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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”), filed a complaint in this matter pursuant to Section(s) 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended (“CERCLA”), seeking injunctive relief and 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 BCX Tank Superfund Site (“the Site”) in Jacksonville, Duval County, Florida.

B. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are able to pay the amounts specified in Section VI (Payment of Response Costs).

D. The United States and Settling Defendants 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 will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is 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 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry 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 upon Settling Defendants and their 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 Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "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.
- c. "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 holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Fair Market Value" shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and

both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, "Fair Market Value" shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, "Fair Market Value" shall mean the balance of Settling Defendants' mortgage on the Property at the time of the transfer.

h. "Financial Information" shall mean those financial documents identified in *Appendix C*.

i. "Insurance Policy" shall mean the policy issued by Indian Harbor Insurance Company to BCX, Inc./Seven Out, LLC with policy number PEC000978802.

j. "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.

k. "Net Sales Proceeds" shall mean the total value of all consideration received by Settling Defendants for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) less: (i) the balance of Settling Defendants' mortgage on the Property; (ii) closing costs limited to those reasonably incurred and actually paid by Settling Defendants associated with the Transfer of the Property; and (iii) federal and state taxes owed on the proceeds. Settling Defendants shall provide EPA and the State with documentation sufficient to show the total value of all consideration received by Settling Defendants for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items (i) through (iii) above. This documentation shall include, but not be limited to, the report of an appraisal paid for by Settling Defendants, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation shall also include, either as part of the report or separately: a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer; and a schedule showing all outstanding indebtedness on the Property.

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

- m. "Parties" shall mean the United States and the Settling Defendants.
- n. "Plaintiff" shall mean the United States.
- o. "Property" shall mean that portion of the Site that is owned by Settling Defendant, Seven Out, LLC, as of the Effective Date. The Property is located at 1903 East Adams Street in Jacksonville, Duval County, Florida, and is generally designated by the following property description:

Part of the E. Hundal Grant, in Section 45, Township 2 South, Range 27 East, Jacksonville, Duval County, Florida, more particularly described as follows: Commencing at the Southeast corner of Lot 98 of Commodores Point, according to plat recorded in Plat Book 12, Pages 31 and 32, of the current public records of Duval County, Florida; thence South 83 degrees 22 minutes East 50 feet to the intersection of the East line of Bryan Street with the North line of East Adams Street for a place of beginning; thence Northerly along said East Line of Bryan Street 205.4 feet to the Southerly right of way line of a spur track, said right of way line being 10 feet from the center line of an existing spur track; thence Northeasterly along said right of way line along a curve with a radius of 531.67 feet an arc distance of 298.02 feet to the intersection of another right of way line of another spur track, said right of way line being 10 feet from the center line of said other spur track; thence Southerly along said right of way line 300 feet (Deed) (300.34 feet-actual) to a point of curve; thence along said right of way line with a curve to the right with a radius of 809 feet an arc distance of 161.9 feet (Deed) (162.04 feet-actual) to the North line of East Adams Street; thence Westerly along said North line of East Adams Street 139.4 feet (Deed) (129.40 feet-actual) to the place of beginning.

- p. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- q. "Release Agreement" shall mean the document executed by the Settling Defendants in favor of Indian Harbor Insurance Company, a copy of which is attached hereto as *Appendix A*.
- r. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

- s. "Settling Defendants" shall mean: Seven Out, LLC, a Florida limited liability company formed July 9, 2001; and BCX, Inc., a Georgia corporation formed August 17, 2000.
- t. "Site" shall mean the BCX Tank Superfund Site, encompassing approximately 0.89 acres located at 1903 East Adams Street in Jacksonville, Duval County, Florida. A map of the Site is attached as *Appendix B*.
- u. "State" shall mean the State of Florida.
- v. "Transfer" shall mean each sale, assignment, transfer or exchange by Settling Defendants (or its successors or heirs) of the Property, or any portion thereof, or of an entity owning the Property, where title to the Property (or any portion or interest thereof) or to the entity owning the Property is transferred and Fair Market Value is received in consideration, or is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure. A Transfer does not include a transfer pursuant to an inheritance or a bequest.
- w. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment from the proceeds of its Insurance Policy and to convey its real Property to address its liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X.

VI. PAYMENT OF RESPONSE COSTS

5. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to EPA three hundred fifty thousand dollars (\$350,000.00). This sum (\$350,000.00) represents an agreed amount of Insurance Policy proceeds to be paid to the United States as a result of a separate agreement between the Settling Defendants and its insurer ("Release Agreement"). The Settling Defendants' proper execution of the Release Agreement is a condition precedent to the obligation of the Indian Harbor Insurance Company to pay the agreed amount of Insurance Policy proceeds under Policy PEC000978802. In consideration of the properly executed Release Agreement, the Indian

Harbor Insurance Company, on behalf of the Settling Defendants, shall pay the sum of \$350,000.00 directly to the United States in accordance with Paragraph 6 of this Consent Decree.

6. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referring to USAO File Number _____, the EPA Region and Site/Spill ID Number A4FE, and DOJ Case Number 90-11-3-09152. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office for the Middle District of Florida following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of payment, Settling Defendants shall send notice to EPA and DOJ in accordance with Section XIV (Notices and Submissions) that payment has been made.

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substance Superfund.

9. Payment of Proceeds of Sale of Property. Settling Defendant, Seven Out, LLC, agrees that it will not sell, assign, transfer or exchange the Property except by means of a Transfer.

a. In addition to the payment made under Paragraph 5, Settling Defendants shall pay to EPA 100% of the Net Sales Proceeds of the Transfer of the Property. Payment shall be made to EPA within 15 days of the effective date of the Transfer of the Property.

b. Payment shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund. The check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID # A4FE, and DOJ Case Number 90-11-3-09152, and shall be sent to:

U.S. Environmental Protection Agency
Region 4 Superfund Payments
Cincinnati Finance Center
Post Office Box 979076
St. Louis, MO 63197-9000

Settling Defendants shall send notice that payment has been made in accordance with Paragraph 7 above, and the payment shall be deposited in accordance with Paragraph 8 above.

c. At least 30 days prior to any such Transfer, Settling Defendants shall notify EPA of the proposed transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the Property based upon an appraisal obtained within one year of the Transfer. Settling Defendants shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA.

d. In the event of a Transfer of the Property or any portion thereof, Settling Defendants shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and Settling Defendants modify this Consent Decree in writing.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

10. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

11. Stipulated Penalty. If any amounts due under Paragraph 5 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9, five hundred dollars (\$500.00) per violation per day that such payment is late.

12. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

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

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated

penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. RELEASE OF NOTICE OF FEDERAL LIEN

15. Within 30 days after EPA receives all payments required by Paragraphs 5 and 9 of this Consent Decree, EPA shall file a Release of Notice of Federal Lien in the Office of the Clerk of the Circuit Court of Duval County, Florida. The Release of Notice of Federal Lien shall release the Notice of Federal Lien filed on April 6, 2005, (Document Number 2005112004) and shall not release any other lien or encumbrance which may exist upon the Property.

IX. COVENANT NOT TO SUE BY PLAINTIFF

16. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 23 shall be null and void. Such forfeiture, however, shall not in any way effect the Settling Defendants' release of Indian Harbor Insurance Company as set forth in the Release Agreement. 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 Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

17. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 16. Notwithstanding any

other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants 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 upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the 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 Defendants; and
- e. 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.

18. Notwithstanding any other provision of this Consent Decree, EPA 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 provided by Settling Defendants, or the financial certification made by Settling Defendants in Paragraph 28, is false or, in an material respect, inaccurate.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

19. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to the Site or 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 Florida

Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

Except as provided in Paragraph 21 (Waiver of Claims) and Paragraph 25 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 17 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

20. 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).

21. Settling Defendants agree not to assert any CERCLA claims or causes of action that it may have for all matters relating to the Site (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) against any other person.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 21, 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. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 21, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. 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)-(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).

23. 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 Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or

claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), 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 or any other person, except for the State, provided, however, that if the United States exercises rights under the reservations in Section IX (Covenant Not to Sue by Plaintiff), other than in Paragraphs 17.a. (claims for failure to meet a requirement of the settlement) or 17.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.

24. Settling Defendants agree that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants 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 in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

XIII. CERTIFICATION

26. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

27. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants

shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, it shall provide Plaintiff with the following: (a) the title of the record; (b) the date of the record; (c) the name and title of the author of the record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the record; and (f) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

28. Each Settling Defendant hereby 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, reports, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State 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 Settling Defendant's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

XIV. NOTICES AND SUBMISSIONS

29. 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 herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

DOJ:

Karl Fingerhood, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611

EPA:

Stacey A. Haire, Attorney-Advisor
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

and

Paula V. Painter
Environmental Protection Specialist
SD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

As to Settling Defendants:

Ferrell Carden
Managing Member of Seven Out, LLC
and Chief Financial Officer of BCX, Inc.
1307 East River Hills Circle, #17
Jacksonville, FL 32211

XV. RETENTION OF JURISDICTION

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

XVI. INTEGRATION/APPENDICES

31. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree 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 the Release Agreement between the Settling Defendants and Indian Harbor Insurance Company.

Appendix B is the map of the Site; and

Appendix C is a list of the financial documents submitted to EPA by Settling Defendants.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

33. 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.

XVIII. SIGNATORIES/SERVICE

34. Each undersigned representative of Settling Defendants to this Consent Decree and the Deputy Chief, Environmental Enforcement Section of the United States Department of Justice 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.

35. Settling Defendants hereby agree 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 Defendants in writing that it no longer supports entry of the Consent Decree.

36. Settling Defendants 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 its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree 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 Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XIX. FINAL JUDGMENT

37. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2011.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seven Out, LLC, and BCX, Inc., Civil Action Number 3:11-cv-00009 relating to the BCX Tank Superfund Site.

FOR THE UNITED STATES OF AMERICA:

ROBERT E. O'NEILL
United States Attorney
Middle District of Florida

~~ELLEN MAHAN~~
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice

~~KARL J. FINGERHOOD~~ (PA Bar ID No. 63260)
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, DC 20044-7611
Telephone: (202) 514-7519
Telefax: (202) 514-2583

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seven Out, LLC, and BCX, Inc., Civil Action Number _____, relating to the BCX Tank Superfund Site.

FOR THE UNITED STATES OF AMERICA:

GWENDOLYN KEYES FLEMING
Regional Administrator
Region 4
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30303

STACEY A. HAIRE
Attorney-Advisor
Office of Environmental Accountability
Region 4
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30303

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seven Out, LLC, and BCX, Inc., Civil Action Number _____, relating to the BCX Tank Superfund Site.

FOR SETTLING DEFENDANTS SEVEN OUT, LLC, AND BCX, INC.

Date: 7-22-10

FERRELL CARDEN
Managing Member of Seven Out, LLC
and Chief Financial Officer of BCX, Inc.
1307 East River Hills Circle, #17
Jacksonville, FL 32211

Date: 7/22/10

JACK QUICK
Registered Agent for Seven Out, LLC
and Secretary of BCX, Inc.
140 Arrow Trace
Havana, FL 32333

Date: 7-23-10

ALEX SUTOR
Member of Seven Out, LLC
7759 Holsteiner Lane
Tallahassee, FL 32309

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Jack Quick
Registered Agent for Seven Out, LLC
and Secretary of BCX, Inc.
140 Arrow Trace
Havana, FL 32333

Appendix A

RELEASE AGREEMENT

This Release Agreement (the "Release Agreement") is executed this 23rd day of July, 2010 by BCX, INC. ("BCX") and SEVEN OUT L.L.C. ("SEVEN OUT") (collectively the "Settling Defendants"), in favor of INDIAN HARBOR INSURANCE COMPANY ("INDIAN HARBOR"), for good and valuable consideration as described herein. The Settling Defendants execute this Agreement subject and pursuant to the following facts and representations:

RECITALS

1. Indian Harbor issued a Pollution and Remediation Legal Liability Policy, No. PEC000978802 (the "Policy") to BCX, effective from July 31, 2003 to July 31, 2004, covering the property located at 1903 East Adams Street, Jacksonville, Florida and 1859 East Adams Street, Jacksonville, Florida (the "Site"). The Policy lists SEVEN OUT as an additional insured. The Policy provides limits of liability of \$3,000,000 for each loss, remediation expense or legal defense expense, with aggregate limits of \$6,000,000. The claims made policy has a self-insured retention amount of \$50,000.

2. In early June 2004, an inspector with the City of Jacksonville discovered that one or more storage tanks at the Site were leaking waste water into the secondary containment area and that the secondary containment area was leaking as well. By letter dated June 24, 2004, BCX reported to INDIAN HARBOR that the storage tanks located at the Jacksonville Site were leaking product into the secondary containment area and the secondary containment area had been leaking, but was immediately repaired.

3. Shortly thereafter, the EPA determined that the leaking storage tanks and the leaking secondary containment area posed an immediate and significant threat to the

environment. Additionally, the EPA determined that there were abandoned and unsecured tanks located at the Site which were believed to contain industrial waste water and waste oil. Based on these and other findings, the EPA initiated emergency action regarding the Site which included the following planned removal actions: emergency stabilization of the secondary containment wall; sampling of waste from the tanks and secondary containment area; bulking of materials and disposal off site in compliance with Federal Regulations; determination of the extent of the sludge and soil contamination and off-site disposal; and movement and/or removal of the tanks to allow for safe clean up.

4. In or about May 2007, the Settling Defendants executed an Assignment of Insurance Proceeds to the EPA. The Settling Defendants, however, still retain ownership and control of the subject claim such that it is within their authority to entered into this settlement with INDIAN HARBOR and execute this Release Agreement in favor of INDIAN HARBOR.

5. The EPA incurred significant costs in connection with the emergency response action at the Site. The EPA identified potentially responsible parties (the "PRP's") who may have been or were responsible for some or all of the waste water stored at the Jacksonville Site. The PRPs have paid some of the EPA emergency response costs.

6. The EPA contends that some or all of the costs of the emergency response action at the Site are covered under the Policy. INDIAN HARBOR disputes coverage on a number of grounds.

7. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), is filing a complaint

pursuant to Section(s) 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), seeking injunctive relief and 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 Site.

8. The Settling Defendants and the United States are simultaneously with the execution of this Release Agreement entering into a Consent Decree to be filed in the United States District Court, Middle District of Florida, Jacksonville Division. This Release Agreement will be Exhibit A to that Consent Decree.

9. This is a settlement of a disputed claim. Indian Harbor does not admit liability, but merely wishes to buy its peace.

10. In accordance with the terms and conditions of this Release Agreement and the Consent Decree, INDIAN HARBOR agrees to pay to the EPA, on behalf of and for the benefit of the Settling Defendants, the sum of Three Hundred Fifty Thousand Dollars (\$350,000) in full settlement and satisfaction of any and all claims involving the Site or claims under the Policy.

11. By virtue of this payment, the Settling Defendants and Indian Harbor desire to:

- (i) settle all pending claims and potential claims against INDIAN HARBOR relating to the Site, including claims for clean up costs, administrative expenses, attorney's fees, interest, and costs;

- (ii) release all rights, if any, the EPA may have under the Policy by virtue of the Assignment of Insurance Proceeds; and
- (iii) release Indian Harbor from liability with respect to potential claims by potentially responsible parties (i.e., PRP's).

12. BCX and SEVEN OUT have undertaken all necessary action to execute this Agreement and thereby effectuate the actions described in paragraph 11, above.

Accordingly, the Settling Defendants agree as follows:

TERMS OF THE RELEASE

1. BCX and SEVEN OUT, as well as its and their successors and assigns, agree to release INDIAN HARBOR, including its employees, officers, directors, owners, representatives, agents, attorneys, predecessors, successors, related entities and assigns, from any and all claims arising out of or in any way related to claims under the Policy and/or the Site. This Release Agreement is binding on the UNITED STATES, the EPA, BCX, SEVEN OUT, as well as any of its or their successors and assigns.

2. In discharging and releasing Indian Harbor from any and all claims arising out of or in any way related to claims under the Policy and/or the Site, the Settling Defendants declare that no representations with respect to the nature and extent of any injuries, damages, legal liability or financial responsibility made by any agent, representative, attorney or employee of INDIAN HARBOR have induced them to make this settlement and enter into this Agreement.

3. The undersigned represents that he or she is fully authorized to enter into this Release Agreement and to legally bind the Settling Defendants and its and their successors and assigns to the terms and conditions of this Agreement.

THE UNDERSIGNED EXECUTES THIS AGREEMENT ON BEHALF OF BCX, INC. AND SEVEN OUT, LLC.

Date: 7-22-10

By: _____

Its: President

Date: 7-22-10

By: _____

Its: Managing Member

DATE: 7/22/10

JACK QUICK
REGISTERED AGENT FOR
SEVEN OUT, LLC AND
SECRETARY OF BCX, INC
140 ARROW TRACE
HAVANA, FL 32333

7-23-10

Alex Sutor
Shareholder

STATE OF FLORIDA

COUNTY OF LEON

The foregoing instrument was acknowledged before me this 22nd day of July, 2010, by Ferrell J. Carden, President of BCX, Inc. and Managing Member of Seven Out, LLC, who is personally known to me or who has produced _____ (type of identification) as identification.

(SEAL)



MARY R. KNEECE
MY COMMISSION # DD 883142
EXPIRES: May 25, 2013
Bonded Thru Budget Notary Services

(Signature of person taking acknowledgment)

Mary R Kneece

(Name of officer taking acknowledgment
- typed, printed or stamped)

STATE OF FLORIDA

COUNTY OF LEON

The foregoing instrument was acknowledged before me this 23rd day of July, 2010, by JACK QUICK, Registered Agent for Seven Out, LLC and Secretary of BCX, Inc., who is personally known to me or who has produced _____ (type of identification) as identification.

(SEAL)



MARY R. KNEECE
MY COMMISSION # DD 883142
EXPIRES: May 25, 2013
Bonded Thru Budget Notary Services

(Signature of person taking acknowledgment)

Mary R Kneece

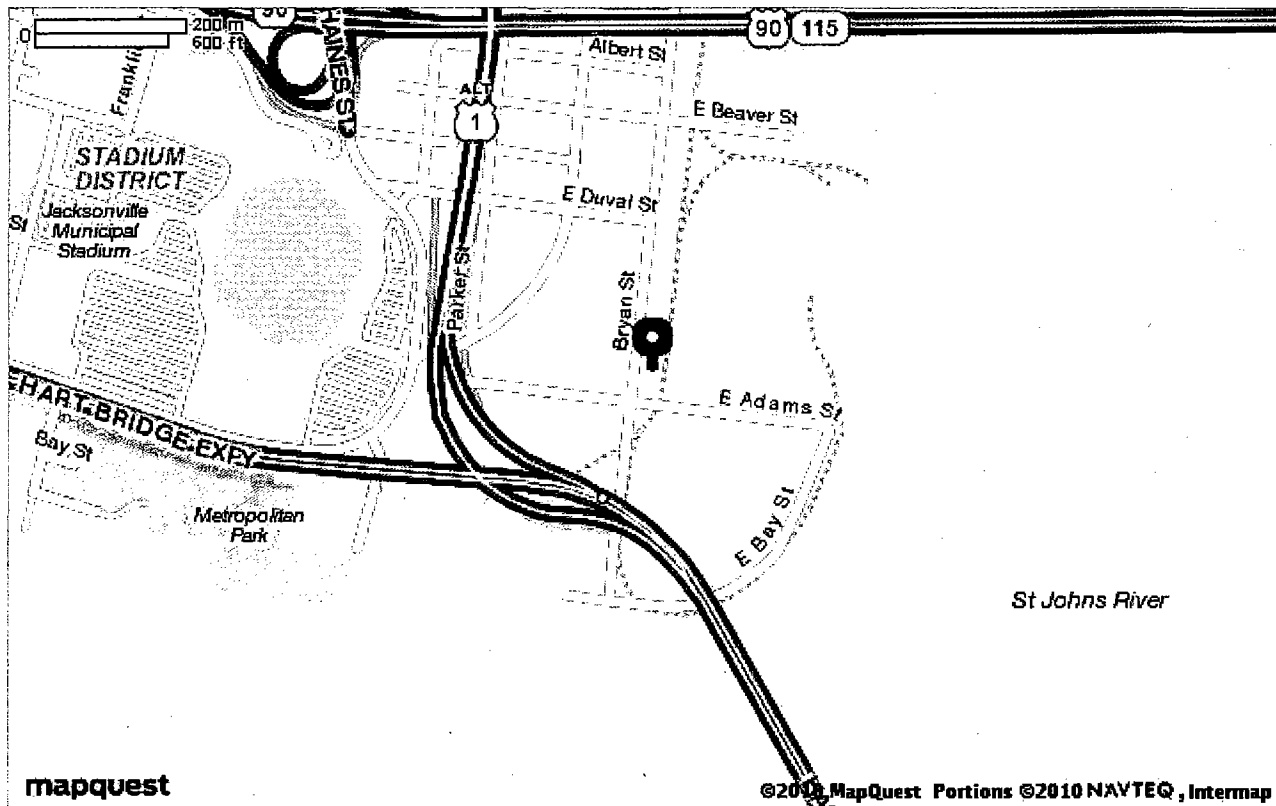
(Name of officer taking acknowledgment
- typed, printed or stamped)

Appendix B

Notes

Map of:

1903 E Adams St
Jacksonville, FL 32202-1209



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Directions and maps are informational only. We make no warranties on the accuracy of their content, road conditions or route usability or expeditiousness. You assume all risk of use. MapQuest and its suppliers shall not be liable to you for any loss or delay resulting from your use of MapQuest. Your use of MapQuest means you agree to our [Terms of Use](#)

Appendix C

Appendix C

Financial Information

1. Mortgage to Atlantic Coast Federal securing the Site property for \$3,380,000, recorded on 12/16/02
2. Forbearance Agreement with Atlantic Coast Federal relating to a promissory note for \$4,680,000, recorded on 11/23/2003
3. U.S. Income Tax Return for tax year 2002 from BCX, Inc.
4. U.S. Return of Partnership Income for tax year 2002 from Seven Out, LLC
5. Financial Statements for both BCX, Inc., and Seven Out, LLC, from March, June, and September 2003, including:
 - a. Balance sheets
 - b. Income statements
 - c. Asset lists for both facilities
 - d. Accounts Payable
 - e. Accounts Receivable
 - f. Check registers
 - g. Bank reconciliation tables
 - h. General ledgers
 - i. Record of amounts drawn against line of credit
6. Completed EPA ability-to-pay worksheets for BCX, Inc., and Seven Out, LLC