

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 and )  
 )  
 COMMONWEALTH OF VIRGINIA )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 PERSIMMON LANE, LLC, a Virginia )  
 limited liability company, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Civil Action No. 1:17-cv-00017

**CONSENT DECREE**

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## I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the Commonwealth of Virginia (the “Commonwealth”), on behalf of the Virginia Department of Environmental Quality (“VADEQ”) (collectively, the Commonwealth together with the United States, the “Plaintiffs”), filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 (“CERCLA”), as amended, and Section 10.1 of the Virginia Waste Management Act, Va. Code Ann. § 10-1-1400 *et seq.*, respectively.

B. The United States and the Commonwealth in their Complaint seek, *inter alia*, reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Hidden Lane Landfill Superfund Site near the community of Sterling, in Loudoun County, in the Commonwealth of Virginia (the “Site”), together with accrued interest.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the Commonwealth undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and Va. Code § 10.1-1402(19), respectively, and will undertake additional response actions in the future.

D. In performing response actions at the Site, EPA and the Commonwealth have incurred response costs and will incur additional response costs in the future.

E. The real property on which the Site is situated (the “Property,” as more particularly defined in Paragraph 3.z below) was owned, during their lifetimes, by Philip W. Smith (“Philip Smith”) and Albert E. Moran (“Albert Moran”), as joint tenants, with each

holding a 50% undivided interest in the Property. Both Philip Smith and Albert Moran are now deceased.

(1) Philip Smith died on March 31, 2007. Pursuant to various estate planning documents associated with the estate of Philip Smith (“Philip Smith Estate”), Philip Smith’s interest in the Property (the “Smith Interest”) was to pass to a trust (the “Smith Trust”), the beneficiaries of which were family members of Philip Smith. The Smith Trust and its beneficiaries disclaimed any interest in the Property, leaving the precise ownership status of the Smith Interest unclear.

(2) Albert Moran died on December 23, 1987. Pursuant to Albert Moran’s will, his interest in the Property (the “Moran Interest”) passed to his widow, Sarah Stockton Moran (“Sarah Moran”). Sarah Moran subsequently died on September 17, 2003. Pursuant to the residuary clause of Sarah Moran’s will, the Moran Interest in the Property was to pass to the four beneficiaries under Sarah Moran’s will: (a) Georgia Stockton (“Georgia”); (b) Oma Louise Flood (“Oma”); (c) Anna Belle Elrod (“Anna”); and (d) Henderson Edward Stockton (“Edward”) (Georgia, Oma, Anna, and Edward are referred to collectively as “Moran’s Beneficiaries”). In light of the environmental issues affecting the Property, however, Moran’s Beneficiaries indicated that they would not accept title to the Moran Interest in the Property and were not willing to do so in the future absent resolution of potential claims for response costs incurred and to be incurred with respect to the Property. The Estate of Sarah Moran remains open.

F. In 2012, EPA entered into a Settlement Agreement for Recovery of Response Costs with the Philip Smith Estate and the Smith Trust (CERCLA Docket No. CER-03-2012-0073 CR) pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1). Under that agreement, the Philip Smith Estate and Smith Trust made a cash payment to EPA for the benefit

of the Hidden Lane Landfill Superfund Site Special Account in exchange for a covenant from EPA not to sue or take administrative action to recover further response costs.

G. On September 9, 2015, the Personal Representatives of the Estate of Sarah Moran and Moran's Beneficiaries initiated a partition action in the Circuit Court of Loudoun County in the Commonwealth of Virginia under the style and number *Walker Flood, in his capacity as Executor of the Estate of Sarah Stockton Moran, Deceased, et al. v. Community Wireless Structures II, LLC, a Virginia limited liability company, et al.*, Civil No. CL00096177-00 ("the Partition Action"). The purpose of the Partition Action was to remove the cloud to title of the Property and to consolidate the various ownership interests of the Philip Smith Estate and Estate of Sarah Moran in the Property into a single limited liability company, Persimmon Lane, LLC.

H. Persimmon Lane, LLC is a Virginia limited liability company that was formed by the Personal Representatives of the Estate of Sarah Moran in order to pursue the Partition Action and to enter into this Consent Decree. The membership interests in Persimmon Lane are held by the Personal Representatives of the Estate of Sarah Moran.

I. On November 16, 2015, the Loudoun County Circuit Court issued a Final Order of Partition in the Partition Action that conveyed all ownership interests in the Property to Persimmon Lane, LLC in fee simple, thereby consolidating the interests of the unknown beneficiaries of the Philip Smith Estate as well as the property interests of the Estate of Sarah Moran into Persimmon Lane, LLC. As such, Persimmon Lane, LLC, is the current owner of the Property and is a successor of the Estate of Sarah Moran.

J. The United States and the Commonwealth allege that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Va. Code §

10.1-1402(19), respectively, and is liable for response costs incurred and to be incurred at the Site.

K. For the purposes of this Consent Decree, Settling Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and to Va. Code § 10.1-1402(19). Settling Defendant neither admits nor denies the allegations in the Complaint, and nothing in this Decree shall constitute or be construed as an admission of liability, fact, or law on the part of Settling Defendant.

L. The Personal Representatives of the Estate of Sarah Moran, on behalf of the Moran Estate, previously submitted financial information to the United States. The United States reviewed the financial information submitted by the Personal Representatives of the Estate of Sarah Moran and determined that the Personal Representatives of the Estate of Sarah Moran, acting on behalf of the Estate, had limited financial ability to pay for response costs incurred and to be incurred at the Site. Thereafter, the Personal Representatives of the Estate of Sarah Moran formed Settling Defendant, a Virginia limited liability company, in order to consolidate the ownership interests in the Property and to enter into this Consent Decree. The United States has reviewed additional financial information submitted by Settling Defendant. Based upon this information, the United States has determined that the Settling Defendant also has limited financial ability to pay for response costs incurred and to be incurred at the Site. The financial information submitted by the Estate of Sarah Moran and Settling Defendant is included in the list of documents comprising Appendix A.

M. The Plaintiffs and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith,

that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

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

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms



listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. “Bona Fide Prospective Purchaser” or “BFPP” shall mean a person as described in CERCLA Sections 101(40) and 107(r), 42 U.S.C. §§ 9601(40) and 9607(r).

b. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

c. “Commonwealth” shall mean the Commonwealth of Virginia and each department, agency, and instrumentality of the Commonwealth of Virginia, including the Virginia Department of Environmental Quality.

d. “Commonwealth Costs” shall mean costs incurred by the Commonwealth in connection with the Site by the Effective Date, including applicable interest on such costs.

e. “Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

f. “Cumulative Net Sales Proceeds” shall mean the cumulative amount recovered in Net Sales Proceeds from each and every sale of the Property or portions thereof. Appendix D sets forth a Proceeds Distribution Example that demonstrates how Cumulative Net Sales Proceeds are to be calculated pursuant to this Consent Decree.

g. “Date of Lodging” shall mean the date this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Eastern District of Virginia, Alexandria Division.

h. “Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

i. “DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

j. “Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

k. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

l. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

m. “Estimated Post-PCOR Response Costs” shall mean all costs EPA anticipates that the United States will incur to perform the response actions at the Site, as determined by EPA within one hundred twenty (120) days after EPA issues a Preliminary Close Out Report (“PCOR”) for the response actions at the Site. Estimated Post-PCOR Response Costs shall also include the estimated cost of operation and maintenance for the response actions at the Site.

n. “Financial Information” shall mean those financial documents identified in Appendix A.

o. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in connection with the Site after August 31, 2013 through the date that EPA calculates Estimated Post-PCOR Response Costs. Future Response Costs shall also include: (i) all Interest on direct and indirect costs incurred that has

accrued during the period from August 31, 2013, to the date of payment; (ii) all direct and indirect costs incurred prior to August 31, 2013, but paid after that date; and (iii) Estimated Post-PCOR Response Costs.

p. “Hidden Lane Landfill Special Account” shall mean one or more special accounts, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

q. “Institutional Controls” shall mean proprietary controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, and/or resource use to minimize the potential for human exposure to waste materials at or in connection with the Site; (ii) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the remedial action(s); and/or (iii) provide information intended to modify or guide human behavior at or in connection with the Site.

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

s. “Net Sales Proceeds” shall mean all consideration received by Settling Defendant from the sale of the Property or, as applicable, a portion(s) of the Property, less the following administrative expenses:

- i. The repayment of past loans totaling \$574,870 to the Estate of Sarah Moran by Moran's Beneficiaries for approved administrative expenses relating to the Site (the "Beneficiary Loans");
- ii. Any payment in consideration of the release of any lien listed as a Permitted Encumbrance in Appendix E, hereto;
- iii. Any reasonable closing costs paid in order to complete the sale(s) of the Property or any portion thereof;
- iv. Any reasonable broker's fees paid in order to complete the sale(s) of the Property or any portion thereof;
- v. Any Commonwealth and/or municipal transfer, recordation and grantor taxes regarding the sale(s);
- vi. Reasonable fees and costs arising from the appraisals required by Paragraphs 5.b and 5.d of this Consent Decree;
- vii. Reasonable attorneys' fees and costs paid relating to the Partition Action, to this Consent Decree, and to actions reasonably necessary to complete the sale(s) of the Property or any portions thereof;
- viii. Any federal income tax liability, as calculated by a third party certified accountant, arising from the portion of Net Sales Proceeds that must be disbursed to EPA and/or the Commonwealth pursuant to Paragraph 5;
- ix. Reasonable fees and costs paid to a third-party certified accountant in order to obtain the estimate of federal income taxes arising from any sale(s) of the Property or any portions thereof; and

x. Any other reasonable administrative fees or costs, if approved by EPA in advance of having been incurred, that arise from the maintenance of the Property or compliance with the requirements of this Consent Decree.

The exclusions under Paragraphs 3.s.ii through 3.s.x shall only apply to the extent that such fees and/or costs have already been incurred and have not been previously satisfied by the reimbursement for the Beneficiary Loans under Paragraph 3.s.i. In order to qualify under Paragraphs 3.s.i through 3.s.x, an expense must be supported by adequate documentation which has been submitted to EPA and the Commonwealth.

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

u. “Parties” shall mean the United States, the Commonwealth of Virginia, and Settling Defendant.

v. “Partition Action” means that action brought in the Circuit Court of Loudoun County, Commonwealth of Virginia, under the style and number *Walker Flood, in his capacity as Executor of the Estate of Sarah Stockton Moran, Deceased, et al. v. Community Wireless Structures II, LLC, a Virginia limited liability company, et al.*, Civil No. CL00096177-00.

w. “Past Response Costs” shall mean those costs, including, but not limited to, direct and indirect costs, that the United States has paid at or in connection with the Site through August 31, 2013 plus Interest on all such costs according to 42 U.S.C. § 9607(a) from August 16, 2008 through August 31, 2013.

x. "Performing Parties" shall mean any potentially responsible parties who have entered or may enter into an agreement with the United States for performance of response action at the Site or who have been or may be ordered to perform response action at the Site.

y. "Plaintiffs" shall mean the United States and the Commonwealth of Virginia.

z. "Property" shall mean the two parcels of real property, one of which contains the Hidden Lane Landfill. The Property is located at 45470 Persimmon Lane near the community of Sterling, in Loudoun County, Virginia, and consists more particularly of Parcels A and B as designated by the following property descriptions:

**PARCEL A**

Tax Map No.: 63-15  
PIN: 027-47-0634-000 Group No.: 018  
Magisterial District: Potomac  
Size: 147.98 acres

All that certain tract or parcel of land, containing 147.98 acres, more or less, together with all the improvements thereon and rights and appurtenances thereunto appertaining, situate, lying and being in Broad Run Magisterial District, Loudoun County, Virginia, adjoining the Potomac River, the lands of Robert B. Young, Mankin and the lands now owned or formerly owned by George Dorrell's heirs, which said tract or parcel of land, according to the survey made by Robert E. Rodgers, C.S., November 9, 1954, is described with more particularly by metes and bounds as follows: BEGINNING at the Southwest corner of said land hereby conveys and running thence in and with the line of Young N 11° 26' 12" E 4947.74 feet to the edge of the Potomac River; thence in an Easterly direction in and with the edge of said river for a distance of approximately 1657.82 feet to a point in the line of the Dorrell land; thence in and with the line of Dorrell S 11° 39' 09" W 3211.60 feet to a point in the corner of Mankin; thence in the line of Mankin N 79° 08' 43" W 880.15 feet to a point in the corner of Mankin; thence in the line of Mankin S 11° 26' 12" W 667.99 feet to a point in the corner of Mankin; thence with the line of Mankin N. 78° 33' 48" W 74.58 feet to a point in the corner of Mankin; thence with the line of Mankin S 12° 39' 32" W 1268.52 feet to a point in the corner of Mankin; thence continuing with the line of Mankin 78° 33' 48" W 650.76 feet to the place of beginning, containing 147.98 acres, more or less.

**PARCEL B**

A ten foot wide strip described as PT Youngs 10 foot strip in the Potomac Magisterial

District and identified by Loudoun County parcel identification number (PIN) 027-36-0959-000, and containing 1.14 acres as shown on tax map 63A—2—C, and further described on the Loudoun County tax rolls as PT YOUNGS 10FT STRIP, 128-1653 WB, 460-652, 878-1877, 1077-1088 FINAL ORDER, Acreage: 1.14

aa. “Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

bb. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

cc. “Response Costs” shall mean all costs of “response,” as that term is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), incurred by the United States in connection with the Site.

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

ee. “Settling Defendant” shall mean Persimmon Lane, LLC.

ff. “Site” shall mean the Hidden Lane Landfill Superfund site, encompassing a landfill of approximately 25 acres, located at 45470 Persimmon Lane near the community of Sterling, in Loudoun County, Virginia, and groundwater and soil contamination originating from the landfill, generally shown on the map included in Appendix B.

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

hh. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

ii. “Wetland Mitigation Bank” means any wetland mitigation bank that (i) was created pursuant to and is operated in accordance with 40 C.F.R. § 230.98; and (ii) is authorized to buy and sell wetland and stream “compensatory mitigation credits” as set forth in 40 C.F.R. § 230.98 within the same watershed in which the Property is located.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make one or more payments to resolve its alleged civil liability for the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, as provided in the Covenants by Plaintiffs in Section IX, and subject to the Reservations of Rights by Plaintiffs in Section X.

#### **VI. PAYMENT OF RESPONSE COSTS**

5. Distribution of Net Proceeds of Sale of Property. Settling Defendant shall pay to EPA and the Commonwealth the amount of the Cumulative Net Sales Proceeds of the Property set forth in Paragraph 5.n, below.

a. Maintenance of Clear Title. Commencing on the Effective Date, having consolidated the ownership interests in the Property through the Partition Action, Settling Defendant shall maintain clear and marketable title to the Property, or to any remaining portion after a partial Transfer, until the entire Property has been Transferred.

b. Appraisal of Property If Sold to Wetland Mitigation Bank. Within sixty (60) days of the Effective Date, Settling Defendant shall submit to EPA the name of one or more appraisers in order to assess the fair market value of the Property, or any portion thereof, that



could be sold or otherwise conveyed to a Wetland Mitigation Bank. The appraiser(s) identified by Settling Defendant shall be certified to meet the Uniform Standards of Professional Appraisal Practice by a nationally recognized organization of professional real estate appraisers. EPA, in consultation with the Commonwealth, may, within sixty (60) days thereafter, disapprove the proposed appraiser(s). If all proposed appraisers are disapproved by EPA, Settling Defendant shall, within fifteen (15) days after such disapproval, submit names of additional appraisers, who shall be subject to EPA's disapproval as provided above. Any appraisers not disapproved by EPA shall be deemed to be accepted. Within sixty (60) days of either EPA's acceptance of an appraiser or the deadline for EPA's disapproval of the proposed appraisers, Settling Defendant shall obtain an appraisal of the Property that assesses the fair market value of the Property, or any portion thereof, if conveyed to a Wetland Mitigation Bank. The appraisal(s) shall be performed by any appraiser accepted by EPA. In the event any such appraiser is not accepted by EPA, Settling Defendant shall submit alternate appraiser(s) for EPA review and acceptance until such time that EPA accepts an appraiser to carry out the provisions in this Paragraph. Settling Defendant shall be responsible for paying all Wetland Mitigation Bank appraisal fees as they come due. Settling Defendant shall submit a copy of the appraisal(s) to EPA. If the Property, or any portion thereof, is not sold to a Wetland Mitigation Bank within one (1) year of the date of the Wetland Mitigation Bank appraisal, EPA may require Settling Defendant, and Settling Defendant agrees, to obtain a new Wetland Mitigation Bank appraisal of the Property, or any portion thereof, in accordance with this Paragraph. EPA is entitled to request, and Settling Defendant agrees to conduct, additional Wetland Mitigation Bank appraisals on an annual basis until the entire Property has been sold. If EPA requests an additional Wetland Mitigation Bank appraisal, Settling Defendant shall comply with the deadlines and procedures described in this

Paragraph with respect to the selection of the initial Wetland Mitigation Bank appraiser and procurement of the required appraisal.

c. Institutional Controls. Within sixty (60) days of its receipt from EPA of Institutional Controls selected by EPA, Settling Defendant agrees to record in the Clerk's Office of the Circuit Court of Loudoun County, Virginia, and to comply with, any and all Institutional Controls that are selected by EPA, in consultation with the Commonwealth, for the Property or any portion thereof, in a format provided by EPA in advance. Settling Defendant shall only Transfer the land subject to said Institutional Controls.

d. General Appraisal of Property. Within thirty (30) days of recording the Institutional Controls as required by Paragraph 5.c, and thereafter upon written request by EPA, Settling Defendant shall submit to EPA the names of one or more appraisers who will conduct a general appraisal of the Property. The appraisers identified by Settling Defendant shall be certified to meet the Uniform Standards of Professional Appraisal Practice by a nationally recognized organization of professional real estate appraisers. EPA, in consultation with the Commonwealth, may, within sixty (60) days thereafter, disapprove the proposed appraiser(s). If all proposed appraisers are disapproved by EPA, Settling Defendant shall, within fifteen (15) days after such disapproval, submit names of additional appraisers, who shall be subject to EPA's disapproval as provided above. Any appraisers not disapproved by EPA shall be deemed to be accepted. Within sixty (60) days of either EPA's acceptance of an appraiser or the deadline for EPA's disapproval of the proposed appraisers, Settling Defendant shall obtain a general appraisal of the Property that assesses the value of the Property, or any portions thereof, with the Institutional Controls identified pursuant to Paragraph 5.c imposed. The appraisal(s) shall be performed by any appraiser deemed to be accepted by EPA. In the event any such appraiser is

not accepted by EPA, Settling Defendant shall submit alternate appraiser(s) for EPA review and acceptance until such time that EPA accepts an appraiser to carry out the provisions in this Paragraph. Settling Defendant shall be responsible for paying all general appraisal fees as they come due. Settling Defendant shall submit a copy of the appraisal(s) to EPA. If the Property, or any portion thereof, is not sold within one (1) year of the date of the general appraisal(s), EPA may require Settling Defendant, and Settling Defendant agrees, to obtain a new general appraisal of the Property, or any remaining portion thereof, in accordance with this Paragraph. EPA is entitled to request, and Settling Defendant agrees to conduct, additional general appraisals of the Property, or any remaining portion thereof, on an annual basis until the entire Property has been sold. If EPA requests an additional general appraisal, Settling Defendant shall comply with the deadlines and procedures described in this Paragraph with respect to the selection of the initial general appraiser and procurements of the required appraisal.

e. Any appraisal(s) under Paragraph 5.b and 5.d shall include an assessment of the estimated values of the Property if sold in total as well as if subdivided, in order to provide for the expedited sale of parcels within the Property that are not part of the Site or where groundwater sampling and analysis indicates that groundwater conditions meet or are below the Maximum Contaminant Level for trichloroethylene (“TCE”) of five (5) micrograms per liter ( $\mu\text{g/l}$ ), pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, as implemented by 40 C.F.R. § 141.61. Appendix C provides a map demonstrating groundwater contamination levels at the Site at or around the time of the Remedial Investigation. For the purposes of conducting the appraisal(s), the Parties acknowledge that additional actions, including but not limited to the installation of water filtration systems, may be required for any development of the Property or portions thereof.

f. In the event that the Property is subdivided such that a partial Transfer of the Property occurs, any subsequent appraisal(s) shall only assess the value of the remaining portion of the Property that has not yet been Transferred.

g. Maintenance of the Property. Until the entire Property is sold, Settling Defendant shall, with respect to all portions of the Property owned by Settling Defendant:

i. Maintain and make necessary repairs to the Property;

ii. Keep the Property insured against loss from liability, with a liability policy with limits of no less than \$250,000;

iii. Timely pay or cause to be paid all real property taxes on the Property; and

iv. Timely pay all water and sewer bills related to the Property.

h. Responsibility for Payment of Expenses. Settling Defendant shall be responsible for timely paying all expenses, taxes, and fees, including those expenses and fees arising from obligations of this Consent Decree, with respect to all portions of the Property owned by Settling Defendant. Qualifying expenses shall be reimbursed from the proceeds of the sale(s) of the Property or any portion thereof pursuant to the terms of Paragraphs 3.s and 5.1 (“Notice of Sale and Calculation of Net Sales Proceeds”).

i. Marketing of the Property.

i. Within sixty (60) days of receiving the first appraisal of the Property under Paragraph 5.b for use of the Property in connection with a Wetland Mitigation Bank, Settling Defendant shall submit a proposal regarding the marketing of the Property to Wetland Mitigation Banks. Settling Defendant’s

proposal may be limited to marketing only a portion of the Property or may recommend that the Property not be marketed to Wetland Mitigation Banks. EPA, in consultation with the Commonwealth, shall provide Settling Defendants with a written approval, denial, or approval in part and denial in part of Settling Defendant's proposal. EPA reserves the right to enlarge, reduce, or otherwise modify the acreage to be marketed from the acreage recommended in Settling Defendant's proposal. Within ten (10) days of receiving EPA's written decision pursuant this Paragraph, Settling Defendant may dispute EPA's decision through the mechanisms of Section VII (Dispute Resolution). Invocation of the dispute resolution procedures shall suspend Settling Defendant's marketing obligations under this Paragraph 5.i.i. Within thirty (30) days of receiving either EPA approval or, if applicable, a final decision pursuant to the dispute resolution procedures, Settling Defendant shall commence using best efforts to sell or otherwise convey an interest in the Property or a portion thereof to a Wetland Mitigation Bank. All offers for sale or conveyance to a Wetland Mitigation Bank remain subject to the requirements of Paragraphs 5.k and 5.l ("Notice of Sale and Calculation of Net Sales Proceeds") of this Consent Decree.

ii. If, at any time after the Effective Date, Settling Defendant receives an offer from a potential BFPP proposing to undertake all future response actions at the Site required by EPA, Settling Defendant shall comply with the requirements of Paragraphs 5.k and 5.l ("Notice of Sale and Calculation of Net Sales Proceeds") of this Consent Decree. Additionally, such an offer shall not be accepted unless it includes the results of an appraisal of the Property, or portion(s)

thereof at issue, at the time of the offer, as well as an appraisal of the Property, or portion(s) thereof at issue, assuming all remediation activities are complete. At the time the offer is provided to EPA pursuant to Paragraph 5.k, EPA shall undertake to complete and provide to Settling Defendant and BFPP a calculation of Past Response Costs and a good faith estimate of Future Response Costs.

iii. Within thirty (30) days after the date of the first general appraisal under Paragraph 5.d, Settling Defendant shall commence using “best efforts” to sell the Property.

iv. “Best efforts” for purposes of this Paragraph include:

- (a) Effectuating any subdivision(s) of the Property after consultation with EPA and the Commonwealth, in order to maximize the Net Sale Proceeds to be recovered within two (2) years from the Effective Date;
- (b) Entering into a listing agreement, for the purpose of marketing and selling the Property or portions thereof, with a real estate broker, dealer, or agent licensed in the Commonwealth of Virginia who customarily deals with real property similar to the Property;
- (c) Advertising the Property or portions thereof for sale in appropriate publications;
- (d) Listing the Property or portions thereof with appropriate real estate listing services;

- (e) Maintaining the Property or any remaining portions thereof in a condition suitable for showing to prospective buyers; and
- (f) Providing access to the Property or any remaining portions thereof, at reasonable times, to real estate brokers, dealers or agents and prospective buyers.

j. Settling Defendant shall submit to EPA reports regarding Settling Defendant's efforts to market the Property or portions thereof. The first such report shall be due ninety (90) days after commencement of "best efforts" to sell the Property or portions thereof as required by Paragraph 5.i immediately above, and successive reports shall be due every ninety (90) days from submission of the previous report until the entirety of the Property has been sold. Settling Defendant may submit a request in writing to EPA to modify or extend the time between reports due under this Paragraph. EPA may approve or deny such requests at its discretion or may impose conditions upon its approval of a modified reporting timeframe. Upon receipt of EPA approval, Settling Defendant may submit subsequent reports under the time frame specified by EPA. EPA approval of an extension of the reporting period shall not constitute a waiver of EPA's rights under this Paragraph, and EPA retains the right to reinstate the ninety (90) day reporting period upon notice to Settling Defendant.

k. Settling Defendant shall provide to EPA a copy of any proposed sales contract for the Property or portions thereof, and must obtain EPA's written approval before executing any such contract. Settling Defendant shall provide to EPA written documentation of any offer to purchase the Property or portions thereof within forty-eight (48) hours after receipt of such offer in order to provide EPA an opportunity to review and either object to or to approve

the offer, in consultation with the Commonwealth. Upon receipt of EPA's written approval of any such offer, Settling Defendant may execute the contract for sale of the Property or portion thereof. Settling Defendant shall provide to EPA a copy of any executed contract within five (5) days after it is signed by all parties.

1. Notice of Sale and Calculation of Net Sales Proceeds. Settling Defendant shall submit to EPA, at least ten (10) days prior to the date of closing of a sale of the Property or any portion thereof, a notice of the sale(s) and Settling Defendant's calculation of the Net Sales Proceeds and Cumulative Net Sales Proceeds.

i. Documentation. Settling Defendant shall submit all documentation regarding the values used in the calculation, including:

- (a) Copies of all documents to be executed regarding the sale;
- (b) Documentation of the amounts of closing costs to be paid;
- (c) Documentation of any broker's fees regarding the sale;
- (d) Documentation of appraisal fees relating to the sale;
- (e) Documentation of the amounts of state and/or municipal transfer taxes to be paid regarding the sale of the Property or portions thereof;
- (f) Documentation of the good faith estimate of federal income tax, if any, that qualifies for exclusion from Net Sales Proceeds under Paragraph 3.s.viii, as calculated by a third-party certified accountant; and



(g) Documentation of the fees of the third-party certified accountant who calculated the estimated federal income taxes.

ii. Calculation of Net Sales Proceeds in the Event of Multiple Sales.

The exclusions for administrative costs and expenses under Paragraph 3.s shall only apply to the extent that those expenses and/or costs have not been previously reimbursed from the proceeds of a prior sale of a portion of the Property.

iii. Settling Defendant may request that EPA approve the calculation of Net Sales Proceeds and Cumulative Net Sales Proceeds prior to any sale.

iv. Provided that the amount of Net Sales Proceeds is approved by EPA, EPA shall arrange for the execution or delivery, at the time of the sale(s), of a release of any federal lien under 42 U.S.C. § 9607(l) filed regarding the Property or any portions thereof at issue in the sale(s).

m. Settling Defendant shall, at the time of calculation of the Net Sales Proceeds from any sale of the Property or any portion(s) of the Property, have a third-party certified accountant provide a good faith estimate of any anticipated federal income tax liability, if any, arising from the portion of Net Sales Proceeds that must be disbursed to EPA and/or the Commonwealth pursuant to Paragraph 5. Such estimated amount, if any, may be deducted on a temporary basis from Net Sales Proceeds when calculated, pending actual assessment of the federal income tax liability associated with the portion of Net Sales Proceeds distributed to EPA and Commonwealth from the sale at issue. Settling Defendant shall place any such estimated

amount in an interest-bearing escrow account until such time as federal income tax is actually assessed on the sale at issue. Any amount remaining in the escrow account following payment of federal income tax on the sale shall be considered Net Sales Proceeds and shall be distributed pursuant to the terms of this Paragraph 5. Settling Defendant shall provide Plaintiffs with formal documentation of any federal tax assessment(s) associated with any sale of the Property or any portion of the Property upon request. All fees or costs arising from the obligations of this Paragraph will be paid by Settling Defendant as they come due.

n. At the time of sale of the entire Property or, if subdivided, upon the sale of each and every subdivided portion of the Property, Settling Defendant shall pay to the Plaintiffs a percentage of the Net Sales Proceeds from each sale, which percentage shall be calculated in accordance with this Paragraph and Table 1, below. Determination of the percentage of the Net Sales Proceeds to be paid to the Commonwealth and EPA shall be based on the amount of Cumulative Net Sales Proceeds that has been or will be received by Settling Defendant as a result of each closing on the sale(s) as provided below and demonstrated in the Proceeds Distribution Example set forth in Appendix D.

i. Net Sales Proceeds totaling \$.01 to \$156,112 (“Category A”) shall be paid entirely to the Commonwealth in satisfaction of the Commonwealth Costs.

ii. For any Cumulative Net Sales Proceeds received by Settling Defendant that total between \$156,112.01 and \$3,000,000 (“Category B”), the Net Sales Proceeds associated with each such recovery shall be divided with EPA recovering 52.5%, the Commonwealth recovering 17.5%, and Settling Defendant recovering 30%, of the Net Sales Proceeds respectively.

iii. For any Cumulative Net Sales Proceeds received by Settling Defendant that total between \$3,000,000.01 and \$10,000,000 (“Category C”), the Net Sales Proceeds associated with each such recovery shall be divided with EPA recovering 56.25%, the Commonwealth recovering 18.75%, and Settling Defendant recovering 25%, of the Net Sales Proceeds respectively.

iv. For any Cumulative Net Sales Proceeds received by Settling Defendant that total between \$10,000,000.01 and \$25,000,000 (“Category D”), the Net Sales Proceeds associated with each such recovery shall be divided with EPA recovering 60%, the Commonwealth recovering 20%, and Settling Defendant recovering 20%, of the Net Sales Proceeds respectively.

v. For any Cumulative Net Sales Proceeds received by Settling Defendant that total between \$25,000,000.01 and up to \$40,000,000 (“Category E”), the Net Sales Proceeds associated with each such recovery shall be divided with EPA recovering 52.5%, the Commonwealth recovering 17.5%, and Settling Defendant recovering 30%, of the Net Sales Proceeds respectively.

vi. For any Cumulative Net Sales Proceeds received by Settling Defendant that exceed \$40,000,000.01 (“Category F”), the Net Sales Proceeds associated with each such recovery shall be divided with EPA recovering 37.5%, the Commonwealth recovering 12.5%, and Settling Defendant recovering 50%, of the Net Sales Proceeds respectively.

vii. In the event that the Settling Defendant’s payments reimburse EPA and the Commonwealth in full for the entirety of both Past Response Costs and Future Response Costs from the Cumulative Net Sales Proceeds, 100% of any

additional Net Sales Proceeds shall be paid to Settling Defendant and any additional payments that would otherwise be required pursuant to Paragraph 5.n are not required.

**TABLE 1**

<b>Cumulative Net Sales Proceeds Recovered</b>	<b>Settling Defendant</b>	<b>EPA</b>	<b>Commonwealth</b>
<b>Category A: \$.01 to \$156,112</b>	0%	0%	100%
<b>Category B: \$156,112.01 to \$3,000,000</b>	30%	52.5%	17.5%
<b>Category C: \$3,000,000.01 to \$10,000,000</b>	25%	56.25%	18.75%
<b>Category D: \$10,000,000.01 to \$25,000,000</b>	20%	60%	20%
<b>Category E: \$25,000,000.01 to \$40,000,000</b>	30%	52.5%	17.5%
<b>Category F: \$40,000,000.01 and above</b>	50%	37.5%	12.5%

o. Settling Defendant shall not be required to comply with Paragraph 5 with respect to the Property or a portion of the Property, in the event, and only to the extent that, the

Property or such portion thereof is transferred involuntarily by operation of law, including foreclosure or its equivalent of any lien which is listed as a Permitted Encumbrance in Appendix E, hereto, or is transferred by deed or other assignment in lieu of foreclosure due to a default on indebtedness secured by the Property or such portion thereof.

p. Retention and Reporting of Operating Funds. If Settling Defendant retains ownership over any portion of the Property after a partial sale, Settling Defendant shall retain sufficient funds to meet Settling Defendant's continuing obligations under this Consent Decree for the remaining portion of the Property. Within ninety (90) days of any such partial sale, Settling Defendant shall submit to EPA a report that itemizes expenses of the type listed in Paragraphs 3.s.i through 3.s.x that: (i) have already been paid; (ii) have been incurred but not yet paid; and (iii) are likely to be incurred in the future. The report shall also include an accounting of the amount of available funding set aside by Settling Defendant to pay for expenses that have been incurred but not yet paid (see Paragraph 5.p.ii) and anticipated future expenses (see Paragraph 5.p.iii). Successive reports shall be due every ninety (90) days from the date of the previous submission until the entirety of the Property is sold. Settling Defendant may seek a modification of the reporting period under this Paragraph pursuant to the procedures described in Paragraph 5.j. Additionally, Settling Defendant may submit a request in writing to EPA to delay the report required under this Paragraph to allow Settling Defendant to consolidate the reports due under this Paragraph 5.p. and Paragraph 5.j. Upon receipt of EPA approval, Settling Defendant may submit consolidated reports.

q. Post Sale Obligations. In the event of a sale or other Transfer of the Property or any portion thereof, Settling Defendant shall continue to be subject to all terms, conditions and benefits of this Consent Decree, except for Section XIV (Access and Institutional

Controls), to the extent it requires Settling Defendant (i) to provide access to the Property or portion thereof that was sold or Transferred; (ii) to record Institutional Controls regarding the Property or portion thereof that was sold or Transferred; or (iii) to abide by all land, water, and other resource use restrictions regarding the Property or portion thereof that was sold or transferred. Settling Defendant shall continue to be subject to the requirement to enforce any agreements, pursuant to Section XIII (Notice to Successors-in-Title and Transfers of Real Property), requiring the new owner to provide EPA and the Commonwealth with access to the Property or portion thereof that was sold or Transferred. Settling Defendant shall also continue to be subject to the requirement, pursuant to Section XIV (Access and Institutional Controls), to provide access to the portions of the Property for which the Settling Defendant retains ownership and to cooperate with Plaintiffs' efforts to secure, record, and ensure compliance with Institutional Controls regarding the Property or portion thereof that was sold or Transferred.

r. Commonwealth Consent to Property Transfers. The Commonwealth expressly agrees to undertake good faith efforts to timely consent to and provide any and all documentation, information, and other things necessary to effectuate all Transfers of the Property or portions thereof that are permissible pursuant to the terms of this Consent Decree.

s. Subsequent Use of Property. To the extent applicable and practical, the terms of this Consent Decree shall not exempt subsequent use of the Property from any more stringent restriction of county, municipal, or local law. Nothing in this or any other Paragraph shall alter any requirement, deadline, or time limit provided for in law or regulation.

6. Payment Instructions.

a. Settling Defendant shall make payment(s) to EPA at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling

Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Eastern District of Virginia after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Michael Stockton, Manager  
3866 Tall Oaks Drive  
Bland, MO 65014  
E-mail: mstockton@bugeyetech.com

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice to DOJ and EPA of such change in accordance with Section XVI (Notices and Submissions).

b. At the time of payment(s), Settling Defendant shall send notice that payment has been made to EPA in accordance with Section XVI (Notices and Submissions), and by email to EPA and DOJ at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov) and [EESCaseManagementENRD@usdoj.gov](mailto:EESCaseManagementENRD@usdoj.gov), or by mail to:

EPA Cincinnati Finance Office MS:NWD  
26 West Martin Luther King Drive  
Cincinnati, Ohio 45268

and

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DJ No. 90-11-3-10986

Such notice shall reference the CDCS Number, Site/Spill ID Number 03MN, and DOJ Case Number 90-11-3-10986.

c. The total amount to be paid to EPA pursuant to Paragraph 5 (Distribution of Net Proceeds of Sale of Property) shall be deposited by EPA in the Hidden Lane Landfill Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, with any amount in excess of the sum of the Past Response Costs and Future Response Costs returned to the Settling Defendant in accordance with the provisions set forth in Paragraph 6.g.

d. After EPA issues a Preliminary Close Out Report (“PCOR”) for the remedial action(s) at the Site, EPA thereafter shall calculate the Estimated Post-PCOR Response Costs in consultation with the Commonwealth. EPA shall then calculate the Future Response Costs and shall provide Settling Defendant and the Commonwealth with a final accounting of Future Response Costs.

e. In the event that, as of the date of calculation of Future Response Costs, the sum of the Past Response Costs and Future Response Costs exceeds the amount paid by Settling Defendant pursuant to Paragraph 5 and any portion of the Property has not yet been sold or transferred or any payments have not been made pursuant to Paragraph 5, Settling Defendant shall continue to comply with the requirements set forth in Paragraph 5 until the amount of payment of Net Sales Proceeds to EPA and the Commonwealth equals the sum of the Past Response Costs and Future Response Costs, or, until such time the United States agrees in writing to waive such requirement.

f. Settling Defendant shall make the payment to the Commonwealth required pursuant to Paragraph 5 (Distribution of Net Proceeds of Sale of Property) in the form of an official bank check. The check shall be made payable to Virginia Department of Environmental Quality and shall reference United States of America and Commonwealth of Virginia v.



Persimmon Lane, LLC, a Virginia limited liability company. Settling Defendant shall send the check to:

Receipts Control  
Virginia Department of Environmental Quality  
Post Office Box 1104  
Richmond, VA 23218

g. Overpayment.

i. The Commonwealth shall remit to EPA any amount received by the Commonwealth from Settling Defendant pursuant to Paragraph 5 (Payment of Net Proceeds of Sale of Property) that exceeds the sum of (i) Commonwealth Costs and (ii) the total estimated cost of operation and maintenance of the remedy at the Site as determined by EPA at the time EPA calculates Future Response Costs in accordance with Paragraph 6.d. The Commonwealth's payment to EPA shall be due within sixty (60) days of receipt of any such overpayment, provided that no payment by the Commonwealth to EPA shall be due until sixty (60) days from the date EPA calculates Future Response Costs.

ii. EPA shall remit and return to Settling Defendant any amount received by Plaintiffs from Settling Defendant pursuant to Paragraph 5 (Payment of Net Proceeds of Sale of Property) that exceeds the sum of (i) Commonwealth Costs; (ii) Past Response Costs; and (iii) Future Response Costs. Any such remittance shall be paid within one-hundred and twenty (120) days of any such exceedance(s), provided that no payment by EPA to Settling Defendant shall be due until one-hundred and twenty (120) days from the date EPA calculates Future

Response Costs and one-hundred and twenty (120) days from the date EPA receives any remittance from the Commonwealth required pursuant to Paragraph 6.g.i. Any such remittance will be made by check payable to Persimmon Lane, LLC that will be mailed to:

Robert A. Zick  
Zick, Voss, Politte & Richardson, P.C.  
438 West Front Street  
P.O. Box 2114  
Washington, Missouri 63090

## **VII. DISPUTE RESOLUTION**

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

8. Informal Dispute Resolution. A dispute shall be considered to have arisen when any party sends the other parties a written Notice of Dispute. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

9. Formal Dispute Resolution.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Plaintiffs shall be

considered binding on Settling Defendants unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States and the Commonwealth a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant.

b. Within twenty (20) days after receipt of Settling Defendant's Statement of Position, EPA shall, after consultation with the Commonwealth, serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA.

c. Within twenty (20) days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

d. The Division Director of the Hazardous Site Cleanup Division, EPA Region III ("HSCD Division Director"), in consultation with the Commonwealth, will issue a final decision resolving the dispute based on the Statements of Position and Reply, if any, served under Paragraphs 9.a through 9.c. The HSCD Division Director's decision shall be binding on Settling Defendant unless Settling Defendant invokes the judicial review process pursuant to Paragraph 10. Any decision issued pursuant to this Paragraph 9.d shall not be construed as binding upon the Commonwealth.

10. Judicial Review and Resolution of Disputes.

a. Within ten (10) days after receipt of the HSCD Division Director's decision, Settling Defendant may file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties

to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree.

b. The United States or the Commonwealth may file a response to Settling Defendant's motion.

11. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in Paragraph

13. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 12 (Stipulated Penalty).

#### **VIII. FAILURE TO COMPLY WITH CONSENT DECREE**

12. Stipulated Penalty.

a. If Settling Defendant fails to comply with any requirement of Paragraph 5 (Distribution of Net Proceeds of Sale of Property), Settling Defendant shall be in violation of this Consent Decree and shall be liable to pay, as a stipulated penalty, \$250 per day for each day of failure to comply with each such requirement(s).

b. Stipulated penalties are due and payable within thirty (30) days after the date of the demand for payment of the penalties by EPA or the Commonwealth. Settling Defendant shall pay 50% of the stipulated payment amount due to the United States and 50% to

the Commonwealth. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

and shall reference the CDCS Number, Site/Spill ID Number 03MN, and DOJ Case Number 90-11-3-10986. All payments to the Commonwealth under this Paragraph shall be made in the form of an official bank check. The check shall be made payable to Virginia Department of Environmental Quality, shall be identified as “stipulated penalties,” and shall reference *United States of America and Commonwealth of Virginia v. Persimmon Lane, LLC, a Virginia limited liability company*. Settling Defendant shall send the check to:

Receipts Control  
Virginia Department of Environmental Quality  
Post Office Box 1104  
Richmond, VA 23218

c. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office MS:NWD  
26 West Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number VAD980829030, and DOJ Case Number 90-11-3-10986.

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

13. Penalties shall continue to accrue as provided in Paragraph 12 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA and the Commonwealth within fifteen (15) days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the District Court to be owed to EPA and the Commonwealth within sixty (60) days after receipt of the District Court's decision or order, except as provided in Paragraph 13.c;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued stipulated penalties determined by the District Court to be owed to the United States and the Commonwealth into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation, within sixty (60) days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen

(15) days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the Commonwealth, or to Settling Defendant, to the extent that they prevail.

14. If the United States or the Commonwealth brings an action to enforce this Consent Decree and prevails in whole or in part, Settling Defendant shall reimburse the United States and the Commonwealth for all costs of such action, including but not limited to costs of attorney time.

15. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

16. Notwithstanding any other provision of this Section, either the United States or the Commonwealth may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties due to it that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

#### **IX. COVENANTS BY PLAINTIFFS**

17. Except as specifically provided in Section X (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), regarding the Site. With respect to present and future liability, these covenants shall take effect upon receipt by EPA of its portion of the Cumulative Net Sales Proceeds pursuant to Paragraph 5 (Distribution of Net Proceeds of Sale of Property) and any stipulated penalties due under Section

VIII (Failure to Comply with Consent Decree). These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 42. If the Financial Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 42, is determined by EPA to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and these covenants and the contribution protection provided in Paragraph 28 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. These covenants extend only to Settling Defendant and do not extend to any other person.

18. In consideration of the actions to be performed and the payments to be made by Settling Defendant under this Consent Decree, and except as otherwise specifically provided in Section X (Reservation of Rights by Plaintiffs), the Commonwealth covenants not to sue or to take administrative action against Settling Defendant pursuant to the Virginia Waste Management Act, Va. Code §§ 10.1-1400 –10.1-1457, CERCLA, 42 U.S.C. §§ 9601-9675, and/or RCRA, 42 U.S.C. §§ 6901-6992, regarding the Site. With respect to present and future liability, these covenants shall take effect upon receipt by the Commonwealth of its portion of the Cumulative Net Sales Proceeds pursuant to Paragraph 5 (Distribution of Net Proceeds of Sale of Property) and any stipulated penalties due under Section VIII (Failure to Comply with Consent Decree). These covenants are conditioned upon the satisfactory performance by



Settling Defendant of its obligations under this Consent Decree. These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to Plaintiffs by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 42. If the Financial Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 42, is determined by Plaintiffs to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and these covenants and the contribution protection provided in Paragraph 28 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the Commonwealth's right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. These covenants extend only to Settling Defendant and do not extend to any other person.

#### **X. RESERVATION OF RIGHTS BY PLAINTIFFS**

19. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenants by Plaintiffs in Paragraphs 17 and 18. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;

e. liability based on the Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

20. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the insurance information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 42, is false or, in any material respect, inaccurate.

21. The Commonwealth reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenants by Plaintiffs in Paragraphs 17 and 18. Notwithstanding any other provision of this Consent Decree, the Commonwealth reserves all rights against Settling Defendant with respect to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by the Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;
- e. liability based on the Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

22. Notwithstanding any other provision of this Consent Decree, the Commonwealth reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the insurance information provided by Settling Defendant, listed in Appendix A, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 42, is false or, in any material respect, inaccurate.

#### **XI. COVENANTS BY SETTLING DEFENDANT**

23. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the Commonwealth, or their contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the Commonwealth of Virginia, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or Commonwealth law, relating to the Site.

24. Except as provided in Paragraph 26 (claims against other potentially responsible parties (“PRPs”)) and Paragraph 30 (Res Judicata and Other Defenses), these covenants shall not apply in the event the United States or the Commonwealth brings a cause of action or issues an order pursuant to any of the reservations set forth in Section X (Reservations of Rights by Plaintiffs), other than in Paragraph 19.a or 21.a (liability for failure to meet a requirement of the Consent Decree) or 19.b or 21.b (criminal liability), but only to the extent that Settling Defendant’s claims arise from the same response action or response costs that the United States or the Commonwealth is seeking pursuant to the applicable reservation.

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

26. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a)

and 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a liable party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION**

27. Except as provided in Paragraph 26 (relating to claims against other liable parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XI (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, provided that this Consent Decree is not intended to further delay the closing of the Estate of Sarah Moran and that the Plaintiffs shall have no objection to such closure upon the entering of this Consent Decree. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

28. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of

CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the Commonwealth, or any other person; provided, however, that if the United States or Commonwealth exercises its rights under the reservations in Section X (Reservations of Rights by Plaintiffs), other than in Paragraphs 19.a or 21.a (liability for failure to meet a requirement of this Consent Decree) or 19.b or 21.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

29. Settling Defendant shall, with respect to any suit or claim brought by them for matters related to this Consent Decree, notify EPA, DOJ, and the Commonwealth in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against it or against the Estate of Sarah Moran or the Estate of Sarah Moran’s Personal Representatives for matters related to this Consent Decree, notify EPA, DOJ, and the Commonwealth in writing within ten (10) days after service of the complaint or claim upon them. In addition, Settling Defendant shall notify EPA, DOJ, and the Commonwealth within ten (10) days after service or receipt of any Motion for Summary Judgment, and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

30. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral

estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiffs set forth in Section IX.

### **XIII. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF REAL PROPERTY**

31. For any real property owned or controlled by Settling Defendant located at the Site, Settling Defendant shall, within thirty (30) days after the Effective Date, submit to EPA for review and approval, in consultation with the Commonwealth, a proposed notice to be filed with the appropriate land records office that: (a) provides a description of the real property; (b) provides notice to all successors-in-title that the real property is part of the Site and that EPA, in consultation with the Commonwealth, will be selecting a response action for the Site which may require institutional controls; (c) identifies the U.S. District Court in which this Consent Decree was filed, the name and civil action number of this case, and the date this Consent Decree was entered by the Court; and (d) references the EPA Settlement Agreement for recovery of response costs with the Estate and Revocable Trust of Philip W. Smith, (CERCLA Docket No. CER-03-2012-0073 CR) pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1), with an effective date of March 19, 2012. Settling Defendant shall record the notice within ten (10) days after EPA's approval of the notice. Settling Defendant shall provide EPA and the Commonwealth with certified copies of the recorded notice within ten (10) days after recording such notice.

32. Settling Defendant shall, at least sixty (60) days prior to any Transfer of any real property located at the Site, give written notice: (a) to the transferee regarding the Consent Decree; and (b) to EPA and the Commonwealth regarding the proposed Transfer, including the name and address of the transferee and a copy of the notice that it provided to the transferee.

33. Prior to Transfer of any real property located at the Site, Settling Defendant shall obtain an agreement from the transferee that has been approved by EPA, in consultation with the Commonwealth, and that is enforceable by Settling Defendant, the United States, and the Commonwealth, which provides EPA, the Commonwealth, PRPs who have entered or may enter into an agreement with the United States or the Commonwealth for performance of response action at the Site (hereinafter "Performing Parties"), and their representatives, contractors, and subcontractors, with access at all reasonable times to the real property located at the Site to perform response actions, including but not limited to those activities listed in Paragraph 35. If Settling Defendant fails to obtain the agreement from the transferee prior to the Transfer, or if the transferee fails to comply with the agreement after Transfer, Settling Defendant shall use best efforts to obtain the transferee's agreement or compliance with the agreement, as appropriate. "Best efforts" for purposes of this Paragraph includes the payment of reasonable sums of money. Plaintiffs may, as they deem appropriate, assist Settling Defendant in obtaining the transferee's agreement or compliance with the agreement, as appropriate.

34. In the event of any Transfer of real property located at the Site, unless Plaintiffs otherwise consent in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including, but not limited to, its obligation to provide and/or secure access and to abide by any land, water, or other resource use restrictions.



#### **XIV. ACCESS AND INSTITUTIONAL CONTROLS**

35. If the Site, or any other real property where access is needed to conduct any activity relating to response action at the Site, is owned or controlled by Settling Defendant:

a. Settling Defendant shall, commencing on the Effective Date, provide the United States, the Commonwealth, and Performing Parties, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity relating to response action at the Site, including, but not limited to, the following activities:

- i. Monitoring, investigation, removal, remedial, or other activities at the Site;
- ii. Verifying any data or information submitted to the United States or the Commonwealth;
- iii. Conducting investigations regarding contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing response actions at or near the Site;
- vi. Assessing compliance by Settling Defendant and any Performing Parties;
- vii. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

viii. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or resource use restrictions.

36. If EPA, in consultation with the Commonwealth, determines in a formal decision pursuant to CERCLA and the NCP, such as a request for funding in support of a removal action, or a record of decision, that institutional controls in the form of Commonwealth or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site in order to help ensure protectiveness of human health and the environment, Settling Defendant shall cooperate with EPA's and the Commonwealth's efforts to secure and ensure compliance with such governmental controls.

37. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth retain all of their access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **XV. RETENTION OF RECORDS AND CERTIFICATION**

38. Until ten (10) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") now in its possession or control, or that come into its possession or control, that relate in any manner to the Settling Defendant's liability under CERCLA with respect to the Site, provided, however, that if Settling Defendant is potentially liable as an owner or operator of the Site, Settling Defendant must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

39. After the conclusion of the record retention period, Settling Defendant shall notify EPA and DOJ and the Commonwealth at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA or DOJ or the Commonwealth, except as provided in Paragraph 34, Settling Defendant shall deliver any such Records to EPA or the Commonwealth.

40. Privileged and Protected Claims.

a. Settling Defendant may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 39.b, and except as provided in Paragraph 39.c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide Plaintiffs with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendant shall provide the Record to Plaintiffs in redacted form to mask the privileged or protected information only. Settling Defendant shall retain all Records that it claims to be privileged or protected until the United States and the Commonwealth have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendant's favor.

c. Settling Defendant may make no claim of privilege or protection regarding:

i. any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical,

radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

ii. the portion of any Record that the Settling Defendant is required to create or generate pursuant to this Consent Decree.

41. Business Confidential Claims. Settling Defendant may assert that all or part of a Record submitted to Plaintiffs under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendant asserts a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the Commonwealth, or if EPA has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

42. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to Settling Defendant's potential liability regarding the Site since the earlier of notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and the Settling Defendant's

financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);

b. submitted to Plaintiffs financial information that fairly, accurately, and materially sets forth the Settling Defendant's financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to Plaintiffs and the time Settling Defendant executed this Consent Decree;

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information; and

d. fully disclosed the identity and any supporting information regarding the existence of any potentially responsible parties under Section 107(a) of CERCLA other than the Estate of Sarah Moran or the Philip Smith Estate and their heirs, successors, and assigns.

## **XVI. NOTICES AND SUBMISSIONS**

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

As to DOJ:

Chief, Environmental Enforcement Section

Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-10986

As to EPA:

Branch Chief  
Hazardous Site Cleanup Division - Cost Recovery Branch  
EPA Region III  
1650 Arch Street (MC 3HS62)  
Philadelphia, PA 19103

As to the Commonwealth:

Russell Deppe  
Land Protection Enforcement Manager  
Virginia Department of Environmental Quality  
629 E. Main Street  
Richmond, VA 23218

As to Setting Defendant:

Persimmon Lane, LLC  
c/o Ray W. King, Registered Agent  
LeClairRyan, A Professional Corporation  
999 Waterside Drive, Suite 2100  
Norfolk, VA 23510  
(757) 441-8929  
(757) 624-3773 (fax)

Robert A. Zick  
Zick, Voss, Politte & Richardson, P.C.  
438 West Front Street  
P.O. Box 2114  
Washington, Missouri 63090  
(636) 239-1616  
(636) 239-5161 (Fax)  
raz@zvplaw.com

Alan D. Albert  
LeClairRyan, A Professional Corporation

999 Waterside Drive, Suite 2100  
Norfolk, VA 23510  
(757) 441-8914  
(757) 624-3773 (fax)  
alan.albert@leclairryan.com

#### **XVII. RETENTION OF JURISDICTION**

44. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### **XVIII. INTEGRATION/APPENDICES**

45. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: “Appendix A” is a list of the financial documents submitted to EPA by the Estate of Sarah Moran and Settling Defendant; “Appendix B” is the map of the Site; “Appendix C” is a map showing groundwater TCE contamination at the Site at or around the time of the Remedial Investigation; “Appendix D” is a Proceeds Distribution Example to assist in understanding how proceeds from the sale(s) of the Property or portions thereof shall be distributed in accordance with this Consent Decree; and “Appendix E” is a list of permitted encumbrances, if any.

**XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

46. This Consent Decree shall be lodged with the District Court for a period of not less than thirty (30) days for public notice and comment. The United States and the Commonwealth reserve the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

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

**XX. SIGNATORIES/SERVICE**

48. Each undersigned representative of Settling Defendant, the Deputy Chief, Environmental Enforcement Section, United States Department of Justice, and the Director, Commonwealth of Virginia Department of Environmental Quality, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

49. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

50. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees



to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

**XXI. FINAL JUDGMENT**

51. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the Commonwealth, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

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

\_\_\_\_\_  
United States District Judge  
Eastern District of Virginia

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Virginia v. Persimmon Lane, LLC*, a Virginia limited liability company, related to the Hidden Lane Landfill Superfund Site.

**FOR THE UNITED STATES OF AMERICA:**

Date: 10/11/16



NATHANIEL DOUGLAS

Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611



THOMAS P. KOLKIN

Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611  
Tel: 202-305-0427  
Email: thomas.kolkin@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Virginia v. Persimmon Lane, LLC*, a Virginia limited liability company, related to the Hidden Lane Landfill Superfund Site.

**FOR THE UNITED STATES OF AMERICA:**

Date: *Dec 22, 2016*

DANA J. BOENTE  
United States Attorney

By:

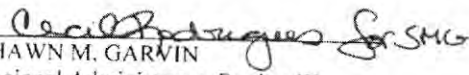
  
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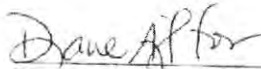
Gerard Mene  
Assistant U.S. Attorney  
Eastern District of Virginia  
2100 Jamieson Ave.  
Alexandria, VA 22314  
Tel: 703-299-3777  
Fax: 703-299-3898  
Gerard.Mene@usdoj.gov


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Virginia v. Persimmon Lane, LLC, a Virginia limited liability company*, related to the Hidden Lane Landfill Superfund Site.

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

Date: 10/1/2016

  
SHAWN M. GARVIN  
Regional Administrator, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

  
MARY B. COE  
Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

  
JAMES F. VAN ORDEN  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Virginia v. Persimmon Lane, LLC, a Virginia limited liability company*, related to the Hidden Lane Landfill Superfund Site.

**FOR THE COMMONWEALTH OF VIRGINIA:**

Date: 12-19-16

MARK R. HERRING  
Attorney General

JOHN W. DANIEL, II  
Deputy Attorney General

DONALD D. ANDERSON  
Section Chief and Senior Assistant Attorney General



KELCI A. BLOCK (VSB No.: 86036)  
Assistant Attorney General  
Office of the Attorney General  
Commonwealth of Virginia  
900 East Main Street  
Richmond, Virginia 23219  
(804) 786-3890 – Office  
(804) 786-2650 – Facsimile

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Virginia v. Persimmon Lane, LLC*, a Virginia limited liability company, related to the Hidden Lane Landfill Superfund Site.

**FOR THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY:**

Date: 12/21/2016



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DAVID K. PAYLOR

Director

Virginia Department of Environmental Quality

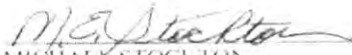
629 East Main Street

Richmond, VA 23218

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Virginia v. Persimmon Lane, LLC, a Virginia limited liability company*, related to the Hidden Lane Landfill Superfund Site.

**FOR PERSIMMON LANE, LLC, A VIRGINIA LIMITED LIABILITY COMPANY:**

Date: 9/19/16

  
MICHAEL STOCKTON  
Manager, Persimmon Lane, LLC  
3866 Tall Oaks Drive  
Bland, Missouri 65014