

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA :
and STATE OF CONNECTICUT, :
 :
 : Plaintiffs, :
 :
 : v. :
 :
Eastgate Plaza, LLC, :
 :
 : Defendant. :
----- X

Civil No. _____

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the U.S. Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607 ("CERCLA"), seeking (1) injunctive relief and (2) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Scovill Industrial Landfill Site ("Site") consistent with the National Contingency Plan, 40 C.F.R. Part 300 (NCP).

B. The State of Connecticut ("State") also filed a complaint against the defendant in this Court alleging that the defendant is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and Conn. Gen. Stat. § 22a-451. The State in its complaint seeks reimbursement of costs incurred at or in connection with the Site.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. On July 27, 2000, EPA listed the Site on the National Priorities List. Between the fall of 2002 and 2011, EPA, in consultation with the Connecticut Department of Energy and Environmental Protection ("CT DEEP"), oversaw and conducted a Remedial Investigation, Human Health Risk Assessment, Ecological Risk Assessment, and Feasibility Study at the Site. On September 30, 2013, EPA issued its Record of Decision ("ROD"), outlining its selected remedial approach for the Site. On September 21, 2016, EPA issued an Explanation of Significant Differences ("ESD"), which documents a significant difference, but not fundamental change, to the cleanup approach selected in the ROD.

D. The 25-acre Site, located in Waterbury, Connecticut, consists of about 20 contiguous parcels, containing a mix of commercial and residential uses. Scovill Manufacturing Company used the Site as a landfill from 1919 to the mid-1970s for disposal of ash, cinders, demolition debris, and other wastes generated by the company. The waste materials contain elevated levels of polycyclic aromatic hydrocarbons, polychlorinated biphenyls, and metals. As areas were filled in, Scovill sold off the filled parcels for development to new owners.

E. Settling Defendant owns 50 Store Avenue, Waterbury, Connecticut, also identified by the City of Waterbury Tax Assessor's Office as Map 0325, Block 0358, Lot 0007, and also referred to as Area I in the ROD. With respect to this property, the Remedy in the ROD, as adjusted under the ESD, calls for: soil excavation below the asphalt parking lot; consolidation of soils exceeding direct contact threat cleanup standards with similarly contaminated soils from Area J under a two-foot thick protective soil cap on Area J; off-site disposal of soils exceeding pollutant mobility cleanup standards designed to protect groundwater; backfilling with clean soil; restoration of the property including repaving the asphalt parking lot; and implementation of Institutional Controls. The ROD, as adjusted under the ESD, calls for other actions with respect to other parcels at the Site, including but not limited to excavation, consolidation of contaminated soils above direct contact threat cleanup standards with similarly contaminated soils from Area J under the two-foot thick cap, and off-site disposal of contaminated soils above Connecticut Pollutant Mobility Criteria.

F. In performing response action at the Site, EPA has incurred Response Costs and will incur additional response costs in the future.

G. The United States and the State allege that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); the State alleges that Settling Defendant is a responsible party pursuant to Conn. Gen. Stat. § 22a-451, and the United States and the State allege that the Settling Defendant is jointly and severally liable for response costs incurred and to be incurred at the Site.

H. The defendant that has entered into this Consent Decree (“Settling Defendant”) does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

I. The United States has reviewed the Financial Information and Insurance Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that Settling Defendant has limited financial ability to pay for response costs incurred and to be incurred at the Site.

J. The United States, the State, 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, 1367 and 1345; 42 U.S.C. §§ 9607 and 9613(b); has pendant jurisdiction of the claims made by the State under Conn. Gen. Stat. §§ 22a-6a, 22a-16 and 22a-451; and 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 State, 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:

“Affected Property” means all real property at the Site and any other real property, owned or controlled by Settling Defendant, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the following property: 50 Store Avenue, Waterbury, Connecticut, which is further described in the deed, dated October 11, 2005, recorded in Volume 5534, Page 123 of the land evidence records in the City of Waterbury, Connecticut, Clerk’s Office, and which is also identified by the City of Waterbury Tax Assessor’s Office as Map 0325, Block 0358, Lot 0007.

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

“CT DEEP” shall mean the Connecticut Department of Energy and Environmental Protection and its successor departments, agencies, or instrumentalities.

“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.

“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.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

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

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“Explanation of Significant Differences” or “ESD” shall mean the Explanation of Significant Differences issued by EPA on September 21, 2016, specifying certain significant differences, but not fundamental changes, to the Remedy selected in the ROD.

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

“Insurance Information” shall mean those insurance documents identified in Appendix C.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedy; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“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. Rates are available online at <http://www2.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

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

“Parties” shall mean the United States, State of Connecticut and the Settling Defendant.

“Plaintiff” shall mean the United States.

“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.

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

“Record of Decision” or “ROD” shall mean the Record of Decision issued by EPA on September 30, 2013, outlining its selected Remedy for the Site.

“Remedy” means the actions selected in the Record of Decision to address the threat of hazardous substances to harm public health, welfare and environment at the Site.

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and State have paid or will pay at or in connection with the Site, plus Interest on all such costs that have accrued pursuant to 42 U.S.C. § 9607(a).

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

“Settling Defendant” shall mean Eastgate Plaza, LLC, a limited liability company incorporated in Connecticut.

“Site” shall mean the Scovill Industrial Landfill Superfund Site, encompassing approximately 25 acres, located in Waterbury, Connecticut, and generally shown on the map included in Appendix A.

“Scovill Industrial Landfill Superfund Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, originally established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3) for the March 2006 settlement of Saltire Industrial, Inc. in U.S. Bankruptcy Court, Southern District of New York, Case No. 04-15389 (BRL).

“State” shall mean the State of Connecticut.

“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.

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

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous waste” under Conn. Gen. Stat. § 22a-115(1) or RCSA Section 22a-449(c)-100 et seq., and (5) any “pollution,” “contamination” or “hazardous waste” under Conn. Gen. Stat. § 22a-423, § 22a-448 and § 22a-451.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment and to provide access and implement Institutional Controls to resolve its alleged civil liability for the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Conn. Gen. Stat. §§ 22a-6a, 22a-14 to 20, inclusive, 22a-432, 22a-451 and 22a-471, relating to the Site as provided in the Covenants by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X.

VI. PAYMENT OF RESPONSE COSTS

5. Payment of Response Costs. Settling Defendant shall pay to EPA the principal amount of ninety-three thousand dollars (\$93,000). The payment shall be made within 30 days after the Effective Date and, if timely paid, shall include no interest.

6. Settling Defendant shall make payment by Fedwire Electronic Funds Transfer EFT to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit (FLU) of the U.S. Attorney’s Office for the District of Connecticut after the Effective Date. The payment instructions provided by the FLU will 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 will provide the payment instructions to:

John R. DeMattia, Manager and Sole Owner
Eastgate Plaza, LLC
3241 Main Street, Suite D
Stratford, CT 06614
jd@demattiacorp.com
203-375-8048

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).

7. Deposit of Payment. The payment shall be deposited by EPA in the Scovill Industrial Landfill Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Notice of Payment. At the time of payment, Settling Defendant shall send notice that payment has been made (a) to EPA in accordance with Section XVI (Notices and Submissions), (b) to the State in accordance with Section XVI; (c) to DOJ in accordance with Section XVI; and (c) to the EPA Cincinnati Finance Center (CFC) at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 01 7F, and DJ Number 90-11-3-11297.

9. Payment of State Response Costs. Within 30 days after the Effective Date, Settling Defendant shall pay to the State seven thousand dollars (\$7,000), in the form of an official bank check. The check shall be made payable to "Treasurer, State of Connecticut Department of Energy and Environmental Protection" and shall reference *United States of America and State of Connecticut v. Eastgate Plaza, LLC, and Spill Case Numbers 0099-01737 and 0098-00549*. Settling Defendant shall send the check to:

State of CT (DEEP)
Attn: Paula McDowell
79 Elm Street
Hartford, CT 06106

VII. FAILURE TO COMPLY WITH CONSENT DECREE

10. Interest on Payments. If Settling Defendant fails to make the payment required by Paragraph 5 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment.

11. Stipulated Penalty.

a. If the amount due to EPA under Paragraph 5 (Payment of Response Costs) or the amount due to the State under Paragraph 9 (Payment of State Response Costs) is not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 10 (Interest on Payments), \$500 per violation per day that such payment is late.

b. If Settling Defendant violates any other requirement set out in this Consent Decree, including without limitation to the requirements in Section XIII, Property Requirements, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, the following amounts per day for each day of failure:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$ 300
15th through 30th day	\$ 400
31st day and beyond	\$ 500

c. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA or the State. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT 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”

Each payment shall reference the CDCS Number, Site/Spill ID Number 01 7F, and DJ Number 90-11-3-11297.

d. Settling Defendant shall identify all payments to the State under this Paragraph as "stipulated penalties" and shall pay them by official bank check made payable to "Treasurer, State of Connecticut Department of Energy and Environmental Protection." The check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name, *United States of America and State of Connecticut v. Eastgate Plaza, LLC*, and CT DEEP Spill Case Numbers 0099-01737 and 0098-00549. Settling Defendant shall send the check to:

State of CT (DEEP)
 Attn: Paula McDowell
 79 Elm Street
 Hartford, CT 06106

e. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA, DOJ and the State in accordance with Paragraph 8 (Notice of Payment).

f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State 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 payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or 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.

12. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the State 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 Plaintiffs by virtue of Settling Defendant's 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 Defendant from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. JUDGMENT AND NOTICE OF LIEN

15. Settling Defendant hereby stipulates to liability to the United States and the State for claims asserted in the Complaints in this consolidated action under Section 107 of CERCLA, and under, inter alia, Conn. Gen. Stat. §§ 22a-6a, 22a-16, and 22a-451, in the amount of \$13,715,015, plus Interest running from the Effective Date until the date of payment, plus any other unreimbursed Response Costs, whether incurred before or after the Effective Date, plus Interest. By so stipulating, Settling Defendant does not admit to liability for any intentional violation of law but only to strict and retroactive liability arising from acts or omissions that Settling Defendant asserts it did not know, expect, or intend at the time would cause harm or liability. Settling Defendant consents to the filing by the United States in the land evidence records in the City of Waterbury, Connecticut, Clerk's Office of a notice of judgment lien regarding the Property based on the judgment in favor of the United States.

a. With respect to claims asserted by the United States for EPA's response costs, judgment is hereby entered against Settling Defendant in the amount of \$ 12,899,174, plus Interest running from the Effective Date until the date of payment, plus any other unreimbursed Response Costs, whether incurred before or after the Effective Date, plus Interest.

b. With respect to the claims asserted by the State for State Response Costs, judgment is hereby entered against Settling Defendant in the amount of \$815,841, plus Interest running from the Effective Date until the date of payment, plus any other unreimbursed Response Costs, whether incurred before or after the Effective Date, plus Interest.

c. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment in this action between and among the United States, the State, and Settling Defendant.

IX. COVENANTS BY PLAINTIFFS

16. Except as specifically provided in Section X (Reservation of Rights by United States and State), (a) 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, and (b) the State covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, Conn. Gen. Stat. §§ 22a-6a, 22a-14 to 20, inclusive, 22a-432, 22a-451 and 22a-471, relating to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. 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 and the Insurance Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 44. These covenants extend only to Settling Defendant and do not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES AND STATE

17. 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 Paragraph 16 (Covenants by Plaintiffs). 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 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.

18. 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 44, is false or, in any material respect, inaccurate.

19. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if (1) conditions at the Site, previously unknown to EPA, are discovered, or information, previously unknown to EPA, is received, in whole or in part, and (b) (2) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedy is not protective of human health or the environment. For purposes of this Paragraph, the information and the conditions known to EPA will include only that information and those conditions known to EPA and set forth in the administrative record for the Site as of the date of lodging of this Consent Decree.

20. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 16 (Covenants by Plaintiffs). Notwithstanding any other provision of this Consent Decree, the State 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 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.

21. Notwithstanding any other provision of this Consent Decree, the State 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 44, is false or, in any material respect, inaccurate.

22. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or

in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Site and/or to pay the State for additional costs of response if (1) conditions at the Site, previously unknown to the State, are discovered, or information, previously unknown to the State, is received, in whole or in part, and (b) (2) the State determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedy is not protective of human health or the environment. For purposes of this Paragraph, the information and the conditions known to the State will include only that information and those conditions known to the State and set forth in the administrative record for the Site as of the date of lodging of this Consent Decree.

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 State, 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 [State] 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 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 state law, relating to the Site.

24. Except as provided in Paragraph 26 (claims against other PRPs) and Paragraph 31 (Res Judicata and other Defenses), these covenants shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to any of the reservations set forth in Section X (Reservations of Rights by United States and State), other than in Paragraph 17.a (liability for failure to meet a requirement of the Consent Decree) or 17.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 State 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 potentially responsible 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 (claims against other PRPs), 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 that 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. 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).

28. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and 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 the “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; provided, however, that if the United States exercises rights under the reservations in Section X (Reservations of Rights by United States), other than in Paragraphs 17.a (liability for failure to meet a requirement of Consent Decree) 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.

29. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

30. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing no later than 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 for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA, DOJ and the State within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

31. In any subsequent administrative or judicial proceeding initiated by the United States or the State 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 State 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. PROPERTY REQUIREMENTS

32. Agreements Regarding Access and Non-Interference. Settling Defendant shall, with respect to its Affected Property:

a. Access Requirements. Provide the United States, the State and potentially responsible parties who have entered or may enter into an agreement with the United States or the State for performance of response action at the Site (hereinafter "Performing Parties"), and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including, but not limited to the following activities:

- (1) Verifying any data or information submitted to the United States or the State;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, monitoring overseeing, and inspecting any response actions, including but not limited to any work related to or incidental to implementing the Remedy selected in the ROD (as adjusted under the ESD, and as otherwise amended by EPA at a future time) and/or ensuring the long-term effectiveness of the Remedy selected in the ROD (as adjusted under the ESD, and as otherwise amended by EPA at a future time);
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XIV (Access to Information);
- (6) Assessing Settling Defendant and any Performing Party's compliance with the Consent Decree;
- (7) Determining whether the Affected 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
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances, (ii) interfere with or adversely affect the implementation,

integrity, or protectiveness of response actions at the Site, including the restrictions listed in Paragraph 32.c (Land, Water, or Other Resource Use Restrictions)

c. Land, Water, or Other Resource Use Restrictions. The following is a list, subject to potential change by EPA, of land, water, or other resource use restrictions applicable to the Affected Property:

(1) No reuse or disposal of soils from the Affected Property outside of the boundaries of the Affected Property except pursuant to EPA and CT DEEP approval, including but not limited to, approval consistent with R.C.S.A. section 22a-133k-2(h);

(2) No use of the Affected Property for residential and recreational activities, including but not limited to the following activities: (i) single and multi-family dwelling and rental units; (ii) pre-schools, schools, day care centers, and community centers for children under 18, (iii) eldercare facilities; (iv) parks, playgrounds, sports fields and other entertainment and recreational facilities; (v) hospitals, healthcare facilities and other extended care medical facilities; and (vi) transient or other residential facilities, without approval from CT DEEP and EPA; and the Affected Property shall be used solely for industrial or commercial activity related to the commercial production, distribution, manufacture or sale of goods or services;

(3) Before EPA determines that the Remedy selected in the ROD (as adjusted under the ESD, and as otherwise amended by EPA at a future time) for the Affected Property is complete by issuing a Certificate of Completion for the remedial work on the Affected Property: No excavation, disturbance or re-use of soil at any depth, including under the Building Area as shown on the survey map, without approval from CT DEEP and EPA (After EPA determines that the remedy selected in the ROD (as modified under the ESD, and as otherwise modified/amended by EPA at a future time) for the Affected Property is complete by issuing a Certificate of Completion for the remedial work on the Property, this provision shall be extinguished);

(4) After EPA determines that the Remedy selected in the ROD (as adjusted under the ESD, and as otherwise amended by EPA at a future time) for the Affected Property is complete by issuing a Certificate of Completion for the remedial work on the Affected Property: (1) the soil and concrete building slab located at the Building Area as shown on the survey shall not be excavated, exposed or disturbed in any manner by activities such as demolition, excavation or other intrusive activities; and (2) soil at the Affected Property located more than four feet below the ground surface or beneath a warning layer shall not be excavated, exposed, or disturbed, without approval from CT DEEP and EPA; and

(5) Groundwater at the Affected Property shall not be used or extracted for any purpose and groundwater wells shall not be installed, except for groundwater monitoring conducted pursuant to a plan approved by the EPA and CT DEEP.

33. Proprietary Controls. Settling Defendant shall, with respect to Settling Defendant's Affected Property, execute and record, in accordance with the procedures of this Paragraph, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree, including but not limited to those activities listed in Paragraph 32.a (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in Paragraph 32.c (Land, Water, or Other Resource Use Restrictions).

a. Grantees. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, and other appropriate grantees. The Proprietary Controls must be in substantially the form attached hereto as Appendix D.

b. Initial Title Evidence. The Settling Defendant shall, within 45 days after EPA's approval of the Institutional Controls Implementation and Assurance Plan described below:

(1) Record Title Evidence. Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the Settling Defendant, or "To Be Determined;" (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, "Prior Encumbrances"); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) Non-Record Title Evidence. Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

c. Release or Subordination of Prior Liens, Claims, and Encumbrances.

(1) Settling Defendant shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to the Settling Defendant, unless EPA waives this requirement as provided under Paragraph 33.c(2)-(4).

(2) Settling Defendant may, by the deadline under Paragraph 33.b (Initial Title Evidence), submit an initial request for waiver of the requirements of Paragraph 33.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the Remedy or result in unacceptable exposure to Waste Material.

(3) Settling Defendant may, within 90 days after EPA's approval of the Institutional Controls Implementation and Assurance Plan, or if an initial waiver request has been filed, within 45 days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 33.c(1) regarding any particular Prior Encumbrance on the grounds that Settling Defendant could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Settling Defendant shall complete its obligations under Paragraph 33.c(1) regarding all Prior Encumbrances: within 180 days after EPA's approval of the Institutional Controls Implementation and Assurance Plan; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA's determination on the final waiver request.

d. Update to Title Evidence and Recording of Proprietary Controls.

(1) Settling Defendant shall submit to EPA for review and approval, by the deadline specified in Paragraph 33.c(5), all draft Proprietary Controls and draft instruments addressing Prior Encumbrances. The Proprietary Controls must be in substantially the form attached hereto as Appendix D.

(2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Settling Defendant shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 33.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Settling Defendant shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Settling Defendant shall secure the release, subordination, modification, or relocation under Paragraph 33.c(1), or the waiver under Paragraphs 33.c(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

(3) If Settling Defendant submitted a title insurance commitment under Paragraph 33.b(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Settling Defendant shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to the United States, Settling Defendant, or other person

approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form or other form approved by EPA.

(4) Settling Defendant shall, within 30 days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to the United States and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

e. Settling Defendant during its period of ownership monitor, maintain, ensure, and annually report on all Proprietary Controls required under this Consent Decree. The Proprietary Control shall require future owners, during their time of ownership, to maintain, ensure and annually report on the effectiveness of all Proprietary Controls to EPA and/or the State as appropriate.

f. Settling Defendant shall submit to EPA within 45 days of the Effective Date an Institutional Controls Implementation and Assurance Plan. The Institutional Controls Implementation and Assurance Plan (ICIAP) shall describe plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. Settling Defendant shall develop the ICIAP in accordance with Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:

- (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the Affected Property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
- (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

34. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Settling Defendant would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If Settling Defendant is unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the United States, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist Settling Defendant, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations,

modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable.

35. Settling Defendant shall not Transfer its Affected Property unless it has: (a) first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by Settling Defendant and Plaintiffs; and (ii) requires the transferee to provide access to and to refrain from using the Affected Property to the same extent as is provided under Paragraph 32.a (Access Requirements) and Paragraph 32.c (Land, Water, or Other Resource Use Restrictions); and (b) executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Affected Property in accordance with Paragraph 33 (Proprietary Controls).

36. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Settling Defendant shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such Institutional Controls.

37. Notice to Successors-in-Title.

a. Settling Defendant shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Settling Defendant's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA has selected a Remedy for the Site; and (iii) that EPA, or potentially responsible parties who have entered or may enter into an agreement with the United States, will be implementing such Remedy for the Site, (iv) that Settling Defendant has entered into a Consent Decree requiring it to provide access and implement Institutional Controls pursuant to the selected Remedy; and (3) identify the U.S. District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Settling Defendant shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Settling Defendant shall, prior to entering into a contract to Transfer Settling Defendant's Affected Property, or 60 days prior to Transferring Settling Defendant's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a Remedy for the Site, that EPA, or potentially responsible parties who have entered or may enter into an agreement with the United States, will be implementing such Remedy; and

(2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the notice that it provided to the proposed transferee.

38. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including its obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

39. Notwithstanding any provision of the Consent Decree, Plaintiffs retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION

40. Settling Defendant shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, real property title reports, title insurance policies and related communications; sampling; analysis; chain of custody records; manifests; trucking logs; receipts; reports; sample traffic routing; correspondence; or other documents or information regarding the Site.

41. 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 41.b, and except as provided in Paragraph 41.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 has 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:

(1) 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

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

42. 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 State, 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.

43. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XV. CERTIFICATION

44. 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 its potential liability regarding the Site since notification of potential liability by the United States or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;

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; and

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.

XVI. NOTICES, SUBMISSIONS AND APPROVALS

45. 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. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov

As to DOJ by regular mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-11297

As to EPA: John Hultgren, Enforcement Counsel
Office of Environmental Stewardship
United States Environmental Protection Agency
5 Post Office Square - Suite 100 (OES04-2)
Boston, MA 02109-3912
617-918-1761

Almerinda Silva, Remedial Project Manager
Office of Site Remediation and Restoration
United States Environmental Protection Agency
5 Post Office Square - Suite 100 (OES07-4)
Boston, MA 02109-3912
617-918-1246

As to the State: Denise Lillo Vecchio
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
Federal Bar No. CT 03503
860-808-5250

Sheila Gleason
Environmental Analyst
Remediation Division
Water Protection and Land Reuse
Connecticut Department of Energy and Environmental
Protection
79 Elm Street, Hartford, CT 06106-5127
860-424-3767

As to Setting Defendant: John R. DeMattia, Manager and Sole Owner
Eastgate Plaza, LLC
3241 Main Street, Suite D
Stratford, CT 06614
jd@demattiacorp.com
203-375-8048

46. Approval of Deliverables

a. Initial Submissions

(1) After review of any deliverable that is required to be submitted for EPA approval under the Consent Decree, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

47. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 46.a. (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 46.a, Settling Defendant shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (5) any combination of the foregoing.

48. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 46.a (Initial Submissions) or Paragraph 47 (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Consent Decree; and (2) Settling Defendant shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 46(a) or Paragraph 47 does not relieve Settling Defendant of any liability for stipulated penalties under Paragraph 11 (Stipulated Penalty) of the Consent Decree. As determined necessary by EPA, EPA may request the revision of any EPA-approved deliverable and submission of the revised deliverable to EPA for approval per the procedure outlined in Paragraphs 46 and 47.

XVII. RETENTION OF JURISDICTION

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

XVIII. INTEGRATION/APPENDICES

50. 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 the map of the Site.

“Appendix B” is a list of the financial documents submitted to EPA by Settling Defendant.

“Appendix C” is a list of the insurance documents submitted to EPA by Settling Defendant.

“Appendix D” is a draft Declaration of Environmental Land Use Restriction and Grant of Easement, to be further adjusted for the Affected Property and approved by EPA and the State, for use as a Proprietary Control.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

51. This Consent Decree shall be lodged with the Court for a period of at least 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 that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

52. 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

53. Each undersigned representative of Settling Defendant and the Deputy Chief, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, Connecticut's Office of the Attorney General 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.

54. 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.

55. 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 its 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

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

SO ORDERED THIS __ DAY OF _____, 20__.

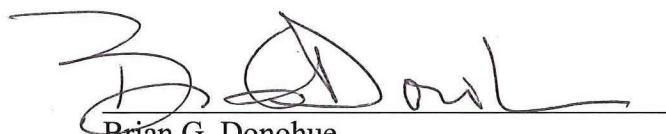
United States District Judge

Signature Page for Consent Decree Regarding Scovill Industrial Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Ellen Mahan
Deputy Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

10/26/17
Dated

A handwritten signature in black ink, appearing to read "B. Donohue", written over a horizontal line.

Brian G. Donohue
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Consent Decree Regarding Scovill Industrial Landfill Superfund Site

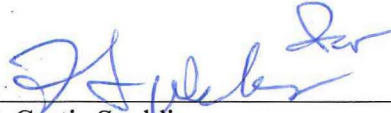
Deirdre M. Daly
United States Attorney
District of Connecticut

9/30/16
Dated



Natalie N. Elicker
Assistant United States Attorney
District of Connecticut
157 Church Street, 25th Floor
New Haven, CT 06510

Signature Page for Consent Decree Regarding Scovill Industrial Landfill Superfund Site



H. Curtis Spalding
Regional Administrator, Region 1
U.S. Environmental Protection Agency – Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912




9/30/16

John E. Hultgren
Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Signature Page for Consent Decree Regarding Scovill Industrial Landfill Superfund Site

FOR THE STATE OF CONNECTICUT:

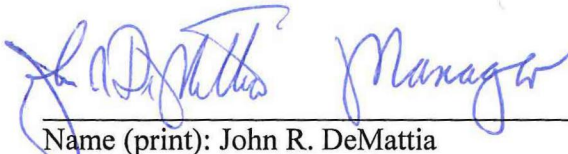
9/30/16
Dated


Denise Lillo Vecchio
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

Signature Page for Consent Decree Regarding Scovill Industrial Landfill Superfund Site

FOR
Eastgate Plaza, LLC:

9/30/16
Date

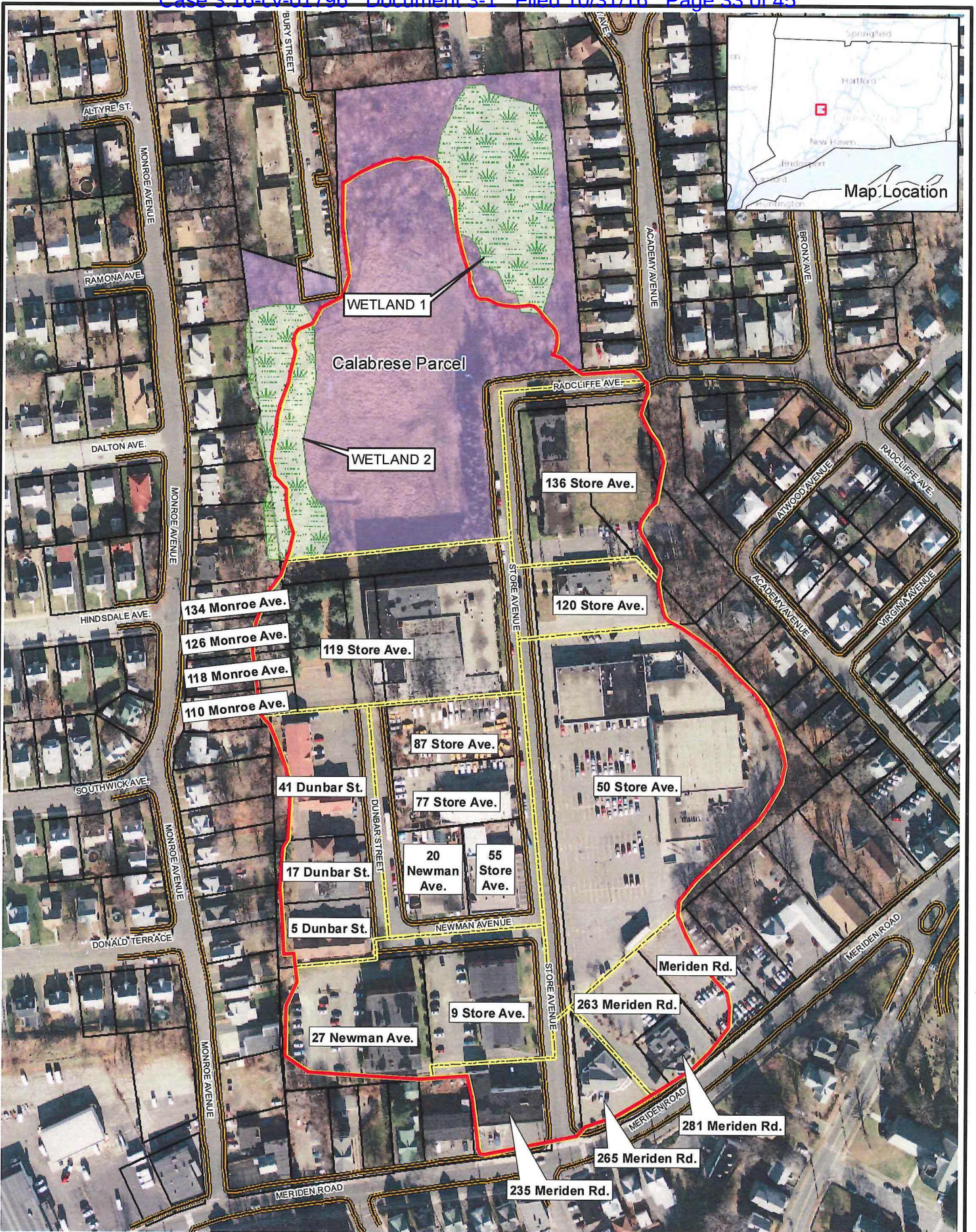
 Manager

Name (print): John R. DeMattia
Title: Manager and Sole Owner
Address: 3241 Main Street, Suite D
Stratford, CT 06614

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

Name (print): Raymond Rizio
Title: Attorney
Company: Q+R Associates, LLC
Address: One Post Rd
Fairfield, CT 06424
Phone: 203-255-9928
Email: rrizio@qrlaw.com

APPENDIX A: Map of Site



Path: R:\60000\Task Orders\60018_Scovill\LT\Technical Data (TD)\GIS_Data\Mapa\RI_Report\RI_Section 4_Feb 2013\Fig_1-C_Scovill_Address.mxd Date Printed: 7/19/2013

N	Drawn By: JH	Checked By: BA
	Date: June 2013	Revision No. 00
APPROXIMATE SCALE 0 50 100 200 Feet		

Estimated Limit of Scovill Derived/Placed Fill	Calabrese Property
Risk Area Boundaries	Approximate Seasonal Wetland Area
Assessor's Parcel Boundaries	Modern Roads

FIGURE 1 - C
 Site Plan
 Scovill Industrial Landfill
 Waterbury, CT

Nobis
 Engineering & Sustainable Future
 Nobis Engineering, Inc.
 585 Middlesex Street
 Lowell, MA 01851
 (978) 853-0691
 www.nobiseng.com
 Client-Focused, Employee-Owned

APPENDIX B: List of the financial documents submitted to EPA by Settling Defendant on September 18, 2015.

- U.S. Individual Tax Returns for John R. DeMattia and Constance DeMattia for 2009, 2011, 2012, and 2013.
- Amended U.S. Individual Tax Returns for John R. DeMattia and Constance DeMattia for 2010.
- Schedule E from U.S. Individual Tax Returns for 2009, 2010, 2011, 2012, and 2013.
- Year to date financial statements for 2014 and 2015.
- Budgets for 2011, 2012, 2013, 2014, and 2015.
- TD Bank mortgage billing notice and year end summary due January 24, 2015.
- Written statement by Eastgate Plaza, LLC on financial condition and ability to pay.
- Eastgate Plaza, LLC operating agreement, dated September 16, 2005.
- Open-End Mortgage Deed (with Security Agreement, Financing Statement and Assignment of Rents) dated April 24, 2007

APPENDIX C: List of the insurance documents submitted to EPA by Settling Defendant on March 30 and 31, 2016.

- Eastgate Plaza, LLC – [Response to] Insurance Questions for Ability to Pay Analysis – February 11, 2016, Period of Investigation: 2005 to Present.
- Commercial property and general liability insurance policies issued by Peerless Insurance Company for the policy years commencing November 1, 2008, November 1, 2009, and November 1, 2010.
- Excess/umbrella insurance policies issued by Peerless Insurance Company for policy years commencing November 1, 2011, November 1, 2012, November 1, 2013, November 1, 2014, November 1, 2015.

APPENDIX D: Draft Declaration of Environmental Land Use Restriction and Grant of Easement

After Recording Return to:

Environmental Land Use Restriction Coordinator
State of Connecticut Department of Energy & Environmental Protection
Remediation Division
Bureau of Water Protection and Land Reuse
79 Elm Street
Hartford, CT 06106-5127

---DRAFT---

**DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION
AND GRANT OF EASEMENT**

This Declaration of Environmental Land Use Restriction and Grant of Easement is made this ___ day of _____, _____, between Eastgate Plaza, LLC of 3241 Main Street, Suite D, Stratford, Connecticut, 06614 (the "Grantor") and the Commissioner of Energy & Environmental Protection of the State of Connecticut (the "Grantee").

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of certain real property (referred to herein as the "Property") located at 50 Store Avenue in the City of Waterbury in New Haven County, designated as Map # 0325, Block # 0358, Lot # 0007 on the tax assessor's map of the City of Waterbury in New Haven County, and conveyed to the Grantor by deed, recorded in the Waterbury City Clerk's Office, Volume 5534, Page 123, more particularly described on Exhibit A which is attached hereto and made a part hereof; and

WHEREAS, the Property is part of the Scovill Industrial Landfill Superfund Site (the "Site"), which the United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 27, 2000; and

WHEREAS, the Grantor, Grantee and EPA are parties to a Consent Decree, Docket No. _____, entered by the U.S. District Court, District of Connecticut, on _____ (the "Consent Decree"), to resolve Grantor's alleged liability to EPA under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and alleged liability to the State of Connecticut under Section 107 of CERCLA, 42 U.S.C. § 9607, and Connecticut General Statutes Section 22a-451, and the Consent Decree requires the recording of this declaration of environmental land use restriction and grant of easement; and

WHEREAS, the Grantor and the Grantee agree that EPA, as the lead agency administering the remedy at the Property under CERCLA, shall be a third-party beneficiary of this declaration of environmental land use restriction and grant of easement and agree to give EPA the right as third-party beneficiary to enforce the performance of the obligations set forth in this declaration of environmental land use restriction and grant of easement, as described further herein; and

WHEREAS, EPA and the Grantee have determined that this environmental land use restriction will effectively protect public health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the "Decision Document") which is made a part hereof; and

Eastgate Plaza, LLC Property
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WHEREAS, the Property is identified in the class A-2 survey [the survey shall meet the requirements of the attached checklist], which survey is attached hereto as Exhibit C and is made a part hereof, contains pollutants; and

WHEREAS, to prevent exposure to or migration of such pollutants and to abate hazards to human health and the environment and in accordance with the Decision Document, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Property, and to grant this environmental land use restriction to the Grantee on the terms and conditions set forth below; and

WHEREAS, EPA signed a Record of Decision (“ROD”) on September 30, 2013, as modified by an Explanation of Significant Differences (“ESD”) issued September 21, 2016, which selected a remedy for the Property, and which provides for the recording of land use restrictions on the land records of the City of Waterbury necessary to protect the public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment. The ROD and ESD, and the Administrative Records upon which the ROD and ESD are based, are available for review at the Silas Bronson Library, 267 Grand Street, Waterbury, Connecticut, 06702 and at EPA’s Superfund Records Center in Boston, MA, and on the internet at www.epa.gov/superfund/scovill; and

WHEREAS, the Grantee has determined that the environmental land use restriction as set forth below is consistent with the ROD as modified by the ESD; and

WHEREAS, the Grantee and EPA, their employees, agents, contractors and subcontractors may require access to the Property in the future to conduct remedial actions, monitoring, and operation and maintenance on the Property to ensure continued protection of human health and the environment, the Grantor grants such permanent easement to the Grantee, EPA and their employees, agents, contractors and subcontractors as more fully described herein; and

WHEREAS, the Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against the Grantor and Grantor’s successors and assigns, as provided herein;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose.

In accordance with the Decision Document and the ROD, as modified by the ESD, the purpose of this environmental land use restriction is to assure that:

- i) The Property is not used for residential and recreational activities, including but not limited to the following: (i) single and multi-family dwelling and rental units; (ii) pre-schools, schools, day care centers, and community centers for children under 18, (iii) eldercare facilities; (iv) parks, playgrounds, sports fields and other entertainment and recreational facilities; (v) hospitals, healthcare facilities and other extended care medical facilities; and (vi) transient or other residential facilities; and the Property is used solely for industrial or commercial activity related to the commercial production, distribution, manufacture or sale of goods or services;
- ii) Soil located at any depth below the ground surface of the Property, including under the Building Area as shown on the survey (Exhibit C), is not excavated, exposed, or disturbed before EPA determines that the remedy selected in the ROD (as modified under the ESD, and as otherwise modified/amended by EPA at a future time) for the Property is complete;

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- iii) After EPA determines that the remedy selected in the ROD is complete, as described in Paragraph 2(ii):
 - a. The concrete building slab and underlying soil located at the Building Area as shown on the survey (Exhibit C) shall not be excavated, exposed or disturbed in any manner by activities such as demolition, excavation or other intrusive activities; and
 - b. Soil at the Property located more than four feet below the ground surface or beneath a warning layer shall not be excavated, exposed or disturbed.
- iv) Soil excavated soil from Property shall not be reused or disposed of outside of the boundaries of the Property without EPA and CTDEEP approval; and
- v) Groundwater at the Property shall not be used or extracted for any purpose and groundwater wells shall not be installed, except for groundwater monitoring conducted pursuant to a plan approved by the EPA and the CTDEEP.

2. Restrictions Applicable to the Property.

In furtherance of the purposes of this environmental land use restriction, the Grantor shall assure that, unless a release of restriction is granted pursuant to Paragraph 5 below, use, occupancy, and activity of and at the Property are restricted as follows:

- i) Non-residential, Non-recreational activity. The Property shall not be used for any residential or recreational activity as described in Paragraph 1(i), and the Property shall be used solely for industrial and commercial activity as described in Paragraph 1(i);
- ii) Before EPA determines that the remedy selected in the ROD (as modified under the ESD, and as otherwise modified/amended by EPA at a future time) for the Property is complete by issuing a Certificate of Completion for the remedial work on the Property, it is prohibited to excavate, disturb or re-use soil at any depth below the ground surface, including under the Building Area as shown on the survey (Exhibit C). After EPA determines that the remedy selected in the ROD (as modified under the ESD, and as otherwise modified/amended by EPA at a future time) for the Property is complete by issuing a Certificate of Completion for the remedial work on the Property, this provision shall be extinguished;
- iii) After EPA determines that the remedy selected in the ROD is complete by issuing a Certificate of Completion for the remedial work on the Property, as described in Paragraph 2(ii):
 - c. The soil and concrete building slab located at the Building Area as shown on the survey (Exhibit C) shall not be excavated, exposed or disturbed in any manner by activities such as demolition, excavation or other intrusive activities; and
 - d. Soil at the Property located more than four feet below the ground surface or beneath a warning layer shall not be excavated, exposed, disturbed.
- iv) Soil excavated at the Property shall not be reused or disposed of outside of the boundaries of the Property, except pursuant to EPA and CTDEEP approval consistent with this environmental land use restriction, including but not limited to, approval consistent with R.C.S.A. section 22a-133k-2(h); and

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- v) Groundwater at the Property shall not be used or extracted for any purpose and groundwater wells shall not be installed, except for groundwater monitoring conducted pursuant to a plan approved by the EPA and the CTDEEP.

3. Except as provided in Paragraph 4 below, no action shall be taken, allowed, suffered, or omitted by the Grantor if such action or omission is reasonably likely to:

- i) Create a risk of migration of pollutants or a potential hazard to human health or the environment; or
- ii) Result in a disturbance of the structural integrity of any component of the remedy; or
- iii) Interfere with the performance of remedial actions, monitoring, or operation and maintenance activities associated with the Site, whether such activities are being conducted by the Grantee or EPA or by another party or parties under direction of the Grantee or EPA.

4. Emergencies.

In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraphs 2 and 3 above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor:

- i) Immediately notifies the Grantee and EPA of the emergency;
- ii) Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;
- iii) Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and
- iv) Implements a plan approved in writing by the Grantee and EPA, on a schedule approved by the Grantee and EPA, to ensure that the Property is remediated in accordance with the ROD, the National Contingency Plan (“NCP”) (40 C.F.R. Section 300), and the Regulations of Connecticut State Agencies (“R.C.S.A.”) sections 22a-133k-1 through 22a-133k-3, inclusive, or restored to its condition prior to such emergency.

5. Release of Restriction; Alterations of the Property; Burden of Proof.

- i) The Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any of the Property inconsistent with this environmental land use restriction unless the Grantor has first recorded the Grantee’s and EPA’s written approval of such alteration upon the land records of the City of Waterbury, Connecticut. The Grantee and EPA shall not approve any such alteration and shall not permanently release, in whole or in part, the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to the Grantee’s and EPA’s satisfaction that the Property meets the requirements of R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, and that the action or alteration will not create a risk to human health or the environment, will not impair the integrity of the remedy, and will not interfere with monitoring, operation, and maintenance activities associated with the Site, whether such activities are being conducted by the Grantee or EPA or by another party or parties under direction of the Grantee or EPA. The Grantee is authorized to release the restrictions per Connecticut General Statutes Section 22a-133o(d).

- ii) With respect to any claim or cause of action asserted by the Grantee or EPA against the Grantor under this environmental land use restriction, the Grantor shall bear the burden of proving that any activities do not or will not create a risk to human health or the environment, or have the potential of adversely affecting the integrity of the remedy.

6. Grant of Easement to the Grantee.

The Grantor hereby grants and conveys to the Grantee, the Grantee's agents, contractors, subcontractors, employees, and designees, and any person performing pollution remediation activities including, but not limited to, implementation of the remedy, monitoring, and operation and maintenance activities under the direction of EPA or the Grantee, a non-exclusive easement (the "Easement") over the Property as is necessary for access for carrying out any actions to abate a threat to human health or the environment associated with the Property or the Site.

Pursuant to this Easement, the Grantee, the Grantee's agents, contractors, subcontractors, employees, and designees, and any person performing pollution remediation activities including, but not limited to, remedial actions, monitoring, and operation and maintenance activities under the direction of the Grantee or EPA may enter upon and inspect the Property and perform such investigations and actions as the Grantee and/or EPA deem necessary, including but not limited to investigations and actions for any one or more of the following purposes:

- i) Determining whether the 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;
- ii) Ensuring that the use, occupancy, and activities of and at the Property are consistent with this environmental land use restriction and do not interfere with the implementation of and long-term integrity of the remedy selected in the ROD (as adjusted under the ESD, and as otherwise amended by EPA at a future time);
- iii) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Property, including but not limited to this environmental land use restriction.
- iv) Ensuring that any remediation implemented complies with the ROD, CERCLA, the NCP, and R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive;
- v) Performing any additional investigations or remediation necessary to protect human health and the environment;
- vi) Conducting investigations related to contamination at or near the Property;
- vii) Assessing the need for, planning, or implementing, monitoring, overseeing and inspecting any response actions at or near the Property, including but not limited to any work related to or incidental to implementing the remedy selected in the ROD (as adjusted under the ESD, and as otherwise amended by EPA at a future time) and/or ensuring the long-term effectiveness of the remedy selected in the ROD (as adjusted under the ESD, and as otherwise amended by EPA at a future time);
- viii) Assessing implementation of quality assurance and quality control practices for the remedial action;
- ix) Assessing Grantor's and any party's compliance with the Consent Decree;
- x) Delivering, storing, moving, and removing equipment and supplies;
- xi) Collecting and removing samples;
- xii) Verifying any data or information submitted to the United States or the State;
- xiii) Constructing, operating, maintaining, altering, repairing, inspecting and removing existing monitoring wells and appurtenances thereto;

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- xiv) Trimming, cutting, felling and removing trees, underbrush, other vegetation, structures or obstructions from the means of ingress and egress to the wells; and
- xv) Inspecting and investigating the Property.
- xvi) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Grantor or its agents

Grantor reserves, however, to himself, his heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired by this environmental land use restriction.

7. Notice and Time of Entry onto Property.

Entry onto the Property by the Grantee, EPA, and their agents, contractors, subcontractors, employees, and designees pursuant to this Easement shall be upon reasonable notice and at reasonable times, provided that entry shall not be subject to these limitations if the Grantee or EPA determine that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property.

The Grantor, or any future holder of any interest in the Property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this declaration of environmental land use restriction and grant of easement. The failure to include such provision will not affect the validity or applicability to the Property of this declaration of environmental land use restriction and grant of easement.

9. Persons Entitled to Enforce Restrictions.

The restrictions in this declaration of environmental land use restriction and grant of easement on use, occupancy, and activity of and at the Property will be enforceable by the Grantee in accordance with R.C.S.A. section 22a-133p of the General Statutes. The restrictions in this declaration of environmental land use restriction and grant of easement are also enforceable by EPA as third-party beneficiary in accordance with applicable law.

10. Severability and Termination.

If any court of competent jurisdiction determines that any provision of this declaration of environmental land use restriction or grant of easement is invalid or unenforceable, such provision will be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision will be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument will remain in full force and effect. Further, in either case, the Grantor shall submit a copy of this restriction and of the judgment of the Court to the Grantee and EPA in accordance with R.C.S.A. section 22a-133q-1(l). This environmental land use restriction shall be terminated if the Grantee and EPA provide notification pursuant to R.C.S.A. section 22a-133q-1(l).

11. Binding Effect.

All of the terms, covenants and conditions of this declaration of environmental land use restriction and grant of easement shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

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12. Terms Used Herein.

The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and 22a-133o-1 of the Regulations of Connecticut State Agencies as such sections existed on the date of execution of this environmental land use restriction.

13. Covenants.

The Grantor hereby covenants to and with the Grantee and the Grantee's assigns, that the Grantor is lawfully seized in fee simple of the Property, and the Grantor has the good and lawful right and power to sell and convey it, that the Property is free and clear of encumbrances, and that Grantor shall forever warrant and defend the title thereto and the quiet possession thereof.

[Signature Pages Follow]

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GRANTOR:

Date

John DeMattia, Manager and Sole Owner, Eastgate Plaza, LLC
Duly Authorized

Witnesses:

Signature

Printed/Typed Name

Signature

Printed/Typed Name

STATE OF)

) ss. < _____ > < _____ >

COUNTY OF)

Personally appeared John DeMattia, Manager and Sole Owner, Eastgate Plaza, LLC, signer and sealer of the foregoing instrument, and acknowledged the same to be his/her free act and deed, and the free act and deed of said corporation before me.

Notary Public/Commissioner of the Superior Court

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GRANTEE: Grantee, the Commissioner of Energy & Environmental Protection, by the Commissioner's duly designated agent, Betsey Wingfield, Bureau Chief, Bureau of Water Protection and Land Reuse.

Date

Betsey Wingfield, Bureau Chief
Bureau of Water Protection & Land Reuse
Connecticut Department of Energy & Environmental Protection
79 Elm Street
Hartford, CT 06106