



**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**And**  
**DESTINY USA**

**I. Purpose**

The purpose of this Memorandum of Understanding (MOU) is to formally create a mutually beneficial working relationship between the United States Environmental Protection Agency (EPA) and Destiny USA ("the Parties.")

**II. Background**

Design, construction and operation of buildings and other facilities have a significant impact on the environment at every level -- locally, regionally, nationally, and globally. These impacts manifest themselves at all building stages -- from the start to the finish of a facility's lifecycle. The construction and operation of facilities and management of their environs use significant quantities of energy, water and materials. Through sustainable facility design, construction and operation development, we can improve the quality of human life and ecological systems in many ways. By evaluating the different environmental aspects of a facility, we can minimize the adverse affects to our natural environment caused by air and water pollution, solid and hazardous waste generation, and disruption of wildlife habitat.

*Green building* is the practice of creating healthier and more resource-efficient models of design, site development, construction, renovation, operation, maintenance, and deconstruction. As one of the nation's top 20 largest construction projects, Destiny USA has raised the bar for environmentally responsible development and has set ambitious goals. Destiny USA aims to provide a unique experience in retail, recreation, entertainment, education, research and environmentalism. Through the Federal "Green Bonds" legislation, Destiny USA was designated as a project that will demonstrate how green building can provide far-reaching economic and environmental benefits. Destiny USA is committed to brownfield acquisition and redevelopment; to the use of renewable energy sources; and to the highest levels of certification from the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program. Destiny USA's renewable energy commitments include: a 45-megawatt biodiesel-fired combined

heat and power plant; 3.37 megawatts of photovoltaic's; 14.95 megawatts of fuel cell generation; and a reduction of 13 tons of sulfur dioxide emissions per day compared to typical operation at comparable facilities.

EPA's mission is to protect human health and the environment. To support this mission, EPA employs multiple tools and strategies that include developing and enforcing regulations, and promoting voluntary partnerships with industries, businesses, non-profit organizations, and state and local governments, in order to promote and achieve environmental goals. Towards these ends, EPA administers a number of voluntary programs that seek to advance sustainable development and "smart growth," including programs that promote brownfields redevelopment; reductions of air pollution emissions from facility construction and operation; beneficial use of waste materials in concrete and other construction materials; other solid waste reuse and recycling efforts in facility construction and operation; energy use reductions through its Energy Star and related programs; water use reduction efforts and improved storm water management; environmentally preferable purchasing; and implementation of recommendations in the *Whole Building Resource Guide* (developed by the U.S. General Services Agency) and other life-cycle programs.

EPA and Destiny USA will, through this MOU, work together to further progress in sustainable development.

### **III. Understanding/Commitments**

The Parties recognize the importance of collaboration to serve the needs of society through proper design, construction and management of the built environment and to control its impact on the natural environment. Consequently, the Parties are hereby establishing a working relationship, and undertaking certain commitments with respect to building and development-related environmental issues, including, but not limited to the following specific undertakings related to the design, construction and operation of the Destiny USA facility.

#### **A. Design**

##### **Green Building**

Destiny USA agrees to implement green building design, construction, operation, maintenance, renovation and deconstruction principles to maximize both economic and environmental performance. Green construction methods will be integrated into buildings at all stages, from design and construction, to renovation and deconstruction. Destiny USA's design and construction team will use an integrated approach from the earliest stages of a building project. Destiny USA will use the *Whole Building Design Guide* to assist in creating a successful, environmentally high-performing facility. On October 31, 2005, Destiny USA officially registered the project with the U. S. Green Building Council (USGBC) and is committed to obtaining the highest levels of certification under LEED.

### **Energy Star Program**

Destiny USA is committed to becoming an Energy Star Partner. Destiny USA will develop a portfolio of buildings that achieve top energy performance and demonstrate continuous improvement and superior management and environmental leadership. EPA will recognize energy conservation achievements by Destiny USA by identifying it as an “Energy Star Leader.”

### **WaterSense Program**

Destiny USA is committed to becoming a WaterSense Partner. Destiny USA will design and develop a facility that reduces water utilization by adopting water-efficient practices and products which will include water efficient landscaping using captured rain and recycled site water, innovative wastewater technology and high efficiency lavatories.

## **B. Construction**

### **Industrial Materials Recycling.**

By Destiny USA's use of industrial materials recycling such as coal combustion products and other beneficial use products in lieu of other materials, such as Portland cement, the nation benefits from reduced greenhouse gas emissions and energy use. For every ton of coal ash used in concrete to replace Portland Cement, there is a reduction of one ton of greenhouse gases. Furthermore, these materials are valuable resources that can provide additional benefits such as improved concrete strength, economic savings, conservation of raw materials, and a reduction in the use of our nation's lands for disposal.

The first phase of Destiny USA will use over 3,000 tons of coal ash and reduce greenhouse gases by over 3,000 tons.

### **Clean Diesel and other Clean Air Programs.**

Destiny USA will cooperatively undertake a voluntary initiative to promote and implement measures to effectively reduce emissions from vehicles and other internal combustion engines used in construction and operation of its facilities, with a focus on diesel engine emission reductions. These activities will lead to a measurable decrease in diesel emissions through the following strategies:

#### **1. Clean Construction Equipment**

Clean construction equipment reduces pollution from conventional diesel fuel-powered construction vehicles and equipment by requiring the use of ultra-low sulfur diesel fuel and best available pollution control retrofit technologies. Destiny USA will include the use of clean construction equipment in its specifications for contractors working on facility construction and operation. During the first phase, Destiny will retrofit over 100 construction vehicles with Diesel Particulate Filters (DPFs). In combination with the use of clean fuel, this practice will reduce construction vehicle emissions by nearly 85% during construction.

## **2. Enhanced Idling Reduction**

Enhanced idling reduction measures reduce fuel consumption and pollution by setting a reasonable time limit for idling and actively enforcing this limit. Destiny USA will implement idling reduction measures in its own fleets, and encourage or require its contractors and tenants to do the same.

## **3. SmartWay**

The SmartWay Transport Partnership is a voluntary collaboration between EPA and the freight industry designed to increase energy efficiency while significantly reducing greenhouse gases and air pollution. SmartWay Transport Partners lead the way towards a cleaner, more efficient transportation future by adopting fuel-saving strategies that increase profits and reduce emissions -- a "win-win" opportunity for all. Destiny USA will encourage (through, e.g., establishment of incentives) its contractors and tenants to become SmartWay Transport Partners.

## **C. Operation**

### **Environmental Management System (EMS)**

Destiny USA will implement an Environmental Management System (EMS) and a comprehensive set of management tools and principles that will allow the organization to systematically manage environmental, health and safety matters. An EMS is a framework for continually planning, implementing, reviewing, and improving operations to integrate environmental concerns into daily business practices. The Integrated Environmental Management System is structured for the ISO 14001 framework and the certification is an international standard for EMS.

### **Solid Waste Reuse and Recycling**

Solid waste generation is part of daily life. It includes paper, containers, food waste and, increasingly, electronic equipment such as computers. EPA's Resource Conservation Challenge (RCC) is a voluntary program that promotes reduction, reuse and recycling of such wastes. Particularly with respect to electronics, the RCC promotes improved design, manufacture, operation and end-of-life disposal strategies to reduce waste volume and potentially hazardous components. Destiny USA is committed to an integrated solid waste reuse and recycling strategy for its facilities, including electronics.

### **Transportation and Commuter Programs**

Destiny USA will create a transportation plan that promotes clean transportation alternatives through the use of fuel-saving strategies, commuter benefit programs, and other innovative measures. Programs may include, but not be limited to the following:

#### **1. Clean Vehicle Fleets**

Clean vehicle programs reduce fuel consumption and improve air quality by taking advantage of the latest technologies available to improve fuel economy and reduce emissions from on-road vehicles. Clean vehicle fleet measures include purchase of cleaner (hybrid or alternatively fueled) light-duty vehicles, and use of ultra-low sulfur diesel fuel and best available retrofit technologies on diesel fuel-powered on-road

vehicles. Destiny USA will use clean vehicles in its own fleets, and promote the use of clean vehicle fleets by its contractors and tenants. To date, Destiny USA has experimented with the use of biodiesel in snow plowing vehicles and has a small fleet of hybrids and a biodiesel vehicle. As the project grows, additional alternative and fuel efficient vehicles will be added to the fleet.

## **2. Best Workplace for Commuters**

Best Workplaces for Commuters is an innovative, voluntary business-government program that distinguishes and provides national recognition to employers offering outstanding commuter benefits such as free or low cost bus passes, strong telework programs, carpooling matching and vanpool subsidies. Employers that meet the EPA's *National Standard of Excellence* in commuter benefits get on the list of Best Workplaces for Commuters — a fast growing mark of excellence in environmental leadership. Destiny USA will implement a commuter benefits program that qualifies for the EPA National Standard of Excellence in commuter benefits.

## **3. SmartWay**

Destiny USA expects to influence commerce on a regional scale, while minimizing environmental impacts to neighboring communities. In support of this, Destiny USA will conserve energy and reduce harmful diesel emissions by promoting the SmartWay Transport Partnership among carriers, shippers and tenants who participate in Destiny mall daily operations.

## **IV. Terms and Conditions**

This MOU is not a contractual or a financial obligation instrument. Nothing in this MOU shall obligate EPA or Destiny USA to expend appropriations or to enter into any contract or other obligations or be cited as the basis for the promise or transfers of funds. Collaboration under this MOU shall be in accordance with applicable statutes and regulations.

This MOU does not restrict EPA or Destiny USA from participating in similar activities or arrangements with other entities or Federal agencies.

Either Party may unilaterally withdraw at any time from this MOU by transmitting a signed writing to that effect to the other Party.

By mutual agreement, which may be either formal or informal, the Parties may modify the list of intended activities set forth in Paragraph III, above and/or determine the practical manner by which the goals, purposes and activities of this MOU will be accomplished. However, modification to other written parts of this MOU must be made in writing and signed by both Parties or their designees.

Nothing in this MOU shall be construed to authorize or permit any violation of any Federal, State or local law, including, but not limited to, any environmental law administered and/or enforced by EPA.

Destiny USA agrees that it does not expect, nor will it ever seek to compel from EPA in any judicial forum, the payment of money, services or other thing of value from U.S. EPA based upon the terms of this MOU. The foregoing provision does not in any way affect any legal rights accruing to Destiny USA by virtue of any other law, contract and/or assistance agreement.

Destiny USA understands and acknowledges that, as an institution of the Federal Government, EPA has a duty to refrain from providing any commercial entity an exclusive privilege without receiving payment therefore and, as a consequence, that EPA's relationship with Destiny USA in no way affects, alters or otherwise constrains EPA's right to provide similar (or identical) services to, or establish similar (or identical) relationships with, any other entity

Destiny USA understands that EPA's participation in this MOU does not constitute an endorsement, express or implied of (a) any policy advocated by Destiny USA or (b) any good or service offered or sold by Destiny USA or any member.

Destiny USA shall maintain full right, title and interest in any intellectual property right, including a copyright, in any work product developed solely by Destiny USA in furtherance of the objectives of this MOU. Any intellectual property developed collaboratively by the Parties will be governed by the Federal Copyright Statute at Title 17 of the United States Code or by the Federal Patent Statute at Title 35 of the United States Code.

The U.S. EPA enters into this MOU under the authority of Section 103 of the Clean Air Act, 42 U.S.C. §7403, Section 104 of the Clean Water Act, 33 U.S.C. §1254, and Section 8001 of the Solid Waste Disposal Act, 42 U.S.C. §6981, Section 6604 of the Pollution Prevention Act, and Section 324A of the Energy Policy and Conservation Act, which provide EPA with authority to undertake cooperative efforts with private organizations to promote the coordination and acceleration of research, studies, training, and other efforts to prevent, reduce and eliminate pollution.

This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity against Destiny USA or EPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of EPA and Destiny USA.

**V. Effective Date and Administration**

This MOU will become effective upon signature by the Regional Administrator of EPA Region 2 and the Owner and Chief Executive officer of Destiny USA or their designees. It may be modified or amended by written agreement between both parties. This MOU will terminate at the end of five (5) years from the date of signature unless revised or extended at that time by written agreement of the parties. It may be terminated at any time by either party upon the issuance of a written notice to the other party. The Parties will review annually the provisions of this MOU and its implementation.

Signed:

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ALAN J. STEINBERG  
Regional Administrator  
U.S. EPA Region 2

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ROBERT CONGEL  
Founder & Chairman  
Destiny USA

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

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