UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

IN THE MATTER OF: Former Toastmaster Facility Clarence, Missouri Empower Brands LLC, and Cooper Industries, LLC, Respondent(s) Proceeding Under Sections 104, 106(a), 107 and 122 of the *Comprehensive Environmental Response, Compensation, and Liability Act*	*CERCLA* Docket No. CERCLA-07-2025-0142 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Empower Brands LLC on its own behalf and as indemnitor for and Cooper Industries, LLC ("Respondents"). This Settlement provides for the performance of post-removal site controls by Respondents and the payment by Respondents of certain response costs incurred by the United States at or in connection with the "Toastmaster Clarence Site" generally located at 211 Old Highway 36 in Clarence, County of Shelby, Missouri.

2. This Settlement is issued under the authority vested in the President of the United States by sections 104, 106(a), 107, and 122 of the *Comprehensive Environmental Response, Compensation, and Liability Act* ("*CERCLA*"). This authority was delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017)) and 1414D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 7 to the director of the Superfund and Emergency Management Division by Regional Delegation Nos. R7-14-14A, R7-14-14C, and R7-14-14D, effective April 29, 2019.

3. The EPA has notified the State of Missouri (the "State") of this action pursuant to section 106(a) of CERCLA.

4. The EPA and the Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents do not constitute an admission of fact, conclusion of law, or any liability. Respondents do not admit and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, and conclusions of law and determinations in Sections IV and V of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and agree not to contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon the EPA and upon Respondents and their successors. Unless the EPA otherwise consents, (a) any change in ownership or corporate or other legal status of any Respondent, including any transfer of assets, or (b) any Transfer of the site or any portion thereof, does not alter any of Respondents' obligations under this Settlement. The EPA recognizes that an indemnity exists between Respondents, as described in Paragraph 16. Based on this indemnity, in the event of any action by the United States to enforce this Settlement, the EPA may in its unreviewable discretion elect to first proceed solely against Empower Brands LLC; however, nothing herein shall affect the joint and several liability of the Respondents.

6. Respondents shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Respondents with respect to the site or the Work. Respondents are responsible for ensuring that such parties act in accordance with the terms of this Settlement.

III. DEFINITIONS

7. Terms not otherwise defined in this Settlement have the meanings assigned in *CERCLA* or in regulations promulgated under *CERCLA*. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

"Action Memorandum" means the EPA Action Memorandum relating to the Site signed on January 12, 2024, by the Regional Administrator, EPA Region 7, or their delegatee, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.

"*CERCLA*" means the *Comprehensive Environmental Response, Compensation, and Liability Act*, 42 U.S.C. §§ 9601-9675.

"Day" or "day" means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. "Working Day" means any day other than a Saturday, Sunday, or federal or State holiday.

"Effective Date" means the effective date of this Settlement as provided in Section XXVIXXVI.

"EPA" means the U.S. Environmental Protection Agency.

"Fund" means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

"Including" or "including" means "including but not limited to."

"Interest" means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of *CERCLA*, compounded annually on October 1 of each year. The applicable rate of interest will 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. As of the date the EPA signs this Settlement, rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"*National Contingency Plan*" or "*NCP*" means the *National Oil and Hazardous Substances Pollution Contingency Plan* promulgated pursuant to section 105 of *CERCLA*, codified at 40 C.F.R. part 300, and any amendments thereto.

"Owner Respondent" means any Respondent that owns or controls all or a portion of the Site.

"Paragraph" or "¶" means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

"Parties" means the EPA and Respondents.

"Past Response Costs" means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the EPA paid in connection with the site up to the Effective Date, plus all interest on such costs accrued under section 107(a) of *CERCLA* through such date.

"*RCRA*" means the *Solid Waste Disposal Act*, 42 U.S.C. §§ 6901-6992k (also known as the *Resource Conservation and Recovery Act*).

"Removal Action" means the Removal Action selected in the Action Memorandum.

"Respondents" mean Empower Brands LLC and Cooper Industries, LLC.

"Section" means a portion of this Settlement identified by a Roman numeral.

"Settlement" means this Administrative Settlement Agreement and Order on Consent, all appendixes attached hereto (listed in Section XXI), and all deliverables approved under and incorporated into this Settlement. If there is a conflict between a provision in Sections I through XXVI and a provision in any appendix or deliverable, the provision in Sections I through XXVI controls.

"Site" means the Former Toastmaster Clarence Site, comprising approximately 9.4 acres, located at 211 Old Highway 36 in Clarence**,** Shelby County, Missouri and depicted generally on the map attached as Appendix B.

"Special Account" means the Toastmaster Clarence special account, within the Fund, established for the site by the EPA under section 122(b)(3) of *CERCLA*.

"State" means the State of Missouri.

"Transfer" means 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" means the United States of America and each department, agency, and instrumentality of the United States, including the EPA.

"Waste Material" means (a) any "hazardous substance" under section 101(14) of *CERCLA*; (b) any pollutant or contaminant under section 101(33) of *CERCLA*; (c) any "solid waste" under section 1004(27) of *RCRA*.

"Work" means all obligations of Respondents under Sections VII (Coordination and Supervision) through XI (Indemnification and Insurance).

"Work Takeover" means the EPA's assumption of the performance of any of the Work in accordance with ¶ 36.

IV. FINDINGS OF FACT

8. The property located at 211 Old Highway 36 in Clarence, Shelby County (the "Facility," as further defined below) is currently owned by Diamond State Manufacturing Real Estate LLC, and occupied by Show Me Alternatives Manufacturing.

9. Use of the Facility began in approximately 1947 reportedly initially for the production of gloves and shoes. Ammunition boxes were produced at the Facility from 1950 to 1960, and wood window sashes were produced from 1960 to 1962. The McGraw-Edison Company ("McGraw-Edison") manufactured ironing boards and barbecue grills at the Facility from 1962 to 1968 then began manufacturing heating elements, which continued under various ownerships until approximately 2000.

10. Ownership and operation of the Facility transferred from McGraw-Edison to Toastmaster, Inc. as part of an asset sale dated July 16, 1980.

11. Cooper Industries, LLC is the successor corporation to McGraw-Edison

12. In October 1983, Toastmaster Inc. was acquired by Magic Chef, Inc. Magic Chef, Inc. was acquired by Maytag Company in 1986. On April 1, 2006, Whirlpool completed its acquisition of Maytag Corporation.

13. Toastmaster was sold by Maytag to a management team in January 1987. However, as part of that sale, Toastmaster's heating elements operations and related assets at the Facility were retained by Maytag. Thereafter, Maytag continued operations at the Facility manufacturing heating elements under a lease while Toastmaster continued its ownership of the Facility. On March 31, 1995, Toastmaster conveyed the property to Maytag by general warranty deed.

14. Maytag conveyed the property to Emerson Electric on April 21, 1998, and Emerson Electric continued the manufacture of heating elements at the Facility for a short time until it ceased those operations and sold the property to the City of Clarence in September 1999. The City of Clarance leased the property to Fairfield Aluminum Casting Company (FALCO) which operated the facility for secondary processing of aluminum and magnesium castings.

15. SMA Manufacturing Real Estate, LLC became the owner of Facility on March 10, 2020, and then on May 1, 2024 sold the Facility to Diamond State Manufacturing Real Estate LLC.

16. On January 8, 1999, Toastmaster was acquired by Salton, Inc. Salton later changed its name to Russell-Hobbs, Inc. and Toastmaster eventually was merged into Spectrum Brands after it acquired Russell-Hobbs in 2010. Subsequently, through a reorganization in 2022, a Spectrum Brands' subsidiary, Empower Brands, LLC, holds assets and liabilities of the former Toastmaster operations. Additionally, pursuant to an April 3, 2020 agreement, Empower Brands LLC (by assignment from its parent corporation Spectrum Brands, Inc.) is indemnifying Cooper Industries, LLC for environmental liabilities and Claims arising from the Site. Regarding indemnified matters, Empower Brands LLC is authorized to take actions in the name and on behalf of Cooper (e.g., 'Cooper Industries, LLC by its indemnitor, Empower Brands LLC').

17. Trichloroethylene ("TCE") was used as degreasing solvent related to certain historic manufacturing that took place at the Facility. According to records the Facility has small quantity generator status from at least 1979 to 1996, with use of volatile organic compounds during all or a portion of that period of time. In June 2022, MoDNR referred the site to the EPA for assessment of chlorinated solvent releases at the site.

18. In July 2023, the EPA conducted a sampling event to investigate soil-gas and groundwater along the perimeter of the former Toastmaster Clarence facility as part of a Removal Site Evaluation related to the past release of TCE at the site. The sampling found elevated levels of TCE and TCE degradation products near neighboring residences.

19. In December 2023, the EPA conducted indoor air and sub-slab gas sampling in homes and businesses near the former Toastmaster Clarence Facility. As a result of the sampling, the EPA found one residence with indoor air samples containing levels of TCE above the Removal Management Level (RML). TCE detections were reported in sub-slab and crawl space samples, suggesting a complete exposure pathway and a subsurface source.

20. In January 2024, sample results were communicated to affected property owners and tenants. On January 5, 2024, the EPA provided a portable carbon air filter system to the residential home at 602 North Shelby Street, Clarence, Missouri with air levels exceeding RMLs to lower indoor TCE levels.

21. On July 1-3, 2024, vapor intrusion (VI) mitigation system was installed at 602 North Shelby Street, Clarence, Missouri. The system was installed in the basement and crawl spaces, locations previously agreed upon by the property owner and the EPA. The EPA also sealed foundation cracks and added seal over the sump pump in order to minimize vapor intrusion.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

22. Based on the Findings of Fact in Section IV and the administrative record, the EPA has determined that:

a. The site is a "facility" as defined by section 101(9) of *CERCLA*.

b. The contamination found at the site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by section 101(14) of *CERCLA*.

c. Each Respondent is a "person" as defined by section 101(21) of *CERCLA*.

d. Each Respondent is a responsible party under section 107(a) of *CERCLA* in that each is

(1) a successor to an entity who were the "owners" and/or "operators" of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of *CERCLA*, and within the meaning of section 107(a)(2) of *CERCLA*.

e. The conditions described in the Findings of Fact constitute an actual or threatened "release" of a hazardous substance from the facility as defined by section 101(22) of *CERCLA*.

f. The EPA determined in an Action Memorandum dated January 12, 2024, that the conditions at the site may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of *CERCLA*.

g. The EPA has determined the Removal Action is necessary to protect the public health, welfare, or the environment.

VI. ORDER AND AGREEMENT

23. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement as follows:

VII. COORDINATION AND SUPERVISION

24. **Respondents' Project Coordinator**

a. Arcadis U.S., Inc. shall serve as Respondents' initial contractor. Respondents have designated, and the EPA has not disapproved, the following individual as its Project Coordinator, who shall be responsible for administration of all actions by Respondents required by this Settlement:

Christopher Kalinowski, PE
Certified Project Manager / Principal
Arcadis U.S., Inc.
175 Regency Woods Place, Ste. 400
Cary, NC 27518
(919) 415-2277
chris.kalinowski@arcadis.com

b. Notice or communication relating to this Settlement from the EPA to Respondents' Project Coordinator constitutes notice or communication to all Respondents.

c. Respondents may change their Project Coordinator by following the procedures under ¶ 25.

25. Procedures for Notice and Disapproval

a. Respondents shall notify the EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 10 days prior to commencement of such Work.

b. The EPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable. If the EPA issues a notice of disapproval, Respondents shall, within 10 days, submit to the EPA a list of supplemental proposed Project Coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. The EPA may disapprove the proposed Project Coordinator, contractor, or subcontractor, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

26. **EPA On-Scene Coordinator**. The EPA designates John Frey of the Assessment, Emergency Response and Removal Branch, Region 7, as its On-Scene Coordinator ("OSC"). The OSC has the authorities described in the NCP, including oversight of Respondents' implementation of the Work, authority to halt, conduct, or direct any Work, or to direct any other Removal Action undertaken at the site. The OSC's absence from the site is not a cause for stoppage of work. The EPA may change its OSC and will notify Respondents of any such change.

VIII. PERFORMANCE OF THE WORK

27. Respondents shall perform the Work in accordance with this Settlement, including all EPA-approved, conditionally approved, or modified deliverables as required by this Settlement. The Work includes, at a minimum, all actions necessary to implement the Removal Action, including the following:

a. Operation of the Depressurization System: It is intended that the Depressurization System runs continuously (24 hours per day/7 days per week/365 days per year), subject only to periodic maintenance and unanticipated power interruptions. The Depressurization System shall be run until the EPA notifies Respondents in writing that the Depressurization System is no longer needed to ensure that TCE concentrations originating from a VI source are below 2.1 µg/m^3 within the building located on 602 North Shelby Street.

b. Maintenance of the Depressurization System: Respondents shall maintain the Depressurization System to ensure its continued effectiveness until the EPA determines that the Depressurization System is no longer needed to ensure that TCE concentrations originating from a VI source are below 2.1 µg/m^3 within the building located on 602 North Shelby Street. Such maintenance shall include the following:

(1) No less frequently than once every three hundred sixty-five (365) days, check each magnehelic gauge installed in the Depressurization System, including those installed by the EPA and those that may be installed by the EPA or Respondents in the future, and record its readings to determine whether the Depressurization System is performing effectively. In the event one or more gauges are found to read outside its/their initial vacuum reading by an amount to suggest that the Depressurization System is not

performing effectively, notify the EPA OSC within 48 hours of such finding(s). Respondents shall comply with all EPA OSC requests for additional information/inspections for each gauge so identified.

(2) No less frequently than once every three hundred sixty-five (365) days, check each of the fans installed in the Depressurization System, including those installed by the EPA and those that may be installed by the EPA or Respondents in the future. In the event one or more fans ceases operation completely, operates in a manner that indicates the Depressurization System is not performing effectively, or operates in a manner that evidences imminent failure (e.g., noisy operation), Respondents shall, as soon as is reasonably possible after becoming aware of such condition, replace such fan with a unit that has specifications that are substantially identical to those described for the fans and shall notify the EPA OSC within 48 hours after such replacement.

(3) No less frequently than once every three hundred sixty-five (365) days, check the Energy Recovery Ventilator (ERV) System, including those installed by the EPA and those that may be installed by the EPA or Respondents in the future. In the event one or more of the ERV systems ceases operation completely, operates in a manner that is not within recommended manufacturer specifications or operates in a manner that evidences imminent failure (e.g., noisy operation), Respondents shall, as soon as is reasonably possible after becoming aware of such condition, repair or replace the ERV System with a unit that has specifications that are substantially identical to those described for the fans and shall notify the EPA OSC within 48 hours after such replacement.

c. Notice of Changes to Existing Floorplans, Status of the Foundation, or Factors Which May Cause Indoor VOC Levels to Exceed Acceptable Levels. Respondents shall notify the EPA if, during maintenance activity required by Paragraph 27.b above, Respondents observe or determine that any of the following events or conditions exist on 602 North Shelby Street, or if the person owning or controlling the property reports that any of the following events or conditions exist on 602 North Shelby Street:

(1) A significant change to the layout or size of any existing or future tenant space within the building located on 602 North Shelby Street; or

(2) Damage to or penetration of the foundation of the building located on 602 North Shelby Street; or

(3) TCE levels originating from a VI source at or above 2.1 $\mu g/m^3$ within the building located on 602 North Shelby Street.

Such notice, following the requirements under Section XX (Notices and Submissions), shall be provided no less than five (5) days after Respondents completion of annual maintenance activity, or after the person owning or operating the property reports on any such events or conditions to

Respondents. In the event Respondents notify the EPA of, or the EPA otherwise becomes aware of, any of the above-described events or condition, the EPA may require a modification of this Settlement to (a) require the installation additional equipment necessary to keep TCE originating from a VI source within all spaces in the building located on 602 North Shelby Street below 2.1 $\mu g/m^3$, (b) require the modification to existing equipment or reasonable modification to the structure to keep TCE originating from a VI source within all spaces in the building located on 602 North Shelby Street below 2.1 $\mu g/m^3$, or (c) any combination of the above.

Respondents will communicate with the person owning or controlling the property about the Depressurization System and the Energy Recovery Ventilator (ERV) System and how to identify whether the systems are operating properly. Respondents will exchange contact information with the person owning or controlling the property so that Respondents and the person owning or controlling the property can discuss any issues with the systems or changes to the structure or foundation as described above.

28. Records. Respondents shall maintain records documenting all actions taken to comply with this Order including, but not limited to, records documenting (1) maintenance of the Depressurization System, and (2) observed or reported changes to the building located on 602 North Shelby Street triggering the notice requirements of Section XX. All such records shall be maintained for the period of time established for record retention in Section XIX (Record Retention). In the event Respondents perform sampling, sampling records shall also be maintained and provided to the EPA as part of the requirements of this Paragraph.

29. Respondents' obligations to finance and perform the Work and to pay amounts due under this Settlement are joint and several. In the event of the insolvency of any Respondent or the failure by any Respondent to participate in the implementation of the Settlement, the remaining Respondents shall complete the Work and make the payments.

30. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from the EPA of the modification, amendment, or replacement.

31. **Community Involvement**. The EPA has the lead responsibility for implementing community involvement activities at the site, including the preparation of a community involvement plan, in accordance with the NCP and EPA guidance. As requested by the EPA, Respondents shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification and (b) public meetings that may be held or sponsored by the EPA to explain activities at or relating to the site.

32. **Deliverables: Specifications and Approval**

a. **General Requirements for Deliverables.** Respondents shall submit all deliverables to the EPA in electronic form, unless otherwise specified by the OSC.

b. **Technical Specifications for Deliverables.** Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable ("EDD") format. Other delivery methods may be allowed by the OSC if electronic direct submission presents a significant burden or as technology changes.

c. **Approval of Deliverables**. After review of any deliverable required to be submitted for EPA approval under the Settlement, the EPA shall: (1) approve, in whole or in part, the deliverable; (2) approve the submission upon specified conditions or required revisions to the deliverable; (3) disapprove, in whole or in part, the deliverable; or (4) any combination of the foregoing. If the EPA requires revisions, the EPA will provide a deadline for the resubmission, and Respondents shall submit the revised deliverable by the required deadline. Once approved or approved with conditions or required revisions, Respondents shall implement the Settlement or other deliverable in accordance with the EPA-approved schedule. Upon approval, or subsequent modification, by the EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under the Settlement; and (2) Respondents shall take any action required by such deliverable, or portion thereof. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

33. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the OSC or, in the event of their unavailability, the Regional Duty Officer at (913) 281-0991 of the incident or site conditions; and (c) take such actions in consultation with the OSC or authorized EPA officer and in accordance with all applicable provisions of this Settlement and any other applicable deliverable approved by the EPA.

34. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report under *CERCLA* § 103 of or section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Respondents shall immediately orally notify the OSC or, in the event of their unavailability, the Regional Duty Officer at (913) 281-0991, and the National Response Center at (800) 424-8802. Respondents shall also submit a written report to the EPA within seven days after the onset of such event, (a) describing the event, and (b) all measures taken and to be taken: (1) to mitigate any release or threat of release, (2) to mitigate any endangerment caused or threatened by the release; and (3) to prevent the reoccurrence of any such a release or threat of release. The reporting requirements under this Paragraph are in addition to the reporting required by *CERCLA* §§ 103 and 111(g) or EPCRA § 304.

35. **Compliance with Applicable Law**. Nothing in this Settlement affects Respondents' obligations to comply with all applicable state and federal laws and regulations, except as provided in section 121(e) of *CERCLA*, and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by the EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal

environmental or state environmental or facility siting laws. The activities conducted in accordance with this Settlement, if approved by the EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

36. **Work Takeover**

a. If the EPA determines that Respondents: (1) have ceased implementation of any portion of the Work required under this Section; (2) are seriously or repeatedly deficient or late in performing the Work required under this Section; or (3) are implementing the Work required under this Section in a manner that may cause an endangerment to public health or welfare or the environment, the EPA may issue a notice of Work Takeover to Respondents, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Respondents shall remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless the EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Respondents do not remedy to the EPA's satisfaction the circumstances giving rise to the notice of Work Takeover, the EPA may notify Respondents and, as it deems necessary, commence a Work Takeover.

c. The EPA may conduct the Work Takeover during the pendency of any dispute under Section XIV but shall terminate the Work Takeover if and when: (1) Respondents remedy, to the EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XIV that the EPA is required to terminate the Work Takeover.

IX. PROPERTY REQUIREMENTS

37. If the site, or any other property where access is needed to implement this Settlement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide the EPA, the State, and their representatives, including contractors, with access at all reasonable times to the site, or such other property, for the purpose of conducting any activity related to this Settlement. Where any action under this Settlement is to be performed in areas owned or controlled by someone other than Respondents, Respondents shall use best efforts to obtain all necessary agreements for access, enforceable by Respondents and the EPA, within 30 days after the Effective Date, or as otherwise specified in writing by the OSC.

38. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use 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 or use restriction agreements, as required by this Section. If Respondents cannot accomplish what is required through "best efforts" in a timely manner, they shall notify the EPA, and include a description of the steps taken to achieve the requirements. If the EPA deems it appropriate, it may assist Respondents, or take independent action, to obtain such access.

39. Any Respondent who owns or controls any property at the site shall, prior to entering into a contract to Transfer any of its property that is part of the site, or 60 days prior to a Transfer of such property, whichever is earlier, (a) give written notice to the proposed transferee that the property is subject to this Settlement; and (b) give written notice to the EPA of the proposed Transfer, including the name and address of the transferee. Any Respondent who owns or controls property at the site also agrees to require that their successors comply with this Section IX and Section XIX (Records).

40. Notwithstanding any provision of the Settlement, the EPA retains all of its access authorities and rights, including related enforcement authorities under *CERCLA*, *RCRA*, and any other applicable statute or regulations.

X. FINANCIAL ASSURANCE

41. To ensure completion of the Work required under Section VIII (Performance of Work), Respondents shall secure financial assurance, initially in the amount of $10,000 ("Estimated Cost of the Work"), for the benefit of the EPA. The financial assurance must: (a) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the EPA; and (b) be satisfactory to the EPA. As of the date of signing this Settlement, the sample documents can be found under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms::

a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit, payable to the EPA or at the direction of the EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund established for the benefit of the EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. a policy of insurance that provides the EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. a demonstration by a Respondent that it meets the relevant financial test criteria of ¶ 42, accompanied by a standby funding commitment, that requires the affected Respondent to pay funds to or at the direction of the EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. a guarantee to fund or perform the Work executed in favor of the EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) demonstrates to the EPA's satisfaction that it meets the financial test criteria of ¶ 42.

42. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 41.e or 41.f shall, within 30 days after the Effective Date:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. tangible net worth of at least $10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. tangible net worth of at least $10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal

environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to the EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from the EPA. As of the date of signature of this Settlement, a sample letter and report are available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

43. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 41.e or 41.f shall also:

a. annually resubmit the documents described in ¶ 42.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. notify the EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. provide to the EPA, within 30 days of the EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 42.b; the EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

44. Respondents shall, within 30 days after the Effective Date, seek the EPA's approval of the form of Respondents' financial assurance. Within 60 days after the EPA's approval, Respondents shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA in accordance with ¶ 42.b.

45. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify the EPA of such information within seven days. If the EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, the EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying the EPA or receiving notice from the EPA under this Paragraph, secure and submit to the EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. The EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to the EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of ¶ 47 (Modification of Amount, Form, or Terms

of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

46. **Access to Financial Assurance**

a. If the EPA issues a notice of a Work Takeover under ¶ 36.b, then, in accordance with any applicable financial assurance mechanism, the EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be paid in accordance with ¶ 46.d.

b. If the EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 46.d46.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 36, either: (1) The EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism including the related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 41.e, then the EPA is entitled to demand an amount, as determined by the EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 10 days after such demand, pay the amount demanded as directed by the EPA.

d. Any amounts required to be paid under this ¶ 46 must be, as directed by the EPA: (i) paid to the EPA in order to facilitate the completion of the Work by the EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to the EPA, the EPA may deposit the payment into the Fund or into the 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 the EPA to the Fund.

47. **Modification of Amount, Form, or Terms of Financial Assurance**. On any anniversary of the Effective Date, or at any other time agreed to by the Parties, Respondents may request to change the form, terms, or amount of the financial assurance mechanism. Respondents shall submit any such request to the EPA in accordance with ¶ 41, and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. The EPA will notify Respondents of its decision regarding the request. Respondents may modify the form, terms, or the amount of the financial assurance mechanism only in accordance with: (a) The EPA's approval; or (b) any resolution of a dispute on the appropriate amount of financial assurance under Section XIV. Any decision made by the EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to

challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Respondents shall submit to the EPA, within 30 days after receipt of the EPA's approval, or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

48. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only:; (a) in accordance with the EPA's approval of such release, cancellation, or discontinuation; or (b) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV.

XI. INDEMNIFICATION AND INSURANCE

49. **Indemnification**

a. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as the EPA's authorized representative under section 104(e)(1) of *CERCLA*. Respondents shall indemnify and save and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities under this Settlement, including any claims arising from any designation of Respondents as the EPA's authorized representatives under section 104(e)(1) of *CERCLA*. Further, Respondents agree to pay the EPA all costs it incurs including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control in carrying out activities under with this Settlement. The EPA may not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities under this Settlement. The Respondents and any such contractor may not be considered an agent of the EPA.

b. The EPA shall give Respondents notice of any claim for which the EPA plans to seek indemnification in accordance with this ¶ 49, and shall consult with Respondents prior to settling such claim.

50. Respondents covenant not to sue and shall not assert any claim or cause of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work or other activities on or relating to the site, including claims on account of construction delays. In addition, Respondents shall indemnify and save and hold harmless the United States with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for

performance of work at or relating to the site, including claims on account of construction delays.

51. **Insurance**. Respondents shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of $1 million per occurrence; (b) automobile liability insurance with limits of liability of $1 million per accident; and (c) umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents under this Settlement. Respondents shall maintain this insurance as long as continuing obligations last.. In addition, for the duration of this Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. Prior to commencement of the Work, Respondents shall provide to the EPA certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondents demonstrate by evidence satisfactory to the EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to the EPA under this Paragraph identify the former Toastmaster facility, Clarence, Missouri and the EPA docket number of this case.

XII. PAYMENTS FOR RESPONSE COSTS

52. **Payment by Respondents for Past Response Costs**. Within 30 days after the Effective Date, Respondents shall pay the EPA, in reimbursement of Past Response Costs in connection with the site, $179,556.16. Respondents shall make payment at https://www.pay.gov using the "EPA Miscellaneous Payments Cincinnati Finance Center" link, and including references to the Site Name, Docket Number, and Site/Spill ID number listed in ¶ 86 and the purpose of the payment. Respondents shall send notices of this payment to the EPA in accordance with ¶86. If the payment required under this Paragraph is late, Respondents shall pay, in addition to any stipulated penalties owed under Section XV, an additional amount for Interest accrued from the Effective Date until the date of payment.

53. **Deposit of Payments**. The EPA may, in its unreviewable discretion, deposit the amounts paid under ¶ 52 in the Fund, in the Special Account, or both. The EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the site, or transfer those amounts to the Fund.

XIII. FORCE MAJEURE

54. "Force majeure," for purposes of this Settlement, means any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of

Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work, or increased cost of performance.

55. If any event occurs for which Respondents will or may claim a force majeure, Respondents shall notify the EPA's OSC by email. The deadline for the initial notice is 7 days after the date Respondents first knew or should have known that the event would likely delay performance. Respondents shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Respondents knew or should have known. Within 7 days thereafter, Respondents shall send a further notice to the EPA that includes: (a) a description of the event and its effect on Respondents' completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (c) the proposed extension of time for Respondents to complete the requirements of the Settlement; (d) a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (e) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Respondents from asserting any claim of force majeure regarding that event, provided, however, that if the EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶54 and whether Respondents has exercised best efforts under ¶ 41, the EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

56. The EPA will notify Respondents of its determination whether Respondents are entitled to relief under ¶ 54, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Respondents may initiate dispute resolution under Section XIV regarding the EPA's determination within 15 days after receipt of the determination. In any such proceeding, Respondents have the burden of proving that they are entitled to relief under ¶54 and that their proposed extension was or will be warranted under the circumstances.

57. The failure by the EPA to timely complete any activity under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from timely completing a requirement of the Settlement, Respondents may seek relief under this Section.

XIV. DISPUTE RESOLUTION

58. Unless otherwise provided in this Settlement, Respondents shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.

59. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute ("Notice of Dispute") to the EPA. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between the parties to the dispute. If Respondents object to any EPA action taken pursuant to this Settlement, they shall send the EPA a Notice of Dispute describing the objection(s) within 7 days after such action. The period for informal negotiations may not exceed 20 days after the dispute arises, unless the EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by the EPA is binding unless Respondents initiate formal dispute resolution under ¶ 60. By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.

60. **Formal Dispute Resolution**

a. **Statements of Position**. Respondents may initiate formal dispute resolution by submitting, within seven days after the conclusion of informal dispute resolution under ¶59, an initial Statement of Position regarding the matter in dispute. The EPA's responsive Statement of Position is due within 20 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. If appropriate, the EPA may extend the deadlines for filing statements of position for up to 15 days and may allow the submission of supplemental statements of position.

b. **Formal Decision**. The Director of the Superfund & Emergency Management Division, EPA Region 7, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Respondents, and shall be incorporated into and become an enforceable part of this Settlement.

61. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as the EPA agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 64.

XV. STIPULATED PENALTIES

62. Unless the noncompliance is excused under Section XIII (Force Majeure), Respondents are liable to the EPA for the following stipulated penalties:

a. for any failure: (1) to pay any amount due under Section XII; or (2) to establish and maintain financial assurance in accordance with Section X:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	$250
15th through 30th day	$500
31st day and beyond	$1,000

b. for any failure to submit timely or adequate deliverables required by this Settlement other than those specified in ¶ 62.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	$100
15th through 30th day	$250
31st day and beyond	$500

63. **Work Takeover Penalty**. If the EPA commences a Work Takeover under ¶36, Respondents are liable for a stipulated penalty in the amount of $50,000. This stipulated penalty is in addition to the remedy available to the EPA under ¶ 46 (Access to Financial Assurance).

64. **Accrual of Penalties**. Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate noncompliance with this Settlement. Stipulated penalties accrue regardless of whether Respondents have been notified of their noncompliance, and regardless of whether Respondents have initiated dispute resolution under Section XIV, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that the EPA subsequently determines is deficient, during the period, if any, beginning on the 31st day after the EPA's receipt of such submission until the date that the EPA notifies Respondents of any deficiency; or

b. with respect to a matter that is the subject of dispute resolution under Section XIV, during the period, if any, beginning on the 21st day after the EPA's Statement of Position is received until the date of the Formal Decision under ¶ 60.b.

65. **Demand and Payment of Stipulated Penalties**. The EPA may send Respondents a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Respondents may initiate dispute resolution under Section XIV within 30 days after receipt of the demand. Respondents shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Respondents shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Respondents shall make payment at https://www.pay.gov using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site Name, Docket Number, and B7N7 and the purpose of the payment. Respondents shall send notices of this payment to the EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Respondents under the Settlement.

66. Nothing in this Settlement limits the authority of the EPA to seek any other remedies or sanctions available by virtue of Respondents' noncompliance with this Settlement or of the statutes and regulations upon which it is based, including penalties under sections 106(b)

and 122(l) of *CERCLA*, and punitive damages pursuant to section 107(c)(3), provided, however, that the EPA may not seek civil penalties under section 122(l) of *CERCLA* for any noncompliance for which a stipulated penalty is provided for in this Settlement, except in the case of a willful noncompliance with this Settlement or in the event that the EPA assumes performance of a portion or all of the Work pursuant to ¶ 36 (Work Takeover).

67. Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

XVI. COVENANTS BY EPA

68. **Covenants for Respondents**. Subject to ¶ 70, the EPA covenants not to sue or to take administrative action against Respondents under sections 106 and 107(a) of *CERCLA* regarding the Work described in Section VIII of this agreement and Past Response Costs.

69. The covenants under ¶ 68, (a) take effect upon the Effective Date; (b) are conditioned on the complete and satisfactory performance by Respondents of the requirements of this Settlement; (c) extend to the successors of each Respondent but only to the extent that the alleged liability of the successor of the Respondent is based solely on its status as a successor of the Respondent; and (d) do not extend to any other person.

70. **General Reservations**. Notwithstanding any other provision of this Settlement, EPA reserves, and this Settlement is without prejudice to, all rights against Respondents regarding the following:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for performance of response action other than the Work;

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 arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the site; and

e. criminal liability.

71. Subject to ¶68, nothing in this Settlement limits any authority of the EPA to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the site, or to request a Court to order such action.

XVII. COVENANTS BY RESPONDENTS

72. **Covenants by Respondents**

a. Subject to ¶ 73, Respondents covenant not to sue and shall not assert any claim or cause of action against the United States under *CERCLA*, section 7002(a) of *RCRA*, the United States Constitution, the *Tucker Act*, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding the Work, Past Response Costs, and this Settlement.

b. Subject to ¶ 73, Respondents covenant not to seek reimbursement from the Fund through *CERCLA* or any other law for costs of the Work, Past Response Costs, or any claim arising out of response actions at or in connection with the site.

73. **Respondents' Reservation**. The covenants in ¶72 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 70.a through 70.e.

74. **De Micromis Waiver**. Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of *CERCLA*) that they may have for all matters relating to the site against any person where the person's liability to Respondents with respect to the site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the site, or having accepted for transport for disposal or treatment of hazardous substances at the site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if the EPA determines that: (a) the materials containing hazardous substances contributed to the site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the site; or (b) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of *CERCLA* or section 3007 of *RCRA* with respect to the site, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the site; or if (c) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise. This waiver does not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the site against such Respondent.

75. Respondents agree not to seek judicial review of the final rule listing the site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the site.

XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION

76. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which each Respondent has, as of the Effective Date, resolved its liability to the EPA within the meaning of sections 113(f)(2), 113(f)(3)(B), and 122(h)(4) of *CERCLA*; and (b) each

Respondent 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. The "matters addressed" in this Settlement are the Work and Past Response Costs provided, however, that if the EPA exercises rights against Respondents under the reservations in ¶¶70.a through 70.e, the "matters addressed" in this Settlement do not include those response costs or response actions that are within the scope of the exercised reservation.

77. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify the EPA no later than 60 days prior to the initiation of such suit or claim. Each Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify the EPA within 10 days after service of the complaint on such Respondent. In addition, each Respondent shall notify the EPA 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.

78. **Res Judicata and Other Defenses**. In any subsequent administrative or judicial proceeding initiated against any Respondent by the EPA or by the United States on behalf of the EPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

79. Except as provided in ¶ 74, nothing in this Settlement creates any rights in, or grants any defense or cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including pursuant to section 113 of *CERCLA*), defenses, claims, demands, and causes of action that each Party 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 diminishes the right of the United States under section 113(f)(2) and (3) of *CERCLA* to pursue any person not a party to this Settlement 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).

XIX. RECORDS

80. **Respondents' Certification**. Each Respondent certifies individually that: (a) it has implemented a litigation hold on documents and electronically stored information relating to the site, including information relating to its potential liability under *CERCLA* regarding the site, since the notification of potential liability by the United States or the State; and (b) it has fully complied with any and all EPA requests for information under sections 104(e) and 122(e) of *CERCLA*, and section 3007 of *RCRA*.

81. **Retention of Records and Information**

a. Respondents shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data ("Records") until 3 years following the EPA's issuance of the Notice of Completion of Work:

(1) All records regarding Respondents' liability and the liability of any other person under *CERCLA* regarding the site;

(2) All reports, plans, permits, and documents submitted to the EPA in accordance with this Settlement, including all underlying research and data; and

(3) All data developed by, or on behalf of, Respondents in the course of performing the Work.

b. At the end of the Record Retention Period, Respondents shall notify the EPA that it has 90 days to request the Respondents' Records subject to this Section. Respondents shall retain and preserve their Records subject to this Section until 90 days after the EPA's and the State's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

82. Respondents shall provide to the EPA, upon request, copies of all Records and information required to be retained under this Section. Respondents shall also make available to the EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

83. **Privileged and Protected Claims**

a. Respondents may assert that all or part of a record requested by the EPA is privileged or protected as provided under federal law, in lieu of providing the record, provided that Respondents comply with ¶83.b., and except as provided in ¶ 83.c.

b. If Respondents assert a claim of privilege or protection, they shall provide the 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, of 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, Respondents shall provide the record to the EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all records that they claim to be privileged or protected until the EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents shall not make any claim of privilege or protection regarding: (1) any data regarding the site, including 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 Respondents are required to create or generate in accordance with this Settlement.

84. **Confidential Business Information Claims**. Each Respondent is entitled to claim that all or part of a record submitted to the EPA under this Section is Confidential Business Information ("CBI") that is covered by section 104(e)(7) of *CERCLA* and 40 C.F.R. § 2.203(b). Respondents shall segregate all records or parts thereof submitted under this Settlement which they claim is CBI and label them as "claimed as confidential business information" or "claimed as CBI." Records that a submitter properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to the EPA, or if the EPA notifies the submitter that the records are not entitled to confidential treatment 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 the submitter.

85. Notwithstanding any provision of this Settlement, the EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under *CERCLA*, *RCRA*, and any other applicable statutes or regulations.

XX. NOTICES AND SUBMISSIONS

86. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to the EPA: *via email to*:

John Frey
OSC SEMD-AERR-RROPS
frey.john@epa.gov
Re: Site/Spill ID # B7N7

As to Respondents: *via email to*:
Christopher Kalinowski, PE
Certified Project Manager / Principal
Arcadis U.S., Inc.
175 Regency Woods Place, Ste. 400
Cary, NC 27518
(919) 415-2277
chris.kalinowski@arcadis.com

XXI. APPENDIXES

87. The following appendixes are attached to and incorporated into this Settlement:

"Appendix A" is the Action Memorandum.

"Appendix B" is a map of the site.

XXII. MODIFICATIONS

88. The OSC may modify any plan or schedule in writing or by oral direction. The EPA will promptly memorialize in writing any oral modification, which will be effective on the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

89. If Respondents seek permission to deviate from any approved Settlement or schedule, Respondents' Project Coordinator shall submit a written request to the EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with a requested deviation until receiving oral or written approval from the OSC pursuant to ¶ 88.

90. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondents relieves Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXIII. SIGNATORIES

91. The undersigned representative of the EPA and each undersigned representative of a Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such party to this Settlement.

XXIV. NOTICE OF COMPLETION OF WORK

92. When Respondents have performed the Work for 365 days from the Effective Date, and have paid Past Response Costs, and the EPA determines such Work has been satisfactorily completed, the EPA will provide written notice of completion of work to Respondents. If the EPA determines that such Work has not been completed in accordance with this Settlement, the EPA will notify Respondents so Respondents can correct such deficiencies. Failure of Respondents to correct deficiencies shall be a violation of this Settlement. The Notice of Completion of Work does not relieve Respondents from continuing obligations, which include continuing to perform that Work governed by Section VIII Performance of Work, and record retention. Documentation of compliance with continuing obligations should be provided on an annual basis to R7_SEMD_Enforcement@epa.gov and the relevant Missouri Department of Natural Resources Project Manager overseeing the site. The continuing obligations to perform the Work governed by Section VIII shall cease when the EPA determines that TCE concentrations originating from a VI source are below 2.1 µg/m^3 within the building located on 602 North Shelby Street. Respondents may seek such determination at any time from the EPA by providing supporting data which the EPA shall review.

XXV. INTEGRATION

93. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Settlement.

XXVI. EFFECTIVE DATE

94. This Settlement is effective when EPA issues notice to Respondents that the Regional Administrator or his/her delegatee has signed the Settlement.

IT IS SO AGREED AND ORDERED:

BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

8/27/25
Dated

ROBERT JURGENS
Digitally signed by ROBERT JURGENS
Date: 2025.08.27 11:27:10 -05'00'

Robert D. Jurgens
Division Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 7

Signature Page for Settlement Regarding Toastmaster Clarence Superfund Site

FOR RESPONDENT EMPOWER BRANDS LLC.

Date: 8/18/2025 | 4:25 PM CDT	Signature:  Print Name: Ehsan Zargar Title: ~~Executive Vice President, General Counsel~~ and Corporate Secreta

Signature Page for Settlement Regarding Toastmaster Clarence Superfund Site

FOR RESPONDENT COOPER INDUSTRIES, LLC,
BY ITS INDEMNITOR, EMPOWER BRANDS LLC.

Date: 8/25/2025 | 2:36 PM CDT	Signature:  Print Name: Ehsan Zargar Title: Executive Vice President, General Counsel and Corporate Secret