SDMS DocID 000200622

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1—EPA NEW ENGLAND

In the Matter of: **Broad Brook Mill Superfund Site,** East Windsor, Connecticut, **Hamilton Sundstrand Corporation,** Settling Party, Proceeding under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9622(h)(1)	**AGREEMENT FOR RECOVERY OF PAST AND FUTURE RESPONSE COSTS** U.S. EPA Region 1 Docket No. CERCLA-01-2003-0014

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1) and Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987), whose authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (May 11, 1994) and further delegated to the Director of the Office of Site Remediation and Restoration by Region 1 delegations (June 30, 1995 and September 3, 1996).

2. This Agreement is made and entered into by EPA and the Hamilton Sundstrand Corporation ("Hamilton Sundstrand" or "Settling Party"). The Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Broad Brook Mill Superfund Site (the "Site") located in East Windsor, Connecticut. The Site was previously identified as the Millbrook Condominiums Site. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. On December 1, 2000, EPA proposed the Site for listing to the Superfund National Priorities List ("NPL").

5. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. These response actions included EPA's initiation of Removal Site Investigation in December 1999, which documented the presence of volatile organic compounds ("VOCs") in ground water, and soil gas and polycyclic aromatic hydrocarbons ("PAHs") in exposed surface soils. They also included EPA's oversight of the Settling Party's performance of a voluntary removal action, from May 2001 through July 2001, which consisted of the installation of interim soil cover materials around the 21-unit condominium building and asbestos abatement activities in the former boiler building.

6. In performing these response actions, EPA incurred response costs at or in connection with the Site.

7. On or about the date of entry of this Agreement, EPA and the Connecticut Department of Environmental Protection (the "State") have entered or will enter into a Deferral Agreement whereby EPA has agreed or will agree to defer the process of finalizing the listing of the Site to the NPL in favor of a cleanup under the authority of the State's statutory, regulatory and administrative provisions. Once the necessary response actions at the Site are successfully completed, EPA will have no further interest in finalizing the NPL listing for the Site, unless EPA receives new information of a release or potential release that poses a significant threat to human health or the environment which is not adequately addressed under State authority. If EPA determines that the response is not CERCLA-protective, is unreasonably delayed, or does not adequately address the affected community's concerns, then EPA can terminate the Deferral Agreement, finalize the NPL listing, and address the Site under the EPA Superfund program.

8. On or about the date of entry of this Agreement, the State has issued or will issue an enforceable Consent Order, whereby the Settling Party and possibly additional parties will perform, among other things, the remedial action at the Site.

9. In order to ensure adequate remediation of the Site under State authority, EPA will incur response costs at or in connection with the Site, including but not limited to oversight costs.

10. EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the Site.

11. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.

12. EPA and the Settling Party desire to resolve the Settling Party's alleged civil liability for

Past Response Costs and Future Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

13. This Agreement shall be binding upon EPA and upon the Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

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

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

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

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

d. "Deferral Agreement" shall mean the Deferral Agreement relating to the Site signed, on or about the date of entry of this Agreement, by the Regional Administrator of EPA Region 1 and the Commissioner of the Connecticut Department of Environmental Protection, as well as any modifications made in accordance with the Deferral Agreement.

e. "Effective Date" shall mean the effective date of this Agreement as defined in Section XVII of this Agreement.

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

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to the Deferral Agreement, verifying and overseeing response actions performed pursuant to the Deferral Agreement, providing grants related to the response actions performed pursuant to the Deferral Agreement, or otherwise implementing, overseeing, or enforcing the Deferral Agreement, including but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs. Future Response Costs shall also include all Interim Response Costs and all Interest on the Past Response Costs the Settling Party has agreed to reimburse under this Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from December 17, 2002 to the date of payment of the Past Response Costs.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on September 30 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Interim Response Costs" shall mean all costs, including direct and indirect costs paid by the United States in connection with the Site between December 17, 2002 and the Effective Date.

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

k. "Parties" shall mean EPA and the Settling Party.

l. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA paid at or in connection with the Site through December 17, 2002, plus Interest on all such costs through such date.

m. "Section" shall mean a portion of this Agreement identified by a roman numeral.

n. "Settling Party" shall mean the Hamilton Sundstrand Corporation.

o. "Site" shall mean the Broad Brook Mill Superfund Site, previously identified as the Millbrook Condominiums Site, which is located in the Broad Brook section of East Windsor, Hartford County, Connecticut, and bordered approximately by a stream (Broad Brook) to the north, Broad Brook and townhouses to the west, Mill Street to the south, and Main Street to the east, and which includes a former industrial mill building converted into a 21-unit condominium building, Brookside Drive (the driveway to the 21-unit condominium building), and the grounds

that surround the building.

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

q. "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) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6903(27); and 4) any "hazardous waste" under Section 22a-115 of the Connecticut General Statutes.

V. PAYMENT OF RESPONSE COSTS

15. Payment for Past Response Costs.

a. Within 30 days of the Effective Date, the Settling Party shall pay EPA $322,301.88 in reimbursement of Past Response Costs. Payment shall be made to EPA by a certified or cashier's check made payable to "EPA Hazardous Substance Superfund," and shall be accompanied by a statement identifying the name and address of the Settling Party making payment, the Site name, the Site/Spill ID No. 017M, and U.S. EPA Region 1 Docket No. CERCLA-01-2003-0014. The Settling Party shall send the check to:

EPA - Region 1, Attn: Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

b. At the time of payment, the Settling Party shall send notice that such payment has been made to:

Financial Management Officer
Office of Administration and Resource Management
U.S. Environmental Protection Agency
Region 1 - EPA New England
One Congress Street, Suite 1100 (MCO)
Boston, MA 02114-2023

c. The total amount to be paid by the Settling Party pursuant to Paragraph 15(a) shall be deposited in the Broad Brook Mill Superfund 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.

16. Payments for Future Response Costs.

a. The Settling Party shall pay EPA all Future Response Costs not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. On a periodic basis, but not before September 1, 2004, EPA will send the Settling Party a bill requiring payment that consists of a summary of costs incurred during the preceding period; the summary will include a breakdown of costs by category, including payroll, travel, indirect costs, and contracts. The Settling Party shall make all payments within forty-five (45) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 17 of this Agreement.

b. The Settling Party shall make each payment required by this Paragraph by a certified or cashier's check made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the Settling Party making payment, the Site name, the Site/Spill ID No. 017M, and U.S. EPA Region 1 Docket No. CERCLA-01-2003-0014. The Settling Party shall send each check to:

EPA - Region 1
Attn: Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

c. At the time of payment, the Settling Party shall send notice that payment has been made to:

Financial Management Officer
Office of Administration and Resource Management
U.S. Environmental Protection Agency
Region 1 - EPA New England
One Congress Street, Suite 1100 (MCO)
Boston, MA 02114-2023

d. The total amount to be paid by the Settling Party pursuant to Paragraph 16(a) shall be deposited in the Broad Brook Mill Superfund 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.

17. The Settling Party may, in accordance with Section VI of this Agreement, dispute all or

part of a bill for Future Response Costs submitted under this Agreement, if the Settling Party alleges that EPA has made an accounting error, or if the Settling Party alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, the Settling Party shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 16 on or before the due date. Within the same time period, the Settling Party shall pay the full amount of the contested costs into an interest-bearing escrow account. The Settling Party shall simultaneously transmit a copy of both checks to the person listed in Paragraph 16(c) above. The Settling Party shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within fifteen (15) days after the dispute is resolved.

VI. DISPUTE RESOLUTION

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

19. If the Settling Party objects to any EPA billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within thirty (30) days of receipt of the bill, unless the objection(s) has/have been resolved informally. EPA and the Settling Party shall have thirty (30) days from EPA's receipt of the Settling Party's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

20. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of the Office of Site Remediation and Restoration, EPA Region 1 - EPA New England, will issue a written decision on the dispute to the Settling Party. EPA's decision shall be incorporated into and become an enforceable part of this Agreement.

VII. FAILURE TO COMPLY WITH AGREEMENT

21. Interest on Late Payments. In the event that the payment for Past Response Costs is not made within thirty (30) days of the Effective Date, or the payments for Future Response Costs are not made within forty-five (45) days of the Settling Party's receipt of a bill, the Settling Party shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall continue to accrue on the unpaid balance through the date of payment. The Interest on Future Response

Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of the Settling Party's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 22.

22. Stipulated Penalties for Late Payments.

a. If any amounts due to EPA under Paragraphs 15 or 16 are not paid by the required date, the Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 21, $750 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall made in accordance with Paragraphs 16(b) and 16(c).

c. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

23. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of the Settling Party's failure to comply with the requirements of this Agreement, the Settling Party shall be subject to an enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

24. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

25. In consideration of the payments that will be made by the Settling Party under the terms of this Agreement, and except as specifically provided in Paragraph 26 (Reservations of Rights by EPA), EPA covenants not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42

U.S.C. § 9607(a), for recovery of Past Response Costs and Future Response Costs, subject to Section XV of this Agreement. This covenant not to sue shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and Section VII, Paragraphs 21 (Interest on Late Payments) and 22 (Stipulated Penalties for Late Payments), subject to Section XV of this Agreement. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

26. The covenant not to sue by EPA set forth in Paragraph 25 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against the Settling Party with respect to all other matters, including but not limited to:

a. liability for failure of the Settling Party to meet a requirement of this Agreement;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Future Response Costs, including but not limited to costs incurred if the Deferral Agreement is terminated;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability;

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. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

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

X. COVENANT NOT TO SUE BY THE SETTLING PARTY

28. The Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Future Response Costs (subject to Section XV of this Agreement), or this Agreement, including but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Connecticut 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; and

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

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

30. The Settling Party agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the disposal, release, or threat of release of Waste Materials at the Site which occurred prior to the Effective Date, including for contribution with respect to Past Response Costs, Future Response Costs (subject to Section XV of this Agreement), or this Agreement, against the Millbrook Owners' Association, Inc. and the individual owners of the condominium units.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

31. Except as provided in Paragraph 30, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as provided in Paragraph 30, EPA and the Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), 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.

32. EPA and the Settling Party agree that the actions undertaken by the Settling Party in accordance with this Agreement do not constitute an admission of any liability by the Settling

Party. The Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

33. The Parties agree that the Settling Party is entitled, as of the Effective Date, subject to Section XV of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs and Future Response Costs.

34. The Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. The Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within ten (10) days of service of the complaint or claim upon it. In addition, the Settling Party shall notify EPA within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

35. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Party 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 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 covenant not to sue by EPA set forth in Paragraph 25.

36. Pursuant to the Deferral Agreement (and as discussed in Paragraph 7 above), EPA may continue the Federal rule-making process for finalizing listing of the Site on the NPL if, upon termination of the Deferral Agreement, EPA determines the response action not to be CERCLA-protective. The Settling Party agrees to waive its right to challenge such a final NPL listing.

XII. RETENTION OF RECORDS

37. Until twenty (20) years after the Effective Date, the Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

38. After the conclusion of the document retention period in the preceding Paragraph, the Settling Party shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, the Settling Party shall deliver any such records or documents to EPA. The Settling Party may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide EPA 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. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. The Settling Party shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor.

XIII. NOTICES AND SUBMISSIONS

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

As to EPA:

Man Chak Ng
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 - EPA New England
One Congress Street, Suite 1100 (SES)
Boston, MA 02114-2023

and

Anni Loughlin
Remedial Project Manager
Office of Site Remediation and Restoration
U.S. Environmental Protection Agency
Region 1 - EPA New England
One Congress Street, Suite 1100 (HBT)
Boston, MA 02114-2023

As to the Settling Party:

Ellen Quinn
United Technologies Corporation
One Financial Plaza
Hartford, CT 06101

XIV. INTEGRATION

40. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XV. CONTINGENCIES

41. If EPA or the State voids the Deferral Agreement, as a result of the ownership interests of the twenty-one condominium units and these units' mill building and associated common property failing to be transferred by September 1, 2004, then:

a. the Settling Party is not obligated to pay for Future Response Costs;

b. EPA would reserve, and this Agreement would be without prejudice to, all rights against the Settling Party with respect to Future Response Costs;

c. the Settling Party would reserve, and this Agreement would be without prejudice to, all claims or causes of action against the United States, or its contractors or employees, with respect to Future Response Costs;

d. the Settling Party would reserve, and this Agreement would be without prejudice to, all claims or causes of action against the Millbrook Owners' Association, Inc. and the individual owners of the condominium units with respect to Future Response Costs; and

e. the Settling Party's covenant not to sue (Section X) and protection from contribution actions or claims (Section XI) would not apply to Future Response Costs.

XVI. PUBLIC COMMENT

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

XVII. EFFECTIVE DATE

43. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 42 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

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IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Susan Studlien

Susan Studlien
Director
Office of Site Remediation and Restoration
EPA Region 1 - EPA New England

December 5, 2003
Date

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of U.S. EPA Region 1 Docket No. CERCLA-01-2003-0014, relating to the Broad Brook Mill Superfund Site:

FOR THE SETTLING PARTY
HAMILTON SUNDSTRAND CORPORATION:

By: _____ November 4, 2003
Michael A. Monts — Date
Vice President, Secretary & General Counsel
Hamilton Sundstrand Corporation