

**IN THE MATTER OF:**

JPMorgan Chase Bank, N.A., in its fiduciary capacity as trustee of The Donald D. Shepard and Emily H. Shepard Trust,

# SETTLEMENT AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

EPA Docket No.  
CERCLA-03-2012-0062DC

PROCEEDING UNDER SECTION

122(h)(1) OF CERCLA,  
42 U.S.C. § 9622(h)(1)

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## I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to EPA Regional Administrators by Delegation 14-14-D and re-delegated to the Director of the Hazardous Site Cleanup Division by Delegation 14-14-D (1200 TN RIII-157) on November 7, 2003. This Settlement Agreement is made and entered into by EPA and JPMorgan Chase Bank, N.A., in its fiduciary capacity as successor trustee under that certain indenture originally dated December 31, 1951, by and among Ailsa M. Bruce, *et al.*, and the Charleston National Bank ("Trustee" or "Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

## II. BACKGROUND

2. This Settlement Agreement concerns the Browning Lumber Company Superfund Site ("Site") located in or near Bald Knob, Boone County, West Virginia. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the Trustee have performed response actions at the Site pursuant to Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604, to address elevated levels of arsenic and other hazardous substances there.

4. In performing response actions, EPA has incurred response costs at or in connection with the Site, which Trustee represents is enrolled in the West Virginia Voluntary Remediation Program. The State of West Virginia has preliminarily approved the Trustee's Remedial Action Work Plan for the Site that will consist of institutional controls prohibiting use of groundwater at the Site for drinking purposes.

5. EPA alleges that Settling Party is a potentially responsible party under Sections 107(a) and 107(n) of CERCLA, 42 U.S.C. §§ 9607(a) and 9607(n), and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

6. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and is entered into without the admission or adjudication of any issue of fact or law.

## III. PARTIES BOUND

7. This Agreement shall be binding upon EPA and upon Settling Party and their successors and assigns; provided, however, that this Agreement shall be binding upon Trustee and any other successor fiduciary only in their fiduciary capacities and not in any of their personal capacities, except to the extent personal liability may exist under Section 107(n) of CERCLA, 42

U.S.C. § 9607(n). Any change in ownership or corporate or other legal status of Settling Party, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Party under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

#### IV. DEFINITIONS

8. Unless otherwise expressly provided in this Agreement, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or its appendix, the following definitions shall apply:

- a. "Administrative Clean-Up Agreement" shall mean the Administrative Settlement Agreement and Order on Consent for Removal Response Action (EPA Docket No. CERC-03-2007-0028DC), which was issued under Sections 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622, on or around January 17, 2007, and amended on September 28, 2011, and under which the Trustee has been performing a removal action at the Site with EPA oversight.
- b. "Agreement" shall mean this Administrative Settlement Agreement for Recovery of Past Response Costs and any appendix hereto.
- c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.
- d. "Day" or "day" shall mean a calendar day. In computing any period of time under this Agreement, if the last day should fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- e. "Effective Date" shall be the date upon which EPA notifies the Trustee that the public-comment period required by Paragraph 40 has closed and that any comments received do not require modification of or EPA's withdrawal from this Agreement.
- f. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.
- g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. "Institutional Controls" shall mean proprietary controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, and/or resource use to minimize the potential for human exposure to waste material at or in connection with the Site; (ii) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the

protectiveness of the response action; and/or (iii) provide information intended to modify or guide human behavior at or in connection with the Site.

- i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.
- k. "Parties" shall mean EPA and JPMorgan Chase Bank, N.A.
- l. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has incurred or paid at or in connection with the Site, plus accrued Interest on all such costs through the Date of Payment established in Paragraph 9 of this Agreement.
- m. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, which is also known as the Resource Conservation and Recovery Act.
- n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- o. "Settling Party" shall mean JPMorgan Chase Bank, N.A., in its fiduciary capacity as successor trustee under that certain indenture originally dated December 31, 1951, by and among Ailsa M. Bruce, *et al.*, and the Charleston National Bank.
- p. "Site" shall mean the Browning Lumber Company Superfund Site, encompassing approximately 16.43 acres, located along Route 85 (a/k/a Pond Fork Road) in Bald Knob, Boone County, West Virginia, and generally shown on the map included as Appendix A to this Agreement.
- q. "Site Special Account" shall mean the Browning Lumber Company Site special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).
- r. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.
- s. "Waste Material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous material" under the

West Virginia Hazardous Waste Management Act, W. Va. Code §§ 22-18-1, *et seq.*

## V. PAYMENT OF RESPONSE COSTS

9. Payment by Settling Party for Response Costs. Within thirty (30) days after the Effective Date, Settling Parties shall pay to EPA \$1,280,000.00.

10. Payment by Settling Parties shall be made to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A3FD and the EPA docket number for this action -- CERCLA-03-2012-0062DC.

11. At the time of payment, Settling Parties shall send notice that payment has been made to EPA in accordance with Section XIII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the Site/Spill ID Number A3FD and the EPA docket number for this action -- CERCLA-03-2012-0062DC.

12. The total amount to be paid by Settling Parties pursuant to Paragraph 9 either (a) shall be deposited by EPA in the Browning Lumber Company Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site; or (b) shall be transferred by EPA to the EPA Hazardous Substance Superfund.

## VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

13. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 9 (Payment by Settling Party for Response Costs) by the required due date, Interest shall begin to accrue on the unpaid balance and shall continue to accrue through the date of payment.

14. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 9 (Payment by Settling Party for Response Costs) are not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$1,000.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days after the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties," shall reference the Site/Spill ID Number A3FD and the EPA docket number for this action, and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

c. At the time of payment, Settling Party shall send notice that payment has been made to:

Racine Davis (3HS62)  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street  
Philadelphia, PA 19103

and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notices shall reference Site/Spill ID Number A3FD and the EPA docket number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

15. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply

with the requirements of this Agreement, should Settling Party fail or refuse to comply with the requirements of this Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

16. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Agreement.

## VII. COVENANTS BY EPA

17. Covenants for Settling Party by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon receipt by EPA of the full payment required by Paragraph 9 (Payment by Settling Party for Response Costs), plus any Interest thereon or any stipulated penalty as are required at the time of such payment under Paragraph 13 (Interest on Late Payments) or Paragraph 14 (Stipulated Penalty). These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. These covenants extend only to Settling Party and do not extend to any other person.

## VIII. RESERVATIONS OF RIGHTS BY EPA

18. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenants for Settling Party by EPA in Paragraph 17. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

19. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or

judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

20. Nothing in this Agreement shall abrogate, diminish, or excuse the ongoing obligations of Settling Party under the Administrative Clean-Up Agreement.

#### IX. COVENANTS BY SETTLING PARTY

21. Covenants by Settling Party. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were or are incurred, including any claim under the United States Constitution, the Constitution of the State of West Virginia, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any against the United States, including any department, agency, or instrumentality of the United States, claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or § 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

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

23. Claims Against De Micromis Parties. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including, but not limited to, claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to response actions at the Site against any person where the person's liability to Settling Party with respect to said response actions at the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

24. The waiver in Paragraph 23 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA



determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

25. Claims Against Ability-to-Pay Parties. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including, but not limited to, claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs relating to the Site against any person that has entered or in the future enters into a final settlement with EPA based on limited ability to pay with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

#### X. EFFECT OF SETTLEMENT/CONTRIBUTION

26. Except as provided in Paragraph 23 (Claims Against De Micromis Parties) and Paragraph 25 (Claims Against Ability-to-Pay Parties), nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as provided in Paragraph 23 (Claims Against De Micromis Parties) and Paragraph 25 (Claims Against Ability-to-Pay Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

27. The Parties agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

28. The Parties agree that this Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or

claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs. The Parties further agree that this Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States for Past Response Costs.

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

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

31. Effective upon its execution of this Agreement, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 28, and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert and may not maintain any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by EPA.

## XI. ACCESS TO INFORMATION

32. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information, including records, reports, documents, and other information in electronic form (hereinafter referred to as "Records"), within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence,

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or other documents or information related to the Site.

33. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business-confidentiality claims covering part or all of the Records submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Parties that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Party.

b. Settling Party may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing Records, it shall provide EPA with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all Records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no Records created or generated pursuant to the requirements of this Agreement or the Administrative Clean-up Agreement shall be withheld from EPA on the grounds that they are privileged or confidential.

34. No claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## XII. RETENTION OF RECORDS

35. Until three (3) years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

36. After the conclusion of the three (3)-year document retention period in the preceding Paragraph, Settling Party shall notify EPA at least ninety (90) days prior to the destruction of any such Records and, upon request by EPA, Settling Party shall deliver any such Records to EPA. Settling Party may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: (1) the title of the Record; (2) the date of the Record; (3) the name,

title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all Records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no Records created or generated pursuant to the requirements of this Settlement Agreement or the Administrative Clean-Up Agreement shall be withheld on the grounds that they are privileged or confidential.

37. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### XIII. NOTICES AND SUBMISSIONS

38. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

#### As to EPA:

Robert S. Hasson (3RC41)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street  
Philadelphia, PA 19103  
[Hasson.robert@epa.gov](mailto:Hasson.robert@epa.gov)

Racine Davis (3HS62)  
Compliance Officer  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street  
Philadelphia, PA 19103  
[Davis.racine@epa.gov](mailto:Davis.racine@epa.gov)

#### As to Settling Party:

Michael W. Steinberg

Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
[msteinberg@morganlewis.com](mailto:msteinberg@morganlewis.com)

#### XIV. INTEGRATION/APPENDIX

39. This Agreement and its appendix constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendix are attached to and incorporated into this Settlement Agreement: "Appendix A" is the map of the Site.

#### XV. PUBLIC COMMENT

40. This Agreement shall be subject to a public comment period of not less than thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

#### XVI. ATTORNEY GENERAL APPROVAL

41. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

#### XVII. EFFECTIVE DATE

42. The effective date of this Agreement shall be the date upon which EPA issues written notice to Settling Party that the public comment period pursuant to Paragraph 40 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:

  
RONALD BORSELLINO

Director, Hazardous Site Cleanup Division  
U.S. Environmental Protection Agency, Region III

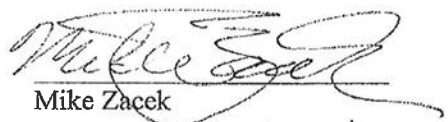
  
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of **CERCLA-03-2012-0062DC**, relating to the **Browning Lumber Company Superfund Site**:

FOR SETTLING PARTY: JPMorgan Chase Bank, N.A. , in its fiduciary capacity as successor trustee under that certain indenture originally dated December 31, 1951, by and among Ailsa M. Bruce, *et al.*, and the Charleston National Bank

ADDRESS: 3245 Elizabeth Lake Road  
Waterford, MI, 48328-3004

By:



Mike Zacek

June 4, 2012

Vice President and Trust Officer

## Appendix A (Site Map)



U:\Project\Browning Lumber\04507-102\Figures\ProgressReport.dwg



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SITE LAYOUT		
BROWNING LUMBER SITE GREENWOOD, BOONE COUNTY WEST VIRGINIA		
SCALE:	DATE:	PROJECT NUMBER:
AS SHOWN	09/10/07	04507-102-107

ENSR   ALCOM
ENSR CORPORATION 2005 CASOT BOULEVARD WEST, SUITE 100 LANGHORNE, PENNSYLVANIA 18047 PHONE: (215) 757-4000 FAX: (215) 757-3904 WEB: HTTP://WWW.ENSR.ALCOM.COM

DESIGNED BY:	NO.	DESCRIPTION	DATE	BY
MS				
DRAWN BY:				
JK				
CHECKED BY:				
APPROVED BY:				