

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

October 12, 2011

Industri-plex OU-1 Coordinator
for the Industri-plex Site Remedial Trust
c/o Randall Cooper, P.E.
Environmental Remediation Manager
Monsanto Company
800 North Lindbergh Blvd.
St. Louis, MO 63167

Re: Industri-plex Site, Woburn, MA
Inauguration Plan

Dear Mr. Cooper:

The United States Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) (collectively, the Agencies), hereby approve the Plan of Inauguration for Institutional Controls (the Inauguration Plan) at the Industri-plex Superfund Site in Woburn, MA (the Site).

The Inauguration Plan prescribes procedures Landowners and the Industri-plex Site Interim Custodial Trust must follow to inaugurate properly a Grant of Environmental Restriction and Easement (GERE) on their respective Property, when notified to do so, pursuant to the 1989 Consent Decree for the Site¹ (the Consent Decree). This approval is made pursuant to Section III K and Attachment B of Appendix I of the Consent Decree.

¹ The consent decree was entered on April 24, 1989, by the United States District Court for the District of Massachusetts in the matters styled United States v. Stauffer Chemical Company et al., Civil Action No. 89-0195-MC and Commonwealth of Massachusetts v. Stauffer Chemical Company et al., Civil Action No. 89-0196-MC, and recorded at the Middlesex South District Registry of Deeds in Book 19837, Page 476.

The Inauguration Plan consists of the Inauguration Plan and its six attachments, as listed below:

**Inauguration Plan
Attachments**

- **Attachment 1 consists of:**
 - **Attachment I Cover Sheet**
 - **Form GERE**
 - **Appendix I (Definitions)**
 - **Appendix II (Legal Description of Property)**
 - **Appendix III (Legal Description of Restricted Area)**
 - **Appendix IV (Work Protocols)**
 - **Appendix V (Cover Inspection Plan)**
 - **Appendix VI (Amendment Protocol)**
 - **Appendix VII (Subordination Agreement)**
 - **Exhibit A Cover Sheet**
 - **Exhibit A (EPA request letter to MassDEP)**
- **Attachment 2 (Form Clerk's Certificate)**
- **Attachment 3 (Form Certification of Title)**
- **Attachment 3a (Form First Supplemental Certification of Title)**
- **Attachment 4 (Form Subordination. Agreement)**
- **Attachment 5 (Form Notice for Publication)**

A complete copy of the Inauguration Plan is attached to this letter.

The Agencies reserve all rights to modify the Inauguration Plan, upon advance written notice to the ISRT and any affected Landowner, to ensure its effectiveness and efficiency in properly establishing institutional controls at the Site under the Consent Decree.

The Agencies note that the ISRT prepared the attached **draft Transmittal Letter (Transmittal Letter)**, which the ISRT will issue to each Landowner with the Inauguration Plan for purposes of notifying each Landowner when it is time to implement a GERE on its Property. The Agencies will inform the ISRT when to issue its Transmittal Letter to each Landowner by issuing to the ISRT's Preliminary Reviewer the attached joint **Agency Inauguration Plan Letter (Agency IP Letter)** for each property.

Please do not hesitate to contact either Joseph LeMay at USEPA or Jennifer McWeeny at MassDEP or the Agencies' legal counsel identified below, should you have any questions regarding this approval.

Sincerely,



Jennifer McWeeney, Project Manager
MassDEP



Joseph LeMay, Remedial Project Manager
US EPA, Region 1

Enclosures

Inauguration Plan
Transmittal Letter (draft)
Agency Inauguration Plan Letter (form)

cc: Michael W. Parker, Esq. (w/enclosures)
Andy Cohen, Esq., MassDEP
David Peterson, Esq., USEPA, Region 1

PLAN OF INAUGURATION

for

INSTITUTIONAL CONTROLS

at the

INDUSTRI-PLEX SUPERFUND SITE
(OPERABLE UNIT NO. 1)

in

Woburn, MA

August 26, 2011

EPA Site Identification Number: MAD076580950
MassDEP Release Tracking Number: 3-0001731

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- Attachment 1—Form GERE
- Attachment 2—Form Clerk’s Certificate
- Attachment 3—Form Certification of Title
- Attachment 3a—Form First Supplemental Certification of Title
- Attachment 4—Form Subordination Agreement
- Attachment 5—Form Notice for Publication

¹ As stated in the cover letter to this document, electronic copies of all Attachments can be found at: <ftp://209.80.128.232/dep/>.

I. INTRODUCTION

This is the Plan of Inauguration for Institutional Controls (the “Inauguration Plan”) for the Industri-plex Superfund Site (Operable Unit No. 1) in Woburn, Massachusetts. Institutional controls primarily consist of land use restrictions for each property within the Site (defined below), which each Landowner (defined below) must establish. This Inauguration Plan describes the procedure, including forms, for doing so, and is a requirement of the federally approved judicial Consent Decree (defined below) for the Site. The Inauguration Plan has been prepared by the Industri-plex Site Remedial Trust and approved by the United States Environmental Protection Agency and the Massachusetts Department of Environmental Protection pursuant to Paragraphs D and F of “Section VII. The Work” of the Consent Decree.

The process for carrying out this Inauguration Plan on each property within the Site consists of five basic stages. The first is the Preliminary Review stage, during which the Preliminary Reviewer confirms that the land use restrictions prepared by the Landowner, known here as a “GERE” (defined below), and accompanying application materials are complete and ready for substantive review by MassDEP and USEPA. The second is the Definitive Review stage, during which MassDEP and USEPA perform a substantive review of the application. The third is the execution stage, during which the GERE and related documents are signed and submitted to MassDEP and USEPA for final review, approval and countersignature (on the GERE). The fourth is the recording stage, during which the Landowner records and/or registers the GERE in the appropriate land registry. The fifth is the publication stage and submittal of evidence of compliance, during which the Landowner notifies the City of Woburn of the GERE and publishes a notice to publicly announce its establishment, and then documents to the regulatory agencies that the entire process has been satisfactorily completed. Each of these steps is outlined in greater detail in Section III of this Inauguration Plan.

The Institutional Controls

The purpose of the Inauguration Plan is to establish the process for implementing certain institutional controls (“Institutional Controls”) required for each property within the Site. The specific controls required for individual properties are determined according to the classes of land present (*i.e.*, Classes A, B, C, and D) as approved by USEPA during Site remediation.² Once established, the system of Institutional Controls will serve to ensure the long-term protectiveness of remediation activities implemented at the Site.

The Consent Decree states that: “[E]ach Settler or Successor-in-Title that is a Landowner at the time specified for Inauguration of Institutional Controls shall perform, at its own expense, all actions necessary or appropriate to complete the Inauguration of Institutional Controls on its property within the Site in accordance with the plan and schedule

² Properties that contain only Class A Land are not required to implement Institutional Controls.

therefore approved or developed by Plaintiffs.” See Paragraph D, “Section VII. The Work” of the Consent Decree.

Paragraph D of “Section VII. The Work” of the Consent Decree also specifies that each Landowner (and its successors in interest), must implement the Institutional Controls on its property and cooperate with other Landowners at the Site in implementing the Institutional Controls at their properties. For example, a Landowner may have to subordinate an easement that it holds on an adjacent property so that the Institutional Controls may be established properly on that adjacent property.

Under the Consent Decree, the obligation of each Landowner to establish Institutional Controls also applies to successors-in-title: “Each Settler who is a Landowner and each Successor-in-Title shall take all actions necessary to Inaugurate Institutional Controls on its respective property” See Paragraph A of “Section X. Institutional Controls” of the Consent Decree.

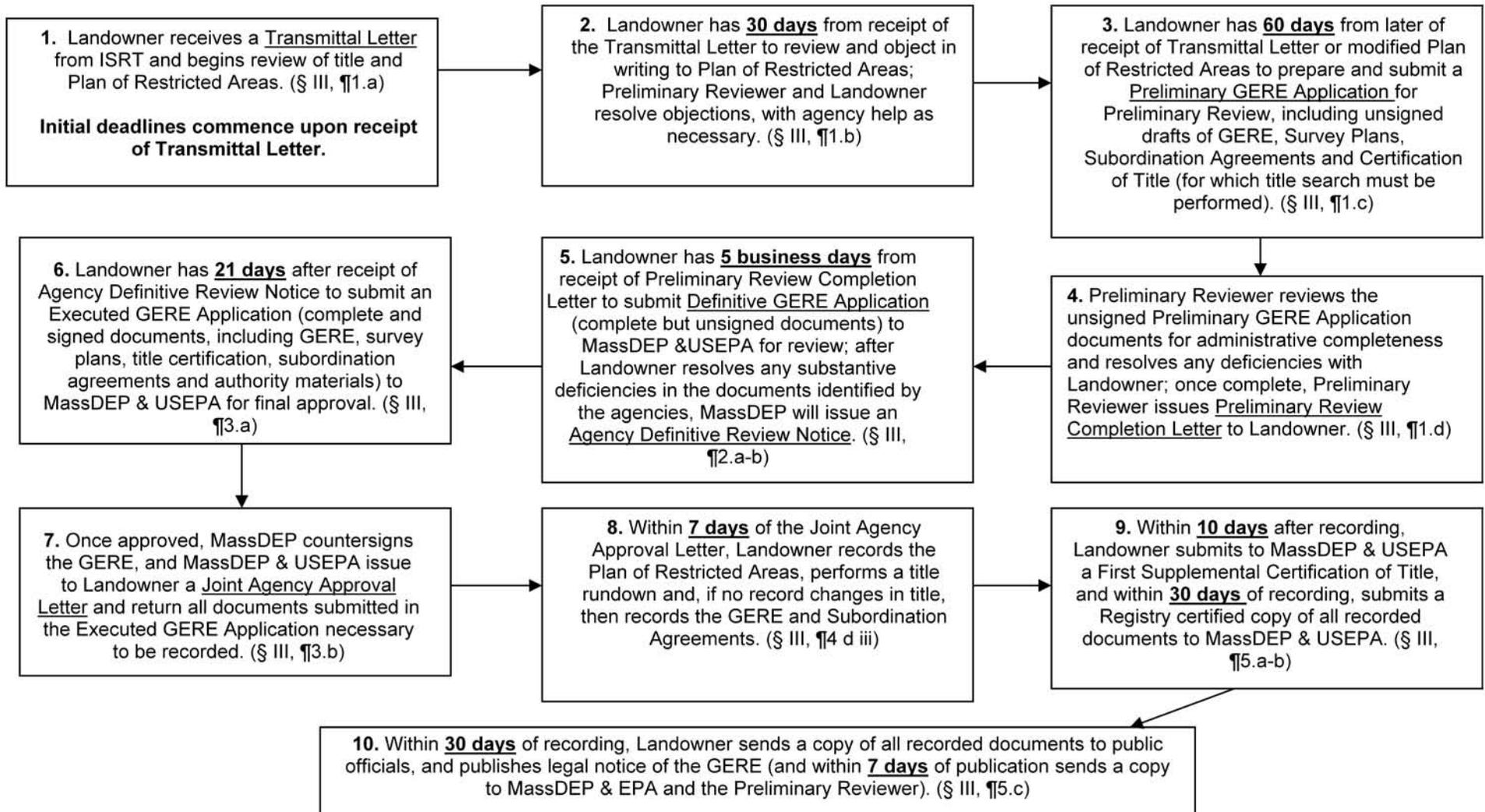
The Grant of Environmental Restriction and Easement

The Institutional Controls, which consist primarily of a set of land use restrictions, are set forth in a document known as a Grant of Environmental Restriction and Easement (or “GERE”, as further defined below) from each Landowner (“Grantor”) that restricts the use of each property based on the classes of land it contains (A, B, C or D) as determined by USEPA, and grants certain access easements and enforcement rights to MassDEP (“Grantee”), a Plan of Restricted Areas for each individual property, and related plans and documentation. Each individual GERE must be approved jointly by USEPA and MassDEP (and signed by MassDEP) before it is recorded with the Registry of Deeds or filed with the Land Court (for Registered Land). Any Landowner who fails to implement a GERE in accordance with this Inauguration Plan may be assessed stipulated penalties by USEPA or MassDEP. See Paragraph C of “Section XXXIII. Stipulated Penalties” of the Consent Decree.

In addition, any Landowner whose property is subject to a previously recorded (or filed) instrument entitled “Notice and Covenants” and/or “Interim Grant of Environmental Restriction and Easement,” or to an approval letter for transfer of property issued by USEPA or MassDEP, should note that the GERE is intended to replace and supersede those prior documents.

Illustration 1—Flow Chart of Inauguration Steps

NOTE: This diagram is intended for illustrative purposes, only. For specific details and definitive timelines of the GERE inauguration process, refer to the body of the Inauguration Plan (see Section/Paragraph references in parentheses), which shall control over this diagram.



II. DEFINITIONS

Some of the terms used in the Inauguration Plan are defined in the Consent Decree, the attached form Grant of Environmental Restriction and Easement developed for use at this Site, or in this section of the Inauguration Plan. Wherever used in this Inauguration Plan, the terms listed below shall have the following meanings:

“Certification of Title” shall mean a certification of title, using the form attached to this Inauguration Plan as Attachment 3 (“Form Certification of Title”), issued to MassDEP by an insured attorney licensed to practice in the Commonwealth of Massachusetts certifying title to the Property as defined in the GERE in the Grantor, and including all encumbrances of record and a legible copy of any instrument identified in such certification of title as the source of the Landowner’s title or as encumbering the property along with a copy of any plans referenced in any such instrument. All such interests (*i.e.*, encumbrances listed in the certification of title) should be located on the Plan of Restricted Areas, as appropriate, through the process set forth in subparagraph 1.b of Section III.

NOTES:

Reference is made to the explanatory note on p. 11, below, regarding the requirement that the Certification of Title certify title to the Property shown on the Survey Plans (with respect to the Property), defined below, and described in the corresponding legal description.

Reference is made to the explanatory note on page 16, below, regarding the requirements applicable to any assertion by a Landowner that an encumbrance listed in the Certification of Title does not establish an interest in the Property prior to the GERE nor need to be subordinated.

“Consent Decree” shall mean the Consent Decree entered on April 24, 1989, by the United States District Court for the District of Massachusetts in the matters styled *United States v. Stauffer Chemical Company et al.*, Civil Action No. 89-0195-MC and *Commonwealth of Massachusetts v. Stauffer Chemical Company et al.*, Civil Action No. 89-0196-MC, and recorded at the Middlesex South District Registry of Deeds in Book 19837, Page 476.

“Day” shall mean a calendar day, unless otherwise specified as a “business day.” Any time period expressed in “days” that ends on a weekend or federal or state holiday shall be extended to the next business day.

“Definitive GERE Application” shall mean the GERE documents submitted to MassDEP and USEPA for Definitive Review pursuant to, and consisting of all those items identified in, Paragraph 2 of Section III of this Inauguration Plan.

“Definitive Review” shall mean MassDEP’s and USEPA’s review of a Definitive GERE Application pursuant to Paragraph 2 of Section III of this Inauguration Plan.

“Evidence of Authority” shall mean documentary evidence as applicable and conforming to the Title Standards and Guidelines of (i) the Landowner’s authority to execute a GERE and any related interests, and (ii) the appropriate signatory’s authority to execute all required Subordination Agreements. For example, if a person(s) signing the GERE is not an individual signing on his/her own behalf, but rather on behalf of an entity (LLC, LLP, limited partnership, etc.), or as trustee, executor, or attorney in fact, then documentation shall be submitted with the GERE verifying that the person(s) signing the GERE is authorized to do so. By way of example only, if the property owner is a corporation, such documentation shall consist of:

- (a) an original or Registry certified copy of a Clerk’s Certificate of Incumbency from the clerk of the corporation certifying that the officer(s) signing the GERE on behalf of the corporation were duly authorized to do so at a meeting of the Board of Directors and that he or she held his or her office as of the date of the signing of the GERE; and
- (b) unless the corporate officer(s) signing the GERE holds the office of both President or Vice President and Treasurer or Assistant Treasurer, an original or Registry certified copy of a Clerk’s Certificate from the Clerk or Secretary of the corporation certifying a corporate vote, resolution, or by-law authorizing the officer(s) to do so; a form Clerk’s Certificate is attached to this Inauguration Plan as Attachment 2 (“Form Clerk’s Certificate”).
- (c) If the property owner is a Limited Liability Company, a Limited Liability Partnership, a Limited Partnership, a General Partnership, a Trust or any other entity, execution formalities must comply with the Title Standards and Guidelines and the provisions of the Massachusetts General Laws relating to the execution of documents concerning real estate held by such entity.

NOTE: The Landowner is responsible for obtaining advice of legal counsel and for obtaining or preparing all documents required under this Inauguration Plan, including but not limited to authority documents discussed above, in compliance with the Massachusetts General Laws, the Title Standards and Guidelines. In order to meet the timeline to obtain signatures established in this Inauguration Plan (explained below), it is strongly recommended that Landowners discuss the GERE requirements, including Evidence of Authority, with all necessary parties (including those who will sign Subordination Agreements) in advance of receiving the Agency Definitive Review Notice (defined below).

“Executed GERE Application” shall mean the GERE documents submitted to MassDEP and USEPA pursuant to, and consisting of all those items identified in, Paragraph 3 of Section III of this Inauguration Plan.

“First Supplemental Certification of Title” shall mean a supplemental certification of title, using the form attached to this Inauguration Plan as Attachment 3a (“Form First Supplemental Certification of Title”), issued to MassDEP by an insured attorney licensed to practice in the Commonwealth of Massachusetts updating the underlying Certification of Title, and including all additional encumbrances of record since the date and time of the underlying Certification of Title, and a legible copy of any instrument identified in such First Supplemental Certification of Title as encumbering the property along with a copy of any plans referenced in any such instrument. All such interests (*i.e.*, encumbrances listed in the First Supplemental Certification of Title) should be located on the Plan of Restricted Areas, as appropriate.

“GERE” shall mean the final Grant of Environmental Restriction and Easement in the form approved for Industri-plex Site GEREs (Attachment 1 to this Inauguration Plan),³ to be approved by USEPA and MassDEP and to be accompanied by a Plan of Restricted Areas (defined below) and related plans, exhibits and documentation, prepared in accordance with the following directions:

- (a) customized where indicated in the attached form to complete all information specific to the Grantor and the subject property, and any other required information, including all relevant exhibits (including a legal description of the land that will be subject to the GERE, which description shall be the same as the description provided in the Certification of Title, defined above, and which may be obtained from the Survey Plans, as defined below, with respect to the Property, or otherwise provided by the Landowner); and
- (b) retaining or deleting bracketed provisions, in accordance with the bold printed and bracketed explanatory notes (Landowners shall also delete the explanatory notes from the completed form prior to submitting), or as instructed by MassDEP or suggested by the Preliminary Reviewer; and
- (c) except as noted above, the form GERE may not be modified.

NOTE: The form GERE is being provided with this Inauguration Plan in printed format and electronically via the website identified in the cover letter and in the footnote to the Table of Contents.

“ISRT” or the “Industri-plex Site Remedial Trust” shall mean the “Remedial Trust,” as defined in Section VIII.B of the Consent Decree.

“Landowner” shall have the meaning attributable to such term in the Consent Decree. The term Landowner shall mean in this case the person or entity who owns and/or

³ Preliminary Reviewer may include property-specific information—*see* subparagraph 1.a of Section III.

operates the parcel(s) of land within the Site upon which the GERE is to be recorded or registered and shall also include the Grantor, as such term is used in the GERE. For purposes of execution of the GERE and any related interests, Landowner shall mean the holder of record of the real property subject to the GERE as determined in the Certification of Title in an approved Definitive GERE Application, subject to MassDEP's Definitive Review (defined below) and the Agency Definitive Review Notice (defined below).

"MassDEP" shall mean the Massachusetts Department of Environmental Protection, having its principal office at One Winter Street, Boston, MA 02108.

"Plan of Restricted Areas" in general shall mean a plan depicting the surveyed locations of certain restricted areas and other features of the remedy implemented at the Site. The Plan of Restricted Areas typically consists of three (3) sheets and will be provided in draft form to each Landowner by the ISRT. This plan has been prepared for each property at the Site by Meridian Land Services, Inc. and/or other licensed land surveyor, and is to be recorded when final in the Middlesex South District Registry of Deeds. Generally, each restricted area has been designated as one or more certain classes of land: "Class A Land," "Class B Land," "Class C Land" and/or "Class D Land." These classes of land are described in Appendix I of the GERE.

"Preliminary GERE Application" shall mean the package of GERE documents submitted to the Preliminary Reviewer for Preliminary Review pursuant to, and consisting of all those items identified in, subparagraph 1.c of Section III of this Inauguration Plan.

"Preliminary Review" shall mean the review of a Preliminary GERE Application by the Preliminary Reviewer pursuant to the procedures set forth in subparagraph 1.d of Section III of this Inauguration Plan and consistent with the Standard of Preliminary Review.

"Preliminary Reviewer" shall mean the person identified as the Preliminary Reviewer in Paragraph 6 of Section III of this Inauguration Plan.

"Site" shall mean the Industri-plex Superfund Site in Woburn, Massachusetts (Operable Unit No. 1) and shall have the meaning attributable to such term in the Consent Decree.

"Standard of Preliminary Review" shall mean a good faith effort by the Preliminary Reviewer to review and evaluate a Preliminary GERE Application for administrative completeness. This review shall consist of:

- (a) confirmation that each Preliminary GERE Application includes all required documents;

- (b) a comparison to ensure Landowner submittals contain no changes to any forms included in the Inauguration Plan, except where permitted therein;
- (c) a comparison to ensure conformity between any Landowner-provided legal descriptions and Landowner's survey plans of the subject property and the Plan of Restricted Areas, and the legal descriptions included therewith, prepared by the ISRT;
- (d) confirmation that the Landowner has provided a proposed Subordination Agreement for all encumbrances identified in the Certification of Title included in the Preliminary GERE Application, except as provided in clause (e), immediately following; and
- (e) in connection with any encumbrance which the Landowner asserts does not establish an interest in the Property prior to the GERE and for which the Landowner has not provided a proposed Subordination Agreement, confirmation that the Landowner instead has provided in the Certification of Title a corresponding notation and brief written explanation regarding why subordination is unnecessary for that encumbrance, with supporting documentation as appropriate.

This Standard of Preliminary Review shall not obligate the Preliminary Reviewer to obtain from the relevant source any missing documentation (except for identifying the same to the Landowner in accordance with Paragraph 1 of Section III of this Inauguration Plan) or to review signatures or verify the authority or incumbency of individuals executing GERE documents. It is understood that the Preliminary Reviewer may rely without inquiry or verification upon a Certification of Title from a Massachusetts Attorney that is provided by the Landowner with submitted materials. The Preliminary Reviewer may rely upon the plans submitted by the Landowner without verification of the same, for purposes of review of a property's legal description. The Preliminary Reviewer may rely upon the sufficiency of boilerplate language included in the attached forms (see "List of Attachments" on page 2), where applicable.

"Subordination Agreement" shall mean an agreement, in the form attached to this Inauguration Plan as Attachment 4 ("Form Subordination Agreement") to be obtained from:

- (a) any and all holders of a prior interest in a Restricted Area, and
- (b) any and all holders of a prior interest in a portion of the Property situated outside of a Restricted Area, if any, if such prior interest affects those interests created under the GERE.

"Survey Plans" shall mean:

- (a) with respect to the Restricted Areas as defined in the GERE, a full-size print (*e.g.*, a 24” by 36” print) of the Plan of Restricted Areas for the Property provided to the Landowner in the Transmittal Letter, as it may have been revised pursuant to the process set forth in subparagraph 1.b of Section III; and
- (b) with respect to the Property as defined in the GERE, a full-size print (*e.g.*, a 24” by 36” print) of a survey plan of the Property that clearly and sufficiently identifies the location and boundaries of the Property that is the subject of the proposed GERE which, at a minimum has been prepared by a Massachusetts Registered Land Surveyor and identifies all required boundaries by metes and bounds, and which is either:
 - (i) a new or recent plan in recordable form prepared by or for the Landowner; or
 - (ii) a full-size print (*e.g.*, a 24” by 36” print) of a recorded reference survey plan listed in item 3 in the table of Reference Plans shown on Sheet 1 of the Plan of Restricted Areas, if any, meeting the above requirements; or
 - (iii) only if neither (i) nor (ii) is available, then the Plan of Restricted Areas as described in subparagraph (a) preceding.

NOTE: If the Landowner elects to adopt the alternative described in (iii) above, then the Landowner must adopt and submit the corresponding legal description of the Property prepared by the ISRT’s surveyor for use in the GERE.

NOTE: The Certification of Title must certify the Landowner’s title to the parcel of land shown on whichever survey plan of the Property the Landowner may elect to submit and described in the corresponding legal description.

“Title Standards and Guidelines” shall mean, collectively, all applicable Title Standards of the Real Estate Bar Association for Massachusetts and the Land Court Guidelines for Registered Land.

“USEPA” shall mean the United States Environmental Protection Agency, having a regional office at 5 Post Office Square, Suite 100, Boston, Massachusetts 02109-3912.

III. IMPLEMENTATION PROCEDURE

The process for implementing this Inauguration Plan is generally outlined in the flow chart attached hereto as “Illustration 1,” and is more particularly described in the Inauguration Plan as follows:

1. “What should each Landowner do to prepare and submit the Preliminary GERE Application for Preliminary Review?” explains the Preliminary Review process which each Landowner needs to complete with the Preliminary Reviewer before submitting a Definitive GERE Application to MassDEP and USEPA for Definitive Review. (The Preliminary Review process provides for advance consultation with MassDEP, if necessary.)
2. “What should each Landowner do to prepare and submit the Definitive GERE Application to MassDEP and USEPA for Definitive Review?” states when and how each Landowner must submit its Definitive GERE Application to MassDEP and USEPA for review and approval following the completion of Preliminary Review.
3. “What should each Landowner do to prepare and submit the Executed GERE Application to MassDEP and USEPA for final approval?” describes each Landowner’s obligation to execute and submit the GERE and related plans and documents to MassDEP and USEPA, after completion of Definitive Review.
4. “What does each Landowner need to do to record and/or register the GERE and related plans and documentation, after MassDEP and USEPA approval?” describes each Landowner’s obligation to record (and/or file) the GERE and related plans and documents, after MassDEP and USEPA approval, with the Registry of Deeds and/or Land Court.
5. “What does each Landowner need to submit after recording and/or registering the GERE and related plans and documents, and what public notice of the GERE must each Landowner provide?” describes the documents and plans that each Landowner must submit, and to whom, after recording or registering the GERE and related plans and documents, and also Landowners’ obligations to notify the City of Woburn about the GERE and publicize the GERE according to certain required procedures. Generally, these submittals document that each GERE has been properly established.
6. “Where should Landowners send the required submittals?” provides contact information for all required submittals at all stages of the process.

The ISRT, USEPA and MassDEP have prepared a number of forms, in addition to the form GERE, in order to simplify and streamline the process for inauguration of Institutional Controls. The forms are included as attachments to this Inauguration Plan.

The GERE application review process established in this Inauguration Plan includes preliminary review of each Landowner's completed forms and related documents by the Preliminary Reviewer, then a two-step review and approval by MassDEP and USEPA, and then filing with the registry of deeds and/or Land Court.

Deadlines for Landowners to deliver these written communications have been established below in order to facilitate the timely filing of each GERE, survey plans and related documents with the registry of deeds and/or the Land Court, once they have been reviewed and approved by MassDEP and USEPA.

NOTES:

Deadlines. It is the obligation of each Landowner to meet all applicable deadlines established in this Inauguration Plan. Failure to comply may subject the Landowner to stipulated penalties or other sanctions under the Consent Decree and/or result in the Landowner being required to update or renew certain required submittals and/or to re-perform certain elements of the GERE implementation process in order to comply with this Inauguration Plan, including incurring any additional costs associated with such activities.

Form of Written Communications. In order to facilitate and expedite the review process, **all written communications from Landowners, except full-size survey plans, shall be made in both hard copy (usually 2 hard copies to each agency—see applicable requirements in text) and electronic format (e.g., by e-mail or on CD), unless otherwise specified below.** Full-size survey plans shall be submitted in hard copy; duplicate electronic submittals of full-size plan are also encouraged, if available. A Landowner who is unable to make any written communications in electronic format, may request MassDEP, USEPA and the Preliminary Reviewer to accept communications in hard copy, only, promptly upon receiving a Transmittal Letter (defined in Paragraph 1, below). In that event, the Landowner may be required to use overnight couriers to ensure timely delivery of written communications.

When a Written Communication is Deemed Made. All written communications to MassDEP, USEPA and/or the Preliminary Reviewer required by this Inauguration Plan shall be deemed made when **received** at the offices of each relevant party in the manner specified, below. All written communications required to be made in both hard copy and in electronic format (unless waived as described above) shall be considered made when received at the offices of each relevant party in **both** hard copy and electronic format.

1. WHAT SHOULD EACH LANDOWNER DO TO PREPARE AND SUBMIT THE PRELIMINARY GERE APPLICATION FOR PRELIMINARY REVIEW?

In order to help ensure that Landowners submit a complete set of documents for later MassDEP and USEPA review and approval, there will first be an administrative completeness review of the proposed documents, referred to in this Inauguration Plan as a Preliminary Review (defined in Section II, above). The Preliminary Review will be performed by the Preliminary Reviewer in accordance with the Standard of Preliminary Review (defined in Section II, above). The steps and paperwork involved in the Preliminary Review are outlined below.

a. Each Landowner will receive a Transmittal Letter that begins the GERE process. The ISRT will send to each Landowner a written notice, by certified mail/return receipt requested or otherwise with proof of delivery, consisting of a cover letter and a copy of the Inauguration Plan with all attachments in printed form. These attachments will include, without limitation, the form GERE with certain property-specific information inserted,³ a letter jointly issued by MassDEP and USEPA regarding institutional controls pursuant to the 1989 Consent Decree and a copy of the draft Plan of Restricted Areas. This notice and all such enclosures are collectively referred to as the “Transmittal Letter.” The ISRT will simultaneously send an electronic copy of the Transmittal Letter to MassDEP and USEPA.

NOTE: Upon receipt of a Transmittal Letter (defined above), Landowners are strongly encouraged to obtain professional assistance from a real estate attorney licensed in Massachusetts (1) to complete the forms and other requirements of this Inauguration Plan and (2) to commence an examination of title records for its property, in preparation for its review of the Plan of Restricted Areas and Certification of Title.

b. Each Landowner should review the Plan of Restricted Areas. Within thirty (30) days of the date of receipt of the Transmittal Letter, each Landowner shall notify the Preliminary Reviewer in writing of the following, as applicable: (i) any easements or similar encumbrances burdening its property which are not already shown on the Plan of Restricted Areas, together with full copies of the instruments creating such encumbrances; or (ii) any material inaccuracy in the Plan of Restricted Areas, together with a reasonably detailed explanation of such inaccuracy (such notification a “Landowner Discrepancy Notice”). **A Landowner’s failure to file a timely Landowner Discrepancy Notice shall be deemed to be approval by Landowner of the Plan of Restricted Areas.**

³ An electronic version of this site-specific form GERE will also be on a posted website. Electronic copies of all other forms will be available at www._____.

The Preliminary Reviewer shall consult with the ISRT and its surveyor in an attempt to resolve any Landowner Discrepancy Notice, and the ISRT shall revise the Plan of Restricted Areas to reflect any missing easements or other encumbrances, or to eliminate any material inaccuracies, in either case as properly documented in a timely Landowner Discrepancy Notice. If the Landowner Discrepancy Notice is not properly documented, the Preliminary Reviewer will inform the Landowner of the deficiency and the Plan of Restricted Areas shall not be modified to reflect such Landowner Discrepancy Notice unless the Landowner, within ten (10) days of receiving such deficiency notice, files a renewed Landowner Discrepancy Notice including whatever documentation is necessary to correct the deficiency. If the Preliminary Reviewer (in consultation with the ISRT) determines that a renewed Landowner Discrepancy Notice remains deficient, then the Preliminary Reviewer shall forward such Discrepancy Notice to MassDEP along with an explanation of such deficiency, with a copy to USEPA, for consideration pursuant to this Inauguration Plan and the Consent Decree. In such event, the ISRT shall make any modifications to the Plan of Restricted Areas as MassDEP, after a reasonable opportunity for review and comment by USEPA, may direct, and shall deliver a new copy of the Plan of Restricted Areas (as modified) to the Landowner.

c. Each Landowner must prepare and submit a Preliminary GERE Application for Preliminary Review. **Within sixty (60) days** from the later to occur of (i) Landowner's receipt of the Transmittal Letter and (ii) Landowner's receipt of a modified Plan of Restricted Areas (if the Landowner Discrepancy Notice procedures set forth in subparagraph 1.b of this Section are followed), each Landowner shall prepare and submit a Preliminary GERE Application for each parcel of land within the Site owned by such Landowner, as shown on the (modified) Plan of Restricted Areas.

The Preliminary GERE Application shall consist of each of the following items:

- an unexecuted GERE (including a legal description of the Property by metes and bounds at Appendix II);

NOTE: The GERE provided to Landowner is in final form and no changes to the text of the GERE shall be made by the Landowner except as described in the GERE definition at p. 8 in Section II, "Definitions," above.

- a Survey Plan of the Property (corresponding to the legal description of the Property);

- an unexecuted Certification of Title, including all encumbrances of record and a legible copy of any instrument identified in such certification of title as encumbering the property along with a copy of any plans referenced in any such instrument, **updated through no more than thirty (30) days prior to submittal of the Preliminary GERE Application;**

NOTES:

If Landowner plans to obtain a release or termination of an encumbrance listed on the Certification of Title, then Landowner should do so, record the same, and obtain a revised Certification of Title (no longer listing the encumbrance in question) to submit with the Preliminary GERE Application.

If Landowner wishes to assert that an encumbrance listed in the Certification of Title does not establish an interest in the Property prior to the GERE and therefore does not intend to provide a proposed Subordination Agreement for that encumbrance, then Landowner shall at a minimum ensure that the Certification of Title includes a corresponding notation and brief written explanation of why subordination is unnecessary for that encumbrance, and must submit supporting documentation, as appropriate, for review.

- unexecuted Subordination Agreements for each title encumbrance identified on the Certification of Title;
- an unexecuted copy of Landowner's Evidence of Authority with respect to its GERE; and
- an **executed** copy of the Landowner Acknowledgement at the end of the Inauguration Plan (the final page of this document).

Each Landowner shall submit the Preliminary GERE Application to the Preliminary Reviewer, for Preliminary Review as described in this Inauguration Plan, with an electronic copy of the cover letter (without enclosures) to MassDEP and USEPA.

NOTE: Other than returning a signed copy of this Inauguration Plan, no documents should be executed at this point; signatures should be obtained only after Landowner receives an Agency Definitive Review Notice (see subparagraph 2.b of this Section, below).

d. The Preliminary Reviewer will issue a Preliminary Review Completion Letter to each Landowner. The Preliminary Reviewer shall review each Preliminary GERE Application in accordance with the Standard for Preliminary Review and shall notify the Landowner in writing of the result of Preliminary Review by electronic mail, with a copy to MassDEP and USEPA. Such notice shall specify any deficiencies observed during the Preliminary Review, noting any additional documentation needed for Preliminary Review. If a Preliminary GERE Application is complete (either upon initial presentation, or after resolving any deficiencies), the Preliminary Reviewer shall notify the Landowner that the application is complete (the “Preliminary Review Completion Letter”). The Preliminary Review Completion Letter shall be sent to the Landowner both electronically and by registered mail or recognized overnight courier.

Each Landowner must respond to a notice of deficiency from the Preliminary Reviewer, correcting any identified deficiencies, **within ten (10) days of receipt**, unless the Landowner submits to the Preliminary Reviewer a written request, by electronic mail or otherwise, for a longer response period within two (2) business days of receiving the deficiency notice. The Preliminary Reviewer may, in consultation with MassDEP or the ISRT as the Preliminary Reviewer deems appropriate, grant such extensions as are reasonably requested by the Landowner. In the event of a disagreement over the reasonableness of a requested extension, prior to responding to the Landowner the Preliminary Reviewer shall first notify MassDEP and USEPA. MassDEP reserves the right to determine the reasonableness of such a request. The time period for the Landowner to make corrections identified in such deficiency notice will be tolled pending the Preliminary Reviewer's response to a timely filed extension request.

In the event that the Preliminary Reviewer detects a deficiency in the Preliminary GERE Application or missing documentation during its Preliminary Review (including, without limitation, missing Subordination Agreements for identified encumbrances), the Landowner shall work diligently to address and correct the deficiency or submit the missing documentation to complete the Preliminary GERE Application within the applicable time period. In case of an irresolvable disagreement between the Preliminary Reviewer and the Landowner as to the GERE's administrative completeness, the Preliminary Reviewer will notify and seek instruction from MassDEP, and shall also notify USEPA.

A Preliminary Review Completion Letter from the Preliminary Reviewer will (i) indicate that the Preliminary GERE Application is ready for submittal to MassDEP and USEPA in the form of a Definitive GERE Application, and (ii) include general information about the nature of the Evidence of Authority that a Landowner should expect to submit with the Executed GERE Application. The Preliminary Reviewer will send an electronic copy of the Preliminary Review

Completion Letter simultaneously to MassDEP and USEPA, accompanied by a copy of the Preliminary GERE Application (and list of supportive materials) upon which such Completion Letter is based. After receiving a Preliminary Review Completion Letter, a Landowner shall submit its Definitive GERE Application for agency review in accordance with Paragraph 2 of this Section, below.

None of the Preliminary Reviewer, the ISRT or the ISRT's constituent companies shall have or incur any liability pursuant to this Inauguration Plan in connection with the Preliminary Review, which review shall be ministerial in nature, except for any express liability arising under the Consent Decree or other applicable law from the ISRT's failure to perform in good faith those tasks assigned to it under this Inauguration Plan.

NOTE: The Preliminary Review shall not be binding upon MassDEP or USEPA and the agencies fully reserve all rights to make, and shall make, the final determination of the administrative and substantive adequacy of the Definitive GERE application, once it has been submitted for agency review and approval, as provided, below.

*Table 1—Preliminary GERE Application Checklist
(refer to subparagraph 1.c, above, for detailed requirements)*

- ___ GERE (completed from form, unsigned), including Appendices I through VII and all Exhibits
 - ___ Appendix I (complete references in definition BB, “Plan of Restricted Areas” at p. 5)
 - ___ Appendix II (provide legal description of the Property)
 - ___ Appendix III (legal description of the Restricted Areas provided by ISRT)
 - ___ Landowner’s Evidence of Authority to execute its GERE (unsigned)
- ___ Survey Plan of the Property (corresponds to legal description in Appendix II)
- ___ Certification of Title (complete from form; unsigned)
 - ___ legible copy of each listed encumbrance
 - ___ copy of any plans referenced in each listed encumbrance
 - ___ if applicable, an explanation in Certification of Title as to why an encumbrance does not establish an interest in the Property prior to the GERE, and supporting documentation
- ___ Subordination Agreement (complete from form; unsigned) for each encumbrance listed in Certification of Title (except as noted in accordance with the immediately preceding paragraph)
- ___ Landowner Acknowledgement (last page of Inauguration Plan; completed and signed by Landowner)

NOTE: All written communications from Landowners, except full-size survey plans, must be made in both hard copy (usually 2 hard copies to each agency—see applicable requirements in text) and electronic format (e.g., by e-mail or on CD), unless otherwise specified—see detailed note on Form of Written Communications on p. 13, above.

2. WHAT SHOULD EACH LANDOWNER DO TO PREPARE AND SUBMIT THE DEFINITIVE GERE APPLICATION TO MASSDEP AND USEPA FOR DEFINITIVE REVIEW?

a. Upon satisfactory completion of Preliminary Review, as evidenced by receipt of the Preliminary Review Completion Letter, each Landowner shall submit a Definitive GERE Application to MassDEP and USEPA. Upon receipt of the Preliminary Review Completion Letter, each Landowner shall **immediately, and no later than five (5) business days thereafter**, submit to MassDEP and USEPA a Definitive GERE Application (with supportive materials) for the agencies' review. These submittals shall include two (2) hard copies and one copy in electronic format of the Definitive GERE Application to each agency and, for tracking purposes, one (1) copy of the cover letter, only, to the Preliminary Reviewer, in electronic format or otherwise.

The Definitive GERE Application shall consist of each of the following items, each in the form deemed complete pursuant to the Preliminary Review Completion Letter (to the extent the same were required to be submitted for Preliminary Review):

- an unexecuted GERE;
- a full-size copy of the Survey Plan of the Property;
- an unexecuted Certification of Title (including all encumbrances of record and a legible copy of any instrument identified in such certification of title as encumbering the property along with a copy of any plans referenced in any such instrument and for any encumbrance which the Landowner asserts does not establish an interest in the Property prior to the GERE and for which the Landowner has not provided a proposed Subordination Agreement, the corresponding notation and brief written explanation regarding why subordination is unnecessary for that encumbrance, with supporting documentation as appropriate, as per the (modified) Preliminary Review Application);
- unexecuted Subordination Agreements for each title encumbrance identified on the Certification of Title (except as noted in accordance with the immediately preceding bulleted paragraph);
- unexecuted copy of the Evidence of Authority with respect to the GERE and the Subordination Agreements;
- a full-size copy of the Plan of Restricted Areas;
- a copy of the Preliminary Review Completion Letter; and

- a copy of the executed Landowner Acknowledgement at the end of the Inauguration Plan (the final page of this document).

b. MassDEP and USEPA shall perform their Definitive Review of the unsigned GERE application and issue an Agency Definitive Review Notice. Upon receipt from a Landowner of a Definitive GERE Application, MassDEP and USEPA will commence their Definitive Review process, which consists of an administrative and substantive review of the Definitive GERE Application. Once Definitive Review is complete, MassDEP shall notify the Landowner in writing, with a copy to USEPA and the Preliminary Reviewer, either that the Definitive GERE Application is complete and ready for execution and submittal as the Executed GERE Application for approval, as required in subparagraph 3.a, below (such written notice of completion, being an “Agency Definitive Review Notice”), or is incomplete, in which case the agencies shall specify any deficiencies to be addressed and/or additional documentation required to complete the Definitive GERE Application. The Landowner shall promptly resolve any deficiencies so identified directly with the agencies, within the timeframe specified by the agencies for doing so.

NOTE: Although Landowners must obtain Subordination Agreements consistent with the definition of that term (Section II. Definitions, above), MassDEP, in its sole discretion, reserves the right to assess whether a particular encumbrance must be subordinated in order to ensure that a particular GERE will have priority over all other interests in the subject Property and otherwise be fully effective. This reservation shall include, without limitation, the right to review and approve any proposed explanatory notation and brief written explanation in the Certification of Title and any supporting documentation, which may be submitted in lieu of a Subordination Agreement for any particular encumbrance.

Table 2—Definitive GERE Application Checklist
(refer to subparagraph 2.a, above, for detailed requirements)

- ___ GERE (completed from form, unsigned), including Appendices I through VII and all Exhibits)
 - ___ Appendix I (complete references in definition BB, “Plan of Restricted Areas” at page 5)
 - ___ Appendix II (provide legal description of the Property)
 - ___ Appendix III (legal description of the Restricted Areas provided by ISRT)
 - ___ Landowner’s Evidence of Authority to execute its GERE (unsigned)
- ___ full-size copy of a Survey Plan of the Property
- ___ Certification of Title [complete from form; unsigned; as per the (modified) Preliminary GERE Application]
 - ___ legible copy of each listed encumbrance
 - ___ legible copy of any plans referenced in each listed encumbrance
 - ___ if applicable, an explanation in the Certification of Title as to why an encumbrance does not establish an interest in the property prior to the GERE that requires subordination, and supporting documentation [as per the (modified) Preliminary GERE Application]
- ___ Subordination Agreement (complete from form; unsigned) for each encumbrance listed in certification of title (except as noted in accordance with the immediately preceding paragraph)
 - ___ Evidence of Authority (unsigned) for each encumbrance holder to execute its respective subordination agreement
- ___ full-size copy of the Plan of Restricted Areas
- ___ copy of the Preliminary Review Completion Letter (signed by Preliminary Reviewer)
- ___ copy of the executed Landowner Acknowledgement at the end of the Inauguration Plan (the final page of this document)

NOTE: All written communications from Landowners, except full-size survey plans, must be made in both hard copy (usually 2 hard copies to each agency—see applicable requirements in text) and electronic format (e.g., by e-mail or on CD), unless otherwise specified—see detailed note on Form of Written Communications on p. 13, above.

3. WHAT SHOULD EACH LANDOWNER DO TO PREPARE AND SUBMIT THE EXECUTED GERE APPLICATION TO MASSDEP AND USEPA?

a. Each Landowner shall submit an Executed GERE Application to MassDEP and USEPA following receipt of an Agency Definitive Review Notice. Within twenty-one (21) days of receipt of an Agency Definitive Review Notice, the Landowner shall submit to MassDEP and USEPA an Executed GERE Application. When making these submittals, the Landowner shall submit to MassDEP two (2) original hard copies of the documents and one (1) copy in electronic format; and to USEPA two (2) hard copies of the documents and one (1) copy in electronic format; and to the Preliminary Reviewer one (1) copy in electronic format.

If MassDEP or USEPA identify deficiencies in the Executed GERE Application, the Landowner will be notified as soon as possible to address such deficiencies. Each Landowner shall promptly address any deficiencies in the Executed GERE Application identified by MassDEP or USEPA, within the timeframe established by the agencies for doing so.

The Executed GERE Application shall consist of each of the following items, each in the form deemed complete pursuant to the Agency Definitive Review Notice (to the extent the same were required to be submitted for Definitive Review):

- a complete, executed and notarized GERE, **dated no more than twenty-one (21) days prior to submittal to MassDEP**, including all exhibits and using appropriate forms of signature and acknowledgement;
- a full-size copy of a Survey Plan of the Property;
- a complete, executed Certification of Title satisfactory to MassDEP, including any explanatory notations and brief written explanations as to any encumbrances which do not require Subordination Agreements, in accordance with MassDEP's Definitive Review and the Agency Definitive Review Notice, and updated through no more than thirty (30) days prior to submittal to MassDEP;
- a complete, executed and notarized Subordination Agreements, dated "as of" or after the date of execution of the GERE and dated no more than twenty-one (21) days prior to submittal to MassDEP, using appropriate forms of signature and acknowledgement, for each title encumbrance identified on the Certification of Title (except as noted in accordance with the immediately preceding bulleted paragraph);

- Evidence of Authority, dated no more than twenty-one (21) days prior to submittal to MassDEP, with respect to the GERE and the Subordination Agreements;
- a full-size copy of the Plan of Restricted Areas; and
- a copy of the Agency Definitive Review Notice.

NOTE: Subordination Agreements cannot be effective prior to the GERE and therefore must be dated or stated to take effect on or after the date of execution of the GERE.

b. MassDEP and USEPA will issue a Joint Agency Approval Letter. MassDEP's and USEPA's approval of an Executed GERE Application shall mean MassDEP's Commissioner's approval (or that of the Commissioner's designee) as evidenced by the Commissioner's signature on the GERE (or that of the Commissioner's designee), subject to any conditions and requirements set forth in a Joint Agency Approval Letter issued to each Landowner by MassDEP and USEPA with respect to each Landowner's GERE. The Joint Agency Approval Letter typically will approve a GERE submittal subject to certain generally applicable conditions and requirements plus any property-specific conditions and requirements.

NOTE: The provisions of each Joint Agency Approval Letter, which will be specific to a particular property, shall control over any conflicting provisions of this Inauguration Plan.

Table 3—Executed GERE Application Checklist
(refer to subparagraph 3.a, above, for detailed requirements)

- ___ GERE (executed and notarized), including Appendices I through VII and all Exhibits
- ___ full-size copy of a Survey Plan of the Property
- ___ Landowner's Evidence of Authority (signed and notarized, as necessary) to execute its GERE
- ___ Certification of Title (executed)
- ___ Subordination Agreement (executed and notarized), for each title encumbrance listed in Certification of Title (except as noted in accordance with the Definitive Review Completion Letter)
- ___ Evidence of Authority (signed and notarized, as necessary) for each encumbrance holder to execute its respective Subordination Agreement
- ___ full-size copy of the Plan of Restricted Areas
- ___ copy of the Agency Definitive Review Notice

NOTE: All written communications from Landowners, except full-size survey plans, must be made in both hard copy (usually 2 hard copies to each agency—see applicable requirements in text) and electronic format (e.g., by e-mail or on CD), unless otherwise specified—see detailed note on Form of Written Communications on p. 13, above.

4. WHAT DOES EACH LANDOWNER NEED TO DO TO RECORD AND/OR REGISTER THE GERE AND RELATED PLANS AND DOCUMENTATION, AFTER MASSDEP/USEPA APPROVAL? Each Landowner shall record in the Registry of Deeds and/or file (for Land registered with the Land Court) its approved GERE and Plan of Restricted Areas in accordance with the Joint Agency Approval Letter and the instructions below, and shall be responsible for paying all recording fees, costs of notice, and any other associated costs:
- a-1. Record the Survey Plan of the Property. The original mylars of the Survey Plan of the Property must be recorded if the Landowner has created a new Survey Plan of the Property for the GERE. If applicable, the Survey Plan of the Property shall be recorded in the Registry of Deeds in advance of recording the GERE in the Registry and/or filing the GERE with the Land Court.
 - a-2. Record the Plan of Restricted Areas. The original mylars of the Plan of Restricted Areas shall be recorded in the Registry of Deeds in advance of recording the GERE in the Registry and/or filing the GERE with the Land Court. The ISRT will provide each Landowner with the original mylars for recording upon issuance of the Joint Agency Approval Letter (pursuant to subparagraph 3.b, above).
 - b. Complete All Recording Data and Dates. All recording data and dates shall be properly completed in all approved documents prior to recording the same in the Registry and/or filing the same with the Land Court. This shall include, without limitation, the following:
 - i. all recording data relative to the Survey Plan of the Property and the Plan of Restricted Areas, as applicable, and the date of execution of the GERE must be inserted in the GERE and its appendices, as indicated; and
 - ii. all recording data for the GERE and the date of execution of the GERE must be inserted in each Subordination Agreement and Evidence of Authority document, as indicated.
 - c. Update Title Examination. **Immediately prior to recording (or filing) the GERE**, Landowner's title-certifying attorney must perform a title run down from the date and time of the preceding title examination performed pursuant to subparagraph 3.a, above, through the date and time of recording (or filing) of the GERE. **If any additional encumbrances have been recorded (or filed) since the date and time of the Certification of Title submitted with the Executed GERE Application, the GERE shall not be recorded (or filed)**, but Landowner shall **immediately** notify MassDEP, and provide a copy of each such encumbrance and any associated plans to MassDEP, the Preliminary Reviewer and USEPA. If requested by MassDEP/USEPA, a signed First Supplemental Certification of Title shall also be provided at this time.

d. Record/Register.

i. If no such additional encumbrances have been recorded, then the GERE, all approved Subordination Agreements, and all approved Evidence of Authority documents as set forth in the Joint Agency Approval Letter, shall be duly recorded by the Landowner in the Middlesex South District Registry of Deeds and/or filed with the Land Court **within seven (7) days, as provided in subparagraph 4.d iii., below.**

ii. If additional encumbrances have been recorded or filed (with the Land Court), then upon completion of further Preliminary Review by the Preliminary Reviewer consistent with Paragraph 1 of this Section, above (if requested by MassDEP) and approval from MassDEP, after Subordination Agreements have been provided for these encumbrances or the Landowner otherwise addresses the encumbrances with MassDEP in accordance with the Definitive Review process, the Landowner must again update the title examination and proceed to record and/or file with the Land Court the Executed GERE Application, as signed by MassDEP, and such further Subordination Agreement(s) in accordance with subparagraphs 4.c and 4.d.i of this Section, above.

iii. Recording with the Registry and/or filing (with the Land Court) must be completed **within seven (7) days of the date of each Landowner's receipt from MassDEP of the Joint Agency Approval Letter or any further written approval** (in the case of additional encumbrances having been recorded since the date and time of the title rundown reflected in the Certification of Title). **Failure to meet this deadline may require the Landowner to repeat several elements of the process for inaugurating Institutional Controls including but not limited to signing of Subordination Agreements, at additional costs, and may expose the Landowner to the risk of enforcement action.**

iv. Landowners owning unregistered land must indicate on the front of the GERE and associated documents that all originals should be returned to MassDEP, after recording (at the address set forth in Paragraph 7, below). In addition, the GERE needs to be marginally referenced on the deed into the owner of the subject property. To accomplish this, whoever records the GERE for the landowner should specifically request that the registry official accepting the GERE for recording make sure that the GERE is marginally referenced in the Registry's electronic indexing system. After recording the GERE, the Landowner shall verify that the GERE is electronically indexed (and will later need to provide a copy of the

electronic index to MassDEP pursuant to subparagraph 5.b, below, along with other submittals).

v. Landowners owning registered land must arrange to have the Plan of Restricted Areas filed in the Land Court and referenced on the Memorandum of Encumbrances associated with the Certificate of Title for the Property.

5. WHAT DOES EACH LANDOWNER NEED TO SUBMIT AFTER RECORDING AND/OR REGISTERING THE GERE AND RELATED PLANS AND DOCUMENTS, AND WHAT PUBLIC NOTICE OF THE GERE MUST EACH LANDOWNER PROVIDE? Each Landowner must promptly submit to MassDEP, with a copy to USEPA, the following documentation after recording the GERE, plans and related documentation, and also provide the following notice to local officials and the public:

a. Submit First Supplemental Certification of Title. **Within ten (10) days of recording and/or filing the GERE**, the Landowner must submit a First Supplemental Certification of Title confirming that no new encumbrances appeared of record prior to recording in the Registry and/or filing (with the Land Court) the GERE and related documents, as required pursuant to subparagraph 4.d, above. This First Supplemental Certification of Title shall update the date and time of examination of title to the Property through the date and time of recording and/or filing the GERE using the form provided.

NOTE: If the Landowner is required to submit more than one supplemental certification of title, then the second supplemental certification of title shall be entitled “Second Supplemental Certification of Title,” and so on.

b. Submit Certified Copies of Recorded Documents. **Within 30 days of recording in the Registry and/or filing with the Land Court the GERE, any Subordination Agreement(s), the Evidence of Authority document(s), and the Survey Plan(s)**, or as soon as reasonably possible thereafter with respect to any required submittal which is not available before the expiration of this time period, each Landowner must submit to MassDEP and USEPA, with a copy to the Preliminary Reviewer in electronic format:

- i. a Registry certified copy of the GERE bearing the book and page/instrument number and/or document number;
- ii. a Registry certified copy of each Subordination Agreement bearing the book and page/instrument number and/or document number;

- iii. ___ a Registry certified copy of each Evidence of Authority document bearing the book and page/instrument number and/or document number;
- iv. ___ a Registry certified copy of the Plan of Restricted Areas, bearing the plan book/plan number(s);
- v. ___ a Registry certified copy of the Landowner's Survey Plan of the Property referenced in the GERE, bearing the plan book/plan number(s), if applicable (required for a Landowner using a more recent Survey Plan of the Property than the plans referenced on sheet 1 of the Plan of Restricted Areas for that Property, unless such a Registry certified copy has previously been submitted to MassDEP with a copy to the Preliminary Reviewer and USEPA);
- vi. ___ if the property subject to the GERE is unregistered land, a Registry certified copy of the electronic index depicting the marginal reference to the GERE; and
- vii. ___ if the property subject to the GERE is registered land, a Registry certified copy of the Certificate of Title referencing the GERE and the Plan of Restricted Areas on the Memorandum of Encumbrances by name and document number.

NOTE: All written communications from Landowners, except full-size survey plans, must be made in both hard copy (usually 2 hard copies to each agency—see applicable requirements in text) and electronic format (e.g., by e-mail or on CD), unless otherwise specified—see detailed note on Form of Written Communications on p. 13, above.

- c. ___ Notify local officials and the public about the recorded GERE. To inform local officials and the public of the activity and/or use limitations of the property subject to the GERE, each Landowner shall **within thirty (30) days after the GERE is recorded in the Registry and/or filed with the Land Court**, provide:
 - i. ___ To Local Officials. A copy of the GERE, including all attachments, and all Survey Plans, to the Mayor, the Director of the Board of Health, the Director of the Planning Board, and the Building Commissioner, each in the City of Woburn.
 - ii. ___ By Publication. To indicate the recording and/or registering of the GERE, publish a legal notice in accordance with 310 Code of Massachusetts Regulations 40.1403(2)(b), and including the information described in 310 Code of Massachusetts Regulations §40.1403(7)(b)(1), in a newspaper which circulates in the City of Woburn; and **within seven (7)**

days of publication, provide a copy of the legal notice to MassDEP and USEPA, with a copy to the Preliminary Reviewer. A form notice for publication is attached to this Inauguration Plan as Attachment 5 (“Form Notice for Publication”).

NOTE: All written communications from Landowners, except full-size survey plans, must be made in both hard copy (usually 2 hard copies to each agency—see applicable requirements in text) and electronic format (e.g., by e-mail or on CD), unless otherwise specified—see detailed note on Form of Written Communications on p. 13, above.

6. **WHERE SHOULD LANDOWNERS SEND THE REQUIRED SUBMITTALS?**
Unless otherwise directed by the Preliminary Reviewer, MassDEP or USEPA, respectively, all required submittals shall be sent to the following addresses, respectively, and the contact information for each is as follows.

As to the Preliminary Reviewer:

Michael W. Parker, Esq.
Rackemann, Sawyer & Brewster LLP
160 Federal Street
Boston, MA 02110-1700
telephone: (617) 951-1190
fax: (617) 542-7437
e-mail: mparker@rackemann.com

As to the ISRT:

Industri-plex OU-1 Coordinator
for the Industri-plex Site Remedial Trust
c/o Randall Cooper, P.E.
Environmental Remediation Manager
Monsanto Company
800 North Lindbergh Blvd.
St. Louis, MO 63167
telephone: (314) 694-3270
fax: (314) 694-8820
e-mail: randall.lee.cooper@monsanto.com

As to MassDEP:

Jennifer McWeeney, Industri-plex Superfund Site Project Manager
Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 8th Floor
Boston, MA 02108
telephone: (617) 654-6560
fax: (617) 292-5530
e-mail: Jennifer.Mcweeney@state.ma.us

As to USEPA:

Joseph LeMay, EPA Remedial Project Manager
Industri-plex Superfund Site, Woburn, Massachusetts
United States Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (MC OSRR07-4)
Boston, MA 02109-3912
telephone: (617) 918-1323
fax: (617) 918-0323
e-mail: Lemay.Joe@epa.gov

[no further text; signature page follows]

Landowner Acknowledgement

By signing below, Landowner hereby acknowledges that it has received the Transmittal Letter and has reviewed and understands the terms of this Inauguration Plan.

(Landowner signature)

Print Name: _____

Title: _____

Date: _____

Attorney contact information (*optional*). If Landowner has retained legal counsel to assist in this matter, please provide the name and contact information for your attorney, below:

Attorney name

Telephone number

E-mail address

Industri-plex Superfund Site
INAUGURATION PLAN
Attachment 1 – FORM GERE

Attachment 1

Form Grant of Environmental Restriction and Easement

- GERE
- Appendices I – VII
- Exhibit A

GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT
(42 U.S.C. §9601, *et seq.* and M.G.L. c. 21E)

[Note: This instrument is established as an institutional control for a federal Superfund site pursuant to a judicial consent decree, as set forth below; CERCLA, 42 U.S.C. § 9601, et seq.; and Section 6 of Chapter 21E, M.G.L. c. 21E, §6; and contains a GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT running to the MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION.]

Site Name: Industri-Plex Superfund Site
Site Location: Woburn, MA
EPA Site Identification Number: MAD076580950
MassDEP Release Tracking Number: 3-0001731

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- V. Cover Inspection Plan.
- VI. Amendment Protocol.
- VII. Subordination Agreement Form.

Exhibits

- A. Request letter from Robert Cianciarulo, EPA to Jay Naparstek, MassDEP - MassDEP as sole grantee.
- [if applicable (see below), add:]** B. EPA and MassDEP property transfer approval letter dated _____.

This Grant of Environmental Restriction and Easement (the “Grant”) is by and between _____ [name of landowner], of _____ [address of landowner, including county] (“Grantor”) [Note: modify for corporate grantor, etc., as appropriate]; and the MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION (“MassDEP” or “DEP”), a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts 02108 (“Grantee”).

W I T N E S S E T H :

WHEREAS, Grantor is the owner in fee simple of that [those] certain parcel[s] of land located in the City of Woburn, Middlesex County, Massachusetts, with all buildings and improvements thereon, if any;

WHEREAS, said parcel[s] of land, known and/or numbered as _____ which is [are] more particularly bounded and described in Appendix II (“Legal Description of the Property”), attached hereto and made a part hereof, (the “Property”) is [are] subject to the terms and conditions of this instrument. The Property is shown on a plan entitled “_____” prepared by _____, dated _____, recorded and/or filed [Note: for unregistered land add:] in the Middlesex South Registry of Deeds at Book _____, Page _____; [Note: for registered land add:] with the Middlesex South Registry District of the Land Court as Plan No. _____, [shown as Lot _____];

[Note: The Grant must include a legal description of the Property that is subject to the Grant and a reference to a surveyed plan of the Property (upon which the legal description is based). If registered land, this plan shall be the existing Land Court Plan of the Property. If unregistered land, unless this plan is already of record, it must be recorded prior to the Grant.]

WHEREAS, those certain portions of the Property subject to restrictions have each been designated a certain “class of land,” such classes of land being [Note: delete any of the following Classes of Land that are not situated within the Property.] Class A Land, Class B Land, Class C Land and Class D Land (collectively, all of the foregoing restricted areas comprising the “Restricted Areas”), said Restricted Areas being identified on a certain plan consisting of three (3) sheets, entitled “Plan of Restricted Areas” prepared for _____ [name referenced on plan], Lot IC-____, Woburn, Massachusetts, prepared by Meridian Land Services, Inc., dated January 12, 2004[, as revised through revision ____, dated _____], and recorded in the Middlesex South District Registry of Deeds as Plan No. _____ of 20__ (the “Plan of Restricted Areas”);

WHEREAS, a legal description of the Restricted Areas by metes and bounds is set forth in Appendix III (“Legal Description of the Restricted Areas”), attached hereto and made a part hereof;

WHEREAS, the Property and the Restricted Areas are subject to covenants, restrictions, easements and other rights and obligations under the terms and conditions of this instrument;

[Note: Although certain provisions of the Grant will affect the entire Property (such as the easements providing access and other rights), some portions of the Property may be subject to different restrictions or rights under the Grant than other portions (such as the different classes of land, defined below). In the latter situation, (i) the Grant must also include a legal description (by metes and bounds) of each portion of the Property subject to the different restrictions (that is, the different classes of land) and (ii) a surveyed plan must be prepared and Recorded showing the boundaries of each such portion of the Property and, for registered land, referenced in or on the Certificate of Title for the Property. (This plan should also show a perimeter survey of the Property, for purposes of locating the different restricted portions, both within the larger parcel and relative to adjacent properties.) All restricted areas, collectively, are referred to as the “Restricted Areas.” This plan will also show the location of the Engineered Cover, the Equivalent Cover and the Clean Corridors, as applicable.]

[Note: For purposes of assisting Landowners in satisfying the requirements specified in the preceding note, the ISRT has agreed to provide Landowners a proposed Plan of Restricted Areas and associated narrative legal descriptions for use in Appendix III (of this instrument). Landowners will have an opportunity to review and comment on this Plan and on the descriptions, and each will need to be approved by the agencies as part of each Landowner’s later submittal. See Section III, Paragraph 1 of the Inauguration Plan for additional information.]

WHEREAS, the United States Environmental Protection Agency (“EPA”), a duly constituted agency organized under the laws of the United States of America and having a regional office at 5 Post Office Square, Suite 100 (MC OSRR07-4), Boston, MA 02109-3912, has identified a disposal site, known as the Industri-Plex Superfund Site located in Woburn, MA (the “Site”), and placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601, *et seq.*, as amended (“CERCLA”), 42 U.S.C. §9605, as a result of the release or threatened release of hazardous substances, as those terms are defined in CERCLA;

WHEREAS, MassDEP, as a result of the release of oil and/or hazardous materials at the Site, as those terms are defined in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E, as amended (“Chapter 21E”), has classified the Site as a Tier IA disposal site and has assigned to the Site MassDEP Release Tracking Number 3-0001731, pursuant thereto;

WHEREAS, EPA regulates activities at disposal sites pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. 300.400, *et seq.*, as amended (the “NCP”); and MassDEP regulates activities at disposal sites pursuant to Chapter 21E and the Massachusetts Contingency Plan, 310 C.M.R. 40.0000, as amended (the “MCP”);

WHEREAS, EPA, with the concurrence of MassDEP, has specified certain response actions for the Site in a Record of Decision dated September 30, 1986 (the “ROD”); which response actions include and require institutional controls in the nature of deed restrictions to ensure the long-term effectiveness of the Remedy by preventing

certain activities and uses in the Restricted Areas, and by requiring certain operations and maintenance activities; and may select further response actions for the Site;

WHEREAS, EPA, in correspondence from Robert Cianciarulo, Chief, Massachusetts Superfund Section, EPA, to Jay Naparstek, Deputy Division Director, Response and Remediation, MassDEP, dated August 5, 2008, a copy of which is attached hereto as Exhibit A, notified MassDEP: (i) that EPA desired to establish the within Grant to effect the aforementioned restrictions in order to meet the institutional control requirements for the Selected Remedy under the ROD; (ii) that if the United States had sought to acquire a grant to establish the restrictions the United States would first need to obtain the State's agreement to accept transfer of such interests upon completion of the remedial action, pursuant to Section 104(j)(2) of CERCLA, 42 U.S.C. 9604(j)(2); (iii) that the Selected Remedy will be completed once institutional controls have been established for the Site; and (iv) that EPA, therefore, in order to establish the restrictions and for purposes of efficiency, has requested MassDEP to accept the within Grant directly;

WHEREAS, MassDEP, pursuant to Sections 3(a) and 6 of Chapter 21E, as amended, respectively, is authorized to take all action appropriate to secure to the Commonwealth the benefits of CERCLA and to acquire an interest in real property if necessary to carry out the purposes of Chapter 21E, and is willing to serve as Grantee;

WHEREAS, pursuant to that certain Consent Decree entered on April 24, 1989 by the United States District Court for the District of Massachusetts in the matter styled *United States v. Stauffer Chemical Company et al.*, Civil Action No. 89-0195-MC and *Commonwealth of Massachusetts v. Stauffer Chemical Company et al.*, Civil Action No. 89-0196-MC, and recorded at the Middlesex South Registry of Deeds in Book 19837, Page 476 (the "Consent Decree"), certain environmental remediation activities have been and are being conducted at the Site; and said institutional controls are required to be designed and implemented at the Site;

WHEREAS, pursuant to Attachment B ("Institutional Controls") of Appendix I ("Remedial Design/Action Plan") of the Consent Decree, the paramount purpose of the institutional controls is the preservation of the continued effectiveness of the remedial actions in order to protect human health and the environment; and to the extent that it is feasible to do so consistent with this paramount purpose, EPA and MassDEP may permit designs of institutional controls that permit the greatest possible use and enjoyment of the Site or parts of the Site;

WHEREAS, the Property is situated within the Site, which Site contains Class A Land, Class B Land, Class C Land, and Class D Land, so-called, as defined herein in Appendix I ("Definitions");

WHEREAS, Grantor is a Settler, a trust established by the Consent Decree known as the Custodial Trust, or successor in title to either, pursuant to the Consent Decree; and

WHEREAS, pursuant to the Consent Decree, all Settlers who are landowners, the Custodial Trust, and their respective successors in title, are required to inaugurate these institutional controls;

NOW, THEREFORE, pursuant to and in consideration of the terms of the Consent Decree [note: if applicable, add: and EPA and MassDEP's approval of the transfer of the Property pursuant to an approval letter from _____ to _____ dated _____, [recorded and/or filed at/with _____] [a copy of which is attached hereto as Exhibit B] [note: if applicable, add:] [and a certain Interim Grant recorded at _____], the receipt and sufficiency of which consideration is hereby acknowledged, and in accordance with Chapter 21E, Section 6, GRANTOR hereby GIVES, GRANTS AND CONVEYS to the MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION, as aforesaid, with QUITCLAIM COVENANTS, those certain restrictions and easements as hereinafter set forth, in, on, upon, through, over and under the Property, being more particularly bounded and described as aforesaid.

(The foregoing grant being referred to herein as the "Grant," as aforesaid, the "Grant of Environmental Restriction and Easement," "Industri-Plex Site Institutional Controls," or "Institutional Controls.")

The terms and conditions of said Institutional Controls are set forth, below, and in Appendix I ("Definitions"), Appendix II ("Legal Description of the Property"), Appendix III ("Legal Description of the Restricted Areas"), Appendix IV "(Work Protocols)", Appendix V ("Cover Inspection Plan"), Appendix VI ("Amendment Protocol") and Appendix VII ("Subordination Agreement Form") to this instrument, all of which are attached hereto and made a part hereof.

1. Definitions. The terms used in the Institutional Controls, including all appendices, shall have the meanings set forth in Appendix I ("Definitions"), or if not defined therein, then as ascribed to them in the Consent Decree, in Section 101 of CERCLA, in the NCP, in Section 2 of Chapter 21E, and/or in the MCP, as applicable.

2. Restricted Activities and Uses. Except as otherwise provided in Paragraph 3 ("Permitted Activities and Uses") and Paragraph 5 ("Emergency Excavation"), Grantor shall not perform, suffer, allow, or cause any person to perform any of the activities or uses set forth below in, on, upon, through, over or under the following Restricted Areas, or portions thereof, which are situated within the Property.

A. Class D Land. The prohibited activities and uses for Class D Land are:

i. excavating, drilling, or otherwise disturbing the Cover and/or the soil underlying the Cover, unless in strict compliance with the Work Protocols;

ii. extracting, pumping, consuming, exposing, or otherwise using groundwater, unless in strict compliance with the Work Protocols;

iii. planting vegetation which would impair the effectiveness of the Cover, including without limitation deep-rooted trees and other vegetation the roots of which would likely grow to breach or otherwise impair the geotextile or geomembrane portion of the Engineered Cover;

iv. commercial or industrial activity or use;

v. residential activity or use;

vi. agricultural activity or use; or

vii. any activity or use which would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation or maintenance of the Remedy;

B. Class C Land. The prohibited activities and uses for Class C Land are:

i. excavating, drilling, or otherwise disturbing the Cover and/or the soil underlying the Cover, unless in strict compliance with the Work Protocols;

ii. extracting, pumping, consuming, exposing or otherwise using groundwater, unless in strict compliance with the Work Protocols;

iii. planting vegetation which would impair the effectiveness of the Cover, including without limitation deep-rooted trees and other vegetation the roots of which would likely grow to breach or otherwise impair the geotextile or geomembrane portion of the Engineered Cover;

iv. residential activity or use;

v. agricultural activity or use; or

vi. any activity or use which would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation or maintenance of the Remedy.

C. Class B Land. The prohibited activities and uses for Class B Land are:

i. excavating, drilling, or otherwise disturbing the soil or ground covering features, including building foundations, slabs and/or underlying soils, unless in strict compliance with the Work Protocols;

ii. extracting, pumping, consuming, exposing or otherwise using groundwater, unless in strict compliance with the Work Protocols;

iii. residential activity or use;

iv. agricultural activity or use; or

v. any activity or use which would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation or maintenance of the Remedy.

D. Class A Land. The prohibited activities and uses for Class A Land are:

i. extracting, pumping, consuming, exposing or otherwise using groundwater, unless in strict compliance with the Work Protocols; or

ii. any activity or use which would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation or maintenance of the Remedy.

3. Permitted Activities and Uses. Grantor expressly reserves the right to perform, suffer, or allow, or to cause any person to perform any activity or use in, on, upon, through, over, or under the Property that is not restricted by the provisions of this Grant. In addition, Grantor may perform, suffer, allow or cause any person to perform the activities and uses set forth below, subject to the conditions set forth below, in, on, upon, through, over or under any of the following Restricted Areas, or portions thereof, which are situated within the Property.

A. Class C Land and Class D Land. The permitted activities and uses for Class C Land and Class D Land are:

i. excavation or other disturbance of the Engineered Cover for the limited purposes of landscaping and horticulture, using only herbaceous and small woody, shallow-rooted plants which will not penetrate or otherwise adversely affect the geotextile or geomembrane portion of the Engineered Cover; and installing, maintaining and repairing fences, irrigation systems and/or exterior lighting systems; subject to the following conditions:

a. such excavation or other disturbance, if within twelve (12) inches of the geotextile or geomembrane, shall be conducted solely by hand (*i.e.*, without the use of any power equipment or power tools);

b. such excavation or other disturbance shall not penetrate the geotextile or geomembrane portion of the Engineered Cover;

c. such excavation or other disturbance, including any associated temporary on-site storage of excavate, shall be conducted in a timely manner;

- d. any disturbed portion of such Engineered Cover shall be restored to its original thickness or greater and to the same type of Cover, both as shown on the As Built Records and/or Cover Certification Report, immediately upon completion of the excavation or other disturbance; and
- e. each project involving work conducted under this provision shall not exceed sixty (60) days in duration; and
- ii. disturbance of the Cover for the purpose of performing Normal Maintenance, subject to the following conditions:
 - a. such disturbance is capable of being conducted, and shall be conducted, without exposing or coming into contact with the soil or ground water underlying the Cover; and
 - b. such disturbance shall not result in a Permanent Cover Modification; and
 - iii. extraction and use of groundwater for the purposes of sampling monitoring wells, provided such extracted groundwater is disposed of in accordance with applicable federal, State or local laws, regulations or ordinances.

B. Class B Land. The permitted activities and uses for Class B Land are:

- i. excavation and backfilling outside the boundaries of Clean Corridors, including the removal of debris and accumulated soil and sediment from drainage areas and structures (*e.g.*, culverts, channels, basins); subject to the following conditions:
 - a. the total volume of material excavated anywhere within the Property shall not exceed ten (10) cubic yards;
 - b. the depth of the excavation shall not exceed three (3) feet;
 - c. such excavation shall only be permitted provided that no soil is disposed of, or is required to be disposed of, off of the Property; and
 - d. such excavation, including any associated temporary on-site storage of excavate, shall be conducted in a timely manner; not to exceed sixty (60) days in duration; and

ii. excavation and backfilling within the boundaries of Clean Corridors, subject to the following conditions:

a. such excavation shall only be permitted within the bounds of the geotextile or other material bounding the Clean Corridors, and shall not penetrate such geotextile or other material nor otherwise disturb the soil or other material outside such bounds; and

b. such excavation, if within twelve (12) inches of the geotextile, shall be conducted solely by hand (i.e., without the use of any power equipment or power tools); and

iii. extraction and use of groundwater for the purposes of sampling monitoring wells, provided such extracted groundwater is disposed of in accordance with applicable federal, State or local laws, regulations or ordinances.

C. Class A Land. The permitted activities and uses for Class A Land are:

i. extraction and use of groundwater for the purposes of sampling monitoring wells, provided such extracted groundwater is disposed of in accordance with applicable federal, State or local laws, regulations or ordinances.

D. The provisions of this Paragraph 3 (“Permitted Activities and Uses”) shall not release Grantor or any other party from liability for releases of oil or hazardous substances, nor shall this provision excuse Grantor or any other party from complying with CERCLA, Chapter 21E, or any other applicable federal, State or local laws, regulations or ordinances.

4. Obligations and Conditions. Grantor, at its sole cost and expense (except where otherwise noted in the subparagraphs, below), affirmatively agrees to perform and satisfy the following obligations and conditions.

A. Inspection, Inspection Report. Grantor shall engage an Independent Professional or a Professional Engineer (P.E. Civil), who shall: (i) familiarize himself with the Property and that portion of the Remedy situated on the Property and on any abutting properties, including the restrictions on uses and activities established in this Grant and any related construction plans and documentation (including, if the Property contains any Class C Land or Class D Land, the As Built Records and/or the Cover Certification Report); (ii) conduct periodic visual, non-intrusive inspections of the Restricted Areas to ensure that Grantor is in compliance with these restrictions; and, (iii) if the Property contains any Class C Land or Class D Land, also conduct periodic visual, non-intrusive inspections of the Cover in order to monitor its condition and protectiveness to ensure that it is

maintained in accordance with the As Built Records and/or the Cover Certification Report, as the case may be.

i. All required inspections shall be conducted at least once every calendar year during the three-month period beginning on March 1st and ending on May 31st, or with such greater frequency as the Independent Professional or Professional Engineer, Grantee, or Grantor may determine is warranted taking into consideration the particular uses and activities at the Property and, if applicable, the condition of the Cover; and, if the Property contains any Class C Land or Class D Land, within seven (7) days of receipt of written notice from Grantee of the occurrence of a twenty-five (25) year, twenty-four (24) hour storm event; or, with the written approval of Grantee, with such lesser frequency as Grantee, in its sole discretion, may determine is warranted taking into consideration the particular uses and activities at the Property.

ii. No later than fourteen (14) days after conducting each required inspection, Grantor shall submit to Grantee, with a copy to EPA and Settlers, a written inspection report, prepared by the Independent Professional or Professional Engineer who performed the inspection, summarizing the results of the inspection and stating whether Grantor is in compliance with the restrictions and, if applicable, whether the Cover is in good condition and repair, and including any supporting information upon which such determinations are based, as applicable. Each such inspection report shall include a written statement, signed by Grantor, stating that (a) Grantor has personally reviewed the inspection report and that (b) the inspection report is true, accurate and complete. If Grantor is a corporate entity, a duly authorized officer of the corporation shall sign the inspection report on behalf of Grantor.

iii. All inspections and reports required for Class C Land and Class D Land pursuant to this subparagraph 4.A. shall be performed and prepared, respectively, in accordance with the Cover Inspection Plan, set forth in Appendix V ("Cover Inspection Plan") to this Grant.

B. Normal Maintenance. The provisions of this subparagraph 4.B. shall only apply if the Property contains Class C Land or Class D Land. Grantor shall perform Normal Maintenance of Class C Land and Class D Land, in a timely fashion as required to maintain the integrity and effectiveness of that portion of the Remedy situated on the Property, and no later than ninety (90) days from the time when Grantor first knows or reasonably should have known of the condition requiring the performance of such Normal Maintenance. In determining whether Normal Maintenance is needed, and in the performance of Normal Maintenance, Grantor shall consider not only information that a landowner would ordinarily possess, but also information contained in the Cover Certification Report and obtained during the inspections performed at the Property pursuant to subparagraph 4A. ("Inspection, Inspection Report").

i. Provided, however, that in the event that Grantor believes that such Normal Maintenance is needed as the result of a Defect in the Remedy, then in lieu of performing such Normal Maintenance within the required time period set forth above, Grantor may instead, within the same time period, submit a written request to EPA for a determination under the Consent Decree of whether such Normal Maintenance is needed as the result of a Defect in the Remedy. Grantor shall provide a copy of such submittal to Grantee and Settlers. Grantor's submittal shall include a written statement by an Independent Professional asserting that, in his or her professional opinion, the need for such Normal Maintenance is due to a Defect in the Remedy, and explaining the basis for such opinion. This statement must be signed by the Independent Professional, and must be accompanied by his or her supporting analysis, and other documentation as appropriate. The time period for this submittal may only be extended with the prior, written approval of Grantee. Failure to fully comply with the requirements of this provision shall automatically waive any right that Grantor may otherwise possess to delay or excuse performance of the required Normal Maintenance.

ii. If EPA determines, pursuant to the Consent Decree, that such Normal Maintenance is needed as the result of a Defect in the Remedy, then Grantor's obligations to fund and perform such Normal Maintenance shall be determined (along with those of other parties bound under Section IV.A of the Consent Decree) pursuant to and in accordance with the terms and provisions of the Consent Decree and its appendices, including without limitation Sections VII.A, VII.B, VII.C(8) and X.D of the Consent Decree and Section F.3.e of Appendix I (Remedial Design/Action Plan) of the Consent Decree. Otherwise, Grantor shall fund and perform such Normal Maintenance in accordance with the terms and provisions of this Grant.

iii. Nothing herein is intended to impair or otherwise affect whatever rights Grantor may possess pursuant to the Consent Decree, if any, to pursue and obtain recovery from any other person or entity for costs associated with Normal Maintenance.

C. Operation and Maintenance Plan. The provisions of this subparagraph 4.C. shall only apply if the Property contains Class C Land or Class D Land. Grantor shall fund and implement the activities required by the Operation and Maintenance Plan at the Property, in accordance with the terms and provisions of the Consent Decree, including without limitation its appendices. The provisions of this Grant shall not limit or modify any additional obligations to perform such activities on the Property or elsewhere within the Site, to which Grantor may be subject under the Consent Decree, including without limitation its appendices.

D. Remedy Failure: Preliminary Action, Notification and Repair. The provisions of this subparagraph 4.D shall only apply if the Property contains Class C Land or Class D Land.

i. In the event of any Remedy Failure, Grantor shall immediately implement such preliminary action as is reasonably necessary to prevent potential human exposure to, and/or releases of, soil and/or groundwater due to the Remedy Failure.

ii. Unless the work necessary to repair the Remedy Failure falls within the definition of Normal Maintenance, Grantor shall notify Grantee, EPA, and other Settlers of such Remedy Failure, orally no more than twenty-four (24) hours from the time Grantor first knows or reasonably should have known of such Remedy Failure, and in writing no more than five (5) business days from the time that Grantor first knows or reasonably should have known of such Remedy Failure.

iii. Grantor shall, within twenty-one (21) days of such written notification, prepare and submit to Grantee, with a copy to EPA and Settlers, a work plan for the repair of the Remedy Failure, in accordance with the Work Protocols. After submittal of such work plan and any review and approval required pursuant to the Work Protocols, Grantor shall promptly conduct the repair in accordance with such work plan and otherwise comply with all applicable requirements of the Work Protocols.

iv. Provided, however, that in the event that Grantor believes that such Remedy Failure is the result of a Defect in the Remedy, then in lieu of submitting such work plan within twenty-one (21) days of the date when such written notification is due, Grantor may instead, within the same time period, submit a written request to EPA for a determination under the Consent Decree of whether such Remedy Failure is the result of a Defect in the Remedy. Grantor shall provide a copy of such submittal to Grantee and Settlers. Grantor's submittal shall include a written statement by an Independent Professional asserting that, in his or her professional opinion, the Remedy Failure is the result of a Defect in the Remedy, and explaining the basis for such opinion. This statement must be signed by the Independent Professional, and must be accompanied by his or her supporting analysis, and other documentation as appropriate. The time period for this submittal may only be extended with the prior, written approval of Grantee. Failure to fully comply with the requirements of this provision shall automatically waive any right that Grantor may otherwise possess to delay or excuse submittal of the work plan for the repair of the Remedy Failure and to conduct such repair.

v. If EPA determines, pursuant to the Consent Decree, that such Remedy Failure is the result of a Defect in the Remedy, then Grantor's obligations to fund and perform response actions to cure the Remedy

Failure, beyond those response actions taken pursuant to subparagraph 4.D.i., above, shall be determined (along with those of other parties bound under Section IV.A of the Consent Decree) pursuant to and in accordance with the terms and provisions of the Consent Decree and its appendices, including without limitation Sections VII.A, VII.B, VII.C(8) and X.D of the Consent Decree and Section F.3.e of Appendix I (“Remedial Design/Action Plan”) to the Consent Decree. Otherwise, Grantor shall fund and perform response actions to cure such Remedy Failure in accordance with the terms of this Grant.

vi. Nothing herein shall impair or otherwise affect whatever rights Grantor may possess pursuant to the Consent Decree, if any, to pursue and obtain recovery from any other person or entity for costs incurred to cure a Remedy Failure.

E. Notification of Other Violations. Grantor shall timely notify Grantee and EPA of any violation of this Grant of which Grantor becomes aware, except to the extent otherwise required or waived in subparagraph 4.D, above.

F. Permit and Approval Related Notifications.

i. Grantor, at the time that it submits any application to obtain a permit or approval from any governmental or other authority for any use or activity within the Restricted Areas, shall provide that authority with a copy of this Grant and with written notification of the nature and extent of the restrictions on uses and activities established herein.

ii. Grantor, at the time that it submits any building permit application for construction within the Restricted Areas to the City of Woburn, shall submit to Grantee and EPA a copy of its building permit application, and, upon receipt, a copy of any certificate of use and occupancy or other final permit or approval issued in connection with its building permit application.

5. Emergency Excavation. In the event that it becomes necessary to excavate a portion of the Restricted Areas as part of a response to an emergency (*e.g.*, emergency repair of utility lines, pipes, wires, conduits or related structures, or responding to a fire or flood), then the activity and use restriction provisions of Paragraph 2 (“Restricted Activities and Uses”), which would otherwise restrict such excavation, shall be temporarily suspended with respect to such excavation for the duration of the response, provided that Grantor satisfies the following requirements:

A. orally notifies the following persons of such emergency as soon as possible but no later than two (2) hours after having learned of such emergency:

i. MassDEP Northeast Regional Office of Emergency Response Section;

ii. EPA Office of Emergency Planning and Response;

or such other persons as Grantee or EPA, respectively, may each identify in writing, from time to time, to Grantor for such emergency response notifications;

B. notifies Grantee and EPA in writing of such emergency no later than five (5) days after having learned of such emergency, with a copy to Settlers;

C. limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;

D. implements all measures necessary to limit actual or potential risk to human health, safety, public welfare or the environment;

E. manages and disposes of any soils, sediments, and/or groundwater removed in connection with such excavation in accordance with Paragraph 14 (“Materials Management and Sampling Protocol”) of the Work Protocols;

F. reinstates the Cover, if applicable, in accordance with Paragraph 15 (“Cover and Clean Corridors Protocol”) of the Work Protocols;

G. engages an Independent Professional to oversee the implementation of the activities required in subparagraphs 5.C. through 5.F.; and

H. no later than thirty (30) days following the date of the emergency, submits to Grantee and EPA a written emergency excavation report prepared by an Independent Professional documenting that the excavation activity conducted as part of the emergency response was conducted in compliance with this Paragraph 6 (“Emergency Excavation”). This report shall contain, at a minimum, the following:

i. the name and address of Grantor, the Independent Professional and, if different, the person that conducted the emergency response;

ii. a detailed description of the nature of the emergency, the emergency response and the time frame within which it occurred;

iii. the address where the emergency response took place, and a map illustrating the location of the emergency response;

iv. all monitoring data, sampling analytical results, disposal location(s), and soil and groundwater volume estimates, if applicable, obtained, used and/or developed in connection with the emergency response. If the emergency response involved the disposal of Contaminated Soil or Contaminated Groundwater off of the Site, then a

copy of the documentation evidencing the disposal facility's acceptance of the media and all other transport manifest documentation;

v. the written opinion of an Independent Professional stating that all of the requirements of subparagraphs 5.D., 5.E. and 5.F., above, if applicable, have been satisfied.

6. Grant of Easement.

A. In establishing this Grant, Grantor hereby grants to Grantee, and to its agents, contractors, subcontractors and employees, a perpetual easement to pass and repass in, on, upon, through and, across, over and under the Property; for the following purposes:

i. inspecting the Property and the Remedy to ensure compliance with and fulfillment of, including enforcement of, the terms of this Environmental Restriction and Easement;

ii. conducting surface and subsurface investigations;

iii. installing and sampling groundwater monitoring wells;

iv. conducting other intrusive and non-intrusive investigations and activities consistent with CERCLA, the NCP, Chapter 21E and the MCP;

v. performing operations and maintenance activities for the Remedy and/or as set forth in any operations and maintenance plan developed pursuant to the Consent Decree;

vi. performing response actions in connection with the Remedy;
and

vii. conducting any other activity required by the Consent Decree or future remedial actions.

B. The foregoing grant of easement is made subject to and conditioned upon the following:

i. Grantor acknowledges that Grantee's exercise of its rights granted hereunder may interfere with Grantor's use and enjoyment of the Property, and/or may require temporary closure of a portion of the Property;

ii. Grantor shall cooperate fully with Grantee in the exercise of the foregoing easement rights, and shall not interfere with the actions taken in furtherance of the exercise of the easement;

iii. Grantee, consistent with its responsibilities under applicable law, shall use reasonable efforts to minimize interference with the Grantor's operations on and/or use of the Property;

iv. Grantee shall make reasonable efforts to provide advance notice to Grantor of any physically intrusive investigations and remediation activities either intends to conduct at the Property pursuant to its easements, unless such activities are conducted as part of an emergency and/or enforcement activities, as Grantee, in its sole discretions, may determine; and

v. Grantor shall have the right, upon timely request and at its own cost and expense, to obtain a split sample of any sample obtained by Grantee pursuant to the easement, unless such sample is obtained as part of an emergency and/or enforcement activities, as Grantee, in its sole discretions, may determine.

7. Construction and Severability.

A. This instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policies and purposes of CERCLA and/or Chapter 21E. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

B. In the event that any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event that the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

8. Enforcement.

A. Grantee, its successors and assigns, shall have the right to enforce the terms and conditions of this instrument, including without limitation the right to enforce Grantor's obligation to perform its duties and obligations hereunder. If Grantee, in its sole discretion, elects to perform response actions it deems necessary to cure any violation of this Grant, all costs and expenses for such response actions shall be assessed against Grantor, as follows. Grantee shall submit an itemized bill for work performed to Grantor, who shall remit payment therefor within thirty (30) days of receipt, unless another time or schedule is agreed upon by both parties. Such costs may include the costs and expenses to collect any repayment, together with Interest thereon, and all costs and expenses

of any related proceedings at law or in equity, including court costs and attorney's fees plus Interest.

B. Grantor expressly acknowledges that a violation of the terms of this instrument could result in the following:

i. the assessment of penalties, including without limitation stipulated penalties pursuant to Paragraph 9 (“Stipulated Penalties”), and other action by Grantee to enforce the terms of this Grant, pursuant to M.G.L. c. 21E and its implementing regulations, and other law and regulations, as applicable; and/or

ii. upon a determination by a court of competent jurisdiction, the issuance of criminal and civil penalties, and/or equitable remedies which could include the issuance of an order to modify or remove any improvements constructed in violation of the terms of this Grant at Grantor’s sole cost and expense, and/or to reimburse Grantee for any costs incurred in modifying or removing any improvement constructed in violation of the terms of this Grant.

C. All reasonable costs and expenses of Grantee, including but not limited to, attorney’s fees, incurred in any such enforcement action shall be borne by Grantor, to the extent not inconsistent with Chapter 21E and/or any other applicable law.

D. Notwithstanding any other provision of this instrument, all rights and remedies (including without limitation sanctions and penalties) available hereunder shall be in addition to, but not in lieu of, any and all rights and remedies (including without limitation sanctions and penalties) at law or in equity, including CERCLA or Chapter 21E, and/or pursuant to the Consent Decree, which rights and remedies Grantee fully reserves. Enforcement of the terms of this instrument, including without limitation Paragraph 9 (“Stipulated Penalties”), shall be at the discretion of Grantee, and any forbearance, delay or omission to exercise its rights under this instrument shall not be deemed to be a waiver by Grantee of such term or any subsequent breach of the same or any other term, or of any of the rights of Grantee under this instrument.

9. Stipulated Penalties.

A. In the event that Grantor violates a provision of the Grant, Grantor shall pay to Grantee stipulated penalties in the following amounts for each day of each and every such violation:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 st through 7 th day	\$ 750.00
8 th through 14 th day	\$1,500.00

15 th through 28 th day	\$2,500.00
29 th through 60 th day	\$4,000.00
Beyond 60 days	\$8,000.00

B. Stipulated penalties shall begin to accrue on the day that performance is due or noncompliance occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Grant.

C. All penalties due to Grantee under this Paragraph shall be paid within forty-five (45) days of receipt by Grantor of notification of noncompliance from Grantee. Interest shall begin to accrue on the unpaid balance at the end of the 45-day period.

D. Stipulated penalties due to Grantee shall be paid by certified check payable to the Commonwealth of Massachusetts and shall be submitted by reliable overnight delivery service, delivered in hand or mailed by postage-paid registered or certified mail, return receipt requested to:

Office of the Attorney General
Chief, Environmental Protection Division
One Ashburton Place
Boston, MA 02108.

E. Each check in payment of stipulated penalties shall be marked with:

- i. a reference to the Industri-Plex Site;
- ii. Civil Action Number 89-0196-MC; and
- iii. shall state that it is for stipulated penalties pursuant to this Grant.

F. Grantee may, in its sole discretion, waive or suspend the accrual of any stipulated penalties due to it under this Paragraph 9 (“Stipulated Penalties”).

10. Compliance Status Requests. Grantor may submit a written request to Grantee for a written statement of the status of Grantor’s compliance with this Grant based on information then in Grantee’s possession, such as the inspection reports submitted pursuant to subparagraph 4.A. Grantee shall make best efforts to respond to up to two such requests per annum, within thirty (30) days of receipt.

11. Self-Executing. This instrument is intended and is hereby declared to be self-executing, and shall not be deemed or construed to be personal or executory (within the meaning of any provision of the Federal Bankruptcy Code or similar law of any jurisdiction whether now existing or hereafter arising).

12. Provisions to Run with the Land. The land use restrictions, obligations, access rights and related rights, provided in this Grant, establish certain rights, liabilities, agreements and obligations upon and subject to which the Property or any portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered or conveyed. The rights, liabilities, agreements and obligations herein set forth shall run with the Property for the term of this instrument, as applicable thereto, and any portion thereof, and shall inure to the benefit of Grantee, its successors and assigns, and be binding upon Grantor and all parties claiming by, through or under Grantor. Grantor hereby covenants for himself and his heirs, successors and assigns, to stand seized and hold title to the Property, or any portion thereof, subject to these land use restrictions and access rights, and related rights; provided, however, that a violation of these land use restrictions and access rights, and related rights, shall not result in a forfeiture or reversion of Grantor's title to the Property.

13. Concurrence Presumed. It is agreed that:

A. Grantor and all parties claiming by, through or under Grantor shall be deemed to be in accord with the provisions herein set forth; and

B. Grantor and all such parties agree for and among themselves and any party claiming by, through or under them, and their respective agents, contractors, subcontractors and employees, that the land use restrictions, obligations, and access rights, and related rights, herein established, shall be adhered to and not violated and that their respective interests in the Property shall be subject to the provisions herein set forth.

14. Incorporation into Deeds, Mortgages, Leases & Instruments of Transfer. Grantor hereby agrees to incorporate this instrument, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Property, or any portion thereof, is conveyed; provided, however, that any failure of Grantor to do so shall not affect the validity or applicability of the provisions of Paragraph 12 (“Provisions to Run With the Land”).

15. Amendment and Release.

A. Grantor may amend this instrument, including without limitation any of its appendices or the Plan of Restricted Areas, only with the prior, written approval of Grantee. Grantor further agrees to execute any amendment to this instrument which Grantee reasonably deems necessary to maintain the continued effectiveness of the Remedy in order to protect human health and the environment. All amendments shall include Grantee’s signed approval and shall become effective upon Recordation and/or Registration.

B. Grantor may propose to Grantee, with a copy to EPA and Settlers, an amendment of an activity or use restriction set forth in Paragraph 2 (“Restricted

Activities and Uses”), including a change in Class of Land of all or a portion of the Property, or of a permitted activity or use set forth in Paragraph 3 (“Permitted Activities and Uses”), based upon changed circumstances including without limitation new analytic and engineering data. In the event that Grantor requests such an amendment, Grantor shall comply with the provisions of the Amendment Protocol, set forth in Appendix VI (“Amendment Protocol”) to this Grant.

C. Release. Grantee may release its interest in the Grant, in whole or in part, in its sole discretion, and in accordance with Chapter 21E. Any such release shall become effective upon its Recordation and/or Registration.

D. Recordation and/or Registration. Grantor hereby agrees to Record and/or Register any amendment to and/or release of this instrument, or other document created pursuant to this instrument for which Recording and/or Registration is required, within thirty (30) days of the date of having received from Grantee any such amendment, release or other such document executed by Grantee and/or evidencing Grantee’s approval, as appropriate, in recordable form. No more than thirty (30) days from the date of Recording and/or Registering of said amendment, release and/or other such document, Grantor shall provide a Registry certified copy of the amendment, release and/or other such document, evidencing the official, final Recording and/or Registration information thereon, to Grantee and the Document Repository, with a copy to EPA and Settlers. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment or release.

E. Notice to Local Officials. In accordance with the requirements set forth in 310 C.M.R. §40.1403(7), as amended, and within thirty (30) days after Recording and/or Registering any such amendment, release, or other such document, Grantor shall: (i) provide the City of Woburn’s Chief Municipal Officer, Board of Health, Zoning Official and Building Code Enforcement Official with copies of such Recorded and/or Filed amendment, release or other such document; (ii) publish a legal notice indicating the Recording and/or Registering of such amendment, release or other such document, and including the information described in 310 C.M.R. §40.1403(7)(b)(1), in a newspaper which circulates in the City of Woburn; and (iii) provide copies of said legal notice to Grantee within seven (7) days of its publication.

16. No Dedication Intended. Nothing in this instrument shall be construed to be a gift or dedication of the Property to Grantee or to the general public for any purpose whatsoever.

17. Term. This Grant shall run with the land in perpetuity and is intended to conform to the exception for “other restrictions held by any governmental body” set forth in clause (c) of the first paragraph of M.G.L. c. 184, § 26, as amended.

18. Rights Reserved.

A. It is expressly agreed that acceptance of this instrument by Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of Grantee to issue any future order or take any future response action with respect to the Property or in any way affect any other claim, action, suit, cause of action, or demand which Grantee may otherwise possess with respect thereto.

B. Nothing in this document shall limit or otherwise affect the rights of EPA or MassDEP to obtain access to, or restrict the use of, the Property pursuant to CERCLA, Chapter 21E, or any other applicable statute or regulation.

19. No Waiver. Except as otherwise provided herein, no delay by any party to this instrument in exercising any right or remedy provided herein shall constitute a waiver thereof, and no waiver by a party to this instrument of any specific provision hereof shall be construed as a waiver of any preceding or succeeding violation of the same or any other provision hereof.

20. Assignment. This Grant, including without limitation all easements, rights, covenants, obligations and restrictions inuring to the benefit of Grantee, herein contained, shall be freely assignable by Grantee, in whole or in part, at any time.

21. Authority. Grantor represents and warrants that he, she or it has been duly authorized by all necessary action to execute this instrument. Grantor represents and warrants that he, she or it has good, clear, record title to the Property, free and clear of all matters of record which could extinguish, through foreclosure or otherwise, this Grant, except for bona fide, third-party encumbrances of record duly Recorded and/or Filed prior to the Effective Date of this instrument which have been, or will be, expressly subordinated to this instrument pursuant to a subordination agreement.

22. Interpretation of Words. Any word or defined term contained in this instrument shall be read as singular, plural, masculine, feminine or neuter as the context so requires.

23. Notices; Changes of Address.

A. General. Any notice, delivery or other communication permitted or required under this instrument, including those notices made pursuant to subparagraphs 23.B. through 23.E., inclusive, unless otherwise provided in this instrument, shall be in writing and sent by reliable overnight delivery service, delivered in hand or mailed by postage-paid registered or certified mail, return receipt requested. Upon instruction from Grantee, a duplicate or electronic copy shall be included with any submittal. Notices or other communications shall be deemed given, if by overnight delivery service, on the first business day following deposit with such delivery service; if by hand, on the date of the receipt evidencing the hand delivery thereof; or, if by registered or certified mail, three (3) days after deposit in the United States mails; provided that notice of change of address shall be deemed effective only upon receipt.

B. Grantee, MassDEP and EPA. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to (i) Grantee or MassDEP, and/or (ii) EPA, as the case may be, it shall be directed to both MassDEP and EPA, to the individuals at the addresses specified below, or as otherwise directed in writing by MassDEP and/or EPA, respectively.

As to MassDEP:

Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 8th Floor
Boston, MA 02108

Attention: Industri-Plex Superfund Site Project Manager

As to EPA:

EPA Remedial Project Manager
Industri-Plex Superfund Site, Woburn, Massachusetts
United States Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (MC OSRR07-4)
Boston, MA 02109-3912

and to:

EPA Enforcement Counsel
Industri-Plex Superfund Site
United States Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (MC OSRR04-4)
Boston, MA 02109-3912

C. Settlers. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to Settlers, it shall be directed to the individual at the address specified below, or as otherwise directed in writing by Settlers:

Industri-Plex OU-1 Coordinator
for the Industri-Plex Site Remedial Trust
c/o Randall Cooper, P.E.
Environmental Remediation Manager
Monsanto Company
800 North Lindbergh Blvd.
St. Louis, MO 63167

D. Grantor. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to Grantor, it shall be directed to the individual at the address specified below:

[Note: fill in name and address of owner of the Property:]

E. Changes of Address. Grantor shall notify Grantee, EPA, and Settlers of any change of the mailing address specified above. Any party giving such notice shall do so in writing, within thirty (30) days of such change in address. Such notice shall be effective upon receipt, unless such notice provides for a later effective date (*e.g.*, in the case of advance notice).

24. Changes in Ownership. In the event of a change in record ownership of all or a portion of the Property, or beneficial ownership of Grantor the transferor and the transferee of such interest shall notify Grantee of such transfer in writing, with a copy to EPA. The transferor's obligation to notify of such change in ownership shall survive such transfer.

A. Such notification shall include, at a minimum:

i. the name and address of the transferor and the transferee of such interest;

ii. the address of the subject Property and a statement as to whether all or a portion of the Property has been transferred;

iii. a Registry certified copy of the instrument of transfer, evidencing the official, final Recording and/or Registration information thereon;

iv. if only a portion of the property has been transferred, a Registry certified copy of the survey plan of record with the Registry of Deeds and/or Land Registration Office, evidencing the official, final Recording and/or Registration information thereon, stamped and signed by a Massachusetts registered land surveyor, identifying such portion; and

v. identification of the Industri-Plex Superfund Site, EPA Site Identification Number MAD076580950 and MassDEP Release Tracking No. 3-0001731.

B. Such notification shall be submitted no later than thirty (30) days after the date of transfer of such interest.

25. Governing Law; Captions. This instrument shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts and of the United States, as applicable. All captions and headings contained in this instrument are for convenience of reference only, and shall not be used to govern or interpret the meaning or intent of any provision of this document.

26. Effective Date. This instrument shall become effective upon its Recordation and/or Registration.

No more than thirty (30) days from the date of Recording and/or Registration, Grantor shall provide Grantee with a certified Registry and/or Land Registration Office copy of this instrument. At that time, or as soon as practicable thereafter, Grantor shall provide Grantee with a copy of this instrument, as recorded, certified by said Registry and/or Land Registration Office, with a copy to EPA and Settlers.

As the Commonwealth of Massachusetts is a party to this instrument, no Massachusetts deed excise tax stamps are affixed hereto, none being required by law (M.G.L. Chapter 64D, Section 1, as amended).

WITNESS the execution hereof under seal this _____ day of _____,
20____.

GRANTOR:

(print name)

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

[Seal]

[Note: or, use corporate form signature block and acknowledgement, etc., as appropriate:]

WITNESS the execution hereof under seal this _____ day of _____,
20____.

GRANTOR:

[name of corporate entity]

By: _____

(print name)

Its: _____
(print title)

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were

_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, as _____ [Note: insert above title] for _____ [Note: insert above corporate name], a corporation.

Notary Public
My commission expires:

[Seal]

In accordance with M.G.L. c. 21E, §6, as amended, the Commissioner of the Department of Environmental Protection hereby approves the Grant.

Kenneth L. Kimmell
Commissioner
Dept. of Environmental Protection

Date: _____

Upon recording, return to:

Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 6th Floor
Boston, MA 02108

Attention: Industri-Plex Superfund Site Project Manager

APPENDIX I – Definitions

1. Definitions. The following terms shall have the meanings set forth, below:

A. “As Built Records” shall mean the engineering drawings and other records, as amended, which depict the location and details of Clean Corridors and/or that portion of the Remedy situated within the Property as constructed, or otherwise designated, a copy of which is on file at the Document Repository.

B. “Business Day” shall mean a calendar day, exclusive of those calendar days which fall on a Saturday, Sunday or federal holiday.

C. “Class A Land” shall mean that portion of the Property, if any, identified as Class A Land on the Plan of Restricted Areas; a legal description thereof by metes and bounds being set forth in Appendix III (“Legal Description of the Restricted Areas”). Class A Land may contain Contaminated Groundwater.

D. “Class B Land” shall mean that portion of the Property, if any, identified as Class B Land on the Plan of Restricted Areas; a legal description thereof by metes and bounds being set forth in Appendix III (“Legal Description of the Restricted Areas”). Class B Land may contain Contaminated Soil and Contaminated Groundwater.

E. “Class C Land” shall mean that portion of the Property, if any, identified as Class C Land on the Plan of Restricted Areas; a legal description thereof by metes and bounds being set forth in Appendix III (“Legal Description of the Restricted Areas”). Class C Land contains Contaminated Soil and Cover, and may contain Contaminated Groundwater.

F. “Class D Land” shall mean that portion of the Property, if any, identified as Class D Land on the Plan of Restricted Areas; a legal description thereof by metes and bounds being set forth in Appendix III (“Legal Description of the Restricted Areas”). Class D Land contains Contaminated Soil and Cover, and may contain Contaminated Groundwater. Class D Land also comprises the East, West, East-Central and South Hide Piles, as shown on the As Built Records; and the location of which are generally depicted on the Plan of Restricted Areas.

G. “Clean Corridors” shall mean all soil or other material, bounded below and to the sides by geotextile or other material as shown on the As Built Records, and bounded above by those portions of the Property, if any, referred to as Clean Corridors on the Plan of Restricted Areas. Clean Corridors are situated within Class B Land and are constructed so as to clearly delineate their boundaries. Generally, Clean Corridors provide an area which does not contain Contaminated Soil, where work may be performed, usually related to utilities or other infrastructure that require frequent access for maintenance.

H. "Contaminated Groundwater" shall mean any groundwater within the Site contaminated with arsenic, chromium, lead, benzene, toluene or other hazardous materials and/or substances exceeding applicable local, State and/or Federal standards.

I. "Contaminated Soil" shall mean soil, sediment, fill or other earthen material within the Site containing arsenic at or above a concentration of three hundred (300) parts per million; lead at or above a concentration of six hundred (600) parts per million; chromium at or above a concentration of one thousand (1000) parts per million; and/or animal hides, or their constituents, from which emanate odors.

J. "Cover" shall mean Engineered Cover and Equivalent Cover, collectively.

K. "Cover Certification Report" shall mean a report prepared for the Property containing such information as is necessary to document the completion of the Cover situated on the Property, as amended, including the As Built Records, as applicable, and/or other construction and survey plans, and quality assurance and control documentation, a copy of which is on file at the Document Repository.

L. "Cover Inspection Plan" shall mean the plan set forth in Appendix V ("Cover Inspection Plan"), attached hereto and made a part hereof.

M. "Day" or "Days" shall mean a calendar day or days, except where expressly otherwise provided.

N. "Defect in the Remedy" shall mean any lack, insufficiency or imperfection in the design or construction of the Remedy, excluding Equivalent Cover, under conditions and use for which the Remedy was designed (but for such lack, insufficiency or imperfection), which results in or may result in a Remedy Failure.

O. "Document Repository" shall mean the records center located at the Woburn Public Library, at 45 Pleasant Street in Woburn, MA, and the EPA Records Center, located at US EPA Region I at 5 Post Office Square – Suite 100 in Boston, MA, established for the Site pursuant to the ROD and/or Consent Decree. The Document Repository contains documents, drawings, reports, data, specifications and other pertinent detailed information pertaining to the Remedy, the Consent Decree and related documents.

P. "Effective Date" shall mean the date of Recordation and/or Registration of this Environmental Restriction and Easement, as the case may be.

Q. "Emergency Excavation Report" shall mean a written report prepared in accordance with the requirements of Paragraph 5 ("Emergency Excavation") of the Grant.

R. “Engineered Cover” shall mean all physical barriers situated in, on, or under those portions of the Property, if any, referred to as Engineered Cover on the Plan of Restricted Areas. Engineered Cover was designed and constructed by the Industri-Plex Site Remedial Trust as part of the response activities at the Site to prevent exposure to Contaminated Soil on Class C Land and Class D Land, as shown on the original As Built Records, or as shown on approved permanent modifications to those As Built Records. Engineered Cover may be comprised of one or more of the following materials: geotextile, geomembrane, soil, gravel, bituminous concrete and/or asphalt.

S. “Equivalent Cover” shall mean all physical barriers preventing exposure to underlying soil, sediment, fill or other earthen material within the Site, situated in, on, or under those portions of the Property, if any, referred to as Equivalent Cover on the Plan of Restricted Areas. Equivalent Cover, although not designed as part of the Engineered Cover, functions to prevent exposure to Contaminated Soil on Class C Land and Class D Land, as shown on the original As Built Records, or as shown on approved permanent modifications to those As Built Records. Equivalent Cover may be comprised of one or more of the following ground covering structures or features, or portions of such structures or features: buildings; foundations; slabs; paved driveways, walkways, parking lots and/or roads; or other such ground covering structures or features.

T. “Gas Treatment System” shall mean that part of the Remedy which consists of physical structures constructed on or beneath the Site, including ancillary structures and improvements, which are situated on the Property, if any, for the purposes of collecting, treating and controlling odors which might otherwise emanate from the East Hide Pile, as shown on the As Built Records; and the location of which is generally depicted on the Plan of Restricted Areas.

U. “Hazardous Substances” shall mean any substance defined as a “hazardous substance,” “pollutant” or “contaminant” under CERCLA; a “hazardous waste” under Section 1004(5) of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6903; a “hazardous material” under Section 2 of Chapter 21E; and/or animal hides, or their constituents, from which emanate odors.

V. “Independent Professional” shall mean a person who is a licensed Hazardous Waste Site Cleanup Professional, pursuant to M. G. L. c. 21A and 309 C. M. R. §§ 1.0 to 8.0 (a “Licensed Site Professional” or “LSP”), and either (i) is also a Professional Engineer (P.E., Civil), licensed by the Massachusetts Board of Registration of Professional Engineers and Professional Land Surveyors, pursuant to M. G. L. c.112 §§ 81D to 81T and implementing regulations; or (ii) is acting, as necessary, in reliance on such a Professional Engineer (P.E., Civil) and other professionals, as needed. In addition, an Independent Professional shall be familiar with the requirements of this Grant of Environmental Restriction and Easement, including its appendices.

W. “Interest” shall mean twelve (12) percent per annum, as set forth in Section 13 of Chapter 21E.

X. "Interim Groundwater Remedy" shall mean that portion of the Remedy which consists of any and all physical structures, including any ancillary structures and improvements, now or hereafter constructed on or beneath the surface of the Site, which are situated on the Property, for the interim groundwater remedy required by the Consent Decree, as more particularly set forth in Paragraph D ("Groundwater Remedy") of Appendix I ("Remedial Design/Action Plan") to the Consent Decree, as now or hereafter are or may be shown on the As Built Records; and the location of which is or may be generally depicted on the Plan of Restricted Areas. The Interim Groundwater Remedy may include, without limitation, facilities for capturing and treating contaminated groundwater; discharging the treated groundwater; and/or monitoring.

Y. "Normal Maintenance" shall mean any and all activities a landowner would routinely need to perform in order to keep his or her property in good condition and repair, exclusive of repair of damage to the geotextile or geomembrane portion of the Engineered Cover. For purposes of this instrument, Normal Maintenance may include, without limitation, activities such as lawn cutting, watering and reseeding; repair of erosion and filling in ruts; bituminous or concrete pavement and asphalt seal coating, bituminous or concrete pavement and asphalt stripe painting, overlaying bituminous or concrete pavement and asphalt, sealing cracks and filling potholes; maintaining and repairing interior building sumps, sump pumps and drainage systems; maintaining and repairing building foundations; removal of unwanted vegetation; removal of debris and accumulated soil and sediment from drainage areas and structures (*e.g.*, culverts, channels, basins).

Z. "Operation and Maintenance Plan" shall mean Chapter 19, including tables and appendices, of the document entitled "100% Remedial Design, Part I, Volume 1," prepared by Golder Associates, dated April 22, 1992, and approved by EPA and DEP in two letters from Joseph DeCola, EPA Project Manager and Jay Naparstek, DEP Project Manager, to Dave L. Baumgartner, ISRT Project Manager, dated March 11, 1993 and May 19, 1993, copies of which are on file at the Document Repository. Chapter 19 includes, without limitation, an Inspection Plan, a Maintenance Plan and a Monitoring Plan.

AA. "Permanent Cover Modification" shall mean a permanent change to the Cover, such that the Cover has been altered from that depicted in the As Built Records, the Cover Certification Report and/or on the Plan of Restricted Areas.

BB. “Plan of Restricted Areas” shall mean the plan consisting of three (3) sheets, entitled “Plan of Restricted Areas” prepared for _____, Lot IC-____, Woburn, Massachusetts, prepared by Meridian Land Services, Inc., dated January 12, 2004[⁵ as revised through revision __ dated _____], and recorded in the Middlesex South District Registry of Deeds as Plan No. ____ of 20____. The Plan of Restricted Areas depicts the surveyed locations of the Restricted Areas and certain other features of the Remedy, including without limitation any Engineered Cover or Equivalent Cover, situated on the Property.

CC. “Qualified Professional” shall mean a professional with no less than five (5) years of experience in the field of hazardous waste site assessment and remediation, including experience in hazardous waste management, construction methods and terminology, and preparation and interpretation of remediation and construction plans and documents. In addition, such professional shall be familiar with the requirements of this Grant of Environmental Restriction and Easement, including its appendices. A Qualified Professional may be, but is not necessarily required to be, an Independent Professional.

DD. “Recorded and/or Registered” and its various conjugations shall mean, as to unregistered land, recorded with the appropriate registry of deeds; and as to registered land, filed with the appropriate land registration office; each conjugated as appropriate;

EE. “Remedy” shall mean the Cover; the Gas Treatment System; the Interim Groundwater Remedy; remediated, restored and/or created wetlands; all as depicted (i) in the Cover Certification Report and/or on the Plan of Restricted Areas to the extent that each such element of the Remedy is situated on the Property and (ii) in any such similar cover certification reports and/or on any such similar plans of restricted areas prepared or recorded, respectively, with respect to any and all other properties at the Site, pursuant to the Consent Decree; and/or any other activity, including any resultant structures, required by the Consent Decree; as originally performed or subsequently modified in accordance with the Consent Decree and, as applicable, this instrument.

FF. “Remedy Failure” shall mean any condition at the Property which (i) prevents the Cover from fulfilling its ground-covering function and exposes potentially Contaminated Soil, including without limitation (a) potholes and other structural damage to pavement, concrete, hardtop, cement, foundations or other such types of Cover; and (b) washouts and other significant Cover deterioration or damage; and/or (ii) prevents any portion of the Remedy from fulfilling its intended function.

GG. “Restricted Areas” shall mean, collectively, those portions of the Property bounded and described in Appendix III (“Legal Description of the Restricted Areas”), attached hereto and made a part hereof. The Restricted Areas encompass all portions of the Property subject to this Grant, and are shown on the Plan of Restricted Areas.

HH. “Settlers” shall mean Settlers as defined in Section III, Paragraph Z of the Consent Decree, at page 11, and their successors and assigns; provided, however, that for purposes of this definition, Settlers shall exclude the Mark-Phillip Trust.

II. “Site” shall mean Site as defined in Section III, Paragraph AA of the Consent Decree, at pages 11-12.

JJ. “Work Protocols” or “Protocols” shall mean the procedures, practices and standards set forth in Appendix IV (“Work Protocols”), attached hereto and made a part hereof.

APPENDIX II – Legal Description of Property

[add legal description of Grantor's Property, by metes and bounds]

[NOTE: for registered land, must include reference to ownership as evidenced in Certificate of Title No. ____, [shown as Lot ____].]

APPENDIX III – Legal Description of Restricted Areas

[add legal description of Restricted Areas situated within the Grantor's property, by metes and bounds]

APPENDIX IV – Work Protocols

SECTION I. GENERAL

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4
5
6 1. Title. This appendix, which shall be referred to as the “Work Protocols,” is an
7 attachment to an instrument entitled “Industri-Plex Site Institutional Controls” (also
8 referred to as the “Institutional Controls,” “Grant of Environmental Restriction and
9 Easement” or “Grant”), dated _____ [insert date of Institutional Controls], and
10 recorded and/or registered herewith, in the Middlesex South Registry of Deeds/Land
11 Registration Office.

12
13 2. Definitions. Unless otherwise defined herein, the terms used in the Work
14 Protocols shall have the meanings set forth in Paragraph 1 (“Definitions”) of the Grant.
15

16 3. Applicability. Whenever the Institutional Controls prohibit or restrict an
17 activity or use unless conducted in compliance with the Work Protocols, or otherwise
18 require compliance with the Work Protocols, Grantor shall comply with the terms and
19 provisions of this appendix.
20

21 4. Submissions. All submissions made pursuant to the Work Protocols shall be
22 made in accordance with the requirements of Paragraph 23 (“Notices; Changes of
23 Address”) of the Grant.
24

25 5. General Requirement. The Work Protocols require Grantor to prepare and
26 submit a work plan in connection with the proposed, but otherwise prohibited activity or
27 use, and in order to comply with certain obligations to cure a Remedy Failure; to obtain
28 certain approvals where specified; and to prepare and submit a completion report when
29 the work described in the work plan is finished. If the activity or use will result in a
30 permanent change to the Institutional Controls, Grantor will also need to modify the
31 Institutional Controls by preparing and submitting revised As Built Records and/or an
32 amendment to the Grant, and related documentation, for review and approval. Grantor is
33 required to engage an Independent Professional or, where permitted, a Qualified
34 Professional to perform certain of these requirements. In some instances, Grantor may
35 also need to retain other professionals, such as a registered land surveyor, to prepare
36 certain submittals. More particularly:
37

38 A. Grantor shall prepare and submit in writing to Grantee, with a copy to
39 Settlers:
40

41 i. a work plan, prior to conducting the otherwise prohibited
42 activity or use at the Property, or when required as part of an obligation to
43 repair a Remedy Failure;
44

45 ii. a revised work plan, if certain contingencies arise; and
46

1 each occurrence of which would not require an amendment to the Grant, in lieu of
2 submitting a work plan for each occurrence of such activity or use.

3
4 B. Each proposed standard work plan shall be submitted in writing, shall
5 be prepared or reviewed by an Independent Professional, and shall include his or
6 her opinion that the particular standard work plan complies with the applicable
7 requirements of Paragraph 13 (“Health and Safety Plan”), Paragraph 14
8 (“Materials Management and Sampling Protocol”) and Paragraph 15 (“Cover and
9 Clean Corridors Protocol”) of this appendix, and any applicable requirements of
10 the Grant.

11
12 C. Any approval of a standard work plan by Grantee shall only be valid if
13 in writing, and may be made upon such terms and conditions as Grantee deems
14 appropriate. Any such terms and conditions shall be deemed a part of that
15 particular approved standard work plan. Grantee’s approval of a particular
16 standard work plan shall remain in effect until the approval either expires by its
17 terms or is withdrawn by Grantee in writing.

18
19 D. An activity or use conducted pursuant to an approved standard work
20 plan shall not otherwise be subject to the Work Protocols, provided that Grantor
21 satisfies all of the following requirements.

22
23 i. Advance Written Notice. Grantor shall provide Grantee, with a
24 copy to Settlers, fourteen (14) days’ advance written notice of the start
25 date of the work to be performed pursuant to a standard work plan. The
26 notice shall identify:

- 27
28 a. the location of the activity or use to be performed,
29
30 b. the applicable approved standard work plan,
31
32 c. the entity which will perform the activity or use, and
33
34 d. if required by the approved standard work plan, the
35 name and license number of the Independent Professional or,
36 where permitted, the Qualified Professional whom Grantor has
37 engaged to oversee the activity;

38
39 ii. Terms and Conditions. Grantor shall comply with the terms
40 and conditions of the applicable approved standard work plan; and

41
42 iii. Completion Report. Grantor shall prepare and submit a
43 completion report in accordance with the requirements of Section III
44 (“Completion Report Requirements”), below.
45
46

SECTION II. WORK PLAN REQUIREMENTS

8. Work Plan Requirements for Class C Land and Class D Land. For any activity or use which is prohibited, unless conducted in strict compliance with the Work Protocols, and/or when required to repair a Remedy Failure, to be performed in whole or in part within Class C Land and/or Class D Land, the following requirements shall apply. If approval for a work plan is not expressly required, then a work plan would be presumptively approved after the requisite time period has expired, barring notice from Grantee.

A. Activity or Use above Contaminated Media. If the activity or use will disturb the Cover, but not fully penetrate through to the Contaminated Soil or Contaminated Groundwater below, then:

i. a Qualified Professional shall prepare or review the work plan, unless the activity or use will result in a Permanent Cover Modification, in which case an Independent Professional shall prepare and/or review the work plan;

ii. the work plan shall be submitted no less than thirty (30) days prior to the initiation of the activity or use;

iii. the work plan shall include the following items :

a. a description of the proposed activity or use as it pertains to the Remedy, including without limitation any disturbance of the Cover;

b. a schedule for the performance of the activity or use, including without limitation a schedule of times and duration for any open excavation;

c. a map and, if necessary, a surveyed plan showing the location of the proposed activity or use, which Grantee may also require at its sole discretion;

d. the names, addresses and telephone numbers of Grantor's primary contacts for the proposed activity or use, including without limitation Grantor, its lessees or other parties responsible for submitting the work plan, its or their contractors and consultants, and the Qualified Professional or, if applicable, the Independent Professional, engaged to prepare or review the work plan;

1
2 iii. the work plan shall be submitted no less than sixty (60) days
3 prior to initiation of the activity or use;

4
5 iv. the work plan shall include the following items:

6
7 a. a description of the proposed activity or use as it pertains
8 to the Remedy, including without limitation any disturbance of the
9 Cover;

10
11 b. a schedule for the performance of the activity or use,
12 including without limitation a schedule of times and duration for
13 any open excavation;

14
15 c. a map and, if necessary, a surveyed plan showing the
16 location of the proposed activity or use, which Grantee may also
17 require at its sole discretion;

18
19 d. the names, addresses and telephone numbers of
20 Grantor's primary contacts for the proposed activity or use,
21 including without limitation Grantor, its lessees or other parties
22 responsible for submitting the work plan, its or their contractors
23 and consultants, and the Independent Professional engaged to
24 prepare or review the work plan;

25
26 e. a Health and Safety Plan, prepared in accordance with
27 the requirements of Paragraph 13 ("Health and Safety Plan") of
28 this appendix;

29
30 f. estimates of the volume of soils, sediments, surface
31 water, and/or groundwater that will be excavated, stored, contained
32 and/or disposed of;

33
34 g. an estimate of the total cost of performing the proposed
35 work plan, including all construction (*e.g.*, labor and materials) and
36 related transactional costs (including, but not limited to, planning,
37 engineering design, inspection, and documentation costs); and

38
39 h. a financial assurance, if required by Paragraph 6
40 ("Financial Assurance Requirement") of this appendix, as provided
41 therein;

42
43 v. the work plan shall satisfy the following requirements:

44
45 a. the requirements of Paragraph 14 ("Materials
46 Management and Sampling Protocol") of this appendix; and

1
2 b. the requirements of Paragraph 15 (“Cover and Clean
3 Corridors Protocol”) of this appendix; and
4

5 vi. the Independent Professional shall provide a written opinion
6 that the work plan complies with the requirements of Paragraph 13
7 (“Health and Safety Plan”), Paragraph 14 (“Materials Management
8 and Sampling Protocol”) and Paragraph 15 (“Cover and Clean
9 Corridors Protocol”) of this appendix, and any applicable
10 requirements of the Grant.
11

12 9. Work Plan Requirements for Class A Land and Class B Land. For any activity
13 or use which is prohibited, unless conducted in strict compliance with the Work
14 Protocols, to be performed in whole or in part within Class A Land and/or Class B Land:
15

16 A. an Independent Professional shall prepare or review the work plan;
17

18 B. the work plan shall be submitted no less than thirty (30) days prior to
19 initiation of the activity or use;
20

21 C. the work plan shall include the following items:
22

23 i. a description of the proposed activity or use;
24

25 ii. a schedule for the performance of the activity or use;
26

27 iii. a map and/or, upon the request of Grantee, a surveyed plan
28 showing the location of the proposed activity or use;
29

30 iv. the names, addresses and telephone numbers of Grantor’s
31 primary contacts for the proposed activity or use, including without
32 limitation Grantor, its lessees or other parties responsible for submitting
33 the work plan, its or their contractors and consultants, and the Independent
34 Professional engaged to prepare or review the work plan; and
35

36 v. a Health and Safety Plan, prepared in accordance with the
37 requirements of Paragraph 13 (“Health and Safety Plan”) of this
38 appendix, unless the activity or use is to be performed wholly within Class
39 A Land, in which case if it can be demonstrated to the satisfaction of the
40 Grantee that Contaminated Groundwater is not present in or near the area
41 of all proposed intrusive work, then such a health and safety plan shall not
42 be required;
43

44 D. the work plan shall satisfy the following requirements:
45

1 i. the applicable requirements of Paragraph 14 (“Materials
2 Management and Sampling Protocol”) of this appendix; and

3
4 ii. a financial assurance, if required by Paragraph 6 (“Financial
5 Assurance Requirement”) of this appendix, as provided therein;

6
7 E. the Independent Professional shall provide a written opinion that the
8 work plan complies with the requirements of Paragraph 13 (“Health and Safety
9 Plan”), the applicable requirements of Paragraph 14 (“Materials Management and
10 Sampling Protocol”) and any applicable requirements of the Grant; and

11
12 F. in the event that Grantor or any other party performing an activity or
13 use pursuant to subparagraphs 9.A. through 9.E. of this appendix, above,
14 discovers Contaminated Soil during the performance of such activity or use, then
15 Grantor or such other party shall:

16
17 i. if the work plan was prepared for activity or use solely within
18 Class A Land, immediately cease work in the area where the
19 Contaminated Soil was discovered, until a revised work plan is approved,
20 as set forth below, and secure the area in order to prevent the release of, or
21 exposure to, such material, or any run-on or run-off, and otherwise
22 comply with the requirements of section ii. (“Temporary On-Site
23 Storage”) of subparagraph 14.A. (“Management of Soils and Sediments”);

24
25 ii. immediately orally notify Grantee of such discovery, and no
26 later than seven (7) days after the date of such event submit written
27 notification thereof to Grantee, with a copy to Settlers;

28
29 iii. submit a revised work plan in accordance with the
30 requirements of subparagraph 8.C (“Activity or Use within Contaminated
31 Media”), as applicable, no later than thirty (30) days after the date of such
32 discovery, containing a proposal either:

33
34 a. to reclassify the land to Class C Land or Class D Land,
35 requiring a new Cover over the Contaminated Soil, in which case
36 the revised work plan shall demonstrate that the applicable
37 requirements of Paragraph 15 (“Cover and Clean Corridors
38 Protocol”) of this appendix are satisfied; or

39
40 b. to excavate and dispose of the Contaminated Soil, in
41 which case the revised work plan shall demonstrate that the
42 applicable requirements of Paragraph 14 (“Materials Management
43 and Sampling Protocol”) of this appendix are satisfied;

44
45 iv. promptly submit, along with the revised work plan, the written
46 opinion of an Independent Professional that the revised work plan

1 complies with the requirements of subparagraph 9.F.iii., above, and any
2 applicable requirements of the Grant;

3
4 v. obtain Grantee's written approval of the revised work plan prior
5 to the commencement of the activity or use set forth in the revised work
6 plan; and

7
8 vi. promptly perform the approved revised work plan.
9

10
11 SECTION III. COMPLETION REPORT REQUIREMENTS.
12

13 10. Completion Report Requirements for Class C Land and Class D Land. After
14 completion of any activity or use conducted in whole or in part within Class C Land or
15 Class D Land requiring submission of a work plan, including without limitation any
16 activity or use conducted pursuant to Paragraph 7 ("Establishment of Standard Work
17 Plans") of this appendix, or subparagraph 4.D ("Remedy Failure: Preliminary Action,
18 Notification and Repair") or Paragraph 5 ("Emergency Excavation") of the Grant:
19

20 A. If the activity or use disturbed the Cover without fully penetrating
21 through to the Contaminated Soil or Contaminated Groundwater below, then:
22

23 i. the completion report shall be submitted in writing, no more
24 than thirty (30) days following completion of all work pursuant to the
25 work plan;
26

27 ii. the completion report shall be prepared or reviewed by a
28 Qualified Professional, and shall include his or her opinion that the
29 activity or use has been performed in compliance with the work plan, as
30 approved, including sufficient supporting information; and
31

32 iii. if, as a result of the activity or use, a Permanent Cover
33 Modification is implemented, then Grantor shall also:
34

35 a. obtain Grantee's written approval of the revised As Built
36 Records, including fully and adequately addressing any comments
37 or concerns that Grantee may identify in connection with its review
38 prior to issuing such approval, and no later than thirty (30) days
39 after Grantee issues such approval, Grantor shall submit two (2)
40 copies of the revised As Built Records, as approved, to EPA for
41 retention in the Document Repository; and
42

43 b. if such Permanent Cover Modification results in or
44 requires, as Grantee, in its sole discretion, may determine, a change
45 in the areal extent of the boundaries of any of the Restricted Areas,
46 the Engineered Cover and/or the Equivalent Cover as shown on the

1 Plan of Restricted Areas, then Grantor shall also comply with the
2 requirements of Appendix VI (“Amendment Protocol”) of the
3 Grant;
4

5 B. If the activity or use fully penetrated the Cover through to the
6 Contaminated Soil or Contaminated Groundwater below, or resulted in a
7 Permanent Cover Modification and/or new or replacement Cover, then:
8

9 i. the completion report shall be submitted in writing, no more
10 than sixty (60) days following completion of all work pursuant to the work
11 plan;
12

13 ii. the completion report shall demonstrate compliance with the
14 work plan and Section IV (“Technical Requirements”) of this appendix,
15 and shall include without limitation sufficient supporting information such
16 as sampling results, disposal information, if applicable, and any
17 Independent Professional opinion(s) required by Section IV (“Technical
18 Requirements”) of this appendix;
19

20 iii. the completion report shall be prepared or reviewed by an
21 Independent Professional, and shall include his or her opinion that the
22 activity or use has been performed in compliance with the work plan, as
23 approved; and
24

25 iv. if, as a result of the activity or use, a Permanent Cover
26 Modification and/or new Cover is implemented, then the completion
27 report shall also include an Independent Professional’s opinion in
28 accordance with subparagraph 15.C.vi. of this appendix, and Grantor shall
29 also:
30

31 a. obtain Grantee’s written approval of the revised As Built
32 Records, including fully and adequately addressing any comments
33 or concerns that Grantee may identify in connection with its review
34 prior to issuing such approval, and no later than thirty (30) days
35 after Grantee issues such approval, Grantor shall submit two (2)
36 copies of the revised As Built Records, as approved, to EPA for
37 retention in the Document Repository; and
38

39 b. if such Permanent Cover Modification results in or
40 requires, as Grantee, in its sole discretion, may determine, a change
41 in the areal extent of the boundaries of any of the Restricted Areas,
42 the Engineered Cover and/or the Equivalent Cover as shown on the
43 Plan of Restricted Areas, then Grantor shall also comply with the
44 requirements of Appendix VI (“Amendment Protocol”) to the
45 Grant.
46

1 11. Completion Report Requirements for Class A Land and Class B Land.
2

3 A. Except as provided in subparagraph 11.B., of this appendix, after
4 completion of any restricted activity or use conducted in whole or in part within
5 Class A Land or Class B Land, including without limitation any activity or use
6 conducted pursuant to Paragraph 7 (“Establishment of Standard Work Plans”) of
7 this appendix or Paragraph 5 (“Emergency Excavation”) of the Grant:
8

9 i. the completion report shall be submitted in writing no more than
10 thirty (30) days following completion of all work pursuant to the work
11 plan;
12

13 ii. the completion report shall demonstrate compliance with the
14 work plan and Section IV (“Technical Requirements”) of this appendix,
15 and shall include without limitation sufficient supporting information such
16 as sampling results, disposal information, if applicable, and any other
17 Independent Professional opinion(s) required by Section IV (“Technical
18 Requirements”) of this appendix;
19

20 iii. the completion report shall be prepared or reviewed by an
21 Independent Professional, and shall include his or her opinion that the
22 activity or use has been performed in compliance with the work plan, as
23 approved; and
24

25 iv. if, as a result of the activity or use, an existing Clean Corridor
26 is permanently modified or a new Clean Corridor is established, then
27 Grantor shall also:
28

29 a. obtain Grantee’s written approval of the revised As Built
30 Records, including fully and adequately addressing any comments
31 or concerns that Grantee may identify in connection with its review
32 prior to issuing such approval, and no later than thirty (30) days
33 after Grantee issues such approval, Grantor shall submit two (2)
34 copies of the revised As Built Records, as approved, to EPA for
35 retention in the Document Repository; and
36

37 b. if such permanent modification to an existing Clean
38 Corridor results in or requires, as Grantee, in its sole discretion,
39 may determine, a change in the areal extent of the boundaries of
40 the Clean Corridor as shown on the Plan of Restricted Areas,
41 and/or if Grantor establishes any new Clean Corridors, then
42 Grantor shall also comply with the requirements of Appendix VI
43 (“Amendment Protocol”) to the Grant.
44

45 B. If, during the performance of any restricted activity or use pursuant to
46 Paragraph 9 of this appendix, Grantor elects to reclassify a portion of land to

1 Class C Land or Class D Land and constructs new Cover over the Contaminated
2 Soil pursuant to subparagraph 9.F. of this appendix, then for any activity or use
3 conducted in that area of the Property, in lieu of complying with the requirements
4 of subparagraph 11.A. of this appendix, Grantor shall comply with the completion
5 report requirements for Class C Land and Class D Land applicable to new Cover,
6 set forth in subparagraph 10.B. of this appendix.
7
8

9 SECTION IV. TECHNICAL REQUIREMENTS
10

11 12. Reference Information. Technical documents at the Document Repository
12 and other documents or information pertaining to the Site may be reviewed as reference
13 material for satisfying the requirements of this Section IV (“Technical Requirements”).
14 For Class C Land and Class D Land, original As Built Records and/or other plans are
15 contained in the Cover Certification Report.
16

17 13. Health and Safety Plan. The Health and Safety Plan (the “HSP”) shall be
18 prepared in accordance with the requirements in 29 CFR §1910.120, as amended, and/or
19 any and all similar and relevant laws, rules, or regulations then existing. The HSP shall
20 be approved by a Certified Industrial Hygienist (“CIH”). The plan shall include, but not
21 be limited to, the following items:
22

23 A. Contaminant Information. Information on the nature, extent and
24 concentrations of Contaminated Soil, Contaminated Groundwater and other
25 Hazardous Substances, if any, which are anticipated to be present in the media
26 that will be impacted by the activity or use proposed in the work plan;
27

28 B. Description of Tasks. A description of tasks which may involve
29 exposure to Contaminated Soil, Contaminated Groundwater and other Hazardous
30 Substances;
31

32 C. Safety Precautions. A description of anticipated actions to protect the
33 health, safety, and welfare of workers and the general public during the
34 performance of the activity or use proposed in the work plan. Actions may
35 include, but would not necessarily be limited to, air monitoring, dust control, odor
36 control, and erosion and sedimentation control measures. Such measures should
37 be employed when the Independent Professional and/or the Safety Officer
38 designated in the HSP determines through site-specific research, visual or
39 olfactory observations and/or monitoring that they are necessary. Intrusive
40 activities into groundwater in any class of land may cause exposure to volatile
41 organic compounds and/or elevated metal levels (particularly arsenic).
42 Monitoring of volatile organic compounds and appropriate direct contact
43 protection measures should be conducted for such activities. For intrusive
44 activities performed in Class B Land, Class C Land, and Class D Land, whether
45 into groundwater or only soils, an action level for total particulates should be
46 established to trigger immediate dust suppression measures and the upgrade of the

1 level of protection as necessary. In addition, such activities may cause the release
2 of hydrogen sulfide and other odorous gases from Contaminated Soils. An action
3 level should also be established for such odorous gases. A supply of odor control
4 materials (e.g., clean fill and/or odor suppressant foam) should be readily
5 available for use in the area where the intrusive activities are conducted;
6

7 D. Physical and Biological Hazards. Discussion of all relevant potential
8 physical and biological hazards;
9

10 E. Informing Workers. A requirement that all persons engaged in the
11 work read and acknowledge the provisions of the HSP, and document compliance
12 with said provisions; and
13

14 F. Worker Training. A requirement that all persons engaged in the work
15 have received appropriate and current training in matters of Health and Safety in
16 accordance with 29 CFR §1910.120, as amended, and/or any and all similar and
17 relevant laws, rules, or regulations then existing.
18

19 14. Materials Management and Sampling Protocol.
20

21 A. Management of Soils and Sediments. For Class B Land, Class C Land
22 and Class D Land, the following management requirements shall apply to soils
23 and sediments, associated materials and personal protective equipment:
24

25 i. General. Excavated soils and sediments generated while
26 performing work at the Property shall be stored, sampled and analyzed by
27 an Independent Professional prior to disposal. All soil, sediments and
28 associated materials and personal protective equipment, shall be managed
29 and disposed of in accordance with the opinion of an Independent
30 Professional and in compliance with all applicable federal, state and local
31 laws, regulations and ordinances;
32

33 ii. Temporary On-Site Storage. Excavated soils and sediments
34 stored on the Property shall be covered with and stored on impermeable
35 material to contain the excavate and prevent precipitation infiltration. The
36 excavation and the excavate shall be bermed around its perimeter to
37 collect precipitation run-off and prevent run-on. Saturated soils requiring
38 dewatering shall be dewatered and water from such dewatering shall be
39 collected and managed in accordance with subparagraph 14.B. The
40 excavation and the excavate shall be designed and marked appropriately to
41 prevent unauthorized access. Soils and sediments excavated, collected,
42 used, and subsequently placed and/or stored on Site shall be sampled and
43 properly disposed of within ninety (90) days from the date such on-site
44 storage is commenced;
45

1 i. General. Groundwater and water from dewatering activities
2 generated while performing work at the Property shall be contained,
3 sampled and analyzed by an Independent Professional prior to disposal.
4 Such water, associated materials and personal protective equipment shall
5 be managed, treated as necessary, and disposed of in accordance with the
6 opinion of an Independent Professional and in compliance with all
7 applicable federal, state and local laws, regulations and ordinances;
8

9 ii. Temporary On-Site Storage. Groundwater, water from
10 dewatering activities, and other contaminated materials (*e.g.*, personal
11 protective equipment) extracted, pumped, excavated, collected, and
12 subsequently placed and/or stored on the Property shall be properly
13 disposed of within ninety (90) days from the date such on-site storage is
14 commenced.
15

16 C. Sampling. For all Restricted Areas, the following sampling
17 requirements shall apply:
18

19 i. General. Sampling of all relevant media (*e.g.*, soil, sediment,
20 groundwater, surface water and other materials) shall be sufficient to
21 assure adequate characterization for the end use of the materials (including
22 any discharge or disposal) in accordance with State and federal law and
23 this Section IV (“Technical Requirements”), and as required by an
24 Independent Professional;
25

26 ii. Confirmatory Sampling. The work plan shall specify sampling
27 details and identify sampling locations. For purposes of reclassification or
28 after removal of Contaminated Soil, sampling shall include, at a minimum,
29 the bottom and all four sides of an excavation and/or sufficient coverage
30 of the subject area, as required by the Independent Professional.
31

32 15. Cover and Clean Corridors Protocol.
33

34 A. Excavation. In the excavation of Cover and Clean Corridors, the
35 following protocol shall apply:
36

37 i. Soil, Geotextile and/or Geomembrane Cover.
38

39 a. Unless the approved work plan provides otherwise,
40 digging within twelve (12) inches of the geotextile fabric or
41 geomembrane material of the Cover shall be done with care by
42 hand to locate and avoid damage or penetration of the
43 geotextile/geomembrane material, and to prevent mixing soil from
44 above the geotextile/geomembrane material with Contaminated
45 Soil from below; and
46

1 in April 1992, a copy of which is on file in the Document
2 Repository; and
3

4 c. Design Criteria. The new or revised Cover design shall
5 address the following design criteria:
6

7 (i) containment and isolation of Contaminated Soil
8 to prevent contact by human receptors;
9

10 (ii) prevention of erosion by water, wind or use of
11 the Property;
12

13 (iii) adequate resistance to frost action/heaving;
14

15 (iv) prevention of settlement or subsidence;
16

17 (v) management of surface water during and after
18 construction, including provisions to withstand the effects
19 of 25-year return period storms;
20

21 (vi) ability to withstand customary and expected
22 activities and uses;
23

24 (vii) long-term protectiveness; and
25

26 (viii) location-specific requirements of all
27 applicable federal, state and local laws, regulations and
28 ordinances.
29

30 iii. Permanent Modifications to Existing Clean Corridors and New
31 Clean Corridors. For the design of permanent modifications to existing
32 Clean Corridors and new Clean Corridors, design drawings, stamped by a
33 Professional Engineer (P.E., Civil), shall be submitted with the work plan.
34

35 C. Construction. In the construction of replacement and new Cover and
36 Clean Corridors, and Permanent Cover Modifications and permanent
37 modifications to existing Clean Corridors, unless the approved work plan
38 provides otherwise, the following protocol shall apply:
39

40 i. Patching Geotextile or Geomembrane. A patch of replacement
41 or added geotextile or geomembrane layer of the Cover or Clean Corridor
42 shall be done in accordance with the original Site, or most recent
43 applicable, design specifications, and in accordance with the following
44 requirements:
45

1 a. a patch of replacement or added geotextile shall be sewn
2 to the existing geotextile with a continuous seam if installed on a
3 slope or, if it is not installed on a slope, the patch may be sewn as
4 described above or placed with each edge overlapping the original
5 Cover or Clean Corridor geotextile by a minimum of three (3) feet;
6 and
7

8 b. a patch of replacement or added geomembrane shall be
9 bonded to existing geomembrane in a manner that will provide
10 equivalent strength and durability to that of the original design;
11

12 ii. Transitions and Tie-Ins. Transitions within the Cover (i.e.,
13 where one type of Cover abuts a different type of Cover, or land without a
14 Cover) and tie-ins for the Clean Corridors shall be constructed in
15 accordance with the original Site or most recent applicable design
16 specifications;
17

18 iii. Inspections. Grantor shall fully cooperate with Grantee and its
19 representatives seeking to inspect the work;
20

21 iv. Supervision. If the work will fully penetrate through the Cover
22 or Clean Corridor to the Contaminated Soil or Contaminated Groundwater
23 below, then Grantor shall retain an Independent Professional to supervise
24 the construction and ensure compliance with the engineering plans and
25 specifications. Otherwise, Grantor may retain a Qualified Professional to
26 supervise the construction and ensure compliance with the engineering
27 plans and specifications;
28

29 v. Surveying During Construction. As necessary, Grantor shall
30 retain a Massachusetts registered land surveyor to horizontally and
31 vertically locate all aspects of the new Cover, replacement Cover and new
32 Clean Corridors as they are being constructed, including but not limited to,
33 the location of geotextile, geomembrane, clean fill, final ground elevation
34 and all structures associated with the Cover or Clean Corridor design; and
35

36 vi. As Built Records. For the completion report, Grantor shall
37 produce new or revised As Built Records for new Cover, new Clean
38 Corridors, Permanent Cover Modifications, and permanent modifications
39 to Clean Corridors, as applicable. The As Built Records shall be stamped
40 by a Professional Engineer (P.E., Civil). For new Cover and Permanent
41 Cover Modifications, the Independent Professional shall also provide a
42 written opinion that the As Built Records continue to support his or her
43 original opinion on the protection of human health and the environment.
44 The As Built Records shall be of the same or equivalent quality and detail
45 as the original As Built Records for the Property, if any, and shall include
46 without limitation the survey by the Massachusetts registered land

- 1 surveyor, locating the horizontal and vertical extent of the Cover or Clean
- 2 Corridor, required in subparagraph 15.C.v, above.

APPENDIX V -- Cover Inspection Plan

1. **Title**. This appendix, which shall be referred to as the “Cover Inspection Plan,” is an attachment to an instrument entitled “Industri-Plex Site Institutional Controls” (also referred to as the “Institutional Controls,” “Grant of Environmental Restriction and Easement” or “Grant”), dated _____ **[insert date of Institutional Controls]**, and recorded and/or registered in the Middlesex South Registry of Deeds/Land Registration Office.

2. **Definitions**. Unless otherwise defined herein, the terms used in the Cover Inspection Plan shall have the meanings set forth in Paragraph 1 (“Definitions”) of the Grant.

3. **Applicability**. In accordance with subparagraph 4.A.iii of the Grant, Grantor shall comply with the provisions of this appendix when performing an inspection of the Cover or preparing a Cover inspection report.

4. **Purpose**. In order to ensure that Grantor adequately fulfills its obligations to perform periodic Cover inspections and submit Cover inspection reports, this appendix sets forth minimum Cover inspection and Cover inspection report requirements.

5. **Consideration of Potential Disturbance to the Cover**. Grantor should consider potential disturbances to the Cover which may reasonably be anticipated to occur, including, without limitation:

A. insufficient vegetation resulting in erosion of the Cover by storm water runoff and/or wind; woody growth whose roots could penetrate the Cover;

B. animal burrows;

C. cracks or fissures of the Cover resulting from excessive differential settlement; potholes and other structural damage to the Cover; and

D. disturbances or damage to the Cover by personnel and/or equipment; and damage to the permanent surveyed monuments, or any security fences.

6. **Minimum Cover Inspection Requirements**. Each Cover inspection shall at a minimum include a Site walkover and the establishment of a visual record of the inspection by means of video and/or photographs. Special attention should be given to each of the following:

A. **Cover Integrity**. The integrity of the Cover and documentation of wash-outs, erosion gullies, damage or deterioration and other breaks (such as cracks, potholes and ruts) in the Cover affecting its ability to prevent direct contact with underlying Contaminated Soils;

B. Subsidence. Any subsidence which may occur as a result of differential settlement shall be recorded, especially as may affect the integrity of the geotextile fabric;

C. Vegetation. Vegetation shall be monitored for (i) bare areas and/or areas without sufficient growth to prevent wind and/or water erosion, which shall be noted for replacement; (ii) any woody growth, which shall be noted for removal before the roots can penetrate the geotextile fabric; and (iii) any undesirable wetland vegetation (*e.g.*, phragmites, purple loosestrife, etc.), which shall be noted for removal;

D. Drainage Structures. The Cover associated with drainage areas and structures shall be inspected for any damage which interferes with the original design and performance of the structure, or the structure's ability to serve as a Cover. The inspection shall note any blockages which could impede or change the course of flow and cause erosion. Culverts shall be noted for cleaning out as appropriate to prevent flooding of upstream areas. The stormwater storage areas shall be checked for erosion, clogging, and accumulation of sediment; and

E. Survey Monuments. The permanent surveyed monuments delineating the boundaries of the Restricted Areas and the Property, and the security fences, shall be inspected for possible damage; any such damage shall be noted for repair or replacement.

7. Inspection Conditions. Inspections of the Cover shall be performed when snow and ice are not covering the ground and no more than three (3) days after mowing of the Cover vegetation, if inspected during the summer months.

8. Documentation and Reporting.

A. The written inspection report shall include a visual record of the inspection by means of videos and/or photographs with date stamp(s). Any required repair and/or maintenance work shall be assessed and noted in the inspection report for performance in accordance with the Normal Maintenance provisions and Remedy Failure provisions (including the Work Protocols) of the Institutional Controls, as appropriate. Written records of any interviews held with parties involved at the Property, particularly with its operation and maintenance, shall be included in the inspection report.

B. Grantor shall maintain copies of the inspection reports it submits at the Property.

APPENDIX VI – Amendment Protocol

SECTION I. GENERAL

1. **Title.** This appendix, which shall be referred to as the “Amendment Protocol,” is attached to an instrument entitled “Grant of Environmental Restriction and Easement” (“GERE”), dated _____ [insert date of GERE] and incorporated therein by reference.

2. **Definitions.** Unless otherwise defined herein, the terms used in this Amendment Protocol shall have the meanings set forth in Paragraph 1 (“Definitions”) of the GERE.

3. **Applicability.** Whenever the GERE, including without limitation the Work Protocols (attached as Appendix IV (“Work Protocols”) to the GERE require compliance with the Amendment Protocol, Grantor shall comply with the terms and provisions of this appendix.

4. **Submissions.** All submissions made pursuant to this Amendment Protocol shall be made in accordance with the requirements of Paragraph 23 (“Notices; Changes of Address”) of the GERE.

SECTION II. REQUIREMENTS

5. **Proposed Amendment.** Grantor shall prepare, sign and submit a written request for Grantee to review and approve the proposed amendment to the GERE, with a copy to other Settlers, which shall include the following information and documentation:

A. Grantor’s name, address and telephone number, the address of the affected property, and a brief description of the proposed amendment and the reason for the proposal;

B. the proposed amendment, in recordable form satisfactory to Grantee, which shall amend the Grant, as appropriate, so as to incorporate any proposed modification, including without limitation:

i. a change in the classes of land included in the Restricted Areas;

ii. a revision to the Plan of Restricted Areas resulting from a change to the areal extent of the boundaries of existing Cover or existing Clean Corridors, the establishment of new Cover or new Clean Corridors, and any change to the boundaries of the Restricted Areas; and

iii. any other permanent change to the GERE which may be proposed by Grantor pursuant to subparagraph 15.B. of the GERE;

C. proposed revised appendices to the GERE and related plans and documentation, which shall at a minimum provide for:

i. appropriate revisions to the legal description of the Restricted Areas attached as Appendix III (“Legal Description of the Restricted Areas”) of the GERE, if applicable;

ii. appropriate revisions to the Plan of Restricted Areas;

iii. proper and customary evidence of Grantor’s authority to execute the proposed amendment and related documentation;

iv. a proposed, updated Certification of Title which shall update the Certification of Title previously provided to Grantee in connection with the establishment of the GERE, and shall be prepared in accordance with the title requirements set forth in the Inauguration Plan (a copy of which may be found in the Document Repository) and/or GERE or any otherwise relevant title requirements;

v. subordination agreements in recordable form satisfactory to Grantee, using the form contained in Appendix VII (“Subordination Agreement Form”) of the GERE, obtained from any and all holders of interests in the Property recorded and/or registered prior to the date of recording or registering of the proposed amendment; unless waived by Grantee, in its sole discretion, for those interests which Grantor establishes, to Grantee’s satisfaction, are not affected by the interests to be created under or modified by the proposed amendment; and

vi. any other customary or appropriate documentation necessary for Grantee to approve the proposed amendment, as Grantee, in its sole discretion, may determine.

D. Grantee, upon request or its own initiative, and in Grantee’s sole discretion, may waive in writing any of the documentation requirements that it may determine are not relevant to a particular proposed amendment, but any such waiver shall apply only to the particular proposed amendment, and all of the above documentation requirements shall apply to all other proposed amendments, unless expressly waived for such other proposed amendments, as well, on a case-by-case basis.

SECTION III. APPROVAL AND RECORDING

6. Approval. Following notification by Grantee that the proposed amendment, all attachments and all related documents are satisfactory, Grantor shall submit a fully executed amendment, along with all such attachments and any revised plans or other related documents in final form, for Grantee's written approval, including any necessary signature by Grantee on the amendment; and fully executed subordination agreements in accordance with subparagraph 5.C.v., above, of this appendix.

7. Recording.

A. Following Grantee's return of the submission to Grantor with Grantee's written approval, Grantor shall update the title through the time of recording in order to determine whether there have been any new matters recorded and/or registered against the property since the date and time of the previous title rundown submitted to Grantee (as part of the Grantor's previous updated Certification of Title submittal). If not, Grantor shall record and/or register the amendment, including all attachments, any subordination agreements, and any revised plans or other related documents, all in accordance with subparagraph 15.D. ("Recordation and/or Registration") of the GERE and, if applicable, shall incorporate the revisions to the As Built Records into the Cover Certification Report, as an amendment.

B. If there have been any new matters recorded and/or registered against the property since the date and time of the previous title rundown submitted to Grantee (as part of the Grantor's previous updated Certification of Title submittal), then Grantor shall not record or register the amendment, attachments, subordination agreements, revised plans or other related documents but, instead, shall:

i. notify Grantee within seven (7) days of performing the title update that Grantor has identified new matters of record,

ii. within thirty (30) days of performing the title update shall submit a new written request to Grantee for approval to record the amendment, including all attachments, any subordination agreements, and any revised plans or other related documents. This request shall include:

a. a copy of the updated Certification of Title, identifying the new matters recorded and/or registered against the Property since the date of the previous title rundown, including explanatory language, satisfactory to MassDEP, taking into account any such new matters of record that are not required to be subordinated pursuant to subparagraph 7.B.ii.b, below, if any; and

b. any necessary fully executed subordination agreements as to any of those matters that may otherwise impair the rights held by the Grantee under the GERE, once it is amended.

iii. once Grantee approves Grantor's new request in writing, Grantor shall record and/or register record the amendment, including all attachments, any subordination agreements, and any revised plans or other related documents, in accordance with the provisions of this Paragraph 7.

8. Title Certification. Within thirty (30) days of the date of recording and/or registration, Grantor shall submit to Grantee a final Certification of Title updated through the time of recording.

9. Notice. Following recording and/or registration, Grantor shall provide copies of the amendment, including all attachments, any subordination agreements, and any revised plans or other related documentation to local officials in accordance with subparagraph 15.E. ("Notice to Local Officials") of the Grant.

10. Costs. Grantor shall be responsible for paying all recording fees and other costs associated with the proposed amendment.

APPENDIX VII – Subordination Agreement Form
(for amendments to the Grant of Environmental Restriction and Easement)

SUBORDINATION AGREEMENT

Site Name: Industri-Plex Superfund Site
Site Location: Woburn, MA
EPA Site Identification Number: MAD076580950
DEP Release Tracking Number: 3-0001731

_____ [insert name of holder of the record interest], of _____ (Town/City), _____ County, _____ (State), is the holder of a _____ granted by _____ to _____, dated _____, recorded with the Middlesex South District Registry of Deeds in Book _____, Page _____ and/or filed with the Land Registration Office of the Middlesex South Registry District as Document No. _____ (the “_____”) [insert abbreviated name of the record interest here, such as e.g. “(the “Willow Street Interceptor Sewer Easement”)”].

_____ [insert name of holder of the record interest] hereby assents to the [First] Amendment to the Grant of Environmental Restriction and Easement granted by _____ to the Massachusetts Department of Environmental Protection dated _____ and recorded with the Middlesex South Registry of Deeds in Book _____, Page _____, and/or filed with the Land Registration Office of the Middlesex South Registry District as Document No. _____ (“the GERE”), and agrees that the _____ [insert abbreviated name of the record interest] shall be subject to said GERE as amended by said [First] Amendment and to the rights created by and under said GERE as amended by said [First] Amendment insofar as the interests created under the _____ [insert abbreviated name of the record interest] affect the Property identified in the GERE as amended by the [First] Amendment and as if for all purposes said [First] Amendment had been executed, delivered and recorded and/or filed prior to the execution, delivery and recordation and/or filing of the _____ [insert abbreviated name of the record interest].

_____ [insert name of holder of the record interest] hereby represent(s) and warrant(s) that [he/she/it/they] is [are] the current and true holder(s) of _____ [insert abbreviated name of the record interest].

WITNESS the execution hereof under seal this _____ day of _____, 20____.

Holder

[Note: if Holder is a legal entity rather than an individual person, modify preceding signature block and following acknowledgement; resolution(s) and/or authorization(s), certificate(s) of incumbency, certificate(s) of existence and good standing, etc. evidencing authority of individual(s) to sign on behalf of legal entity, as appropriate, must also be submitted.]

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

[seal]

[The execution of this Subordination Agreement by a secured lender and/or a fiduciary (as defined in M.G.L. c. 21E, § 2) for the purpose of subordinating its lien to said GERE as amended by said [First] Amendment shall not render such secured lender or fiduciary an "owner" or "operator", provided such secured lender and/or fiduciary shall not otherwise be an "owner" or "operator" within the meaning of § 2.]

Upon recording, return to:

*Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108*

Attention: Industri-Plex Superfund Site Project Manager

**Industri-Plex Superfund Site
GERE
Exhibit A - EPA Letter**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023



August 5, 2008

Jay Naparstek, Deputy Director
Response and Remediation Division
Bureau of Waste Site Cleanup
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

Dear Mr. Naparstek,

The purpose of this letter is to formally request the assistance of the Massachusetts Department of Environmental Protection (MassDEP) to accept all Grants of Environmental Restrictions (Grant) for the Industri-plex Superfund Site, Operable Unit 1 (OU-1), in Woburn, MA. As you know, our offices have been working together on completing the Grants for OU-1 for many years, with the Final Grant for 112 Commerce Way nearly ready to be recorded.

Pursuant to Section 104(j) of CERCLA, 42 U.S.C. § 9604(j), before EPA may acquire any real property interests to conduct a remedial action, the Commonwealth must first agree to accept transfer of such interests upon completion of the remedial action. EPA is in the process of approving all remaining Cover Certification Reports, which we expect to complete this federal fiscal year. Thus, the Selected Remedy for OU-1 will be completed once the Grants have been established. Once this occurs, EPA, if it were to acquire such interests, is required to transfer them to the Commonwealth. Therefore, in order to establish the restrictions and for purposes of efficiency, we request that MassDEP accept the Industri-plex OU-1 Grants directly, as sole Grantee.

If you have any further questions, please feel free to contact me at 617-918-1330 or site attorney David Peterson at 617-918-1891.

Sincerely,

A handwritten signature in black ink, appearing to read "R. G. Cianciarulo", written over a horizontal line.

Robert G. Cianciarulo, Chief
Massachusetts Superfund Section

cc: Joseph LeMay, EPA
David Peterson, EPA
Jennifer McWeeney, MassDEP
Andy Cohen, MassDEP

**Industri-Plex Superfund Site
INAUGURATION PLAN
Attachment 2 – Sample Clerk’s Certificate**

CLERK’S CERTIFICATE

I, _____, do hereby certify:

THAT, I am the Clerk of _____, a Massachusetts [or other State] corporation having a principal place of business at _____, Massachusetts [or other State] (the “Corporation”) and that at a meeting of the Board of Directors of the Corporation duly called and held at the office of the Corporation on the _____ day of _____, 20__, all the directors being present and voting at all times, the following resolution was unanimously adopted:

VOTED: That any person (hereinafter an “Authorized Person”) holding the office of _____, or the President, Treasurer or Clerk be, and any one of them is, hereby authorized and directed in the name and on behalf of the Corporation to sign, in the name and on behalf of the Corporation, seal with the corporate seal, acknowledge and deliver, a certain document entitled Grant of Environmental Restriction and Easement (the “GERE”), dated _____, 20__, from the Corporation to the Massachusetts Department of Environmental Protection, and/or to the United States of America acting by and on behalf of its Environmental Protection Agency, in such form and together with all ancillary documents as said Authorized Person may determine necessary or proper for imposing restrictive covenants, easements and agreements on any property now or hereafter owned by said Corporation, in order to comply with certain actions required by the Massachusetts Department of Environmental Protection and/or the United States Environmental Protection Agency pursuant to the Consent Decree entered on April 24, 1989, by the United States District Court for the District of Massachusetts in the matters styled United States v. Stauffer Chemical Company et al., Civil Action No. 89-0195-MC and Commonwealth of Massachusetts v. Stauffer Chemical Company et al., Civil Action No. 89-0196-MC, and recorded at the Middlesex South District Registry of Deeds in Book 19837, Page 476.

This vote shall remain in full force and effect until an instrument revoking the same shall have been recorded in the Middlesex South District Registry of Deeds and or the Middlesex South Registry District of the Land Court, as applicable.

I DO FURTHER CERTIFY that the above vote is still in force and effect and has not been altered, amended, rescinded or repealed.

I DO FURTHER CERTIFY THAT the Corporation is a duly organized corporation; that the foregoing vote is in accordance with the charter and by-laws of the Corporation; that _____ [and _____] at the date said GERE is executed and delivered to the Massachusetts Department of Environmental Protection and/or to the United States of America acting by and on behalf of its Environmental Protection Agency

is [are] the duly elected and qualified _____ of the Corporation [, respectively], and that I am the duly elected and qualified Clerk of the Corporation.

Dated this ____ day of _____, 20__

ATTEST: A True Copy of Name and Title
[INSERT NOTARY BLOCK]

**Industri-Plex Superfund Site
INAUGURATION PLAN
Attachment 3 – Form Title Certification**

[FIRM LETTERHEAD]

[DATE]

Commonwealth of Massachusetts, Acting by
and through its Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108
Attention: Industri-Plex Site Project Manager

Re: CERTIFICATION OF TITLE
Grantor: _____
Property Description: _____
Deed reference: _____
Industri-plex Site Lot IC-____

Dear Sir or Madam:

We [I] have examined the records of the Middlesex South District Registry of Deeds (“Registry”), the Land Registration Office of the Middlesex South Registry District (the “Land Registration Office”) and the relevant records of the Middlesex County Registry of Probate (the “Registry of Probate”), with respect to the above-described premises (the “Property”), as further described in Schedule A attached hereto and made a part hereof [Schedule A must include all appurtenant rights including but not limited to all appurtenant rights in all roadways abutting the Property], from [DATE], at [TIME], [INSTRUMENT NO.] through [DATE], at [TIME], [INSTRUMENT NO.]. [If a full 50 year examination was not performed, state the reasons for not performing a full 50 year examination and provide the legal and/or conveyancing practice basis for performing less than a 50 year examination.]

We [I] certify to the Commonwealth of Massachusetts, acting by and through its Department of Environmental Protection, that, at such time and based on such examination, _____ [name of party holding title to the Property] (the “Grantor”) by virtue of a Deed dated _____, recorded with said Deeds in Book _____, Page _____, [and/or by Certificate of Title No. _____, in Land Registration Book _____, Page _____, of the Land Registration Office], holds good, clear, record and marketable title to the Property, free and clear of all matters of record, except the following enumerated matters:

[List all matters affecting title. The description of each encumbrance should indicate the its nature and include the date of the document, or plan and book and page reference (if none available, then provide document number.)

[COPIES OF ALL DOCUMENTS REFERENCED IN TITLE CERTIFICATION INCLUDING ANY REFERENCE PLANS MUST BE INCLUDED WITH THE CERTIFICATION.]

This certification relies upon _____ [description of plan, including recording information] for the accuracy of the description.

We [I] do not certify as to compliance and/or violations of applicable subdivision controls or planning board regulations; conservation commission and environmental

control questions, if any; zoning, bankruptcy and creditors' rights; accuracy of descriptions of surveys; rights of parties in possession; mechanics liens; any matters which would be disclosed by an accurate and new survey and inspection of the Property; whether or not restrictions have been violated; disposition agreements of any Redevelopment Authority; pending federal liens not of record, usurious provisions, variable rates repayment or rewrite provisions of mortgages; Indian tribal land claims; standing; errors or omissions in indexing at the Registry, Land Registration Office or Registry of Probate (including, without limitation, computer errors or omissions); unpaid taxes, municipal assessments or any other matters not of record at the Registry, Land Registration Office or Registry of Probate or to subsequent owners of the Property. Liability is limited to matters appearing of record during the period of the examination, and only to the parties to whom this certificate is addressed. This certificate does not cover the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601, et seq., as amended ("CERCLA"), Chapter 963 Acts of 1973 (re: abandoned railroad beds) or provisions of Mass. Gen. Laws ch. 21E (Massachusetts Superfund Statute). No liability is assumed for obtaining releases, discharges or any other instrument noted above.

The certifications set forth above are solely for your benefit in connection with the recordation/registration of that certain Grant of Environmental Restriction and Easement in the Property running from _____ [name of party holding title to the Property] to the Massachusetts Department of Environmental Protection dated _____, and to be recorded and/or filed forthwith. These certifications may not be furnished to any other person or entity or relied upon, in whole or in part, by you for any other matter, nor by any other person or entity in any manner without prior written consent of the undersigned.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

Very truly yours,

[NAME OF LAW FIRM CERTIFYING TITLE]

By: _____
[Name of attorney signing letter]

[Print name]

Its: _____
[Title]

Attachments:

Schedule A – LEGAL DESCRIPTION

**Industri-Plex Superfund Site
INAUGURATION PLAN
Attachment 3a – Form First Supplemental Title Certification**

[FIRM LETTERHEAD]

[DATE]

Commonwealth of Massachusetts, Acting by
and through its Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108
Attention: Industri-Plex Site Project Manager

Re: FIRST SUPPLEMENTAL CERTIFICATION OF TITLE

Grantor: _____
Property Description: _____
Deed reference: _____
Industri-Plex Site Lot IC-____

Dear Sir or Madam:

This First Supplemental Certification of Title (“First Supplemental Certification”) supplements our Certification of Title running to the Commonwealth of Massachusetts, acting by and through its Department of Environmental Protection, and dated _____ (“Certification of Title”), with respect to the above-described property, said property being further described in Schedule A attached hereto and made a part hereof [NOTE: **Schedule A should be the same Schedule A as in the underlying Certification of Title**] (the “Property”).

We [I] have examined the records of the Middlesex South District Registry of Deeds (“Registry”), the Land Registration Office of the Middlesex South Registry District (the “Land Registration Office”) and the relevant records of the Middlesex County Registry of Probate (the “Registry of Probate”) with respect to the Property, from [DATE], at [TIME], [INSTRUMENT NO.], through [DATE], at [TIME], [INSTRUMENT NO.].

[NOTE: **The above start date and instrument number should run from the end date and instrument number from the underlying Certification of Title; the above end date and instrument number should run through the date and instrument number immediately preceding the date and instrument number of the newly recorded/filed GERE.**]

We [I] certify to the Commonwealth of Massachusetts, acting by and through its Department of Environmental Protection, that, at such time and based on such examination, _____ [name of party holding title to the Property] (the “Grantor”) by virtue of a Deed from _____ to _____, dated _____, and recorded with said Deeds in Book _____, Page _____, [and/or by Certificate of Title No. _____, in Land Registration Book _____, Page _____ of the Land Registration Office], holds good, clear, record and marketable title to the Property, free and clear of all matters of record, except those certain matters enumerated in my underlying Certification of Title [and the following additional enumerated matters, said matters having been recorded and/or filed for registration subsequent to the end date and

time of the period of examination of said underlying Certification] **[include preceding bracketed clause, if applicable]:**

[List all matters affecting title since the date and time of the search period of the underlying Certification of Title, if any. The description of each encumbrance should indicate its nature and include the date of the document, or plan, and book and page reference (if none available, then provide the document number).]

[COPIES OF ALL DOCUMENTS REFERENCED IN THIS FIRST SUPPLEMENTAL TITLE CERTIFICATION INCLUDING ANY REFERENCE PLANS MUST BE INCLUDED WITH THIS SUPPLEMENTAL CERTIFICATION.]

This First Supplemental Certification relies upon _____
[description of plan, including recording information] for the accuracy of the description of the Property.

We [I] do not certify as to compliance and/or violations of applicable subdivision controls or planning board regulations; conservation commission and environmental control questions, if any; zoning, bankruptcy and creditors' rights; accuracy of descriptions of surveys; rights of parties in possession; mechanics liens; any matters which would be disclosed by an accurate and new survey and inspection of the Property; whether or not restrictions have been violated; disposition agreements of any Redevelopment Authority; pending federal liens not of record, usurious provisions, variable rates repayment or rewrite provisions of mortgages; Indian tribal land claims; standing; errors or omissions in indexing at the Registry, Land Registration Office or Registry of Probate (including, without limitation, computer errors or omissions); unpaid taxes, municipal assessments or any other matters not of record at the Registry, Land Registration Office or Registry of Probate or to subsequent owners of the Property. Liability is limited to matters appearing of record during the period of the examination, and only to the parties to whom this First Supplemental Certification is addressed. This First Supplemental Certification does not cover the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601, *et seq.*, as amended ("CERCLA"), Chapter 963 Acts of 1973 (re: abandoned railroad beds) or provisions of Mass. Gen. Laws ch. 21E (Massachusetts Superfund Statute). No liability is assumed for obtaining releases, discharges or any other instrument noted above.

The certifications set forth above are solely for your benefit in connection with that certain Grant of Environmental Restriction and Easement in the Property running from _____ **[name of party holding title to the Property]** to the Massachusetts Department of Environmental Protection dated _____, and recorded with said Deeds in Book _____, Page _____, [and/or filed as document number _____ in the Land Registration Office]. These certifications may not be furnished to any other person or entity or relied upon, in whole or in part, by you for any other matter, nor by any other person or entity in any manner without prior written consent of the undersigned.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

Very truly yours,

[NAME OF LAW FIRM CERTIFYING TITLE]

By: _____
[Name of attorney signing letter]

[Print name]

Its: _____
[Title]

Attachments:

Schedule A – LEGAL DESCRIPTION

**Industri-Plex Superfund Site
INAUGURATION PLAN
Attachment 4 - Form Subordination Agreement**

SUBORDINATION AGREEMENT

Site Name: Industri-Plex Superfund Site
Site Location: Woburn, MA
EPA Site Identification Number: MAD076580950
DEP Release Tracking Number: 3-0001731

Property Address: _____, Woburn, MA
Plan of Restricted Areas Lot IC-____

_____ [insert name of holder of the record interest], of _____ (Town/City), _____ County, _____ (State), is the holder of a _____ granted by _____ to _____, dated _____, recorded with the Middlesex South District Registry of Deeds in Book _____, Page _____ and/or filed with the Land Registration Office of the Middlesex South Registry District as Document No. _____ (the “_____”) [insert abbreviated name of the record interest (e.g., “the Willow Street Interceptor Sewer Easement”)].

_____ [insert name of holder of the record interest] hereby assents to the Grant of Environmental Restriction and Easement granted by _____ to the Massachusetts Department of Environmental Protection dated _____ and recorded with the Middlesex South District Registry of Deeds in Book _____, Page _____, and/or filed with the Land Registration Office of Middlesex South Registry District as Document No. _____ (the “GERE”), and agrees that the _____ [insert abbreviated name of the record interest] shall be subject to said GERE and to the rights created by and under said GERE insofar as the interests created under the _____ [insert abbreviated name of the record interest] affect the Property identified in the GERE and as if for all purposes said GERE had been executed, delivered and recorded and/or filed prior to the execution, delivery and recordation and/or filing of the _____ [insert abbreviated name of the record interest].

_____ [insert name of holder of the record interest] hereby represent(s) and warrant(s) that [he/she/it/they] is [are] the current and true holder(s) of the _____ [insert abbreviated name of the record interest].

WITNESS the execution hereof under seal this ____ day of _____, 20____.

Holder

[Note: if Holder is a legal entity rather than an individual person, modify preceding signature block and following acknowledgement; resolution(s) and/or authorization(s), certificate(s) of incumbency, certificate(s) of existence and good standing, etc. evidencing authority of individual(s) to sign on behalf of legal entity, as appropriate, must also be submitted.]

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

[seal]

[The execution of this Subordination Agreement by a secured lender and/or a fiduciary (as defined in M.G.L. c. 21E, § 2) for the purpose of subordinating its lien to said GERE shall not render such secured lender or fiduciary an "owner" or "operator", provided such secured lender and/or fiduciary shall not otherwise be an "owner" or "operator" within the meaning of § 2.]

Upon recording, please return to:

*Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108*

Attention: Industri-Plex Superfund Site Project Manager

**Industri-Plex Superfund Site
INAUGURATION PLAN
Attachment 5 – Form Notice for Publication**

P U B L I C N O T I C E

GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT

**Industri-Plex Superfund Site
Woburn, MA**

**EPA Site Identification Number: MAD076580950
MassDEP Release Tracking Number: 3-0001731**

**Property Address: _____, Woburn, MA
Plan of Restricted Areas Lot IC-_____**

A release of oil and/or hazardous materials has occurred at the above location, which is a portion of a disposal site as defined in Section 2 of Chapter 21E of Massachusetts General Laws (Chapter 21E) and in the Massachusetts Contingency Plan, 310 CMR 40.0000, as amended. The United States has placed this disposal site on the National Priorities List pursuant to the Comprehensive Environmental Response, Cost and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9601 et. seq. and the National Contingency Plan, 40 C.F.R. Part 300, as amended.

On [INSERT DATE GERE RECORDED], 20__, [INSERT NAME OF GRANTOR] recorded with the Middlesex South District Registry of Deeds in Book ____ and Page ____, and/or filed with the Land Registration Office of Middlesex South Registry District as Document Number _____, a GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT ("GERE") for the property at the above address. The recording and/or filing of the GERE was made pursuant to CERCLA, Chapter 21E and a Consent Decree entered on April 24, 1989 by the United States District Court for the District of Massachusetts in the matter styled *United States v. Stauffer Chemical Company et al.*, Civil Action No. 89-0195-MC and *Commonwealth of Massachusetts v. Stauffer Chemical Company et al.*, Civil Action No. 89-0196-MC. The Consent Decree was recorded at the Middlesex South Registry of Deeds in Book 19837, Page 476. The GERE has been granted to the Massachusetts Department of Environmental Protection (MassDEP).

The GERE restricts activities and uses at the property at the above location, except where conducted in strict compliance with work protocols established in the GERE. Some of the

work protocols may require an approval from MassDEP. The restrictions apply to designated areas of the property and each designated area may include restrictions on one or more of the following:

- excavation, drilling, or other disturbance of the surface of the land, buildings foundations, etc. and/or soil underneath
- extraction, pumping, consumption, exposure, or other groundwater use
- planting certain vegetation such as deep-rooted trees and other vegetation with significant root structure;
- commercial, industrial, residential, or agricultural activity or use
- activity or use which may interfere with response actions implemented at the site

The GERE reserves to the landowner the right to perform certain activities and uses which would otherwise be restricted, if they meet certain, specified requirements.

The GERE also requires the landowner to perform annual inspection and reporting to MassDEP and the United States Environmental Protection Agency (USEPA).

Any person interested in obtaining additional information about the GERE may contact **[NAME OF PERSON RECORDING THE GERE OR SUCH PERSON'S REPRESENTATIVE, NAME OF ORGANIZATION, ADDRESS, TELEPHONE NUMBER]**.

The GERE may be reviewed at the offices of MassDEP, One Winter Street, 6th Floor, Boston, MA by arrangement with Jennifer McWeeney, MassDEP Project Manager (617-654-6560); or at the Region 1 office of USEPA, 5 Post Office Square, Suite 100, Boston, MA by arrangement with Joseph LeMay, USEPA Remedial Project Manager (617-918-1323). The disposal site file can be reviewed at the records center located at the Woburn Public Library, at 45 Pleasant Street in Woburn, MA, and at the EPA Records Center, located at the above US EPA Region 1 office. (A copy of the GERE may also be viewed at the above records centers, when available.)

**DRAFT TRANSMITTAL LETTER
TO LANDOWNERS FROM
INDUSTRI-PLEX SITE REMEDIAL TRUST (“ISRT”)**

[Date]

[Name]
[Address]

RE: Landowner Requirements for the Inauguration of Institutional Controls at Operable Unit 1, Industri-Plex Superfund Site, Woburn, Massachusetts

Dear _____:

In August of 1989, previous operators and then current landowners within the Industri-Plex Superfund site in Woburn, MA (the “Site”) entered into a judicially approved consent decree (the “Consent Decree”) with the Massachusetts Department of Environmental Protection (“MassDEP”) and the United States Environmental Protection Agency (“USEPA”) (collectively, the “Agencies”) related to the cleanup of the Site. Pursuant to the Consent Decree, certain activities were established for the first phases of the Site-wide cleanup, called Operable Unit No. 1 (“OU-1”).¹ The Consent Decree also requires that landowners and subsequent landowners within OU-1 adopt certain land use restrictions (“Institutional Controls”). As a landowner or a successor to a landowner who signed the Consent Decree, you are one of a number of parties who are required to establish Institutional Controls on your property.

The Institutional Controls are meant to protect the components of the cleanup (i.e., the geo-textile membrane that lies beneath a portion of the Site and certain areas of ground cover and building foundations) and human health and the environment, while allowing for ongoing commercial and industrial use, where possible. As with the Consent Decree itself, the Institutional Controls will run with the land and be binding upon you and subsequent owners of your property.

Instructions for inaugurating the Institutional Controls are included in the attached Plan of Inauguration of Institutional Controls (“Inauguration Plan”), approved by MassDEP and USEPA (please see their enclosed letter). By timely inaugurating Institutional Controls on your property, you will achieve compliance with the Consent Decree’s requirement. Note that the Consent Decree also established significant penalties

¹ The Consent Decree was entered on August 24, 1989 by the United States District Court for the District of Massachusetts in the matter styled, *United States of America v. Stauffer Chemical Company, et al.*, Civil Action No. 89-0195-MC and *Commonwealth of Massachusetts v. Stauffer Chemical Company, et al.*, Civil Action No. 89-0196-MC. A copy of the Consent Decree can be found at <http://www.epa.gov/ne/superfund/sites/industriplex/44323.pdf>.

for failure to adopt or comply with the Institutional Controls. The Inauguration Plan was prepared by the Industri-plex Site Remedial Trust (“ISRT”) with significant review and comment from MassDEP and USEPA. The ISRT is one of two trust entities that were created by the Consent Decree and is involved with the funding, managing and supervision of the OU-1 remedial effort.² Currently, the ISRT is working with EPA and MassDEP to offer you assistance to inaugurate the Institutional Controls on your property.

By way of background, the form of Institutional Controls is a Grant of Environmental Restriction and Easement (“GERE”). GEREs are required for all properties within OU-1 which contain one or more areas classified as Class B, C and/or D Land. The GERE imposes institutional controls on all four classes of land—A, B, C and D—that are present on such properties. (Only properties within the Site which are comprised solely of Class A Land are not subject to any Institutional Controls.) Besides having an obligation to inaugurate the Institutional Controls on your property, you have a duty to cooperate with other Landowners within OU-1 to inaugurate and maintain the Institutional Controls on their properties. The GERE which you are required to execute and record, together with its appendices, is substantially the same in form and substance as the GERE you reviewed in 2005. Some technical revisions have been made to the GERE and certain appendices which do not materially alter the substance of the documents.

The Institutional Control submission you need to prepare will consist of the GERE, a Plan of Restricted Areas for each individual property (provided by the ISRT), and related documentation as detailed in the Inauguration Plan. Your submission must be approved jointly by USEPA and MassDEP, and then signed by MassDEP before the GERE can be recorded with the Registry of Deeds or filed with the Land Court (for registered land).

The ISRT, USEPA and MassDEP recognize that not all landowners will be familiar with the inauguration process, and the ISRT is prepared to offer assistance regarding the inauguration process. However, any legal questions you have should be directed to your legal counsel. Questions or requests for assistance should be directed writing to Michael W. Parker, Esquire, Rackemann Sawyer & Brewster, LLP, 160 Federal Street, Boston, MA 02110-1700.

We look forward to the timely completion of the inauguration of institutional controls on your property(ies) within OU-1. Thank you for your assistance.

Sincerely,

² A second entity, the Industri-Plex Site Custodial Trust (“Custodial Trust”), was also established to manage certain property formerly held by the Mark Philip Trust. This Trust is also subject to the requirements of the Consent Decree and the need to inaugurate institutional controls.

Randy Cooper
Industri-plex OU-1 Coordinator
for the Industri-plex Site Remedial Trust

cc: Jennifer McWeeney, Project Manager, MassDEP
Joseph LeMay, Remedial Project Manager, USEPA

Enclosures

Agency Inauguration Plan Letter
Inauguration Plan



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

**THIS IS AN IMPORTANT NOTICE.
FAILURE TO TAKE ADEQUATE ACTION IN RESPONSE TO THIS NOTICE COULD
RESULT IN SERIOUS LEGAL CONSEQUENCES.**

[Date]

[Name of Landowner]

[Mailing Address]

[City, State, Zip]

Re: Inauguration Plan for the Industri-plex Superfund Site
Grant of Environmental Restriction and Easement for:
[Property Address]
Lot IC - ____

Dear [Name of Landowner]:

You are receiving this letter because you own property at the Industri-plex Superfund Site, in Woburn, Massachusetts (the Site). This letter is to notify you of your responsibilities as Landowner under the 1989 Consent Decree for the Site¹ to inaugurate a Grant of Environmental Restriction and Easement (GERE) on your property. Under the Consent Decree, each Landowner must comply with the Inauguration Plan approved by the US Environmental Protection Agency (USEPA) and the MA Department of Environmental Protection (MassDEP).

The Inauguration Plan establishes important deadlines which you are obligated to meet. Deadlines commence from the date you receive the Inauguration Plan mailing from the ISRT. Failure to meet deadlines in the Inauguration Plan may subject you to penalties and enforcement action by USEPA and/or MassDEP, under the Consent Decree. You are advised to consider engaging the services of a trained real estate attorney to assist you in fulfilling your obligations as a Landowner under the Inauguration Plan, in a timely manner.

¹ The Consent Decree was entered on August 24, 1989 by the United States District Court for the District of Massachusetts in the matter styled, *United States of America v. Stauffer Chemical Company, et al.*, Civil Action No. 89-0195-MC and *Commonwealth of Massachusetts v. Stauffer Chemical Company, et al.*, Civil Action No. 89-0196-MC. A copy of the Consent decree can be found at <http://www.epa.gov/ne/superfund/sites/industriplex/44323.pdf>.

1. What is the purpose of the Inauguration Plan? The Industri-plex Site Remedial Trust (ISRT) prepared the Inauguration Plan pursuant to the Consent Decree and in coordination with MassDEP and USEPA (collectively, the Agencies). The Agencies then approved the Inauguration Plan. Through the procedures and deadlines established in the Inauguration Plan, you will be guided through the process of properly establishing a GERE on your property, as is further explained in the ISRT's transmittal letter and in the Inauguration Plan.

The Inauguration Plan includes a flow chart illustrating the typical steps to inaugurate a GERE; a number of form documents for use in meeting Inauguration Plan requirements, in addition to the form GERE²; and submittal checklists to assist you in making complete submittals. All forms are attached to the Inauguration Plan and are also available electronically, as indicated in the Inauguration Plan. In addition to the flow chart and the form GERE, the forms include a clerk's certificate, a certification of title, a subordination agreement, and a notice for publication. Your use of these forms should assist you in satisfying the Inauguration Plan requirements and will help keep the GERE approval process efficient and consistent.

2. What is a Landowner obligated to do? Under the Consent Decree, as a Landowner or the successor-in-title to a Landowner,³ you are required to inaugurate a GERE on your property in accordance with the Inauguration Plan. The Inauguration Plan sets forth complete details.

The GERE is a form of institutional controls designed and approved for the Site. It is designed to preserve the remedial actions at the Site in order to protect human health and the environment, while permitting industrial and commercial activities, to the extent possible. The GERE meets these objectives by restricting certain activities and uses, permitting others, and by establishing certain obligations and conditions that each Landowner must fulfill.

3. Has the form GERE been updated since 2005? In April, 2005, the Agencies distributed a final GERE form to Landowners and Settlers (under the Consent Decree), subject to internal Agency management review, and the ISRT began to design the Inauguration Plan. The 2005 form GERE was the result of a lengthy negotiation process which addressed many Landowner and Settler concerns, where possible. Since then, the 2005 form GERE has been updated, but not materially changed.

After the 2005 form GERE was issued, USEPA requested MassDEP to be the sole government agency holder (grantee) of the GERE. MassDEP has agreed to do this with respect to at least the first several GERES to be established at the Site, and the 2005 form GERE has been updated, accordingly. This means that although USEPA and MassDEP will still jointly approve each Landowner GERE before it is recorded at the Registry of Deeds or filed (for registered land) at the Land Court, MassDEP will be the sole grantee instead of a co-Grantee with USEPA.

Although MassDEP will be the sole grantee of your GERE, USEPA, as lead agency under the Consent Decree, will remain the lead agency with respect to certain potential disputes under the

² The form GERE includes several appendices and exhibits.

³ Some Landowners are also obligated to comply with the Inauguration Plan by additional written agreements with the Agencies.

[Name of Landowner]

[date]

Page 3 of 3

GERE that relate directly to provisions of the Consent Decree. (These are identified in the GERE.) In addition, the GERE requires Landowners to provide USEPA with a copy of all submittals to MassDEP, and USEPA will have an opportunity to review and comment to MassDEP regarding Landowner submittals and to provide such other support to MassDEP in managing and enforcing each GERE as may be necessary and appropriate.

Prior to finalizing the Inauguration Plan, the form GERE was implemented at two Site properties to fine tune the documentation before circulating it more widely to additional Landowners. Based on these two pilots, the 2005 form GERE has also been updated to address procedural issues and legal technicalities, but has not been materially changed.⁴

4. Whom do I contact if I have questions? If you have any questions about this letter, please contact Joseph LeMay, USEPA's Remedial Project Manager, at (671) 918-1323; or Jennifer McWeeney, MassDEP's Project Manager, at (617) 654-6560.

The ISRT has agreed to assist the Agencies by conducting a Preliminary Review of the documentation that each Landowner will be preparing in order to establish a GERE on its property, before the Agencies' Definitive Review. If you have any questions about the procedures established in the Inauguration Plan or its attached forms, as noted in the ISRT's transmittal letter, you or your attorney may also contact the ISRT's Preliminary Reviewer, Michael W. Parker, Esq., at (617) 542-7437. Mr. Parker's complete contact information is provided in the Inauguration Plan.

Sincerely,

Robert Cianciarulo
Chief
Massachusetts Superfund Section
USEPA—Region 1

Jay Naparstek
Deputy Division Director
Federal Sires Program
MassDEP

This letter is enclosed with the following documents:

ISRT Transmittal Letter
MassDEP/USEPA Inauguration Plan Approval Letter
Inauguration Plan

⁴ Upon request to the ISRT Operable Unit 1 Coordinator, the ISRT will make available to you a comparison of the updated form GERE and the 2005 form GERE. The ISRT Operable Unit 1 Coordinator's contact information is available in the Inauguration Plan.