among themselves and any
29 party claiming by, through or under them, and their respective agents, contractors,
30 sub-contractors and employees, that the land use restrictions, obligations, and
31 access rights, and related rights, herein established, shall be adhered to and not
32 violated and that their respective interests in the Property shall be subject to the
33 provisions herein set forth.

34 14. Incorporation into Deeds, Mortgages, Leases & Instruments of Transfer.
35 Grantor hereby agrees to incorporate this instrument, in full or by reference, into all
36 deeds, easements, mortgages, leases, licenses, occupancy agreements or any other
37 instrument of transfer by which an interest in and/or a right to use the Property, or any
38 portion thereof, is conveyed; provided, however, that any failure of Grantor to do so shall
39 not affect the validity or applicability of the provisions of Paragraph 12 (“Provisions to
40 Run With the Land”).

41

1 15. Amendment and Release.
2

3 A. Grantor may amend this instrument, including without limitation any of
4 its appendices or the Plan of Restricted Areas, only with the prior, written
5 approval of Grantees. Grantor further agrees to execute any amendment to this
6 instrument which Grantees reasonably deem necessary to maintain the continued
7 effectiveness of the Remedy in order to protect human health and the
8 environment. All amendments shall include Grantees' signed approval and shall
9 become effective upon Recordation and/or Registration.

10
11 B. Grantor may propose to Grantees, with a copy to Settlers, an
12 amendment of an activity or use restriction set forth in Paragraph 2 ("Restricted
13 Activities and Uses"), including a change in Class of Land of all or a portion of
14 the Property, or of a permitted activity or use set forth in Paragraph 3 ("Permitted
15 Activities and Uses"), based upon changed circumstances including without
16 limitation new analytic and engineering data. In the event that Grantor requests
17 such an amendment, Grantor shall comply with the provisions of the Amendment
18 Protocol, set forth in Appendix VI ("Amendment Protocol") to this Grant.
19

20 C. Release. Each of Grantees may release its respective interest in the
21 Grant, in whole or in part, in its respective sole discretion, and in accordance with
22 CERCLA, the NCP, and Chapter 21E, as applicable. This Grant shall not be
23 deemed released unless and until Grantees have both released their respective
24 interests hereunder. Any such releases shall become effective upon their
25 Recordation and/or Registration.
26

27 D. Recordation and/or Registration. Grantor hereby agrees to Record
28 and/or Register any amendment to and/or release of this instrument, or other
29 document created pursuant to this instrument for which Recording and/or
30 Registration is required, within thirty (30) days of the date of having received
31 from Grantees any such amendment, release or other such document executed by
32 Grantees and/or evidencing Grantees' approval, as appropriate, in recordable
33 form. No more than thirty (30) days from the date of Recording and/or
34 Registering of said amendment, release and/or other such document, Grantor shall
35 provide a certified Registry copy of the amendment, release and/or other such
36 document to Grantees and the Document Repository, with a copy to Settlers. At
37 that time, or as soon thereafter as it becomes available, Grantor shall provide
38 Grantees with the final recording information for the amendment, release, and/or
39 other such document, certified by said Registry. Grantor shall pay any and all
40 recording fees, land transfer taxes and other such transactional costs associated
41 with any such amendment or release.
42

1 E. Notice to Local Officials. In accordance with the requirements set
2 forth in 310 C.M.R. §40.1403(7), as amended, and within thirty (30) days after
3 Recording and/or Registering any such amendment, release, or other such
4 document, Grantor shall: (i) provide the City of Woburn’s Chief Municipal
5 Officer, Board of Health, Zoning Official and Building Code Enforcement
6 Official with copies of such Recorded and/or Registered amendment, release or
7 other such document; (ii) publish a legal notice indicating the Recording and/or
8 Registering of such amendment, release or other such document, and including
9 the information described in 310 C.M.R. §40.1403(7)(b)(1), in a newspaper which
10 circulates in the City of Woburn; and (iii) provide copies of said legal notice to
11 Grantees within seven (7) days of its publication.
12

13 16. No Dedication Intended. Nothing in this instrument shall be construed to be
14 a gift or dedication of the Property to Grantees, their respective assigns or to the general
15 public for any purpose whatsoever.
16

17 17. Term. This Grant shall run with the land in perpetuity and is intended to
18 conform to the exception for “other restrictions held by any governmental body” set forth
19 in clause (c) of the first paragraph of M.G.L. c. 184, § 26, as amended.

20 18. Rights Reserved.

21
22 A. It is expressly agreed that acceptance of this instrument by Grantees or
23 its assignment shall not operate to bar, diminish, or in any way affect any legal or
24 equitable right of Grantees, their respective successors or assigns, to issue any
25 future order or take any future response action with respect to the Property or in
26 any way affect any other claim, action, suit, cause of action, or demand which
27 Grantees, their respective successors or assigns, may otherwise possess with
28 respect thereto.
29

30 B. Nothing in this document shall limit or otherwise affect the rights of
31 EPA or DEP to obtain access to, or restrict the use of, the Property pursuant to
32 CERCLA, Chapter 21E, or any other applicable statute or regulation.

33 19. No Waiver. Except as otherwise provided herein, no delay by any party to
34 this instrument in exercising any right or remedy provided herein shall constitute a
35 waiver thereof, and no waiver by a party to this instrument of any specific provision
36 hereof shall be construed as a waiver of any preceding or succeeding violation of the
37 same or any other provision hereof.
38

1 20. Assignment. This Grant, including without limitation all easements, rights,
2 covenants, obligations and restrictions inuring to the benefit of Grantees, herein
3 contained, shall be freely assignable by Grantees, in whole or in part, at any time.
4

5 21. Authority. Grantor represents and warrants that he, she or it has been duly
6 authorized by all necessary action to execute this instrument. Grantor represents and
7 warrants that it has good, clear, record and title to the Property, free and clear of all
8 matters of record which could extinguish, through foreclosure or otherwise, this Grant,
9 except for bona fide, third-party encumbrances of record duly Recorded and/or
10 Registered prior to the Effective Date of this instrument which have been, or will be,
11 expressly subordinated to this instrument pursuant to a subordination agreement.
12

13 22. Interpretation of Words. Any word or defined term contained in this
14 instrument shall be read as singular, plural, masculine, feminine or neuter as the context
15 so requires.
16

17 23. Notices; Changes of Address.

18
19 A. General. Any notice, delivery or other communication permitted or
20 required under this instrument, including those notices made pursuant to
21 subparagraphs 23.B. through 23.E., inclusive, unless otherwise provided in this
22 instrument, shall be in writing and sent by reliable overnight delivery service,
23 delivered in hand or mailed by postage-paid registered or certified mail, return
24 receipt requested. Notices or other communications shall be deemed given, if by
25 overnight delivery service, on the first business day following deposit with such
26 delivery service; if by hand, on the date of the receipt evidencing the hand
27 delivery thereof; or, if by registered or certified mail, three (3) days after deposit
28 in the United States mails; provided that notice of change of address shall be
29 deemed effective only upon receipt.
30

31 B. EPA and DEP. Whenever, under the terms of this instrument, written
32 notice is required to be given or a document is required to be sent to Grantees,
33 EPA and/or DEP, as the case may be, it shall be directed to both EPA and DEP, to
34 the individuals at the addresses specified below, or as otherwise directed in
35 writing by EPA and/or DEP.
36

37 As to EPA:

38
39 EPA Remedial Project Manager
40 Industri-Plex Superfund Site, Woburn, Massachusetts
41 United States Environmental Protection Agency, Region I
42 One Congress Street, Suite 1100

1 Boston, MA 02203

2
3 and to:

4
5 EPA Enforcement Counsel
6 Industri-Plex Superfund Site
7 United States Environmental Protection Agency, Region I
8 One Congress Street, Suite 1100
9 Boston, MA 02203

10
11 As to DEP:

12
13 Bureau of Waste Site Cleanup
14 Department of Environmental Protection
15 One Winter Street, 7th Floor
16 Boston, MA 02108
17 Attention: Industri-Plex Superfund Site Project Manager
18

19 C. Settlers. Whenever, under the terms of this instrument, written notice
20 is required to be given or a document is required to be sent to Settlers, it shall be
21 directed to the individual at the address specified below, or as otherwise directed
22 in writing by Settlers:

23
24 Solutia, Inc.
25 P.O. Box 66760
26 575 Maryville Center Drive
27 St. Louis, MO 63166-6760
28 Attention: Coordinator for Industri-Plex Superfund Site
29
30

31 D. Grantor. Whenever, under the terms of this instrument, written notice
32 is required to be given or a document is required to be sent to Grantor, it shall be
33 directed to the individual at the address specified below:

34
35 **[Note: fill in name and address of owner of the Property:]**

36 _____
37 _____
38 _____
39 _____

40
41 E. Changes of Address. Grantor shall notify Grantees and Settlers of any
42 change of the mailing address specified above. Any party giving such notice shall

1 do so in writing, within thirty (30) days of such change in address. Such notice
2 shall be effective upon receipt, unless such notice provides for a later effective
3 date (*e.g.*, in the case of advance notice).
4

5 24. Changes in Ownership. In the event of a change in record ownership
6 of all or a portion of the Property, the transferor and the transferee of such interest
7 shall notify Grantees of such transfer in writing. The transferor's obligation to
8 notify of such change in ownership shall survive such transfer.
9

10 A. Such notification shall include, at a minimum:

11 i. the name and address of the transferor and the transferee of such
12 interest;

13 ii. the address of the subject Property and a statement as to
14 whether all or a portion of the Property has been transferred;

15 iii. a copy of the instrument of transfer, evidencing the official,
16 final Recording and/or Registration information thereon;

17 iv. if only a portion of the property has been transferred, a copy of
18 the survey plan of record with the Registry of Deeds and/or Land
19 Registration Office, evidencing the official, final Recording and/or
20 Registration information thereon, stamped and signed by a Massachusetts
21 registered land surveyor, identifying such portion; and

22 v. identification of the Industri-Plex Superfund Site, EPA Site
23 Identification Number MAD076580950 and DEP Release Tracking No. 3-
24 1731.
25
26

27 B. Such notification shall be submitted no later than thirty (30) days after
28 the date of transfer of such interest. In the event that either the instrument of
29 transfer or the survey plan, if required, is not available with the official, final
30 Recording and/or Registration information thereon within said thirty (30) days,
31 Grantor shall instead submit a certified Registry copy of such instrument or
32 survey plan within the required thirty (30) day time period, and shall submit a
33 copy with the official, final Recording and/or Registration information as soon
34 thereafter as it becomes available.
35
36
37
38
39

40 25. Governing Law; Captions. This instrument shall be governed by and
41 interpreted in accordance with the laws of the United States and of the Commonwealth of
42 Massachusetts, as applicable. All captions and headings contained in this instrument are

1 for convenience of reference only, and shall not be used to govern or interpret the
2 meaning or intent of any provision of this document.

3
4 26. Effective Date. This instrument shall become effective upon its Recordation
5 and/or Registration.

6
7 No more than thirty (30) days from the date of Recording and/or Registration,
8 Grantor shall provide Grantees with a certified Registry and/or Land Registration Office
9 copy of this instrument. At that time, or as soon as practicable thereafter, Grantor shall
10 provide Grantees with a copy of this instrument, as recorded, certified by said Registry
11 and/or Land Registration Office.

12
13 As the United States of America and the Commonwealth of Massachusetts are
14 parties to this instrument, no Massachusetts deed excise tax stamps are affixed hereto,
15 none being required by law (M.G.L. Chapter 64D, Section 1, as amended).

1 WITNESS the execution hereof under seal this _____ day of _____,
2 2005.

3
4
5 GRANTOR:

6 _____
7
8

9
10
11 _____
12 (print name)
13
14

15
16 COMMONWEALTH OF MASSACHUSETTS

17
18 _____, ss
19

20 On this ____ day of _____, 20__, before me, the undersigned notary
21 public, personally appeared _____, proved to me through
22 satisfactory evidence of identification, which were
23 _____, to be the person whose name is signed on the
24 preceding or attached document, and acknowledged to me that (he) (she) signed it
25 voluntarily for its stated purpose.
26

27 _____
28 Notary Public
29 My commission expires:
30

31 [Seal]
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33

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[Note: or, use corporate form signature block and acknowledgement, etc., as appropriate:]

WITNESS the execution hereof under seal this _____ day of _____,
2005.

GRANTOR:

[name of corporate entity]

By: _____

(print name)

Its: _____
(print title)

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, as _____ [Note: insert above title] for _____ [Note: insert above corporate name], a corporation.

Notary Public
My commission expires:

[Seal]

1 In accordance with CERCLA, 42 U.S.C. §9601 *et seq.*, as amended, the [insert authorized
2 federal officer] of the [insert authorized federal agency or department] hereby approves the
3 Grant.
4

5 _____

6 _____
7
8 [insert name and title]
9

10 Date: _____
11
12
13
14

15 In accordance with M.G.L. c. 21E, §6, as amended, the Commissioner of the
16 Department of Environmental Protection hereby approves the Grant.
17

18
19 _____
20 Robert W. Golledge, Jr.
21 Commissioner
22 Dept. of Environmental Protection
23

24 Date: _____
25
26
27
28
29
30

31 Upon recording, return to:

32 [insert EPA responsible party]
33

APPENDIX I – Definitions

1. Definitions. The following terms shall have the meanings set forth, below:

A. “As Built Records” shall mean the engineering drawings and other records, as amended, which depict the location and details of Clean Corridors and/or that portion of the Remedy situated within the Property as constructed, or otherwise designated, a copy of which is on file at the Document Repository.

B. “Business Day” shall mean a calendar day, exclusive of those calendar days which fall on a Saturday, Sunday or federal holiday.

C. “Class A Land” shall mean that portion of the Property, if any, identified as Class A Land on the Plan of Restricted Areas; a legal description thereof by metes and bounds being set forth in Appendix III (“Legal Description of the Restricted Areas”). Class A Land may contain Contaminated Groundwater.

D. “Class B Land” shall mean that portion of the Property, if any, identified as Class B Land on the Plan of Restricted Areas; a legal description thereof by metes and bounds being set forth in Appendix III (“Legal Description of the Restricted Areas”). Class B Land may contain Contaminated Soil and Contaminated Groundwater.

E. “Class C Land” shall mean that portion of the Property, if any, identified as Class C Land on the Plan of Restricted Areas; a legal description thereof by metes and bounds being set forth in Appendix III (“Legal Description of the Restricted Areas”). Class C Land contains Contaminated Soil and Cover, and may contain Contaminated Groundwater.

F. “Class D Land” shall mean that portion of the Property, if any, identified as Class D Land on the Plan of Restricted Areas; a legal description thereof by metes and bounds being set forth in Appendix III (“Legal Description of the Restricted Areas”). Class D Land contains Contaminated Soil and Cover, and may contain Contaminated Groundwater. Class D Land also comprises the East, West, East-Central and South Hide Piles, as shown on the As Built Records; and the location of which are generally depicted on the Plan of Restricted Areas.

G. “Clean Corridors” shall mean all soil or other material, bounded below and to the sides by geotextile or other material as shown on the As Built Records, and bounded above by those portions of the Property, if any, referred to as Clean Corridors on the Plan of Restricted Areas. Clean Corridors are situated within Class B Land and are constructed so as to clearly delineate their boundaries. Generally, Clean Corridors

provide an area which does not contain Contaminated Soil, where work may be performed, usually related to utilities or other infrastructure that require frequent access for maintenance.

H. "Contaminated Groundwater" shall mean any groundwater within the Site contaminated with arsenic, chromium, lead, benzene, toluene or other hazardous materials and/or substances exceeding applicable local, State and/or Federal standards.

I. "Contaminated Soil" shall mean soil, sediment, fill or other earthen material within the Site containing arsenic at or above a concentration of three hundred (300) parts per million; lead at or above a concentration of six hundred (600) parts per million; chromium at or above a concentration of one thousand (1000) parts per million; and/or animal hides, or their constituents, from which emanate odors.

J. "Cover" shall mean Engineered Cover and Equivalent Cover, collectively.

K. "Cover Certification Report" shall mean a report prepared for the Property containing such information as is necessary to document the completion of the Cover situated on the Property, as amended, including the As Built Records, as applicable, and/or other construction and survey plans, and quality assurance and control documentation, a copy of which is on file at the Document Repository.

L. "Cover Inspection Plan" shall mean the plan set forth in Appendix VI ("Cover Inspection Plan"), attached hereto and made a part hereof.

M. "Day" or "Days" shall mean a calendar day or days, except where expressly otherwise provided.

N. "Defect in the Remedy" shall mean any lack, insufficiency or imperfection in the design or construction of the Remedy, excluding Equivalent Cover, under conditions and use for which the Remedy was designed (but for such lack, insufficiency or imperfection), which results in or may result in a Remedy Failure.

O. "Document Repository" shall mean the records center located at the Woburn Public Library, at 45 Pleasant Street in Woburn, MA, and the EPA Records Center, located at US EPA Region 1 - New England at One Congress Street in Boston, MA, established for the Site pursuant to the ROD and/or Consent Decree. The Document Repository contains documents, drawings, reports, data, specifications and other pertinent detailed information pertaining to the Remedy, the Consent Decree and related documents.

P. "Effective Date" shall mean the date of Recordation and/or Registration of this

Environmental Restriction and Easement, as the case may be.

Q. “Emergency Excavation Report” shall mean a written report prepared in accordance with the requirements of Paragraph 5 (“Emergency Excavation”) of the Grant.

R. “Engineered Cover” shall mean all physical barriers situated in, on, or under those portions of the Property, if any, referred to as Engineered Cover on the Plan of Restricted Areas. Engineered Cover was designed and constructed by the Industri-Plex Site Remedial Trust as part of the response activities at the Site to prevent exposure to Contaminated Soil on Class C Land and Class D Land, as shown on the original As Built Records, or as shown on approved permanent modifications to those As Built Records. Engineered Cover may be comprised of one or more of the following materials: geotextile, geomembrane, soil, gravel, bituminous concrete and/or asphalt.

S. “Equivalent Cover” shall mean all physical barriers preventing exposure to underlying soil, sediment, fill or other earthen material within the Site, situated in, on, or under those portions of the Property, if any, referred to as Equivalent Cover on the Plan of Restricted Areas. Equivalent Cover, although not designed as part of the Engineered Cover, functions to prevent exposure to Contaminated Soil on Class C Land and Class D Land, as shown on the original As Built Records, or as shown on approved permanent modifications to those As Built Records. Equivalent Cover may be comprised of one or more of the following ground covering structures or features, or portions of such structures or features: buildings; foundations; slabs; paved driveways, walkways, parking lots and/or roads; or other such ground covering structures or features.

T. “Gas Treatment System” shall mean that part of the Remedy which consists of physical structures constructed on or beneath the Site, including ancillary structures and improvements, which are situated on the Property, if any, for the purposes of collecting, treating and controlling odors which might otherwise emanate from the East Hide Pile, as shown on the As Built Records; and the location of which is generally depicted on the Plan of Restricted Areas.

U. “Hazardous Substances” shall mean any substance defined as a “hazardous substance,” “pollutant” or “contaminant” under CERCLA; a “hazardous waste” under Section 1004(5) of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6903; a “hazardous material” under Section 2 of Chapter 21E; and/or animal hides, or their constituents, from which emanate odors.

V. “Independent Professional” shall mean a person who is a licensed Hazardous Waste Site Cleanup Professional, pursuant to M. G. L. c. 21A and 309 C. M. R. §§ 1.0 to 8.0 (a “Licensed Site Professional” or “LSP”), and either (i) is also a Professional

Engineer (P.E., Civil), licensed by the Massachusetts Board of Registration of Professional Engineers and Professional Land Surveyors, pursuant to M. G. L. c.112 §§ 81D to 81T and implementing regulations; or (ii) is acting, as necessary, in reliance on such a Professional Engineer (P.E., Civil) and other professionals, as needed. In addition, an Independent Professional shall be familiar with the requirements of this Grant of Environmental Restriction and Easement, including its appendices.

W. "Interest" shall mean:

i. with respect to EPA and Grantor; the rate established by the Department of the Treasury under 31 U.S.C. subsection 3717; and

ii. with respect to DEP, twelve (12) percent per annum, as set forth in Section 13 of Chapter 21E.

X. "Interim Groundwater Remedy" shall mean that portion of the Remedy which consists of any and all physical structures, including any ancillary structures and improvements, now or hereafter constructed on or beneath the surface of the Site, which are situated on the Property, for the interim groundwater remedy required by the Consent Decree, as more particularly set forth in Paragraph D ("Groundwater Remedy") of Appendix I ("Remedial Design/Action Plan") to the Consent Decree, as now or hereafter are or may be shown on the As Built Records; and the location of which is or may be generally depicted on the Plan of Restricted Areas. The Interim Groundwater Remedy may include, without limitation, facilities for capturing and treating contaminated groundwater; discharging the treated groundwater; and/or monitoring.

Y. "Normal Maintenance" shall mean any and all activities a landowner would routinely need to perform in order to keep his or her property in good condition and repair, exclusive of repair of damage to the geotextile or geomembrane portion of the Engineered Cover. For purposes of this instrument, Normal Maintenance may include, without limitation, activities such as lawn cutting, watering and reseeding; repair of erosion and filling in ruts; bituminous or concrete pavement and asphalt seal coating, bituminous or concrete pavement and asphalt stripe painting, overlaying bituminous or concrete pavement and asphalt, sealing cracks and filling potholes; maintaining and repairing interior building sumps, sump pumps and drainage systems; maintaining and repairing building foundations; removal of unwanted vegetation; removal of debris and accumulated soil and sediment from drainage areas and structures (*e.g.*, culverts, channels, basins).

Z. "Operation and Maintenance Plan" shall mean Chapter 19, including tables and appendices, of the document entitled "100% Remedial Design, Part I, Volume 1," prepared by Golder Associates, dated April 22, 1992, and approved by EPA and DEP in

two letters from Joseph DeCola, EPA Project Manager and Jay Naparstek, DEP Project Manager, to Dave L. Baumgartner, ISRT Project Manager, dated March 11, 1993 and May 19, 1993, copies of which are on file at the Document Repository. Chapter 19 includes, without limitation, an Inspection Plan, a Maintenance Plan and a Monitoring Plan.

AA. "Permanent Cover Modification" shall mean a permanent change to the Cover, such that the Cover has been altered from that depicted in the As Built Records, the Cover Certification Report and/or on the Plan of Restricted Areas.

BB. "Plan of Restricted Areas" shall mean the plan consisting of ____ sheets, entitled "Plan of Restricted Areas" prepared by _____, dated _____, recorded in the Middlesex South Registry of Deeds in Plan Book ____, Plan _____. The Plan of Restricted Areas depicts the surveyed locations of the Restricted Areas and certain other features of the Remedy, including without limitation any Engineered Cover or Equivalent Cover, situated on the Property.

CC. "Qualified Professional" shall mean a professional with no less than five (5) years of experience in the field of hazardous waste site assessment and remediation, including experience in hazardous waste management, construction methods and terminology, and preparation and interpretation of remediation and construction plans and documents. In addition, such professional shall be familiar with the requirements of this Grant of Environmental Restriction and Easement, including its appendices. A Qualified Professional may be, but is not necessarily required to be, an Independent Professional.

DD. "Recorded and/or Registered" and its various conjugations shall mean, as to unregistered land, recorded with the appropriate registry of deeds; and as to registered land, filed with the appropriate land registration office; each conjugated as appropriate;

EE. "Remedy" shall mean the Cover; the Gas Treatment System; the Interim Groundwater Remedy; remediated, restored and/or created wetlands; all as depicted (i) in the Cover Certification Report and/or on the Plan of Restricted Areas to the extent that each such element of the Remedy is situated on the Property and (ii) in any such similar cover certification reports and/or on any such similar plans of restricted areas prepared or recorded, respectively, with respect to any and all other properties at the Site, pursuant to the Consent Decree; and/or any other activity, including any resultant structures, required by the Consent Decree; as originally performed or subsequently modified in accordance with the Consent Decree and, as applicable, this instrument.

FF. "Remedy Failure" shall mean any condition at the Property which (i) prevents the Cover from fulfilling its ground-covering function and exposes potentially

Contaminated Soil, including without limitation (a) potholes and other structural damage to pavement, concrete, hardtop, cement, foundations or other such types of Cover; and (b) washouts and other significant Cover deterioration or damage; and/or (ii) prevents any portion of the Remedy from fulfilling its intended function.

GG. “Restricted Areas” shall mean, collectively, those portions of the Property bounded and described in Appendix III (“Legal Description of the Restricted Areas”), attached hereto and made a part hereof. The Restricted Areas encompass all portions of the Property subject to this Grant, and are shown on the Plan of Restricted Areas.

HH. “Settlers” shall mean Settlers as defined in Section III, Paragraph Z of the Consent Decree, at page 11, and their successors and assigns; provided, however, that for purposes of this definition, Settlers shall exclude the Mark-Phillip Trust.

II. “Site” shall mean Site as defined in Section III, Paragraph AA of the Consent Decree, at pages 11-12.

JJ. “Work Protocols” or “Protocols” shall mean the procedures, practices and standards set forth in Appendix V (“Work Protocols”), attached hereto and made a part hereof.

APPENDIX II – Legal Description of Property

[add legal description of Grantor's Property, by metes and bounds]

[NOTE: for registered land, must include reference to ownership as evidenced in Certificate of Title No. ____, [shown as Lot ____].]

APPENDIX III – Legal Description of Restricted Areas

[add legal description of Restricted Areas situated within the Grantor's property, by metes and bounds]

APPENDIX IV – Work Protocols

SECTION I. GENERAL

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4
5
6 1. Title. This appendix, which shall be referred to as the “Work Protocols,” is an
7 attachment to an instrument entitled “Industri-Plex Site Institutional Controls” (also
8 referred to as the “Institutional Controls,” “Grant of Environmental Restriction and
9 Easement” or “Grant”), dated _____ [insert date of Institutional Controls], and
10 recorded and/or registered herewith, in the Middlesex South Registry of Deeds/Land
11 Registration Office.

12
13 2. Definitions. Unless otherwise defined herein, the terms used in the Work
14 Protocols shall have the meanings set forth in Paragraph 1 (“Definitions”) of the Grant.
15

16 3. Applicability. Whenever the Institutional Controls prohibit or restrict an
17 activity or use unless conducted in compliance with the Work Protocols, or otherwise
18 require compliance with the Work Protocols, Grantor shall comply with the terms and
19 provisions of this appendix.
20

21 4. Submissions. All submissions made pursuant to the Work Protocols shall be
22 made in accordance with the requirements of Paragraph 23 (“Notices; Changes of
23 Address”) of the Grant.
24

25 5. General Requirement. The Work Protocols require Grantor to prepare and
26 submit a work plan in connection with the proposed, but otherwise prohibited activity or
27 use, and in order to comply with certain obligations to cure a Remedy Failure; to obtain
28 certain approvals where specified; and to prepare and submit a completion report when
29 the work described in the work plan is finished. If the activity or use will result in a
30 permanent change to the Institutional Controls, Grantor will also need to modify the
31 Institutional Controls by preparing and submitting revised As Built Records and/or an
32 amendment to the Grant, and related documentation, for review and approval. Grantor is
33 required to engage an Independent Professional or, where permitted, a Qualified
34 Professional to perform certain of these requirements. In some instances, Grantor may
35 also need to retain other professionals, such as a registered land surveyor, to prepare
36 certain submittals. More particularly:
37

38 A. Grantor shall prepare and submit in writing to Grantees, with a copy to
39 Settlers:

40
41 i. a work plan, prior to conducting the otherwise prohibited
42 activity or use at the Property, or when required as part of an obligation to
43 repair a Remedy Failure;
44

1 ii. a revised work plan, if certain contingencies arise; and

2
3 iii. a completion report after completing the work; and

4
5 iv. under certain circumstances, if specified, proposed revised As
6 Built Records and/or a proposed amendment to the Institutional Controls,
7 in accordance with Appendix VI (“Amendment Protocol”) of the Grant.

8
9 B. Grantor shall prepare all submittals, obtain any necessary approvals,
10 provide any necessary notifications, and record and/or register any approved
11 amendment, all in accordance with the requirements set forth in Section II, below,
12 according to the class of land where the work is to be performed, and Appendix
13 VI (“Amendment Protocol”), if a Grant amendment is required. Grantor shall
14 engage an Independent Professional or, where permitted, a Qualified Professional
15 to perform certain requirements, as specified in Section II, below. In the event
16 that the otherwise prohibited activity or use will be performed on multiple classes
17 of land, then the requirements for the most restrictive class of land shall apply,
18 except for those technical requirements which are specific to each separate class
19 of land. For purposes of the preceding requirement, Class D Land is the most
20 restrictive and Class A Land is the least restrictive.

21
22 C. Grantor shall perform all work in accordance with the work plan
23 and/or revised work plan, as submitted or, if applicable, as approved. Once
24 Grantor has begun work pursuant to an approved work plan, the terms and
25 conditions of the work plan, as approved, and all related requirements of the
26 Work Protocols shall be enforceable by Grantees, as an obligation of the Grant,
27 pursuant to Paragraph 8 (“Enforcement”) and Paragraph 9 (“Stipulated Penalties”)
28 of the Grant.

29
30 D. Grantor shall satisfy all other applicable requirements of the Work
31 Protocols.

32
33 6. Financial Assurance Requirement. If the estimated total cost of performing a
34 proposed work plan, as approved, exceeds twenty-five thousand dollars (\$25,000), then
35 Grantor shall provide written financial assurance of Grantor’s ability to perform such
36 work plan, in a form approved by Grantees, such as a surety bond guaranteeing payment,
37 a surety bond guaranteeing performance, an irrevocable standby letter of credit, or such
38 other financial mechanism as may be accepted by Grantees. The financial assurance shall
39 provide that, upon Grantees’ determination that Grantor has failed in whole or in part to
40 comply with the terms of the work plan or the Grant, Grantees shall have the right to
41 promptly obtain, without the consent of Grantor, exclusive direction and control over the
42 transfer, use and disbursement of the secured funds or performance benefits to complete
43 the actions, in whole or in part, required by the work plan or the Grant.

44

1 7. Establishment of Standard Work Plans.
2

3 A. Grantor may submit to Grantees, with a copy to Settlers, a written
4 request to approve a standard work plan for a routine, recurring activity or use,
5 each occurrence of which would not require an amendment to the Grant, in lieu of
6 submitting a work plan for each occurrence of such activity or use.
7

8 B. Each proposed standard work plan shall be submitted in writing, shall
9 be prepared or reviewed by an Independent Professional, and shall include his or
10 her opinion that the particular standard work plan complies with the applicable
11 requirements of Paragraph 13 (“Health and Safety Plan”), Paragraph 14
12 (“Materials Management and Sampling Protocol”) and Paragraph 15 (“Cover and
13 Clean Corridors Protocol”) of this appendix, and any applicable requirements of
14 the Grant.
15

16 C. Any approval of a standard work plan by Grantees shall only be valid
17 if in writing, and may be made upon such terms and conditions as Grantees deem
18 appropriate. Any such terms and conditions shall be deemed a part of that
19 particular approved standard work plan. Grantees’ approval of a particular
20 standard work plan shall remain in effect until the approval either expires by its
21 terms or is withdrawn by Grantees in writing.
22

23 D. An activity or use conducted pursuant to an approved standard work
24 plan shall not otherwise be subject to the Work Protocols, provided that Grantor
25 satisfies all of the following requirements.
26

27 i. Advance Written Notice. Grantor shall provide Grantees, with a
28 copy to Settlers, fourteen (14) days’ advance written notice of the start
29 date of the work to be performed pursuant to a standard work plan. The
30 notice shall identify:

- 31 a. the location of the activity or use to be performed,
- 32 b. the applicable approved standard work plan,
- 33 c. the entity which will perform the activity or use, and
- 34 d. if required by the approved standard work plan, the
35 name and license number of the Independent Professional or,
36 where permitted, the Qualified Professional whom Grantor has
37 engaged to oversee the activity;
- 38
- 39
- 40
- 41
- 42

43 ii. Terms and Conditions. Grantor shall comply with the terms
44 and conditions of the applicable approved standard work plan; and

1
2 iii. Completion Report. Grantor shall prepare and submit a
3 completion report in accordance with the requirements of Section III
4 (“Completion Report Requirements”), below.
5

6
7 SECTION II. WORK PLAN REQUIREMENTS
8

9 8. Work Plan Requirements for Class C Land and Class D Land. For any
10 activity or use which is prohibited, unless conducted in strict compliance with the Work
11 Protocols, and/or when required to repair a Remedy Failure, to be performed in whole or
12 in part within Class C Land and/or Class D Land, the following requirements shall apply.
13 If approval for a work plan is not expressly required, then a work plan would be
14 presumptively approved after the requisite time period has expired, barring notice from
15 the Grantees.
16

17 A. Activity or Use above Contaminated Media. If the activity or use will
18 disturb the Cover, but not fully penetrate through to the Contaminated Soil or
19 Contaminated Groundwater below, then:
20

21 i. a Qualified Professional shall prepare or review the work plan,
22 unless the activity or use will result in a Permanent Cover Modification, in
23 which case an Independent Professional shall prepare and/or review the
24 work plan;
25

26 ii. the work plan shall be submitted no less than thirty (30) days
27 prior to the initiation of the activity or use;
28

29 iii. the work plan shall include the following items :
30

31 a. a description of the proposed activity or use as it
32 pertains to the Remedy, including without limitation any
33 disturbance of the Cover;
34

35 b. a schedule for the performance of the activity or use,
36 including without limitation a schedule of times and duration for
37 any open excavation;
38

39 c. a map and, if necessary, a surveyed plan showing the
40 location of the proposed activity or use, which Grantees may also
41 require at their sole discretion;
42

43 d. the names, addresses and telephone numbers of
44 Grantor’s primary contacts for the proposed activity or use,

1 including without limitation Grantor, its lessees or other parties
2 responsible for submitting the work plan, its or their contractors
3 and consultants, and the Qualified Professional or, if applicable,
4 the Independent Professional, engaged to prepare or review the
5 work plan;

6
7 iv. the work plan shall satisfy the applicable requirements
8 of Paragraph 15 (“Cover and Clean Corridors Protocol”) of this
9 appendix; and

10
11
12 v. the Qualified Professional or the Independent Professional, as
13 the case may be, shall provide a written opinion that the work plan
14 complies with the applicable requirements of Paragraph 15 (“Cover and
15 Clean Corridors Protocol”) of this appendix, and any applicable
16 requirements of the Grant.

17
18 B. Accidental Exposure of Contaminated Media. In the event that Grantor
19 or any other party performing an activity or use pursuant to subparagraph 8.A. of
20 this appendix, above, fully penetrates the Cover through to the Contaminated Soil
21 or Contaminated Groundwater below, then Grantor or such other party shall:

22
23 i. immediately cease work in the area where the Cover penetration
24 occurred until a revised work plan is approved, as set forth below, and
25 secure the area in order to prevent the release of, or exposure to, such
26 material, or any run-on or run-off, and otherwise comply with the
27 requirements of section ii. (“Temporary On-Site Storage”) of
28 subparagraph 14.A. (“Management of Soils and Sediments”) and section
29 ii. (“Temporary On-Site Storage”) of subparagraph 14.B. (“Management
30 of Groundwater and Water from Dewatering”);

31
32 ii. immediately orally notify Grantees of such event, and no later
33 than seven (7) days after the date of such event submit written notification
34 thereof to Grantees, with a copy to Settlers;

35
36 iii. submit a revised work plan in accordance with the
37 requirements of subparagraph 8.C. (“Activity or Use within Contaminated
38 Media”), except that it shall be submitted no later than thirty (30) days
39 after the date of such event rather than sixty (60) days prior to initiation of
40 the activity or use; and

41
42 iv. promptly perform the approved work plan.
43

1 C. Activity or Use within Contaminated Media. If the activity or use will
2 fully penetrate the Cover through to the Contaminated Soil or Contaminated
3 Groundwater below, or otherwise disturb Contaminated Soil or Contaminated
4 Groundwater, then:

5
6 i. an Independent Professional shall prepare or review the work
7 plan;

8
9 ii. Grantor shall obtain Grantees' written approval of the work
10 plan before commencing the proposed activity or use;

11
12 iii. the work plan shall be submitted no less than sixty (60) days
13 prior to initiation of the activity or use;

14
15 iv. the work plan shall include the following items:

16
17 a. a description of the proposed activity or use as it pertains
18 to the Remedy, including without limitation any disturbance of the
19 Cover;

20
21 b. a schedule for the performance of the activity or use,
22 including without limitation a schedule of times and duration for
23 any open excavation;

24
25 c. a map and, if necessary, a surveyed plan showing the
26 location of the proposed activity or use, which Grantees may also
27 require at their sole discretion;

28
29 d. the names, addresses and telephone numbers of
30 Grantor's primary contacts for the proposed activity or use,
31 including without limitation Grantor, its lessees or other parties
32 responsible for submitting the work plan, its or their contractors
33 and consultants, and the Independent Professional engaged to
34 prepare or review the work plan;

35
36 e. a Health and Safety Plan, prepared in accordance with
37 the requirements of Paragraph 13 ("Health and Safety Plan") of
38 this appendix;

39
40 f. estimates of the volume of soils, sediments, surface
41 water, and/or groundwater that will be excavated, stored, contained
42 and/or disposed of;

43

1 g. an estimate of the total cost of performing the proposed
2 work plan, including all construction (*e.g.*, labor and materials) and
3 related transactional costs (including, but not limited to, planning,
4 engineering design, inspection, and documentation costs); and
5

6 h. a financial assurance, if required by Paragraph 6
7 (“Financial Assurance Requirement”) of this appendix, as provided
8 therein;
9

10 v. the work plan shall satisfy the following requirements:

11 a. the requirements of Paragraph 14 (“Materials
12 Management and Sampling Protocol”) of this appendix; and
13

14 b. the requirements of Paragraph 15 (“Cover and Clean
15 Corridors Protocol”) of this appendix; and
16

17 vi. the Independent Professional shall provide a written opinion
18 that the work plan complies with the requirements of Paragraph 13
19 (“Health and Safety Plan”), Paragraph 14 (“Materials Management
20 and Sampling Protocol”) and Paragraph 15 (“Cover and Clean
21 Corridors Protocol”) of this appendix, and any applicable
22 requirements of the Grant.
23
24

25 9. Work Plan Requirements for Class A Land and Class B Land. For any activity
26 or use which is prohibited, unless conducted in strict compliance with the Work
27 Protocols, to be performed in whole or in part within Class A Land and/or Class B Land:
28

29 A. an Independent Professional shall prepare or review the work plan;
30

31 B. the work plan shall be submitted no less than thirty (30) days prior to
32 initiation of the activity or use;
33

34 C. the work plan shall include the following items:
35

36 i. a description of the proposed activity or use;
37

38 ii. a schedule for the performance of the activity or use;
39

40 iii. a map and/or, upon the request of Grantees, a surveyed plan
41 showing the location of the proposed activity or use;
42

43 iv. the names, addresses and telephone numbers of Grantor’s
44 primary contacts for the proposed activity or use, including without

1 limitation Grantor, its lessees or other parties responsible for submitting
2 the work plan, its or their contractors and consultants, and the Independent
3 Professional engaged to prepare or review the work plan; and
4

5 v. a Health and Safety Plan, prepared in accordance with the
6 requirements of Paragraph 13 (“Health and Safety Plan”) of this
7 appendix, unless the activity or use is to be performed wholly within Class
8 A Land, in which case if it can be demonstrated to the satisfaction of the
9 Grantees that Contaminated Groundwater is not present in or near the area
10 of all proposed intrusive work, then such a health and safety plan shall not
11 be required;
12

13 D. the work plan shall satisfy the following requirements:
14

15 i. the applicable requirements of Paragraph 14 (“Materials
16 Management and Sampling Protocol”) of this appendix; and
17

18 ii. a financial assurance, if required by Paragraph 6 (“Financial
19 Assurance Requirement”) of this appendix, as provided therein;
20

21 E. the Independent Professional shall provide a written opinion that the
22 work plan complies with the requirements of Paragraph 13 (“Health and Safety
23 Plan”), the applicable requirements of Paragraph 14 (“Materials Management and
24 Sampling Protocol”) and any applicable requirements of the Grant; and
25

26 F. in the event that Grantor or any other party performing an activity or
27 use pursuant to subparagraphs 9.A. through 9.E. of this appendix, above,
28 discovers Contaminated Soil during the performance of such activity or use, then
29 Grantor or such other party shall:
30

31 i. if the work plan was prepared for activity or use solely within
32 Class A Land, immediately cease work in the area where the
33 Contaminated Soil was discovered, until a revised work plan is approved,
34 as set forth below, and secure the area in order to prevent the release of, or
35 exposure to, such material, or any run-on or run-off, and otherwise
36 comply with the requirements of section ii. (“Temporary On-Site
37 Storage”) of subparagraph 14.A. (“Management of Soils and Sediments”);
38

39 ii. immediately orally notify Grantees of such discovery, and no
40 later than seven (7) days after the date of such event submit written
41 notification thereof to Grantees, with a copy to Settlers;
42

43 iii. submit a revised work plan in accordance with the
44 requirements of subparagraph 8.C (“Activity or Use within Contaminated

1 Media”), as applicable, no later than thirty (30) days after the date of such
2 discovery, containing a proposal either:

3
4 a. to reclassify the land to Class C Land or Class D Land,
5 requiring a new Cover over the Contaminated Soil, in which case
6 the revised work plan shall demonstrate that the applicable
7 requirements of Paragraph 15 (“Cover and Clean Corridors
8 Protocol”) of this appendix are satisfied; or

9
10 b. to excavate and dispose of the Contaminated Soil, in
11 which case the revised work plan shall demonstrate that the
12 applicable requirements of Paragraph 14 (“Materials Management
13 and Sampling Protocol”) of this appendix are satisfied;

14
15 iv. promptly submit, along with the revised work plan, the written
16 opinion of an Independent Professional that the revised work plan
17 complies with the requirements of subparagraph 9.F.iii., above, and any
18 applicable requirements of the Grant;

19
20 v. obtain Grantees’ written approval of the revised work plan prior
21 to the commencement of the activity or use set forth in the revised work
22 plan; and

23
24 vi. promptly perform the approved revised work plan.
25

26
27 **SECTION III. COMPLETION REPORT REQUIREMENTS.**
28

29 **10. Completion Report Requirements for Class C Land and Class D Land.** After
30 completion of any activity or use conducted in whole or in part within Class C Land or
31 Class D Land requiring submission of a work plan, including without limitation any
32 activity or use conducted pursuant to Paragraph 7 (“Establishment of Standard Work
33 Plans”) of this appendix, or subparagraph 4.D (“Remedy Failure: Preliminary Action,
34 Notification and Repair”) or Paragraph 5 (“Emergency Excavation”) of the Grant:
35

36 **A.** If the activity or use disturbed the Cover without fully penetrating
37 through to the Contaminated Soil or Contaminated Groundwater below, then:
38

39 i. the completion report shall be submitted in writing, no more
40 than thirty (30) days following completion of all work pursuant to the
41 work plan;

42
43 ii. the completion report shall be prepared or reviewed by a
44 Qualified Professional, and shall include his or her opinion that the

1 activity or use has been performed in compliance with the work plan, as
2 approved, including sufficient supporting information; and
3

4 iii. if, as a result of the activity or use, a Permanent Cover
5 Modification is implemented, then Grantor shall also:
6

7 a. obtain Grantees' written approval of the revised As Built
8 Records, including fully and adequately addressing any comments
9 or concerns that Grantees may identify in connection with their
10 review prior to issuing such approval, and no later than thirty (30)
11 days after Grantees issue such approval, Grantor shall submit two
12 (2) copies of the revised As Built Records, as approved, to EPA for
13 retention in the Document Repository; and
14

15 b. if such Permanent Cover Modification results in or
16 requires, as Grantees, in their sole discretion, may determine, a
17 change in the areal extent of the boundaries of any of the
18 Restricted Areas, the Engineered Cover and/or the Equivalent
19 Cover as shown on the Plan of Restricted Areas, then Grantor shall
20 also comply with the requirements of Appendix VI ("Amendment
21 Protocol") of the Grant;
22

23 B. If the activity or use fully penetrated the Cover through to the
24 Contaminated Soil or Contaminated Groundwater below, or resulted in a
25 Permanent Cover Modification and/or new or replacement Cover, then:
26

27 i. the completion report shall be submitted in writing, no more
28 than sixty (60) days following completion of all work pursuant to the work
29 plan;
30

31 ii. the completion report shall demonstrate compliance with the
32 work plan and Section IV ("Technical Requirements") of this appendix,
33 and shall include without limitation sufficient supporting information such
34 as sampling results, disposal information, if applicable, and any
35 Independent Professional opinion(s) required by Section IV ("Technical
36 Requirements") of this appendix;
37

38 iii. the completion report shall be prepared or reviewed by an
39 Independent Professional, and shall include his or her opinion that the
40 activity or use has been performed in compliance with the work plan, as
41 approved; and
42

43 iv. if, as a result of the activity or use, a Permanent Cover
44 Modification and/or new Cover is implemented, then the completion

1 report shall also include an Independent Professional’s opinion in
2 accordance with subparagraph 15.C.vi. of this appendix, and Grantor shall
3 also:
4

5 a. obtain Grantees’ written approval of the revised As Built
6 Records, including fully and adequately addressing any comments
7 or concerns that Grantees may identify in connection with their
8 review prior to issuing such approval, and no later than thirty (30)
9 days after Grantees issue such approval, Grantor shall submit two
10 (2) copies of the revised As Built Records, as approved, to EPA for
11 retention in the Document Repository; and
12

13 b. if such Permanent Cover Modification results in or
14 requires, as Grantees, in their sole discretion, may determine, a
15 change in the areal extent of the boundaries of any of the
16 Restricted Areas, the Engineered Cover and/or the Equivalent
17 Cover as shown on the Plan of Restricted Areas, then Grantor shall
18 also comply with the requirements of Appendix VI (“Amendment
19 Protocol”) to the Grant.
20

21 **11. Completion Report Requirements for Class A Land and Class B Land.**
22

23 A. Except as provided in subparagraph 11.B., of this appendix, after
24 completion of any restricted activity or use conducted in whole or in part within
25 Class A Land or Class B Land, including without limitation any activity or use
26 conducted pursuant to Paragraph 7 (“Establishment of Standard Work Plans”) of
27 this appendix or Paragraph 5 (“Emergency Excavation”) of the Grant:
28

29 i. the completion report shall be submitted in writing no more than
30 thirty (30) days following completion of all work pursuant to the work
31 plan;
32

33 ii. the completion report shall demonstrate compliance with the
34 work plan and Section IV (“Technical Requirements”) of this appendix,
35 and shall include without limitation sufficient supporting information such
36 as sampling results, disposal information, if applicable, and any other
37 Independent Professional opinion(s) required by Section IV (“Technical
38 Requirements”) of this appendix;
39

40 iii. the completion report shall be prepared or reviewed by an
41 Independent Professional, and shall include his or her opinion that the
42 activity or use has been performed in compliance with the work plan, as
43 approved; and
44

1 iv. if, as a result of the activity or use, an existing Clean Corridor
2 is permanently modified or a new Clean Corridor is established, then
3 Grantor shall also:

4
5 a. obtain Grantees' written approval of the revised As Built
6 Records, including fully and adequately addressing any comments
7 or concerns that Grantees may identify in connection with their
8 review prior to issuing such approval, and no later than thirty (30)
9 days after Grantees issue such approval, Grantor shall submit two
10 (2) copies of the revised As Built Records, as approved, to EPA for
11 retention in the Document Repository; and

12
13 b. if such permanent modification to an existing Clean
14 Corridor results in or requires, as Grantees, in their sole discretion,
15 may determine, a change in the areal extent of the boundaries of
16 the Clean Corridor as shown on the Plan of Restricted Areas,
17 and/or if Grantor establishes any new Clean Corridors, then
18 Grantor shall also comply with the requirements of Appendix VI
19 (“Amendment Protocol”) to the Grant.
20

21 B. If, during the performance of any restricted activity or use pursuant to
22 Paragraph 9 of this appendix, Grantor elects to reclassify a portion of land to
23 Class C Land or Class D Land and constructs new Cover over the Contaminated
24 Soil pursuant to subparagraph 9.F. of this appendix, then for any activity or use
25 conducted in that area of the Property, in lieu of complying with the requirements
26 of subparagraph 11.A. of this appendix, Grantor shall comply with the completion
27 report requirements for Class C Land and Class D Land applicable to new Cover,
28 set forth in subparagraph 10.B. of this appendix.
29

30 31 SECTION IV. TECHNICAL REQUIREMENTS 32

33 12. Reference Information. Technical documents at the Document Repository
34 and other documents or information pertaining to the Site may be reviewed as reference
35 material for satisfying the requirements of this Section IV (“Technical Requirements”).
36 For Class C Land and Class D Land, original As Built Records and/or other plans are
37 contained in the Cover Certification Report.
38

39 13. Health and Safety Plan. The Health and Safety Plan (the “HSP”) shall be
40 prepared in accordance with the requirements in 29 CFR §1910.120, as amended, and/or
41 any and all similar and relevant laws, rules, or regulations then existing. The HSP shall
42 be approved by a Certified Industrial Hygienist (“CIH”). The plan shall include, but not
43 be limited to, the following items:
44

1 A. Contaminant Information. Information on the nature, extent and
2 concentrations of Contaminated Soil, Contaminated Groundwater and other
3 Hazardous Substances, if any, which are anticipated to be present in the media
4 that will be impacted by the activity or use proposed in the work plan;
5

6 B. Description of Tasks. A description of tasks which may involve
7 exposure to Contaminated Soil, Contaminated Groundwater and other Hazardous
8 Substances;
9

10 C. Safety Precautions. A description of anticipated actions to protect the
11 health, safety, and welfare of workers and the general public during the
12 performance of the activity or use proposed in the work plan. Actions may
13 include, but would not necessarily be limited to, air monitoring, dust control, odor
14 control, and erosion and sedimentation control measures. Such measures should
15 be employed when the Independent Professional and/or the Safety Officer
16 designated in the HSP determines through site-specific research, visual or
17 olfactory observations and/or monitoring that they are necessary. Intrusive
18 activities into groundwater in any class of land may cause exposure to volatile
19 organic compounds and/or elevated metal levels (particularly arsenic).
20 Monitoring of volatile organic compounds and appropriate direct contact
21 protection measures should be conducted for such activities. For intrusive
22 activities performed in Class B Land, Class C Land, and Class D Land, whether
23 into groundwater or only soils, an action level for total particulates should be
24 established to trigger immediate dust suppression measures and the upgrade of the
25 level of protection as necessary. In addition, such activities may cause the release
26 of hydrogen sulfide and other odorous gases from Contaminated Soils. An action
27 level should also be established for such odorous gases. A supply of odor control
28 materials (e.g., clean fill and/or odor suppressant foam) should be readily
29 available for use in the area where the intrusive activities are conducted;
30

31 D. Physical and Biological Hazards. Discussion of all relevant potential
32 physical and biological hazards;
33

34 E. Informing Workers. A requirement that all persons engaged in the
35 work read and acknowledge the provisions of the HSP, and document compliance
36 with said provisions; and
37

38 F. Worker Training. A requirement that all persons engaged in the work
39 have received appropriate and current training in matters of Health and Safety in
40 accordance with 29 CFR §1910.120, as amended, and/or any and all similar and
41 relevant laws, rules, or regulations then existing.
42

43 14. Materials Management and Sampling Protocol.
44

1 A. Management of Soils and Sediments. For Class B Land, Class C Land
2 and Class D Land, the following management requirements shall apply to soils
3 and sediments, associated materials and personal protective equipment:
4

5 i. General. Excavated soils and sediments generated while
6 performing work at the Property shall be stored, sampled and analyzed by
7 an Independent Professional prior to disposal. All soil, sediments and
8 associated materials and personal protective equipment, shall be managed
9 and disposed of in accordance with the opinion of an Independent
10 Professional and in compliance with all applicable federal, state and local
11 laws, regulations and ordinances;
12

13 ii. Temporary On-Site Storage. Excavated soils and sediments
14 stored on the Property shall be covered with and stored on impermeable
15 material to contain the excavate and prevent precipitation infiltration. The
16 excavation and the excavate shall be bermed around its perimeter to
17 collect precipitation run-off and prevent run-on. Saturated soils requiring
18 dewatering shall be dewatered and water from such dewatering shall be
19 collected and managed in accordance with subparagraph 14.B. The
20 excavation and the excavate shall be designed and marked appropriately to
21 prevent unauthorized access. Soils and sediments excavated, collected,
22 used, and subsequently placed and/or stored on Site shall be sampled and
23 properly disposed of within ninety (90) days from the date such on-site
24 storage is commenced;
25

26 iii. Soil brought onto, or moved from within, the Property. Soil
27 brought on to, or moved from within, the Property to be used as Cover or
28 within Clean Corridors shall first be sampled and analyzed to show that it
29 is below the applicable MCP Reportable Concentration standards;
30

31 iv. Due Care. Care shall be taken to avoid mixing Contaminated
32 Soil with clean fill; and
33

34 v. Disposal Alternatives. Subject to the requirements of
35 subparagraph 14.A.i, disposal alternatives for soils and sediments include,
36 but are not limited to, the following options:
37

38 a. Sampled Soils and Sediments which are Contaminated
39 Soils. Any soils and sediments which are determined to contain
40 Contaminated Soils after sampling and analysis:
41

42 (i) may be disposed of at a permitted off-site
43 facility following fifteen (15) days' advance, written notice
44 to Grantees; or

1
2 (ii) may be placed below the Cover anywhere
3 within the Site with the permission of the owner of the
4 property where such placement will occur and subject to
5 and in accordance with the requirements of the grant of
6 environmental restriction and easement applicable to that
7 property, provided that the Independent Professional's
8 opinion includes a determination that such placement will
9 not degrade the receiving area by introducing new
10 contaminants;

11
12 b. Unsampled Soils and Sediments. Unsampled, excavated
13 soils and sediments may be placed back into the excavation from
14 which they were originally removed, below the Cover, if any, and
15 within the same Class of Land. Alternatively, unsampled,
16 excavated soils may be placed below the Cover, if any, within the
17 same Class of Land, elsewhere on the Property, subject to the
18 Work Protocols applicable to Class B Land, Class C Land and/or
19 Class D Land, as the case may be.
20

21 B. Management of Groundwater and Water from Dewatering. For all
22 Restricted Areas, the following management requirements shall apply to
23 groundwater, water from dewatering activities, associated materials, and personal
24 protective equipment:
25

26 i. General. Groundwater and water from dewatering activities
27 generated while performing work at the Property shall be contained,
28 sampled and analyzed by an Independent Professional prior to disposal.
29 Such water, associated materials and personal protective equipment shall
30 be managed, treated as necessary, and disposed of in accordance with the
31 opinion of an Independent Professional and in compliance with all
32 applicable federal, state and local laws, regulations and ordinances;
33

34 ii. Temporary On-Site Storage. Groundwater, water from
35 dewatering activities, and other contaminated materials (*e.g.*, personal
36 protective equipment) extracted, pumped, excavated, collected, and
37 subsequently placed and/or stored on the Property shall be properly
38 disposed of within ninety (90) days from the date such on-site storage is
39 commenced.
40

41 C. Sampling. For all Restricted Areas, the following sampling
42 requirements shall apply:
43

1 i. General. Sampling of all relevant media (*e.g.*, soil, sediment,
2 groundwater, surface water and other materials) shall be sufficient to
3 assure adequate characterization for the end use of the materials (including
4 any discharge or disposal) in accordance with State and federal law and
5 this Section IV (“Technical Requirements”), and as required by an
6 Independent Professional;
7

8 ii. Confirmatory Sampling. The work plan shall specify sampling
9 details and identify sampling locations. For purposes of reclassification or
10 after removal of Contaminated Soil, sampling shall include, at a minimum,
11 the bottom and all four sides of an excavation and/or sufficient coverage
12 of the subject area, as required by the Independent Professional.
13

14 15. Cover and Clean Corridors Protocol.

15 A. Excavation. In the excavation of Cover and Clean Corridors, the
16 following protocol shall apply:
17

18 i. Soil, Geotextile and/or Geomembrane Cover.

19 a. Unless the approved work plan provides otherwise,
20 digging within twelve (12) inches of the geotextile fabric or
21 geomembrane material of the Cover shall be done with care by
22 hand to locate and avoid damage or penetration of the
23 geotextile/geomembrane material, and to prevent mixing soil from
24 above the geotextile/geomembrane material with Contaminated
25 Soil from below; and
26
27
28

29 b. Unless the approved work plan provides otherwise, soil
30 from above the geotextile fabric or geomembrane material shall be
31 removed and segregated prior to cutting the
32 geotextile/geomembrane material so that mixing of such soil and
33 Contaminated Soil from below does not occur;
34

35 ii. Asphalt or Concrete Cover. Broken asphalt or concrete Cover
36 may be reused below the Cover in accordance with all applicable federal,
37 State, and local regulations, policies and guidelines. No asphalt or
38 concrete Equivalent Cover shall be disposed of off the Property, unless the
39 work plan includes a plan for the prior decontamination of the asphalt or
40 concrete, or other alternative procedures;
41

42 iii. Inspections. Grantor shall fully cooperate with Grantees and
43 their respective representatives seeking to inspect the work; and
44

1 iv. Supervision of Work. Grantor shall retain an Independent
2 Professional to supervise the excavation, if an Independent Professional
3 developed or reviewed the work plan. Grantor shall retain a Qualified
4 Professional to supervise the excavation, if a Qualified Professional
5 developed or reviewed the work plan.
6

7 B. Design.

8
9 i. Replacement Cover and Clean Corridors. For the replacement
10 of Cover and/or Clean Corridors, engineering plans and specifications of
11 the work, stamped by a Professional Engineer (P.E., Civil), shall be
12 submitted with the work plan. Such plans shall illustrate that, after the
13 work, the structure and type of original Cover or Clean Corridor will be
14 reproduced in accordance with the Cover Certification Report, as
15 amended.
16

17 ii. Permanent Cover Modification and New Cover. For the design
18 of a Permanent Cover Modification and/or new Cover, the following
19 protocols shall apply:
20

21 a. Design Drawings. New or revised design drawings,
22 stamped by a Professional Engineer (P.E., Civil), shall be
23 submitted with the work plan;
24

25 b. Equivalent Protection. The new or revised design of the
26 Cover shall provide protection of human health and the
27 environment, equivalent to or greater than that provided by similar
28 types of Cover included as a part of the original 100% Remedial
29 Design for the Site prepared by Golder and distributed for bidding
30 in April 1992, a copy of which is on file in the Document
31 Repository; and
32

33 c. Design Criteria. The new or revised Cover design shall
34 address the following design criteria:
35

36 (i) containment and isolation of Contaminated Soil
37 to prevent contact by human receptors;
38

39 (ii) prevention of erosion by water, wind or use of
40 the Property;
41

42 (iii) adequate resistance to frost action/heaving;
43

44 (iv) prevention of settlement or subsidence;

1
2 (v) management of surface water during and after
3 construction, including provisions to withstand the effects
4 of 25-year return period storms;

5
6 (vi) ability to withstand customary and expected
7 activities and uses;

8
9 (vii) long-term protectiveness; and

10
11 (viii) location-specific requirements of all
12 applicable federal, state and local laws, regulations and
13 ordinances.

14
15 iii. Permanent Modifications to Existing Clean Corridors and New
16 Clean Corridors. For the design of permanent modifications to existing
17 Clean Corridors and new Clean Corridors, design drawings, stamped by a
18 Professional Engineer (P.E., Civil), shall be submitted with the work plan.
19

20 C. Construction. In the construction of replacement and new Cover and
21 Clean Corridors, and Permanent Cover Modifications and permanent
22 modifications to existing Clean Corridors, unless the approved work plan
23 provides otherwise, the following protocol shall apply:
24

25 i. Patching Geotextile or Geomembrane. A patch of replacement
26 or added geotextile or geomembrane layer of the Cover or Clean Corridor
27 shall be done in accordance with the original Site, or most recent
28 applicable, design specifications, and in accordance with the following
29 requirements:
30

31 a. a patch of replacement or added geotextile shall be sewn
32 to the existing geotextile with a continuous seam if installed on a
33 slope or, if it is not installed on a slope, the patch may be sewn as
34 described above or placed with each edge overlapping the original
35 Cover or Clean Corridor geotextile by a minimum of three (3) feet;
36 and
37

38 b. a patch of replacement or added geomembrane shall be
39 bonded to existing geomembrane in a manner that will provide
40 equivalent strength and durability to that of the original design;
41

42 ii. Transitions and Tie-Ins. Transitions within the Cover (i.e.,
43 where one type of Cover abuts a different type of Cover, or land without a
44 Cover) and tie-ins for the Clean Corridors shall be constructed in

1 accordance with the original Site or most recent applicable design
2 specifications;

3
4 iii. Inspections. Grantor shall fully cooperate with Grantees and
5 their respective representatives seeking to inspect the work;

6
7 iv. Supervision. If the work will fully penetrate through the Cover
8 or Clean Corridor to the Contaminated Soil or Contaminated Groundwater
9 below, then Grantor shall retain an Independent Professional to supervise
10 the construction and ensure compliance with the engineering plans and
11 specifications. Otherwise, Grantor may retain a Qualified Professional to
12 supervise the construction and ensure compliance with the engineering
13 plans and specifications;

14
15 v. Surveying During Construction. As necessary, Grantor shall
16 retain a Massachusetts registered land surveyor to horizontally and
17 vertically locate all aspects of the new Cover, replacement Cover and new
18 Clean Corridors as they are being constructed, including but not limited to,
19 the location of geotextile, geomembrane, clean fill, final ground elevation
20 and all structures associated with the Cover or Clean Corridor design; and

21
22 vi. As Built Records. For the completion report, Grantor shall
23 produce new or revised As Built Records for new Cover, new Clean
24 Corridors, Permanent Cover Modifications, and permanent modifications
25 to Clean Corridors, as applicable. The As Built Records shall be stamped
26 by a Professional Engineer (P.E., Civil). For new Cover and Permanent
27 Cover Modifications, the Independent Professional shall also provide a
28 written opinion that the As Built Records continue to support his or her
29 original opinion on the protection of human health and the environment.
30 The As Built Records shall be of the same or equivalent quality and detail
31 as the original As Built Records for the Property, if any, and shall include
32 without limitation the survey by the Massachusetts registered land
33 surveyor, locating the horizontal and vertical extent of the Cover or Clean
34 Corridor, required in subparagraph 15.C.v, above.

APPENDIX V -- Cover Inspection Plan

1
2
3
4 1. Title. This appendix, which shall be referred to as the “Cover Inspection
5 Plan,” is an attachment to an instrument entitled “Industri-Plex Site Institutional
6 Controls” (also referred to as the “Institutional Controls,” “Grant of Environmental
7 Restriction and Easement” or “Grant”), dated _____ **[insert date of**
8 **Institutional Controls]**, and recorded and/or registered in the Middlesex South Registry
9 of Deeds/Land Registration Office.

10
11 2. Definitions. Unless otherwise defined herein, the terms used in the Cover
12 Inspection Plan shall have the meanings set forth in Paragraph 1 (“Definitions”) of the
13 Grant.

14
15 3. Applicability. In accordance with subparagraph 4.A.iii of the Grant, Grantor
16 shall comply with the provisions of this appendix when performing an inspection of the
17 Cover or preparing a Cover inspection report.

18
19 4. Purpose. In order to ensure that Grantor adequately fulfills its obligations to
20 perform periodic Cover inspections and submit Cover inspection reports, this appendix
21 sets forth minimum Cover inspection and Cover inspection report requirements.

22
23 5. Consideration of Potential Disturbance to the Cover. Grantor should consider
24 potential disturbances to the Cover which may reasonably be anticipated to occur,
25 including, without limitation:

26
27 A. insufficient vegetation resulting in erosion of the Cover by storm water
28 runoff and/or wind; woody growth whose roots could penetrate the Cover;

29
30 B. animal burrows;

31
32 C. cracks or fissures of the Cover resulting from excessive differential
33 settlement; potholes and other structural damage to the Cover; and

34
35 D. disturbances or damage to the Cover by personnel and/or equipment;
36 and damage to the permanent surveyed monuments, or any security fences.

37
38 6. Minimum Cover Inspection Requirements. Each Cover inspection shall at a
39 minimum include a Site walkover and the establishment of a visual record of the
40 inspection by means of video and/or photographs. Special attention should be given to
41 each of the following:

42
43 A. Cover Integrity. The integrity of the Cover and documentation of
44 wash-outs, erosion gullies, damage or deterioration and other breaks (such as

1 cracks, potholes and ruts) in the Cover affecting its ability to prevent direct
2 contact with underlying Contaminated Soils;

3
4 B. Subsidence. Any subsidence which may occur as a result of
5 differential settlement shall be recorded, especially as may affect the integrity of
6 the geotextile fabric;

7
8 C. Vegetation. Vegetation shall be monitored for (i) bare areas and/or
9 areas without sufficient growth to prevent wind and/or water erosion, which shall
10 be noted for replacement; (ii) any woody growth, which shall be noted for
11 removal before the roots can penetrate the geotextile fabric; and (iii) any
12 undesirable wetland vegetation (*e.g.*, phragmites, purple loosestrife, etc.), which
13 shall be noted for removal;

14
15 D. Drainage Structures. The Cover associated with drainage areas and
16 structures shall be inspected for any damage which interferes with the original
17 design and performance of the structure, or the structure's ability to serve as a
18 Cover. The inspection shall note any blockages which could impede or change
19 the course of flow and cause erosion. Culverts shall be noted for cleaning out as
20 appropriate to prevent flooding of upstream areas. The stormwater storage areas
21 shall be checked for erosion, clogging, and accumulation of sediment; and

22
23 E. Survey Monuments. The permanent surveyed monuments delineating
24 the boundaries of the Restricted Areas and the Property, and the security fences,
25 shall be inspected for possible damage; any such damage shall be noted for repair
26 or replacement.

27
28 7. Inspection Conditions. Inspections of the Cover shall be performed when
29 snow and ice are not covering the ground and no more than three (3) days after mowing
30 of the Cover vegetation, if inspected during the summer months.

31
32 8. Documentation and Reporting.

33
34 A. The written inspection report shall include a visual record of the
35 inspection by means of videos and/or photographs with date stamp(s). Any
36 required repair and/or maintenance work shall be assessed and noted in the
37 inspection report for performance in accordance with the Normal Maintenance
38 provisions and Remedy Failure provisions (including the Work Protocols) of the
39 Institutional Controls, as appropriate. Written records of any interviews held with
40 parties involved at the Property, particularly with its operation and maintenance,
41 shall be included in the inspection report.

42
43 B. Grantor shall maintain copies of the inspection reports it submits at the
44 Property.

APPENDIX VI – Amendment Protocol

SECTION I. GENERAL

1. **Title.** This appendix, which shall be referred to as the “Amendment Protocol,” is an attachment to an instrument entitled “Industri-Plex Site Institutional Controls” (also referred to as the “Institutional Controls,” “Grant of Environmental Restriction and Easement” or “Grant”), dated _____ [insert date of Institutional Controls], and recorded and/or registered herewith, in the Middlesex South Registry of Deeds/Land Registration Office.

2. **Definitions.** Unless otherwise defined herein, the terms used in this Amendment Protocol shall have the meanings set forth in Paragraph 1 (“Definitions”) of the Institutional Controls.

3. **Applicability.** Whenever the Institutional Controls, including without limitation the Work Protocols (attached as Appendix IV (“Work Protocols”) to the Institutional Controls), require compliance with the Amendment Protocol, Grantor shall comply with the terms and provisions of this appendix.

4. **Submissions.** All submissions made pursuant to this Amendment Protocol shall be made in accordance with the requirements of Paragraph 23 (“Notices; Changes of Address”) of the Institutional Controls.

SECTION II. REQUIREMENTS

5. **Proposed Amendment.** Grantor shall prepare, sign and submit a written request for Grantees to review and approve the proposed amendment to the Institutional Controls, with a copy to other Settlers, which shall include the following information and documentation:

A. Grantor’s name, address and telephone number, the address of the affected property, and a brief description of the proposed amendment and the reason for the proposal;

B. the proposed amendment, in recordable form satisfactory to Grantees, which shall amend the Grant, as appropriate, so as to incorporate any proposed modification, including without limitation:

i. a change in the classes of land included in the Restricted Areas;

ii. a revision to the Plan of Restricted Areas resulting from a change to the areal extent of the boundaries of existing Cover or existing Clean Corridors, the establishment of new Cover or new Clean Corridors, and any change to the boundaries of the Restricted Areas; and

iii. any other permanent change to the Institutional Controls which may be proposed by Grantor pursuant to subparagraph 15.B. of the Institutional Controls;

C. proposed revised appendices to the Institutional Controls and related plans and documentation, which shall at a minimum provide for:

i. appropriate revisions to the legal description of the Restricted Areas attached as Appendix III (“Legal Description of the Restricted Areas”) of the Institutional Controls, if applicable;

ii. appropriate revisions to the Plan of Restricted Areas;

iii. proper and customary evidence of Grantor’s authority to execute the proposed amendment and related documentation;

iv. a proposed, updated title insurance policy or title opinion which, as the case may be, shall update the policy or opinion previously provided to Grantees in connection with the establishment of the Institutional Controls, and shall be prepared in accordance with the title requirements set forth in the plan for Inauguration of the Institutional Controls (a copy of which may be found in the Document Repository), or any otherwise relevant title requirements;

v. subordination agreements in recordable form satisfactory to Grantees, using the form contained in Appendix VII (“Subordination Agreement Form”) of the Institutional Controls, obtained from any and all holders of interests in the Property recorded and/or registered prior to the date of recording or registering of the proposed amendment, unless waived by Grantees, in their sole discretion, for those interests which Grantor establishes, to Grantees’ satisfaction, do not affect the interests to be created under or modified by the proposed amendment; and

vi. any other customary or appropriate documentation necessary for Grantees to approve the proposed amendment, as Grantees, in their sole discretion, may determine.

D. Grantees, upon request or their own initiative, and in Grantees’ sole discretion, may waive in writing any of the documentation requirements that they may determine are not relevant to a particular proposed amendment, but any such

waiver shall apply only to the particular proposed amendment, and all of the above documentation requirements shall apply to all other proposed amendments, unless expressly waived for such other proposed amendments, as well, on a case-by-case basis.

SECTION III. APPROVAL AND RECORDING

6. Approval. Following notification by Grantees that the proposed amendment, all attachments and all related documents are satisfactory, Grantor shall submit a fully executed amendment, along with all such attachments and any revised plans or other related documents in final form, for Grantees' written approval, including any necessary signature by Grantees on the amendment; and fully executed subordination agreements in accordance with subparagraph 5.C.vi., above, of this appendix.

7. Recording.

A. Following Grantees' return of the submission to Grantor with Grantees' written approval, Grantor shall update the title through the time of recording in order to determine whether there have been any new matters recorded and/or registered against the property since the date and time of the previous title rundown submitted to Grantees (as part of the Grantor's previous updated title insurance policy or title opinion submittal). If not, Grantor shall record and/or register the amendment, including all attachments, any subordination agreements, and any revised plans or other related documents, all in accordance with subparagraph 15.D. ("Recordation and/or Registration") of the Grant, and, if applicable, shall incorporate the revisions to the As Built Records into the Cover Certification Report, as an amendment.

B. If there have been any new matters recorded and/or registered against the property since the date and time of the previous title rundown submitted to Grantees (as part of the Grantor's previous updated title insurance policy or title opinion submittal), then Grantor shall not record or register the amendment, attachments, subordination agreements, revised plans or other related documents but, instead, shall:

i. notify Grantees within seven (7) days of performing the title update that Grantor has identified new matters of record,

ii. within thirty (30) days of performing the title update shall submit a new written request to Grantees for approval to record the amendment, including all attachments, any subordination agreements, and any revised plans or other related documents. This request shall include:

a. a copy of the title update, identifying the new matters recorded and/or registered against the Property since the date of the previous title rundown;

b. any necessary fully executed subordination agreements as to any of those matters that may otherwise impair the rights held by the Grantees under the Grant, once it is amended; and

c. an updated title insurance policy or title opinion, taking into account any such new matters of record that have not been subordinated; and

iii. once Grantees approve Grantor's new request in writing, Grantor shall record and/or register record the amendment, including all attachments, any subordination agreements, and any revised plans or other related documents, in accordance with the provisions of this Paragraph 7.

8. Title Policy/Title Opinion. Within thirty (30) days of the date of recording and/or registration, Grantor shall submit to Grantees a final title insurance policy or title opinion, as the case may be, updated through the time of recording.

9. Notice. Following recording and/or registration, Grantor shall provide copies of the amendment, including all attachments, any subordination agreements, and any revised plans or other related documentation to local officials in accordance with subparagraph 15.E. ("Notice to Local Officials") of the Grant.

10. Costs. Grantor shall be responsible for paying all recording fees and other costs associated with the proposed amendment.

APPENDIX VII – Subordination Agreement Form
(for amendments to the Grant of Environmental Restriction and Easement)

SUBORDINATION AGREEMENT

Site Name: Industri-Plex Superfund Site
Site Location: Woburn, MA
EPA Site Identification Number: MAD076580950
DEP Release Tracking Number: 3-1731

_____, of _____ (Town/City),
_____ County, _____ (State), is the holder of a
_____ granted by _____ to
_____, dated _____, recorded with the Middlesex South
Registry of Deeds in Book ____, Page ____ and/or registered with the Land Registration
Office of the Middlesex South Registry District as Document No. _____.

_____ hereby assents to the [First] Amendment to the Grant of
Environmental Restriction and Easement granted by _____ to the
United States of America and to the Massachusetts Department of Environmental
Protection dated _____ and recorded with the Middlesex South Registry of
Deeds in Book ____, Page ____, and/or registered with the Land Registration Office of
the Middlesex South Registry District as Document No. _____, and agrees that the
_____ shall be subject to said [First] Amendment and to the rights
created by and under said [First] Amendment insofar as the interests created under the
_____ affect the Property identified in the [First] Amendment and as if
for all purposes said [First] Amendment had been executed, delivered and recorded prior
to the execution, delivery and recordation and/or registration of the
_____.

WITNESS the execution hereof under seal this ____ day of _____,
20____.

Holder

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

[seal]

[Note: or, use corporate form signature block and acknowledgement, etc., as appropriate]

[The execution of this Subordination Agreement by a secured lender and/or a fiduciary (as defined in M.G.L. c. 21E, § 2) for the purpose of subordinating its lien to said [First] Amendment shall not render such secured lender or fiduciary an "owner" or "operator", provided such secured lender and/or fiduciary shall not otherwise be an "owner" or "operator" within the meaning of § 2.]

Upon recording, return to:

Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street, 7th Floor
Boston, MA 02108

Attention: Industri-Plex Superfund Site Project Manager