



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

September 9, 2020

VIA OVERNIGHT MAIL & EMAIL

PAD Kulpmont, LLC
c/o Daniel Luzon
333 West 262nd Street
Bronx, NY 10471

**Re: J.H. & C. K. Eagle Mill Site (Kulpmont Borough,
Northumberland County, Pennsylvania) (Parcel
Nos. 002-00-001-019-A; 002-00-001-019; and
002-00-069-005-B):**

Dear Mr. Luzon:

By this letter, the U.S. Environmental Protection Agency (EPA) is providing you with written notice that the thirty-day public comment period for the above-referenced settlement agreement ended on September 2, 2020.

EPA has received no comments that would require the Agency to modify or withdrawal its consent to the settlement agreement. In accordance with Paragraph 50 of the settlement agreement, the Effective Date of the agreement is the date of this letter.

Paragraph 16.a of the settlement requires that you provide EPA, within 30 days of the Effective Date, with the names of one or more appraisers you intend to use to appraise the property. Appraisal; maintenance; rental income; marketing; coordination with EPA regarding offers, execution of a sales contract, and closing; and payment to EPA are covered in detail in Paragraph 16 of the settlement. Pursuant to Paragraph 16.g, the property must be under a contract for sale within three years of the Effective Date. Please review the settlement in its entirety to refamiliarize yourself with its requirements.

Section XV (Notices and Submissions) of the settlement identifies EPA contacts for sending notices and submissions. Because our office has not fully opened and most employees are still working from home, please use the email addresses rather than the postal addresses. We will advise you when we have returned to the office and when postal addresses should be used.

For your convenience, I have enclosed a copy of the fully-executed settlement.

Thank you for your efforts and patience in bringing this matter to a conclusion. If you have any questions, please do not hesitate to contact me at (215) 814-2487 or goldman.andrew@epa.gov.

Respectfully,

ANDREW S. GOLDMAN
Sr. Assistant Regional Counsel

Enclosure

cc: R. Knapp (3SD41)
S. Allen (3SD40)
D. Arnold (3MD30)
N. Wagner (PADEP)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3**

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	
J.H. & C.K. Eagle Mill Site)	
Kulpmont, Northumberland County, PA)	No. CERCLA-03-2020-0080CR
)	
PAD Kulpmont, LLC)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h)(1) OF CERCLA,
)	42 U.S.C. § 9622(h)(1)

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J.H. & C.K. Eagle Mill Site)	
Kulpmont, Northumberland County, PA)	No. CERCLA-03-2020-0080CR
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PAD Kulpmont, LLC)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h)(1) OF CERCLA,
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders), and further delegated to the Director of the EPA Region 3 Superfund and Emergency Management Division by EPA Region 3 Delegation No. 14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Deputy Section Chiefs, Environmental Enforcement Section.

2. This Settlement Agreement is made and entered into by EPA and PAD Kulpmont, LLC (“Settling Party”). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the J.H. & C.K. Eagle Mill Site (“Site”) located in Kulpmont, Northumberland County, Pennsylvania. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. 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.

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

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

7. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors, and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. The Settling Party's signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the Settling Party.

IV. STATEMENT OF PURPOSE

10. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to address its alleged civil liability for the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement 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 Settlement Agreement or its appendices, the following definitions shall apply:

“Affected Property” shall mean all real property at the Site and any other real property, owned or controlled by Settling Party, 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 properties as designated in the land records of Northumberland County, Pennsylvania:

- a. Parcel No. 002-00-001-019A,
- b. Parcel No. 002-00-001-019, and
- c. Parcel No. 002-00-069-005-B.

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

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, 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.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“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.

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

“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 <https://www.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 Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Parties” shall mean EPA and Settling Party.

“Property” shall mean that portion of the Site that is owned by Settling Party as of the Effective Date. The Property is located at and around 1340-1400 Chestnut Street, Kulpmont, Northumberland County, Pennsylvania 17834 and is designated in the land records of Northumberland County, Pennsylvania as follows:

- a. Parcel No. 002-00-001-019A,
- b. Parcel No. 002-00-001-019, and
- c. Parcel No. 002-00-069-005-B.

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

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Party” shall mean PAD Kulpmont, LLC.

“Site” shall mean the J.H. & C.K. Eagle Mill Site located in and around 1340-1400 Chestnut Street, Kulpmont, Northumberland County, Pennsylvania 17834 and is designated in the land records of Northumberland County, Pennsylvania as follows:

- a. Parcel No. 002-00-001-019A,
- b. Parcel No. 002-00-001-019, and
- c. Parcel No. 002-00-069-005-B.

“State” shall mean the Commonwealth of Pennsylvania.

“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.

VI. PAYMENT OF RESPONSE COSTS

12. Reserved.
13. Reserved.
14. Reserved.
15. Reserved.

16. Payment of Net Proceeds of Sale of Property

a. Appraisal of Property. Within thirty (30) days after the Effective Date, Settling Party shall submit to EPA the names of one or more appraisers. The appraisers identified shall be certified to meet the Uniform Standards of Professional Appraisal Practice by a nationally recognized organization of professional real estate appraisers. EPA may, within thirty (30) days thereafter, disapprove the proposed appraiser(s). If all proposed appraisers are disapproved by EPA, Settling Party shall, within fifteen (15) days after such disapproval, submit names of additional appraisers, which shall be subject to EPA's disapproval as provided above. Any appraisers not disapproved by EPA shall be deemed to be approved. Settling Party shall, within sixty (60) days after the deadline for EPA's disapproval of the proposed appraisers, obtain an appraisal of the Property. The appraisal shall be performed by any appraiser deemed to be approved. Settling Party shall be responsible for all appraisal fees. Settling Party shall submit a copy of the appraisal to EPA. If the Property is not sold within one year of the date of the appraisal, and if EPA so requests, Settling Party shall obtain a new appraisal of the Property, in accordance with this Paragraph.

b. Maintenance of the Property. Until the Property is sold, Settling Party shall, at its own expense: (i) maintain and make necessary repairs to the Property, including securing the property from trespassers; (ii) keep the Property insured against loss from casualty and liability; (iii) timely pay or cause to be paid all real property taxes; and (iv) timely pay all water and sewer bills regarding the Property.

c. Rental Income. Rental income from the Property may be used to pay expenses described in Paragraph 16.b (Maintenance of Property). All (100%) of the rental income earned from the date of Settling Party's signature on this Settlement Agreement until the sale of the Property to the extent not required to pay the expenses described in Paragraph 16.b shall be deemed to be proceeds from the sale of the Property and shall be disbursed pursuant to Paragraph 16.h (Payment to EPA). Settling Party shall not enter into any lease or rental agreement for the Property unless the agreement allows a purchaser of the Property to terminate the lease or rental agreement within ninety (90) days of taking title to the Property.

d. Marketing of the Property. Within thirty (30) days after the date of the appraisal, Settling Party shall commence using best efforts to sell the Property. "Best efforts" for purposes of this Paragraph includes: (i) entering into a listing agreement, for the purpose of marketing and selling the Property, with a real estate broker, dealer, or agent licensed in the Commonwealth of Pennsylvania who customarily deals with real property similar to the Property; (ii) advertising the Property for sale in appropriate publications; (iii) listing the Property with appropriate real estate listing services; (iv) maintaining the Property in a condition suitable for showing to prospective buyers; and (v) providing access to the Property, at reasonable times, to real estate brokers, dealers or agents and prospective buyers. Settling Party shall submit to EPA reports regarding Settling Party's efforts to market the property. The first such report shall be due three months after commencement of efforts to sell the Property, and successive reports shall be due quarterly thereafter.

e. Settling Party shall provide to EPA a copy of any offer to purchase the Property within 48 hours after receipt of such offer in order to give EPA an opportunity to review and object to the offer. If EPA does not object to the offer within fifteen (15) days after

receipt of a copy of the offer, then Settling Party may execute the contract for sale of the Property. Settling Party shall provide to EPA a copy of the executed contract within seven (7) days after signing the contract. If EPA objects to the offer within fifteen (15) days after receipt of a copy of the offer, EPA will provide Settling Party with a list of objections and Settling Party shall not sell the Property until EPA's objections have been addressed to EPA's satisfaction.

f. Settling Party shall submit to EPA, at least ten (10) days prior to the date of the closing meeting for sale of the Property, a notice of the sale; the date, time, and location of the closing meeting; Settling Party's calculation of the net sales proceeds; and all documentation regarding the values used in the calculation, including: (i) copies of all documents to be executed regarding the sale; (ii) documentation of the amounts to be paid to holders of any liens listed as a Permitted Encumbrance in Appendix B; (iii) documentation of the amounts of closing costs to be paid; (iv) documentation of any broker's fees regarding the sale; and (v) documentation of the amounts of State and/or municipal transfer taxes to be paid regarding the sale of the Property. Settling Party may request that EPA approve the calculation of net sales proceeds prior to the sale. In that event, EPA's approval shall be binding in any subsequent dispute between the United States and Settling Party regarding whether Settling Party has complied with Paragraph 16.h (Payment to EPA). Settling Party shall notify EPA immediately if the date, time, or location of the closing meeting changes.

g. If, within three (3) years after the Effective Date, Settling Party has not executed a contract for the sale of the Property, upon receipt of notice from EPA, Settling Party shall use best efforts to sell the Property to the highest bidder at a public auction. For purposes of this Paragraph, "best efforts" shall mean engaging the services of a professional auctioneer who will advertise the auction in at least two local newspapers for at least thirty (30) days prior to the auction and who will conduct other marketing activities, as appropriate. The agreement with the professional auctioneer shall be provided to EPA for review and approval.

h. Payment to EPA.

(1) Within five (5) days after the sale of the Property, Settling Party shall pay to the United States 80% of the net sales proceeds from the sale of the Property. "Net sales proceeds" shall mean, for purposes of this Paragraph, all consideration received by Settling Party from the sale of the Property, not including: (i) any payment in consideration of the release of any lien listed as a Permitted Encumbrance in Appendix B, hereto; (ii) any reasonable closing costs paid regarding the sale; (iii) any reasonable broker's fees regarding the sale; (iv) any State and/or municipal transfer taxes regarding the sale; and (v) any net rental income described in Paragraph 16.c (Rental Income).

(2) Settling Party shall make payment to EPA by official bank check made payable to "EPA Hazardous Substances Superfund." The check should refer to "Site ID No. A38D" and "EPA Docket No. CERCLA-03-2020-0080CR" and should be mailed to:

EPA Region 3
Superfund Payments
Cincinnati Finance Office
Box 979076
St. Louis, MO 63197-9000

(3) Notice of Payment. At the time of payment to EPA of 80% of the net sales proceeds, Settling Party shall send notice that such payment has been made: (a) to EPA in accordance with Section XV (Notices and Submissions); and (b) to the EPA Cincinnati Finance Center (CFC) by email or by regular mail 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 refer to “Site ID No. A38D” and “EPA Docket No. CERCLA-03-2020-0080CR.”

i. Release of Lien. The release of any federal lien established pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), regarding the Property, shall be handled in accordance with Appendix C. The procedures set forth in Appendix C may be modified by written agreement between Settling Party and EPA Sr. Assistant Regional Counsel Andrew Goldman (goldman.andrew@epa.gov) or his replacement counsel assigned to this matter. Any such written agreement shall be incorporated into and become an enforceable part of this settlement.

j. Settling Party shall not be required to comply with this Paragraph 16 with respect to any portion of the Property that is transferred involuntarily by operation of law, including foreclosure, or its equivalent, of any lien which is listed as a Permitted Encumbrance in Appendix B, or is transferred by deed or other assignment in lieu of foreclosure due to a default on indebtedness secured by the Property or such portion thereof. In such event, Settling Party shall nonetheless be required to comply with this Paragraph 16 with respect to any portion of the Property remaining in Settling Party’s possession.

k. In the event of a sale or other transfer of the Property or any portion thereof, Settling Party shall continue to be subject to all terms, conditions, and benefits of this Settlement Agreement, except for Section XII (Property Requirements), to the extent it requires Settling Party to provide access to, or to abide by any land, water, or other resource use restrictions regarding the Property or portion thereof that was sold or transferred. Settling Party shall continue to be subject to the requirement to enforce any agreements, pursuant to Section XII, for the new owner to provide access to the Property or portion thereof that was sold.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

17. **Interest on Payments.** If Settling Party fails to make the payment required by Paragraph 16 (Payment of Net Proceeds of Sale of Property) by the required due date under Paragraph 16.h, Interest shall continue to accrue on the unpaid balance from the date payment was due through the date of payment.

18. **Stipulated Penalties.**

a. Applicability.

(1) If any amounts due to EPA under Paragraph 16 (Payment of Net Proceeds of Sale of Property) are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA upon demand, as a stipulated penalty, in addition to the Interest required by Paragraph 17 (Interest on Payments), \$1,500 per violation per day that such payment is late.

(2) If Settling Party fails to use best efforts to sell the Property in accordance with Paragraph 16 (Payment of Net Proceeds of Sale of Property), Settling Party shall be in violation of this Settlement Agreement and shall pay, as a stipulated penalty, \$750 per day for each day of failure to use best efforts to sell the Property.

b. Process.

(1) Demand for Payment. Following EPA's determination that Stipulated Penalties have been triggered under Paragraph 18.a, above, EPA may give Settling Party written notification of its failure to comply and describe the noncompliance. EPA may send Settling Party a written demand for payment of the penalties. However, penalties shall accrue as provided in the Paragraph 18.a regardless of whether EPA has notified Settling Party of its failure to comply. If EPA sends a written demand for payment of stipulated penalties, a copy of the demand will be sent by EPA via email to: CINWD_AcctsReceivable@epa.gov and to R3_Hearing_Clerk@epa.gov.

(2) Payment/Dispute of Demanded Penalties. All penalties accruing under this Paragraph 18 shall be due and payable to EPA within thirty (30) days after Settling Party's receipt from EPA of a demand for payment of the penalties, unless Settling Party invokes the Dispute Resolution procedures under Paragraph 18.c, below within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made by bank check. The bank check and three (3) notices of payment shall be submitted as follows:

a.	Address for bank check	U.S. Environmental Protection Agency Superfund Payments Cincinnati Finance Center P.O. Box 979076 St. Louis, MO 63197-9000
b.	Notice of Payment #1	Via email to: CINWD_AcctsReceivable@epa.gov
c.	Notice of Payment #2	Via email to: R3_Hearing_Clerk@epa.gov
d.	Notice of Payment #3	Via regular mail to: Andrew S. Goldman (3RC10) Sr. Assistant Regional Counsel U.S. EPA 1650 Arch Street Philadelphia, PA 19103

(3) The payment and each Notice of Payment required hereunder shall contain:

- (1) the paying party's name, street/PO Box address, email address, and telephone number;
- (2) "Site No. A38D";
- (3) "EPA Docket No. CERCLA-03-2020-0080CR"; and
- (4) the amount of the payment and the method of payment (e.g., bank check).

(4) Penalties shall accrue as provided in this Paragraph 18 regardless of whether EPA has notified Settling Party 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 Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

c. Dispute Resolution.

(1) Informal Dispute Resolution. If Settling Party disputes a demand for Interest and/or Stipulated Penalties, Settling Party shall send a written Notice of Dispute, to each address identified in Paragraph 18.b(2)(a-d), above, describing the objection(s) within five (5) days after receiving a demand. EPA and Settling Party shall have seven (7) days from EPA's receipt of a Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this subparagraph shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

(2) Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Settling Party shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the attorney identified in Paragraph 18.b(2)(d). EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, the Chief of the Region 3 Cost Recovery Section within the Superfund & Emergency Management Division will issue a written decision on the dispute. EPA's decision shall be incorporated into and become an enforceable part of this Settlement.

(3) Settling Party shall pay stipulated penalties or interest that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

(4) The invocation of dispute resolution procedures under this subparagraph does not extend, postpone, or affect in any way any obligation of under this Settlement. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance. In the event that Settling

Party does not prevail on the disputed issue, stipulated penalties shall be paid and notice provided as provided in subparagraphs 18.b(2) and (3), above.

19. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANTS BY EPA

21. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Settlement Agreement). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party and the financial, insurance, and indemnity certification made by Settling Party in Section XIV (Certification). These covenants extend only to Settling Party and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

22. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 21 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- 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 Party when such ownership or operation commences after signature of this Settlement Agreement by Settling Party;

e. liability based on Settling Party'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 Settlement Agreement by Settling Party; 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.

23. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement 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 Settlement Agreement, if the Financial Information provided by Settling Party, or the financial, insurance, or indemnity certification made by Settling Party in Section XIV (Certification) is false or, in any material respect, inaccurate.

24. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY SETTLING PARTY

25. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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 Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Section 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.

26. Except as provided in Paragraph 28 (claims against other PRPs) and Paragraph 33 (res judicata and other defenses), these covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of

Rights by EPA), other than in Paragraph 22.a (liability for failure to meet a requirement of the Settlement Agreement) or 22.b (criminal liability), but only to the extent that Settling Party's claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

27. Nothing in this Settlement Agreement 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).

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

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

29. Except as provided in Paragraph 28 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Party), each of the Parties 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 Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

30. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 22.a (liability for failure to meet a requirement of the Settlement Agreement) or 22.b (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

31. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party 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).

32. Settling Party shall, with respect to any suit or claim brought by it for matters related to Settlement Agreement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within ten (10) days after service of the complaint or claim upon Settling Party. In addition, Settling Party shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

33. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

34. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 30, and that, in any action brought by the United States related to the “matters addressed,” Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by EPA.

XII. PROPERTY REQUIREMENTS

35. **Agreements Regarding Access and Non-Interference.** Settling Party shall, with respect to its Affected Property:

a. Provide the United States and the State 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 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, or monitoring response actions;
 - (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XIII (Access to Information);
 - (6) Assessing Settling Party's compliance with the Settlement Agreement;
 - (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 Settlement Agreement; and
 - (8) Implementing, monitoring, maintaining, reporting on, and enforcing 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 or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site.

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 regarding the Affected Property, Settling Party shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

37. Reserved.

38. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Settling Party shall continue to comply with its obligations under the Settlement Agreement.

39. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

40. Settling Party shall provide to EPA, 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 its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, 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 Party 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 Party asserts a claim of privilege or protection, it shall provide EPA 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 Party shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Settling Party shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Party's favor.

c. Settling Party 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 Party is required to create or generate pursuant to this Settlement Agreement.

42. Business Confidentiality Claims. Settling Party may assert that all or part of a Record submitted to EPA 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 Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Party asserts a business confidentiality claim. Records that Settling Party claims to be confidential business information 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, or if EPA has notified Settling Party 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 Party.

43. Notwithstanding any provision of this Settlement Agreement, EPA 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 statute or regulations.

XIV. CERTIFICATION

44. Reserved.

45. Reserved.

46. Settling Party 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 Party'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 Party executes this Settlement Agreement; 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.

XV. NOTICES AND SUBMISSIONS

47. Whenever, under the terms of this Settlement Agreement, 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 Party 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 this Settlement Agreement regarding such Party.

As to EPA: Ruth Knapp (3SD41)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2191
Knapp.ruth@epa.gov

As to Settling Party: Daniel Luzon
333 West 262 Street
Bronx, NY 10471

XVI. INTEGRATION/APPENDICES

48. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those

expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

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

“Appendix B” is a list of Permitted Encumbrances.

“Appendix C” is the Lien Release Procedure.

XVII. PUBLIC COMMENT

49. This Settlement Agreement shall be subject to a public comment period of at least thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVIII. EFFECTIVE DATE

50. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 49 has closed and the United States has determined not to withhold its consent or seek to modify this Settlement Agreement based on the comments received, if any.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Paul Leonard
Acting Director, Superfund & Emergency Management
Division
EPA Region 3

Date

FOR PAD Kulpmont, LLC:



[Sign]

3-16-2020

Date

Print:

Daniel Luzon

[Name]

President

[Title]

PAD Kulpmont LLC

[Company]

200 West 262 street, Bronx, NY 10471

[Address]

APPENDIX A

Financial Documents Submitted on behalf of Settling Party:

1. August 30, 2019 response of Mr. Daniel Luzon on behalf of PAD Kulpmont LLC to EPA's June 26, 2019 CERCLA § 104(e) Information Request.
2. Completed "Financial Statement of Businesses" form signed by Mr. Daniel Luzon for PAD Kulpmont LLC on August 29, 2019, submitted as part of August 30, 2019 response.
3. PAD Kulpmont LLC's U.S. Partnership Tax Return, Form 1065 and all attachments for calendar years 2016 and 2017, submitted as part of August 30, 2019 response.

APPENDIX B

No Permitted Encumbrances identified by the Settling Party.

APPENDIX C

Lien Release Procedure

A. If an EPA representative attends the closing meeting, EPA will deliver a release of any federal lien established pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), regarding the Property upon receiving a check for 80% of the net sales proceeds if the amount is deemed acceptable by EPA based on information provided to EPA pursuant to Paragraph 16.f of the Settlement Agreement. Settling Party or the buyer shall be responsible for filing the lien release in the local land records for Northumberland County, Pennsylvania, and the U.S. District Court for the Middle District of Pennsylvania.

B. If an EPA representative does not attend the closing meeting:

1. Settling Party shall, during the closing meeting, email an electronic copy of the check ("Check Image"), containing the information required by Paragraph 16.h(2) of the Settlement Agreement, for 80% of the net sales proceeds to goldman.andrew@epa.gov and knapp.ruth@epa.gov, and shall call EPA Sr. Assistant Regional Counsel Andrew Goldman at (215) 814-2487 when such email has been sent.

2. If the amount shown in the Check Image is deemed acceptable by EPA based on information provided to EPA pursuant to Paragraph 16.f of the Settlement Agreement, EPA will, as soon as practical after receipt of the Check Image, email an electronic copy of the lien release to dluz247@gmail.com. EPA intends to respond to an email sent consistent with, and pursuant to, subparagraph 1, above, within 60 minutes of receiving such email. Following transmittal by EPA of an electronic copy of the lien release, EPA will mail two original copies of the lien release to Settling Party as soon as practicable thereafter. Settling Party or the buyer shall be responsible for filing the lien release in the local land records for Northumberland County, Pennsylvania, and the U.S. District Court for the Middle District of Pennsylvania.