



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

D & L SALES, INC.,

Defendant.

CIVIL ACTION NO. \_\_\_\_\_

CONSENT DECREE

## TABLE OF CONTENTS

I.	BACKGROUND .....	1
II.	JURISDICTION .....	3
III.	PARTIES BOUND .....	3
IV.	DEFINITIONS .....	3
V.	GENERAL PROVISIONS .....	5
VI.	REMEDY REVIEW .....	7
VII.	ACCESS AND INSTITUTIONAL CONTROLS .....	7
VIII.	DUE CARE AND COOPERATION .....	11
IX.	REPORTING REQUIREMENTS .....	11
X.	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS .....	12
XI.	PAYMENTS FOR RESPONSE COSTS .....	13
XII.	FORCE MAJEURE .....	14
XIII.	DISPUTE RESOLUTION .....	15
XIV.	STIPULATED PENALTIES .....	17
XV.	COVENANTS BY PLAINTIFF .....	19
XVI.	COVENANTS BY SETTLING DEFENDANT .....	21
XVII.	EFFECT OF SETTLEMENT; CONTRIBUTION .....	23
XVIII.	ACCESS TO INFORMATION .....	24
XIX.	RETENTION OF RECORDS .....	25
XX.	NOTICES AND SUBMISSIONS .....	26
XXI.	EFFECTIVE DATE .....	27
XXII.	RETENTION OF JURISDICTION .....	27
XXIII.	APPENDICES .....	27
XXIV.	COMMUNITY RELATIONS .....	28
XXV.	MODIFICATION .....	28
XXVI.	RELEASE OF LIEN .....	28
XXVII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT .....	28
XXVIII.	SIGNATORIES/SERVICE .....	29
XXIX.	FINAL JUDGMENT .....	29

## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Aircraft Components, Inc. Superfund Site in Benton Charter Township, Berrien County, Michigan (the "Site"), together with accrued interest; and (2) performance of response work by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Michigan (the "State") on February 16, 2007 of negotiations with potentially responsible parties regarding implementation of the remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on July 5, 2007 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any issue of fact or law or liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. Settling Federal Agencies do not admit any issue of fact or law or liability relating to the Site (as defined below).

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 17, 1996, 61 Fed. Reg. 30510.

G. In June 1998, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430. Two operable units were defined for the Site: the Radiation Operable Unit ("OU #1") and the Chemical Operable Unit ("OU #2").

H. EPA completed a Feasibility Study ("FS") Report for OU #1 on July 28, 2000.

I. In July 2000, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS for OU #1 and of the proposed plan for remedial action in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which EPA based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented for OU#1 at the Site is embodied in a final Record of Decision ("ROD") for OU #1, executed on September 28, 2000, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments received by EPA. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

K. EPA completed an FS for OU #2 on June 18, 2002.

L. In August 2002, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS for OU #2 and of the proposed plan for remedial action in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which EPA based the selection of the response action.

M. The decision by EPA on the remedial action to be implemented for OU#2 at the Site is embodied in a final ROD for OU #2, executed on September 25, 2002, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

N. The Remedial Action required by the OU#1 ROD was substantially completed in 2003. The Remedial Action required by the OU#2 ROD is ongoing.

O. From 2007 through 2009, Settling Defendant and certain Covered Affiliates (as defined below) performed response actions at the Site, under EPA oversight, including supplemental groundwater treatment actions for OU #2.

P. In 2009 and 2010, Settling Defendant and certain Covered Affiliates conducted a Residential Use Demonstration Project, under EPA oversight, to determine the suitability of the northwestern corner of the Site for potential residential development. The demonstration project included an extensive soil sampling program and excavation and disposal of soil that exceeded State residential cleanup criteria.

Q. On September 30, 2010, EPA issued an Explanation of Significant Differences ("ESD") to document a change in the allowable use of the portion of the Site identified as "Area A" on the attached Site map (Appendix A). The allowable use for Area A was amended from commercial/industrial and/or recreational to residential based on the results of the Residential Use Demonstration Project and projected implementation of certain required institutional controls and associated remedial actions to support the change. More specifically, the ESD modified and enhanced certain institutional controls required under the ROD (OU#2), and required additional excavation and off-site disposal of soil from a limited area in Area A. The ESD also required placement of a soil cover at least 12-inches thick, in the planned area of residential construction, slab foundations within any residential construction, installation of appropriate vapor intrusion barriers and implementation of institutional controls to protect the soil cover. In addition, the ESD indicated that passive venting systems may be installed, and an appropriate monitoring network would be in place to monitor methane gas.

R. Settling Defendant has made a certification with regard to its current assets. Based upon this Financial Certification, the United States has determined that Settling Defendant

has limited ability-to-pay, but is able to perform the response actions specified in Section VII. Based on the information presently available to EPA, EPA believes that the Work, as defined below, will be properly and promptly conducted by Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant and Covered Affiliates. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant and Covered Affiliates waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendant and Covered Affiliates shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant, Covered Affiliates, and their successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

## IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree 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 Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Consent Decree:

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

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIII). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Covered Affiliates” shall mean Settling Defendant’s affiliates Harbor Shores Real Estate LLC; Harbor Shores Benton Harbor-Benton Township Land Development LLC; and Harbor Shores Community Redevelopment, Inc.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, 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.

“Easement” shall mean the Declaration of Restrictive Covenants and Environmental Protection Easement attached as Appendix D hereto..

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 71.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Explanation of Significant Differences” or “ESD” shall mean the Explanation of Significant Differences relating to the Site signed on September 30, 2010, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto.

“Institutional Controls” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at the Site.

“MDNRE” shall mean the Michigan Department of Natural Resources and Environment and any successor departments or agencies of the State of Michigan.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral, or an upper or lower case letter.

“Parties” shall mean the United States, Settling Defendant, and Covered Affiliates.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section H of ROD (OU #2).

“Plaintiff” shall mean the United States.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office, currently as set forth in the Easement attached hereto as Appendix D.

“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).

“Record of Decision for the Radiation Operable Unit” or “ROD (OU #1)” shall mean the EPA Record of Decision relating to the Radiation Operable Unit at the Site (Operable Unit #1) signed on September 28, 2000, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto.

“Record of Decision for the Chemical Operable Unit” or “ROD (OU #2)” shall mean the EPA Record of Decision relating to the Chemical Operable Unit at the Site (Operable Unit #2) signed on September 25, 2002, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto.

“Remedial Action” shall mean those activities to be undertaken to implement the RODs, in accordance with plans approved by EPA.

“RODs” shall mean ROD (OU#1) and ROD (OU #2).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean D&L Sales, Inc.

“Settling Federal Agencies” shall mean the United States Department of Defense, including all of its departments, offices, agencies, activities, commands and instrumentalities, including without limitation, the United States Defense Logistics Agency, which is resolving any claims which have been or could be asserted against it with regard to the Site as provided in this Consent Decree.

“Site” shall mean the Aircraft Components, Inc. Superfund Site, encompassing approximately 17-acres, located at 671 North Shore Drive in Benton Township, Berrien County, Michigan, and depicted generally on the map attached as Appendix A.

“State” shall mean the State of Michigan.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of Institutional Controls, as set forth in Appendix C to this Consent Decree, and any modifications made in accordance with this Consent Decree.

“Subsequent Owner” shall mean any person who acquires any legal or equitable ownership interest in any portion of the Site after the date of lodging of this Consent Decree, including any fee interest, leasehold interest, mortgage interest, or beneficial interest in any trust that holds legal title to such property.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America including all of its departments, agencies, and instrumentalities, which includes without limitation EPA and Settling Federal Agencies.

“Waste Material” shall mean: (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous waste” under Michigan Admin Code r. 299.9101-9230.

“Work” shall mean all activities Settling Defendant is required to perform under this Consent Decree and the SOW, except any monitoring requirements and those activities required by Section VI (Remedy Review) and Section XIX (Retention of Records).

#### V. GENERAL PROVISIONS

4. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by implementation of response actions at the Site by Settling Defendant, to pay response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants and the claims of Settling Defendant or Covered Affiliates which have been or could have been asserted against the United States with regard to this Site, as provided in this Consent Decree.

5. Commitments by Settling Defendant and Settling Federal Agencies. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the RODs, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendant and approved by EPA pursuant to this Consent Decree. The United States, on behalf of the Settling Federal Agencies, shall pay EPA for response costs, as provided in this Consent Decree.

6. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the RODs and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

7. Notice to Successors-in-Title.

a. For any real property owned or controlled by Settling Defendant that is located at the Site, Settling Defendant shall, within 60 days after the Effective Date, submit to EPA and the State, for EPA review and approval, a proposed notice to be filed with the land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site, that EPA has selected a remedy for the Site, and that a potentially responsible party has entered into a Consent Decree requiring implementation of the Work as identified herein. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Settling Defendant shall record the notice within ten days of EPA's approval of the notice. Settling Defendant shall provide EPA and the State with certified copies of the recorded notice within 30 days of recording such notice.

b. Settling Defendant shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (i) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (ii) to EPA and the State regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.



c. Settling Defendant may Transfer any real property located at the Site only if any Proprietary Controls required by Paragraph 12.c have been recorded with respect to the real property and EPA has approved in writing the agreement. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 7.c, the Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist the Settling Defendant in obtaining compliance with the agreement. Settling Defendant shall reimburse the United States for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

d. In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including, but not limited to, its obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

#### VI. REMEDY REVIEW

8. Periodic Review. Within 30 days of a request by EPA to perform an "institutional controls study," but no more frequently than annually, Settling Defendant or the Subsequent Owner shall submit to EPA and the State a report setting forth the status of implementation of and compliance with the institutional controls required under Section VII (Access and Institutional Controls) of this Consent Decree, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

9. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

10. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

#### VII. ACCESS AND INSTITUTIONAL CONTROLS

11. The Parties acknowledge that Settling Defendant and any Subsequent Owner of the Site will need to (i) provide access to the Site and (ii) accept certain soil and water use restrictions on various portions of the Site, as determined by EPA, in that such restrictions are necessary to implement, ensure non-interference with, and/or ensure the protectiveness of, the remedial measures performed at the Site. The ROD (OU#2) set cleanup goals for the chemical operable unit by anticipating a future commercial/industrial and/or recreational use for the property; it did not assume a future residential use. The ESD revised the allowable land uses to include future residential use within the northwest portion of the Site (identified as "Area A" on the Site map attached hereto as Appendix A). The ROD (OU#2) and ESD call for placement of

a restrictive covenant on the property to restrict future land uses as set forth therein, due to the estimated levels of residual contaminants in the soils and groundwater following cleanup.

12. Agreement to Provide Access and Non-Interference.

a. Commencing on the date of lodging of the Consent Decree, Settling Defendant and any Subsequent Owner shall provide the United States and the State and their representatives, including EPA and the Michigan Department of Environmental Resources and Environment ("MDNRE") and their contractors and subcontractors, with access at all times to the Site to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XVIII (Access to Information);
- (9) Assessing Settling Defendant's compliance with the Consent Decree;
- (10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. Commencing on the date of lodging of the Consent Decree, Settling Defendant and any Subsequent Owner shall not use the Site, or other such real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action; and

c. Such Settling Defendant shall:

- (1) execute and record in the appropriate land records office Proprietary Controls (the Easement attached hereto as Appendix D) that: (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 12.a, and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 13.c, including, but not limited to, the

specific restrictions listed therein and any land/water use restrictions listed in the Institutional Controls Plan, as further specified in Paragraph 13.a-b.

(2) The Proprietary Controls shall be granted to the United States, on behalf of EPA, and its representatives, and the State and its representatives.

(3) Within 15 days of the Date of Lodging of the Consent Decree, Settling Defendant shall submit to EPA for review and approval regarding such real property a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

(4) Within 15 days of the Date of Entry of the Consent Decree, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Control (the Easement attached hereto as Appendix D) with the appropriate land records office. Within 30 days of recording the Proprietary Control, such Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

13. Institutional Controls Plan, Environmental Protection Easement, and Declaration of Restrictive Covenants Addressing Access Rights and Land/Water Use Restrictions.

a. An Institutional Controls Plan is attached hereto as Appendix C. Upon the date of entry of this Consent Decree, Settling Defendant and any Subsequent Owner shall implement the Institutional Controls Plan.

b. Among other things, the Institutional Controls Plan requires Settling Defendant and any Subsequent Owner to take all actions necessary to ensure that a Proprietary Control in the form of an Environmental Protection Easement and Declaration of Restrictive Covenants (the "Easement"), attached hereto as Appendix D, is executed and recorded with the Register of Deeds, Berrien County, Michigan.

c. The Parties agree that the Easement shall create an easement, running with the land, that affords EPA, MDNRE, and other designees identified by EPA:

- (1) a right of access to all portions of the Site for the purpose of conducting the response activities listed in Subparagraph 12.a;

- (2) a right to enforce restrictions on the use of groundwater beneath all portions of the Site, including that there shall be no consumption use of the groundwater for drinking water purposes, unless a demonstration is made to EPA and MDNRE that such groundwater meets drinking water standards, and EPA and MDNRE approve in writing such demonstration;
- (3) a right to enforce restrictions on the use of land throughout all portions of the Site. These restrictions include:
  - (A) no use which damages or restricts the operation of any remedial action component installed pursuant to the ROD (OU #2), the ESD, this Consent Decree, or the SOW;
  - (B) no tampering with or removal of containment or monitoring systems that remain on the Site as a result of implementation of any response action without prior approval of EPA; and
  - (C) no use of or activity at the Site that may interfere with, damage or otherwise impair the effectiveness of any response action (or any component thereof), except with the written approval of EPA, in consultation with the State of Michigan, and consistent with all statutory and regulatory requirements;
- (4) a right to enforce specified restrictions on the use of land outside of the "residential" area of the Site ("Area A"), including:
  - (A) prohibition on penetration of soils, including, but not limited to, any filling, grading, excavation, drilling, or boring, without the written approval of EPA, in consultation with MDNRE;
  - (B) prohibition on movement of soil within the Site and/or off of the Site, unless the soil is characterized prior to movement and EPA, in consultation with MDNRE, approves such movement in writing; and
  - (C) prohibition on development for residential use;
- (5) a right to enforce specified restrictions on the use of land within the "residential" area of the Site ("Area A"), including:
  - (A) requirement that occupied buildings incorporate soil vapor barriers that meet applicable criteria under Part 201, Environmental Remediation, Michigan's Natural Resources and Environment Protection Act of 1994 ("Part 201 criteria");
  - (B) prohibition on basement construction within any residential buildings;

- (C) prohibition on penetration of soils, including, but not limited to, any excavation, digging, or other disturbance of soil beneath 12-inches below ground surface (including gardening, planting, and light construction), with the exception of construction (including, but not limited to, footings, elevator shafts, basins, etc.) utilizing all required worker protective health, safety and, welfare measures; and
- (D) requirement that the 12-inch installed soil cover be replaced or repaired if disturbed.

(6) a right to install a methane probe network in Area A;

d. The Parties agree that the Easement shall grant access rights and the rights to enforce the land/water use restrictions referenced in Subparagraph 13.c to: (1) the United States, on behalf of EPA, and its representatives, as third party beneficiaries; (2) the State, on behalf of MDNRE, and its representatives; and/or (3) other appropriate designees identified by EPA.

e. Settling Defendant and any Subsequent Owner shall submit a Proposed Residential Development Schedule to EPA, outlining the proposed schedule for any residential development activities at the Site, at least 60 days prior to the start of those activities. Whenever the Schedule is revised or modified, Settling Defendant shall update EPA within 30 days of such revision or modification. At least 30 days prior to the start of residential development activities at the Site, the Settling Defendant shall provide written notice to U.S. EPA of the start of those activities.

f. In accordance with the Proposed Residential Development Schedule, Settling Defendant and any Subsequent Owner shall provide EPA a reasonable opportunity to review the final design plans and the final construction plans for any residential development on the Site, for the purpose of ensuring that the plans are consistent with Institutional Controls and/or other construction requirements necessary to allow for residential use pursuant to the Consent Decree, the SOW, and the ESD. If the EPA Superfund Division Director, Region 5, or his/her delegate, determines that the final design plans and/or the final construction plans are not consistent with the Institutional Controls and/or other construction requirements necessary to allow for residential use stated in this Consent Decree, the SOW and the ESD, then the Director or his/her delegate shall notify Settling Defendant or Subsequent Owner of the inconsistencies and: (1) request that the plans be revised within 30 days to be consistent with those Institutional Controls and/or the other construction requirements and resubmitted to the Director or his/her delegate and MDNRE; and/or (2) direct Settling Defendant or Subsequent Owner to modify the Easement to include all Institutional Controls and/or other construction requirements that the Director or his/her delegate deems necessary to allow for residential use based on his/her review of the final design and the final construction plans for the residential development.

14. If EPA determines that Institutional Controls as described in Subparagraph 13.c should be imposed through state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, Settling Defendant and any Subsequent Owner shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

15. Modification and Termination of the Easement.

a. The obligation to implement and maintain the above restrictions shall run with the land and shall remain in full force and effect from the date of lodging of this Consent Decree, irrespective of any sale, conveyance, alienation, or other transfer of any interest or estate in such property, until such time as EPA issues a determination in writing or the Court rules to either modify or terminate the restrictions in response to a petition from the owner of the property, as provided below.

b. At any time, Settling Defendant or any Subsequent Owner may petition the EPA Superfund Division Director, Region 5, or his/her delegate, to modify the Easement. Upon completion of the Work and achievement of the Performance Standards, consistent with the SOW and the ROD (OU#2), Settling Defendant or any Subsequent Owner may petition the EPA Superfund Division Director, Region 5, or his/her delegate, to terminate the Easement. Any petition for modification or termination shall include (i) identification of the specific provision sought to be modified or terminated and any proposed modification; (ii) any proposed additional uses of the Site; and (iii) a statement as to why the proposed modification or termination is not inconsistent with achievement of the Performance Standards, the SOW and the ROD (OU#2). Final termination of the Easement will be subject to a finding that the response action required at, under or adjacent to the Site by any Consent Decree entered pursuant to CERCLA, has been fully implemented and no other response actions are planned for the Site.

c. The petitioning entity shall provide the State (and Settling Defendant if the petitioner is a Subsequent Owner) a copy of any petition for modification or termination of the Easement concurrent with such submission to EPA. Any Party may object to the proposed modification or termination of the Easement on the grounds that such modification or termination is not consistent with achievement of the Performance Standards, the SOW, and the ROD (OU#2), and/or may result in non-compliance with the Performance Standards. Any Party so objecting shall notify Settling Defendant, the Subsequent Owner, EPA, and the State, in writing, within 30 days of receipt of the petition. The EPA Superfund Division Director, Region 5, or his/her delegate, may allow or deny the petition for modification or termination in whole or in part.

d. Settling Defendant or a Subsequent Owner may seek dispute resolution pursuant to Section XIII (Dispute Resolution), Paragraph 36 (record review), in response to EPA denial of a petition for modification or termination of the Easement or any portion thereof.

16. Notwithstanding any provision of the Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

VIII. DUE CARE AND COOPERATION

17. Nothing in this Consent Decree shall be construed to relieve Settling Defendant's, any Covered Affiliate's, or any Subsequent Owner's duty to exercise due care with respect to hazardous substances at the Site or Settling Defendant's, Covered Affiliate's, or any Subsequent Owner's duty to comply with all applicable laws and regulations.

18. Settling Defendant, Covered Affiliates, and any Subsequent Owner agree to cooperate fully with EPA, EPA's contractors and designees, and the State in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize interference with the operations of Settling Defendant or any Subsequent Owner by such entry and response. In the event that Settling Defendant or any Subsequent Owner becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant or the Subsequent Owner shall: (i) in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA and the State of such release or threatened release; and (ii) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release.

#### IX. REPORTING REQUIREMENTS

19. Settling Defendant shall submit two copies of all plans, reports, and data required by the SOW, the Institutional Controls Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit two copies of all such plans, reports and data to the State. Upon request by EPA, Settling Defendant shall submit in electronic form all portions of any report or other deliverable Settling Defendant is required to submit pursuant to the provisions of this Consent Decree.

20. All reports and other documents submitted by Settling Defendant to EPA which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendant.

#### X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

21. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, with the exception of the final design and construction plans (Paragraph 15 (d)) and the Proposed Residential Development Schedule (Section II, C. of the SOW) EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendant modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

22. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 21(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to their

right to invoke the Dispute Resolution procedures set forth in Section XIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 21(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XIV (Stipulated Penalties).

23. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 21(d), Settling Defendant shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item to EPA and the State for EPA approval. Any stipulated penalties applicable to the submission, as provided in Section XIV, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 24 and 25.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 21(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XIV (Stipulated Penalties).

24. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XIII (Dispute Resolution).

25. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendant invokes the dispute resolution procedures set forth in Section XIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIII (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIV.

26. All plans, reports, and other items required to be submitted to EPA under this Consent Decree, with the exception of the final design and final construction plans (Paragraph 15 (d)) and the Proposed Residential Development Schedule (Section II, C. of the SOW), shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.



## XI. PAYMENTS FOR RESPONSE COSTS

### 27. Payments for Response Costs.

a. As soon as reasonably practicable after the date of entry of this Consent Decree, and consistent with Paragraph 27(c), the United States, on behalf of Settling Federal Agencies, shall pay to the EPA \$5,649,438 in payment for EPA's response costs.

b. The total amount to be paid by Settling Federal Agencies pursuant to this paragraph shall be deposited in the Aircraft Components 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.

c. If the payment to EPA required by this Paragraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the date of entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998. Payment to EPA pursuant to this paragraph is not subject to the provisions of Section XIII (Dispute Resolution).

28. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

## XII. FORCE MAJEURE

29. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors or agents, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

30. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within two days of when Settling Defendant first knew that the event might cause a delay. Within seven days thereafter, Settling Defendant shall provide in writing to EPA and the State an explanation and description

of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

31. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

32. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 29 and 30, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

### XIII. DISPUTE RESOLUTION

33. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

34. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless

it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

35. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 36 or Paragraph 37.

b. Within 60 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 36 or 37. Within 15 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 36 or 37, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 36 and 37.

36. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the RODs' provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 36.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 36.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 36.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 36.a.

37. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 35, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on Settling Defendant unless, within 10 days of receipt of the decision, Settling Defendant files with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Paragraph E of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

38. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 45. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

#### XIV. STIPULATED PENALTIES

39. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 40 and 41 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XII (Force Majeure). "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and

any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

40. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 40.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$3,000	31st day and beyond

b. Compliance Milestones.

<u>Deliverable/Milestone</u>	<u>Due Date</u>
1. Recording of Final Easement and Map of Site	15 days from Date of Entry
2. Final residential design plans / construction plans	At least 60 days prior to start of residential development activities

41. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 36.b or 37.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

42. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendant of a violation.

43. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Settling Defendant's receipt from EPA of a demand for payment of the

penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Fines and Penalties, P.O. Box 979077, St. Louis, MO 63197-9000 and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #050W, the DOJ Case Number 90-11-3-08695, and the name and address of the Party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XX (Notices and Submissions).

44. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

45. Penalties shall continue to accrue as provided in Paragraph 41 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

46. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 43.

47. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

48. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

## XV. COVENANTS BY PLAINTIFF

49. Covenant Not to Sue Settling Defendant by United States. In consideration of the actions that have been and will be performed by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraph 51 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. These covenants not to sue shall take effect upon the recording of the Easement pursuant to Paragraph 13. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Certification made by Settling Defendant in Paragraph 52. If the Financial Certification is subsequently determined by EPA to be false or, in any material respect, inaccurate, the covenant not to sue in this Paragraph and the contribution protection in Paragraph 58 shall be null and void. Performance of the Work shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. These covenants not to sue extend only to Settling Defendant and do not extend to any other person; provided, however, that the United States also covenants not to sue or to take administrative action against the Covered Affiliates pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site.

50. Covenant for Settling Federal Agencies by EPA. In consideration of the payments that will be made by the United States on behalf of Settling Federal Agencies under this Consent Decree, and except as specifically provided in Paragraph 51 of this Section, EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. With respect to present and future liability, EPA's covenant shall take effect upon the receipt of the payments required by Paragraph 27 of Section XI (Payments of Response Costs). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to Settling Federal Agencies and does not extend to any other person.

51. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant and the Covered Affiliates, and EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all matters not expressly included within Plaintiff's Covenant in Paragraph 49 and the Covenant by EPA in Paragraph 50. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant and the Covered Affiliates and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to all rights against Settling Federal Agencies, with respect to:

- a. claims based on a failure by Settling Defendant or Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based on the ownership or operation of the Site by Settling Federal Agencies, when such ownership or operation commences after signature of this Consent Decree;

d. liability based on Settling Defendant's, a Covered Affiliate's, or Settling Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. criminal liability;

g. liability for violations of federal or state law which occur during or after implementation of the Work; and

h. Settling Defendant's liability for any response activities that EPA may require at the Site as a condition of allowing Settling Defendant or a Subsequent Owner to develop the Site (or any portion of the Site) for residential use.

52. Financial Certification. Settling Defendant certifies that it no longer actively participates in any business activity for profit and that the Site constitutes its sole asset. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree 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 Consent Decree, if the Financial Certification made by Settling Defendant in this paragraph is false or, in a material respect, inaccurate.

#### XVI. COVENANTS BY SETTLING DEFENDANT, COVERED AFFILIATES, AND SETTLING FEDERAL AGENCIES

53. Covenants Not to Sue by Settling Defendant and Covered Affiliates. Subject to the reservations in Paragraph 56, Settling Defendant and Covered Affiliates hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, including, but not limited to:

(1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 and 9613, or any other provision of law;

(2) any claims against the United States, including any department, agency or instrumentality of the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site, or

(3) any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Michigan 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.

54. Covenant by Settling Federal Agencies. Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 and 9613, or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

55. Except as provided in Paragraph 58 (Waiver of Claims) and Paragraph 63 (Waiver of Claim-Splitting Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiffs), other than in Paragraphs 51.a (claims for failure to meet a requirement of the Decree), 51.f (criminal liability), and 51.g (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendant's or Covered Affiliate's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

56. Settling Defendant reserves, and this Consent Decree is without prejudice to claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans or activities. Settling Defendant also reserves, and this Consent Decree is without prejudice to, contribution claims against Settling Federal Agencies in the event any claim is asserted by the United States against Settling Defendant pursuant to any of the reservations in Section XV (Covenants by Plaintiffs), other than in Paragraphs 51.a (claims for failure to meet a requirement of the Decree), 51.f (criminal liability), and 51.g (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

58. Waiver of Claims. Settling Defendant and Covered Affiliates agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any

person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

## XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

59. Except as provided in Paragraph 58 (Waiver of Claims), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 58 (Waiver of Claims), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

60. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant and each Settling Federal Agency is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The Covered Affiliates are similarly entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree 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 or any other person; provided, however, that if the United States exercises rights against Settling Defendant (or if EPA or the federal natural resource trustee assert rights against Settling Federal Agencies) under the reservations in Section XV (Covenants by Plaintiffs), other than in Paragraphs 51.a (claims for failure to meet a requirement of the Decree), 51.f (criminal liability), and 51.g (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

61. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

62. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within ten days of service of the complaint on such Settling Defendant. In addition, Settling Defendant shall notify the United States within ten days of service or receipt of any Motion for Summary Judgment and within ten days of receipt of any order from a court setting a case for trial.

63. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant and Covered Affiliates 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 in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiff).

#### XVIII. ACCESS TO INFORMATION

64. Settling Defendant and Covered Affiliates shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to response costs incurred or the Work. Settling Defendant and Covered Affiliates shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the incurrence of response costs or performance of the Work.

65. Business Confidential and Privileged Documents.

a. Settling Defendant and Covered Affiliates may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree 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). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant/Covered Affiliates that the documents or information 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 documents or information without further notice to Settling Defendant/Covered Affiliates.

b. Settling Defendant/Covered Affiliates may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant/Covered Affiliates asserts such a privilege in lieu of providing documents, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant/Covered Affiliates. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

66. No claim of confidentiality or privilege 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.

## XIX. RETENTION OF RECORDS

67. Until five years after the Date of Entry of this Consent Decree, Settling Defendant/Covered Affiliates shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site or that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant/Covered Affiliates must also retain, and instruct their contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant/Covered Affiliates (and their contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

68. At the conclusion of this document retention period, Settling Defendant/Covered Affiliates shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendant/Covered Affiliates shall deliver any such records or documents to EPA and the State. Settling Defendant/Covered Affiliates may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant/Covered Affiliates asserts such a privilege, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant/Covered Affiliates. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

69. Settling Defendant and Covered Affiliates each hereby certify that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

70. The United States acknowledges that each Settling Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XX. NOTICES AND SUBMISSIONS

71. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other 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. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, Settling Federal Agencies, the State, Settling Defendant, and Covered Affiliates, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Re: DJ #90-11-3-08695

and

Chief, Environmental Defense Section  
United States Department of Justice  
Environment and Natural Resources Division  
P.O. Box 23986  
Washington, DC 20026-3986  
Re: DJ # 90-11-6-05714

As to EPA

Director, Superfund Division  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Blvd. (S-6J)  
Chicago, IL 60604

and

Nefertiti Simmons  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Blvd. (S-6J)  
Chicago, IL 60604

As to the State of Michigan

Cynthia Fairbanks  
Environmental Response Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, MI 48909

As to Settling Defendant:

Robert McFeeter  
Settling Defendant's Project Coordinator  
Evergreen Development Company, LLC  
Discovery Center  
608 Pleasant Street  
St. Joseph, MI 49085

and

John V. Byl  
Attorney at Law  
Warner Norcross & Judd LLP  
111 Lyon NW  
900 Fifth Third Ctr.  
Grand Rapids, MI 49503

As to Covered Affiliates:

Jeffrey Noel  
Whirlpool Corporation  
2000 N M-63  
MD 3108  
Benton Harbor, MI 49022

XXI. EFFECTIVE DATE

72. The effective date of this Consent Decree shall be the date of entry of this Consent Decree; provided, however, that Settling Defendant and Covered Affiliates hereby agree that they shall be bound upon the date of lodging of this Consent Decree to comply with the obligations of Settling Defendant and Covered Affiliates specified in this Consent Decree as accruing upon the date of lodging. In the event the United States withdraws or withholds consent to this Consent Decree before entry or the Court declines to enter the Consent Decree, then the preceding requirement to comply with the requirements of this Consent Decree upon the date of lodging shall terminate.

## XXII. RETENTION OF JURISDICTION

73. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

## XXIII. APPENDICES

74. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the description and/or map of the Site.

“Appendix B” is the SOW.

“Appendix C” is the Institutional Controls Plan.

“Appendix D” is the Easement.

## XXIV. COMMUNITY RELATIONS

75. Settling Defendant shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

## XXV. MODIFICATION

76. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Settling Defendant. All such modifications shall be made in writing.

77. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and Settling Defendant.

78. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

#### XXVI. RELEASE OF LIEN

79. Subject to the Reservation of Rights in Section XV of this Consent Decree, upon recording the Easement pursuant to Paragraph 13 and full payment of any amounts owed under Section XIV (Stipulated Penalties), EPA agrees to release any lien it may have on the Site under Section 107 of CERCLA, 42 U.S.C. § 9607.

#### XXVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

80. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant and Covered Affiliates consent to the entry of this Consent Decree without further notice.

81. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XXVIII. SIGNATORIES/SERVICE

82. The undersigned representatives of Settling Defendant, Covered Affiliates, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

83. Settling Defendant and Covered Affiliates agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant and Covered Affiliates in writing that it no longer supports entry of the Consent Decree.

84. Settling Defendant and Covered Affiliates shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant and Covered Affiliates agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. D & L Sales, Inc., relating to the Aircraft Components, Inc. Superfund Site.

**FOR THE UNITED STATES OF AMERICA**

\_\_\_\_\_  
Date

\_\_\_\_\_  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

\_\_\_\_\_  
Date

\_\_\_\_\_  
JEFFREY A. SPECTOR  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

\_\_\_\_\_  
Date

\_\_\_\_\_  
AMY J. DONA  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. D & L Sales, Inc., relating to the Aircraft Components, Inc. Superfund Site.

\_\_\_\_\_  
Date

\_\_\_\_\_  
RICHARD C. KARL  
Superfund Division Director, Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, IL 60604

\_\_\_\_\_  
Date

\_\_\_\_\_  
DIANA EMBIL  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

**DECLARATION OF RESTRICTIVE COVENANTS AND  
ENVIRONMENTAL PROTECTION EASEMENT**

**Aircraft Components Inc. Superfund Site  
U.S. EPA Site No. 050W**

This Declaration of Restrictive Covenants and Environmental Protection Easement is made by and among **D&L Sales, Inc.**, a Michigan Corporation, Grantor; the **Michigan Department of Natural Resources and Environment** ("MDNRE"), having an address c/o Director, Michigan Department of Natural Resources and Environment, P.O. Box 30473, Lansing, Michigan 48909-7973, Grantee; and the **United States of America** and its assigns, having an address c/o United States Environmental Protection Agency ("U.S. EPA"), Attn: Director, Superfund Division, Region 5, 77 W. Jackson Blvd. SR-6J, Chicago, Illinois 60604, Third Party Beneficiary.

This Declaration of Restrictive Covenant and Environmental Easement has been recorded with the Berrien County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by: (1) granting a right of access to the U.S. EPA and MDNRE and their authorized representatives to monitor and conduct Response Activities, as that term is defined below; (2) prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at 671 North Shore Drive, Benton Charter Township, Berrien County and legally described in Exhibit 1 attached hereto ("Property"); (3) assuring that the use of the Property is consistent with the exposure assumptions and institutional control measures required pursuant to the Record of Decision ("ROD") executed by U.S. EPA on September 25, 2002 and concurred with by the State of Michigan pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA") and the Explanation of Significant Differences ("ESD") issued by U.S. EPA on September 30, 2010; and (4) preventing damage or disturbance of any element of the remedial action constructed on the Property.

The Property is associated with a Consent Decree between the United States of America and D&L Sales, Inc. ("Consent Decree"). The Property is part of the Aircraft Components, Inc. Superfund Site (the "Site"). The Site was placed on the National Priorities List on June 17, 1996, and is a facility, as that term is defined in Section 101(9) of CERCLA. On-going remedial actions are being conducted at the Site in accordance with the ROD and ESD. Information pertaining to the environmental conditions at the Property is on file with the U.S. EPA.

The restrictions contained in this Declaration of Restrictive Covenants and Environmental Protection Easement are based upon information available to U.S. EPA at the time the ESD was issued. Failure of the response activities to achieve and maintain the criteria, exposure controls, and requirements specified in the ROD and ESD; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under CERCLA; the discovery of environmental conditions at the Property that were not accounted for in the ROD or ESD; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Declaration of Restrictive Covenants and Environmental Protection Easement not being protective of public health, safety, and welfare, and the environment.

The "*Limits of Land or Resource Use Restrictions*," attached hereto as Exhibit 2, provides a drawing that distinguishes those portions of the Property that are subject to various land use or resource use restrictions as specified herein.

### **Summary of Response Activities**

#### **Check against ESD**

Hazardous substances including radium-226, trichloroethene, tetrachloroethene, VOCs, SVOCs, pesticides, metals, etc. have been released and/or disposed of on the Property. Prior to recording of this Restrictive Covenant, response activities have been undertaken to remove or treat the contamination. Residual VOCs, SVOCs, pesticides and inorganic contamination in the soil and sediment as well as VOCs in the groundwater remain present at levels that require controls to prevent unacceptable exposures. An exposure barrier, consisting of six-inches of clean soil and vegetation, has been placed on portions of the Property intended for recreational use to prevent direct contact with impacted soils. An exposure barrier, consisting of one-foot of clean soil and vegetation, has been placed on portions of the Property available for residential use to prevent direct contact with impacted soils. In situ reductive dechlorination was implemented to clean up the groundwater contamination.

### **Definitions**

"Consent Decree" means the Consent Decree between the United States of America and D & L Sales, Inc., Civ. Action No. \_\_\_\_\_ (E.D. Michigan).

"D & L Sales" means the owner of the Property as of the date of the execution of the Declaration of Restrictive Covenant and Environmental Protection Easement, and the Owner for as long as D & L Sales is a current title holder of the Property or any portion thereof.

"ESD" means the Explanation of Significant Differences to the ROD issued by U.S. EPA on September 30, 2010.

"MDNRE" means the Michigan Department of Natural Resources and Environment, its successor entities, and those persons or entities acting on its behalf.

"NREPA" means the Michigan Natural Resources and Environmental Protection Act, contained in MCL 324.101 et seq.

"Owner" means, at any given time, the then current title holder of the Property or any portion thereof.

"Property" means the property located at 671 North Shore Drive, Benton Charter Township, Berrien County, Michigan, legally described in Exhibit 1 attached hereto.

"Recreational Area" shall mean that portion of the Property designated on Exhibit 2 as "Recreational Area."

"Residential Area" shall mean that portion of the Property designated on Exhibit 2 as "Residential Area."

"Response Activities" shall mean, consistent with Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), such actions as have been or may be necessary to conduct any removal, remedy or remedial action, as those terms are defined in Sections 101(23) and 101(24) of CERCLA, 42 U.S.C. §§ 9601(23)-(24), at the Property and/or at the Site, including enforcement activities related thereto.

"ROD" means the Record of Decision for Operable Unit 2 of the Aircraft Components Inc. Superfund Site executed by U.S. EPA on September 25, 2002.

"SOW" means the Statement of Work incorporated into and made a part of the Consent Decree.

"U.S. EPA" means the United States Environmental Protection Agency, its successor entities, and those persons or entities acting on its behalf.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules ("Part 201 Rules"), 1990 AACRS R 299.5101 et seq., shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the date of filing of this Declaration of Restrictive Covenant and Environmental Protection Easement.

NOW THEREFORE,

Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Consent Decree in United States v. D & L Sales, Case No. \_\_\_\_\_ (W.D. Mich.), does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and conveys and warrants to the Grantee, and its assigns and to the United States of America, and its assigns, as Third Party Beneficiary, (1) the right to enforce such use restrictions, and (2) an environmental protection easement, and for the purposes hereinafter set forth, with respect to the Property.

**Declaration of Land Use or Resource Use Restrictions**

1. The Owner shall prohibit use of groundwater beneath all portions of the Property for drinking water purposes unless a demonstration is made to U.S. EPA and MDNRE that such groundwater meets drinking water standards and U.S. EPA and MDNRE approve in writing such demonstration for use of the groundwater for drinking water purposes.

2. The Owner shall restrict the use of all portions of the Property as follows:

(a) no use which damages or restricts the operation of any remedial action component installed pursuant to the ROD, the ESD, the Consent Decree, or the SOW;

(b) no tampering with or removal of containment or monitoring systems that remain on the Site as a result of implementation of any response action;

(c) no use of or activity at the Property that may interfere with, damage or otherwise impair the effectiveness of any response action (or any component thereof), except with the written approval of U.S. EPA, in consultation with the State of Michigan, and consistent with all statutory and regulatory requirements;

(d) no residential development activities except where a Proposed Residential Development Schedule has been submitted to U.S. EPA at least 60 days prior to the start of those activities. At least 30 days prior to the start of residential development activities at the Site, the Settling Defendant shall provide written notice to U.S. EPA of the start of those activities; and

(e) no residential development construction activities except where Owner has provided U.S. EPA a reasonable opportunity to review the final design plans and the final construction plans for any residential development on the Site, for the purpose of ensuring that the plans are consistent with this Declaration of Restrictive Covenants and Environmental Protection Easement and/or other construction requirements necessary to allow for residential use pursuant to the Consent Decree and the ESD unless U.S. EPA determines that such plans are inconsistent therewith within the time frame set forth in the SOW.

3. The Owner shall restrict the use of that portion of the Property designated on Exhibit 2 as "Recreational Area" as follows:

(a) no residential use unless a demonstration is made to U.S. EPA and MDNRE, following 60-day advance written notice to U.S. EPA and MDNRE of such demonstration, U.S. EPA and MDNRE approve in writing such demonstration for residential use within the proposed area, and U.S. EPA issues a ROD amendment or Explanation of Significant Difference documenting such change in use and setting out any remedial actions, including institutional control measures necessary to allow for residential use as determined by U.S. EPA;

(b) other than routine operation and maintenance of the Recreational Area, no penetration of soils or the installed soil cover on the Recreational Area, including, but not limited to, any filling, grading, excavation, drilling, or boring, except with the written approval of U.S. EPA, in consultation with the MDNRE; and

(c) no movement of soil within the Recreational Area and/or off of the Recreational Area, unless the soil is characterized prior to movement and U.S. EPA, in consultation with the MDNRE, approves such movement in writing.

4. The Owner shall restrict the use of that portion of the Property designated on Exhibit 2 as "Residential Area" as follows:

(a) no occupied buildings may be constructed without installation of volatile organic compound vapor barriers that meet applicable criteria under Part 201, Environmental Remediation, Michigan's Natural Resources and Environment Protection Act of 1994 ("Part 201 criteria");

(b) no basements may be constructed within any residential buildings;

(c) no penetration of soils beneath 12-inches below ground surface, including, but not limited to, any excavation, digging, or other disturbance of soil (including gardening, planting, and light construction), with the exception of construction (including but not limited to footings, elevator shafts, basins, etc.) utilizing all required worker protective health, safety and welfare measures; and

(d) the 12-inch installed soil cover shall be replaced or repaired if it is disturbed.

5. The Owner shall restrict the use of the Property as follows:

(a) no use which damages or restricts the operation of any remedial action component installed pursuant to the ROD (OU #2), the Consent Decree or the Statement of Work;

(b) no tampering with or removal of containment or monitoring systems that remain on the Property as a result of implementation of any response action; and

(c) no use of or activity on the Property that will pose an unacceptable risk to human health or the environment due to hazardous substances or that may interfere with, damage or otherwise impair the effectiveness of any response action (or any component thereof), except with the written approval of EPA in consultation with the MDNRE, and consistent with all statutory and regulatory requirements.

6. U.S. EPA or MDNRE may seek modifications to the restrictions contained in this Declaration of Restrictive Covenants and Environmental Protection Easement as necessary to assure the integrity and effectiveness of the remedial action required under the ROD or assure the protection of the public health, safety, welfare and environment, to the extent authorized by law.

#### **Environmental Protection Easement**

7. Access. Grantor hereby grants to Grantee, and its assigns, and to the United States and its assigns, a Third Party Beneficiary, an irrevocable and continuing right of access at all reasonable times to the Property for the purposes of:

(a) Monitoring, investigation, removal, remedial or other activities (including, but not limited to, installation of a methane probe network in the Residential Area);

(b) Verifying any data or information submitted to the United States or the State;

(c) Conducting investigations relating to contamination at or near the Property;

(d) Obtaining samples;

(e) Assessing the need for, planning, or implementing additional response actions at or near the Property;

(f) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner or its agents, consistent with the Consent Decree;

(g) Assessing Owner's compliance with the Consent Decree;

(h) Determining whether the Property or other real 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 the Consent Decree; and

(i) Implementing, monitoring, reporting on, and enforcing this Declaration of Restrictive Covenant and Environmental Protection Easement.

Nothing in this instrument shall limit or otherwise affect U.S. EPA's or MDNRE's right of entry and access or authorities to take Response Activities, as defined in this instrument, as well as in Section 20101(1)(ee) of Part 201 of the NREPA, under CERCLA, the National Contingency Plan, the NREPA, and any successor statutory provisions, or other state or federal law.

8. Transfer of Interest. The Owner shall provide notice to U.S. EPA and MDNRE of the Owner's intent to transfer any interest in the Property at least fourteen days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant and the applicable provisions of Section 20116 of the NREPA. A copy of this Declaration of Restrictive Covenants and Environmental Protection Easement shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest. The Owner shall include in any instrument conveying any interest in the Property or portion thereafter including but, not limited to, deeds, leases, and mortgages a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANTS AND ENVIRONMENTAL PROTECTION EASEMENT, DATED \_\_\_\_\_, 2011., AND RECORDED WITH THE BERRIEN COUNTY REGISTER OF DEEDS, LIBER \_\_\_\_\_, PAGE \_\_\_\_\_

9. Notices. Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Declaration of Restrictive Covenants and Environmental Protection Easement shall be made in writing and include a statement that the notice is being made pursuant to the requirements of this Declaration of Restrictive Covenants and Environmental Protection Easement, U.S. EPA Site No. 050W, and shall be served either personally or sent via first class mail, postage prepaid, as follows:

For U.S. EPA:

Director  
Superfund Division  
U.S. EPA  
77 West Jackson Blvd. SR 6J  
Chicago, IL 60604

with a copy to:

Diana Embil  
Associate Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Blvd. C 14J  
Chicago, IL 60604

For MDEQ:

Director  
Michigan Department of Environmental Quality  
P.O. Box 30473  
Lansing, MI 48909 7973

10. Term and Enforcement of Declaration of Restrictive Covenants and Environmental Protection Easement. This Declaration of Restrictive Covenants and Environmental Protection Easement shall run with the land and shall be binding on the Grantor, its successors and assigns; future owners; and all current and future successors and assigns, including all lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control. This Declaration of Restrictive Covenants and Environmental Protection Easement may only be modified or rescinded with the written approval of U.S. EPA and MDNRE.



The State of Michigan, through the MDNRE, the Owner, and the United States, on behalf of U.S. EPA, as a third party beneficiary, may enforce the restrictions set forth in this Declaration of Restrictive Covenants and Environmental Protection Easement by legal action in a court of competent jurisdiction.

11. Severability. If any provision of this Declaration of Restrictive Covenants and Environmental Protection Easement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

12. Authority to Execute Declaration of Restrictive Covenants and Environmental Protection Easement. The undersigned person executing this instrument is the Owner, or has the express written permission of the Owner and all other holders of a legal interest whose interest is materially affected by this instrument, and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Declaration of Restrictive Covenants and Environmental Protection Easement.

IN WITNESS WHEREOF, D&L Sales Inc. has caused this Declaration of Restrictive Covenants and Environmental Protection Easement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

D&L Sales, Inc.

By: *[Signature]*

Name: D. Jeffrey Noel

Its: President

STATE OF MICHIGAN  
COUNTY OF BERRIEN

The foregoing instrument was acknowledged before me this 16 day of June, 2011 by Jeff Noel of D&L Sales, Inc., a Michigan corporation, on behalf of the corporation.

*[Signature]*

Notary Public  
Acting in Berrien County, Michigan

My Commission Expires: June 15, 2015

5061835

BONNIE L. LEWIS  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF BERRIEN  
MY COMMISSION EXPIRES JUN 2, 2015  
ACTING IN COUNTY OF Berrien

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

Lot 14, RIDGEWOOD, according to the plat thereof, recorded May 28, 1920, in Volume 6 of Plats, page 20; EXCEPTING THEREFROM that part lying East of the West line of Lots 26 and 29, said plat, extended South to the South line of said Lot 14;

ALSO Part of the Northwest Quarter of Section 18, Township 4 South, Range 18 West, described as: Commencing 1087.6 feet South and 73.9 feet East of the Northwest corner of said Section 18, thence North 69 degrees 15 minutes East 1118.37 feet, thence South 21 degrees 25 minutes East 328 feet to the river, thence Southwesterly along the river to the centerline of North Shore Drive, thence Northerly on the centerline to the place of beginning.

ALSO from the Northwest corner of said Section 18, measure South 1087.68 feet, thence East 73.9 feet, thence North 68 degrees 35 minutes East 1118.37 feet, thence South 64 degrees East 231 feet to the place of beginning of the land herein described, thence Easterly along the line between the land formerly owned by Henrietta Lyon and the land formerly owned by Winans, 975 feet, thence Southerly at right angles to said last line 33 feet, thence Westerly and parallel with first described line (that is the line running Easterly 975 feet) 686 feet, thence on a curve to the left with a radius of 557.2 feet to a point due South of the place of beginning, thence North to the place of beginning.

Parcel numbers 11-03-0018-0015-01-8 and 11-03-0018-0016-00-6

## EXHIBIT 2

### SURVEY OF THE PROPERTY

**[NOTE: All surveys must be conducted by licensed surveyor and shall identify and clearly delineate and graphically depict the spatial extent of all restricted areas in relation to the Property boundaries and the key features of the response activity, including monitoring wells and permanent markers if required; and provide a legal description of the restricted areas of the Property.]**

**EXHIBIT [ ]**  
**CONSENT OF LEASE HOLDERS**

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant.

[Insert Lease Holder's Name]

By: \_\_\_\_\_

Signature

Name: \_\_\_\_\_

Print or Type Name

Its: \_\_\_\_\_

Title

STATE OF MICHIGAN [insert state]  
COUNTY OF [insert name of county]

**[NOTE: Choose only one of the following four acknowledgments:**

**OPTION 1: If property owner is an individual:**

The foregoing instrument was acknowledged before me this [date] by [name of owner], Owner.

✓ **OPTION 2: If property owner is a corporation:**

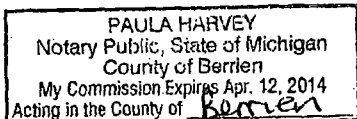
The foregoing instrument was acknowledged before me this [date] by [name of officer or agent, title of officer or agent] of [name of corporation/owner], a [state or place of incorporation corporation], on behalf of the corporation.

**OPTION 3: If property owner is a partnership:**

The foregoing instrument was acknowledged before me this [date] by [name of partnership or agent], partner [or agent] on behalf of [name of partnership/owner], a partnership.

**OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):**

The foregoing instrument was acknowledged before me this [date] by [name of attorney in fact] as attorney in fact on behalf of [name of principal].



Notary Public

[Print or type name]

[Commissioned in] County, [State]

My Commission Expires: 4-12-2014

**STATEMENT OF WORK FOR  
ACTIONS RELATED TO INSTITUTIONAL CONTROLS AND  
RESIDENTIAL USE OF PART OF THE SITE**

**AIRCRAFT COMPONENTS, INC. SITE  
BENTON CHARTER TOWNSHIP, BERRIEN COUNTY, MICHIGAN**

**I. PURPOSE**

The purpose of this Statement of Work ("SOW") is to: set forth requirements for implementation of institutional controls, removal of a soil "hot spot," and installation of a 12-inch soil cover and a vapor barrier (Section II A, below) at the Aircraft Components Inc. Site (the "Site") as required by the Consent Decree in which this SOW is incorporated, the Record of Decision for the Chemical Operable Unit (OU#2) (the "ROD") and the Explanation of Significant Differences for OU#2 (the "ESD"); and provide a framework for actions necessary to allow for use of part of the Site for residential purposes.

**II. DESCRIPTION OF SUPPLEMENTAL REMEDIAL ACTION**

**A. Institutional Controls**

Institutional controls ("ICs") are necessary to restrict use of areas at the Site where hazardous substances remain in soil and groundwater above levels that allow for unlimited use and unrestricted exposure. Residual chemical contaminants present in soil at the Site will not allow for unrestricted exposure and unlimited use of the Site, but will allow for use under recreational and/or commercial/industrial exposure assumptions. Consistent with the cleanup standards, an area of the Site was developed as part of a golf course. A proposal has been made for future residential use within a separate area of the Site. ICs are necessary, along with other construction requirements necessary to allow for residential use of that area of the Site.

The Settling Defendant shall facilitate achievement of the IC objectives set out in the ROD, the ESD and the Consent Decree. An IC Plan is attached to and incorporated in to the Consent Decree as Appendix C thereto. The Settling Defendant shall implement the IC Work Plan. Within 15 days of the Date of Entry of the Consent Decree, the Settling Defendant shall take all actions necessary to ensure that the approved Easement, including the approved Map of the Site as an attachment, is executed and recorded with the Register of Deeds, Berrien County, Michigan. The Settling Defendant shall provide U.S. EPA with a certified copy of the Easement, including the attached Map of the Site, within 30 days of such recording.

**B. Hot Spot Removal, Installation of 12-inch Soil Cover and Placement of Volatile Organic Compound (VOC) Specific Barrier**

The Settling Defendant shall ensure that: (1) the two soil "hot spots," identified in the ESD, were filled with 6 inches of clean soil in accordance with the ESD and U.S. EPA requirements; and (2) the installation of the 12-inch clean soil cover over the proposed residential area in the northwest area of the Site was completed in accordance with the ESD and U.S. EPA requirements. The two soil hot spot areas identified in the ESD must have a total of 18 inches of clean soil cover. Each soil hot spot must be filled with 6 inches of clean soil following excavation in addition to the 12-inch clean soil cover. The remainder of the proposed residential area in the northwest area of the Site will also have the 12-inch clean soil cover installed over it, except in those areas where Settling Defendants demonstrate, to the satisfaction of U.S. EPA, that no cover is needed because of the presence of wetlands, ponds, trees, or significant vegetation. In the event that such wetlands or ponds are filled, or such trees or vegetation are removed, Settling Defendants agree to install a 12-inch clean soil cover over such areas promptly after the filling or removal and prior to any development in those areas.

In order to ensure that implementation of these remedial activities occurred in accordance with the ESD and U.S. EPA requirements, the Settling Defendant shall:

1. Submit to U.S. EPA a Work Plan for Verification Soil Sampling Work. This Work Plan shall provide for: (a) random analytical sampling of the 12-inch clean soil cover; (b) review of the pre-and post-excavation topography, the backfill topography and the analytical data concerning the backfill materials; and (c) reporting of the information and data resulting from that review as part of the Response Action Completion Report (see below).
2. Following U.S. EPA's approval of the Verification Soil Sampling Work Plan, provide written notice to U.S. EPA 60 days prior to the start of any verification sampling work so that U.S. EPA can oversee the work.
3. Following U.S. EPA's approval of the Verification Soil Sampling Work Plan, and after providing prior written notice to U.S. EPA, perform the verification soil sampling work within 120 days of the lodging of the Consent Decree. During or following the performance of the verification soil sampling work, U.S. EPA will conduct a visual inspection of the backfill depth at the two hot spot removal areas.
4. Submit a Response Action Completion Report to U.S. EPA for review and approval within 30 days following completion of the verification soil sampling work. The Completion Report must: summarize the completion of the two soil hot spot removals and the installation of the 12-inch clean soil cover; provide the results from the random analytical sampling of the 12-inch clean soil cover; report the information and data resulting from the review of the excavation topography, the backfill topography and the analytical data concerning backfill materials; and certify that the removal,

installation and sampling activities were completed in accordance with U.S. EPA requirements.

Before any residential development construction occurs, the Settling Defendant shall place a Volatile Organic Compound (VOC)-specific barrier in the proposed residential area in the northwest area of the Site. The Volatile Organic Compound (VOC)-specific barrier must be selected for such placement based on its ability to block the site-specific VOCs. Also, as stated in the ESD, the U.S. EPA recommends the use of a passive venting system for any residential construction and installation of an adequate methane network to monitor the methane production in the area.

C. Notice of and Opportunity to Review Residential Design and Construction Plans

The Settling Defendant shall submit a Proposed Residential Development Schedule to U.S. EPA, outlining the proposed schedule for the residential development activities at the Site at least 60 days prior to the start of those activities. The Settling Defendant shall also update U.S. EPA whenever the Schedule is revised or modified within 30 days of said revision or modification. At least 30 days prior to the start of residential development activities at the Site, the Settling Defendant shall provide written notice to U.S. EPA of the start of those activities.

U.S. EPA shall be provided a reasonable opportunity to review the final design plans and the final construction plans for any residential development at the Site to ensure that the plans are consistent with the ICs and other construction requirements necessary to allow for residential use as required under the Consent Decree and the ESD. The Settling Defendant shall provide a copy of the final design plans and the final construction plans for the residential development to U.S. EPA and MDNRE upon finalization of the plans. If U.S. EPA finds that the design and/or construction plans are not consistent with the ICs and/or other construction requirements necessary to allow for residential use as stated in the Consent Decree and the ESD, then U.S. EPA shall notify the Settling Defendant of the inconsistencies and: (1) request that the plans be revised within 30 days to be consistent with the ICs and the other construction requirements; and/or (2) direct the Settling Defendant to modify the Easement to include all ICs and other construction requirements that U.S. EPA deems necessary to allow for residential use based on its review of the final design and the final construction plans for the residential development. Any modification of the Easement required under this provision, shall be recorded with the Register of Deeds, Berrien County, Michigan. The Settling Defendant shall provide U.S. EPA with a certified copy of the modified Easement, including all attachments, within 10 days of such recording. All required ICs, whether stated in the Easement or any modified Easement, shall be implemented and in place before residential development activities begin at the Site. Within 30 days of completion of the residential development activities, the Settling Defendant shall submit copies of the "as-built" drawings to U.S. EPA and MDNRE.



### **III. SCHEDULE OF MAJOR DELIVERABLES AND MILESTONES**

A summary of the project schedule and reporting requirements contained in this SOW are presented below:

<b><u>Deliverable/Milestone</u></b>	<b><u>Due Date</u></b>
1. Recording of Easement and Map of Site	15 days from Date of Entry of Consent Decree
2. Work Plan for Verification Soil Sampling	60 days from date of lodging of Consent Decree
3. Written notice of verification soil sampling	60 days prior to start of verification soil sampling
4. Verification soil sampling	120 days from date of lodging of Consent Decree
5. Remedial Action Completion Report	30 days from date of completion of verification soil sampling.
6. Final design plans and final construction plans	Upon finalization of the design plans and the construction plans
7. Proposed Residential Development Schedule	60 days prior to start of residential development activities

## DECLARATION OF RESTRICTIVE COVENANTS AND ENVIRONMENTAL PROTECTION EASEMENT

**Aircraft Components Inc. Superfund Site  
U.S. EPA Site No. 050W**

This Declaration of Restrictive Covenants and Environmental Protection Easement is made by and among **D&L Sales, Inc.**, a Michigan Corporation, Grantor; the **Michigan Department of Natural Resources and Environment** ("MDNRE"), having an address c/o Director, Michigan Department of Natural Resources and Environment, P.O. Box 30473, Lansing, Michigan 48909-7973, Grantee; and the **United States of America** and its assigns, having an address c/o United States Environmental Protection Agency ("U.S. EPA"), Attn: Director, Superfund Division, Region 5, 77 W. Jackson Blvd. SR-6J, Chicago, Illinois 60604, Third Party Beneficiary.

This Declaration of Restrictive Covenant and Environmental Easement has been recorded with the Berrien County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by: (1) granting a right of access to the U.S. EPA and MDNRE and their authorized representatives to monitor and conduct Response Activities, as that term is defined below; (2) prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at 671 North Shore Drive, Benton Charter Township, Berrien County and legally described in Exhibit 1 attached hereto ("Property"); (3) assuring that the use of the Property is consistent with the exposure assumptions and institutional control measures required pursuant to the Record of Decision ("ROD") executed by U.S. EPA on September 25, 2002 and concurred with by the State of Michigan pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA") and the Explanation of Significant Differences ("ESD") issued by U.S. EPA on September 30, 2010; and (4) preventing damage or disturbance of any element of the remedial action constructed on the Property.

The Property is associated with a Consent Decree between the United States of America and D&L Sales, Inc. ("Consent Decree"). The Property is part of the Aircraft Components, Inc. Superfund Site (the "Site"). The Site was placed on the National Priorities List on June 17, 1996, and is a facility, as that term is defined in Section 101(9) of CERCLA. On-going remedial actions are being conducted at the Site in accordance with the ROD and ESD. Information pertaining to the environmental conditions at the Property is on file with the U.S. EPA.

The restrictions contained in this Declaration of Restrictive Covenants and Environmental Protection Easement are based upon information available to U.S. EPA at the time the ESD was issued. Failure of the response activities to achieve and maintain the criteria, exposure controls, and requirements specified in the ROD and ESD; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under CERCLA; the discovery of environmental conditions at the Property that were not accounted for in the ROD or ESD; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Declaration of Restrictive Covenants and Environmental Protection Easement not being protective of public health, safety, and welfare, and the environment.

The "*Limits of Land or Resource Use Restrictions*," attached hereto as Exhibit 2, provides a drawing that distinguishes those portions of the Property that are subject to various land use or resource use restrictions as specified herein.

### **Summary of Response Activities**

#### **Check against ESD**

Hazardous substances including radium-226; trichloroethene, tetrachloroethene, VOCs, SVOCs, pesticides, metals, etc. have been released and/or disposed of on the Property. Prior to recording of this Restrictive Covenant, response activities have been undertaken to remove or treat the contamination. Residual VOCs, SVOCs, pesticides and inorganic contamination in the soil and sediment as well as VOCs in the groundwater remain present at levels that require controls to prevent unacceptable exposures. An exposure barrier, consisting of six-inches of clean soil and vegetation, has been placed on portions of the Property intended for recreational use to prevent direct contact with impacted soils. An exposure barrier, consisting of one-foot of clean soil and vegetation, has been placed on portions of the Property available for residential use to prevent direct contact with impacted soils. In situ reductive dechlorination was implemented to clean up the groundwater contamination.

### **Definitions**

"Consent Decree" means the Consent Decree between the United States of America and D & L Sales, Inc., Civ. Action No. \_\_\_\_\_ (E.D. Michigan).

"D & L Sales" means the owner of the Property as of the date of the execution of the Declaration of Restrictive Covenant and Environmental Protection Easement, and the Owner for as long as D & L Sales is a current title holder of the Property or any portion thereof.

"ESD" means the Explanation of Significant Differences to the ROD issued by U.S. EPA on September 30, 2010.

"MDNRE" means the Michigan Department of Natural Resources and Environment, its successor entities, and those persons or entities acting on its behalf.

"NREPA" means the Michigan Natural Resources and Environmental Protection Act, contained in MCL 324.101 et seq.

"Owner" means, at any given time, the then current title holder of the Property or any portion thereof.

"Property" means the property located at 671 North Shore Drive, Benton Charter Township, Berrien County, Michigan, legally described in Exhibit 1 attached hereto.

"Recreational Area" shall mean that portion of the Property designated on Exhibit 2 as "Recreational Area."

"Residential Area" shall mean that portion of the Property designated on Exhibit 2 as "Residential Area."

"Response Activities" shall mean, consistent with Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), such actions as have been or may be necessary to conduct any removal, remedy or remedial action, as those terms are defined in Sections 101(23) and 101(24) of CERCLA, 42 U.S.C. §§ 9601(23)-(24), at the Property and/or at the Site, including enforcement activities related thereto.

"ROD" means the Record of Decision for Operable Unit 2 of the Aircraft Components Inc. Superfund Site executed by U.S. EPA on September 25, 2002.

"SOW" means the Statement of Work incorporated into and made a part of the Consent Decree.

"U.S. EPA" means the United States Environmental Protection Agency, its successor entities, and those persons or entities acting on its behalf.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules ("Part 201 Rules"), 1990 AACR 299.5101 *et seq.*, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the date of filing of this Declaration of Restrictive Covenant and Environmental Protection Easement.

NOW THEREFORE,

Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Consent Decree in United States v. D & L Sales, Case No. \_\_\_\_\_ (W.D. Mich.), does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and conveys and warrants to the Grantee, and its assigns and to the United States of America, and its assigns, as Third Party Beneficiary, (1) the right to enforce such use restrictions, and (2) an environmental protection easement, and for the purposes hereinafter set forth, with respect to the Property.

#### **Declaration of Land Use or Resource Use Restrictions**

1. The Owner shall prohibit use of groundwater beneath all portions of the Property for drinking water purposes unless a demonstration is made to U.S. EPA and MDNRE that such groundwater meets drinking water standards and U.S. EPA and MDNRE approve in writing such demonstration for use of the groundwater for drinking water purposes.

2. The Owner shall restrict the use of all portions of the Property as follows:

(a) no use which damages or restricts the operation of any remedial action component installed pursuant to the ROD, the ESD, the Consent Decree, or the SOW;

(b) no tampering with or removal of containment or monitoring systems that remain on the Site as a result of implementation of any response action;

(c) no use of or activity at the Property that may interfere with, damage or otherwise impair the effectiveness of any response action (or any component thereof), except with the written approval of U.S. EPA, in consultation with the State of Michigan, and consistent with all statutory and regulatory requirements;

(d) no residential development activities except where a Proposed Residential Development Schedule has been submitted to U.S. EPA at least 60 days prior to the start of those activities. At least 30 days prior to the start of residential development activities at the Site, the Settling Defendant shall provide written notice to U.S. EPA of the start of those activities; and

(e) no residential development construction activities except where Owner has provided U.S. EPA a reasonable opportunity to review the final design plans and the final construction plans for any residential development on the Site, for the purpose of ensuring that the plans are consistent with this Declaration of Restrictive Covenants and Environmental Protection Easement and/or other construction requirements necessary to allow for residential use pursuant to the Consent Decree and the ESD unless U.S. EPA determines that such plans are inconsistent therewith within the time frame set forth in the SOW.

3. The Owner shall restrict the use of that portion of the Property designated on Exhibit 2 as "Recreational Area" as follows:

(a) no residential use unless a demonstration is made to U.S. EPA and MDNRE, following 60-day advance written notice to U.S. EPA and MDNRE of such demonstration, U.S. EPA and MDNRE approve in writing such demonstration for residential use within the proposed area, and U.S. EPA issues a ROD amendment or Explanation of Significant Difference documenting such change in use and setting out any remedial actions, including institutional control measures necessary to allow for residential use as determined by U.S. EPA;

(b) other than routine operation and maintenance of the Recreational Area, no penetration of soils or the installed soil cover on the Recreational Area, including, but not limited to, any filling, grading, excavation, drilling, or boring, except with the written approval of U.S. EPA, in consultation with the MDNRE; and

(c) no movement of soil within the Recreational Area and/or off of the Recreational Area, unless the soil is characterized prior to movement and U.S. EPA, in consultation with the MDNRE, approves such movement in writing.

4. The Owner shall restrict the use of that portion of the Property designated on Exhibit 2 as "Residential Area" as follows:

(a) no occupied buildings may be constructed without installation of volatile organic compound vapor barriers that meet applicable criteria under Part 201, Environmental Remediation, Michigan's Natural Resources and Environment Protection Act of 1994 ("Part 201 criteria");

(b) no basements may be constructed within any residential buildings;

(c) no penetration of soils beneath 12-inches below ground surface, including, but not limited to, any excavation, digging, or other disturbance of soil (including gardening, planting, and light construction), with the exception of construction (including but not limited to footings, elevator shafts, basins, etc.) utilizing all required worker protective health, safety and welfare measures; and

(d) the 12-inch installed soil cover shall be replaced or repaired if it is disturbed.

5. The Owner shall restrict the use of the Property as follows:

(a) no use which damages or restricts the operation of any remedial action component installed pursuant to the ROD (OU #2), the Consent Decree or the Statement of Work;

(b) no tampering with or removal of containment or monitoring systems that remain on the Property as a result of implementation of any response action; and

(c) no use of or activity on the Property that will pose an unacceptable risk to human health or the environment due to hazardous substances or that may interfere with, damage or otherwise impair the effectiveness of any response action (or any component thereof), except with the written approval of EPA in consultation with the MDNRE, and consistent with all statutory and regulatory requirements.

6. U.S. EPA or MDNRE may seek modifications to the restrictions contained in this Declaration of Restrictive Covenants and Environmental Protection Easement as necessary to assure the integrity and effectiveness of the remedial action required under the ROD or assure the protection of the public health, safety, welfare and environment, to the extent authorized by law.

### **Environmental Protection Easement**

7. Access. Grantor hereby grants to Grantee, and its assigns, and to the United States and its assigns, a Third Party Beneficiary, an irrevocable and continuing right of access at all reasonable times to the Property for the purposes of:

(a) Monitoring, investigation, removal, remedial or other activities (including, but not limited to, installation of a methane probe network in the Residential Area);

(b) Verifying any data or information submitted to the United States or the State;

(c) Conducting investigations relating to contamination at or near the Property;

(d) Obtaining samples;

(e) Assessing the need for, planning, or implementing additional response actions at or near the Property;

(f) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner or its agents, consistent with the Consent Decree;

(g) Assessing Owner's compliance with the Consent Decree;

(h) Determining whether the Property or other real 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 the Consent Decree; and

(i) Implementing, monitoring, reporting on, and enforcing this Declaration of Restrictive Covenant and Environmental Protection Easement.

Nothing in this instrument shall limit or otherwise affect U.S. EPA's or MDNRE's right of entry and access or authorities to take Response Activities, as defined in this instrument, as well as in Section 20101(1)(ee) of Part 201 of the NREPA, under CERCLA, the National Contingency Plan, the NREPA, and any successor statutory provisions, or other state or federal law.

8. Transfer of Interest. The Owner shall provide notice to U.S. EPA and MDNRE of the Owner's intent to transfer any interest in the Property at least fourteen days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant and the applicable provisions of Section 20116 of the NREPA. A copy of this Declaration of Restrictive Covenants and Environmental Protection Easement shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest. The Owner shall include in any instrument conveying any interest in the Property or portion thereafter including but, not limited to, deeds, leases, and mortgages a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANTS AND ENVIRONMENTAL PROTECTION EASEMENT, DATED \_\_\_\_\_, 2011., AND RECORDED WITH THE BERRIEN COUNTY REGISTER OF DEEDS, LIBER \_\_\_\_\_, PAGE \_\_\_\_\_

9. Notices. Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Declaration of Restrictive Covenants and Environmental Protection Easement shall be made in writing and include a statement that the notice is being made pursuant to the requirements of this Declaration of Restrictive Covenants and Environmental Protection Easement, U.S. EPA Site No. 050W, and shall be served either personally or sent via first class mail, postage prepaid, as follows:

For U.S. EPA:

Director  
Superfund Division  
U.S. EPA  
77 West Jackson Blvd. SR 6J  
Chicago, IL 60604

with a copy to:

Diana Embil  
Associate Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Blvd. C 14J  
Chicago, IL 60604

For MDEQ:

Director  
Michigan Department of Environmental Quality  
P.O. Box 30473  
Lansing, MI 48909 7973

10. Term and Enforcement of Declaration of Restrictive Covenants and Environmental Protection Easement. This Declaration of Restrictive Covenants and Environmental Protection Easement shall run with the land and shall be binding on the Grantor, its successors and assigns; future owners; and all current and future successors and assigns, including all lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control. This Declaration of Restrictive Covenants and Environmental Protection Easement may only be modified or rescinded with the written approval of U.S. EPA and MDNRE.

The State of Michigan, through the MDNRE, the Owner, and the United States, on behalf of U.S. EPA, as a third party beneficiary, may enforce the restrictions set forth in this Declaration of Restrictive Covenants and Environmental Protection Easement by legal action in a court of competent jurisdiction.

11. Severability. If any provision of this Declaration of Restrictive Covenants and Environmental Protection Easement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

12. Authority to Execute Declaration of Restrictive Covenants and Environmental Protection Easement. The undersigned person executing this instrument is the Owner, or has the express written permission of the Owner and all other holders of a legal interest whose interest is materially affected by this instrument, and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Declaration of Restrictive Covenants and Environmental Protection Easement.



IN WITNESS WHEREOF, D&L Sales Inc. has caused this Declaration of Restrictive Covenants and Environmental Protection Easement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

D&L Sales, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN  
COUNTY OF BERRIEN

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_ of D&L Sales, Inc., a Michigan corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
Acting in Berrien County, Michigan

My Commission Expires: \_\_\_\_\_

## EXHIBIT 1

### LEGAL DESCRIPTION OF PROPERTY

Lot 14, RIDGEWOOD, according to the plat thereof, recorded May 28, 1920, in Volume 6 of Plats, page 20; EXCEPTING THEREFROM that part lying East of the West line of Lots 26 and 29, said plat, extended South to the South line of said Lot 14;

ALSO Part of the Northwest Quarter of Section 18, Township 4 South, Range 18 West, described as: Commencing 1087.6 feet South and 73.9 feet East of the Northwest corner of said Section 18, thence North 69 degrees 15 minutes East 1118.37 feet, thence South 21 degrees 25 minutes East 328 feet to the river, thence Southwesterly along the river to the centerline of North Shore Drive, thence Northerly on the centerline to the place of beginning.

ALSO from the Northwest corner of said Section 18, measure South 1087.68 feet, thence East 73.9 feet, thence North 68 degrees 35 minutes East 1118.37 feet, thence South 64 degrees East 231 feet to the place of beginning of the land herein described, thence Easterly along the line between the land formerly owned by Henrietta Lyon and the land formerly owned by Winans, 975 feet, thence Southerly at right angles to said last line 33 feet, thence Westerly and parallel with first described line (that is the line running Easterly 975 feet) 686 feet, thence on a curve to the left with a radius of 557.2 feet to a point due South of the place of beginning, thence North to the place of beginning.

Parcel numbers 11-03-0018-0015-01-8 and 11-03-0018-0016-00-6

## EXHIBIT 2

### SURVEY OF THE PROPERTY

**[NOTE: All surveys must be conducted by licensed surveyor and shall identify and clearly delineate and graphically depict the spatial extent of all restricted areas in relation to the Property boundaries and the key features of the response activity, including monitoring wells and permanent markers if required; and provide a legal description of the restricted areas of the Property.]**

**EXHIBIT [ ]**  
**CONSENT OF LEASE HOLDERS**

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant.

[Insert Lease Holder's Name]

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF MICHIGAN [insert state]  
COUNTY OF [insert name of county]

**[NOTE: Choose only one of the following four acknowledgments:**

**OPTION 1: If property owner is an individual:**

The foregoing instrument was acknowledged before me this [date] by [name of owner], Owner.

**OPTION 2: If property owner is a corporation:**

The foregoing instrument was acknowledged before me this [date] by [name of officer or agent, title of officer or agent] of [name of corporation/owner], a [state or place of incorporation corporation], on behalf of the corporation.

**OPTION 3: If property owner is a partnership:**

The foregoing instrument was acknowledged before me this [date] by [name of partnership or agent], partner [or agent] on behalf of [name of partnership/owner], a partnership.

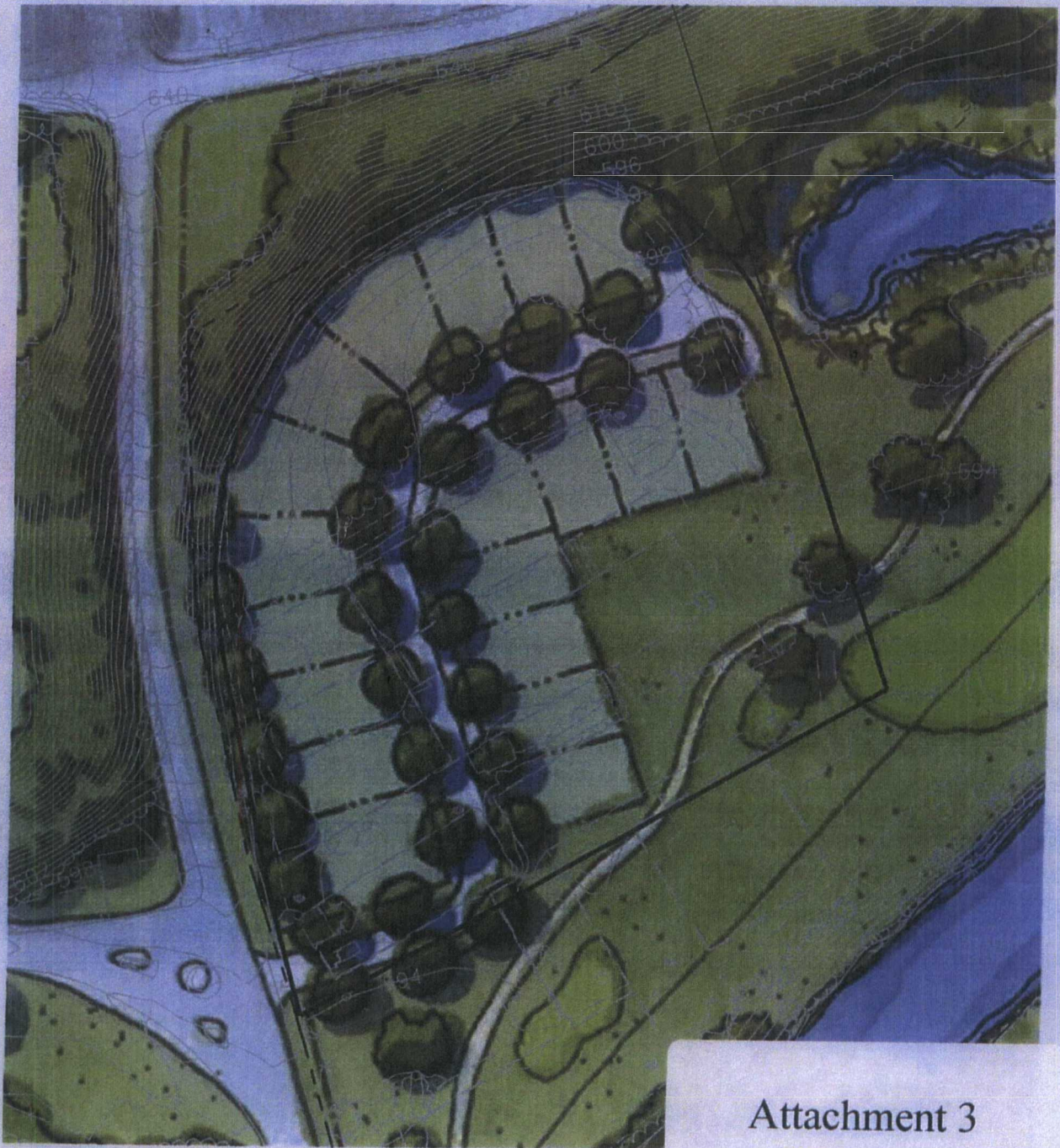
**OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):**

The foregoing instrument was acknowledged before me this [date] by [name of attorney in fact] as attorney in fact on behalf of [name of principal].

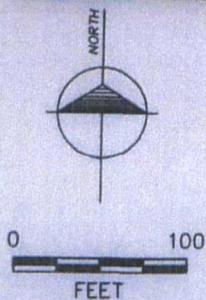
\_\_\_\_\_  
Notary Public  
[Print or type name]  
[Commissioned in] County, [State]

My Commission Expires: \_\_\_\_\_





## Attachment 3



### LEGEND

- PROPERTY BOUNDARY
- WATER BOUNDARY

NOTE: BASE MAP FROM WESTON.

NLW111708  
82433 P52 ResArea Concept.Dwg

FIGURE 1

### CONCEPTUAL DRAWING SHOWING RESIDENTIAL AREA

HARBOR SHORES  
BERRIEN COUNTY, MICHIGAN

82433.31



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. D & L Sales, Inc., relating to the Aircraft Components, Inc. Superfund Site.

FOR HARBOR SHORES COMMUNITY  
REDEVELOPMENT, INC.

6-16-11  
Date

Signature: Jeffery D. Gilbertson  
Name (print): Jeffery D. Gilbertson  
Title: Vice President  
Address: Harbor Shores Community Redevelopment  
1608 Pleasant St.  
St. Joseph, MI 49085

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

Name (print): John G. Cavelon, Jr  
Title: COUNSEL  
Address: Dickinson Wright PLLC  
200 Ottawa Ave, NW, Suite 1000  
Grand Rapids, Michigan 49503  
Ph. Number: 616-336-1010

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. D & L Sales, Inc., relating to the Aircraft Components, Inc. Superfund Site.

FOR HARBOR SHORES COMMUNITY  
REDEVELOPMENT, INC.

6-16-11  
Date

Signature: Jeffery D. Gilbertson  
Name (print): Jeffery D. Gilbertson  
Title: Vice President  
Address: Harbor Shores Community Redevelopment  
1008 Pleasant St.  
St. Joseph, MI 49085

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

Name (print): John G. Cavelon, Jr  
Title: COUNSEL  
Address: Dickinson Wright PLLC  
200 Ottawa Ave, NW, Suite 1000  
Grand Rapids, Michigan 49503  
Ph. Number: 616-336-1010

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. D & L Sales, Inc., relating to the Aircraft Components, Inc. Superfund Site.

FOR D & L SALES, INC.

6-16-11  
Date

Signature: [Signature]  
Name (print): D. Jeffrey Nor  
Title: President  
Address: 1008 Pleasant Street  
St. Joseph, MI 49085

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

Name (print): John G. Cameron, Jr.  
Title: Counsel  
Address: Dickson Wright PLLC  
200 Ottawa Ave., NW Suite 1000  
Grand Rapids, MI 49503  
Ph. Number: (616) 336-1010



THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND  
LIABILITY ACT (CERCLA)

14-13-B. Concurrence in Settlement of Civil Judicial Actions

1. AUTHORITY. To exercise the Agency's concurrence in the settlement of civil judicial enforcement actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and to request the Attorney General to amend a consent decree issued under CERCLA.

2. TO WHOM DELEGATED. Regional Administrators.

3. LIMITATIONS.

a. Regional Administrators may exercise the Agency's concurrence authority in settlement of Regionally-initiated CERCLA action consistent with OSWER Directive 9012.10-a and 9012.10-b dated June 17, 1988 and August 18, 1988 respectively. Subsequent memorandum issued by the Assistant Administrator for Enforcement and Compliance Assurance will further identify settlements to be delegated to the Regional Administrators.

b. For all cases initiated by the Regional Administrator other than those identified in paragraph 3.a of this delegation (in which the Regional Administrator concurs for the Agency), and those limitations identified in subsequent memorandum, the Regional Administrator or delegatee must obtain the concurrence of the Assistant Administrator for Enforcement and Compliance Assurance or his/her designee before exercising this authority. The Assistant Administrator for Enforcement and Compliance Assurance or his/her designee may waive the concurrence requirement by future memorandum.

3. REDELEGATION AUTHORITY. The authority to request the Attorney General to amend a consent decree issued under CERCLA may be redelegated to the Division Directors level. The other authorities cited in paragraph 1 above may be redelegated.

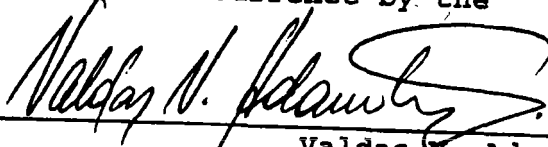
THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND  
LIABILITY ACT (CERCLA)

14-13-B. Concurrence in Settlement of Civil Judicial  
Actions (Cont'd)

4. ADDITIONAL REFERENCES.

- a. Sections 104, 106, 107, 109 and 122 of CERCLA.
- b. All applicable Agency guidance and directives.
- c. For actions including 31 U.S.C. 3711 and its applicable regulations, see delegations covering claims of EPA found in Chapter 1 of this Manual.
- d. Settlements under CERCLA Section 122(g) are covered by delegation 14-14-E, "De Minimis Settlements."

I, Valdas Adamkus, Regional Administrator, Region 5, having been duly delegated the authorities set forth under this delegation, redelegate these same authorities and responsibilities, subject to the conditions and limitations set forth in the above delegation, to the Director, Superfund Division, Region 5. Exercise of this authority is subject to advance concurrence by the Regional Counsel or designee.



Valdas W. Adamkus

5/2/96  
Date