

Site: Industri-Plex  
Break: 10.8  
Other: \_\_\_\_\_

**APPENDIX III**

**INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT**

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## INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT

This agreement, made and effective as of this \_\_\_\_ day of \_\_\_\_\_, 1989, by and among Stauffer Chemical Company; Stauffer Management Company; ICI American Holdings, Inc. (collectively "ICI"); Monsanto Company; Atlantic Avenue Associates, Inc.; Boston Edison Company; The Boyd Corporation; Stephen Dagata and Adeline Dagata; Mary E. Fitzgerald and John J. Mulkerin, as trustees of The Nodraer Realty Trust; Hiro K. Ganglani and Sunder K. Ganglani; Michael A. Howland individually and as trustee of Atlantic Avenue Trust; Lipton Industries, Inc.; Ronald F. Liss; Massachusetts Bay Transportation Authority; Richard G. Mizzone, Metrophane Zayka, Jr., Nicholas Zayka and Peter Zayka, as trustees of the Aero Realty Trust; Paul X. O'Neill and Phyllis O'Neill, as trustees of the PX Realty Trust; Pebco Company; Positive Start Realty, Inc.; Augustine P. Sheehy; Peter J. Volpe; The Welles Company; Winter Hill Storehouse, Inc.; City of Woburn; and Woodcraft Supply Corporation (the "Donors") and Mercantile Bank, N.A. (the "Trustee").

WHEREAS, the Donors have executed a consent decree with the United States of America ("United States") and the Commonwealth of Massachusetts ("Commonwealth") in United States of America v. Stauffer Chemical Company, Inc., et al., Civil Action No. 89-0195-Mc and Commonwealth of Massachusetts v. Stauffer Chemical Company, et al., Civil Action No. 89-0196-Mc (both in the United States District Court for the District of

Massachusetts) (hereinafter the "Consent Decree") for the implementation of remedial design, construction and action, and operation and maintenance as described in Appendix I to the Consent Decree, with respect to hazardous substances allegedly located at the facility known as the Industri-Plex Site (the "Industri-Plex Site" or the "Site") located in Woburn, Massachusetts; and

WHEREAS the Donors have agreed to settle their liability to the United States and the Commonwealth for (a) all costs incurred up to the date of lodging of the Consent Decree by the United States and the Commonwealth with regard to the Industri-Plex Site; (b) the remediation of the Industri-Plex Site, with the exception of certain possible future groundwater remedial measures for which the Donors deny liability; (c) the operation and maintenance of the remediation of the Industri-Plex Site; and (d) the costs of the United States and Commonwealth to oversee the remediation of the Industri-Plex Site;

WHEREAS to fulfill the Consent Decree, the Donors have agreed to make the payments and carry out the work as specified in the Consent Decree and the attached RD/AP and this Trust Agreement;

WHEREAS the Parties to the Consent Decree have agreed that on behalf of all the Donors Donor Monsanto Company will actually undertake to perform the work under the supervision of the United States in consultation with the Commonwealth and will

be reimbursed in part by the other Donors pursuant to the agreements and schedules set forth in this Trust Agreement;

WHEREAS the Parties to the Consent Decree have agreed that the Settler Mark-Phillip Trust (not a party to this Trust Agreement) shall apply all of its property and assets, real and personal, to (1) reimburse the Donors for their costs incurred in carrying out the terms of the Consent Decree; (2) to reimburse the United States for certain past costs not reimbursed by the Donors, (3) to reimburse the United States and the Commonwealth for future groundwater remediation at the Industri-Plex Site and other specified purposes with regard to which Donors deny liability and have not agreed herein to undertake; and (4) otherwise comply with all other relevant aspects of the Consent Decree, including this Trust Agreement, another trust agreement which is Appendix IV to the Consent Decree and which is titled the Industri-Plex Site Interim Custodial Trust, and an escrow agreement which is Appendix V to the Consent Decree;

WHEREAS the Parties to the Consent Decree have agreed that the Mark-Phillip Trust's property will be sold and the proceeds applied as set forth in the Consent Decree, and that the sale of the Mark-Phillip Trust property may, but need not, be made in parcels, upon (A) agreement by the United States in consultation with the Commonwealth that the remedy (including inauguration of certain institutional controls) has been satisfactorily completed for all of the property or any parcel thereof or (B) agreement by the United States and the Common-

wealth to the sale upon such terms and conditions as they deem appropriate to assure the performance of all remedial work on, and the Inauguration of all Institutional Controls applicable to, the property, as required by the Consent Decree;

WHEREAS as part of the remediation of the Industri-Plex Site, the Donors have agreed in the Consent Decree to develop, inaugurate and comply with Institutional Controls designed to protect the other aspects of the remedy, and have agreed to place restrictions on their property that will run with land requiring all present and future landowners of the Industri-Plex Site to comply with said Institutional Controls;

WHEREAS Donor City of Woburn has agreed in the Consent Decree to undertake to make certain adjustments in the tax liability with respect to the Mark-Phillip Trust's property as one of the conditions of its agreement to settle this matter, including its agreement to (1) take actions to dissolve existing tax titles and liens; (2) settle and discharge existing tax liabilities; (3) reassess the value of the Mark-Phillip Trust property at zero or takes other action of similar effect; (4) keep such assessment at zero on each Mark-Phillip Trust parcel until it shall have been sold pursuant to the terms of this Consent Decree; (5) accept \$645,000 to reimburse it for accrued taxes, interest and penalties, such amount being a settlement of claims discharging all past tax liability, to be paid out of the proceeds of the Mark-Phillip Trust property as set forth in the Consent Decree;

WHEREAS, each Donor has entered into the Consent Decree and this Agreement in reliance on the funding and other commitments made herein by each and every other Donor;

WHEREAS, the Donors shall deliver to the Trustee pursuant to Section 2.01 of this Agreement the funds described in the Schedules to Exhibit A hereto; and

WHEREAS, the Donors desire that such funds together with any interest constitute a Trust Fund, to be held and administered by the Trustee for the purposes hereinafter set forth for the benefit of the Donors, the United States and the Commonwealth (hereinafter collectively the "Beneficiaries");

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the parties hereto agree as follows:

## ARTICLE I

### PURPOSE, NAME AND ACCEPTANCE OF TRUST

1.01 Trust Fund Purpose. The purpose of this Trust is to provide funds to satisfy the obligations of the Donors under the Consent Decree, including the obligations to (a) pay the costs of the Work as defined in the Consent Decree (the "Work"), (b) to reimburse the United States and the Commonwealth as provided in Section 5.01 below, and (c) pay other proper expenses of the Donors pursuant to the Consent Decree. All such costs and expenses are to be paid in accordance with this Agreement.

1.02 Name of Trust Fund. The funds received by the Trustee from the Donors together with the proceeds and

reinvestments thereof shall be known as the Industri-Plex Site Remedial Trust Fund (the "Trust Fund" or the "Remedial Trust Fund").

1.03 Nature of Funds. The funds contributed by Donors to the Remedial Trust Fund (other than funds contributed for the payment of stipulated penalties) are voluntary payments and not payments of fines, penalties or monetary sanctions, nor are they amounts forfeited as collateral posted in connection with a proceeding which could result in imposition of such fines, penalties or monetary sanctions. Furthermore, the contribution of the funds by the Donors shall not be construed as an admission of storage, treatment, handling or disposal of hazardous substances at the Industri-Plex Site, as defined in the Consent Decree, Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC § 9601(14), or any other federal or state statute or regulation.

1.04 Acceptance of Trust. The Trustee hereby accepts the trust, duties, obligations, and requirements specifically imposed on it by this Agreement, and agrees to carry out and perform, punctually, such duties, obligations, and requirements (and only such duties, obligations and requirements), for the benefit and on behalf of the Donors as set forth in this Agreement. No implied duties, obligations or requirements will be read into this Agreement against the Trustee.

## ARTICLE II

### THE TRUST FUND

2.01 Trust Estate and Donors' Obligations. The Trust Estate shall consist of (1) the funds contributed by the Donors to the Trustee for the above-stated purposes, and (2) all interest and income earned on such funds. Each Donor shall deliver to the Trustee the amounts allocated to it as set forth on the schedules of Exhibit A hereto. The payments set forth on Exhibit A, Schedule I shall be delivered to the Trustee within 20 (twenty) days of the entry by the court of the Consent Decree. All other payments shall be made in proportionate installments at such times as the Trustee shall direct as provided in Section 2.02. The Trustee shall be governed by the terms of this Agreement, including the schedules to Exhibit A, in receiving and directing payments.

2.02 Additions to Trust Estate. The Donors retain an unlimited obligation to ensure that the Trust Estate has sufficient assets to assure the uninterrupted progress and timely completion of the Work required under the Consent Decree. The Trustee shall make demands in writing upon the Donors for additional contributions to the Trust Estate in amounts determined by the expenditure forecasts pursuant to Section 7.02 below, to satisfy the purpose of this Trust as set forth in Section 1.01. When such calls for additional payments are made, each Donor's additional contribution shall be in the proportions specified in the appropriate schedule of Exhibit A hereto;

provided, however, that Donor ICI shall not be required to contribute to payments pursuant to this Agreement for matters referred to in Section XXIV D. or subsection XXIV E.2. of the Consent Decree, insofar as ICI is excepted from such provisions and provided further that the Donors other than ICI and Monsanto Company shall not be required to contribute to payments for Long Term Operation and Maintenance Costs as defined in Section III.N. of the Consent Decree and as set forth in Exhibit A, Schedule IV hereto. The Donors agree by their execution of this Agreement to satisfy all such future calls upon them for contribution to the Trust Estate within 30 days of receipt of such written demand.

2.03 Default. In the event that a Donor fails to make any payment or contribution required by this Agreement, the other Donors shall make that payment or contribution in the same proportions as their individual payments or contributions bear to the total amount of payments or contributions, not including payments or contributions of the defaulting party. Such Donors shall have the right to enforce this Agreement and the Consent Decree against any Donor who fails to make proper payment or contribution pursuant to this Agreement, and to pursue any other applicable remedies against such Donor. Default may be cured by the payment or contribution by the defaulting Donor of all amounts assessed against it hereunder and then due, together with interest as provided in Section 2.04 hereof.

2.04 Interest Obligations of Donors. Except as provided in Section 2.01, payments and contributions are due

within thirty (30) days of receipt of written demand from the Trustee. No interest shall accrue prior to the due date of any payment or contribution. Thereafter, interest shall accrue at the prime rate, as determined by the Trustee, plus two percent.

### ARTICLE III

#### MANAGEMENT COMMITTEE AND PROJECT TEAM

3.01 Management Committee. In recognition of the complexity of the Work and the professional expertise required to supervise and coordinate the Work, a Management Committee shall be established to represent the Donors in the day-to-day transactions regarding the Work. The Management Committee shall be comprised of one representative each from Monsanto Company and ICI and one representative selected collectively by the other Donors.

3.02 Rules of the Management Committee. (a) The Management Committee shall determine the rules by which it shall perform its duties. The Management Committee may permit voting by proxy, meetings by telephone, and such other procedures as the Committee members shall decide in their discretion are appropriate. In all matters, the Donors agree to cooperate in an effort to achieve a consensus. Failing to achieve such a consensus, the decision of a majority of the committee members voting on an issue shall control, provided that no decision shall be made pursuant to this Section without the concurrence of Monsanto Company, which concurrence shall not be unreasonably

withheld. In the event of a tie or deadlock of the Management Committee, the controlling decision shall be that of those Committee members which include Monsanto Company.

(b) In making any decision concerning the use of any Donor's real property for purposes of staging or storage in connection with the Work, the Management Committee will consult with such Donor concerning such staging or storage. The Management Committee will consider the views presented by any Donor and will accommodate such views to the extent it deems practicable. The Donors acknowledge that the implementation of the Work may involve the temporary disruption of the Site, including the use of drilling equipment, excavation and earth moving machinery and the transportation of materials and equipment over the roadways and properties within the Site. It is the intention of the Donors, however, to take all steps reasonably practicable to minimize interference with the ongoing business affairs of the Donors which own and use property within the Site. Recognizing the foregoing, the Parties hereto agree that to the extent reasonably practicable, all materials and equipment required for use in undertaking the Work shall be stored on the Mark-Phillip Trust Property (exclusive of the Boston Edison transmission easement.) Further, in developing the work plans for the implementation of the Work, the Donors shall incorporate all measures reasonably practicable to minimize interference with the Donors' business activities. In the event that any Donor determines that any activity of any other Donor

undertaken in furtherance of the Work is causing unreasonable interference with the affected Donor's business or use of property, the affected Donor shall have the right to petition the Management Committee for relief from such interference. Upon receipt of such a petition for relief, the Management Committee shall meet to discuss such requests and take such action as is reasonably practicable to minimize any interference. The Petition process shall not, however, limit the decision-making authority of the Management Committee or provide any Donor with any rights of review not otherwise provided in this Agreement.

3.03 Authority of Management Committee. Except as otherwise provided in this Agreement, the Donors hereby authorize, and the Trustee hereby delegates the power and duty to, the Management Committee to take all such action as the Management Committee deems necessary or appropriate for the supervision and coordination of the Work. The authority of the Management Committee shall include, without limitation, the authority, consistent with this Agreement and the Consent Decree, to (1) direct the affairs of the Trustee; (2) make decisions concerning the performance of the Work; (3) conduct meetings of its members; (4) conduct meetings among the Donors and EPA and/or the Commonwealth; (5) coordinate community relations activities, including the conduct of any press conferences and the issuance of press releases, of the Donors in connection with the Site; (6) perform the tasks set forth in Section 3.04 hereof, which tasks may be performed through a Project Team established in accordance

with Section 3.04, (7) approve payments to be made from the Trust; (8) perform such duties as are delegated to it by the Trustee pursuant to Section 6.11 hereof; (9) approve the expenditure of funds from the Remedial Trust Fund and (10) delegate its authority to a designee. The Management Committee shall report to the Donors in writing its decisions, actions, and recommendations so as to keep the Donors reasonably informed of the Work.

3.04 Project Team. Without limiting the authority granted to the Management Committee pursuant to Section 3.03, the Management Committee shall be authorized to designate and employ a technical subcommittee of the Management Committee, a project manager, a Project Coordinator (as defined in the Consent Decree), engineers, technicians, clerks, agents, accountants and counsel (such personnel being hereinafter collectively referred to as the "Project Team"). The responsibilities of the Project Team shall include, without limitation, (a) monitoring, coordination and implementation of the progress of the Work; (b) certification or verification, as appropriate, of the satisfactory progress of the Work; (c) verification or certification, as appropriate, of the proper completion of the activities and payment due for such activities pursuant to Section 4.02 hereof; (d) preparation of invitations for bids or requests for proposals; (e) advice on selection of contractors and subcontractors, on management of change orders, and on settlement of protests, claims, disputes and other related

procurement matters so as to assure that the Work is performed in accordance with the Consent Decree; (f) preparation of expenditure forecasts pursuant to Section 7.02(b) and such other reports and plans as may be required by the Consent Decree; (g) coordination of communication regarding the Work among the parties hereto and the United States and the Commonwealth; and (h) oversight of the performance of the daily activities during the Work. The Management Committee shall have the absolute right to dismiss any such personnel for any reason, with or without cause.

#### ARTICLE IV

##### RETENTION OF PROFESSIONAL AND OTHER SERVICES

4.01 Accountants. The Trustee may, with the concurrence of the Management Committee, employ an independent certified public accounting firm to perform auditing and accounting services for the Trust Fund (the "Accountants"). Such services may include, without limitation, (a) the preparation of reports pursuant to Article VII hereof; (b) the auditing of invoices submitted by the Contractors (as defined in Section 4.02) and the Project Team, pursuant to Section 5.02 hereof, and claims submitted by the United States or the Commonwealth pursuant to Section 5.01 hereof; and (c) the provision of advice to the Trustee as to the payment of the audited invoices and claims.

4.02 Contractors. The Trustee shall, with the written concurrence of the Management Committee, enter into contracts on

behalf of the Donors with such persons (the "Contractors") selected by the Management Committee to undertake and complete the Work and to carry out the obligations of the Donors under and in accordance with the terms of the Consent Decree.

4.03 Retention and Removal of Other Professional and Employee Services. The Trustee shall, with the concurrence of the Management Committee, employ such attorneys, accountants, custodians, engineers, contractors, clerks, investment counsel and agents or employees (including any firm or entity in which it may have an interest); lease from others, furnish, operate, and maintain office space; and make payments therefor as it shall deem reasonable for the implementation of the purposes of this Trust.

## ARTICLE V

### PAYMENTS AND REIMBURSEMENTS OF TRUST FUND

5.01 Payments to the United States and the Commonwealth. (a) Within thirty (30) days of the effective date of the Consent Decree, the Trustee shall deliver to the United States the amount of \$377,487.00 and shall deliver to the Commonwealth the amount of \$6,000.00 as reimbursement for response costs incurred prior to the lodging of the Consent Decree by the United States and the Commonwealth in relation to the Industri-Plex Site.

(b) The Management Committee shall review the documentation supplied with the demands by the United States and the Commonwealth for oversight costs incurred after the lodging

of the Consent Decree pursuant to Section XIX C. of the Consent Decree to verify that the claimed costs were incurred and that the amount of the demand was properly calculated. Upon receipt of approval of the Management Committee, the Trustee shall pay the approved amounts within 30 days of receipt of the demands for payment.

(c) In the event that the Donors should become liable for the payment of stipulated penalties pursuant to Section XXIII of the Consent Decree due to failure to comply with the requirements of the Consent Decree, the Trustee, upon the written verifications of such penalties by the Management Committee, shall deliver to the United States and the Commonwealth payments of such penalties, together with a statement that the payment is for stipulated penalties, by the 15th day of the month following the month in which the noncompliance occurred. The Donors' contributions to any penalty payments shall be in the same proportion as their contributions set forth in Exhibit A, Schedule II.B.

(d) All payments made to the United States pursuant to this Section 5.01 shall be made by certified or cashier's check payable to "EPA Hazardous Substances Superfund" and shall be sent by certified mail, return receipt requested to:

EPA Superfund  
P.O. Box 371003M  
Pittsburgh, PA 15251

Copies of the check and the letter enclosing the check shall be submitted to:

Chief, Environmental Enforcement Section  
Land and Natural Resources Division  
Department of Justice  
10th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
RE: DOJ # 90-11-2-228

and

Director, Waste Management Division  
United States Environmental Protection Agency  
Region I  
JFK Federal Building  
Boston, Mass. 02203  
RE: Industri-Plex Site

(e) All payments made to the Commonwealth pursuant to this Section 5.01 shall be made by certified or cashier's check payable to The Commonwealth of Massachusetts and shall be sent by certified mail, return receipt requested to:

Massachusetts Department of the Attorney General  
Environmental Protection Division  
One Ashburton Place  
Boston, Mass. 02108

5.02 Payment of Costs of Work. The Contractors and Project Team shall submit invoices to the Trustee for the fees and expenses of the Work. In addition, invoices shall be submitted to the Trustee for the fees and expenses of movement of the electrical transmission lines located on the Boston Edison Right of Way Number 14 in accordance with the agreement between Boston Edison Company and the other Donors attached hereto as Exhibit C. After the audit, verification and certification of such invoices in accordance with Sections 4.01 and 3.04 hereof, and after receipt of approval of the Management Committee or its

designee, the Trustee shall pay the amount of such invoices to the Contractors, the Project Team, and Boston Edison Company.

5.03 Payment of Expenses and Loans to Industri-Plex Site Interim Custodial Trust. Subject to the approval of the Management Committee, the Trustee shall pay invoices of the trustee of the Industri-Plex Site Interim Custodial Trust (the "Interim Custodial Trust") established pursuant to the Consent Decree (the "Interim Custodial Trustee") for the expenses of administering the Trust. In addition, the Trustee shall make interest-free loans to the Interim Custodial Trustee in such amounts and upon such terms as the Management Committee determines to be necessary and appropriate for the purposes of arranging for the sale of real estate consistent with and as required by the terms of the Consent Decree. Payments and loans shall be based upon estimates of the costs of operation of the Interim Custodial Trust for the following 120 days, which estimates shall be prepared as part of the expenditure forecasts by the Project Team pursuant to Sections 3.04 and 7.02(b) hereof; provided, that the Interim Custodial Trustee may submit a request and invoice to the Trustee for up to \$50,000 for Initial Operating Funding at any time following its acceptance of the Interim Custodial Trust without an estimate of the cost of operations for the following 120 days, and provided further, that the Interim Custodial Trustee may submit a request and invoice to the Trustee at any time for additional funds, provided that such request and invoice is accompanied by a statement explaining why

the funds in the possession of the Interim Custodial Trustee are insufficient to carry out its required duties and why the regular funding procedures would not likely result in timely receipt of the necessary funding. Where approved by the Management Committee, such payments and loans shall be made within thirty days after receipt of such approval by the Trustee. In the event that funds are available, payments and loans for Initial Operating Funding or for needed additional funds, shall be paid as soon as possible. Contributions for such payments and loans shall be charged to the Donors according to Schedule II of Exhibit A hereto, and shall be demanded and paid pursuant to Section 2.02 hereof. The failure of a Donor to make a payment or contribution required for the purposes of this Section shall be a default subject to Section 2.03 hereof, and delinquent payment of contributions shall be subject to the imposition of interest pursuant to Section 2.04 hereof.

5.04 Payment to the Industri-Plex Site Long-Term Custodial Trust. Subject to the approval of the Management Committee, the Trustee shall pay to the trustee of the Industri-Plex Site Long-Term Custodial Trust (the "Long-Term Custodial Trust") the amount determined by the Interim Custodial Trustee (with the approval of EPA and the Commonwealth) to be necessary to provide adequately for the custodial care of any property to be held by the Long-Term Custodial Trust, including but not limited to trustee's fees, insurance, maintenance and security. Where approved by the Management Committee, payment shall be made

within thirty days after receipt of such approval by the Trustee. Contributions for such payment shall be allocated among the Donors according to Schedule IV of Exhibit A hereto, and shall be demanded and paid pursuant to Section 2.02 hereof. The failure of a Donor to make a payment of contribution required for the purposes of this Section shall be a default subject to Section 2.03 hereof, and delinquent payment of contributions shall be subject to the imposition of interest pursuant to Section 2.04 hereof.

## ARTICLE VI

### TRUSTEE'S POWERS

The Trustee shall have, in addition to those powers specified elsewhere herein and the general powers of the office, the following powers with respect to the Remedial Trust Fund, which powers shall be exercised in a fiduciary capacity, in the best interest of this Trust and the beneficiaries thereof:

6.01 Payment of Expenses of Administration. To incur and pay any and all charges, taxes and expenses upon or connected with this Trust or the Remedial Trust Fund in the discharge of its fiduciary obligations under this Agreement.

6.02 Retention of Property. To obtain, hold and retain all or any part of the Remedial Trust Fund in the form in which the same may be at the time of the receipt by the Trustee, as long as it shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any

court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

6.03 Preservation of Principal. Notwithstanding any other provision in this Agreement, to at all times hold, manage and invest the assets of this Trust in a manner designed to preserve the principal of this Trust and, consistent with preservation of the principal of the Trust, to maximize the principal and income derived therefrom, for the purposes of this Trust.

6.04 Investment of Trust Estate. Pending use of the Trust Estate for the purpose of this Trust, to invest and reinvest all or any part of the Trust Estate (including any undistributed income therefrom), at the direction and in accordance with the written instructions of the Management Committee, which direction and instructions shall be limited to investments in United States direct obligations, obligations guaranteed by agencies of the United States government, common trust funds or mutual funds that invest in United States direct or guaranteed obligations, bank certificates of deposit to the extent such are insured by the federal government, common trust funds or money market funds that invest in short-term municipal bonds, and short-term money market funds administered by the Trustee. In all cases, however, the total investments must be sufficiently liquid to enable the Trust to fulfill the purposes of the Trust and to satisfy obligations as they become due.

Nothing in this Section 6.04 shall be construed as authorizing the Trustee to carry on any business or to divide the gains therefrom. The sole purpose of this Section 6.04 is to authorize the investment of the Trust Estate or any part thereof as may be reasonably prudent pending use of the Trust Estate for the purpose of the Trust.

6.05 Management of Trust Estate. Without any business objective, and as may be incidental or advisable in connection with the purpose of this Trust as set forth in Section 1.01, to sell, exchange, partition or otherwise dispose of all or any part of the Trust Estate at public or private sale, without prior application to or approval by or order of any court, upon such terms and in such manner and at such prices as it shall determine.

6.06 Extension of Obligations and Negotiations of Claims. To renew or extend the time of payment of any obligation, secured or unsecured, payable to or by this Trust, for as long a period or periods of time and on such terms as it shall determine, and to adjust, settle, compromise and arbitrate claims or demands in favor of or against this Trust, including claims for taxes, upon such terms as it deems advisable, upon obtaining approval of or direction from a majority of the Donors.

6.07 Registration of Securities. To hold any stocks, bonds, securities, and other property in the name of a nominee, in street name, or by other title-holding device, without indication of trust.

6.08 Location of Assets. To hold any property belonging to the Trust at any place in the United States.

6.09 Authority to Represent Donors. Upon obtaining written approval and direction from a majority of the Donors not then in default of their obligations under this Agreement (the "Non-defaulting Donors"), to represent Donors with regard to any matter concerning this Trust or its purpose before any federal, state or local agency or authority which has authority or attempts to exercise authority over the work required by the Consent Decree or over any matter which concerns the Consent Decree or this Agreement, and to invoke the dispute resolution procedure pursuant to Section XXII of the Consent Decree. This authority may be delegated in writing by the Trustee to the Management Committee. All costs incurred by the Trustee, including, but not limited to attorneys fees, pursuant to this Section 6.09 shall be paid by Donors in accordance with Sections 2.02, 2.03 and 8.06 of this Agreement.

6.10 Institution of Litigation. To institute litigation in the name of the Trust on behalf of or in the name of all consenting and Non-defaulting Donors, upon obtaining written approval and direction from a majority of the Non-defaulting Donors, against any party that refuses to participate in the settlement provided by the Consent Decree, or any party that agrees to participate in the settlement but fails to make payments in accordance with Section 2.01 hereof, or fails to make additional payments as provided in Section 2.02 hereof, or fails

to make payment for fines or penalties in accordance with Section 5.01 hereof. A Donor may, upon written notice to the Trustee and other Donors, elect not to participate in such litigation, in which case it will not share in any recovery or costs associated with such litigation. All such costs incurred by the Trustee, including but not limited to attorneys fees, pursuant to this Section 6.10 shall be paid in accordance with Sections 2.02, 2.03, and 8.06 of this Agreement.

6.11 Delegation of Ministerial Powers. Subject to the approval of the Management Committee, to delegate to the Management Committee and other persons such ministerial powers and duties as the Trustee may deem to be advisable.

6.12 Appointment of Successor Interim Custodial Trustee. To appoint successor trustee(s) as needed for the Interim Custodial Trust, upon written approval of and direction from a majority of Non-defaulting Donors.

6.13 Powers of Trustee to Continue until Final Distribution. To exercise any of such powers after the date on which the principal and income of the Remedial Trust Estate shall have become distributable and until such time as the entire principal of, and income from, the Remedial Trust Estate shall have been actually distributed by the Trustee. It is intended that the Trust terminate following the completion of the Work and final distribution of the Trust Estate.

6.14 Discretion in Exercise of Powers. To do any and all other acts which it shall deem proper to effectuate the powers specifically conferred upon it by this Agreement.

## ARTICLE VII

### ACCOUNTS AND RECORDS

7.01 Separate Records To Be Kept. The Trustee shall keep, or direct the Accountants, if any, to keep, proper books of records and accounts, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Remedial Trust Fund. All such books of records and accounts shall be preserved and retained for at least 6 years after the completion of the Work.

7.02 Reports. (a) Within 30 days of the close of each calendar quarter, the Trustee shall present to the Donors (i) a statement of receipts and disbursements consisting of the Trust balance at the beginning of such quarter, the receipts and disbursements for such quarter and the Trust balance at the end of such quarter; (ii) a statement of Trust assets as of the close of such quarter that is in agreement with the ending Trust balance shown in such statement of receipts and disbursements. By each March 31, the Trustee shall present to the Donors a statement of receipts and disbursements and a statement of trust assets for the prior year ended December 31, accompanied by a report of the Accountants stating that an audit of such financial statements has been made in accordance with generally accepted auditing standards, stating the opinion of such Accountants in

respect of the financial statements and the accounting principles and practices reflected therein and as to the consistency of the application of the accounting principles, and identifying any matters to which such Accountants take exception and stating, to the extent practicable, the effect of such exception on such statements; and (iii) a copy of all accountings received from the Interim Custodial Trustee for such quarter.

(b) Within 60 days of the effective date of this Agreement, and every 90 days thereafter, the Trustee shall submit to the Donors, the U.S. and the Commonwealth the expenditure forecasts prepared by the Project Team pursuant to Section 3.04. Such forecasts shall include cash flow projections that project the level of funds that will be necessary to pay for all site-related obligations, including but not limited to the obligations described in Sections 1.01, 5.03 and 5.04 hereof, for the succeeding 120 day period, the current balance of the Trust Fund and the projected balance of the Trust Fund at the end of the 120 day period. The expenditure forecasts to be submitted to the U.S. EPA shall be sent, postage prepaid, to:

Director, Waste Management Division  
United States Environmental Protection Agency  
Region I  
JFK Federal Building  
Boston, Mass. 02203  
RE: Industri-Plex Site

As to the Commonwealth:

Chief, Environmental Protection Division  
Department of the Attorney General  
One Ashburton Place  
Room 1902  
Boston, Mass. 02108-1698

7.03 Right to Inspect. The Donors and each of them shall have the right at all reasonable times and upon reasonable notice to inspect all records, accounts, and data of the Trustee relating to the Trust Fund.

#### ARTICLE VIII

##### CONDITIONS OF TRUSTEE'S OBLIGATIONS

The Trustee accepts the Trust imposed upon it by this Agreement but only upon and subject to the following express terms and conditions:

##### 8.01 Limitation of Duties, Obligations and Power.

(a) The Trustee shall manage the Trust Estate in accordance with the powers and within the limitations fixed by this Agreement.

(b) The Trustee shall act on behalf of the Donors pursuant to such directions of the Donors, the Management Committee and the Project Team as shall be in conformity with this Agreement.

(c) The Donors shall provide to the Trustee the names of the members of the Management Committee and Project Team and the Trustee may rely absolutely on the accuracy of such notification until notified in like manner of any change thereof.

(d) Discretionary Actions (as defined below) shall be taken by the Trustee solely upon directions of the Management Committee. In accordance with Section 10.01, the Donors shall indemnify and hold harmless the Trustee from all losses, claims, liabilities, injuries, damages, and expenses (including, but not limited to, reasonable attorneys' fees and costs of investigation), regarding or arising from any and all Discretionary Actions taken by it pursuant to such directions. The term "Discretionary Actions" shall mean all actions taken by the Trustee other than Investment of the Trust Estate in accordance with Section 6.04 and Management of the Trust Estate in accordance with Section 6.05. All such directions to the Trustee shall be rendered or confirmed in writing. The Trustee expressly disavows any expertise in matters of environmental control, law, reclamation, restoration or any other matter whatsoever related to air, ground, or water pollution or the health and safety of the environment, or remedies for defects therein, and no party to this Agreement shall make any statement or take any action which might imply or give rise to any inference to the contrary.

8.02 Limitation of Liability. In no event shall the Trustee be liable except for its gross negligence or willful misconduct in relation to its duties under this Agreement. The Trustee shall have no responsibility hereunder except to the extent of the duties placed upon the Trustee to hold, administer, deposit, secure, invest and use the Trust Funds as required by

this Agreement, to the extent funds for such purposes are received by the Trustee, to comply with this Agreement, to follow the Donors' and Management Committee's directions which do not conflict with this Agreement and to perform the other express covenants and agreements made by the Trustee under the provisions of this Agreement.

8.03 Reliance on Documentation. The Trustee shall be protected in acting in accordance with the provisions of this Agreement upon any notice, requisition, request, consent, certificate, order, affidavit, letter, telegram or other paper or document which is reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

8.04 Right to Demand Documentation. Notwithstanding anything else in this Agreement, in the administration of the Trust Fund, the Trustee shall have the right, but shall not be required, to demand before the disbursement of any cash or in respect of any action whatsoever within the purview of this Agreement, any showings, certificates, opinions, appraisals, or other information, or action, or evidence thereof, in addition to that required by the terms hereof which the Trustee reasonably believes to be necessary or desirable.

8.05 Trustee's Compensations. The Trustee shall be compensated for its services hereunder in accordance with Exhibit B attached hereto. The Trustee shall have a lien upon the Remedial Trust Fund for such compensation, and all reasonable expenses, advances, and counsel fees, and as indemnity for all

liabilities incurred in and about the execution of this Trust and the exercise and performance of the powers and duties of the Trustee hereunder, and the cost and expenses, including reasonable counsel fees, of defending against any claim of such liability (except liabilities, costs or expenses incurred as a result of gross negligence or willful misconduct of the Trustee).

8.06 Limitation on Financial Liability. No provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, nor to take any action pursuant to this Agreement, whether or not directed to take any such action by the Management Committee, which in the judgment of the Trustee may reasonably conflict with any rule of law, or with the terms of this Agreement or which would be unjustly prejudicial to the Donors not taking part in such direction. When acting pursuant to the direction of the Donors pursuant to this Agreement, the Trustee may take other action deemed proper by the Trustee that is not inconsistent with such direction; provided, however, that the terms of this Section shall not impose any additional duties or responsibilities upon the Trustee.

## ARTICLE IX

### SUCCESSOR TRUSTEES

9.01 Resignation of Trustee. The Trustee may at any time resign and be discharged from the Trust hereby created by giving not less than 60 days written notice to the Donors, and such resignation shall take effect upon the day specified in such notice, unless a successor Trustee shall have been sooner appointed by the Donors as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of a successor Trustee.

9.02 Removal of Trustee. Notwithstanding Section 9.03 hereof, the Trustee may be removed at any time with or without cause by a decision set forth in writing of the Management Committee or by an instrument or concurrent instruments in writing, delivered to the Trustee and signed by a majority of the Non-defaulting Donors.

9.03 Appointment of Successor Trustee. In the event that the Trustee hereunder shall resign or be removed, or be dissolved, or should be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in the event that the Trustee shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by a majority of the Non-defaulting Donors by an instrument or concurrent instruments in writing, signed by such Donors, or by their attorneys in fact duly authorized in writing, and delivered to the Trustee. Every

successor Trustee shall be a trust company or bank in good standing, if there be such a trust company or bank willing, qualified, and able to accept the trust upon reasonable or customary terms. In the event that no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within 60 days after a vacancy in the office of Trustee shall have occurred, any Donor and/or any retiring Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper, prescribe or appoint a successor Trustee.

9.04 Transfer to Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor, an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, trusts, duties, and other obligations hereunder of its predecessor; but such predecessor shall nevertheless, upon written request of a majority of the Donors, execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and money held by it to its successor; provided, however, that before any such delivery is required or made, all reasonable, customary and legally accrued fees, advances and expenses of any such

predecessor Trustee shall be paid in full. Should any deed, assignment or instrument in writing from the Donors be required by any successor Trustee for more fully and certainly vesting in such Trustee the estates, rights, powers, and duties hereby vested or intended to be vested in the predecessor Trustee, any and all such deeds, assignments, and instruments in writing shall, on request prior to appointment of the successor Trustee, be executed, acknowledged and delivered by the Donors.

9.05 Merger or Consolidation of Trustee. Any corporation or association into which the Trustee or any successor to it may be merged or converted, or with which it or any successor to it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Trustee or any successor to it shall be a party, shall be a successor Trustee under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, notwithstanding anything to the contrary herein.

## ARTICLE X

### INDEMNIFICATION

10.01 Indemnification of Trustee. The Donors collectively hereby agree to indemnify and hold harmless the Trustee, its agents and employees, from all losses, claims, liabilities, injuries, damages and expenses (including but not limited to reasonable attorneys' fees and costs of investigation) which the Trustee, its agents or employees may incur or suffer

arising out of this Agreement, the Trust Fund or the performance of the Trustee's obligations or duties relating thereto; provided, however, that the Donors shall not be required to indemnify the Trustee, its agents or employees for losses, claims, liabilities, injuries, damages or expenses arising solely from the Trustee's gross negligence or willful misconduct. Such indemnification shall be shared by the Donors in the proportions set forth in Exhibit A, Schedule II.B. hereto. The Donors shall make payment upon receipt of Trustee's demand. In the event any one or more Donors fail to make timely payment of indemnification after receipt of the Trustee's demand for payment, it shall be the obligation of the other Donors to use good faith efforts to enforce this indemnification provision. If within 90 days of Trustee's demand for payment, such efforts are unsuccessful, the other Donors shall pay the Trustee the deficit amount in proportion to their respective actual contributions to the Trust Fund. Such Donors shall have the right to enforce this provision against those who have failed to make proper payment pursuant to this Section, including the right to reasonable attorneys' fees. Notwithstanding anything to the contrary contained herein, but subject to the following two sentences, the Trustee shall not be required to make any payments in its individual and nonfiduciary capacity in the implementation of this Agreement. The Trustee hereby agrees to indemnify and hold harmless the Trust Fund, the Donors, the Management Committee, the Project Team and the Accountants, and their agents and employees (the "Cross-

Indemnified Parties"), for all losses, claims, liabilities, injuries, damages and expenses (including without limitation reasonable attorneys' fees and expenses and costs of investigation) which the Cross-Indemnified Parties may incur or suffer arising out of or relating to the gross negligence or willful misconduct of the Trustee or its agents or employees. The Trustee shall make payment promptly for any undisputed indemnity obligation under this Agreement.

10.02 Indemnification of Management Committee, Project Team, Accountants and Other Professionals. The Donors collectively hereby agree to indemnify and hold harmless the Management Committee, the Project Team and the accountants and other professionals engaged pursuant to Section 4.03 of this Agreement and their agents and employees (the "Indemnified Parties") for all losses, claims, liabilities, injuries, damages and expenses (including but not limited to reasonable attorneys' fees and costs of investigation) which the Indemnified Parties may incur or suffer arising out of this Agreement, the Trust Fund or the performance of their obligations or duties relating thereto; provided, however, that the Donors shall not be required to indemnify any Indemnified Party for losses, claims, liabilities, injuries, damages or expenses arising solely from its gross negligence or willful misconduct. Such indemnification shall be shared by the Donors in the proportions set forth in Exhibit A, Schedule B hereto. The Donors shall make payment upon receipt of demand by an Indemnified Party. In the event any one

or more Donors fail to make timely payment of indemnification after receipt of such demand, it shall be the obligation of the other Donors to use good faith efforts to enforce this indemnification provision. If within 90 days of the demand for payment, such efforts are unsuccessful, the other Donors shall pay the Indemnified Party the Deficit amount in proportion to their respective actual contributions to the Trust Fund. Such Donors shall have the right to enforce this provision against those who have failed to make proper payment pursuant to this Section, including the right to reasonable attorneys' fees.

10.03 Survival of Indemnification. Notwithstanding any other provision hereof, the obligations of the Donors and the Trustee with respect to Sections 8.01, 10.01 and 10.02 above shall survive the termination of this Agreement.

10.04 Disputes Concerning Indemnity Obligations. Any dispute that arises under or with respect to any Indemnity obligation hereunder shall be subject to informal negotiations between the parties to the dispute for a period of up to thirty (30) days from the time notice of the existence of a dispute is given. The period for negotiations may be extended by agreement between the parties to the dispute. The party making the objection shall not be required to make payment during the pendency of the dispute.

## ARTICLE XI

### TERMINATION OF TRUST

11.01 Termination of Trust. This Trust shall not terminate until the completion of the Work as determined under Section XXIX of the Consent Decree. In the event that the Court shall issue an order rejecting the motion to enter the Consent Decree or entering the Consent Decree with modifications not approved by all parties to the Consent Decree, this Trust shall terminate. The Management Committee shall give the Trustee prompt written notification as to when the Work has been completed in accordance with the terms of the Consent Decree.

11.02 Distribution of Trust Fund Upon Termination. Upon termination of this Trust, the Trustee shall liquidate the assets of the Trust and thereupon distribute the entire remaining Trust Estate, including all accrued, accumulated and undistributed net income, in accordance with the provisions of Exhibit C to the extent applicable, and otherwise to the Donors in proportion to their respective actual contributions to the Trust Fund during the term of the Trust. If any Donor, or its successor, cannot be located within one hundred eighty (180) days after the termination date after diligent effort, its share of the Trust shall be deemed to be waived, and the Trustee shall distribute that share to the remaining Donors in proportion to their respective actual contributions to the Trust Fund during the term of the Trust.

## ARTICLE XII

### MISCELLANEOUS

12.01 Covenant Not To Sue. Each Donor hereby covenants not to sue, or to maintain or assert any claim against any other Donor hereunder in connection with any claim arising out of or relating to Covered Matters as defined in the Consent Decree or the alleged storage, treatment, handling, disposal, transportation, presence, actual or threatened release, or discharge of any materials at, to, on, onto, in, into, upon, from or near the Industri-Plex Site, including but not limited to claims for payments or contribution made under this Agreement, claims for diminution in value of a Donor's property, and claims relating to the Site that have been or could have been asserted in Augustine P. Sheehy v. William F. D'Annolfo, et al., Middlesex County (Massachusetts) Superior Court, Civil Action No. 87-292, and Augustine P. Sheehy v. Lipton Industries, Inc., Middlesex County (Massachusetts) Superior Court, Civil Action No. 82-3883. These covenants not to sue shall not apply with regard to (1) claims to enforce the terms of this Trust Agreement or the Consent Decree, (2) claims for contribution or indemnification arising out of or relating to suits or administrative actions by the United States or the Commonwealth or subsequent suits by persons or entities not a party to the Consent Decree; and (3) claims arising out of or based upon Hazardous Substances brought to the Site after October 28, 1988.

12.02 Particular Words. Any word contained in this text of this Agreement shall be read as a singular or plural and a masculine, feminine or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated the word "person" shall be taken to mean and include an individual, partnership, association, company or corporation.

12.03 Severability of Provisions. If any provision of this Agreement or its application to any person or entity or in any circumstances shall be invalid and unenforceable, the application of such provision to persons or entities and in circumstances other than those as to which it is invalid or unenforceable and the other provisions of this Agreement, shall not be affected by such invalidity or unenforceability.

12.04 Notices Under Agreement. Any notice required by this Agreement to be given to the Donors shall be deemed to have been properly given when mailed, postage prepaid, by registered or certified mail, to the person to be notified as set forth by the Donor at the time of making its contributions. Any Donor may change that address by delivering notice thereof in writing to the Trustee. Any notice required by this Agreement to be delivered to any other person or entity shall have deemed to have been properly delivered when mailed, postage prepaid, by registered or certified mail, to the person to be notified at the last known address of such a person or entity, according to the records of the one giving notice.

12.05 Counterparts of Agreement. This Agreement has been executed for the convenience of the parties hereto in counterparts, any one of which for all purposes shall be deemed to have the status of an executed original.

12.06 Governing Jurisdiction. This Agreement shall be enforceable against the Trustee in any court of competent jurisdiction in the State of Missouri. This Agreement shall be enforceable against any Donor in the United States District Court for the District of Massachusetts or other court of competent jurisdiction in the Commonwealth of Massachusetts or State of Missouri. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Missouri.

12.07 No Transferability of Obligations to the Trust. The obligation of the Donors to contribute funds pursuant to Article II hereof is not transferable except to a successor corporation or corporations.

12.08 Alterations and Amendments. The Donors, acting by unanimous vote of the Non-defaulting Donors, and the Trustee may from time to time and at any time during the term of this Trust, alter or amend this Agreement, in whole or in part. Any such alteration or amendment shall be consistent with the Consent Decree and notice thereof shall be given to the United States and the Commonwealth pursuant to Section VIII D. of the Consent Decree. Such alteration or amendment must be in writing and be signed by all Non-defaulting Donors. The Trustee shall give notice of such action to Donors as provided in Section

12.04. No such alteration or amendment, however, shall be effective without the Trustee's written consent.

12.09 Control by Donors. The Donors agree to cooperate in an effort to achieve a consensus. Failing to achieve such a consensus, whenever the approval, direction or other action by a majority of the Donors is required pursuant to this Agreement, no such approval, direction or other action shall be made or taken without the concurrence of Monsanto Company, which concurrence shall not be unreasonably withheld. In the event of a tie or deadlock of the Donors, the controlling decision shall be that of those Donors which include Monsanto Company. Furthermore, a majority of the Donors may at any time direct the Trustee in writing to take any action or to refrain from taking any action provided that (a) such direction does not conflict with the Donors' obligations under the Consent Decree or this Agreement, and (b) no such direction shall be made pursuant to this section without the concurrence of Monsanto Company, and in the event of a tie or deadlock among the Donors, the controlling decision shall be that of those Donors which include Monsanto Company. This provision is not intended to alter in any way other provisions of this Agreement which confer authority upon the Trustee to manage the Trust. In making any decision concerning the use of any Donor's real property for purposes of staging or storage in connection with the Work, the Donors will consult with such Donor concerning such staging or storage. The Donors will consider the views presented by any Donor and will

accommodate such views to the extent they deem, by majority vote as defined hereunder, practicable. The preceding two sentences shall not, however, limit the provisions of this Section 12.09 concerning the making of decisions by the Donors.

12.10 No Authority to Conduct Business. The purpose of this Trust is limited to the matters set forth in this Agreement. This Agreement shall not be construed to confer upon the Trustee any authority to conduct business. The object of this Trust is specifically limited to the matters set forth herein and there is no objective to carry on any business or to divide the gains therefrom.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under seal by persons authorized to sign on their behalf by signing an authorization form attached hereto as of the day and year first written above.

MERCANTILE BANK, N.A.,  
as Trustee

By:   
Name: Linda P. Jones  
Title: Pension Trust Officer

**INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM**

Stauffer Chemical Company has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Stauffer Chemical Company.

Signed: Gary L. Ford

Name: Gary L. Ford

Title: Assistant Director of Law

Date: 5/1/89

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

Stauffer Management Company has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Stauffer Management Company.

Signed:



Name:

A. C. Perrino

Title:

Vice President

Date:

May 1, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

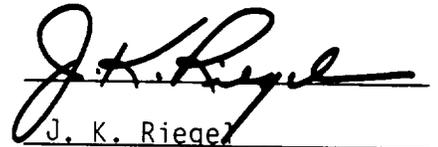
Title: \_\_\_\_\_

**INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM**

ICI American Holdings Inc. has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of ICI American Holdings Inc.

Signed:



Name:

J. K. Riegel

Title:

Vice President

Date:

5-1-89

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

Monsanto Company has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Monsanto Company.

Signed:



Name:

W. W. Varnado

Title:

Director, Remedial Projects

Date:

April 26, 1989

ACCEPTANCE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

**INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM**

Aero Realty Trust has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Aero Realty Trust.

Metrophane Zayka, JR.  
Metrophane Zayka, JR., as trustee and not individually

Nicholas Zayka  
Nicholas Zayka, as trustee and not individually

Peter Zayka  
Peter Zayka, as trustee and not individually

Signed: Richard G. Mizzone  
Name: Richard G. Mizzone  
Title: PRES  
Date: April 28, 1989

**ACCEPTANCE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

**INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM**

Boston Edison Company has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Boston Edison Company.

Signed:   
Name: C. Bruce Damrell  
Title: Vice President  
Date: May 4, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

THE BOYD CORPORATION has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of THE BOYD CORPORATION.

Signed: James C. Boyd  
Name: JAMES C. BOYD  
Title: PRESIDENT  
Date: 5/3/89

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

Stephen & Adeline Dagata have ~~has~~ agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Stephen & Adeline Dagata.

Signed:

Stephen Dagata

Name:

Stephen Dagata

Title:

Co-owner

Date:

May 3, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

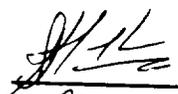
By: \_\_\_\_\_

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

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

SUNDER K. Ganglani & Hiro K. Ganglani has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of \_\_\_\_\_.

Signed:   
Name: SUNDER K. Ganglani  
Title: CO OWNER  
Date: May 4, 1989

ACCEPTANCE:

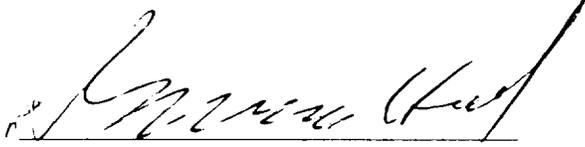
Hiro K. Ganglani  
HK. Ganglani  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Title: CO OWNER

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

Michael A. Howland, as Trustee of Atlantic Avenue Trust, has agreed to contribute funds to the Industri-Plex site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Atlantic Avenue Trust.

Signed: 

Name: Michael A. Howland

Title: Trustee, Atlantic Avenue Trust

Date: May 4, 1989

ACCEPTANCE:

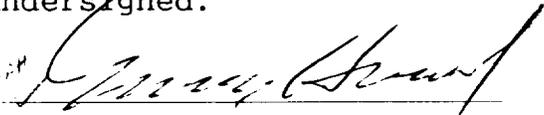
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Titled: \_\_\_\_\_

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

Michael A. Howland has agreed to contribute funds to the Industri-Plex site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

Signed: 

Name: Michael A. Howland

Date: May 4, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

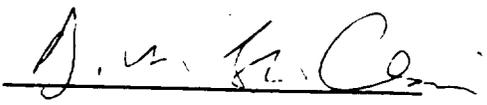
By: \_\_\_\_\_

Titled: \_\_\_\_\_

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

Lipton Industries, Inc. has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Lipton Industries, Inc.

Signed:   
Name: D. W. St. Clair  
Title: Vice President  
Date: May 4, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM**

Ronald F. Liss has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of                      donor.

Signed:

*Ronald F. Liss*

Name:

Ronald F. Liss

Title:

Donor

Date:

May 3, 1989

**ACCEPTANCE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

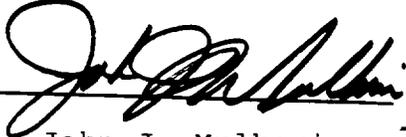
By: \_\_\_\_\_

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

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

Nodraer Realty Trust has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Nodraer Realty Trust.

Signed:   
Name: John J. Mulkerin  
Title: Trustee  
Date: May 3, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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



INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

Positive Start Realty Inc. has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Positive Start Realty Inc.

Signed: Robert W. De Rosa  
Name: Robert W. De Rosa  
Title: President  
Date: May 5, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

PX Realty Trust has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of PX Realty Trust

Signed:

Paul O'Deill

Name:

PAUL X. O'DEILL

Title:

TRUSTEE

Date:

5/4/89

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

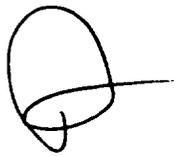
By: \_\_\_\_\_

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

**INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM**

PETER J VOLPE has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of PETER J VOLPE.

Signed:   
Name: PETER J VOLPE  
Title: \_\_\_\_\_  
Date: MAY 3, 1989

**ACCEPTANCE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

**INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM**

The Welles Company, a Massachusetts limited partnership, Woodcraft Supply Corporation, a Massachusetts corporation, Atlantic Avenue Associates, Inc., a Massachusetts corporation has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of The Welles Company, Woodcraft Supply Corporation and Atlantic Avenue Associates, Inc.

Signed: \_\_\_\_\_



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

Rogers G. Welles

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

President and General Partner

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

April 28, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

INDUSTRI-PLEX SITE REMEDIAL TRUST AGREEMENT  
AUTHORIZATION FORM

\_\_\_\_\_ has agreed to contribute funds to the Industri-Plex Site Remedial Trust Fund as a Donor pursuant to the Industri-Plex Site Remedial Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of Winterhill Storehouse INC..

Signed:

*Richard D Bain*

Name:

Richard D Bain

Title:

President

Date:

May 4, 1989

ACCEPTANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

**EXHIBIT A**

**DONORS**

Stauffer Chemical Company; Stauffer Management Company; and ICI American Holdings, Inc. ("ICI")

Monsanto Company ("Monsanto")

Boston Edison Company ("Boston Edison")

The Boyd Corporation ("Boyd")

Stephen Dagata and Adeline Dagata ("Dagata")

Mary E. Fitzgerald and John J. Mulkerin as trustees of The Nodraer Realty Trust ("Nodraer")

Hiro K. Ganglani and Sunder K. Ganglani ("Ganglani")

Michael A. Howland, individually and as trustee of Atlantic Avenue Trust ("Howland")

Lipton Industries, Inc. ("Lipton")

Ronald F. Liss ("Liss")

Massachusetts Bay Transportation Authority ("MBTA")

Richard G. Mizzone, Metrophane Zayka, Jr., Nicholas Zayka, and Peter Zayka as trustees of the Aero Realty Trust ("Aero")

Pebco Company ("Pebco")

Positive Start Realty, Inc. ("Positive Start")

Paul X. O'Neill and Phyllis O'Neill, as trustees of The PX Realty Trust ("PX")

Augustine P. Sheehy, d/b/a/ Dundee Park Properties ("Sheehy")

Peter J. Volpe ("Volpe")

The Welles Company, Woodcraft Supply Corporation, Atlantic Avenue Associates, Inc., (collectively, "Welles")

Winter Hill Storehouse, Inc. ("Winter Hill")

The City of Woburn, Massachusetts ("Woburn")

All Donors on this list other than ICI and Monsanto are hereinafter collectively referred to as "Additional Donors."

**EXHIBIT A**

**SCHEDULE I**

**CONTRIBUTIONS FOR REIMBURSEMENT OF  
RESPONSE COSTS INCURRED BY THE UNITED STATES  
PRIOR TO THE EFFECTIVE DATE OF THE CONSENT DECREE  
(Paid pursuant to Section 2.01 of the Trust Agreement  
and Section XIX of the Consent Decree)**

<u>Donor</u>	<u>Contribution</u>
Boston Edison	\$ 39,057.27
Boyd	20,595.67
Dagata	18,806.75
Nodraer	19,465.07
Ganglani	18,091.19
Howland	18,864.00
Lipton	18,448.98
Liss	19,164.54
MBTA	19,865.79
Aero	17,733.40
Pebco	18,513.37
Positive Start	19,042.89
PX	27,443.63
Sheehy	18,448.97
Volpe	31,543.82
Welles	19,880.10
Winter Hill	19,157.38
Woburn	<u>19,364.18</u>
<b>TOTAL:</b>	<b>\$ 383,487.00</b>
<b>Amount to be paid to United States:</b>	<b>\$ 377,487.00</b>
<b>Amount to be paid to Commonwealth:</b>	<b>\$ 6,000.00</b>

**EXHIBIT A**

**SCHEDULE II**

**CONTRIBUTIONS PERCENTAGES FOR FUNDING OF  
REMEDIAL DESIGN AND REMEDIAL ACTION**

**A. Contribution Percentages for Funding of Remedial Design and  
Remedial Action up to \$18,000,000:**

1.	Monsanto	50.000%
2.	ICI	45.000%
	(Except Monsanto will pay the first \$1,175,000 of ICI's obligation under this Schedule II)	
3.	Boston Edison	1.659%
4.	Boyd	0.223%
5.	Dagata	0.083%
6.	Nodraer	0.135%
7.	Ganglani	0.028%
8.	Howland	0.088%
9.	Lipton	0.056%
10.	Liss	0.111%
11.	MBTA	0.166%
12.	Aero	0.000%
13.	Pebco	0.061%
14.	Positive Start	0.102%
15.	PX	0.755%
16.	Sheehy	0.056%
17.	Volpe	1.074%
18.	Welles	0.167%
19.	Winter Hill	0.111%
20.	Woburn	<u>0.127%</u>
	<b>TOTAL</b>	<b>100%</b>

B. Contribution Percentages for Funding of Remedial Design and Remedial Action over \$18,000,000:

1.	Monsanto	50.000%
2.	ICI	45.000%
3.	Boston Edison	1.165%
4.	Boyd	0.242%
5.	Dagata	0.153%
6.	Nodraer	0.186%
7.	Ganglani	0.117%
8.	Howland	0.156%
9.	Lipton	0.135%
10.	Liss	0.171%
11.	MBTA	0.206%
12.	Aero	0.099%
13.	Pebco	0.138%
14.	Positive Start	0.165%
15.	PX	0.585%
16.	Sheehy	0.135%
17.	Volpe	0.790%
18.	Welles	0.207%
19.	Winter Hill	0.170%
20.	Woburn	<u>0.181%</u>
<b>Total:</b>		100%

**EXHIBIT A**

**SCHEDULE III**

CONTRIBUTION AMOUNTS AND PERCENTAGES  
OF THE DONORS TO FUTURE UNITED STATES  
AND COMMONWEALTH COSTS INCURRED IN  
OVERSEEING THE REMEDIAL ACTION

A. Amounts Additional Donors Shall Contribute to Oversight Costs

1989	\$ 75,000
1990	75,000
1991	75,000
1992	25,000
<hr/>	
Total	\$250,000

B. Additional Donors' Contribution Percentages to Oversight Costs Set Forth in Section A of this Schedule

	<u>First \$216,513<sup>1</sup></u>	<u>\$216,513 - \$250,000<sup>2</sup></u>
Boston Edison	5.556%	23.308%
Boyd	5.556%	4.846%
Dagata	5.556%	3.057%
Nodraer	5.556%	3.716%
Ganglani	5.556%	2.342%
Howland	5.556%	3.115%
Lipton	5.556%	2.700%
Liss	5.556%	3.415%
MBTA	5.556%	4.117%

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<sup>1</sup> The percentages in this column apply to the first \$216,513 paid pursuant to this schedule III by Boston Edison, Boyd, Dagata, Nodraer, Ganglani, Howland, Lipton, Liss, MBTA, AERO, Pebco, Positive Start, PX, Sheehy, Volpe, Welles, Winter Hill, and Woburn, collectively.

<sup>2</sup> The percentages in this column apply to the balance of \$33,487 paid pursuant to this schedule III by Boston Edison, Boyd, Dagata, Nodraer, Ganglani, Howland, Lipton, Liss, MBTA, Aero, Pebco, Positive Start, PX, Sheehy, Volpe, Welles, Winter Hill, and Woburn, collectively.

Aero	5.556%	1.984%
Pebco	5.556%	2.764%
Positive Start	5.556%	3.294%
PX	5.556%	11.694%
Sheehy	5.556%	2.700%
Volpe	5.556%	15.795%
Welles	5.556%	4.131%
Winter Hill	5.556%	3.408%
<u>Woburn</u>	<u>5.556%</u>	<u>3.615%</u>
Total:	100%	100%

C. Contribution Percentages to Oversight Costs Over and Above Amounts Contributed by Additional Donors

Monsanto	50%
ICI	50%

Monsanto and ICI shall be obligated to contribute to oversight costs only to the extent that the contributions of the Additional Donors provided for in A and B of this Schedule are insufficient to cover such costs.

**EXHIBIT A**  
**SCHEDULE IV**

CONTRIBUTION PERCENTAGES OF THE DONORS FOR THE  
PAYMENT OF LONG-TERM OPERATION AND MAINTENANCE COSTS

Monsanto	50%
ICI	<u>50%</u>
Total	\$100%

**EXHIBIT B**

**TRUSTEE'S COMPENSATION**

Mercantile Bank's trustee fee will be as follows:

- For investment services, 15 basis points per quarter on market value of the trust payable at the end of each quarter.
- For attorneys fees, \$155 per hour for professional time and no extra charge for clerical time to support the performance. The \$155 per hour fee will be reviewed at the end of a full year to determine if all parties agree that it is fair based on the experience for that year.
- For administrative services, \$70 per hour for professional time and no extra charge for clerical time to support the professional. The \$70 per hour fee will be reviewed at the end of a full year to determine if all parties agree that it is fair based on the experience for that year.

EXHIBIT C

AGREEMENT FOR REIMBURSEMENT OF COSTS OF  
THE MOVEMENT OF ELECTRICAL TRANSMISSION LINES

1. Donor Boston Edison Company, has agreed to undertake to perform work on and to the electrical transmission lines located on Right of Way Number 14 as may be necessary to allow for the performance of remedial actions at the Industri-Plex Superfund Site.

2. Boston Edison Company shall present technical data and engineering justification to the Management Committee for approval prior to any work being undertaken at the Site. Written approval by the Management Committee of the scope of the work to be performed shall, upon written directions to the Trustee, obligate the Trustee to reimbursement subject to the terms of this Agreement.

3. Boston Edison Company agrees to pay the first one hundred thousand dollars (\$100,000.00) of costs and expenses incurred for work related to the transmission lines. The Boston Edison Company shall be reimbursed pursuant to this Agreement for all costs in excess of one hundred thousand dollars (\$100,000.00) up to a maximum aggregate reimbursement of one hundred and fifty thousand dollars (\$150,000.00). Payments shall be made in four (4) annual installments. Payments shall only be made for costs incurred. Payments shall be made by the Trustee in accordance with Section 5.02 of the Remedial Trust Agreement.

4. On October 31 of each year beginning with October 31, 1989, Boston Edison Company shall submit to the Management Committee a statement of costs incurred in accordance with this agreement. The Management Committee shall review the cost documentation supplied with the statements by the Boston Edison Company to certify that the claimed costs were incurred and that the amount thereof were properly calculated. Upon receipt of written approval of the Management Committee, the Trustee shall pay the amounts demanded within 30 days of receipt of the demand for payment.