

APPENDIX E

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Tax Parcel No.:

Prepared By: [Name of Owner}

Record and Return To: [Name of Owner Agent and Address]

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by [*Names of all Owners of the Property and add other Holders, if any*] (“Owner”) and the Delaware Department of Natural Resources and Environmental Control (“DNREC”)[ADD: additional names of HOLDERS(e.g. names of performing Settling Defendants) (Collectively referred to as “Holders”) pursuant to 7 *Del. C.* ch. 79, subchapter II, Uniform Environmental Covenants Act, for the purpose of subjecting the property identified below to the activity and use limitations and requirements as set forth herein.

WITNESSETH

WHEREAS, [Name of Owner Entity] is the Owner of certain real estate located within the XXX acre Delaware Sand & Gravel Superfund Site (“Site”) located in [Address] [New Castle/Kent/Sussex] County, Delaware, as described on **Exhibit A** attached hereto and made apart hereof (the “Property”); and

WHEREAS, the United States Environmental Protection Agency (“EPA”) issued a Record of Decision Amendment No.2 dated December 12, 2017 (“ROD Amendment No.2”) which, along with prior decision documents, including a 1988 ROD, a 1993 ROD Amendment and an Explanation of Significant Differences in 2003 (collectively referred to as the “Selected Remedy”), are included in the Site’s Administrative Record available at: <https://semspub.epa.gov/src/collection/03/AR155>; and

WHEREAS, in accordance with the Selected Remedy, Owner is willing to establish this Environmental Covenant on the property;

WHEREAS, Owner and DNREC acknowledge and agree that EPA, or its successors, shall be permitted to enforce the obligations and conditions, including the activity and use limitations and requirements, set forth herein;

NOW THEREFORE, Owner(s) and HOLDERS agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to 7 *Del. C.* ch. 79, subchapter II, Uniform Environmental Covenants Act.
2. Property. This Environmental Covenant concerns an approximately [_____] acre tract of real property located within the XXXX acre Site located in New Castle County, Delaware and further identified on the [*New Castle/Kent/Sussex*] County tax maps as tax parcel number(s) [or a portion of tax parcel number(s)] _____] (“the Property”). The Property is located at [_____] , in [_____] County, Delaware and is more particularly described in Exhibit A attached hereto and incorporated herein by reference.
3. Owner. [*Name of Owner(s)*], located at [*business or residential address as applicable*], _____, is the owner of the Property. For purposes of this Environmental Covenant, “Owner” has the meaning set forth in 7 *Del. C. Section 7907(7)*.
4. Holder. [LIST NAMES OF HOLDERS] is/are the Holder(s) of this Environmental Covenant.
5. Activity and Use Limitations and Requirements. Pursuant to the ROD Amendment No.2, Owner hereby agrees to comply with the following activity and use limitations and requirements [LIST ALL USE/ACTIVITY RESTRICTIONS BELOW]:
6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, in accordance with 7 *Del. C.* § 7910(a), subject to amendment or termination as set forth herein. The term “Transferee” as used in this Environmental Covenant shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to 7 *Del. C.* § 7916. Failure to timely seek to enforce compliance with this Covenant or the use limitations or requirements contained herein by any Holder shall not bar any subsequent enforcement effort by such Holder and shall not be deemed a waiver of the Holder’s right to take action to enforce for non-compliance. Nothing in this Environmental Covenant shall restrict the Secretary of DNREC from exercising any other authority provided to him/her under applicable law. *Additionally, Owner and Holders understand and agree that EPA may enforce compliance with this Environmental Covenant, including, but not limited to, the activity and use restrictions contained herein.*

8. Rights of Access. Owner hereby grants to DNREC, EPA and their employees, agents, and contractors, the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Within thirty (30) days of written request by DNREC or EPA, or by the end of every January following the recording of this Environmental Covenant, Owner shall submit to EPA, DNREC, and any Holder, written documentation describing compliance with this Environmental Covenant.

10. Remedial Decision Record. EPA's Administrative Record containing all documents that support the issuance of the ROD and ESDs is available for review at <https://semspub.epa.gov/src/collection/03/AR155> or upon request to EPA.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations and requirements set forth in this Environmental Covenant, and shall identify the location where the Covenant has been recorded. The notice upon conveyance shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE ENVIRONMENTAL COVENANT DATED AND RECORDED IN THE OFFICIAL RECORDS OF THE [NC/KC/SC] OFFICE OF THE RECORDER OF DEEDS ON THE DATE OF THIS DOCUMENT AND NOTED AS THE INSTRUMENT NUMBER ON THE TOP LEFT CORNER OF THE FIRST PAGE OF THIS ENVIRONMENTAL COVENANT. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS AND REQUIREMENTS:

[Restate the subparagraphs set forth in Paragraph # 5 above.]

Owner shall notify EPA and DNREC within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone numbers of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to [LIST NAMES OF HOLDERS] the Holder(s) of this Environmental Covenant as follows:

[a.] that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all of the obligations hereunder;

[b.] that the Owner is the sole owner of the Property and holds fee simple title

which is free, clear and unencumbered; and that as of the effective date of this Environmental Covenant, no person holds a mortgage or lien on the Property that is superior in time and right to this Environmental Covenant; and

OR

[if the Owner is not the sole owner of the Property or does not hold fee simple title that is free, clear and unencumbered,] that each party holding an interest in the Property has agreed to subordinate such interest to this Environmental Covenant pursuant to 7 Del. C. § 7908(c)(3), as evidenced by the subordination agreement(s) attached hereto as Exhibit B.

- [c.] that the Owner has identified all other parties that hold any interest (e.g., an encumbrance) in the Property and has notified such parties of the Owner's intention to enter into this Environmental Covenant; and
- [d.] that this Environmental Covenant will not materially violate, contravene or constitute a material default under any other agreement, contract or instrument to which the Owner is a party or by which the Owner may be bound or affected.

12. Amendment or Termination.

[a.] This Environmental Covenant is subject to amendment or termination by the mutual consent of Owner (or Transferee), EPA and DNREC pursuant to 7 Del. C. § 7915. As used in this Environmental Covenant, the term "Amendment" means any material changes to the provisions of the Environmental Covenant, including the activity and use limitations or requirements set forth herein; or, the elimination of one or more activity and use limitations or requirements when there is at least one limitation or requirement remaining. An Amendment shall also include an assignment of the Environmental Covenant as specified in 7 Del. C. § 7915.

[b.] As used in this Environmental Covenant, the term "Termination" shall mean the elimination of all activity and use limitations and requirements set forth herein and any other material obligations provided for by this Environmental Covenant.

[c.] This Environmental Covenant may be amended or terminated only by a written instrument duly approved by EPA, or its successor, and the Owner (or Transferee) of the Property and executed by the Owner of the Property and DNREC. Within thirty (30) days of the execution of any Amendment, or the Termination of the Environmental Covenant by the Owner and DNREC, the Owner shall file such instrument for recording in the Office of the [*New Castle/Kent/Sussex*] County Recorder of Deeds, and shall

provide a file-and date-stamped copy of the recorded instrument to DNREC, EPA and to [the Name of Municipality (if applicable)].

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Delaware.
15. Recordation. Within thirty (30) days following the date that this Environmental Covenant is fully executed, it shall be filed by the Owner in the Office of the [New Castle/Kent/Sussex] Recorder of Deeds, in the same manner as a deed to the Property. This Covenant must be indexed in the grantor's index in the name of the Owner, and in the grantee's index in the name of the Holder, DNREC.
16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant is recorded as a deed record for the Property in the Office of the [New Castle/Kent/Sussex] County Recorder of Deeds.
17. Distribution of Environmental Covenant. The Owner shall distribute a filed and date stamped copy of the recorded Environmental Covenant to DNREC, EPA and to [the Name of Municipality (if applicable)], Delaware.
18. Notice. Any document or communication that is required to be provided to the parties to this Environmental Covenant shall be submitted to:

TO HOLDER(s): Environmental Program Administrator
DNREC-RS
391 Lukens Drive
New Castle, DE 19720

TO OWNER:
[Name of Owner's Signatory]
[Title or Position]
[Address]

TO EPA AS ENFORCING AUTHORITY:
Attn: Chief, Site Remediation Branch
US EPA Region III
4 Penn Center

19. Authorized Signatory. The undersigned representative of the Owner represents and certifies that he/she is authorized to execute this Environmental Covenant on the Owner's behalf.

IT IS SO AGREED:

[NAME OF OWNER]

Signature of Owner

Printed Name and Title

Date

State of _____)

_____)

County of _____)

ss:

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of _____, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of _____.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 20__.

Notary Public

