

# Attachment C

## Tables

**Table C1 Historical Ground Water Sampling Results**

**Table C2 Changes in Toxicity Values Post OU-2 ROD Groundwater (Zone B)**

**Table C3 Changes in Toxicity Values OU-1 Soils**

**Table C4 Vapor Intrusion - Comparison of Groundwater Concentrations to Screening Values**

**Table C5 Vapor Intrusion - Comparison of Soil Gas Concentrations to Screening Values**

**Table C6 OU-02 Chemical Specific Evaluations (MCLs and Surface Water Discharge)**

Lorentz Barrel and Drum  
Historical Ground Water Sampling Results

WellID	MCLs SamplingDate	200 1,1,1-TCA	2 <sup>(a)</sup> 1,1-DCA	7 1,1-DCE	5 1,2-DCA	5 1,2-DCPA	70 cis-1,2-DCE	5 PCE	5 TCE	2 Vinyl Chloride
P-6	11/29/2000	4.2	35	18	18	31	490	15	670	260
P-6	10/5/2001	<18	41	24	18	27	520	<19	920	210
P-6	10/14/2002	7.6	29	33	13	22	260	49	430	170
P-6	10/29/2003	<0.33	16	16	7.4	10	200	17	370	140
P-6	10/6/2004	4.4	15	15	9.6	7.9	120	35	260	68
P-9	11/29/2000	26	24	85	9.9	13	75	11	140	63
P-9	10/4/2001	35	29	120	<17	<19	130	19	380	62
P-9	10/14/2002	25	24	84	15	15	83	30	300	56
P-9	10/29/2003	18	16	110	12	9.6	86	21	320	44
P-9	10/6/2004	14	12	100	9.2	5.9	54	17	230	19
P-10	11/29/2000	15	5.3	59	0.8	0.8	9.6	<0.5	<0.5	<0.5
P-10	10/4/2001	19	6	70	<4.3	<4.8	13	<4.7	<4.2	<6
P-10	10/14/2002	1.1	0.49	6.9	<0.5	<0.5	1.1	<0.5	<0.5	<0.5
P-10	10/29/2003	0.35	<0.24	1.9	<0.37	<0.14	0.39	<0.23	<0.19	<0.24
P-10	10/6/2004	0.81	0.24	2.8	<0.5	<0.5	0.56	<0.5	0.18	<0.5
P-12	11/29/2000	13	5.7	65	0.6	1.1	13	<0.5	11	<0.5
P-12	10/4/2001	17	<8	87	<8.6	<9.5	17	<9.4	16	<12
P-12	10/14/2002	14	6.3	66	0.63	1.1	15	<0.5	19	0.3
P-12	10/29/2003	13	5.4	67	0.61	1.1	14	<0.23	22	0.69
P-12	10/6/2004	12	5.5	69	0.58	1	14	<0.5	19	2.2
P-14	11/29/2000	66	6.4	62	43	<0.5	<0.5	<0.5	1.2	<0.5
P-14	10/4/2001	86	12	16	5.7	<4.8	<3.3	<4.7	<4.2	<6
P-14	10/14/2002	91	14	19	7.8	<0.5	<0.5	<0.5	<0.5	0.48
P-14	10/29/2003	73	11	21	8.2	<0.14	<0.16	<0.23	<0.19	0.59
P-14	10/6/2004	71	10	23	0.94	<0.5	<0.5	<0.5	<0.5	<0.5

**Table C-1**  
**Lorentz Barrel and Drum**  
**Historical Ground Water Sampling Results**

WellID	MCLs SamplingDate	200 1,1,1-TCA	2 <sup>(a)</sup> 1,1-DCA	7 1,1-DCE	5 1,2-DCA	5 1,2-DCPA	70 cis-1,2-DCE	5 PCE	5 TCE	2 Vinyl Chloride
P-18	11/29/2000	24	110	460	20	23	250	30	390	55
P-18	10/4/2001	1	2.7	21	<0.86	<0.95	4.2	<0.94	7.6	2.1
P-18	10/14/2002	39	82	560	20	<0.5	110	18	210	78
P-18	10/29/2003	23	50	590	14	8.2	89	15	210	55
P-18	10/6/2004	17	39	470	11	6.1	65	18	190	28
P-22	11/28/2000	<0.5	<0.5	0.7	<0.5	<0.5	<0.5	<0.5	1.5	<0.5
P-22	10/4/2001	<0.89	<0.8	1	<0.86	<0.95	0.68	<0.94	5.5	<1.2
P-22	10/14/2002	0.77	0.36	0.99	<0.5	<0.5	<0.5	<0.5	6.2	<0.5
P-22	10/29/2003	0.55	<0.24	0.76	<0.37	<0.14	0.49	<0.23	5.0	<0.24
P-22	10/6/2004	0.86	0.43	1.2	<0.5	0.2	1.5	<0.5	7.8	<0.5
P-26	10/4/2001	18	<8	50	<8.6	<9.5	7.8	<9.4	<8.4	<12
P-26	10/14/2002	1.2	0.42	4.7	<5	<0.5	1.1	<0.5	<0.5	<0.5
P-26	10/29/2003	4.7	7.0	25	<0.37	0.73	6.2	<0.23	0.8	8.5
P-26	10/6/2004	3.2	9.6	15	<0.5	0.84	3.1	<0.5	0.55	3.4
P-28	11/28/2000	8.1	2.7	22	<0.5	<0.5	1.8	<0.5	0.9	<0.5
P-28	10/8/2001	20	<8.0	56	<8.6	<9.5	<6.6	<9.4	<8.4	<12
P-28	10/14/2002	13	3.4	31	<0.5	0.28	2	<0.5	1.3	<0.5
P-28	10/29/2003	8.9	2.5	27	<0.37	0.29	1.9	<0.23	1.2	<0.24
P-28	10/6/2004	7.4	2.5	30	<0.5	0.33	2.2	<0.5	1.3	<0.5
P-30	11/28/2000	7.4	1.5	14	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
P-30	10/4/2001	19	3.3	32	<0.86	<0.95	<0.66	<0.94	<0.84	<1.2
P-30	10/14/2002	12	2.4	17	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
P-30	10/29/2003	9.5	1.7	16	<0.37	<0.14	0.16	<0.23	<0.19	<0.24
P-30	10/6/2004	13	2.3	25	<0.5	<0.5	0.22	<0.5	<0.5	<0.5
MW-22	11/27/2000	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-22	10/5/2001	<0.89	4.9	<0.98	<0.86	<0.95	<0.66	<0.94	<0.84	3.1
MW-22	10/11/2002	<0.5	2.2	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	1.5
MW-22	10/29/2003	<0.5	0.98	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	0.8
MW-22	10/6/2004	<0.5	0.49	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5

Lorentz Barrel and Drum  
Historical Ground Water Sampling Results

WellID	MCLs SamplingDate	200	2 <sup>(a)</sup>	7	5	5	70	5	5	2
		1,1,1-TCA	1,1-DCA	1,1-DCE	1,2-DCA	1,2-DCPA	cis-1,2-DCE	PCE	TCE	Vinyl Chloride
MW-24	11/28/2000	<0.5	2.4	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-24	10/8/2001	<0.89	2.9	<0.98	<0.86	<0.95	<0.66	<0.94	<0.84	<1.2
MW-24	10/14/2002	<0.5	2.7	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-24	10/29/2003	<0.5	2.8	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-24	10/6/2004	<0.5	3.8	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-37	3/24/1993	39	28	70	8	6	22	<1	<1	14
MW-37	6/16/1993	38	27	88	9	8	32	<1	<1	30
MW-37	3/19/1998	8.2	7.9	16	3.8	1.4	7.7	<0.5	<0.5	4.6
MW-37	6/24/1998	6.8	8.9	18	4	2	6.4	<0.5	<0.5	1.1
MW-37	12/15/1999	19	22	61	15	8.1	42	<0.5	<0.5	<0.5
MW-38	10/23/1998	14	8	32	<0.5	<0.5	1.8	<0.5	<0.5	<0.5
MW-38	12/9/1998	21	7.9	31	<0.5	0.5	2.7	<0.5	<0.5	<0.5
MW-38	3/11/1999	8.9	5.4	13	<0.5	<0.5	1.1	<0.5	<0.5	<0.5
MW-38	6/4/1999	10	5.4	16	<0.5	<0.5	1.5	<0.5	<0.5	<0.5
MW-38	9/17/1999	8.7	5.2	22	<0.5	<0.5	1.2	<0.5	<0.5	<0.5
MW-38	12/15/1999	20	8.6	32	<0.5	0.5	3.6	<0.5	<0.5	<0.5
MW-38	11/28/2000	2.6	3.1	5.9	<0.5	<0.5	0.7	<0.5	<0.5	<0.5
MW-38	10/8/2001	12	6.3	28	<0.86	<0.95	2.5	<0.94	<0.84	<1.2
MW-38	10/14/2002	11	7.1	27	<0.5	0.36	3.2	<0.5	<0.5	<0.5
MW-38	10/29/2003	12	6.3	34	<0.5	0.47	5	<0.5	<0.5	<0.5
MW-38	10/6/2004	0.4	0.26	1.7	<0.5	<0.5	0.22	<0.5	<0.5	<0.5
MW-39	6/4/1999	3.8	11	1.1	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-39	9/17/1999	3.4	11	1.9	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-39	12/14/1999	2.7	9.6	1.4	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-39	11/28/2000	1.8	8.8	1.1	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-39	10/8/2001	4	15	2.7	<0.86	<0.95	<0.66	<0.94	<0.84	<1.2
MW-39	10/14/2002	2.8	12	2.2	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
MW-39	10/29/2003	3.1	9.7	4	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5

(a) Value represents California PRG  
Shaded cell indicates value exceeds respective MCL or California PRG

**Table C2**  
**Changes in Toxicity Values Post OU-2 ROD Groundwater (Zone B)**

	CSFo		RfDo		CSFi		RfDi		CSFo		RfDo		CSFi		RfDi
	1988 ROD ORIGINAL		ORIGINAL		ORIGINAL		ORIGINAL		CURRENT		CURRENT		CURRENT		CURRENT
	1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d
<b>ORGANICS</b>															
Benzene	2.90E-02	<i>h'89</i>		<i>nva</i>	2.90E-02	<i>h'89</i>	NVA		5.50E-02	<i>i</i>	4.00E-03	<i>i</i>	2.70E-02	<i>i</i>	8.60E-03
Chlordane	1.61E+00	<i>h'89</i>	6.00E-05	<i>h'89</i>	1.30E+00	<i>h'89</i>	ND		3.50E-01	<i>i</i>	5.00E-04	<i>i</i>	3.50E-01		2.00E-04
Chloroform	8.10E-02	<i>h'89</i>	1.00E-02	<i>h'89</i>	8.10E-02	<i>h'89</i>	ND				1.00E-02	<i>i</i>	8.10E-03	<i>i</i>	1.40E-02
<i>1,1-Dichloroethane</i>			<i>1.00E-02</i>	<i>i</i>			<i>1.43E-01</i>	<i>h</i>			2.00E-01	<i>p</i>			1.40E-01
1,2-Dichloroethane	9.10E-02				3.50E-02				9.10E-02	<i>i</i>	2.00E-02	<i>n</i>	9.10E-02	<i>i</i>	1.40E-03
1,1-Dichloroethene	5.80E-01	<i>h'89</i>	9.00E-03	<i>h'89</i>	1.16E+00	<i>h'89</i>	NA				5.00E-02	<i>i</i>			5.70E-02
<i>1,2-dichloropropane</i>															
PCBs (total)	7.70E+00														
PCB, unspciated mix, low risk									7.00E-02	<i>i</i>	7.00E-05	<i>i</i>	7.00E-02	<i>i</i>	7.00E-05
PCB, unspciated mix, high risk									2.00E+00	<i>i</i>	2.00E-05	<i>i</i>	2.00E+00	<i>i</i>	2.00E-05
1,1,2,2 Tetrachloroethane	2.00E-01				2.00E-01										
Tetrachloroethene	5.10E-02	<i>n</i>	1.00E-02	<i>i</i>	1.70E-03	<i>n</i>	1.10E-01	<i>n</i>	5.40E-01	<i>c</i>	1.00E-02	<i>i</i>	2.10E-02	<i>c</i>	1.00E-02
Toxaphene	1.10E+00								1.10E+00	<i>i</i>			1.10E+00	<i>i</i>	
<i>1,1,1-Trichloroethane</i>															
Trichloroethene	1.10E-02	<i>h'88</i>	NA		2.50E-02	<i>h'88</i>	NA		4.00E-01	<i>n</i>	3.00E-04	<i>n</i>	4.00E-01	<i>n</i>	1.00E-02
Trichloroethene (Cal-Modified PRG)									1.30E-02	<i>c</i>	5.00E-01	<i>c</i>	7.00E-03	<i>c</i>	1.70E-01
Vinyl Chloride	2.30E+00	<i>h'88</i>	NA		2.50E-02	<i>h'88</i>	NA		7.50E-01	<i>i</i>	3.00E-03	<i>i</i>	1.60E-02	<i>i</i>	2.90E-02
<b>INORGANICS</b>															
Antimony			4.00E-04	<i>h'88</i>											
Arsenic	1.50E-01	<i>h'88</i>	1.00E-03	<i>h'88</i>	5.00E+01	<i>h'88</i>			1.50E+00	<i>i</i>	3.00E-04	<i>i</i>	1.50E+01	<i>i</i>	
Barium			7.00E-02	<i>i</i>							7.00E-02	<i>i</i>			
Chromium (VI)			5.00E-03	<i>i</i>	4.10E+01	<i>h'88</i>					3.00E-03	<i>i</i>			
Cobalt			3.70E-02	<i>h</i>							2.00E-02	<i>p</i>			
Nickel			2.00E-03	<i>i</i>	8.40E-01						2.00E-02	<i>i</i>			
Zinc			2.00E-01	<i>i</i>							3.00E-01	<i>i</i>			

Original = 1988 ROD: cited only CSFos and provided no sources; only carcinogenicity was evaluated.  
 Other original values and sources (italics) are from RI (Ebasco), 1990; RI Addendum 3 (URS), June 19, 1992  
 Chemicals in italics were not listed as COCs but had NPDES discharge limits in the 1988 ROD.  
 Risk was addressed in 1990 RI; Sb had HI>1.  
 Current = October 2004 Region 9 PRGs (as listed May 2005, online), May 2005 IRIS (online)

Key: CSFo,i = Cancer Slope Factor oral, inhalation; RfDo,i = Reference Dose oral, inhalation  
 I=IRIS p=PPRTV c=California EPA n=NCEA h=HEAST x=Withdrawn r=Route-extrapolation  
 NA = Not Available

**Table C3**  
**Changes in Toxicity Values OU-1 Soils**

	CSFo		RfDo		CSFi		RfDi		CSFo		RfDo		CSFi		RfDi	
	ORIGINAL		ORIGINAL		ORIGINAL		ORIGINAL		CURRENT		CURRENT		CURRENT		CURRENT	
	1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d	
<b>ORGANICS</b>																
<b>PESTICIDES</b>																
Aldrin	1.70E+01	h'89	3.00E-05	h'89	1.70E+01	h'89	NA		1.70E+01	i	3.00E-05	i	1.70E+01	i	3.00E-05	r
Chlordane	1.30E+00	h'89	6.00E-05	h'89	1.30E+00	h'89	ND		3.50E-01	i	5.00E-04	i	3.50E-01		2.00E-04	i
4,4-DDD	2.40E-01	h'89	5.00E-04	h'89	NA				2.40E-01	i			2.40E-01	r		
4,4-DDE	3.40E-01	h'89	5.00E-04	h'89	3.40E-01		NA		3.40E-01	i	NA		3.40E-01	r		
4,4-DDT	3.40E-01	h'89	5.00E-04	h'89	3.40E-01		ND		3.40E-01	j	5.00E-04	i	3.40E-01	i	5.00E-04	r
Dieldrin	1.60E+01	h'89	5.00E-05	h'89	1.60E+01	h'89	ND		1.60E+01	i	5.00E-05	i	1.60E+01	i	5.00E-05	r
Endosulfan	NA		5.00E-05	h'89	NA		ND				6.00E-03	i			6.00E-03	r
<b>PCBs/Dioxins</b>																
PCBs (total)	7.70E+00	h'89	ND		1.00E-05	h'89	1.00E-05	h'89	2.00E+00	i	3.00E-03	i	2.00E+00	i	2.90E-02	i
PCB, unspciated mix, low risk									7.00E-02		7.00E-05	i	7.00E-02	i	7.00E-05	r
PCB, unspciated mix, high risk									2.00E+00	i	2.00E-05	i	2.00E+00	i	2.00E-05	r
2,3,7,8-TCDD (eq.) (ppb)	1.56E+05	h'89	NA		1.56E+05	h'89	NA		1.50E+05	h			1.50E+05	h		
<b>INORGANICS</b>																
Arsenic	1.75E+00	h'88	1.00E-03	h'88	5.00E+01	h'88			1.50E+00	i	3.00E-04	i	1.50E+01	i		
Chromium (VI)			5.00E-03	i	4.10E+01	h'88					3.00E-03	i	2.90E-02	i	2.20E-06	i
Lead																

Original = RI (Ebasco), 1990; RI Addendum 3 (URS), June 19, 1992

Current = October 2004 Region 9 PRGs (as listed May 2005, online), May 2005 IRIS (online)

Key : CSFo, I = Cancer Slope Factor oral, inhalation; RfDo, I = Reference Dose oral, inhalation  
 I=IRIS p=PPRTV c=California EPA n=NCEA h=HEAST x=Withdrawn r=Route-extrapolation  
 NA = Not Available

**Table C3**  
**Changes in Toxicity Values OU-1 Soils**

	CSFo		RfDo		CSFi		RfDi		CSFo		RfDo		CSFi		RfDi	
	ORIGINAL		ORIGINAL		ORIGINAL		ORIGINAL		CURRENT		CURRENT		CURRENT		CURRENT	
	1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d	
<b>ORGANICS</b>																
<b>PESTICIDES</b>																
Aldrin	1.70E+01	h'89	3.00E-05	h'89	1.70E+01	h'89	NA	h'89	1.70E+01	i	3.00E-05	i	1.70E+01	i	3.00E-05	r
Chlordane	1.30E+00	h'89	6.00E-05	h'89	1.30E+00	h'89	ND	h'89	3.50E-01	i	5.00E-04	i	3.50E-01		2.00E-04	i
4,4-DDD	2.40E-01	h'89	5.00E-04	h'89	NA				2.40E-01	i			2.40E-01	r		
4,4-DDE	3.40E-01	h'89	5.00E-04	h'89	3.40E-01		NA		3.40E-01	i	NA	i	3.40E-01	r		
4,4-DDT	3.40E-01	h'89	5.00E-04	h'89	3.40E-01		ND		3.40E-01	i	5.00E-04	i	3.40E-01	i	5.00E-04	r
Dieldrin	1.60E+01	h'89	5.00E-05	h'89	1.60E+01	h'89	ND	h'89	1.60E+01	i	5.00E-05	i	1.60E+01	i	5.00E-05	r
Endosulfan	NA		5.00E-05	h'89	NA		ND				6.00E-03	i			6.00E-03	r
<b>PCBs/Dioxins</b>																
PCBs (total)	7.70E+00	h'89	ND		1.00E-05	h'89	1.00E-05	h'89	2.00E+00	i	3.00E-03	i	2.00E+00	i	2.90E-02	i
PCB, unspciated mix, low risk									7.00E-02		7.00E-05	i	7.00E-02	i	7.00E-05	r
PCB, unspciated mix, high risk									2.00E+00	i	2.00E-05	i	2.00E+00	i	2.00E-05	r
2,3,7,8-TCDD (eq.)(ppb)	1.56E+05	h'89	NA		1.56E+05	h'89	NA		1.50E+05	h			1.50E+05	h		
<b>INORGANICS</b>																
Arsenic	1.75E+00	h'88	1.00E-03	h'88	5.00E+01	h'88			1.50E+00	i	3.00E-04	i	1.50E+01	i		
Chromium (VI)			5.00E-03	i	4.10E+01	h'88					3.00E-03	i	2.90E-02	i	2.20E-06	i
Lead																

Original = RI (Ebasco), 1990; RI Addendum 3 (URS), June 19, 1992

Current = October 2004 Region 9 PRGs (as listed May 2005, online), May 2005 IRIS (online)

Key : CSFo,l = Cancer Slope Factor oral, inhalation; RfDo,l = Reference Dose oral, inhalation  
 I=IRIS p=PPRTV c=California EPA n=NCEA h=HEAST x=Withdrawn r=Route-extrapolation  
 NA = Not Available

**Table C3**  
**Changes in Toxicity Values OU-1 Soils**

	CSFo		RfDo		CSFI		RfDI		CSFo		RfDo		CSFI		RfDI	
	ORIGINAL		ORIGINAL		ORIGINAL		ORIGINAL		CURRENT		CURRENT		CURRENT		CURRENT	
	1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d		1/mg/kg/d		mg/kg/d	
<b>ORGANICS</b>																
<b>PESTICIDES</b>																
Aldrin	1.70E+01	h'89	3.00E-05	h'89	1.70E+01	h'89	NA	h'89	1.70E+01	i	3.00E-05	i	1.70E+01	i	3.00E-05	r
Chlordane	1.30E+00	h'89	6.00E-05	h'89	1.30E+00	h'89	ND	h'89	3.50E-01	i	5.00E-04	i	3.50E-01	i	2.00E-04	i
4,4-DDD	2.40E-01	h'89	5.00E-04	h'89	NA				2.40E-01	i			2.40E-01	r		
4,4-DDE	3.40E-01	h'89	5.00E-04	h'89	3.40E-01	h'89	NA	h'89	3.40E-01	i	NA	i	3.40E-01	r		
4,4-DDT	3.40E-01	h'89	5.00E-04	h'89	3.40E-01	h'89	ND	h'89	3.40E-01	i	5.00E-04	i	3.40E-01	i	5.00E-04	r
Dieldrin	1.60E+01	h'89	5.00E-05	h'89	1.60E+01	h'89	ND	h'89	1.60E+01	i	5.00E-05	i	1.60E+01	i	5.00E-05	r
Endosulfan	NA		5.00E-05	h'89	NA		ND				6.00E-03	i			6.00E-03	r
<b>PCBs/Dioxins</b>																
PCBs (total)	7.70E+00	h'89	ND		1.00E-05	h'89	1.00E-05	h'89	2.00E+00	i	3.00E-03	i	2.00E+00	i	2.90E-02	i
PCB, unspciated mix, low risk									7.00E-02		7.00E-05	i	7.00E-02	i	7.00E-05	r
PCB, unspciated mix, high risk									2.00E+00	i	2.00E-05	i	2.00E+00	i	2.00E-05	r
2,3,7,8-TCDD (eq.) (ppb)	1.56E+05	h'89	NA		1.56E+05	h'89	NA		1.50E+05	h			1.50E+05	h		
<b>INORGANICS</b>																
Arsenic	1.75E+00	h'88	1.00E-03	h'88	5.00E+01	h'88			1.50E+00	i	3.00E-04	i	1.50E+01	i		
Chromium (VI)			5.00E-03	i	4.10E+01	h'88					3.00E-03	i	2.90E-02	i	2.20E-06	i
Lead																

Original = RI (Ebasco), 1990; RI Addendum 3 (URS), June 19, 1992

Current = October 2004 Region 9 PRGs (as listed May 2005, online), May 2005 IRIS (online)

Key : CSFo,I = Cancer Slope Factor oral, inhalation; RfDo,I = Reference Dose oral, inhalation  
 I=IRIS p=PPRTV c=California EPA n=NCEA h=HEAST x=Withdrawn r=Route-extrapolation  
 NA = Not Available

**TABLE C4**  
**Vapor Intrusion - Comparison of Groundwater Concentrations to Screening Values**

	Oct 2004 Zone B Groundwater Concentration Downgradient of Extraction System (SJSU dorms)(C)				Oct 2004 Zone B Groundwater Concentration Upgradient of Extraction System (SJSU athletic fields)(D)	EPA (A) Question 1	EPA (A) Question 4	EPA (A) Question 5
	Minimum	Maximum	Mean	95%UCL	Maximum	Toxic?	Table 2c Target GW Concentration Risk=1E-06	Table 3c Target GW Concentration Risk=1E-06, a=2.0E-04
	ug/l	ug/l	ug/l	ug/l	ug/l		ug/l	ug/l
ORGANICS								
1,1-Dichloroethane	0.24	9.6	3	5.9	39	Yes	2.20E+03	1.10E+04
1,2-Dichloroethane	<0.5	<0.5	<0.5		11	Yes	5*	1.20E+01
1,1-Dichloroethene	1.7	51	20.9	36.2	470	Yes	1.90E+01	9.40E+02
cis-1,2-Dichloroethene	0.22	3.1	1.2	2.2	65	Yes	2.10E+02	1.00E+03
Tetrachloroethene	<0.5	<0.5	<0.5		18	Yes	5*	5.40E+00
1,1,1-TCA	0.4	13	6.1	10.7	71	Yes	3.10E+03	1.60E+04
Trichloroethene	<0.5	1.3	0.46	1.4	250	Yes	5*	5*
Vinyl Chloride	<.5	3.4	1.8	0.78	28	Yes	2*	2*

(A) Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance) (EPA, November, 2002), Tables 1, 2c, 3c (R=E-06, HI=.1); **Bold**> MCL

(B) Screening for Environmental Concerns at Site with Contaminated Soil and Groundwater, Interim Final (California Regional Water Quality Control Board, San Francisco Bay Region, February 2005)

Table E-1a, Low/Moderate Permeability Vadose Zone Soil

(C) Wells P-10, P-26, P-28, P-30, MW-38, and MW39-A

(D) Wells P-9, P-14, P-18, P-22

\* MCL

Lesser of 95% UCL or maximum used as exposure point concentration

**Bold** values are > MCLs or EPA generic but < EPA Semi-site-specific or RWQCB residential and industrial values

Table C5

Vapor Intrusion - Comparison of Soil Gas Concentrations to Screening Values

	1996 Zone B Concentration	1996 Zone B Concentration	EPA Question 4 Table 2c (A)	EPA (A) Question 4 Table 2c	EPA (A) Question 5 Table 3c SG	EPA (A) Question 5 Table 3c SG	RWQCB (B)	RWQCB (B)
	Downgradient SJSU & Residential Maximum Detection Limit Depth <5'	Downgradient SJSU & Residential Maximum Detection Limit Depth 5-15'	Target Shallow Soil Gas Concentration Risk=1E-06	Target Deep Soil Gas Concentration Risk=1E-06	Target Soil Gas Concentration Risk=1E-06 $\alpha=2.0E-03$ Loamy Sand Depth <5'	Target Soil Gas Concentration Risk=1E-06, $\alpha=7.0E-04$ Loamy Sand Depth 5-15'	Soil Gas SLs <3 m Residential	Soil Gas SLs <3m Industrial
	ug/m3	ug/m3	ug/m3	ug/m3	ug/m3	ug/m3	ug/m3	ug/m3
ORGANICS								
Trichloroethene	<11	<12	2.20E-01	2.20E+00	1.10E+01	3.20E+01	1.20E+03	4.10E+03
Vinyl Chloride	<5.1	<7	2.80E+00	2.80E+01	1.40E+02	4.00E+02	3.20E+01	1.10E+02

(A) Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance) (EPA, November, 2002), Tables 2c and 3c

(B) Screening for Environmental Concerns at Site with Contaminated Soil and Groundwater, Interim Final (California Regional Water Quality Board, San Francisco Bay Region, February 2005)

Table E-1a, Low/Moderate Permeability Vadose Zone Soil

All TCE and VC soil gas samples were non-detects, but some samples had elevated detection limits

**Bold** Detection Limits > EPA Table 2c target generic but < EPA target semi-site specific and RWQCB soil gas screening levels

Notes for Table C-4 Vapor Intrusion – Ground Water and C-5 Vapor Intrusion – Soil Gas

The potential for vapor intrusion at the Lorentz Barrel and Drum (LB&D) Site was evaluated using Draft *Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance)* (EPA, November, 2002) Table 2c generic values at Risk = 1E-06 and Table 3c semi-site specific screening values at risk = 1E-06. Site values were also compared to screening values in *Screening for Environmental Concerns at Site with Contaminated Soil and Groundwater*, Interim Final (California Regional Water Quality Control Board, San Francisco Bay Region, February 2005) Table E-1a, Low/Moderate Permeability Vadose Zone Soil. There are current and potential occupied structures within 100' of the shallow ground-water plume, and toxicity of the chemicals present in the ground water merits evaluation.

On the basis of Figure 2-7, Geological Cross Section, North-South (EMCON Associates Workplan Shallow Ground Water Treatment Remedial Design, December 1989), attenuation factors suitable for sandy loam were used for evaluation of groundwater (depth of 20') and factors for loamy sand were used for evaluation of shallow soil gas (<5' depth) and deep soil gas (5'-15' depth).

See Table C-4 Vapor Intrusion Ground Water. The vapor intrusion pathway for currently occupied structures (SJSU housing complex southwest of the intersection of 10<sup>th</sup> Street and E. Humboldt Street and SJSU Athletic Offices northeast of this intersection) overlying the plume was evaluated. The lesser of the maximum or the 95% UCL of the October 2004 ground-water volatile organic compound concentrations in six wells (P-10, P-26, P-28, P-30, MW-38, and MW39-A) downgradient of the extraction system was used as an exposure point concentration. ProUCL was used to calculate the 95% UCL. Vinyl chloride was detected in only 1 of the six wells. Although the maximum concentration (3.4 ug/l) exceeded the MCL of 2 ug/l, the 95% UCL did not exceed the EPA or RWQCB residential and industrial ground-water screening levels. Exposure point concentrations of all other COCs were less than EPA Table 2c and Table 3c at risk = 1E-06) and RWQCB residential and industrial ground-water screening levels.

Potential vapor intrusion of future potential occupied structures on the SJSU athletic fields overlying the shallow ground-water plume upgradient of the extraction system was also evaluated using maximum detected October 2004 groundwater concentrations from P-9, P-14, P-18 and P-22. Trichloroethene, vinyl chloride, 1,2-dichloroethane, and 1,1-dichloroethene exceeded MCLs or EPA Table 2c Target Ground Water Concentrations at risk = 1E-06, did not exceed EPA semi-site-specific target ground water concentrations at risk = 1E-06 or RWQCB residential and industrial ground-water screening levels. Institutional controls to require further evaluation of the vapor intrusion pathway prior to construction and occupation of structures on the SJSU sports field between Spartan Stadium and the track area are recommended.

**TABLE C6**  
**OU-02 Chemical Specific Evaluations (MCLs and Surface Water Discharge)**

No.	Compound	Federal/State MCLs (ug/l)		Discharge to Drinking Water Areas**		Discharge to Other Surface Water Areas		OU-2 <sup>(1)</sup> /OU-2 <sup>(2)</sup> ROD expected NPDES limits	2005 General Permit Trigger Levels
		1	2	Average Monthly Effluent Limitation* ** (ug/L)	Maximum Daily Effluent Limitation (ug/L)	Average Monthly Effluent Limitation*** (ug/L)	Maximum Daily Effluent Limitation (ug/L)		
1	Benzene <sup>(1,2)</sup>	5	5/1 <sup>(6)</sup>		1		5	0.5/5	
2	Carbon Tetrachloride		5	0.25*	0.50	4.4	5		
3	Chloroform <sup>(1,2)</sup>	100	80 <sup>(4)</sup>		5		5	5/5	
4	1,1-Dichloroethane <sup>(2)</sup>		5 <sup>(6)</sup>		5		5	5/5	
5	1,2-Dichloroethane <sup>(1,2)</sup>	5	5	0.38*	0.5		5	1/1	
6	1,1-Dichloroethylene <sup>(1,2)</sup>	7	7/6 <sup>(6)</sup>	0.057*	0.11*	3.2	5	5/5	
7	Ethylbenzene		700/300 <sup>(6)</sup>		5		5		
8	Methylene Chloride (Dichloromethane)		5	4.7	5		5		
9	Tetrachloroethylene <sup>(1,2)</sup>		5	0.8	1.6		5	5/5	
10	Toluene				5		5		



No. 1	Compound 2	Federal/State MCLs (ug/l) 3		Discharge to Drinking Water Areas** 4	Discharge to Other Surface Water Areas 5		OU-2 <sup>(1)</sup> /OU-2 <sup>(2)</sup> ROD expected NPDES limits 6	2005 General Permit Trigger Levels 7
	1,1,2,2-Tetrachloroethane <sup>(1,2)</sup>						5	0.1
	Arsenic <sup>(1,2)</sup>	50	10 <sup>(3)</sup>				20	10
	Antimony <sup>(5)</sup>		6				Not Listed	6
	Barium <sup>(2)</sup>	1000	2000/ 1000 <sup>(6)</sup>					
	Chlordane <sup>(1,2)</sup>		2/0.1 <sup>(6)</sup>				0.014	0.00057
	Cobalt <sup>(2)</sup>						Not listed	Not listed
	Chromium (total) <sup>(2)</sup>	50	100/50 <sup>(6)</sup>				11	11
	Freon 113 <sup>(2)</sup>						5	
	Molybdenum <sup>(2)</sup>						Not listed	Not listed
	Nickel <sup>(2)Ⓞ</sup>		Remanded/100 <sup>(6)</sup>				7.1	8.2
	Vanadium <sup>(2)</sup>						Not listed	Not listed

No. 1	Compound 2	Federal/State MCLs (ug/l) 3		Discharge to Drinking Water Areas** 4	Discharge to Other Surface Water Areas 5		OU-2 <sup>(1)</sup> /OU-2 <sup>(2)</sup> ROD expected NPDES limits 6	2005 General Permit Trigger Levels 7
	Zinc <sup>(2)</sup>						58	35
	PCBs (total) <sup>(1,2)</sup>		0.5				0.065	0.00017
	Toxaphene <sup>(1,2)</sup>	5	3				0.24	0.0002

\* If reported detection level is greater than effluent limit, then a non-detect result using a 0.5 ug/L detection level is deemed to be in compliance.

\*\* Drinking water areas are defined as surface waters with the existing or potential beneficial uses of "municipal and domestic supply" and "groundwater recharge" (the latter includes recharge areas to maintain salt balance or to halt salt water intrusion into fresh water aquifers).

\*\*\* Applicable when three or more days of effluent monitoring results are available

(1) Original OU-2 Contaminants of Concern (from Table 6-1; OU-2 ROD)

(2) Original OU-2 ARARs and TBCs for Groundwater (Table 8-1; OU-2 ROD)

(3) Effective 1/23/06

(4) As Total trihalomethanes (TTHM)

(5) Antimony (Sb) discussed in OU-01 ROD (6.4.2), but not a GW COC in 1988 OU-02 ROD

(6) California DHS value

@ Tentative value per OU-2 ROD

# Permit Criteria not available; assumed equivalent to OU-2



## Attachment D

The following list of questions was discussed among the identified people involved in the OU2 shallow groundwater remediation during a teleconference on May 9, 2005. The list of questions was provided in advance of the call to allow time for the participants to formulate responses.

### Those participating:

S. J. Chern	Region 9 RPM
Joya Banerjee	OU-2 Project Manager
Robert Aaserude	PRP Manager Montgomery Watson
Pat Lacey	OU-2 Site Manager Field Environmental Solutions
Charles Orwig	PRP Manager Dupont
Lindsey Lien	US Army Corps of Engineers
Sam Bass	US Army Corps of Engineers

1. *Do you have historical plume maps of the shallow zone?* The Lorentz Shallow Groundwater Task Force (LSGTF) indicated a TCE plume map had been provided to the EPA RPM along with a table of data based on sampling in the housing areas to ensure TCE is not present in the residential areas. The document will be resent to the EPA RPM who will forward it on to the U S Army Corps of Engineers (USACE). The USACE asked what the levels of concern were and they referred us to the annual monitoring report Table 3.
2. *How have you been tracking the plume movement? There appears to be a limited number of wells available to track the plume. The ROD for OU1 states there appears to have been little movement over the 1988 - 1993 time frame.* The plume boundary monitoring wells 24, 39 and 40 have shown reductions or stable trends in the contaminants of concern (CoC). The plume is stable and has not expanded in the last 10 years.
3. *Has there been any sampling at the extraction wells in the plume and or piezometers?* The basic monitoring strategy was developed during the field sampling plan developed in 1992 and had not changed significantly until this year (2005). USACE asked if the piezometers are screened at the same depth as the shallow zone extraction wells. The LSGTF indicated they were.
4. *The sampling strategy is unclear for the monitoring well network?* The FSP was revised and updated about January/February (I had March) of this year (2005). The EPA RPM mentioned that the plan was to address only the shallow groundwater plume, and the USEPA was responsible for the intermediate and deep aquifers. Figures 1 and 2 of the annual monitoring report did not reflect any data but the shallow aquifer.

5. ***PCB/Pesticides were to be collected, has that changed?*** PCBs/Pesticides were collected in the combined system influent until the NPDES permit was revised in 1996, when it was dropped. The NPDES permit was reissued again in July 2004 and the PCB/Pesticide monitoring was not included. Correspondence provided by the LSGTF dated March 18, 2005 indicated 1, 4 Dioxane, SVOCs, hardness, salinity, antimony, beryllium and thallium. The San Francisco Regional Water Quality Control Board approves/issues the NPDES permit.
6. ***When were the Alma Street Wells last sampled and what were the results?*** Wells that are sampled are identified in the annual sampling report, along with the historic information. There was some concern regarding the boundary well location on the southwest portion of the plume. The LSGTF consultant indicated wells 22 and 25 were substituted for wells 36 and 37 that are closer to the edge of the plume about 1999 due to access issues. A letter from the EPA approved the change in 2000. However, concentrations of 1,1-DCE exceeded criteria in the last sampling round from well 37 in 1999. Student housing lies between well 37 and well 25, so it is unknown if contaminants currently exist beneath student housing.
7. ***Have you ever collected MNA data?*** No.
8. ***Why bailers vs low flow sampling?*** Bailers were in the original FSP in 1992, which were pre-low flow sampling protocols. The concern by the CX is the potential loss of VOCs. The LSGTF is in the process of evaluating the use of low flow sampling at the Lorentz OU2 area. The LSGTF is optimistic that low-flow sampling will become the standard, which should give more accurate results as well as save sample collection time.
9. ***Why are you limiting the shallow groundwater extraction to the relatively low concentration portion of plume and not extracting near the source?*** The LSGTF stated the OU2 ROD was limited to stopping the plume migration both horizontally and laterally. The other groups, in particular the source reduction group was responsible for removing the source, and the current thinking by the LSGTF is, the high concentration area adjacent to the site is a source control issue. The USACE asked who installed the extraction wells next to the site. The LSGTF replied they installed them concurrently with the wells in the center of the leading edge of the plume. Negotiations broke down between the various parties and the LSGTF decided to not pump from the wells along Alma Avenue. Others installed the monitoring wells along Alma Avenue.

The USACE asked about the process the LSGTF used to gradually cut back on the number of extraction wells being pumped in the plume. The LSGTF indicated they stopped pumping and evaluated capture based on the potentiometric levels measured in subsequent monitoring events. The USACE asked if the LSGTF was developing a groundwater model. They responded they were. The model will verify plume containment is occurring, and also address contaminant degradation in the shallow plume.

10. **What are the current clean up goals? Clean up schedule? The Preliminary Closeout Report gives 2004 as the shallow groundwater cleanup date.** The clean up goals are tabulated in the annual monitoring report. The model addressed in question 9 will help estimate the time needed to meet clean up criteria.
11. **Has a written exit strategy been developed with the regulators?** The LSGTF is in the process of developing an exit strategy.
12. **How have institutional controls been implemented in relation to the vertical conduits? Well 39 was removed, but by whom and a new well 39A installed by the Water District, but who coordinated the efforts?** The USACE will investigate how the proper authorities were made aware of the situation with MW 39. Following the notification of the EPA RPM, and the Santa Clara Regional Water Quality District, the process was done in accordance with standard procedures.
13. **Who owns the site at the present time?** The current owner is identified as the 10<sup>th</sup> Street Land Management, they purchased the parcel in February, 2002 from the estate of Mr. Ernest Lorentz, Jr.
14. **Who rents the site, and is there a management company involved? This information is unavailable.** The EPA RPM will attempt to find the renters.
15. **Who is responsible for security, what is the company name, what is the frequency and the method of monitoring?** A representative from the LSGTF will identify the company and provide the data to the EPA RPM.
16. **Could you provide O&M cost data?** The LSGTF will provide one - two years of data from the last years of operation.
17. **Is there an updated site plan showing new well locations, cleanouts, strainers, and other pertinent features?** The LSGTF will provide an updated plan to the EPA RPM showing revised site information.
18. **The EPA indicated the site related field sampling plan, Quality Assurance Project Plan, Health and Safety Plan, O & M manual, are over 10 years old, from another company, and should be updated. What is the status of this effort?** The sampling and analysis plan and quality assurance project plans were updated in February 2005; the O&M manual was updated in 2004 (an addendum was generated); the LSGTF is in the process of updating the health and safety plan to reflect the new operating conditions at the plant and for the well field.

**19. The reports do not identify the number of wells operating. How long has the present operating condition been in place, and how was it determined that this was optimum, or adequate to capture the plume, especially with the influence of the irrigation system for the well in the baseball field outfield?** There are currently 3 wells operating, wells 9, 13, and 19. Extraction well 9 pumps the most water potentially due to influences from its proximity to the irrigated baseball field. The LSGTF indicated the model was not set up to address the impacts from the irrigation system, but will be revised to do so. The response to question 9 addresses the issue pertaining to the number of pumps. Well 9 is a faster-recharger; the pump operates more often than wells 13 or 19.

**20. What flow rate does the batch plant operate during the treatment cycle?** The influent flow rate from the extraction field averages 1.2 gpm with three wells operating. The wells fill the equalization tank and upon reaching the start liquid level in the tank, the treatment system pump is activated, and the system operates at a flow rate of 12 – 16 gpm until the tank liquid level reaches the shut off point.

## **Attachment F**

## **Title Searches**

**DRAFT TITLE REPORT**

**LORENTZ BARREL & DRUM SUPERFUND SITE**

**388 E. Alma Avenue (APN 477-09-034)  
384 E. Alma Avenue (APN 477-09-036)  
1507 S. 10<sup>th</sup> Street (APN 477-09-037)  
SAN JOSE, CA**

September 14, 2005

**Submitted To:**

**U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, California 94105**

**Submitted By:**

**Science Applications International Corporation  
1000 Broadway, Suite 675  
Oakland, California 94607**

**Contract No. GS-10F-0076J  
Delivery Order 0906  
SAIC Project No. 06-5026-01-2303**

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APPENDIX A -	TITLE DOCUMENTS FROM JANUARY 1, 1998 TO PRESENT
APPENDIX B -	JULY 25, 1998 PRELIMINARY REPORT OF COMMONWEALTH LAND TITLE AND INSURANCE COMPANY
APPENDIX C -	JULY 2, 1998 SAIC TITLE REPORT UPDATE
APPENDIX D -	JANUARY 9, 1993 SAIC TITLE REPORT UPDATING AND INCORPORATING SEPTEMBER 11, 1985 TECHLAW, INC. REPORT

**Attachment G**  
**Restrictive Covenants**

10<sup>th</sup> Street Land Management

The Newark Group, Inc.

# **Restrictive Covenants**

10<sup>th</sup> Street Land Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

IN THE MATTER OF:	)	EPA DOCKET NUMBER 2002-04
LORENTZ BARREL & DRUM	)	
SUPERFUND SITE	)	
	)	
	)	
UNDER THE AUTHORITY OF THE	)	AGREEMENT
COMPREHENSIVE ENVIRONMENTAL	)	AND COVENANT NOT TO SUE
RESPONSE, COMPENSATION, AND	)	10th STREET LAND MANAGEMENT
LIABILITY ACT OF 1980, 42 U.S.C.	)	
§ 9601, <i>et seq.</i> , as amended.	)	

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and 10th Street Land Management (Settling Respondent) (collectively the "Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.* and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

The purpose of this Agreement is to facilitate the maintenance of remedial facilities and the development of the Lorentz Barrel & Drum Superfund Site, CAD029295706, in San Jose, California (the "Site"). 10th Street Land Management is a California corporation formed to acquire the Site from the Lorentz Estate, which plans to operate the property as a parking and storage facility for commercial trucks, other vehicles and equipment.

The property was owned and operated for many years by Ernest Lorentz as an industrial container recycling facility, and is now opened by Mr. Lorentz's estate, which is insolvent. In 1988, EPA issued the Operable Unit 2 ROD for shallow groundwater extraction and treatment and in 1990 EPA and eleven Potentially Responsible Parties (PRPs) signed a Consent Decree requiring the PRPs to design, construct, and operate a shallow groundwater extraction and

treatment system as specified in the 1988 ROD. In 1992, EPA and a different group composed of seven PRPs signed an Administrative Consent Order to remove and dispose of remaining barrels, sumps, drums and debris. In 1993, the EPA issued the Operable Unit 1 ROD to address all remaining sources of contamination not previously addressed at the property. Final construction of the Operable Unit 1 remedy, which included installation of an asphaltic cap, soil vapor extraction system and groundwater monitoring, was completed in September 1998.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VIII, IX, X, and XI, the potential liability of the Settling Respondent for the Existing Contamination at the Property which would otherwise result from Settling Respondent becoming the owner of the Property.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
2. "Existing Contamination" shall mean
  - a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of this Agreement;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and

c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

3. "Institutional Controls" shall mean the obligations set forth in the Covenant to Restrict Use of Property/Environmental Restriction, a similar form of which is attached hereto as Exhibit 1, to be entered into between the Settling Respondent and the State of California Department of Toxic Substances Control ("DTSC").

4. "Parties" shall mean the United States on behalf of EPA, and the Settling Respondent.

5. "Property" shall mean that portion of the Site, encompassing approximately five acres, located at 1507 South 10th Street, San Jose, Santa Clara County, California, which is described in Exhibit 2 of this Agreement.

6. "Settling Respondent" shall mean 10th Street Land Management, and its officers, directors, agents, representatives, and employees.

7. "Site" shall mean the Lorentz Barrel & Drum Superfund Site located at the corner of S. 10th Street and Alma in San Jose, California, approximately five acres depicted generally on the map attached as Exhibit 3. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants have come to be located.

8. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

### III. STATEMENT OF FACTS

9. Settling Respondent is not a PRP and has no current obligations with respect to the Site. As part of the consideration for the entering into of this Agreement, Settling Respondent has entered into a Prospective Purchaser Agreement with the California DTSC undertaking continuing obligations with respect to the ongoing inspection, maintenance, and improvement of the asphalt cap, retaining walls and concrete structures, and security fencing and gates at the Property.

Additionally, the Settling Respondent has agreed to pay DTSC the sum of \$192,000 and agreed to DTSC's Covenant to Restrict Use of Property/Environmental Restriction (see Exhibit 1 hereto). Subject to approval of the Santa Clara County Probate Court, Settling Respondent has secured the agreement of the Estate and the known heir, Ms. Joyce Daniels, to sell the Property to it.

10. The Settling Respondent represents, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondent has had no involvement with the Property or the Site.

#### IV. PAYMENT

11. In consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein and Removal of Lien in Section XXI, Settling Respondent agrees to pay to EPA the sum of \$408,000, within 30 days of the effective date of this Agreement. The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or Electronic Funds Transfer ("EFT" or wire transfer) made payable to "EPA Hazardous Substance Superfund," referencing EPA Region IX, EPA Docket number 2002-04, and Site ID# 0989 and name and address of Settling Respondent. Wire transfer payments shall be made in accordance with instructions to be provided to Settling Respondent by EPA following the effective date of this Agreement.

12. Certified checks, along with a transmittal letter, shall be sent to:

EPA Region IX  
Attn: Superfund Accounting  
P.O. Box 360863M  
Pittsburgh PA 15251

Notice of payment (including a copy of the checks and transmittal letter) shall be sent to those persons listed in Section XV (Notices and Submissions) and to:

Donald Loi  
Financial Management Specialist (PMD-6)  
U.S. EPA Region IX  
75 Hawthorne Street, San Francisco, CA 94105

Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Attn: Bradley O'Brien

The cash amount paid by Settling Respondent pursuant to this Agreement shall be deposited into a Special Account and shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

13. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

#### V. WORK TO BE PERFORMED

14. Settling Respondent agrees to perform the work described in the Statement of Work, attached as Exhibit 4 hereto, in consideration for this agreement. The work to be performed includes the routine inspection, maintenance, and improvement of the asphalt cap, retaining walls and concrete structures, and providing security fencing and gates at the Property.

#### VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

15. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA, the California DTSC, and their authorized officers, employees, representatives, and all other persons performing response actions under EPA or DTSC oversight, an irrevocable right of access at all reasonable times to the Property for the implementation of response actions at the Site, for the purposes of performing and overseeing response actions at the Site under federal and state law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding

any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") *et. seq.*, and any other applicable statute or regulation, including any amendments thereto.

16. With respect to any Property owned or controlled by the Settling Respondent that is located within the Site, within 15 days after the effective date of this Agreement or the date of acquisition of any Property, whichever date is later, the Settling Respondent shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Santa Clara County, State of California, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA selected remedies for the soil and groundwater contamination at the site on September 22, 1988 and August 26, 1993, and that potentially responsible parties have implemented part of the remedies pursuant to a Partial Consent Decree in United States v. E.I. duPont de Nemours & Co., et al., filed on July 6, 1990 in the United States District Court for the Northern District of California, case number C 90 0488 EFL and an Administrative Order on Consent in United States v. Eastman Kodak Company, et al., issued in October, 1992, EPA Region 9 Order No. 92-29, Administrative Record Number AR0536. The Settling Respondent shall record the notice within 10 days of EPA's approval of the notice. The Settling Respondent shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice.

17. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation, including any Institutional Controls. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the

Property or an interest in the Property are consistent with this Section, and Section XII (Parties Bound/Transfer of Covenant), and Section V (Work to be Performed) of the Agreement.

#### VII. DUE CARE/COOPERATION

18. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

#### VIII. CERTIFICATION

19. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any

past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

#### IX. UNITED STATES' COVENANT NOT TO SUE

20. Subject to the Reservation of Rights in Section X of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

#### X. RESERVATION OF RIGHTS

21. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Work to be Performed), Section VI (Access/Notice to Successors in Interest), Section VII (Due Care/Cooperation), and Section XV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its

successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA and which is not due to existing contamination;

(g) liability for violations of local, State or federal law or regulations; and

(h) liability for institutional controls as set forth in the Covenant to Restrict Use of Property/Environmental Restriction (see Exhibit 1), to be entered into between Settling Respondent and DTSC.

22. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

23. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

24. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way

restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal or state law. Settling Respondent acknowledges that it is purchasing Property where response actions may be required.

#### XI. SETTLING RESPONDENT'S COVENANT NOT TO SUE

25. In consideration of the United States' Covenant Not To Sue in Section IX of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

26. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute 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).

#### XII. PARTIES BOUND/TRANSFER OF COVENANT

27. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon the Settling Respondent, its officers, directors, and employees. The United

States' Covenant Not to Sue in Section IX and Contribution Protection in Section XIX shall apply to Settling Respondent's officers, directors, or employees, to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

28. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA which shall exercise its discretion in accordance with applicable federal law, policies, and regulations.

29. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

30. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement in order for the Covenant Not to Sue in Section IX to be available to that party. The Covenant Not To Sue in Section IX shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

### XIII. DISCLAIMER

31. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

### XIV. DOCUMENT RETENTION

32. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to hazardous substances, pollutants or contaminants at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

### XV. PAYMENT OF COSTS

33. If the Settling Respondent fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

### XVI. NOTICES AND SUBMISSIONS

34. All notices to Settling Respondent shall be sent to:

Jerry Daniels, President  
10th Street Land Management  
6438 Berwickshire Way  
San Jose, CA 95120  
tel (408) 323-1708 / fax (413) 647-2442

All notices to the United States should be sent to:

William Keener, ORC-1  
Assistant Regional Counsel  
U.S. EPA  
75 Hawthorne Street  
San Francisco, CA 94105

with a copy to:

Diane Strassmaier, SFD-7-4  
Superfund Project Manager  
U.S. EPA  
75 Hawthorne Street  
San Francisco, CA 94105

#### XVII. EFFECTIVE DATE

35. If the EPA and the Attorney General's designee approve this Agreement prior to the date Settling Respondents take possession or control of the Property, and EPA does not withdraw or modify its consent to this Agreement after reviewing public comments, then the effective date of this Agreement shall be the date upon which Settling Respondents take possession or control of the Property. If the EPA or the Attorney General's designee does not execute this Agreement, or if EPA withdraws or modifies its consent to this Agreement after reviewing public comments, or Settling Respondents take possession or control of the Property prior to the date the Regional Administrator and the Assistant Attorney General approve this Agreement, then there is no Agreement and no effective date.

#### XVIII. TERMINATION

36. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

#### XIX. CONTRIBUTION PROTECTION

37. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as

provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement include all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

38. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

39. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

#### XX. EXHIBITS

40. Exhibit 1 shall mean a form similar to the Covenant to Restrict Use of Property/ Environmental Restriction to be entered into between Settling Respondent and DTSC.

41. Exhibit 2 shall mean the description of the Property which is the subject of this Agreement.

42. Exhibit 3 shall mean the map depicting the Site.

43. Exhibit 4 shall mean the Statement of Work.

#### XXI. REMOVAL OF LIEN

44. Subject to the Reservation of Rights in Section X of this Agreement, upon payment of the amount specified in Section IV (Payment), EPA agrees to remove any lien it may have on the Property under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), as a result of response action conducted by EPA at the Property.

#### XXII. PUBLIC COMMENT

45. This Agreement shall be subject to a thirty-day public comment period, after which

EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

---

Keith Takata, Director  
Superfund Division  
EPA Region IX

Date

IT IS SO AGREED:  
UNITED STATES DEPARTMENT OF JUSTICE

BY:

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John C. Cruden  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Date

IT IS SO AGREED:  
10TH STREET LAND MANAGEMENT

BY:

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Jerry Daniels, President  
10th Street Land Management

Date

**EXHIBIT 1**  
**to the AGREEMENT**  
**AND COVENANT NOT TO SUE**  
**10TH STREET LAND MANAGEMENT**  
EPA Docket Number: 2002-04

RECORDING REQUESTED BY:  
10th Street Land Management Corp.  
6438 Berwickshire Way  
San Jose, California 95120

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
Berkeley Office  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710  
Attention: Barbara J. Cook, P.E., Chief  
Northern California-Coastal Cleanup  
Operations Branch

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Assessor's Parcel No. 477-09-037  
Lorentz Barrel and Drum Superfund Site)

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This Covenant and Agreement ("Covenant") is made by and between 10th Street Land Management (the "Covenantor"), the current owner of property situated in San Jose, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant. The Parties further

intend that the provisions of this Covenant also be for the benefit of, and be enforceable by, the U.S. Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately 5 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located at 1507 South 10th Street, at the intersection of Alma Avenue and 10th Street, San Jose, County of Santa Clara, State of California. This property is more specifically described as Santa Clara County Assessor's Parcel No. 477-09-037.

1.02. The Property commonly known as Lorentz Barrel and Drum Site was operated as a drum recycling facility from 1947-1987. Autowrecking facilities, a junkyard, a roofing company, a construction company and a sandblasting company also operated on the Property. Contamination was first identified in 1981. In late 1987 and 1988, the United States Environmental Protection Agency (US EPA) and the Department jointly conducted emergency response actions to remove contaminated soils.

Several remediation technologies have been employed to address the contamination on the Property, including without limitation, a groundwater pump and treat system, soil vapor extraction ("SVE") system, encapsulation of contaminated soil with a asphalt-concrete cap to prevent infiltration to groundwater, and removal and off-site disposal of contaminated soil, septic system and sewer lines. The Site was divided into two operable units (OU). OU 2 consisted of evaluation and remediation of the shallow groundwater. The Record of Decision for OU 2 was signed in September 1988 by U.S. EPA, and the remedy selected consisted

of extraction of contaminated shallow groundwater and treatment. Currently, a group of potentially responsible parties, under a consent decree (C-90-0488) entered into in 1990, operates a pump and treatment system to remediate contaminated groundwater. The Record of Decision for Operable Unit 1 was signed in August 1993 by U.S. EPA and addresses a final action for the contaminated soil and debris. The selected remedy includes treating contaminated soil using SVE, capping the remaining contaminated soil and debris with asphaltic concrete pavement, groundwater monitoring, removal and disposal of other contaminated materials, debris and stockpiled soils, and implementing institutional controls. US EPA operates a SVE system at the Property. The location of SVE system and groundwater treatment system are shown on Exhibit B.

The asphalt-concrete cap is continuous over the entire parcel. Reinforced, cast-in-place concrete retaining walls and cast-in-place concrete curbs and gutters are at the Site perimeter. An eight-foot high metal mesh fence with heavy gauge posts is continuous around the Site perimeter and two locked access gates (one on Alma Street and one on 10th Street) have been installed. All surface water is collected within the Site perimeter and is collected in a large storm drain inlet near Alma Street. The storm water is then sent to the main City of San Jose storm drain located under Alma Street.

1.03. The primary contaminants of concern affecting groundwater are: arsenic, nickel, trichloroethane, 1,1-dichloroethane, 1,1-dichloroethene, 1,2-dichloropropane, cis-1,2-dichloroethene, 1,2-dichloroethane, 1,1,2,2 tetrchloroethane, benzene, chloroform, tetrachloroethene, trichloroethene, toluene, chlordane, toxaphene, PCBs (total) and vinyl chloride. Contaminants of concern identified in soil include: arsenic, chromium, lead, aldrin, chlordane, 4,4-DDD, 4,4-DDE, 4,4-DDT,

dieldrin, endosulfan, PCBs (total), 2,3,7,8-TCDD, phenol, di(ethylhexyl)phthalate, bis (2-ethylhexyl)phthalate, di-n-butylphthalate, butylbenzylphthalate, phenanthrene, pentachlorophenol (PCP), trichloroethene, and tetrachloroethene. The potential human health effects resulting from exposure to these contaminants are as described in the US Department of Health and Human Services, Public Health Services, Agency for Toxic Substances and Disease Registry, Individual Toxicological Profiles. Based on the health risk assessment prepared by Ebasco in July 1990, the Department concluded that use of the Property as residence, hospital, school or day care center would entail an unacceptable cancer risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of the Covenant, does not present an unacceptable threat to human safety or environment, if limited to commercial and industrial use.

## ARTICLE II

### DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.04. Occupant. "Occupant" means Owners and any person or

entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA is the CERCLA Lead Agency at the time of the recording of this instrument.

### ARTICLE III

#### GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by U.S. EPA as a third party beneficiary and by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department and U.S. EPA.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department and to U.S. EPA not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department and U.S. EPA shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

#### ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

- (e) A Public Park.

#### 4.02. Soil Management

- (a) Except as provided by Section 4.02(b) below, the Property shall not be used in such a way that will disturb or interfere with the integrity of the Cap, the SVE system, or the groundwater treatment system as noted in Section 4.04.
- (b) The Property shall be used and developed in a way that preserves the integrity of the Cap installed on the Property, except that under the supervision of the CERCLA Lead Agency, the Cap may be removed or disturbed temporarily to install fixtures, repair or replace the Cap or install improvements on the Property. The capped soil shall not be disturbed without a Soil Management Plan and a Health and Safety Plan submitted to the CERCLA Lead Agency for review and approval.
- (c) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (d) The Owner shall provide the CERCLA Lead Agency written notice at least fourteen (14) days prior to any activities which will disturb the Cap, underlying soils, or soil and groundwater treatment systems.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).;
- (b) Extraction of groundwater for purposes other than site remediation

#### 4.04. Non-Interference with Cap, SVE System or Groundwater

Treatment System. Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the CERCLA Lead Agency.
- (b) All uses and development of the Capped Property shall preserve the integrity and physical accessibility of the Cap, SVE System and Groundwater Treatment System.
- (c) The Cap shall not be altered without written approval by the CERCLA Lead Agency.
- (d) Covenantor shall notify the CERCLA Lead Agency of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the CERCLA Lead Agency shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Access for U.S. EPA and Department. U.S. EPA and the Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by U.S. EPA or the Department in order to protect the public health or safety, or the environment. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions under CERCLA, the National Contingency Plan, 40 C.F.R. Part 300 and

its successor provisions, or federal law.

4.06. Access for Implementing Operation and Maintenance.

The entity or person responsible for implementing the Operation and Maintenance Plan shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Plan until the the CERCLA Lead Agency determines that no further Operation and Maintenance is required.

ARTICLE V

ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department or U.S. EPA to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department or U.S. EPA to file civil or criminal actions as provided by law.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no variance may be granted under this paragraph 6.01 without prior review and prior concurrence of the variance by U.S. EPA.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no termination may be granted under this Paragraph 6.02 without prior review and prior written concurrence of the termination by U.S. EPA.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, after review and prior written concurrence by U.S. EPA, this Covenant shall continue in effect in perpetuity.

ARTICLE VII  
MISCELLANEOUS

7.01. No Dedication or Taking. The Covenantor entered into this Agreement as part of a resolution with the Department and U.S. EPA of its potential liabilities upon becoming an owner of the Site. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under state or federal law.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully

executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: 10th Street Land Management  
c/o Jerry Daniels  
6438 Berwickshire Way  
San Jose, California 95120

To Department: Barbara J. Cook, P.E., Chief  
Department of Toxic Substances Control  
Northern California - Coastal Cleanup  
Operations Branch  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

To EPA: U.S. EPA, Region IX  
Re: Lorentz Barrel & Drum Superfund Site  
CERCLIS: CAD029295706  
Attn: Diane Strassmaier  
75 Hawthorne Street, SFD-7-4  
San Francisco, California 94105-3901

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: \_\_\_\_\_

By: 10th Street Land Management

Title: Jerry Daniels, President

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

Department of Toxic Substances Control

By: \_\_\_\_\_

Title: Barbara J. Cook, P.E., Chief  
Northern California - Coastal Cleanup  
Operations Branch

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

U.S. EPA as a Third Party Beneficiary

By: \_\_\_\_\_

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

Title: *[signatory's name and title]*

STATE OF CALIFORNIA )

)

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,

before me \_\_\_\_\_, personally appeared

\_\_\_\_\_

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT 4**  
**to the AGREEMENT**  
**AND COVENANT NOT TO SUE**  
**10TH STREET LAND MANAGEMENT**  
EPA Docket Number: 2002-04

**Statement of Work**

**Operable Unit 1 Remedial Action**  
**Lorentz Barrel and Drum Superfund Site**

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### **A. INTRODUCTION**

The purpose of this Statement of Work for the Lorentz Barrel and Drum Superfund Site ("the Site") is to outline the tasks required of the Settling Respondent to the Agreement and Covenant Not to Sue 10th Street Land Management, EPA Docket #2002-04 (the Agreement), implementing portions of the remedial action constructed in accordance with the Record of Decision (ROD) for the Site which was signed by the Regional Administrator on August 26, 1993. The Record of Decision, this Statement of Work, any applicable guidance including guidance provided by Region 9 of the U.S. Environmental Protection Agency (EPA), and the Agreement to which this is appended, shall be followed in implementing the maintenance of the asphalt cap, retaining walls, surface drainage system and security fencing at the Site. Other remedial action work at the site, the soil vapor extraction system and the groundwater pump and treat system, will be maintained and operated by entities other than 10th Street Land Management (the Settling Respondent).

The Operable Unit 1 (OU 1) ROD for the Site includes multiple remedial activities, including the construction of a cap and the installation and operation of a soil vapor extraction (SVE) system. EPA signed an Administrative Consent Order with seven potentially responsible parties (PRPs) to remove and dispose of the remaining drums, asbestos, site debris, structures, and sumps in 1992. This work was later included in the ROD for OU 1, and was completed by the PRPs in 1994. The remaining preliminary tasks were completed prior to 1997 and the final construction phase of the OU 1 remedy, the asphaltic concrete cap and SVE system, were completed in September 1998.

### **B. GENERAL PROVISIONS**

#### **1. Definitions**

Unless otherwise expressly provided herein, terms used in this Statement of Work are those defined in the Agreement, CERCLA or in regulations promulgated under CERCLA and shall have the meaning assigned to them in CERCLA or in such regulations.

#### **2. EPA Approval**

EPA approval of any submittals does not constitute a release of responsibility by the Settling Respondent for inspections and work to be performed pursuant to

this Statement of Work.

### **3. Effective Date**

The date commencing the schedule of the deliverables required under this Statement of work will be the effective date for the Agreement.

### **4. Notification**

The Settling Respondent shall notify the CERCLA lead agency, in writing, of any future intention to cease operations, for reasons other than approved scheduled maintenance or unforeseen emergency (such as earthquake or fire) at least 30 days in advance.

### **5. Coordination with other Federal, State, and local agencies**

The Settling Respondent shall contact all appropriate federal, state, and local agencies with regulatory authority to determine requirements related to the site and the intended use of the site. The Settling Respondent shall furnish a copy of all correspondence and submittals made to federal (except EPA correspondence), state, and local agencies to EPA and the California Department of Toxic Substances Control (DTSC) in a timely manner. In addition to environmental regulatory compliance, the Settling Respondent shall provide copies of building permit applications and other permits for operation of facilities at the site to EPA and DTSC.

### **6. Proposed Changes or Alterations to the Existing Asphalt Cap, Security Fence, and/or Retaining Walls**

The Settling Respondent must contact EPA and DTSC if changes in the use of the site, construction of new buildings, and/or modifications to the existing asphalt cap, fencing, or retaining walls are planned. The Settling Respondent must submit a description of the intended change to EPA and DTSC and receive written approval prior to initiating work. Depending on the nature of the proposed change, EPA and DTSC may require a submittal of detailed plans for review and approval.

## **C. WORK TO BE PERFORMED**

### **1. Asphalt Cap**

#### **a. Routine Maintenance**

The Settling Respondent shall maintain a minimum 3 inch thick asphalt cap. In areas where the pavement has cracked, the cracks shall be sealed. Maintenance of potholes or any other type of breach in the cap shall be repaired within one week of forming regardless of the size of the breach. The distressed asphalt area shall be sawcut and all of the debris shall be removed. The excavated area shall be repaired with 3 inches of asphalt or to a level flush with the surrounding cap. A slurry seal shall be applied over the repaired area. The Settling Respondent shall immediately install a temporary barrier over the breach in the asphalt cap which effectively prevents dust or soil from migrating and prevents human contact with the soils. This temporary barrier shall remain in place until the asphalt cap is repaired.

#### **b. Inspections**

The Settling Respondent shall conduct a monthly visual inspection of the entire cap during the winter months (October through March) and provide a monthly status report to EPA and DTSC. During the remaining portion of the year, the Settling Respondent shall inspect the entire cap every three months and provide a status report to EPA and DTSC. EPA may adjust this schedule based on the actual use of the site and the performance of the asphalt cap.

At the end of the first year, and every two years thereafter, a complete site inspection shall be made jointly by the facility manager, the pavement maintenance contractor, and a qualified engineer. The inspection should result in the identification of needed improvements above and beyond normal pavement maintenance to minimize potential for distress to the asphaltic concrete with the goal of maintaining the integrity of the asphalt. A written report summarizing the finding of the joint inspection shall be submitted to both EPA and DTSC. At a minimum, the report shall include the field observations, conclusions, and recommended work tasks and the schedule for work that shall be performed.

#### **c. Emergency Maintenance**

In the event of a catastrophic event, such as an earthquake, the Settling Respondent shall immediately conduct a thorough site investigation and notify EPA and DTSC to discuss the condition of the asphalt cap. In the event the cap is significantly impacted, the Settling Respondent shall submit a proposal to EPA and DTSC for review and approval describing the actions which will be required to repair the damaged asphalt cap and a schedule for the repair work.

## **2. Retaining Walls and Concrete Structures**

### **a. Routine Maintenance**

The Settling Respondent shall repair cracks or spalls which measure over 1/4 inch wide in the portions of the retaining walls, concrete gutters and curbs which are in direct contact with the site soil with appropriate elastomeric compounds.

### **b. Inspections**

The Settling Respondent shall have a qualified (California State licensed) structural engineer conduct an annual inspection of the retaining walls, curbs, and gutters at the site and provide a status report to EPA and DTSC describing the condition of the structures and identifying repair items. In the event that any displacement is found in the retaining walls the Settling Respondent shall submit an engineering analysis to determine if the movement indicates structural instability. In addition, the report shall identify interim repairs which will prevent the erosion of soil from under the asphalt cap.

### **c. Emergency Maintenance**

In the event of a catastrophic event, such as an earthquake, the Settling Respondent shall immediately conduct a thorough site investigation and notify EPA and DTSC to discuss the condition of the retaining walls, curbs, and gutters. In the event that any of the structures was significantly impacted, the Settling Respondent shall submit a proposal to EPA and DTSC for review and approval describing the actions which will be required to repair the damaged structures and a schedule for the repair work.

## **3. Security Fencing and Gates**

### **a. Routine Maintenance**

The Settling Respondent shall repair breaches in the perimeter fencing at the site. The fence shall be free of holes, rust, and any other impairment to the structural integrity of the fence, support posts, or gates. In the event the Settling Respondent change the locks on the gates, two copies of the new keys should be sent to each of the following parties: EPA, DTSC.

**b. Inspections**

The Settling Respondent shall conduct an inspection of the entire perimeter fence annually and provide a status report to EPA and DTSC. The report shall identify necessary repair needs for the upcoming year with a proposed schedule for the work.

**c. Emergency Maintenance**

In the event of a catastrophic event, such as an earthquake, the Settling Respondent shall immediately conduct a thorough site investigation and notify EPA and DTSC to discuss the condition of the security fencing. In the event the fencing is significantly impacted, the Settling Respondent shall submit a proposal to EPA and DTSC for review and approval describing the actions which will be required to repair the fence, and a schedule for the repair work. In the event that the fence allows access onto the site, and the asphalt cap and/or retaining walls have been damaged, or site soils are not contained, the Settling Respondent shall immediately provide a temporary fence, temporary ground cover, and/or a security guard at the site to prohibit human exposure to the site soils.

**D. SUBMITTALS**

One copy of each document shall be submitted to both EPA and DTSC:

- a. Site Management Plan
- b. Routine Status Reports (monthly, annual/ bi-annual)
- c. Emergency Preparedness Plan
- d. Emergency Response Contacts
- e. Emergency Repair Proposals (as required)

**E. CONTACTS**

EPA: Diane Strassmaier  
US EPA, SFD-7-4,  
75 Hawthorne Street,  
San Francisco, CA 94105  
tel (415) 972-3247

DTSC: Ted Parks  
California DTSC  
700 Heinz Avenue, Suite 200, Bldg. F  
Berkeley, CA 94710  
tel (510) 540-3805

10th St.: Jerry Daniels, President  
10th Street Land Management  
6438 Berwickshire Way  
San Jose, CA 95120  
tel (408) 323-1708  
fax (413) 647-2442

# **Restrictive Covenants**

The Newark Group, Inc.

COPY

DO NOT SEND TO RECORDS ADR

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2 Environment and Natural Resources Division  
U.S. Department of Justice

3 KEVIN V. RYAN  
4 United States Attorney  
Northern District of California

5 CHARLES O'CONNOR  
6 Assistant United States Attorney  
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8 San Francisco, CA 94102

9 MATTHEW A. FOGELSON  
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10 Environmental Enforcement Section  
Environment and Natural Resources Division  
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13 Fax: (415) 744-6476  
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14 Attorneys for Plaintiff United States

15  
16 IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 THE NEWARK GROUP, INC.

21 Defendants  
22

C05 02144

CIVIL ACTION NO.

23 NOTICE OF LODGING OF PROPOSED CONSENT DECREE  
24 PENDING SOLICITATION OF PUBLIC COMMENT BY  
25 U.S. DEPARTMENT OF JUSTICE

26 The United States has filed a Complaint, pursuant to Sections 106 and 107(a) of the  
27 Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42  
28 U.S.C. §§ 9606 and 9607(a), for the performance of response actions and the reimbursement of

1 response costs.

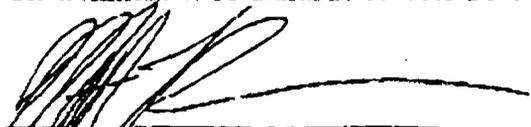
2 Plaintiff, the United States, hereby notifies the Court that, contemporaneous with the  
3 filing of the Complaint, the United States lodged a Consent Decree for the above referenced  
4 matter (attached as Exhibit 1 hereto).

5 The Court should not sign the Consent Decree at this time. Instead, the proposed Consent  
6 Decree should remain lodged with the Court while the United States provides an opportunity for  
7 public comment as provided by the Consent Decree.

8 The Department of Justice will publish in the Federal Register a notice that the proposed  
9 Consent Decree has been lodged with the Court. The Notice will solicit public comment  
10 for a period of 30 days. During the comment period, no action is required of this Court.

11  
12 Respectfully submitted,

13 KELLY A. JOHNSON  
14 Acting Assistant Attorney General  
15 Environment and Natural Resources Division

16   
17 MATTHEW A. FOGELSON  
18 Trial Attorney  
19 Environmental Enforcement Section  
20 Environment and Natural Resources Division  
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22 301 Howard Street  
23 San Francisco, CA 94105  
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OF COUNSEL  
ANN C. CHAN  
Assistant Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Telephone: (415) 972-3909

Exhibit 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA.

Plaintiff,

v.

THE NEWARK GROUP, INC.

Defendant.

CIVIL ACTION NO.

JUDGE

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter against The Newark Group, Inc. ("Settling Defendant") pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C §§ 9606, 9607, as amended ("CERCLA"), seeking, inter alia: (i) reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Lorentz Harrel and Drum Superfund Site in San Jose, Santa Clara County, California ("Site"), and (ii) performance of response work by Settling Defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

B. Settling Defendant does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

C. The decisions by EPA on the remedial actions to be implemented at the Site are embodied in two Records of Decision ("RODs"): ROD 1, executed on September 21, 1988, and

1 ROD 2, executed on August 26, 1993. The State of California, through the Department of Toxic  
2 Substances Control, has given its concurrence to the remedial actions embodied in the RODs.  
3 The RODs include summaries of EPA's responses to public comments. Notice of the final plans  
4 were published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

5 D. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C.  
6 § 9621(f)(1)(F), EPA notified the State of California, through the Department of Toxic  
7 Substances Control ("DTSC"), of negotiations with potentially responsible parties regarding  
8 implementation of the remedial design and remedial action for the Site, and EPA has provided  
9 DTSC with an opportunity to participate in such negotiations and be a party to this Consent  
10 Decree.

11 E. The United States and Settling Defendant agree, and this Court by entering this  
12 Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith,  
13 that settlement of this matter will avoid prolonged and complicated litigation between the Parties,  
14 and that this Consent Decree is fair, reasonable, and in the public interest.

15 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED.

16 ADJUDGED, AND DECREED:

## 17 II. JURISDICTION

18 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.  
19 §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, 9613(b), and also has personal jurisdiction over  
20 Settling Defendant. Solely for the purposes of this Consent Decree and the underlying  
21 Complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction  
22 of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this  
23 Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## 24 III. PARTIES BOUND

25 2. This Consent Decree is binding upon the United States, and upon Settling Defendant  
26 and its successors and assigns. Except if agreed to in the future by EPA under Paragraph 7c, any  
27 change in ownership or corporate or other legal status including, but not limited to, any transfer  
28 of assets or real or personal property, shall in no way alter the status or responsibilities of Settling

1 Defendant under this Consent Decree.

#### 2 IV. DEFINITIONS

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

7 "CERCLA" shall mean the Comprehensive Environmental Response,  
8 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

9 "Complaint" shall mean the pleading United States v. The Newark Group, Inc.  
10 filed concurrently with this Consent Decree and bearing the same Civil Action Number.

11 "Consent Decree" shall mean this Consent Decree and all appendices attached  
12 hereto.

13 "Day" shall mean a calendar day unless expressly stated to be a working day.

14 "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In  
15 computing any period of time under this Consent Decree, where the last day would fall on a  
16 Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next  
17 working day.

18 "DOJ" shall mean the United States Department of Justice and any of its  
19 successor departments, agencies, or instrumentalities.

20 "DTSC" shall mean the California Department of Toxic Substances Control and  
21 any of its successor departments or agencies.

22 "Effective Date" shall be the date upon which this Consent Decree is entered by  
23 the Court, except as otherwise provided herein.

24 "EPA" shall mean the United States Environmental Protection Agency and any of  
25 its successor departments, agencies, or instrumentalities.

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

28 "Future Response Costs" shall mean all costs, including but not limited to direct

1 and indirect costs, that the United States incurs pursuant to Paragraph 45 of Section XIII (Work  
2 Takeover).

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

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

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

13 "Past Response Costs" shall mean all costs, including, but not limited to, direct  
14 and indirect costs, that the United States paid at or in connection with the Site through the  
15 Effective Date.

16 "Parties" shall mean the United States and Settling Defendant.

17 "Plaintiff" shall mean the United States.

18 "Property" shall mean that portion of the Site, encompassing approximately 1.47  
19 acres, formerly owned by Arata-Western, Inc., and currently owned by Settling Defendant, which  
20 is generally shown on the map included in Appendix A to this Consent Decree.

21 "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also  
22 known as the Resource Conservation and Recovery Act).

23 "ROD 1" shall mean the EPA Record of Decision relating to Operable Unit 2 at  
24 the Site signed on September 21, 1988, by the Regional Administrator, EPA Region IX, as  
25 amended, and all attachments thereto.

26 "ROD 2" shall mean the EPA Record of Decision relating to Operable Unit 1 at  
27 the Site signed on August 26, 1993, by the Regional Administrator, EPA Region IX, as amended,  
28 and all attachments thereto.

1 "Section" shall mean a portion of this Consent Decree identified by a Roman  
2 numeral.

3 "Settling Defendant" shall mean The Newark Group, Inc. and its corporate  
4 successors and assigns.

5 "Site" shall mean the Lorentz facility Superfund site, encompassing  
6 approximately 6.72 acres, located at 1515 South Tenth Street in San Jose, Santa Clara County,  
7 California, and generally shown on the map included in Appendix B.

8 "State" shall mean the State of California.

9 "Statement of Work" or "SOW" shall mean the statement of work set forth in  
10 Appendix C to this Consent Decree and any modifications to Appendix C made in accordance  
11 with this Consent Decree.

12 "United States" shall mean the United States of America, including its  
13 departments, agencies and instrumentalities, including, without limitation EPA.

14 "Work" shall mean all activities Settling Defendant is required to perform under  
15 this Consent Decree, except those required by Section XVI (Retention of Records).

#### 16 **V. GENERAL PROVISIONS**

17 4. **Objectives of the Parties.** The objectives of the Parties in entering into this  
18 Consent Decree are to protect public health or welfare or the environment at the Site by the  
19 implementation of response actions at the Site by the Settling Defendant, to reimburse response  
20 costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendant as provided  
21 in Sections XII through XIV of this Consent Decree.

22 5. **Commitments by Settling Defendant.** Settling Defendant shall finance and  
23 perform the Work in accordance with this Consent Decree, the RODs, the SOW and all work  
24 plans and other plans developed by Settling Defendant and approved by EPA pursuant to this  
25 Consent Decree. Settling Defendant shall also reimburse the United States for Past Response  
26 Costs and Future Response Costs as provided in this Consent Decree.

27 6. **Compliance With Applicable Law.** All activities undertaken by Settling  
28 Defendant pursuant to this Consent Decree shall be performed in accordance with the

1 requirements of all applicable Federal and state laws and regulations. Settling Defendant must  
2 also comply with all applicable or relevant and appropriate requirements of all Federal and state  
3 environmental laws as set forth in the RODs and the SOW. The activities conducted pursuant to  
4 this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

5 7. Notice to Successors-in Title

6 a. Within 15 days after the entry of this Consent Decree, Settling Defendant  
7 shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Santa  
8 Clara County, State of California, which shall provide notice to all successors-in-title that the  
9 Property is part of the Site, and that Settling Defendant has entered into a Consent Decree  
10 requiring implementation of a portion of the remedy. Such notice shall identify the United States  
11 District Court in which the Consent Decree was filed, the name and civil action number of this  
12 case, and the date the Consent Decree was entered by the Court. Settling Defendant shall record  
13 the notice within 10 days of EPA's approval of the notice. Settling Defendant shall provide EPA  
14 with a certified copy of the recorded notice within 10 days of recording such notice.

15 b. At least 30 days prior to the conveyance of any interest in the Property  
16 including but not limited to fee interests, leasehold interests, and mortgage interests, Settling  
17 Defendant shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by  
18 which an interest in real property has been conveyed that confers a right of access to the Property  
19 (hereinafter referred to as "access easements") pursuant to Section VII (Access and Institutional  
20 Controls), and (iii) any instrument by which an interest in real property has been conveyed that  
21 confers a right to enforce restrictions on the use of the Property (hereinafter referred to as  
22 "restrictive easements") pursuant to Section VII (Access and Institutional Controls). At least 30  
23 days prior to such conveyance, Settling Defendant shall also give written notice to EPA and  
24 DTSC of the proposed conveyance, including the name and address of the grantee, and the date  
25 on which notice of the Consent Decree, access easements, or restrictive easements was given to  
26 the grantee.

27 c. In the event of any conveyance of any interest in the Property, the Settling  
28 Defendant's obligations under this Consent Decree, including but not limited to its obligation to

1 provide or secure access and institutional controls, as well as to abide by such institutional  
2 controls, pursuant to Section VII (Access and Institutional Controls) of this Consent Decree, shall  
3 continue to be met by Settling Defendant. In no event shall such conveyance release or otherwise  
4 affect the liability of Settling Defendant to comply with all provisions of this Consent Decree,  
5 absent the prior written consent of EPA. If the United States approves, the grantee may perform  
6 some or all of the Work under this Consent Decree.

#### 7 **VI. PERFORMANCE OF WORK BY SETTLING DEFENDANT**

8 8. Settling Defendant shall implement the SOW, including all inspection,  
9 maintenance, and reporting requirements contained therein. Within 30 days of the Effective Date  
10 of this Consent Decree, Settling Defendant shall begin implementing the SOW. Within 90 days  
11 of the Effective Date of this Consent Decree, Settling Defendant shall submit the initial Routine  
12 Status Report as required by the SOW.

13 9. Within 60 days of the Effective Date of this Consent Decree, Settling Defendant  
14 shall submit to EPA its Property Maintenance Plan and Emergency Response Plan as provided by  
15 the SOW.

#### 16 **10. Modification of the SOW or Related Work Plans**

17 a. If EPA determines that modification to the work specified in the SOW  
18 or in work plans developed pursuant to the SOW is necessary to maintain the effectiveness of the  
19 remedy set forth in the RODs, EPA may require that such modification be incorporated in the  
20 SOW or such work plans; provided, however, that a modification may only be required pursuant  
21 to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the  
22 RODs.

23 b. If Settling Defendant objects to any modification determined by EPA to be  
24 necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section X  
25 (Dispute Resolution). The SOW or related work plans shall be modified in accordance with the  
26 final resolution of the dispute.

27 c. Settling Defendant shall implement any work required by any  
28 modifications incorporated in the SOW or in work plans developed pursuant to the SOW in

1 accordance with this Paragraph.

2 d. Nothing in this Paragraph shall be construed to limit EPA's authority to  
3 require performance of further response actions as otherwise provided in this Consent Decree.

4 **VII. ACCESS AND INSTITUTIONAL CONTROLS**

5 11. Commencing on the date of lodging of this Consent Decree, Settling Defendant  
6 shall provide the United States and its representatives, including EPA and its contractors, with  
7 access at all reasonable times to the Property, for the purpose of conducting any activity related  
8 to this Consent Decree, and the RODs, including but not limited to the following activities:

- 9 a. Monitoring the Work
- 10 b. Verifying any data or information submitted to the United States
- 11 c. Conducting inspections of the Property
- 12 d. Implementing the Work pursuant to the conditions set forth in Paragraph

13 45 of this Consent Decree

14 e. Assessing Settling Defendant's compliance with this Consent Decree

15 f. Determining whether the Property is being used in a manner that is  
16 prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this  
17 Consent Decree

18 12. Commencing on the date of lodging of this Consent Decree, Settling Defendant  
19 shall refrain from using the Property in any manner that would interfere with or adversely affect  
20 the implementation, integrity, or protectiveness of the remedial measures to be performed  
21 pursuant to the RODs.

22 13. a. Settling Defendant shall execute and record in the Recorder's Office of  
23 Santa Clara County, State of California, a Covenant to Restrict Use of Property, Environmental  
24 Restriction, identical to the form attached hereto as Appendix D. Within 15 days of entry of this  
25 Consent Decree, Settling Defendant shall provide to EPA, for its review and approval, a current  
26 title insurance commitment or other evidence of title acceptable to EPA that shows title to the  
27 Property to be free and clear of all prior liens and encumbrances (except when those liens or  
28 encumbrances are approved by EPA, or when, despite its best efforts, Settling Defendant is

1 unable to obtain release or subordination of such prior liens or encumbrances). Within 15 days  
2 of EPA's approval and acceptance of the title evidence, Settling Defendant shall update the title  
3 search and, if it is determined that nothing has occurred since the effective date of the  
4 commitment to affect the title adversely, Settling Defendant shall record the Covenant to Restrict  
5 Use of Property, Environmental Restriction with the Recorder's Office of Santa Clara County.

6 b. Within 30 days of recording the Covenant to Restrict Use of Property,  
7 Environmental Restriction, Settling Defendant shall provide EPA with a final title insurance  
8 policy, or other final evidence of title acceptable to EPA, and a certified copy of the original  
9 recorded Covenant to Restrict Use of Property, Environmental Restriction, showing the clerk's  
10 recording stamps.

11 14. Notwithstanding any provision of this Consent Decree, the United States retains  
12 all of its access authorities and rights, as well as its rights to require land or water use restrictions,  
13 including enforcement authorities related thereto, under CERCLA, RCRA and any other  
14 applicable statute or regulation.

#### 15 **VIII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

16 15. After review of any plan, report or other item that is required to be submitted  
17 pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b)  
18 approve the submission upon specified conditions; (c) modify the submission to cure the  
19 deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling  
20 Defendant modify the submission; or (e) any combination of the above. However, EPA shall not  
21 modify a submission without first providing Settling Defendant at least one notice of deficiency  
22 and an opportunity to cure within 15 days, except where a previous submission or submissions  
23 have been disapproved due to material defects and the deficiencies in the submission or  
24 submissions under consideration indicate a bad faith lack of effort to submit an acceptable  
25 deliverable.

26 16. In the event of approval, approval upon conditions, or modification by EPA,  
27 pursuant to Paragraph 15(a), (b), or (c), Settling Defendant shall proceed to take any action  
28 required by the plan, report, or other item as approved or modified by EPA, subject only to its

1 right to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution) with  
2 respect to the modifications or conditions made by EPA. In the event that EPA modifies the  
3 submission to cure deficiencies pursuant to Paragraph 15 (c) and the submission has a material  
4 defect, EPA retains its right to seek Stipulated Penalties, as provided in Section XI (Stipulated  
5 Penalties).

6 17. Re-submission of Plans.

7 a. Upon receipt of a notice of disapproval pursuant to Paragraph 15 (d),  
8 Settling Defendant shall, within 15 days or such longer time as specified by EPA in such notice,  
9 correct the deficiencies and resubmit the plan, report, or other item for approval.

10 b. Notwithstanding the receipt of a notice of disapproval pursuant to  
11 Paragraph 15(d), Settling Defendant shall proceed, at the direction of EPA, to take any action  
12 required by any non-deficient portion of the submission. Implementation of any non-deficient  
13 portion of a submission shall not relieve Settling Defendant of any liability for Stipulated  
14 Penalties under Section XI (Stipulated Penalties).

15 18. In the event that a resubmitted plan, report or other item, or portion thereof, is  
16 disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies,  
17 in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the  
18 plan, report or other item. Settling Defendant shall implement any such plan, report, or item as  
19 modified or developed by EPA, subject only to its right to invoke the procedures set forth in  
20 Section X (Dispute Resolution).

21 19. If upon re-submission, a plan, report, or item is disapproved or modified by EPA  
22 due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan,  
23 report, or item timely and adequately, unless Settling Defendant invokes the dispute resolution  
24 procedures set forth in Section X (Dispute Resolution), and EPA's action is overturned pursuant  
25 to that Section. The provisions of Section X (Dispute Resolution) and Section XI (Stipulated  
26 Penalties) shall govern the implementation of the Work and accrual and payment of any  
27 Stipulated Penalties during Dispute Resolution. If EPA's disapproval or modification is upheld,  
28 Stipulated Penalties shall accrue for such violation from the date on which the initial submission

1 was originally required, as provided in Section XI (Stipulated Penalties).

2 20. All plans, reports, and other items required to be submitted to EPA under this  
3 Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent  
4 Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required  
5 to be submitted to EPA under this Consent Decree, the approved or modified portion shall be  
6 enforceable under this Consent Decree.

### 7 **IX. PAYMENT FOR RESPONSE COSTS**

#### 8 **21. Payment for Past Response Costs**

9 a. Within 30 days of the Effective Date of this Consent Decree, Settling  
10 Defendant shall pay to EPA \$15,000. Payment shall be made by FedWire Electronic Funds  
11 Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT  
12 instructions. These instructions shall be provided to Settling Defendant, following lodging of the  
13 Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern  
14 District of California.

15 b. At the time of payment, Settling Defendant shall also send notice that  
16 payment has been made to EPA and DOJ in accordance with Section XVII (Notices and  
17 Submissions). Such notice shall reference the EPA Region and Site-Spill ID Number  
18 0989PS01, DOJ Case Number 90-11-2-467/5, and the civil action number of this case.

19 c. The total amount to be paid by Settling Defendant pursuant to Paragraph  
20 21.a shall be deposited by the United States in the Lorentz Special Account within the EPA  
21 Hazardous Substance Superfund to be retained and used to conduct or finance response actions at  
22 or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance  
23 Superfund.

#### 24 **22. Payments for Future Response Costs.**

25 a. In the event of a Work Takeover by EPA pursuant to Paragraph 45,  
26 Settling Defendant shall pay to EPA all Future Response Costs not inconsistent with the National  
27 Contingency Plan. On a periodic basis the United States will send Settling Defendants a bill  
28 requiring payment that includes a SCORPIOS cost summary. Settling Defendant shall make all

1 payments within 30 days of Settling Defendant's receipt of each bill requiring payment, except as  
2 otherwise provided in Paragraph 23. Settling Defendant shall make all payments required by this  
3 Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous  
4 Substance Superfund," referencing the name and address of the party making the payment, EPA  
5 Site/Spill ID Number 0989PS01, DOJ Case Number 90-11-2467/5, and the civil action number  
6 of this case. Settling Defendant shall send the check(s) to:

7 EPA - Cincinnati Accounting Operations  
8 Attention: Region 9 Reccivables  
9 P.O. Box 371099M  
10 Pittsburgh, PA 15251

11 b. At the time of payment, Settling Defendants shall send notice that payment  
12 has been made to the United States, to EPA and to the Regional Financial Management Officer,  
13 in accordance with Section XVII (Notices and Submissions).

14 c. The total amount to be paid by Settling Defendant pursuant to Paragraph  
15 22.a shall be deposited by the United States in the Lorentz Special Account within the EPA  
16 Hazardous Substance Superfund to be retained and used to conduct or finance response actions at  
17 or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance  
18 Superfund.

19 23. Settling Defendant may contest payment of any Future Response Costs under  
20 Paragraph 22 if it determines that the United States has made an accounting error or if it alleges  
21 that a cost item that is included represents costs that are inconsistent with the NCP. Such  
22 objection shall be made in writing within 30 days of receipt of the contested bill and must be sent  
23 to the United States pursuant to Section XVII (Notices and Submissions). Any such objection  
24 shall specifically identify the contested Future Response Costs and the basis for objection. In the  
25 event of an objection, Settling Defendant shall within the 30 day period pay all uncontested  
26 Future Response Costs to the United States in the manner described in Paragraph 22.

27 Simultaneously, Settling Defendant shall establish an interest-bearing escrow account in a  
28 federally-insured bank duly chartered in the State of California and remit to that escrow account  
funds equivalent to the amount of the contested Future Response Costs. Settling Defendant shall

1 send to the United States, as provided in Section XVII (Notices and Submissions), a copy of the  
2 transmittal letter and the check remitting the uncontested Future Response Costs, together with a  
3 copy of the correspondence that establishes and funds the escrow account, which shall include  
4 information containing the identity of the bank and bank account under which the escrow account  
5 is established as well as a bank statement showing the initial balance of the escrow account.

6 Simultaneously with establishment of the escrow account, Settling Defendant shall initiate the  
7 dispute resolution procedures in Section X (Dispute Resolution). If the United States prevails in  
8 the dispute, within 5 days of the resolution of the dispute, Settling Defendant shall pay the sums  
9 due (with accrued Interest) to the United States in the manner described in Paragraph 22. If  
10 Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall  
11 pay all contested costs (plus associated accrued Interest) as to which it did not prevail to the  
12 United States in the manner described in Paragraph 22; Settling Defendant shall be disbursed any  
13 balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in  
14 conjunction with the procedures set forth in Section X (Dispute Resolution) shall be the  
15 exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to  
16 reimburse the United States for its Future Response Costs.

17 24. In the event that the payments required by Subparagraph 21.a are not made within  
18 30 days of the Effective Date, or the payments required by Paragraph 22.a are not made within 30  
19 days of the Settling Defendant's receipt of the bill requiring payment, Settling Defendant shall  
20 pay Interest on the unpaid balance. Interest to be paid on Past Response Costs under this  
21 Paragraph shall begin to accrue on the Effective Date. Interest on Future Response Costs shall  
22 begin to accrue on the date of the bill for those costs. Interest shall accrue through the date of  
23 Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in  
24 addition to such other remedies or sanctions available to Plaintiff by virtue of Settling  
25 Defendant's failure to make timely payments under this Section, including but not limited to  
26 payment of Stipulated Penalties pursuant to Paragraph 28. Settling Defendant shall make all  
27 payments required by this Paragraph in the manner described in Paragraph 22.

28

## X. DISPUTE RESOLUTION

1  
2 25. Unless otherwise expressly provided for in this Consent Decree, the dispute  
3 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising  
4 under or with respect to this Consent Decree. However, the procedures set forth in this Section  
5 shall not apply to actions by the United States to enforce obligations of the Settling Defendant  
6 that have not been disputed in accordance with this Section.

7 26. Any dispute that arises under or with respect to this Consent Decree shall in the  
8 first instance be the subject of informal negotiations between the Parties. The period for informal  
9 negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by  
10 written agreement of the Parties. The dispute shall be considered to have arisen when one Party  
11 sends the other a written Notice of Dispute.

### 27. Statement of Position.

12  
13 a. In the event that the Parties cannot resolve a dispute by informal  
14 negotiations under the preceding Paragraph, then the position advanced by EPA shall be  
15 considered binding unless, within 10 days after the conclusion of the informal negotiation period,  
16 Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on  
17 the United States a written Statement of Position on the matter in dispute, including but not  
18 limited to any factual data, analysis, or opinion supporting that position and any supporting  
19 documentation relied upon by Settling Defendant.

20 b. Following receipt of Settling Defendant's Statement of Position submitted  
21 pursuant to Paragraph 27.a, the Director of the Superfund Division, EPA Region IX, will issue a  
22 final decision resolving the dispute. The Superfund Division Director's decision shall be binding  
23 on Settling Defendant unless, within 10 days of receipt of the decision, Settling Defendant files  
24 with the Court and serves on the United States a motion for judicial review of the decision,  
25 setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief  
26 requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly  
27 implementation of the Consent Decree. The United States may file a response to Settling  
28 Defendant's motion.

c. The invocation of formal dispute resolution procedures under this Section

1 shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this  
 2 Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated  
 3 Penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed  
 4 pending resolution of the dispute as provided in Paragraph 37. Notwithstanding the stay of  
 5 payment. Stipulated Penalties shall accrue from the first day of noncompliance with any  
 6 applicable provision of this Consent Decree. In the event that Settling Defendant does not  
 7 prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in  
 8 Section XI (Stipulated Penalties).  
 9

10 **XI. STIPULATED PENALTIES**

11 28. If any amounts due under Paragraphs 21.a and 22.a are not paid by the required  
 12 date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated  
 13 penalty, in addition to the interest required by Paragraph 24, \$5,000 for each day that payment is  
 14 late.

15 29. Stipulated Penalty Amounts - Work

16 The following Stipulated Penalties shall accrue per violation per day for failure to timely  
 17 perform any routine or emergency maintenance work required under the SOW:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 <sup>st</sup> through 14 <sup>th</sup> day
\$2,000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$3,000	31 <sup>st</sup> day and beyond.

22 30. Stipulated Penalty Amounts - Reports.

23 The following Stipulated Penalties shall accrue per violation per day for failure to submit  
 24 timely or adequate reports pursuant to Paragraphs 8, 9, 17, and 18:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$1,000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$1,500	31 <sup>st</sup> day and beyond.

1           31. In the event that EPA assumes performance of a portion or all of the Work  
2 pursuant to Paragraph 45 of Section XIII (Work Takeover), Settling Defendant shall be liable for  
3 a stipulated penalty in the amount of \$50,000.

4           32. All penalties shall begin to accrue on the day after the complete performance is  
5 due or a violation occurs and shall continue to accrue through the final day of the correction of  
6 the noncompliance or completion of the activity. However, Stipulated Penalties shall not accrue:  
7 (1) with respect to a deficient submission under Section VIII (EPA Approval of Plans and Other  
8 Submissions), during the period, if any, beginning on the 31<sup>st</sup> day after EPA's receipt of such  
9 submission until the date that EPA notifies Settling Defendant of any deficiency; (2) with respect  
10 to a decision by the Director of the Superfund Division, EPA Region IX, under Paragraph 27.b of  
11 Section X (Dispute Resolution), during the period, if any, beginning on the 21st day after the date  
12 that Settling Defendant's Statement of Position is received until the date that the Director issues a  
13 final decision regarding such dispute; or (3) with respect to judicial review by this Court of any  
14 dispute under Section X (Dispute Resolution), during the period, if any, beginning on the 31st  
15 day after the Court's receipt of the final submission regarding the dispute until the date that the  
16 Court issues a final decision regarding such dispute. Nothing herein shall prevent the  
17 simultaneous accrual of separate penalties for separate violations of this Consent Decree.

18           33. All penalties accruing under this Section shall be due and payable to the United  
19 States within 30 days of Settling Defendant's receipt from EPA of a demand for payment of the  
20 penalties, unless Settling Defendant invokes the dispute resolution procedures under Section X  
21 (Dispute Resolution). All payments to EPA under this Paragraph shall be identified as  
22 "Stipulated Penalties" and shall be made by certified or cashier's check made payable to "EPA  
23 Hazardous Substance Superfund." The check, or a letter accompanying the check, shall  
24 reference the name and address of the party making payment, the Site name, the EPA Region and  
25 Site Spill ID Number 0989PS01, DOJ Case Number 90-11-2-467/5, and the civil action number  
26 of this case. Settling Defendant shall send the check (and any accompanying letter) to:

27           EPA - Cincinnati Accounting Operations  
28           P.O. Box 371099M  
            Pittsburgh, PA 15251  
            Attention: Region 9 Superfund Site Collections Officer

1 Or if by overnight mail, then to:

2 Mellon Client Service Center  
3 Attention : Government Supervisor (371099)  
4 Room 0690  
5 500 Ross Street  
6 Pittsburgh, PA 15262  
7 Phone # 412- 234-5805

8 34. At the time of each payment of a Stipulated Penalty, Settling Defendant shall also  
9 send notice that such payment has been made to EPA and DOJ in accordance with Section XVII  
10 (Notices and Submissions) . Such notice shall reference the EPA Region and Site/Spill Id  
11 Number 0989PS01, DOJ Case Number 90-11-2-467/5, and the civil action number of this case.

12 35. Payment of Stipulated Penalties shall not excuse Settling Defendant from any  
13 payment required by Section IX or from performance of any other requirements of this Consent  
14 Decree.

15 36. Stipulated Penalties shall accrue as provided in this Paragraph regardless of  
16 whether EPA has notified Settling Defendant of any violation or made a demand for payment,  
17 but need only be paid upon demand.

18 37. Stipulated Penalties shall continue to accrue as provided in Paragraph 32 during  
19 any dispute resolution period, but need not be paid until the following:

20 a. if the dispute is resolved by agreement or by a decision of EPA that is not  
21 appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15  
22 days of the agreement or the receipt of EPA's decision or order;

23 b. if the dispute is appealed to this Court and the United States prevails in  
24 whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be  
25 owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in  
26 Paragraph 37.c, below;

27 c. if the District Court's decision is appealed by any Party, Settling  
28 Defendant shall pay all accrued penalties determined by the District Court to be owing to the  
United States into an interest-bearing escrow account within 60 days of receipt of the Court's

1 decision or order. Penalties shall be paid into this account as they continue to accrue, at least  
2 every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent  
3 shall pay the balance of the account to EPA or to Settling Defendant in accordance with the  
4 Court's mandate.

5 38. If Settling Defendant fails to pay Stipulated Penalties when due, the United States  
6 may institute proceedings to collect the penalties, as well as Interest. Settling Defendant shall  
7 pay Interest on the unpaid balance, which shall begin to accrue on the date demand is made  
8 pursuant to Paragraph 33.

9 39. If the United States brings an action to enforce this Consent Decree, and the  
10 United States prevails in such action, Settling Defendant shall reimburse the United States for all  
11 costs of such action, including but not limited to costs of attorney time.

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

15 41. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in  
16 any way limiting the ability of the United States to seek any other remedies or sanctions available  
17 by virtue of Settling Defendants' violation of this Consent Decree or of the statutes and  
18 regulations upon which it is based, including but not limited to penalties pursuant to Section 122  
19 (l) of CERCLA; provided, however, that the United States shall not seek civil penalties pursuant  
20 to Section 122 (l) of CERCLA for any violation for which a stipulated penalty is provided herein,  
21 except in the case of a willful violation of the Consent Decree.

22 42. Notwithstanding any other provision of this Section, the United States may, in its  
23 unreviewable discretion, waive payment of any portion of the Stipulated Penalties that have  
24 accrued pursuant to this Consent Decree.

## 25 **XII. COVENANT BY PLAINTIFF**

26 43. Covenant Not to Sue Settling Defendant by United States. Except as specifically  
27 provided in Section XIII (Reservation of Rights by United States), the United States covenants  
28 not to sue or to take administrative action against Settling Defendant pursuant to Sections 106

1 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), or pursuant to Section 7003 of RCRA, 42  
2 U.S.C. § 6973, with regard to the Site. This covenant not to sue shall take effect upon receipt by  
3 EPA of all payments from Settling Defendant required by Paragraph 21.a of Section IX (Payment  
4 of Response Costs) and any amount due under Section XI (Stipulated Penalties). This covenant  
5 not to sue is conditioned upon the satisfactory performance by Settling Defendant of its  
6 obligations under this Consent Decree. This covenant not to sue extends only to Settling  
7 Defendant and does not extend to any other person.

### 8 **XIII. RESERVATION OF RIGHTS BY UNITED STATES**

9 44. General Reservations of Rights by United States. The United States reserves, and  
10 this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to  
11 all matters not expressly included within the Covenant by Plaintiff in Paragraph 43:

12 Notwithstanding any other provision of this Consent Decree, the United States reserves all rights  
13 against Settling Defendant with respect to:

14 a. claims based on a failure by Settling Defendant to meet a requirement of this  
15 Consent Decree;

16 b. criminal liability;

17 c. liability for damages for injury to, destruction of, or loss of natural resources,  
18 and for the costs of any natural resource damage assessments;

19 d. liability based upon Settling Defendant's transportation, treatment, storage, or  
20 disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous  
21 substance or a solid waste, at or in connection with the Site, after signature of this Consent  
22 Decree by Settling Defendant;

23 e. liability arising from the past, present, or future disposal, release or threat of  
24 release of a hazardous substance, pollutant, or contaminant, other than at the Site.

25 44.1 Notwithstanding any other provision of this Consent Decree, the United States  
26 reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this  
27 action or in a new action, or to issue an administrative order, seeking to compel Settling  
28 Defendant (1) to perform response actions relating to the Site, or (2) to reimburse the United

1 States for additional costs of response if:

2 (i) conditions at the Site, previously unknown to EPA, are discovered, or  
3 (ii) information, previously unknown to EPA, is received, in whole or in part,  
4 and EPA determines that these previously unknown conditions or information, together with any  
5 other relevant information, indicates that the remedial actions specified in the RODs are not  
6 protective of human health or the environment.

7 44.2. For purposes of Paragraph 44.1, the information and the conditions known to EPA  
8 regarding the Site shall include only that information and those conditions known to EPA as of  
9 the date of issuance of the most recent Five-Year Review Report for the Site, dated September  
10 27, 2000, and as set forth in the September 27, 2000 Five-Year Review Report, in the RODs for  
11 the Site, and in the administrative record supporting the RODs.

12 45. Work Takeover. In the event EPA determines that Settling Defendant has ceased  
13 implementation of any portion of the Work, is seriously or repeatedly deficient or late in its  
14 performance of the Work, or is implementing the Work in a manner that may cause an  
15 endangerment to human health or the environment, EPA may assume the performance of all or  
16 any portions of the Work as EPA determines necessary. Settling Defendant may invoke the  
17 procedures set forth in Section X (Dispute Resolution) to dispute EPA's determination that  
18 takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in  
19 performing the Work pursuant to this Paragraph shall be considered Future Response Costs that  
20 Settling Defendant shall pay pursuant to Section IX (Payment for Response Costs).

21 46. Notwithstanding any other provision of this Consent Decree, the United States  
22 retains all authority and reserves all rights to take any and all response actions authorized by law.

23 **XIV. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

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

27 a. any direct or indirect claim for reimbursement from the Hazardous Substance  
28 Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§

1 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

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

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

7 48. Except as provided in Paragraphs 50 and 54, these covenants not to sue shall not  
8 apply in the event the United States brings a cause of action or issues an order pursuant to the  
9 reservations set forth in Paragraph 44 (c) - (e), or Paragraph 44.1, but only to the extent that  
10 Settling Defendant's claims arise from the same response action, response costs, or damages that  
11 the United States is seeking pursuant to the applicable reservation.

12 49. Nothing in this Consent Decree shall be deemed to constitute approval or  
13 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or  
14 40 C.F.R. § 300.700(d).

15 50. Settling Defendant agrees not to assert any claims and to waive all claims or causes  
16 of action that it may have for all matters relating to the Site, including for contribution, against  
17 any person that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA with  
18 respect to the Site as of the Effective Date of this Consent Decree. This waiver shall not apply  
19 with respect to any defense, claim, or cause of action that Settling Defendant may have against  
20 any person if such person asserts a claim or cause of action relating to the Site against Settling  
21 Defendant.

22 **XV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

23 51. Except as provided in Paragraph 50, nothing in this Consent Decree shall be  
24 construed to create any rights in, or grant any cause of action to, any person not a Party to  
25 this Consent Decree. The preceding sentence shall not be construed to waive or nullify any  
26 rights that any person not a signatory to this Decree may have under applicable law. Except  
27 as provided in Paragraph 50, the Parties each expressly reserve any and all rights  
28 (including, but not limited to, any right to contribution), defenses, claims, demands, and

1 causes of action that each Party may have with respect to any matter, transaction, or  
2 occurrence relating in any way to the Site against any person not a Party hereto.

3 52. The Parties agree, and by entering this Consent Decree this Court finds, that  
4 Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection  
5 from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42  
6 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters  
7 addressed" in this Consent Decree are all response actions taken or to be taken and all  
8 response costs incurred or to be incurred, at or in connection with the Site, by the United  
9 States or any other person. The "matters addressed" in this Consent Decree do not include  
10 those response costs or response actions as to which the United States has reserved its  
11 rights under this Consent Decree (except for claims for failure to comply with this Decree),  
12 in the event that the United States asserts rights against Settling Defendant coming within  
13 the scope of such reservations.

14 53. Settling Defendant agrees that, with respect to any suit or claim for  
15 contribution brought by it for matters related to this Consent Decree, it will notify EPA and  
16 DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling  
17 Defendant also agrees that, with respect to any suit or claim for contribution brought  
18 against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing  
19 within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant  
20 shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary  
21 Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for  
22 matters related to this Consent Decree.

23 54. In any subsequent administrative or judicial proceeding initiated by the  
24 United States for injunctive relief, recovery of response costs, or other relief relating to the  
25 Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based  
26 upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-  
27 splitting, or other defenses based upon any contention that the claims raised by the United  
28 States in the subsequent proceeding were or should have been brought in the instant case;

1 provided, however, that nothing in this Paragraph affects the enforceability of the Covenant  
2 by Plaintiff set forth in Section XII.

### 3 **XVI. RETENTION OF RECORDS**

4 55. Until 3 years after the entry of this Consent Decree, Settling Defendant shall  
5 preserve and retain all records, reports, or information (hereinafter referred to as "records")  
6 now in its possession or control, or which come into its possession or control, that relate in  
7 any manner to response actions taken at the Site or the liability of any person for response  
8 actions or response costs at or in connection with the Site, regardless of any corporate  
9 retention policy to the contrary.

10 56. After the conclusion of the 3-year document retention period set forth in the  
11 preceding Paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to  
12 the destruction of any records and, upon request by EPA or DOJ, Settling Defendant shall  
13 deliver any such records to EPA. Settling Defendant may assert that certain records are  
14 privileged under the attorney-client privilege or any other privilege recognized by federal  
15 law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the  
16 following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation  
17 (e.g., company or firm), and address of the author of the record; 4) the name and title of  
18 each addressee and recipient; 5) a description of the subject of the record; and 6) the  
19 privilege asserted. If a claim of privilege applies only to a portion of a record, the record  
20 shall be provided to EPA in redacted form to mask the privileged information only.

21 Settling Defendant shall retain all records that it claims to be privileged until the United  
22 States has had a reasonable opportunity to dispute the privilege claim and any such dispute  
23 has been resolved in Settling Defendant's favor. However, no records created or generated  
24 pursuant to the requirements of this or any other settlement with the United States shall be  
25 withheld on the grounds that they are privileged.

26 57. Settling Defendant hereby certifies that, to the best of its knowledge and  
27 belief, after appropriate inquiry, it has not since notification of potential liability by the  
28 United States or the State or the filing of suit against it regarding the Site, altered,

1 mutilated, discarded, destroyed or otherwise disposed of any records, information, or  
2 reports relating to its potential liability regarding the Site which are the sole record of  
3 factual information, except as such documents are destroyed or altered in  
4 the ordinary course of Settling Defendants' business and in compliance with State and  
5 federal law, and that no such records have been destroyed for an improper purpose.  
6 Settling Defendant further certifies that it has fully complied with any and all EPA requests  
7 for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e),  
8 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### 9 XVII. NOTICES AND SUBMISSIONS

10 58. Whenever, under the terms of this Consent Decree, notice is required to be  
11 given or a document is required to be sent by one Party to another, it shall be directed to the  
12 individuals at the addresses specified below and, as to the Settling Defendant, to the  
13 individual specified by Settling Defendant as the agent authorized to accept service  
14 pursuant to Section XXI, unless those individuals or their successors give notice of a  
15 change to the other Parties in writing. Written notice as specified herein shall constitute  
16 complete satisfaction of any written notice requirement of the Consent Decree with respect  
17 to the United States, EPA, DOJ, and the Settling Defendant, respectively.

18 As to the United States:

19 As to DOJ:

20 Chief, Environmental Enforcement Section  
21 Environment and Natural Resources Division  
22 U.S. Department of Justice (DJ # 90-11-2-467/5)  
23 P.O. Box 7611  
24 Ben Franklin Station  
25 Washington, D.C. 20044-7611

26 Matthew A Fogelson  
27 Trial Attorney  
28 Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
301 Howard Street, Suite 1050  
San Francisco, CA 94105

1 As to EPA:

2 Ann C. Chan  
3 Assistant Regional Counsel  
4 Office of Regional Counsel (ORC-3)  
5 U.S. EPA, Region IX  
6 75 Hawthorne Street  
7 San Francisco, CA 94105

8 Shiann-Jang Chern  
9 Remedial Project Manager  
10 Superfund Division (SFD-7-1)  
11 U.S. EPA, Region IX  
12 75 Hawthorne Street  
13 San Francisco, CA 94105

14 William Hanamoto  
15 Policy and Management Division – Superfund Accounting  
16 U.S. EPA, Region IX  
17 75 Hawthorne Street  
18 San Francisco, CA 94105

19 Joe Schmidt  
20 Regional Financial Management Officer (PMD-5)  
21 U.S. EPA, Region IX  
22 75 Hawthorne Street  
23 San Francisco, CA 94105

24 **XVIII. RETENTION OF JURISDICTION**

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

27 **XIX. INTEGRATION/APPENDICES**

28 60. This Consent Decree and its appendices constitute the final, complete, and  
exclusive agreement and understanding among the Parties with respect to the settlement  
embodied in this Consent Decree. The Parties acknowledge that there are no  
representations, agreements, or understandings relating to the settlement other than those  
expressly contained in this Consent Decree. The following appendices are attached to and  
incorporated into this Consent Decree:

“Appendix A” is a map of the Property;

“Appendix B” is a map of the Site;

“Appendix C” is the SOW;

1 "Appendix D" is the Covenant to Restrict Use of Property, Environmental  
2 Restriction.

3 **XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

4 61. This Consent Decree shall be lodged with the Court for a period of not less  
5 than 30 days for public notice and comment and for opportunity for a public hearing  
6 pursuant to Section 7003(d) of the Resources Conservation and Recovery Act, 42 U.S.C. §  
7 6973(d). The United States reserves the right to withdraw or withhold its consent if the  
8 comments regarding the Consent Decree disclose facts or considerations which indicate  
9 that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant  
10 consents to the entry of this Consent Decree without further notice.

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

14 **XXI. SIGNATORIES/SERVICE**

15 63. The undersigned representative of Settling Defendant to this Consent Decree  
16 and the Assistant Attorney General of the United States Department of Justice certify that  
17 they are authorized to enter into the terms and conditions of this Consent Decree and to  
18 execute and legally bind the Parties they represent to this document.

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

23 65. Settling Defendant shall identify, on the attached signature page, the name  
24 and address of an agent who is authorized to accept service of process by mail on its behalf  
25 with respect to all matters arising under or relating to this Consent Decree. Settling  
26 Defendant hereby agrees to accept service in that manner and to waive the formal service  
27 requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any  
28 applicable local rules of this Court, including but not limited to service of a summons. The

1 Parties agree that Settling Defendant need not file an answer to the Complaint in this action  
2 unless or until the Court expressly declines to enter this Consent Decree.

3 **XXII. FINAL JUDGMENT**

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

8  
9 SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005.

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12 United States District Judge  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United  
2 States v. The Newark Group, Inc., (N.D. Cal.) relating to the Lorentz Superfund Site.

3 For THE UNITED STATES OF AMERICA

4  
5 Date: 5/3/05

  
6 KELLY A. JOHNSON  
7 Acting Assistant Attorney General  
8 Environment and Natural Resources Division  
9 U.S. Department of Justice  
10 Washington, D.C. 20530

11  
12 Date: 5/6/05

  
13 MATTHEW A. FOGELSON  
14 Trial Attorney  
15 Environmental Enforcement Section  
16 Environment and Natural Resources Division  
17 U.S. Department of Justice  
18 301 Howard Street  
19 San Francisco, CA 94105

1 Date: 5-19-05

*Keith Takata*

2 KEITH TAKATA  
3 Director, Superfund Division  
4 U.S. Environmental Protection Agency, Region IX  
5 75 Hawthorne Street  
6 San Francisco, CA 94105

6 Date: 5/6/05

*Ann C. Chan*

7 ANN C. CHAN  
8 Assistant Regional Counsel  
9 U.S. Environmental Protection Agency, Region IX  
10 75 Hawthorne Street  
11 San Francisco, CA 94105

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1 For Settling Defendant THE NEWARK GROUP, INC.

2  
3 Date: 30 Mar '05 Robert H. Mulla

4  
5 Title: President - CEO

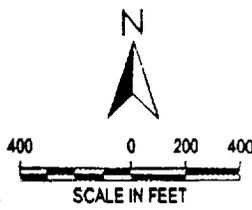
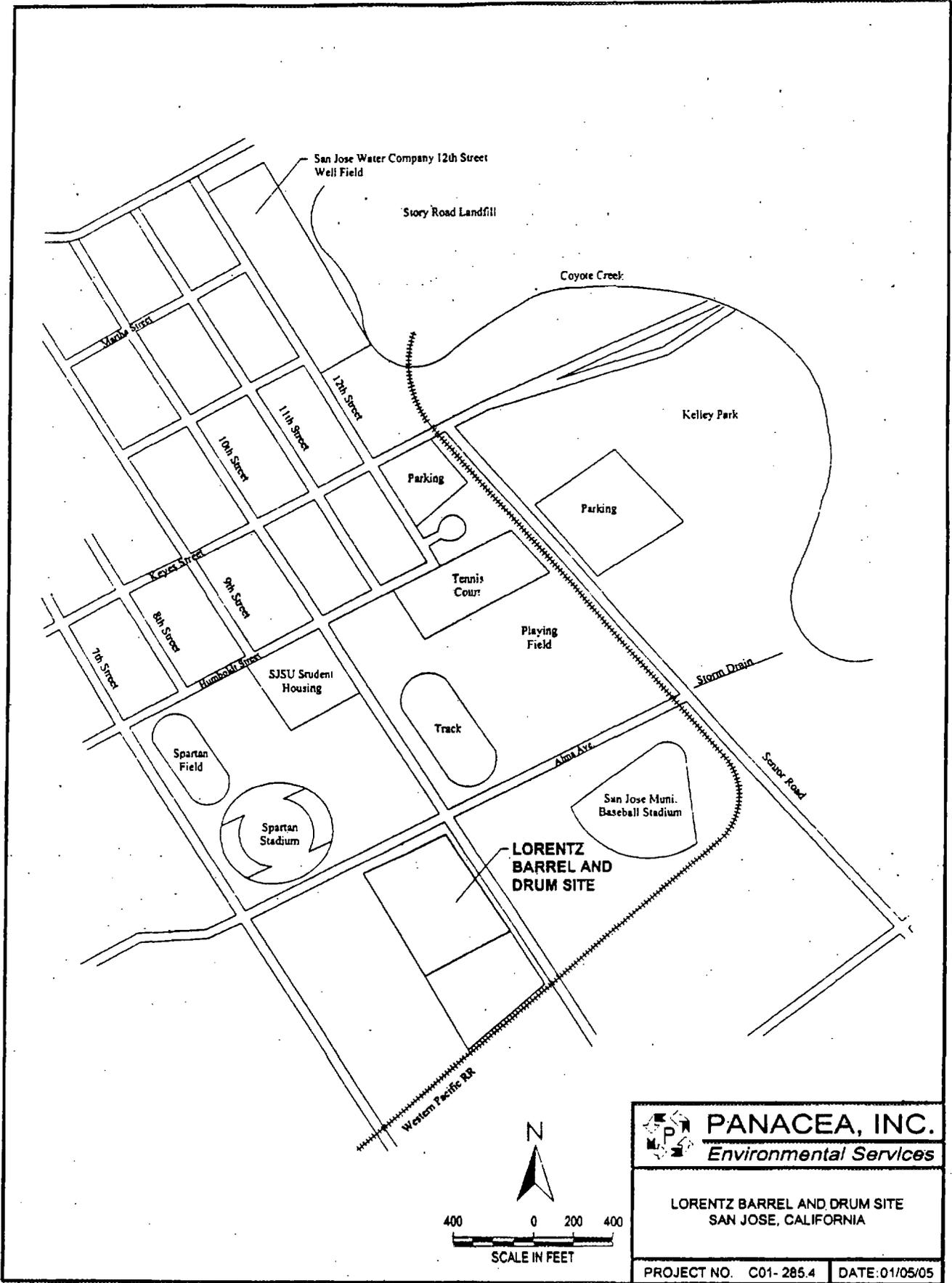
6  
7 Agent Authorized to Accept Service on Behalf of Above-signed Party:

8 Name: RICHARD RICCI, ESQ.

9  
10 Title: DIRECTOR, LOWENSTEIN SANDLER PC

11 Address: 65 LIVINGSTON AVE.  
12 ROSELAND, NJ 07068

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	<b>PANACEA, INC.</b> <i>Environmental Services</i>	
	LORENTZ BARREL AND DRUM SITE SAN JOSE, CALIFORNIA	
PROJECT NO. C01- 285.4	DATE: 01/05/05	

Consent Decree in United States v. The Newark Group (N.D. Cal.)

Appendix C  
Statement of Work  
Lorentz Barrel and Drum Superfund Site

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  - 3. Notification
  - 4. Coordination with other Federal, State and Local Agencies
  - 5. Proposed Changes or Alterations to the Existing Concrete and Asphalt Caps
- C. Work to be Performed
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  - 3. Emergency Maintenance of Concrete and Asphalt Caps
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## A. INTRODUCTION

This Statement of Work ("SOW") relates to the Lorentz Barrel and Drum Superfund Site in San Jose, California ("the Site"). The purpose of the SOW is to outline the tasks required of Settling Defendant by the Consent Decree, to which this SOW is appended, with respect to the approximately 1.47 acres of the Site currently owned by Settling Defendant (the "Property").

Two Records of Decision ("RODs") were issued for the Site.

ROD 1 (EPA/ROD/R09-88/023), for Site Operable Unit 2 ("OU-2"), was issued on September 21, 1988 and described the shallow groundwater remedy. An Explanation of Significant Differences ("ESD") for OU-2 was issued on April 24, 1998. The ESD explained the decision to change the shallow groundwater remedy from the combination of Ultra Violet/Oxidation Unit ("UV/OX") and Granular Activated Carbon ("GAC") to the GAC system alone.

ROD 2 (EPA/ROD/R09-93/094), for Site Operable Unit 1 (OU-1), was issued on August 26, 1993 and defined the selected remedy for the remainder of the Site. OU-1 remedial tasks included the construction of a cap at the Site, maintaining the cap, and installation and operation of a soil vapor extraction system. An ESD for OU-1 ROD was issued on May 29, 1998.

Settling Defendant shall follow ROD 2 (as amended by the ESD for ROD 2), this SOW, the Consent Decree to which this SOW is appended, and any applicable guidance, including guidance provided by Region 9 of the U.S. Environmental Protection Agency ("EPA"), in implementing the maintenance requirements with respect to the concrete and asphalt caps on the Property (hereinafter referred to as the "Caps").

In accordance with Section 121(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9621(c), EPA will review the protectiveness of the selected remedy at least once every five years. Such review will include review of institutional control measures and long term operation and maintenance of the Site remedy.

## B. GENERAL PROVISIONS

### 1. Definitions

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

## **2. EPA Approval**

EPA approval of any submittals does not constitute a release of responsibility by Settling Defendant for inspections and work to be performed pursuant to this SOW.

## **3. Notification**

Settling Defendant shall notify the CERCLA lead agency, in writing, of any future intentions to cease operations for reasons other than approved scheduled maintenance or unforeseen emergency (such as earthquake or fire), at least 14 days in advance of ceasing operations.

## **4. Coordination with other Federal, State, and Local Agencies**

Settling Defendant shall contact all appropriate federal, state, and local agencies with regulatory authority to determine requirements related to the Property and the intended use of the Property. Settling Defendant shall furnish a copy of all correspondence and submittals relating to environmental regulatory compliance made to federal (except EPA correspondence), state, and local agencies to EPA and the California Department of Toxic Substances Control ("DTSC") in a timely manner. In addition to environmental regulatory compliance, the Settling Defendant shall provide copies of building permit applications and other permits for operation of facilities at the Property to EPA and DTSC.

## **5. Proposed Changes or Alterations to the Existing Concrete and Asphalt Caps**

Settling Defendant must contact EPA and DTSC in the planning stage if changes in the use of the Property, construction of new buildings, modifications of the Caps, subsurface drilling/excavation, or well installation activities are planned. Settling Defendant must submit a description of the intended change to EPA and DTSC and receive written approval prior to initiating work. Depending on the nature of the proposed change, EPA and DTSC may require a submittal of detailed plans and documentation for review and approval.

## **C. WORK TO BE PERFORMED**

### **1. Routine Maintenance of Concrete and Asphalt Caps**

On an on-going basis:

- a. Settling Defendant shall repair or reseal the Caps in areas where the pavement has cracked.
- b. If heavy equipment will be used on any portion of the Caps, Settling

Defendant shall confirm that such portion of the Caps has adequate strength to support the loading of heavy equipment.

c. Settling Defendant shall repair any potholes, distressed areas, or other type of breach in the Caps within two weeks of the formation of such pothole or breach, regardless of the size of the pothole or breach.

d. Settling Defendant shall immediately install a temporary barrier over any pothole, distressed area, or other type of breach in the Caps and such temporary barrier must effectively prevent dust or soil migration and prevent human contact with the soils. Such temporary barriers shall remain in place until the Caps are effectively repaired. Any excavated or repaired area shall be restored to pre-excavation thickness of the concrete and/or asphalt so that the excavated or repaired area is level and flush with the surrounding Cap.

## **2. Inspections of Concrete and Asphalt Caps**

a. Settling Defendant shall conduct a visual inspection of the Caps every (i) June, (ii) September, and (iii) in each month from October through the following March, and provide a status report ("Routine Status Report") to EPA and to DTSC within 30 days after each such visual inspection documenting, at a minimum, the condition of the Caps, including a description of any cracks, breaches or other maintenance concerns. EPA may adjust the schedule for the submission of Routine Status Reports based on the actual use of the Property and the performance of the Caps. The initial Routine Status Report shall be submitted within ninety (90) days of the Effective Date of the Consent Decree. Routine Status Reports may be submitted in electronic format.

b. One year from the Effective Date of the Consent Decree, and every two years thereafter, a complete inspection of the Property shall be made jointly by the facility manager and a qualified engineer. The joint inspection should identify any need for improvements above and beyond normal pavement maintenance which are necessary to minimize the potential for distress to the Caps with the goal of maintaining the integrity of the Caps. Settling Defendant shall submit to EPA and to DTSC a written report certified by the qualified engineer ("Joint Inspection Report") summarizing the finding of the joint inspection, including any inspection photos of the Property which should be included as necessary. At a minimum, the report shall include the field observations, conclusions, recommended work tasks and the schedule for work that shall be performed to maintain the Caps. In any month in which a Joint Inspection Report is submitted, no Routine Status Report need be submitted.

## **3. Emergency Maintenance of Concrete and Asphalt Caps**

In the event of a catastrophic event such as an earthquake or break of subsurface utility

pipelines, Settling Defendant shall immediately conduct a thorough investigation of the Property and notify EPA and DTSC within forty-eight (48) hours after such event to discuss the condition of the Caps. Settling Defendant shall submit an incident report to EPA and DTSC within two weeks after each such event. In the event the Caps are significantly impacted, within 30 days after the event, Settling Defendant shall submit a proposal to EPA and DTSC, for review and approval, describing the actions which will be required to repair the Caps and setting forth a schedule for the repair work.

#### **D. OTHER SUBMITTALS**

Within ninety (90) days of the Effective Date of the Consent Decree, Settling Defendant shall submit a Property Maintenance Plan to both EPA and DTSC. The Property Maintenance Plan shall include a Routine Property Maintenance Section and an Emergency Response Section.

##### **1. Routine Property Maintenance Section**

The Routine Property Maintenance Section of the Property Maintenance Plan, at a minimum, shall include a map of the Property; contact information for relevant personnel; a schedule and description of inspection and maintenance work to be performed; qualifications of inspection personnel; a sample form for the Routine Status Report which should include a section for the description of any maintenance work performed since submission of the last Routine Status Report; any existing maintenance or repair records generated prior to the Effective Date of the Consent Decree; a sample form for the Joint Inspection Report; a description of record keeping practices relevant to maintenance of the Property, and health, safety, and reporting protocols with respect to repairs of the Caps. The Property Maintenance Plan should be dated and referenced by version number.

##### **2. Emergency Response Section**

The Emergency Response Section of the Property Maintenance Plan, at a minimum, shall include a description of the Property and environmental contamination; maps of the Property; names and contact information for relevant emergency response personnel (e.g. emergency contact person, Property manager, fire department, utility company); and emergency response protocol.

#### **E. CONTACTS**

Whenever under the terms of this SOW, 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:

pipelines, Settling Defendant shall immediately conduct a thorough investigation of the Property and notify EPA and DTSC within forty-eight (48) hours after such event to discuss the condition of the Caps. Settling Defendant shall submit an incident report to EPA and DTSC within two weeks after each such event. In the event the Caps are significantly impacted, within 30 days after the event, Settling Defendant shall submit a proposal to EPA and DTSC, for review and approval, describing the actions which will be required to repair the Caps and setting forth a schedule for the repair work.

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The Routine Property Maintenance Section of the Property Maintenance Plan, at a minimum, shall include a map of the Property; contact information for relevant personnel; a schedule and description of inspection and maintenance work to be performed; qualifications of inspection personnel; a sample form for the Routine Status Report which should include a section for the description of any maintenance work performed since submission of the last Routine Status Report; any existing maintenance or repair records generated prior to the Effective Date of the Consent Decree; a sample form for the Joint Inspection Report; a description of record keeping practices relevant to maintenance of the Property; and health, safety, and reporting protocols with respect to repairs of the Caps. The Property Maintenance Plan should be dated and referenced by version number.

##### **2. Emergency Response Section**

The Emergency Response Section of the Property Maintenance Plan, at a minimum, shall include a description of the Property and environmental contamination; maps of the Property; names and contact information for relevant emergency response personnel (e.g. emergency contact person, Property manager, fire department, utility company); and emergency response protocol.

#### **E. CONTACTS**

Whenever under the terms of this SOW, 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:

EPA:

Mr. Shiann-Jang Chern  
USEPA, Region IX, SFD-7-4  
75 Hawthorne Street  
San Francisco, CA 94105  
Telephone: (415)-972-3268

DTSC:

Mr. Ted Parks,  
California Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200, Building F  
Berkeley, CA 94710  
Telephone: (510)-540-3805

The Newark Group, Inc.

c/o Richard F. Ricci, Esq.  
Lowenstein Sandler PC  
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David Asher  
Vice President, General Counsel and Secretary  
The Newark Group, Inc.  
20 Jackson Drive  
Cranford, N.J. 07016

EPA:

Mr. Shiann-Jang Chern  
USEPA, Region IX, SFD-7-4  
75 Hawthorne Street  
San Francisco, CA 94105  
Telephone: (415)-972-3268

DTSC:

Mr. Ted Parks,  
California Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200, Building F  
Berkeley, CA 94710  
Telephone: (510)-540-3805

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Exempt from Recording Fees per Government  
Code Section 27383

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Pages 15



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Taxes.....  
Copies.....  
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**RECORDING REQUESTED BY**

The Newark Group, Inc.  
20 Jackson Drive  
Cranford, New Jersey 07016

**WHEN RECORDED, MAIL TO:**

Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710  
Attention: Barbara J. Cook, P.E., Chief  
Northern California-Coastal Cleanup  
Operations Branch

BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
County Agency

RDE # 012  
6/10/2005  
10 50 AM

SPACE ABOVE THIS LINE

RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY**

**ENVIRONMENTAL RESTRICTION**

(Re: Northwest Portion of Lorentz Barrel and Drum Superfund Site, Assessor's Parcel  
Nos. 477-09-034 and 477-09-036)

This Covenant and Agreement ("Covenant") is made by and between The Newark Group, Inc. (the "Covenantor"), the current owner of property situated in San Jose, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471 (c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of the U.S. Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately 1.60 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located at 384 and 388 East Alma Avenue, San Jose, County of Santa Clara, State of California. This property is more specifically described as Santa Clara County Assessor's Parcel Numbers 477-09-034 and 477-09-036.

1.02. The Property is the northwest portion of the Lorentz Barrel and Drum Superfund Site ("LB&D Site"), where a drum recycling facility operated from 1947 to 1987. Improper waste handling practices during the drum recycling operation resulted in chemical contamination of the soil and groundwater at the LB&D Site. The LB&D Site was added to U.S. EPA's National Priorities List on October 4, 1989 (Site ID No. 200061; CERCLIS ID No. CAD029295706). Remediation at the LB&D Site is being conducted under the authority and supervision of the U.S. EPA.

1.03. The two parcels that comprise the Property were grant deeded in 1981 and 1984 to Arata Western, which became The Newark Group, Inc. Prior to this property transfer, a portion of the Property was used for stockpiling drums in conjunction with the operations of Lorentz Barrel and Drum. In 1991, the Property was investigated as part of the Remedial Investigation of the LB&D Site conducted by U.S. EPA. Thirty soil borings were completed on the Property to depths of approximately 5.5 feet. The results of the sampling were summarized in the report "Remedial Investigation: Addendum No. 2, Recycled Fibers, Inc. Soils Investigation Report" (RI Addendum No. 2) prepared by URS Consultants for U.S. EPA and dated June 19, 1992.

1.04. Hazardous substances, as defined in HSC section 25316, CERCLA section 101(14), and 40 Code of Federal Regulations sections 261.3 and 302.4 remain on the Property. The hazardous substances identified in RI Addendum No. 2 include: 4,4-DDT, Aroclor 1260, bis (2-ethylhexyl)phthalate, and several polynuclear aromatic hydrocarbons including benzo(a)pyrene and benzo(a)anthracene. RI Addendum No. 2

indicated that the Property had concentrations of polychlorinated biphenyls, pesticides, and semi-volatile organic compounds in soil at levels exceeding the  $10^{-6}$  risk level, and in the case of Aroclor 1260, exceeding the  $10^{-5}$  risk level.

1.05. The remedy selected for the LB&D Site by U.S. EPA in the Record of Decision (ROD) issued on August 26, 1993 consists of groundwater and soil vapor extraction and treatment, construction of an engineered cap on the LB&D Site, except for the area comprised by the Property, and deed restrictions. The ROD concluded that there was minimal risk since the Property was covered with concrete or asphaltic-concrete and soil was not exposed. However, the ROD also concluded that there could be health risks if the soil were to be exposed in the future. The existing pavement and buildings on the Property shall hereafter be referred to as the "Cap." The remedy chosen by U.S. EPA in the ROD required that deed restrictions be placed on and Five-Year Reviews be conducted for the LB&D Site, including the Property.

1.06. The provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions") set forth in this Covenant are necessary to preclude potential future users' exposure to hazardous substances identified in Section 1.04.

## ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or an ownership interest in, all or any portion of the Property.

2.04. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA is the CERCLA Lead Agency at the time of the recording of this instrument.

### ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department; (d) is for the benefit of U.S. EPA as a third party beneficiary; and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471 (b), all successive owners of the Property are expressly bound hereby for the benefit of the Department and U.S. EPA.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, sublessor, assignor or other transferor shall give the buyer, lessee, sublessee, assignee or other transferor written notice that hazardous substances are located at and adjacent to the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, assignments, or other transfers of all or any portion of the Property which are hereafter executed or renewed. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is insubstantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTION AND COVENANT TO RESTRICT USE OF PROPERTY, RECORDED IN THE PUBLIC LAND RECORDS ON [DATE] \_\_\_\_, IN BOOK \_\_\_\_, PAGE \_\_\_\_, IN FAVOR OF AND ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL, AND FOR THE BENEFIT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

3.05. Conveyance of Property. The Owner shall provide notice to the Department and to U.S. EPA no later than thirty (30) days before any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessor encumbrances). The Department and U.S. EPA shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

#### ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

- (e) A public park.

4.02. Soil Management

- (a) Except as provided by Section 4.02(b) below, the Property shall not be used in such a way that will disturb or interfere with the integrity of the Cap installed at the Property.
- (b) The Property shall be used and developed in a way that preserves the integrity of the Cap, except that under the supervision of the CERCLA Lead Agency, the Cap may be removed or disturbed temporarily to install fixtures, repair or replace the Cap or install improvements on the Property. The capped soil shall not be disturbed without a Soil Management Plan and a Health and Safety Plan submitted to the CERCLA Lead Agency for review and approval.
- (c) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (d) The Owner shall provide the CERCLA Lead Agency written notice at least fourteen (14) days prior to any activities which will disturb the Cap and underlying soils.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops), and
- (b) Extraction of groundwater for purposes other than site remediation

4.04. Non-Interference with Cap. Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the CERCLA Lead Agency.
- (b) All uses and development of the Capped Property shall preserve the integrity and physical accessibility of the Cap.

- (c) The Cap shall not be altered without written approval by the CERCLA Lead Agency.
- (d) Covenantor shall notify the CERCLA Lead Agency of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the CERCLA Lead Agency shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Access for the Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions under CERCLA, the National Contingency Plan, 40 C.F.R. Part 300 and its successor provisions, or federal law.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Plan shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Plan until the CERCLA Lead Agency determines that no further Operation and Maintenance is required.

#### ARTICLE V ENFORCEMENT

5.01. Enforcement. The Department shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. This Covenant shall be enforceable by the Department pursuant to H&SC, Division 20, Chapter 6.5, Article 8 (commencing with section 25180). Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any

improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA, and violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI  
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no variance may be granted under this paragraph 6.01 without prior review and prior concurrence of the variance by U.S. EPA. If requested by the Department or U.S. EPA, any approved variance shall be recorded in the land records by the person or entity granted the variance.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no termination may be granted under this Paragraph 6.02 without prior review and prior written concurrence of the termination by U.S. EPA.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, after review and prior written concurrence by U.S. EPA, this Covenant shall continue in effect in perpetuity.

**ARTICLE VII**  
**MISCELLANEOUS**

7.01. No Dedication or Taking. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under state or federal law.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (ii) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

**To Owner:**

Robert H. Mullen  
President and CEO  
The Newark Group, Inc.  
20 Jackson Drive  
Cranford, New Jersey 07016

**To Department:**

Barbara J. Cook, P.E., Chief  
Department of Toxic Substances Control  
Northern California - Coastal Cleanup Operations Branch  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710