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## **I. JURISDICTION**

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D and redelegated to the Director, Office of Site Remediation and Restoration, by EPA Region 1 Order No. 1200, dated September 3, 1996. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Associate Attorney General of the United States.

2. This Agreement is made and entered into by EPA, the State of New Hampshire (the "State") (EPA and the State are collectively referred to as "Government Parties"), Chester Realty Trust and Mr. Warren Kean (Chester Realty Trust and Mr. Kean are collectively referred to as "Settling Parties"). The Settling Parties consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Agreement concerns the Mohawk Tannery Site ("Site") located in Nashua, New Hampshire. The Government Parties allege that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, the Government Parties undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future. The Site was operated as a tannery for approximately sixty years. During that time, tannery operators used and/or disposed of sludge containing such hazardous substances as chromium, pentachlorophenol, and 4-methylphenol into a number of unlined disposal areas. Tannery operators also discharged wastewater into the Nashua River. Sampling has revealed elevated levels of metals in groundwater and soil. Contaminants detected in the lagoon sludge include, at a minimum, pentachlorophenol, 4-methylphenol, and dioxins. In January 2001, EPA completed a time-critical removal action that included the removal and off-site disposal of asbestos-containing material from the old tannery building and contaminated waste from a clarifier tank. In October 2002, EPA selected a non-time critical removal action for the sludge lagoons. Under a cooperative agreement with EPA, the State initiated a Remedial Investigation at a portion of the Site.

5. In performing response actions at the Site, the Government Parties have incurred response costs and will incur additional response costs in the future.

6. The Government Parties allege that the Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. The Settling Parties have asserted claims against the Insurance Carriers under the Insurance Policies which the Settling Parties have contended provide coverage, or may provide coverage, for some or all of the matters which are the subject of the Government Parties' claims for response costs relating to the Site. Some of these insurance claims have been settled, and some remain pending.

8. The Settling Parties have made, and will make in the future, payments of federal and state taxes as necessary on account of the recovered insurance proceeds. However, because of uncertainties in the tax law, the amount of federal and state taxes that are finally determined to be due and owing will not be known with certainty until the expiration of the relevant statute of limitations for each applicable tax year.

9. The net proceeds from the settled insurance claims have been held by the Chester Realty Trust pending final determination of the amounts of such federal and state tax liabilities.

10. EPA has reviewed the Financial Information submitted by the Settling Parties to determine whether the Settling Parties are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that the Settling Parties have limited financial ability to pay for response costs incurred and to be incurred at the Site.

11. EPA, the State and the Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by the Settling Parties in accordance with this Agreement do not constitute an admission of any liability. The Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

12. This Agreement shall be binding upon the Government Parties, and upon the Settling Parties and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of the Settling Parties, including but not limited to any transfer of assets, including real or personal property, shall in no way alter the Settling Parties' responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into

the terms and conditions of this Agreement and to bind legally the party represented by him or her.

#### **IV. STATEMENT OF PURPOSE**

13. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing the Settling Parties to make cash payments, transfer certain real property, and provide other consideration, as described below, to address their alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA and the State in Section IX, subject to the Reservations of Rights by EPA and the State in Section X.

#### **V. DEFINITIONS**

14. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "Best Efforts" shall include, but not be limited to: (i) listing the property with a broker, dealer, or agent approved by the Government Parties; (ii) responding to the reasonable inquiries of prospective buyers; (iii) allowing the property to be shown at all reasonable times; and (iv) assisting the broker, dealer, or agent in any other reasonable way requested in an effort to sell the property within a reasonable period of time.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

d. "Chester Realty Trust" shall mean the trust established with that name pursuant to the laws of the State of New Hampshire with its office at 400 East Dakota Court in Hernando, Florida.

e. "Chester Realty Trust Profit Sharing Plan" shall mean the Chester Realty Trust Profit Sharing Plan and Trust effective January 1, 2002.

f. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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

h. "Fair Market Value" shall mean the price at which the Site Property or other property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The Settling Parties shall provide EPA and the State with documentation sufficient to demonstrate the Fair Market Value of the subject property. Such documentation can include the report of an appraisal, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties, or such other documentation agreed to by the Parties.

i. "Financial Information" shall mean all financial information provided by the Settling Parties to the Government Parties.

j. "Greenport Associates Limited Partnership" or "Greenport Associates" shall mean that certain New York limited partnership known as Greenport Associates, in which a 3.4735 percent interest is held by Chester Realty Trust at the time of signature of this Agreement, and any Proceeds thereof.

k. "Hughey Street Lots" shall mean the three parcels of land in the City of Nashua, New Hampshire, located to the west of Hughey Street and designated as Lots 134-40, 134-41, and 134-61 on the Nashua land records and comprising together just under 0.4 acres (17,334 square feet according to the land records), and any Proceeds thereof.

l. "Insurance Carriers" shall mean those insurance carriers listed on the attached Appendix A.

m. "Insurance Policies" shall mean those insurance policies listed on the attached Appendix B.

n. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

o. "Interim Payable Proceeds" shall mean the amount of Net Insurance Proceeds payable to the Government Parties from the Escrow Account for a particular tax year after the federal and state taxes on the insurance proceeds for that tax year have been conclusively determined and paid.

p. "Legal Fees" shall mean reasonable attorneys' fees and costs incurred by the Settling Parties for any of the following purposes: presenting and prosecuting claims against Insurance Carriers, the resolution of any such claims, the handling of the proceeds thereof, addressing and handling any tax issues or proceedings relating to the proceeds from any such insurance claims, and providing legal advice and assistance relating to compliance with any of the provisions of this Agreement, but excluding the handling and prosecuting of a dispute with the Government Parties concerning the provisions of this Agreement.

q. "Net Insurance Proceeds" shall mean the amounts recovered by the Settling Parties in response to claims which they have asserted against the Insurance Carriers relating to the Site after payment of applicable federal and state taxes, Legal Fees, reasonable accounting fees and any other reasonable and necessary expenses related to such claims. Net Insurance Proceeds shall also include any refund of federal or state taxes to any of the Settling Parties, less applicable federal and state taxes that result from such refund, reasonable Legal Fees, reasonable accounting fees, and other reasonable and necessary expenses related to such refund.

r. "Net Sales Proceeds" shall mean the total value of all consideration received by the Settling Parties for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the property) less (i) the balance of the Settling Parties' mortgage on the property, if applicable; (ii) closing costs limited to those reasonably and customarily incurred and actually paid by the Settling Parties associated with the Transfer of the property, if applicable; (iii) federal, state and local taxes owed on the proceeds, if any, verified by copies of the relevant signed tax returns, amended tax returns and/or cancelled checks paid to the Internal Revenue Service or other government or government agency to whom the taxes have been paid; and (iv) the cost of any appraisal which the Government Parties, or any one of them, may require the Settling Parties to obtain. The Settling Parties shall provide EPA and the State with documentation sufficient to show the total value of all consideration received by the Settling Parties for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items (i) through (iv) above.

s. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

t. "Parties" shall mean EPA, the State, Chester Realty Trust and Mr. Warren Kean.

u. "Proceeds" shall mean interest, rents, dividends, distributions, usufruct, insurance or other indemnity amounts, condemnation awards, payables, income, or any other payments, accruals, or benefits, associated with or arising from the property in question after the effective date of this Agreement.

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

w. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

x. "Settling Parties" shall mean Chester Realty Trust and Mr. Warren Kean.

y. "Site" shall mean the Mohawk Tannery Site, encompassing approximately thirty acres, located at the intersection of Fairmont Street and Warsaw Avenue in Nashua, Hillsborough County, New Hampshire, and generally shown on the map included in Appendix C, including any contamination that has migrated from this area.

z. "Site Property" shall mean that portion of the Site that is owned by Chester Realty Trust as of the date of Chester Realty Trust's signature on this Agreement. The Site Property is located at the intersection of Fairmont Street and Warsaw Avenue in the City of Nashua, Hillsborough County, New Hampshire, and is identified on the City of Nashua Assessor's Tax Map 134Q as Lot 16Q and Assessor's Tax Map 70Q as Lots 13Q and 14Q.

aa. "The State" shall mean the State of New Hampshire, including its departments, agencies, and instrumentalities.

bb. "Transfer" shall mean each sale, assignment, transfer, exchange or redemption by the Settling Parties (or their successors or heirs) of any property referred to in this Agreement, including the Site Property, the Hughey Street Lots, and Chester Realty Trust's interest in Greenport Associates, or any portion thereof, where title to such property (or any portion or interest thereof) (i) is transferred and Fair Market Value (or other consideration deemed adequate by EPA) is received in consideration; or (ii) is transferred involuntarily by operation of law. A Transfer does not include a transfer pursuant to an inheritance or a bequest.

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

## **VI. PAYMENT OF RESPONSE COSTS**

15. Payment by Mr. Kean. Mr. Kean shall pay to the Government Parties, from property other than any related to any beneficial interest in the Chester Realty Trust, the principal sum of \$75,000, plus an additional sum for Interest as explained below, in three installment payments. Payment shall be made in annual installments. Each installment, except for the first on which no interest shall be due, shall include \$25,000 as a portion of the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the effective date of this Agreement as defined in Paragraph 58. The first payment of \$25,000 shall be due within 30 days of the effective date of this Agreement. Subsequent payments of \$25,000,



plus interest, each shall be due on February 1 of each year thereafter until all payments have been made. If Mr. Kean dies before an installment payment is due, all remaining installment payments shall be accelerated and interest shall be reduced accordingly. Mr. Kean may also elect to accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

a. Payment shall be made by Electronic Funds Transfer ("EFT") to the Mellon Bank, ABA #43000261, Account #910-9053, or as otherwise instructed by EPA. Any Electronic Funds Transfers received at the EPA lockbox bank after 10:30 am (eastern time) will be credited to the next business day. Payment shall be accompanied by a statement identifying the name and address of the Settling Party, the Site name, EPA Region 1 and Site/Spill ID #017C, and the EPA docket number for this action.

b. At the time of each payment, the Settling Party shall also send notice to EPA and the State, in accordance with Section XVII (Notices and Submissions), that such payment has been made. Such notice shall reference EPA Region 1 and Site/Spill ID # 017C and the EPA docket number for this action.

16. If Mr. Kean receives any one or more distributions from the Chester Realty Trust Profit Sharing Plan that either singly or collectively exceed either \$10,000 per month or \$120,000 in any twelve month period for the ten-year period following the effective date of this Agreement, Mr. Kean shall make a payment to the Government Parties consisting of that excess amount up to a collective and total maximum amount of \$25,000. Any payment(s) due pursuant to this paragraph shall be made within thirty (30) days of receipt by Mr. Kean and shall be paid in accordance with Paragraphs 15(a) and (b). At least annually, on February 15 of each year, and continuing for ten years beyond the effective date of this Agreement, the Settling Parties shall provide the Government Parties with a written report in accordance with Section XVII (Notices and Submissions) that lists all of the distributions made from the Chester Realty Trust Profit Sharing Plan during the previous calendar year. Mr. Kean's obligations under this Paragraph only will terminate upon his death, if he dies prior to the expiration of the ten-year period.

17. Payment of Insurance Proceeds. The Settling Parties have obtained legal and tax advice concerning the payment of federal and state taxes on the amounts recovered under the Insurance Policies and have acted in accordance with that advice and will continue to do so in the future.

a. Payments to or for the Benefit of the Government Parties from the Net Insurance Proceeds. (i). No later than fifteen (15) days after the effective date of this Agreement, Chester Realty Trust shall make the following payments: (a) \$418,450 to the Government Parties in the manner described in Paragraphs 15(a) and (b) of this Agreement; and (b) the remaining Net Insurance Proceeds to the Escrow Agent identified in the Escrow Agreement which will be established for the purpose of holding and disbursing Net Insurance Proceeds (the "Escrow Agreement"), a copy of which is attached hereto as Appendix D.

(ii). Not later than thirty (30) days following the receipt by the Settling Parties, or either of them, of any amounts paid by any Insurance Carrier after October 30, 2005 in response to the claims described in Paragraph 17, the Settling Parties shall deliver ninety (90) percent of the Net Insurance Proceeds of any such payments to the Escrow Agent to be held and distributed in accordance with the terms hereof. Settlement of any future insurance claims shall be subject to the approval of the Government Parties, which approval, after reasonable and timely disclosures of information to the Government Parties, shall not be unreasonably withheld. The Government Parties shall be given ten (10) days to review such settlements, and if no response is received during that ten-day period, the Government Parties shall be deemed to have approved the settlement and the Settling Parties may act in reliance on such approval.

b. Except as provided in Paragraph 17(a)(ii) above, the Settling Parties shall transfer to the Escrow Agent within thirty (30) days after receipt, any additional funds subsequently received by the Settling Parties, or either of them, which constitute Net Insurance Proceeds. Such funds shall be held by the Escrow Agent pursuant to the terms of the Escrow Agreement. (All funds in the Escrow Account shall constitute the "Escrowed Property.") The Escrow Agent shall be a federally insured commercial bank or other bonded entity or person acceptable to the Government Parties.

c. In accordance with the tax and legal advice they have received, the Settling Parties shall take the following actions (all of which will hereinafter collectively be referred to as "the Tax Plan"):

(i). Not later than April 15, 2006, the Settling Parties shall seek refunds of federal and state income taxes paid for 2003 and 2004 that have been carried over to tax year 2005. In the event that information necessary for the filing of the Settling Parties' 2005 tax returns, including the refund request, arrives after April 15, 2006, due to no fault of the Settling Parties, the refund request shall be submitted as soon as practicable following the receipt of that information.

(ii). The Settling Parties will continue to treat the receipt of any future insurance proceeds as attributable to injury to the Site Property, and treat any amounts paid to the Government Parties and to the Escrow Agent as a reinvestment of proceeds received as the result of an involuntary conversion under Internal Revenue Code Section 1033, to the full extent allowed by law.

d. The Settling Parties shall not deviate from the Tax Plan unless such a deviation is necessary as a result of intervening contrary authority issued by the U.S. Internal Revenue Service or the appropriate state taxing authority. If such contrary authority requires any deviation from the Tax Plan, the Settling Parties will provide the Government Parties with a valid and reasonable written justification for such deviation with reasonable advance notice before taking any action.

e. Management and Disbursement of Funds in the Escrow Account. The Settling Parties shall instruct the Escrow Agent to hold and disburse the Escrowed Property in accordance with the provisions of this Paragraph 17. The Settling Parties, acting on advice from their tax advisor, shall direct the Escrow Agent in writing to release to the Government Parties the Interim Payable Proceeds for the applicable tax year, pursuant to the provisions set forth below.

(i). Subject to the provisions of subparagraph (f) hereof, the Interim Payable Proceeds shall be paid by the Escrow Agent to the Government Parties in the manner described in Paragraphs 15(a) and (b) of this Agreement within thirty (30) days after the occurrence of the earliest of the following events with respect to any such amounts:

(A). The expiration of the relevant statute of limitations, provided that there is no pending Internal Revenue Service ("IRS") or New Hampshire tax audit, controversy or litigation with respect to the applicable tax year;

(B). A definitive and binding IRS or New Hampshire private letter ruling issued to the Settling Parties that finally determines the amount of federal or New Hampshire taxes due and owing (if any) for the applicable tax year; or

(C). A final determination of any tax due and owing resulting from an audit, controversy or litigation by the IRS, New Hampshire state tax authority or Court (where the final appeal has been heard, no appeal has been timely made, or the Parties have otherwise finally resolved the case).

(ii). At the same time that the Settling Parties provide each such instruction to the Escrow Agent, they shall provide a copy of the instruction to each of the Government Parties hereto together with the tax advisor's explanation and supporting calculations of how his or her conclusions regarding the amounts were arrived at.

f. Notwithstanding any of the provisions of this Agreement, amounts in the Escrow Account shall be used by the Escrow Agent only for the following purposes: (i) to make payments to the Government Parties in accordance with this Agreement; (ii) to make payments of federal and state taxes (and any related interest and/or penalties) which are properly payable in accordance with the Tax Plan and on account of the proceeds of the claims made by the Settling Parties against the Insurance Carriers, or determined by any federal or state taxing authority to be due and owing on account of the proceeds of the claims made by the Settling Parties against the Insurance Carriers; (iii) to pay Legal Fees; (iv) to pay reasonable accounting fees, and other reasonable and necessary expenses, in connection with implementing the Tax Plan and/or the Escrow Agreement, or related to the claims made by the Settling parties against the Insurance Carriers, or related to any Transfers pursuant to this Agreement; and (v) to pay the Escrow Agent's fees (if any) for services as Escrow Agent, and reasonable expenses incurred by the Escrow Agent in carrying out its duties pursuant to this Agreement and the Escrow Agreement.

g. The Settling Parties shall not use, suffer, permit or otherwise direct the Escrow Agent to use the amounts recovered under the Insurance Policies or any refunds received from the United States Internal Revenue Service or the appropriate state taxing authority to offset any tax obligations of the Settling Parties that do not relate directly to the claims filed under the Insurance Policies. The Settling Parties agree to make whole and directly contribute to the Escrowed Property an amount equal to any setoff against or deduction from any tax refunds taken by the taxing authorities on account of any obligation of the Settling Parties that is not related directly to the claims filed under the Insurance Policies. None of the Net Insurance Proceeds shall be used to pay real estate property taxes.

h. The Escrowed Property shall be held in a U.S. Government obligations money market fund. All interest shall accrue to the benefit of the Government Parties and shall be paid in semi-annual installments to the Government Parties by the Escrow Agent in the manner described in Paragraphs 15(a) and (b) of this Agreement on June 15 and December 15 of each year.

i. Continuation and Termination of the Escrow Agreement. The Escrow Agreement shall continue in full force and effect until all of the Escrowed Property has been paid by the Escrow Agent to the Government Parties or otherwise properly disbursed in accordance with the provisions of this Agreement and the Escrow Agreement, and there are no longer any pending unresolved claims by the Settling Parties against the Insurance Carriers relating to the Site. The Parties to the Settlement Agreement may agree in writing to terminate the Escrow Agreement even if there are pending unresolved claims. Upon termination of the Escrow Agreement in accordance with this paragraph, all of the remaining Escrowed Property shall be paid to the Government Parties in accordance with Paragraphs 15(a) and (b).

18. Hughey Street Lots. The Settling Parties agree that they will not sell, assign, transfer, exchange, alienate or convey any interest in the Hughey Street Lots or any Proceeds thereof except as directed by the Government Parties.

a. Chester Realty Trust shall continue to hold title to the Hughey Street Lots until such time that the Government Parties direct the Settling Parties, in writing, to either: (i) use Best Efforts to market and Transfer the Hughey Street Lots; or (ii) execute a deed transferring the Hughey Street Lots to an entity designated by the Government Parties under the terms and conditions specified by the Government Parties. If the Government Parties direct the Settling Parties to execute a deed, as provided in subparagraph 18(a)(ii), they shall duly execute the deed and any other documents necessary to effectuate the Transfer of legal title to the Hughey Street Lots within thirty (30) days of, and in the manner described in, the Government Parties' written request. If the Government Parties direct the Settling Parties to use Best Efforts to market and Transfer the Hughey Street Lots, neither Settling Party shall act as the broker, dealer or agent for the Transfer.

b. The Settling Parties shall pay to the Government Parties one hundred (100) percent of the Net Sales Proceeds received by the Settling Parties from the party acquiring the

Hughey Street Lots. Payment to the Government Parties shall be made within thirty (30) days after the effective date of the Transfer of the Hughey Street Lots in accordance with Paragraphs 15(a) and (b). If any portion of the Net Sales Proceeds is not received by the Settling Parties upon the effective date of the Transfer, for reasons not within their control, then that portion shall be due within thirty (30) days of receipt by the Settling Parties. The Settling Parties shall pay to the Government Parties all other Proceeds within thirty (30) days of receipt thereof.

c. At least thirty (30) days prior to any such Transfer, the Settling Parties shall notify the Government Parties in writing of the proposed Transfer, which notice shall include the identity of the purchaser, the terms of the transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the Property unless the Government Parties agree to a lesser amount in advance of the sale.

d. The Settling Parties shall notify EPA in writing of the completion of the Transfer within 10 days after the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to the Government Parties. In the event that the closing binder and final executed documentation and work sheet are not in the Settling Parties' possession within ten (10) days after the date of closing due to circumstances beyond the control of the Settling Parties, the Settling Parties shall promptly request copies of those documents and shall promptly forward them to EPA.

e. During Chester Realty Trust's continuing period of ownership, the Settling Parties shall exercise appropriate care with respect to the condition of the Hughey Street Lots so as to maximize their Fair Market Value.

19. Interest in Greenport Associates. Chester Realty Trust shall continue to retain its interest in the Greenport Associates Limited Partnership ("Greenport Associates"), and any Proceeds thereof.

a. At least annually, the Settling Parties shall attempt in good faith to Transfer Chester Realty Trust's interest in Greenport Associates.

b. At least 30 days prior to any Transfer, the Settling Parties shall notify the Government Parties in writing of the proposed Transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be approved by the Government Parties.

c. The Settling Parties shall notify the Government Parties in writing of the completion of the Transfer within 10 days after the date of closing and shall include with such notification a copy of the closing documents, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to the Government Parties. In the event that the closing binder and final executed documentation and

work sheet are not in the Settling Parties' possession within ten (10) days after the date of closing due to circumstances beyond the control of the Settling Parties, the Settling Parties shall promptly request copies of those documents and shall promptly forward them to EPA.

d. The Settling Parties shall pay to the Government Parties the Net Sales Proceeds of any Transfer of Chester Realty Trust's interest in Greenport Associates within thirty (30) days after the effective date of the Transfer and in accordance with Paragraphs 15(a) and (b). In the event that the Net Sales Proceeds from any such Transfer cannot be calculated within thirty (30) days after the effective date of the Transfer due to lack of necessary information beyond the control of the Settling Parties (such as the unavailability of a Form K-1 or other information necessary to calculate the tax consequences of the transaction), the Settling Parties shall pay to the Government Parties the Net Sales Proceeds within thirty (30) days after receipt by the Settling Parties of that necessary information. Any other Proceeds received at any time by the Settling Parties as a result of Chester Realty Trust's interest in Greenport Associates shall be forwarded to the Government Parties in accordance with Paragraphs 15(a) and (b) and within thirty (30) days after receipt of such Proceeds.

e. On May 15, 2006, and on May 15 of each year thereafter, the Settling Parties shall provide the Government Parties with copies of all documents (including without limitation all Form K-1's with supporting documentation) provided by Greenport Associates and/or its agents within the past year in accordance with Section XVII (Notices and Submissions).

f. The performance and payment obligations required in this paragraph shall remain in effect until the later of ten (10) years after the effective date of this Agreement or the final disposition of Mr. Kean's testamentary estate.

20. Transfer of Site Property. The Settling Parties agree that they will not sell, assign, transfer, exchange, alienate or convey any interest in the Site Property except as approved by the Government Parties.

a. Chester Realty Trust shall continue to hold title to the Site Property until such time that the Government Parties direct the Settling Parties in writing to either: (i) use Best Efforts to market and Transfer the Site Property; or (ii) execute a deed transferring the Site Property to an entity designated by the Government Parties under the terms and conditions specified by the Government Parties. If the Government Parties direct the Settling Parties to execute a deed, pursuant to subparagraph 20(a)(ii) above, they shall duly execute the deed and any other documents necessary to effectuate the Transfer of legal title to the Site Property within thirty (30) days after, and in the manner described in, the Government Parties' written request. If the Government Parties direct the Settling Parties to use Best Efforts to market and Transfer the Site Property, neither Settling Party shall act as the broker, dealer or agent for the Transfer.

b. The Settling Parties shall pay to the Government Parties one hundred (100) percent of the net consideration received by the Settling Parties from the party acquiring the Site Property, plus any other Proceeds. Payment to the Government Parties shall be made within

thirty (30) days after the effective date of the Transfer of the Site Property in accordance with Paragraphs 15(a) and (b). If the Government Parties, the Settling Parties and the party acquiring the Site Property so agree, consideration may be entirely or partially in the form of response work performed by the party acquiring the Site Property at or in connection with the Site.

c. At least thirty (30) days prior to any such Transfer pursuant to either Paragraphs 20(a)(i) or 20(a)(ii), the Settling Parties shall notify the Government Parties in writing of the proposed Transfer, which notice shall include the identity of the purchaser, the terms of the Transfer, the consideration to be paid, and a copy of the Transfer agreement. Any transfer of the Site Property pursuant to Paragraph 20(a)(i) or 20(a)(ii) shall be for at least Fair Market Value, taking into account the value of any response work to be performed by the party acquiring the Site Property as consideration for the transfer, unless the Government Parties agree to a lesser amount prior to the sale.

d. The Settling Parties shall notify the Government Parties in writing of the completion of the Transfer within 10 days after the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the amount payable to the Government Parties. In the event that the closing binder and final executed documentation and work sheet are not in the Settling Parties' possession within ten (10) days after the date of closing due to circumstances beyond the control of the Settling Parties, the Settling Parties shall promptly request copies of those documents and shall promptly forward them to EPA.

e. Until the Settling Parties transfer title, the Settling Parties shall exercise appropriate care with respect to the condition of the Site Property so as to maximize its Fair Market Value. The Settling Parties shall not cause new, or exacerbate existing, releases or threatened releases of hazardous substances at or from the Site. The Settling Parties shall take reasonable steps to prevent or limit human, environmental or natural resource exposure to hazardous substance releases at or from the Site.

f. The Settling Parties agree that any liens held by the Government Parties on the Site Property shall remain in full force and effect until the later to occur of (i) all payment and other obligations required by Paragraph 17 of this Agreement have been satisfied or (ii) the Site Property is transferred in accordance with Paragraph 20.

21. In the event of any Transfer(s) pursuant to Paragraphs 18, 19 and/or 20, the Settling Parties shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except if EPA, the State and the Settling Parties modify this Agreement in writing.

22. The total amount to be paid by the Settling Parties pursuant to Paragraphs 15 through 20 shall be deposited by EPA in the Mohawk Tannery Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at

or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

23. The Settling Parties shall insure that Chester Realty Trust remains in existence and in good standing under the laws of the State of New Hampshire until all property referred to in this Agreement is disposed of in accordance with this Agreement. The death of Mr. Kean, or any other trustee or beneficiary of Chester Realty Trust, does not in any way affect the obligations imposed by any of the terms and conditions hereof.

## **VII. DISPUTE RESOLUTION**

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

25. If the Settling Parties object to any action taken by the Government Parties pursuant to this Agreement, they shall notify the Government Parties in writing of their objection(s) within twenty-one (21) days of such action, unless the objection(s) has/have been resolved informally. The Parties shall have fourteen (14) days from EPA's receipt of the Settling Parties' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

26. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of the EPA Region I Office of Site Remediation and Restoration will issue a written decision on the dispute to the Settling Parties. EPA's decision shall be incorporated into and become an enforceable part of this Agreement. The Settling Parties' obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, the Settling Parties shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

## **VIII. FAILURE TO COMPLY WITH AGREEMENT**

27. Interest on Late Payments. If a Settling Party fails to make any payment required by Paragraphs 15 through 20 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

28. Interest on Late Installment Payments. If a Settling Party fails to make any payment required by Paragraph 15 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.



29. Stipulated Penalty.

a. If any amounts due under Paragraphs 15 through 20 are not paid by the required date, such Settling Party shall be in violation of this Agreement and shall pay to EPA and the State, as a stipulated penalty, in addition to the Interest required by Paragraphs 27 and 28, \$400 per violation per day that such payment is late.

b. If a Settling Party does not comply with the performance obligations required by Paragraphs 16 through 20, such Settling Party shall be in violation of this Agreement and shall pay to EPA and the State, as a stipulated penalty, \$350 per violation per day of such non-compliance.

c. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA and/or the State, unless the Settling Parties invoke the dispute resolution procedures under Section VII (Dispute Resolution). The Settling Parties shall pay to EPA 70% of stipulated penalties and pay to the State 30% of stipulated penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Party, the Site name, EPA Region 1 and Site/Spill ID #017C, and the EPA Docket Number for this action, and shall be sent to: U.S. Environmental Protection Agency, P.O. Box 360197M, Pittsburgh, PA 15251. All payments to the State under this Paragraph shall be paid by certified or cashier's check made payable to State of New Hampshire and shall be mailed to Bureau Chief, Environmental Protection Bureau, Office of the Attorney General, 33 Capitol Street, Concord, NH 03301.

d. At the time of each payment, the Settling Party shall send notice to EPA and the State in writing that such payment has been made in accordance with Section XVII (Notices and Submissions). Such notice shall identify EPA Region 1 and Site-Spill ID #017C and the EPA Docket Number for this action.

e. Penalties shall accrue as provided above regardless of whether EPA or the State has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision. However, stipulated penalties shall not accrue with respect to a decision by the Director of the EPA Region 1 Office of Site Remediation and Restoration, under Paragraph 26 of Section VII (Dispute Resolution), during the period, if any, beginning on the 14<sup>th</sup> day after the Negotiation Period begins, taking into account any extensions, until the date that the Director of the EPA Region 1 Office of Site Remediation and Restoration issues a final decision regarding such dispute.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

30. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of a Settling Party's failure to comply with the requirements of this Agreement, if a Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3) and applicable state law. If the United States and/or the State brings an action to enforce this Agreement, and the claims made by the United States and/or the State are substantially justified, the Settling Party shall reimburse the United States and/or the State for all costs of such action, including but not limited to costs of attorney time.

31. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. A Settling Party's payment of stipulated penalties shall not excuse such Settling Party from payment as required by Paragraphs 15 to 20 or from performance of any other requirements of this Agreement.

#### **IX. COVENANT NOT TO SUE**

32. Covenant Not To Sue By EPA. Except as specifically provided in Section X (Reservations of Rights), EPA covenants not to sue or to take administrative action against the Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of the first payment required by Paragraph 15 and the payment required by Paragraph 17(a)(i)(a), and payment by Chester Realty Trust of the payment required by Paragraph 17(a)(i)(b). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Parties of all of their obligations under this Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any amount due under Section VIII (Failure to Comply with Agreement). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by the Settling Parties. If the Financial Information is subsequently determined by EPA to have been false or, in any material respect, inaccurate, the Settling Parties shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be voidable at EPA's discretion. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from the Settling Parties' false or materially inaccurate information. This covenant not to sue extends only to the Settling Parties and does not extend to any other person.

33. Covenant Not To Sue By The State. Except as specifically provided in Section X (Reservations of Rights), the State covenants not to sue or to take administrative action against the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and N.H. Rev. State. Ann 147-A:9 and 147-B:10, with regard to the Site. With respect to present and future

liability, this covenant shall take effect upon receipt by EPA of the first payment required by Paragraph 15 and the payment required by Paragraph 17(a)(i)(a), and payment by Chester Realty Trust of the payment required by Paragraph 17(a)(i)(b). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Parties of all of their obligations under this Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any amount due under Section VIII (Failure to Comply with Agreement). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by the Settling Parties. If the Financial Information is subsequently determined by EPA to have been false or, in any material respect, inaccurate, the Settling Parties shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be voidable at the State's discretion. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the State's right to pursue any other causes of action arising from the Settling Parties' false or materially inaccurate information. This covenant not to sue extends only to the Settling Parties and does not extend to any other person.

## **X. RESERVATIONS OF RIGHTS**

34. EPA and the State reserve, and this Agreement is without prejudice to, all rights against the Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue in Section IX. Notwithstanding any other provision of this Agreement, EPA and the State reserve all rights against the Settling Parties with respect to:

- a. liability for failure of a Settling Party to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon a Settling Party's future transportation, treatment, storage, or disposal, or the future arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by the Settling Party; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

35. Notwithstanding any other provision of this Agreement, EPA and the State reserve, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by the Settling Parties, or the financial certification made by the Settling Parties in Paragraph 53(b), is false or, in any material respect, inaccurate.

36. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA or the State may have against any person, firm, corporation or other entity not a signatory to this Agreement.

#### **XI. COVENANT NOT TO SUE BY SETTLING PARTIES**

37. Each Settling Party agrees not to assert any claims or causes of action against the United States or the State, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Hampshire Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 39 (Waiver of Claims) and Paragraph 42 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 34(c) - (e), but only to the extent that the Settling Parties' claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

38. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

39. Each Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person, except as provided in Paragraph 17. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

40. Except as provided in Paragraph 39, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and the State reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

41. The Parties agree that each Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Agreement. The “matters addressed” in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State or any other person. The “matters addressed” in this Agreement do not include those response costs or response actions as to which EPA and/or the State has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA or the State asserts rights against a Settling Party coming within the scope of such reservations.

42. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this paragraph affects the enforceability of the Covenant Not to Sue by EPA and the State set forth in Section IX.

## **XIII. SITE ACCESS AND INSTITUTIONAL CONTROLS**

43. Commencing upon the effective date of this Agreement, each Settling Party agrees to provide EPA and the State, and their representatives and contractors, access at all reasonable times to the Site and to any other property owned or controlled by Settling Party to which access is determined by EPA or the State to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Overseeing response actions at the Site;
- b. Verifying any data or information submitted to EPA and/or the State;
- c. Conducting investigations relating to contamination at or near the Site;

- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Party or its agents, consistent with Section XIV (Access to Information);
- g. Assessing the Settling Parties' compliance with this Agreement; and
- h. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Agreement.

44. Within thirty (30) days after the effective date of this Agreement, each Settling Party shall cease leasing the Site to third parties or otherwise allowing others to use the Site for any reason, except in accordance with this Agreement, and shall refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of any removal or remedial measures to be performed at the Site.

45. Easement.

a. The Settling Parties shall execute and record in the City of Nashua land records office in Hillsborough County, State of New Hampshire, an easement, running with the land, that is in form and substance satisfactory to the Government Parties, subject to approval by the State's Governor and Executive Council.

b. In the alternative, and at the request of the Government Parties, the Settling Parties shall execute and record in the City of Nashua land records office in Hillsborough County, State of New Hampshire, an easement, running with the land, that (i) grants a right of access for the purpose of conducting response activities at the Site, and (ii) grants the right to enforce the land/water use restrictions or other restrictions that EPA and/or the State determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the removal or remedial measures to be performed at the Site. The Settling Parties shall grant the access rights and the rights to enforce the land/water use restrictions to (i) EPA and its representatives; (ii) the State and its representatives; and/or (iii) other appropriate grantees. The Settling Parties shall, within 30 days of a written request from EPA and/or the State, submit to EPA and the State for review and approval with respect to such property:

1. a draft easement that is enforceable under the laws of the State of New Hampshire, in a format acceptable to EPA, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

2. current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of approval from EPA and the State, and acceptance of the easement, the Settling Parties shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Nashua land records office of Hillsborough County. Within 30 days of recording the easement, the Settling Parties shall provide EPA and the State with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

46. If EPA and/or the State determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, the Settling Parties shall cooperate with EPA's and the State's efforts to secure such governmental controls.

47. Notwithstanding any provision of this Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable federal or state statutes or regulations.

#### **XIV. ACCESS TO INFORMATION**

48. Each Settling Party shall provide to EPA and the State, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, federal and state income tax returns, or other documents or information related to the Site or implementation of this Agreement. The obligation to provide copies of federal and state income tax returns, upon request, shall continue only until the termination of the Escrow Agreement.

##### **49. Confidential Business Information and Privileged Documents.**

a. A Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Party that the records are not confidential

under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to the Settling Party.

b. Each Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. The Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

50. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XV. RETENTION OF RECORDS**

51. Until the later of (i) ten (10) years after the effective date of this Agreement or (ii) the time when all property subject to this Agreement and the Escrow Agreement has been transferred in accordance with this Agreement and the Escrow Agreement and the Parties agree that all pending insurance claims have been resolved or should no longer be pursued, the Settling Parties shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site; the liability of any person for response actions or response costs at or in connection with the Site; the properties addressed in this Agreement; insurance coverage held for the benefit of the Site Property and/or the Settling Parties; and/or the filing and pursuit of insurance claims on account of contamination at the Site, regardless of any corporate retention policy to the contrary.

52. After the conclusion of the document retention period in the preceding paragraph, the Settling Parties shall notify EPA and the State, in writing, at least 90 days prior to the destruction of any such records, and, upon request by EPA or the State, the Settling Parties shall deliver any such records to the requesting party. The Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Party asserts such a privilege, it shall provide the requesting party with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record will be provided to the requesting party



in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until the requesting party has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with EPA or the State pertaining to the Site shall be withheld on the grounds that they are privileged.

## **XVI. CERTIFICATION**

53. Each Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of a suit against it regarding the Site and that it has fully complied with any and all requests by EPA and the State for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

## **XVII. NOTICES AND SUBMISSIONS**

54. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA, the State and the Settling Parties.

As to EPA:

Office of Environmental Stewardship  
U.S. Environmental Protection Agency, R1  
1 Congress Street, Suite 1100  
Boston, MA 02114-2023  
Attn: Eve Vaudo, Staff Attorney for Mohawk Tannery Site

As to the State:

Peter C.L. Roth, Esq.  
Environmental Protection Bureau  
Department of Justice  
Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301-6397

As to Chester Realty Trust:

Chester Realty Trust  
Attention: Mr. Warren W. Kean, Trustee  
400 E. Dakota Court  
Hernando, Florida 34442-5326

With a copy to:  
Ridgway M. Hall, Jr., Esq.  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, D.C. 20004

As to Mr. Warren Kean

Mr. Warren W. Kean  
400 E. Dakota Court  
Hernando, Florida 34442-5326

With a copy to:  
Ridgway M. Hall, Jr., Esq.  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, D.C. 20004

**XVIII. MODIFICATIONS**

55. Requirements of this Agreement may be modified in writing by mutual agreement of the Parties.

## **XIX. INTEGRATION/APPENDICES**

56. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

“Appendix A” is a list of Insurance Carriers.

“Appendix B” is a list of Insurance Policies.

“Appendix C” is a map showing the location of the Site.

“Appendix D” is a copy of the Escrow Agreement.

## **XX. PUBLIC COMMENT**

57. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

## **XXI. EFFECTIVE DATE**

58. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 57 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

THE UNDERSIGNED PARTIES enter into this Agreement in the matter of CERCLA No. 01-2005-0053, relating to the Mohawk Tannery Site in Nashua, New Hampshire.

FOR CHESTER REALTY TRUST

By: Warren Kean  
Name:  
Title: trustee

March 20, 2006  
Date:

FOR MR. WARREN KEAN

By: Warren Kean  
Name:  
Title:

March 20, 2006  
Date:

THE UNDERSIGNED PARTIES enter into this Agreement in the matter of CERCLA No. 01-2005-0053, relating to the Mohawk Tannery Site in Nashua, New Hampshire.


FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Susan Studlien  
Susan Studlien, Director  
Office of Site Remediation & Restoration  
Region I  
U.S. Environmental Protection Agency

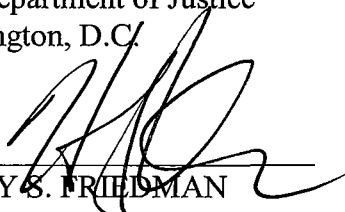
04/28/06  
Date:

THE UNDERSIGNED PARTIES enter into this Agreement in the matter of CERCLA No. 01-2005-0053, relating to the Mohawk Tannery Site in Nashua, New Hampshire.

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

By:   
SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C.

\_\_\_\_\_  
Date:

By:   
HENRY S. FRIEDMAN  
Assistant Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20044

\_\_\_\_\_  
Date:

THE UNDERSIGNED PARTIES enter into this Agreement in the matter of CERCLA No. 01-2005-0053, relating to the Mohawk Tannery Site in Nashua, New Hampshire.

FOR THE STATE OF NEW HAMPSHIRE

By: Michael J. Walls  
Name: Michael J. Walls  
Assistant Commissioner  
Dept. of Env. Services

April 13, 2006  
Date:

## **APPENDIX A**

### **Insurance Companies To Which Claims Have Been Made**

**The American Insurance Company**  
*(a/k/a Fireman's Fund; now part of Allianz  
of America)*

**The Bellefonte Insurance Company**  
*(now part of Northwestern National  
Insurance Company)*

#### **CNA Insurance Companies**

**Employers Mutual Liability Insurance Company**  
*(a/k/a Employers Insurance of Wausau)*

**Federal Insurance Company**  
*(a/k/a Chubb Pacific Indemnity Group and  
Chubb & Son; now part of Chubb Group of  
Insurance Companies)*

**Lumbermens Mutual Casualty Co.**  
*(now part of Kemper Insurance Companies)*

**U.S. Fire Insurance Company**  
*(now part of Fairfax Financial Group)*



**APPENDIX B**

Insurance Companies and Policies  
Under Which Claims Have Been Made

<b><u>Insurance Company</u></b>	<b><u>Policy Numbers</u></b>
<b>The American Insurance Company</b> (a/k/a <i>Fireman's Fund</i> ; now part of <i>Allianz of America</i> )	LA 270 41 36
	LA 288 00 01
	LA 292 34 88
	LA 297 89 87
	LA 310 45 50
	LA 333 14 27
	MXC 550 64 56
<b>The Bellefonte Insurance Company</b> (now part of <i>Northwestern National Insurance Company</i> )	CAG 205816
<b>CNA Insurance Companies</b>	RDU 2931944
	RDU 2929772
<b>Employers Mutual Liability Insurance Company</b> (a/k/a <i>Employers Insurance of Wausau</i> )	152700048466
	152600048466
<b>Federal Insurance Company</b> (a/k/a <i>Chubb Pacific Indemnity Group</i> and <i>Chubb &amp; Son</i> ; now part of <i>Chubb Group of Insurance Companies</i> )	7925-19-40
<b>Lumberman's Mutual Casualty Co.</b> (now part of <i>Kemper Insurance Companies</i> )	5SX 002 805
<b>U.S. Fire Insurance Company</b> (now part of <i>Fairfax Financial Group</i> )	523-109348-1
	523-193042-7
	523-197579-6
	523-293285-6
	523-371563-1
	523-459126-8

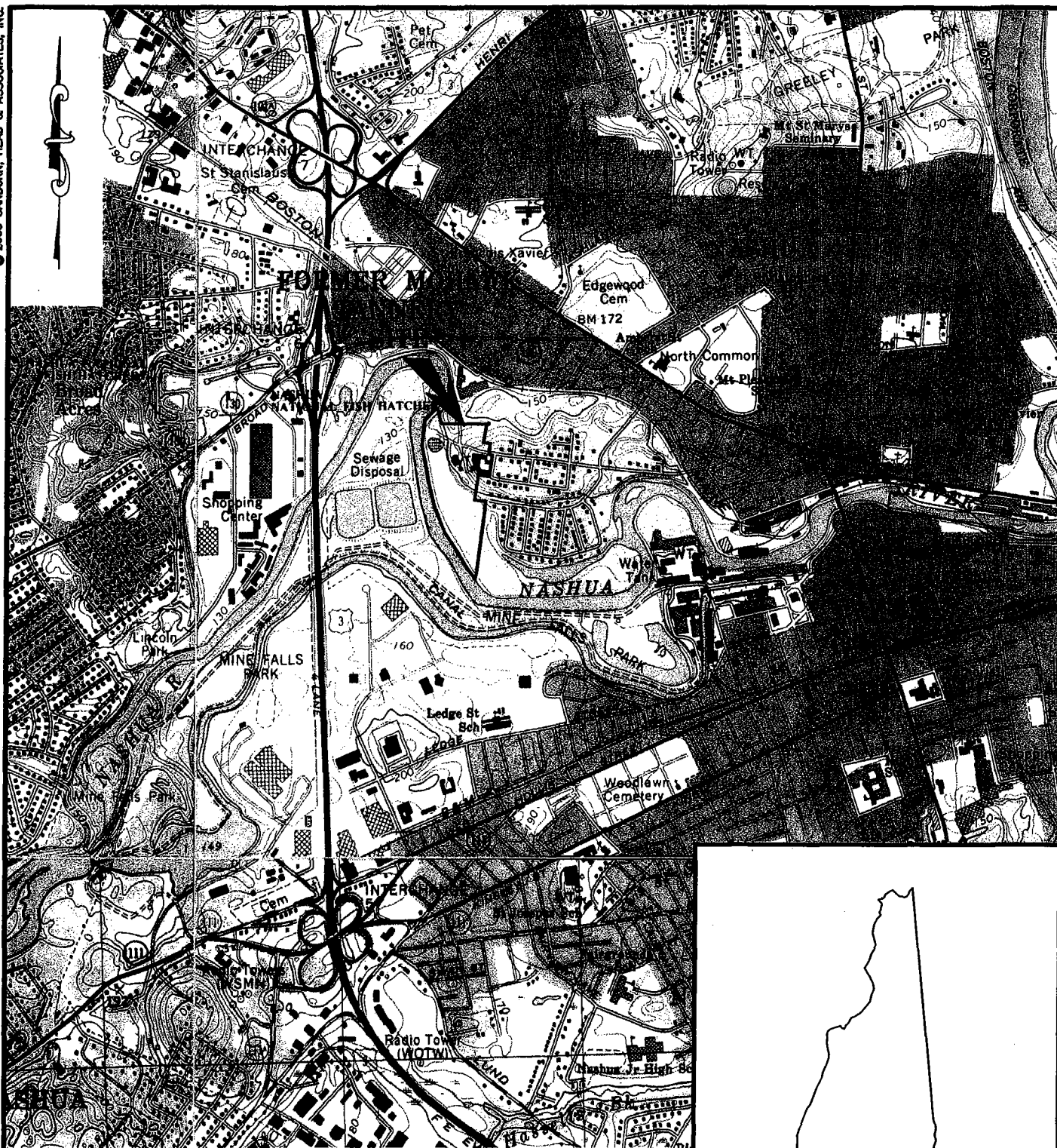
© 2005 SANBORN, HEAD &amp; ASSOCIATES, INC.

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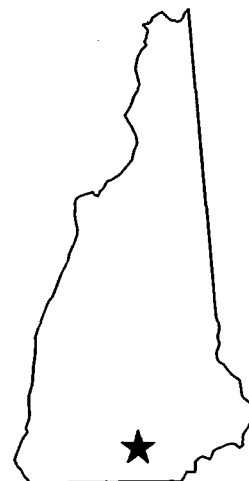
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## NOTES:

BASE MAP TAKEN FROM 7.5 MINUTE  
 USGS QUADRANGLE MAPS:  
 NASHUA NORTH, NH (1965)(PROVISIONAL 1979)  
 NASHUA SOUTH, NH (1965)(PROVISIONAL 1979)  
 PEPPERELL, MA (1965)(PROVISIONAL 1979)  
 SOUTH MERRIMACK, NH (1968)(PHOTOREVISED 1985)

-DRAFT-



# FORMER MOHAWK TANNERY SITE NASHUA, NEW HAMPSHIRE

**SHA**  
 Sanborn, Head & Associates  
 Consulting Engineers & Scientists

## REMEDIAL INVESTIGATION OPERABLE UNIT 1 LOCUS PLAN

SCALE: 1"=2000'	DRAWN BY: PGP	FILE NO. 2158
DATE: MAR 05	CHECKED BY: CAC	FIGURE NO. 1

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Escrow Agreement"), is made as of the 22<sup>nd</sup> day of June, 2006, by Chester Realty Trust ("Trust") and Mr. Warren W. Kean ("Kean") (Chester Realty Trust and Mr. Kean are collectively referred to as "Settling Parties"), and TD Banknorth N.A. as Escrow Agent ("Escrow Agent").

### RECITALS:

A. The Trust is the owner of certain real property and improvements comprising approximately 30 acres located at 11 Warsaw Avenue, Nashua, Hillsborough County, New Hampshire. The Property is further described in deeds recorded in book 3138, pages 121 and 122 at the Hillsborough County Registry of Deeds in Nashua, and consists of Lots 134-16, 70-14 and 70-13 on the land records maintained by the City of Nashua (the "Site Property").

B. The United States Environmental Protection Agency ("EPA") and the State of New Hampshire ("State") (collectively referred to as the "Government Parties") have alleged that the Settling Parties are liable for the costs incurred and to be incurred by the Government Parties in responding to environmental contamination at the Site Property. The Government Parties and the Settling Parties have reached a resolution of the Government Parties' claims. That agreement is embodied in the terms of a Settlement Agreement, which is subject to final approval by the Government Parties following a public comment period.

C. The Settling Parties have asserted claims against certain insurance carriers under certain insurance policies which the Settling Parties have contended provide coverage, or may provide coverage, for some or all of the matters which are the subject of the Government Parties' claims. Some of the insurance claims have been settled, and some remain pending.

D. The purpose of this Escrow Agreement is to hold the net proceeds received from settled insurance claims in escrow as a guaranty fund pending final determination of federal and state taxes owed by Settling Parties on such proceeds and payment of certain fees and expenses pursuant to the Settlement Agreement, at which time or times such net proceeds will be paid to the Government Parties in accordance with this Escrow Agreement.

NOW THEREFORE, the parties agree as follows:

1. Escrowed Property. The "Escrowed Property" shall consist of all payments made by the Settling Parties to the Escrow Agent pursuant to the Settlement Agreement. The money shall be maintained by Escrow Agent in a U.S. Government Obligations Money Market fund. All interest shall accrue to the benefit of, and be currently payable to, the Government Parties. Interest shall be paid in semi-annual installments to the Government Parties on June 15 and December 15 of each year.

2. Payment to the Government Parties. All payments to the Government Parties to be made pursuant to this Escrow Agreement shall be made by Electronic Funds Transfer ("EFT") to the Mellon Bank, ABA #43000261, Account #910-9053, or as otherwise instructed by EPA. Payment shall be accompanied by a statement identifying the name and address of Settling Parties,

the Site name (the "Mohawk Tannery Site"), EPA Region 1 and Site/Spill ID #017C, and the EPA docket number for this matter which is EPA CERCLA Docket No. 01-2005-0053.

3. Escrow Irrevocable. The delivery of the Escrowed Property is irrevocable and the Settling Parties renounce any right, title or interest in or to the Escrowed Property, except as provided in the terms of this Escrow Agreement.

4. Payments by Escrow Agent. Within ten (10) business days of receiving a written statement of instructions from the Settling Parties, acting on advice from their tax advisor, the Escrow Agent shall cause a payment to be made to the Government Parties or other payee out of the Escrowed Property in accordance with the amount set forth in the written statement. The Escrow Agent shall not use the Escrowed Property to pay any other obligations, other than as directed by the Settling Parties in accordance with a written statement. Instructions from the Settling Parties will be given in accordance with the terms of the Settlement Agreement.

5. Reporting. The Escrow Agent shall keep records of any and all such payments made, including name of the payee, the date and the amount of the payment. At not less than quarterly intervals on or about March 31, June 30, September 30 and December 31 of each year commencing on the first such date after the Effective Date of this Escrow Agreement, the Escrow Agent shall send a written accounting to the following persons which shall, at a minimum, include the following information: any amounts received by the Escrow Agent since the previous report; any amounts paid out of the Escrowed Property since the previous report (which payments shall be itemized by date, payee and amount), interest earned in the escrow account since the previous statement to the extent that information is available from the bank, and the current balance in the escrow account:

As to EPA:

Office of Environmental Stewardship  
U.S. Environmental Protection Agency, R1  
1 Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023  
Attention: Eve Vaudo, Staff Attorney for Mohawk Tannery Site

As to the State:

Peter Roth, Esq.  
Senior Assistant Attorney General  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, N. H. 03301

As to the Chester Realty Trust and Mr. Warren Kean:

The Chester Realty Trust  
400 East Dakota Avenue  
Hernando, Florida 34442-5326  
Attention: Mr. Warren W. Kean, Trustee

*With a copy to:*  
Ridgway M. Hall, Jr., Esquire  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2595

6. General Terms and Conditions Applicable to the Escrow Agent.

The duties of the Escrow Agent hereunder shall be entirely administrative and not discretionary. The Escrow Agent shall be obligated to act only in accordance with: (i) the provisions of this Escrow Agreement; or (ii) any orders, judgments or decrees of any court, and Escrow Agent shall not be liable as a result of its compliance with the same.

a. As to any legal questions arising in connection with the administration of this Escrow Agreement, the Escrow Agent may rely absolutely upon the advice given to it by its counsel and shall be free of liability for acting in reliance on such advice; or in the alternative, in the event of any dispute, the Escrow Agent may deliver the documents held by it to the Superior Court for Merrimack County, New Hampshire, or to such person or persons as a court may direct, and thereupon shall be relieved of all further obligation or duty as Escrow Agent hereunder.

b. Escrow Agent may rely absolutely upon the genuineness and authorization of the signature or purported signature of any party upon any Final Determination, instruction, notice, release, receipt or other document delivered to it pursuant to this Escrow Agreement.

c. Each of the Parties hereto agrees to, and hereby does, waive any suit, claim, demand or cause of action of any kind which it may have or may assert against Escrow Agent arising out of or relating to the execution of performance by the Escrow Agent of this Escrow Agreement, unless such suit, claim, demand or cause of action is based upon the gross negligence or bad faith of Escrow Agent.

d. Escrow Agent, as a condition of any disbursement to a Person pursuant to this Escrow Agreement, may require from the recipient a receipt therefor.

e. At any time during the term of this Escrow Agreement, Escrow Agent, upon written instructions of the Government Parties and the Settling Parties, acting unanimously, shall assign its rights and obligations hereunder to another Escrow Agent who agrees to assume such rights and obligations. Upon such assignment, Escrow Agent shall transfer the then remaining Escrowed Property to the new Escrow Agent and thereupon shall be released of any further liability under this Escrow Agreement. Each successor Escrow Agent shall have all the powers and duties of Escrow Agent hereunder.

f. Instructions, notices, releases, payments and any other documents delivered under this Escrow Agreement shall be in writing and sent to the party at the address listed under his, her or its name, or to such other place or person as any party from time to time may direct in writing. Any such communication shall be sent by certified mail, return receipt requested, recognized overnight courier (e.g., Federal Express or Express Mail) or by hand, and, if properly addressed and any postage prepaid, shall be deemed given 3 business days after being deposited in the mail, 1 business day after delivery to an overnight courier or upon delivery by

hand. Electronic communication may be used only if there is express confirmation of receipt by each intended recipient.

g. This Escrow Agreement shall expire when the entire Escrowed Property has been distributed and the Government Parties and Settling Parties advise Escrow Agent in writing that no further amounts will be delivered to Escrow Agent, or that they have agreed to terminate this Escrow Agreement. Upon termination of this Escrow Agreement, all remaining Escrowed Property shall be paid to the Government Parties.

h. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire, including all matters of construction and performance, ignoring any laws that might otherwise govern under principles of conflicts of law applicable thereto.

7. Execution In Counterparts.

This Escrow Agreement may be executed in multiple counterparts with each party signing separately which, together, shall be deemed a single Escrow Agreement, effective and binding on all of the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Escrow Agreement has been executed on behalf of each of the Parties hereto as their free and voluntary act, for the purposes set forth herein, all as of the day and year first above written.

The Chester Realty Trust

By: Warren W. Kean Date: 6/22/2006  
Warren W. Kean, Trustee  
400 East Dakota Court  
Hernando, Florida 34442-5326

By: Warren W. Kean Date: 6/24/2006  
Warren W. Kean  
400 East Dakota Court  
Hernando, Florida 34442-5326

ESCROW AGENT:

~~TD Banknorth Wealth Management Group~~ N.A.

By: Robert P. Dinan Date: 7/19/06  
Robert P. Dinan, CFP  
Senior Vice President  
Senior Wealth Advisor  
TD Banknorth Wealth Management Group  
191 Main Street  
Nashua, N.H. 03060