

## SETTLEMENT AGREEMENT

### SETTLEMENT AGREEMENT

This Settlement Agreement, together with its Exhibits, is made as of March 12, 2008 by and between the Settling Defendants (as defined below), on the one hand, and the Settling Plaintiffs (as defined below), on the other hand, regarding the settlement of all cases and claims between them involving methyl tertiary butyl ether and Other Authorized Oxygenates (as defined below), including but not limited to all cases and claims in the MDL litigation captioned: *In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, Master File No. 1:00-1898, MDL 1358 (SAS), M21-88 (S.D.N.Y.) (hereinafter collectively referred to as the "Settlement Agreement").

#### I. RECITALS

WHEREAS, methyl tertiary butyl ether ("MTBE") was used as an octane enhancer and a component oxygenate of and additive to gasoline at certain times by certain manufacturers and refiners of gasoline;

WHEREAS, tertiary butyl alcohol ("TBA") may have been used as a component oxygenate of and additive to gasoline at certain times and is a breakdown product of MTBE;

WHEREAS, certain Plaintiffs have commenced and maintain lawsuits in various jurisdictions, including but not limited to MDL 1358, in connection with MTBE and/or TBA;

WHEREAS, in the referenced lawsuits, certain Plaintiffs have alleged that certain Defendants are liable based on a commingled product theory of liability and the court has not granted Defendants' motions to dismiss such theory to date;

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WHEREAS, trial currently is scheduled to commence in the spring of 2008 in one of the cases in MDL 1358;

WHEREAS, Settling Defendants (as defined below), while not admitting any wrongdoing or conceding that Plaintiffs have suffered any cognizable injury due to MTBE and/or TBA, nonetheless wish to resolve these lawsuits and claims to avoid the costs, expense, and uncertainty inherent in the litigation;

WHEREAS, Settling Plaintiffs (as defined below) also wish to avoid the costs, expense, and the uncertainty inherent in litigation,

NOW THEREFORE, the Settling Defendants and Settling Plaintiffs agree as follows:

### II. DEFINITIONS:

Terms used in this Settlement Agreement shall have the meanings defined below or as otherwise defined in this Settlement Agreement:

2.1 "Aggregate Settlement Payment" means the total amount that shall be paid to Settling Plaintiffs as a group pursuant to Article VI, which amount shall be comprised of the sum of the several and not joint payment obligations of each of the Settling Defendants pursuant to the Defendants' Allocation and which amount should equal FOUR HUNDRED TWENTY-THREE MILLION NINE HUNDRED SIXTY-THREE THOUSAND FIVE HUNDRED SIXTY-FOUR AND 67/100 DOLLARS (\$423,963,564.67), provided that all Plaintiffs identified on the attached Exhibit A become and remain Settling Plaintiffs and all Settling Defendants become and remain Settling Defendants.

2.2 "Allocation of Settlement Proceeds" means the confidential percentage allocated share of each Settling Plaintiff of the Aggregate Settlement Payment as agreed to by the Settling Plaintiffs after full disclosure, which allocation was communicated in confidence to the Mediator.

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2.3 "Aquifer" means a sub-surface water bearing zone or zones that supplies or potentially supplies drinking water and is accessed or accessible by wells.

2.4 "Bank" means Citibank, N.A. or other financial institution agreed upon by Settling Plaintiffs and Settling Defendants.

2.5 "BTEX" means benzene, toluene, ethyl benzene, trimethyl benzene, and all xylenes.

2.6 "Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day on which commercial banks in New York, New York are closed.

2.7 "Date of Execution" means March 12, 2008, which is the deadline for all Settling Plaintiffs to provide to Settling Defendants in the manner set forth below duly executed Settlement Agreements, Escrow Agreement, Release and Indemnity Agreements and the deadline for all Settling Defendants to provide to Settling Plaintiffs duly executed Settlement Agreements and Escrow Agreement.

2.8 "Defendants' Allocation" means the confidential percentage allocated share of each Settling Defendant of the Aggregate Settlement Payment and any future treatment obligation as agreed to by the Settling Defendants, which allocations were communicated in confidence to the Mediator.

2.9 "Effective Date" means the day following the occurrence of the last of each and every one of the following events: (1) the execution and delivery as set forth herein of this Settlement Agreement by all Settling Plaintiffs and all Settling Defendants, (2) the execution and delivery as set forth herein of the Escrow Agreement on behalf of all Settling Plaintiffs and all Settling Defendants and the Escrow Agent, (3) the completion and exchange of any and all necessary authorizations and/or ratifications of this Settlement Agreement and the Escrow Agreement, whether corporate, partnership, governmental or quasi-governmental, (4) execution and delivery as set forth herein of binding Release and Indemnity Agreements in the form required by this Settlement Agreement in favor of the Settling Defendants by all Settling Plaintiffs, (5) the delivery as set forth herein of executed Stipulations of Dismissal with prejudice in the form required by this Settlement Agreement in favor of the Settling Defendants and any Released Parties who are parties to any of the litigation covered by this Settlement Agreement by all necessary

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Settling Plaintiffs, (6) all hearings and the entry of findings and final orders by the court in MDL 1358 and/or all other competent court(s) or other alternative procedure provided under law, including without limitation the appropriate courts in California with respect to cases remanded from MDL 1358, holding that this Settlement Agreement is a good faith settlement necessary to extinguish claims for contribution by any non-settling alleged joint tortfeasors under the law of all applicable jurisdictions in all of the cases subject to this Settlement Agreement; (7) the entry of final orders of courts of competent jurisdiction approving the settlement and release of the claims of any plaintiffs who are infants or incompetent pursuant to this Settlement Agreement, and (8) the expiration of the time to appeal every such court determination as to the good faith or other approval of this Settlement Agreement, or if an appeal is taken, when all such appeals are exhausted and the Settlement Agreement and the good faith nature or other approvals of the Settlement Agreement under all applicable jurisdictions is upheld and final. However, notwithstanding any provision to the contrary above, in the event any Attorney General for any state or any other Governmental Authority seeks to intervene in any pending case covered by this Settlement Agreement or commences a collateral lawsuit seeking to challenge this Settlement Agreement or the good faith nature of the Settlement Agreement, the Effective Date shall be stayed until the day following the occurrence of the last of each and every one of the following: (1) all such efforts at intervention or collateral attack on this Settlement Agreement by all Attorneys General or other Governmental Authority have been denied or withdrawn, (2) the time to appeal from such denial has expired without an appeal having been taken, and (3) in the event an appeal is taken, all appeals are concluded and the denial of the efforts of any such Attorneys General or other Governmental Authority to intervene or collaterally attack this Settlement Agreement has been sustained and no further appeals are permitted therefrom (referred to throughout as the "Effective Date" or "Effective Date of this Settlement Agreement").

2.10 "Escrow" means the escrow established with the Escrow Agent, which shall include an account in Citibank, N.A. or other financial institution agreed to by the parties ("Escrow Account"), which shall be used to: (i) pool the several, and not joint, payments by the Settling Defendants in accordance with each Settling Defendant's allocated share of the Aggregate

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Settlement Payment in an interest bearing account following the Effective Date, (ii) transfer the Aggregate Settlement Payment to the Settling Plaintiffs in accordance with the terms of this Settlement Agreement and Allocation of Settlement Proceeds, and (iii) in the event the Effective Date is delayed for reasons set forth in Paragraph 6.19, accumulate the several, and not joint, payments by the Settling Defendants in accordance with each Settling Defendant's allocated share of the Aggregate Settlement Payment in an interest bearing account pending the occurrence of the Effective Date or Termination of the Settlement Agreement, in accordance with the Escrow Agreement attached as Exhibit E.

2.11 "Escrow Agent" shall be Citibank, N.A. or such other person or entity agreed to by counsel for the parties or selected under the terms of the Escrow Agreement.

2.12 "Escrow Agreement" is the form of agreement attached as Exhibit E, which Settling Defendants and Settling Plaintiffs expressly authorize the individuals set forth in Exhibit E as the designated authorized representatives of the Settling Defendants and Settling Plaintiffs, respectively, to enter into with the Escrow Agent on behalf of and for the benefit of the Settling Defendants and Settling Plaintiffs, respectively

2.13 "Future Treatment Obligation" means the contractual obligation of Settling Defendants to provide in accordance with the Defendants' Allocation, severally and not jointly, a portion of future treatment costs of certain operating Public Water System groundwater drinking wells owned or operated by Settling Plaintiffs under certain circumstances as more fully set forth in the Treatment Protocol, which is attached as Exhibit F.

2.14 "Governmental Authority" means any government, any governmental, quasi-governmental or regulatory entity, department, commission, board, agency, authority, legislative body, or instrumentality, and any court, tribunal, or judicial body, in each case whether federal, state, or local.

2.15 "Maximum Contaminant Level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system under Federal or State law applicable to a Settling Plaintiff in its respective jurisdiction.

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2.16 "MDL 1358" means the court and all of the cases before the court in the matter captioned: *In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, Master File No. 1:00-1898, MDL 1358 (SAS), M21-88 (S.D.N.Y.).

2.17 "Mediator" means David Geronemus, Esq. of JAMS who was appointed by the MDL 1358 Court as Special Settlement Master.

2.18 "MTBE" means methyl tertiary butyl ether and any associated breakdown products thereof.

2.19 "Other Authorized Oxygenates" means any chemical compound certified for use as an oxygenate under the provisions of the Clean Air Act Amendments of 1990 or as a renewable fuel under the provisions of the Energy Policy Act of 2005, including but not limited to, tertiary butyl alcohol ("TBA"), diisopropyl ether ("DIPE"), ethanol, tertiary amyl methyl ether ("TAME"), and ethyl tertiary butyl ether ("ETBE"), whether used in gasoline at any time as an octane enhancer, oxygenate pursuant to the requirements of the Clean Air Act Amendments of 1990, or for any other reason, and any associated breakdown products thereof.

2.20 "Payment Obligation" refers to the obligation of each Settling Defendant to deposit with the Escrow Agent its allocated share of the Aggregate Settlement Payment according to the Defendants' Allocation pursuant to the terms of this Settlement Agreement, which obligation is several and not joint.

2.21 "Public Water System" has the meaning prescribed by Section 1401(4) of the Safe Drinking Water Act ("SDWA") in effect on the Date of Execution of this Settlement Agreement.

2.22 "Release and Indemnity Agreement" means the Release and Indemnity Agreement in the form of the attached as Exhibit C (public water suppliers and others) or Exhibit D in the case of private well owners in the Wisconsin cases.

2.23 "Released Claims" shall have the meaning given in Paragraph 1 of Exhibit C.

2.24 "Released Parties" shall have the meaning given in Paragraph 2 of Exhibit C.

2.25 "Renewable Fuel" means ethanol and/or any other renewable fuel added to, or a component of, gasoline pursuant to the Energy Policy Act of 2005, regardless of when used in gasoline, past, present or future.

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2.26 "Settling Defendants" means (1) BP America Inc., BP Corporation North America Inc., BP Company North America Inc., BP Amoco Chemical Company, BP Products North America Inc. (f/k/a Amoco Oil Company and including by merger BP Exploration & Oil Inc.), BP West Coast Products LLC, and Atlantic Richfield Company, (2) Chevron Corporation (f/k/a ChevronTexaco Corporation), Chevron U.S.A. Inc. (f/k/a Gulf Oil Corporation), in its own name and on behalf of its operating divisions, Chevron Products Company and Chevron Chemical Company, Texaco Inc., TRMI-H LLC (f/k/a TRMI Holdings Inc.), Unocal Corporation, Union Oil Company of California, Four Star Oil & Gas Company (f/k/a Getty Oil Company), Chevron Phillips Chemical Company LLC, Chevron Phillips Chemical Company LP, (3) ConocoPhillips Company, Conoco Oil Company, Phillips Petroleum Company, Tosco Corporation, Chevron Phillips Chemical Company, L.L.C, and Chevron Phillips Chemical Company, L.P., (4) Equilon Enterprises LLC (d/b/a Shell Oil Products US, and as successor-by-merger to Equiva Services LLC), Motiva Enterprises LLC (individually and also incorrectly named as f/k/a Star Enterprises), Shell Oil Company, Shell Oil Products Company LLC (individually and d/b/a Shell Oil Products Company), Shell Petroleum Inc., Shell Trading (US) Company (individually and also incorrectly named as f/k/a Equiva Trading Company), and TMR Company (f/k/a Texaco Refining and Marketing, Inc. individually and as successor-by-merger to TRME Company f/k/a Texaco Refining and Marketing (East) Inc.); (5) Marathon Petroleum Company LLC, Marathon Oil Company, Marathon Oil Corporation, and Ashland Inc., (6) Big Diamond, Inc., Diamond Shamrock Refining Company, L.P., Diamond Shamrock Stations, Inc., Emerald Marketing, Inc., Huntway Refining Company, Premcor USA Inc., Sigmor Beverage, Inc., Sigmor Corporation, The Premcor Refining Group Inc., Ultramar Energy Inc., Ultramar Inc., Ultramar Ltd., Valero California Retail Company, Valero Diamond Metro, Inc., Valero Energy Corporation, Valero Marketing and Supply Company, Valero Refining and Marketing Company, Valero Refining Company-California, Valero Refining Company-Louisiana, Valero Refining Company-New Jersey, Valero Refining Company-Oklahoma, Valero Refining Company-Tennessee, L.L.C., Valero Refining-New Orleans, L.L.C., Valero Refining-Texas, L.P., Valero Retail Holdings, Inc., Valero Services, Inc., Valero Terminaling and Distribution Company, and VRG Properties Company, (7) CITGO Petroleum Corporation, CITGO

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Refining and Chemicals Company L.P., PDV Midwest Refining, L.L.C., Cities Service Company, The UNO-VEN Company, and LYONDELL CITGO Refining L.P., (8) Sunoco, Inc. (individually and f/k/a Sun Oil Company and f/k/a Sun Company, Inc., and as successor-in-interest to Coastal Eagle Point Oil Company), Sunoco, Inc. (R&M) (individually and f/k/a Sun Refining and Marketing Company and f/k/a Sun Company, Inc. (R&M)), Suntime Refining Company; Belvieu Environmental Fuels L.P., Belvieu Environmental Fuels GP, LLC, Sun BEF, Inc., Sunoco Partners LLC, Sunoco Logistics Partners Operations GP LLC, Sunoco Logistics Partners L.P., Sunoco Pipeline L.P., Sun Pipe Line Company, Atlantic Refining & Marketing Corp., Atlantic Petroleum Corporation, Sun Atlantic Refining and Marketing B.V., and Sun Atlantic Refining and Marketing Company, (9) Hess Corporation (f/k/a Amerada Hess Corporation), Hess Oil Virgin Islands Corporation (a/k/a HOVIC), Hess Energy, Inc., Hess Energy Trading Company (a/k/a HETCO), and HOVENSA, Inc., (10) Flint Hills Resources, LP (f/k/a Koch Refining Company and Koch Petroleum Group), (11) El Paso Merchant Energy-Petroleum Company, El Paso Corporation, El Paso Energy Corporation, El Paso CGP Company, El Paso CGP Company, L.L.P., The Coastal Corporation, Coastal Eagle Point Oil Company, Coastal Refining and Marketing Inc., Coastal Mobile Refining Company, Coastal Oil New England, Coastal Oil New York, Coastal States Trading Company, Coastal Chem, Inc., and Coastal Mart, Inc., and (12) Tesoro Corporation (f/k/a Tesoro Petroleum Corporation) and Tesoro Refining and Marketing Company (erroneously named in some cases as Tesoro Refining and Marketing Company, Inc.), provided, in the case of each of the parties named above, that they execute this Settlement Agreement, comply with its terms, and not exercise a right of termination.<sup>1</sup>

2.27 "Settling Plaintiffs" means the individuals and entities having claims or seeking relief, or preparing to make a claim or seek relief, relating to the actual or threatened presence of MTBE or Other Authorized Oxygenates in water that, as of the Date of Execution, have retained

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<sup>1</sup> Settling Plaintiffs in some of the lawsuits named other entities as defendants which never existed or no longer exist. The definition of Settling Defendants contained herein does not include those non-existent entities, but it is the parties' intention to settle, release and dismiss all of Settling Plaintiffs' claims against any and all of those non-existent entities, as reflected in the Release and Indemnity Agreements attached hereto as Exhibit C and D.

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Baron & Budd and/or Weitz & Luxenberg, P.C., and/or Sher Leff LLP (except the State of New Hampshire and Orange County Water District), including but not limited to the clients identified on the attached Exhibit A (hereinafter referred to collectively as "Settling Plaintiffs").

2.28 "Stipulation of Dismissal" means the stipulation to be provided by each of the Settling Plaintiffs dismissing with prejudice each of the Settling Defendants and Released Parties from any and all litigation subject to this Settlement Agreement with each party to bear their own costs, and which shall be in a form substantially similar to the attached Exhibit I or other appropriate form for the applicable court in which it is to be filed.

2.29 "TBA" means tertiary butyl alcohol and any associated breakdown products thereof.

2.30 "Treatment Protocol" means the protocol that defines the applicability, criteria, operation, and limitations of the Future Treatment Obligation, which is a material part of this Settlement Agreement and is attached as Exhibit F.

### **III. REPRESENTATIONS AND WARRANTIES OF SETTLING PLAINTIFFS**

3.1 Settling Plaintiffs represent and warrant that the Mediator has been provided with a listing of the Allocation of Settlement Proceeds for the distribution of the Aggregate Settlement Payment based upon the objective criteria developed for that purpose, which criteria have been disclosed and agreed to by all Settling Plaintiffs, and that all Settling Plaintiffs have seen the participation of, and allocations to, all other Settling Plaintiffs pursuant to the Allocation of Settlement Proceeds and consents to them. Settling Plaintiffs further represent and warrant that they have been advised of the total fees and costs to be paid to Plaintiffs' Counsel and the method by which such costs were apportioned among the Settling Plaintiffs. Settling Plaintiffs acknowledge that the Settling Defendants have not participated in the allocation and do not have any responsibility for the allocation among the Settling Plaintiffs and any fees or costs to the Plaintiffs' Counsel.

3.2 Settling Plaintiffs acknowledge that Plaintiffs' Counsel has recommended to each of them that these settlement terms are fair and reasonable and should be accepted.

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3.3 Each respective Settling Plaintiff represents that no other person or entity has any interest in the Released Claims of each respective Settling Plaintiff; that each respective Settling Plaintiff has the sole right and exclusive authority to execute this Settlement Agreement, the Release and Indemnity Agreement, and receive the consideration specified in this Settlement Agreement; and that each respective Settling Plaintiff has not sold, assigned, transferred, conveyed, otherwise disposed of, granted a security interest in or lien on any of the Released Claims within the scope of this Settlement Agreement.

3.4 Each respective Settling Plaintiff represents and warrants that the execution, delivery and performance by such Settling Plaintiff of this Settlement Agreement, and the execution, delivery and performance by such Settling Plaintiff of the Release and Indemnity Agreement and the Stipulations of Dismissal, and the authority to cause the Escrow Agreement to be entered into for its benefit, have been approved by all necessary corporate authority and Governmental Authority for each respective Settling Plaintiff. Each respective Settling Plaintiff further represents and warrants that in connection with the execution, delivery, and performance of this Settlement Agreement, the Escrow Agreement, the Release and Indemnity Agreement, and the Stipulations of Dismissal, that each respective Settling Plaintiff has complied with all provisions of the Constitution and laws of the respective states of such Settling Plaintiff and the respective charter, rules, and regulations of such Settling Plaintiff, that each Settling Plaintiff has or has obtained the full power and authority to enter into this Settlement Agreement, the Escrow Agreement, the Release and Indemnity Agreement, and the Stipulations of Dismissal, and that their execution, delivery, and performance by each respective Settling Plaintiff, or on its behalf, does not and will not contravene or constitute a default under any provision of applicable law or regulation or of any agreement, judgment, injunction, order, decree, or contractual restriction binding on such Settling Plaintiff or their property, and does not result in or require the creation or imposition of any lien, security interest, or other charge or encumbrance in favor of a third party upon or with respect to such Settling Plaintiff's property.

3.5 Each respective Settling Plaintiff further represents and warrants that no further approval, authorization, consent, order, notice to, or filing or registration, with any Governmental

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Authority is required with respect to the participation by such Settling Plaintiff in this Settlement Agreement and the execution, delivery to, and performance by such Settling Plaintiff of this Settlement Agreement, the Escrow Agreement, the Release and Indemnity Agreement, and the Stipulations of Dismissal to which it is a party, except any necessary court approvals that may be required in connection with the settlement of the claims of individual Settling Plaintiffs who are minors.

3.6 Each respective Settling Plaintiff also further represents and warrants that, without limiting the generality of the foregoing, such Settling Plaintiff is not entitled to any immunity on any grounds (i) with respect to the performance of their obligations under this Settlement Agreement or the Release and Indemnity Agreement, or (ii) from any legal proceedings to enforce the obligations hereunder or under the Escrow Agreement, the Release and Indemnity Agreement, and the Stipulations of Dismissal. Each respective Settling Plaintiff further represents and warrants that it will not challenge or contest the validity of this Settlement Agreement, the Escrow Agreement, or the Release and Indemnity Agreement and that each respective Settling Plaintiff forever waives any defense to the validity of the Settlement Agreement, the Escrow Agreement, and the Release and Indemnity Agreement, including any defense based on any claim the Settlement Agreement, the Escrow Agreement, and/or the Release and Indemnity Agreement are ultra vires, violative of sovereign immunity, or otherwise void.

3.7 This Settlement Agreement, the Release and Indemnity Agreement, and the Stipulations of Dismissal to which each respective Settling Plaintiff is a party, and the Escrow Agreement that is entered into for its benefit, have been or will be duly executed and delivered by an authorized representative of each Settling Plaintiff and are, or upon execution will be, the valid and legally binding obligations of such Settling Plaintiff, enforceable against the respective Settling Plaintiff in accordance with their respective terms, except as may apply to the settlement of the claims of individual Settling Plaintiffs who are minors and who may require court approval.

3.8 Each Settling Plaintiff respectively represents and warrants that all of its Public Water System operating wells are listed on the attached Exhibit B, that each Settling Plaintiff owns or operates the respective wells identified as theirs on the attached Exhibit B and are the real

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parties in interest in connection with those wells with standing to bring the Released Claims and to compromise them.

3.9 Each Settling Plaintiff respectively represents and warrants that all of its Public Water System wells that have ever had a detected level of any amount of MTBE or TBA in a water sample from such well influent at any time are listed on the attached Exhibit G.

3.10 Each Settling Plaintiff respectively represents and warrants that all of its Public Water System operating wells that have never had a detected level of any amount of MTBE or TBA in a water sample from such well influent at any time are listed on the attached Exhibit H.

### **IV. OBLIGATIONS OF SETTLING PLAINTIFFS**

4.1 On or before the Date of Execution, each respective Settling Plaintiff shall cause to be delivered to Sheila L. Birnbaum, Esq. at the location set forth in the Notice provisions herein, a validly executed Settlement Agreement. Execution of the Settlement Agreement shall bind each respective Settling Plaintiff to the terms of the Treatment Protocol, which is incorporated by reference as if fully set forth herein.

4.2 On or before the Date of Execution, the Settling Plaintiffs also shall cause to be delivered to Sheila L. Birnbaum, Esq. at the location set forth in the Notice provisions herein, fully executed and binding Release and Indemnity Agreements substantially in the form of the attached Exhibit C, or where applicable Exhibit D, which must be valid and binding in all respects as against the Settling Plaintiffs on whose behalf each Release and Indemnity Agreement has been executed and any actions by any Governmental Authority required for such Release and Indemnity Agreements to be valid and binding shall have occurred prior to their transmittal to Settling Defendants and copies of such powers and/or authorizations shall be included with the Release and Indemnity Agreements.

4.3 On or before the Date of Execution, the Settling Plaintiffs shall cause to be delivered to Sheila L. Birnbaum, Esq. at the location set forth in the Notice provisions herein fully executed Stipulations of Dismissal substantially in the form of the attached Exhibit I, which must be valid and binding in all respects as against the Settling Plaintiffs on whose behalf such stipulations have been executed and which shall dismiss with prejudice the Settling Defendants and

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any Released Parties from all litigation covered by this Settlement Agreement, including from all cases, claims and lawsuits identified on the attached Exhibit A.

4.4 Each respective Settling Plaintiff specifically authorizes Robert Gordon, Esq. of Weitz and Luxenberg PC and Scott Summy of Baron and Budd PC to execute on its behalf and for its benefit the Escrow Agreement substantially in the form of the attached Exhibit E and to serve as designated authorized representatives of the Settling Plaintiffs under the terms of the Escrow Agreement. The executed Escrow Agreement shall be delivered to Settling Defendants and the Escrow Agent on or about the Date of Execution. Settling Plaintiffs, jointly and severally, shall indemnify, hold harmless and defend the Escrow Agent and Settling Plaintiffs' designated authorized representatives identified above, from and against any and all losses, claims, liabilities and reasonable expenses which it or they may suffer or incur in connection with the performance of the duties and obligations under the Escrow Agreement, except for those losses, claims, liabilities and expenses resulting solely and directly from its or their own gross negligence or willful misconduct. Further, Settling Plaintiffs agree that they shall be severally responsible to pay 50% of the remaining unpaid fees and expenses, if any, arising from the creation, administration, and regulatory compliance of the Escrow Account that is not covered by interest earned by the Escrow Account. Each Settling Plaintiff's share of such remaining unpaid fees and expenses shall be based on its respective share under the Allocation of Settlement Proceeds. The amount, if any, due and owing by Settling Plaintiffs under this Section may be deducted and paid by Baron & Budd PC from its MTBE Trust Account to which the principal amount of the Escrow Account is disbursed. Further, it is expressly agreed that by serving as a designated authorized representative for the Escrow Agreement, an attorney-client relationship is not created between the designated authorized representatives identified above and any party to this Settlement Agreement, unless such attorney-client relationship existed beforehand. The Settling Plaintiffs, through counsel, shall confirm in a timely manner the appropriateness of the actions to be taken under the Escrow Agreement by the designated authorized representatives upon the request of the designated authorized representatives above.

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4.5 All executed Settlement Agreements received by Settling Plaintiffs pursuant to Paragraph 6.1 herein shall be held in escrow until the Effective Date is reached. Upon receipt of the executed documentation delivered pursuant to Paragraph 6.1, the Settling Plaintiffs shall inspect and review such documentation for any deficiencies.

4.6 On or about March 24, 2008, the Settling Plaintiffs shall cause a written statement to be delivered to all parties identified in the Notice provision herein, indicating: (i) the identity of the respective Settling Defendants who have delivered the documentation referred to in Paragraph 6.1 in compliance with the Settlement Agreement, (ii) the identity of any Settling Defendants who have failed to deliver such documentation in compliance with the Settlement Agreement, and (iii) any deficiencies in the documentation submitted pursuant to Paragraph 6.1.

4.7 Any Settling Defendant whose documentation submitted under Paragraph 6.1 is deficient shall have twenty (20) business days following notification pursuant to Paragraph 4.6 above to cure any deficiencies, unless otherwise agreed to in writing by the Settling Defendants and Settling Plaintiffs.

4.8 The inspection and review procedure, and the curing of any deficiencies, as set forth in Paragraphs 4.6 and 4.7 above shall be completed before the occurrence of any court hearing on the good faith nature of the Settlement Agreement.

4.9 Settling Plaintiffs also hereby agree to reduce any judgment for any of the Released Claims that they might recover against any entity other than Settling Defendants by release and discharge in an amount, fraction, portion, or percentage necessary under applicable state or federal law to bar, eliminate, relieve, or satisfy claims against the Settling Defendants for contribution and/or indemnity to the fullest extent permitted by applicable state or federal law arising from any Released Claims, including any amount reallocated by applicable state or federal statute or common law to Settling Defendants resulting from uncollectibility and/or insolvency of other persons or entities determined to be at fault. This specific provision does not apply to California cases. Instead, Settling Defendants shall receive all the benefits and protections that California law provides as to contribution and indemnity claims upon a court's good faith approval of the Settlement Agreement.

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4.10 Settling Plaintiffs shall execute any additional documentation that may be required under applicable state or federal law in order to give effect to this Settlement Agreement and the Release and Indemnity Agreement and/or participate in and support this Settlement Agreement in any necessary good faith hearings before the MDL court or other courts required to make such a finding of good faith or any appeals of any court decisions on this issue.

4.11 Settling Plaintiffs acknowledge that they are not entitled to access to the Defendants' Allocation, which is confidential. Settling Plaintiffs agree that they will not seek to obtain the Defendants' Allocation in the litigation subject to this Settlement Agreement or any other litigation. Unless the Defendants' Allocation is made public by the Settling Defendants as may be required by law, if necessary to establish the good faith nature of settlements by a court or court(s), or in the event of a default of performance by a Settling Defendant in which case Settling Plaintiffs will be apprised of that Settling Defendant's allocated share under the Defendants' Allocation in order to facilitate enforcement, if Settling Plaintiffs inadvertently or otherwise obtain the Defendants' Allocation, Settling Plaintiffs agree not to use or disseminate the information, but will notify Settling Defendants, return any documents reflecting Defendants' Allocation, and certify to Settling Defendants that the information will not be used or disseminated. Settling Plaintiffs agree that, Article XIII herein notwithstanding, in the event Settling Defendants must provide a court and/or non-settling defendants with the Defendants' Allocation in connection with establishing the good faith nature of the settlements under Article IX herein, Settling Plaintiffs agree to join in a motion seeking to have the Defendants' Allocation filed under seal and produced pursuant to orders of confidentiality.

4.12 Settling Plaintiffs agree that they shall permit the Mediator to provide to Settling Defendants, or to any of them, the Allocation of Settlement Proceeds with respect to all or some of the Settling Plaintiffs to the extent such information is to be used in connection with (i) establishing the good faith nature of the settlement, (ii) assisting one or more Settling Defendants with any insurance or reinsurance claims, tax issues, or financial or other reporting matters, or (iii) in the event a Settling Plaintiff does not provide executed settlement documentation as required or otherwise decides not to join this settlement. To the extent Settling Defendants provide the

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Allocation of Settlement Proceeds to any third-parties pursuant to subsection (ii) above, they shall do so pursuant to a confidentiality agreement.

### **V. REPRESENTATIONS AND WARRANTIES OF SETTLING DEFENDANTS**

5.1 Each Settling Defendant represents and warrants that the Defendants' Allocation, which has been agreed to by the Settling Defendants, has been communicated in confidence to the Mediator.

5.2 Each Settling Defendant represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, or other entity validly existing and in good standing under the laws of the jurisdiction of its registration.

5.3 Each Settling Defendant represents and warrants that all required corporate or other approvals have been obtained, permitting such Settling Defendant's undersigned representative to execute this Settlement Agreement and deliver them to the Settling Plaintiffs, through Settling Plaintiffs' counsel, with binding effect upon such Settling Defendant.

5.4 Each Settling Defendant represents and warrants that the execution, delivery, and performance by such Settling Defendant of this Settlement Agreement will not contravene or constitute a default under any provisions of applicable law or regulation or any agreement, judgment, injunction, order, decree, or contractual restriction binding on such Settling Defendant.

5.5 Each Settling Defendant represents and warrants that, except as provided in this Settlement Agreement, no further approval, authorization, consent, order, notice to or filing or registration with any Governmental Authority is required with respect to such Settling Defendant's participation in this Settlement Agreement and entering into and performing this Settlement Agreement or causing the Escrow Agreement to be entered into for its benefit.

5.6 Subject to the provisions of this Settlement Agreement, each Settling Defendant represents and warrants that no other person or entity has any interest in the claims it is releasing pursuant to Article VIII ("Settling Defendants' Release of Claims").

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### VI. OBLIGATIONS OF SETTLING DEFENDANTS

6.1 On or before the Date of Execution, each respective Settling Defendant shall cause to be delivered to Robert Gordon, Esq. at the location set forth in the Notice provisions herein, a validly executed Settlement Agreement. Execution of the Settlement Agreement shall bind each respective Settling Defendant to the terms of the Treatment Protocol, which is incorporated by reference as if fully set forth herein.

6.2 Each respective Settling Defendant specifically authorizes Steve Leifer, Esq. of Baker Botts LLP and Sheila L. Birnbaum, Esq. of Skadden, Arps, Slate, Meagher & Flom LLP to execute on its behalf and for its benefit the Escrow Agreement substantially in the form of the attached Exhibit E and to serve as designated authorized representatives of the Settling Defendants under the terms of the Escrow Agreement. The executed Escrow Agreement shall be delivered to Settling Plaintiffs and the Escrow Agent on or about the Date of Execution. Settling Defendants, jointly and severally, shall indemnify, hold harmless and defend the Escrow Agent and Settling Defendants' designated authorized representatives identified above, from and against any and all losses, claims, liabilities and reasonable expenses which it or they may suffer or incur in connection with the performance of the duties and obligations under the Escrow Agreement, except for those losses, claims, liabilities and expenses resulting solely and directly from its or their own gross negligence or willful misconduct. Further, Settling Defendants agree that they shall be severally responsible to pay 50% of the remaining unpaid fees and expenses, if any, arising from the creation, administration, and regulatory compliance of the Escrow Account that is not covered by interest earned by the Escrow Account. Each Settling Defendant's share of such remaining unpaid fees and expenses, if any, shall be based on its respective share under the Defendants' Allocation. Further, it is expressly agreed that by serving as a designated authorized representative for the Escrow Agreement, an attorney-client relationship is not created between the designated authorized representatives identified above and any party to this Settlement Agreement, unless such attorney-client relationship existed beforehand. The Settling Defendants, through counsel, shall confirm in a timely manner the appropriateness of the actions to be taken under the Escrow

## SETTLEMENT AGREEMENT

Agreement by the designated authorized representatives upon the request of the request of the designated authorized representatives above.

6.3 All executed Settlement Agreements, Release and Indemnity Agreements and Stipulations of Dismissal received by Settling Defendants pursuant to Paragraphs 4.1, 4.2 and 4.3 above, shall be held in escrow until the Effective Date is reached. In the event the Effective Date is not reached and this Settlement Agreement is terminated, the Release and Indemnity Agreements and the Stipulations of Dismissal shall be returned to the Settling Plaintiffs and said documents shall be considered null and void. Upon the occurrence of the Effective Date, Settling Defendants may cause the Stipulations of Dismissal with prejudice executed by each of the Settling Plaintiffs to be filed with the appropriate courts.

6.4 Upon receipt of the executed documentation delivered pursuant to Paragraphs 4.1, 4.2, and 4.3, the Settling Defendants shall inspect and review such documentation for any deficiencies.

6.5 On or about March 24, 2008, the Settling Defendants shall cause a written statement to be delivered to all parties identified in the Notice provision herein, indicating: (i) the identity of the respective Settling Plaintiffs who have delivered the documentation referred to in Paragraphs 4.1, 4.2, and 4.3 in compliance with the Settlement Agreement, (ii) the identity of any Settling Plaintiffs who have failed to deliver such documentation in compliance with the Settlement Agreement, and (iii) any deficiencies in the documentation submitted pursuant to Paragraphs 4.1, 4.2, and 4.3.

6.6 Any Settling Plaintiff whose documentation submitted under Paragraphs 4.1, 4.2, and 4.3 is deficient shall have twenty (20) business days following notification pursuant to Paragraph 6.4 above to cure any deficiencies, unless otherwise agreed to in writing by the Settling Defendants and Settling Plaintiffs. Unless otherwise agreed to in writing, if a Settling Plaintiff takes more than twenty (20) days to cure any such deficiencies, that Settling Plaintiff shall forfeit to Settling Defendants any interest or income that is earned during the period of the deficiency up to the time the deficiency is cured and to which that Settling Plaintiff would otherwise be entitled to under the provisions of the Escrow Agreement.

## SETTLEMENT AGREEMENT

6.7 The inspection and review procedure, and the curing of any deficiencies, as set forth in Paragraphs 6.5 and 6.6 above shall be completed before the occurrence of any court hearing on the good faith nature of the Settlement Agreement.

6.8 All obligations of the Settling Defendants pursuant to this Settlement Agreement (including but not limited to the Payment Obligation and the Future Treatment Obligation) are intended to be, and shall remain, several and not joint obligations.

6.9 The Payment Obligation of each Settling Defendant shall be limited to the confidential percentage allocated share for that specific Settling Defendant of the Aggregate Settlement Payment. The Future Treatment Obligation of each Settling Defendant shall be limited to 70.6606% of the confidential percentage allocated share for that specific Settling Defendant of the Aggregate Settlement Payment, and any deficiency in the costs of future treatment not satisfied by the Future Treatment Obligation of Settling Defendants, or any of them, shall be the responsibility and obligation of Settling Plaintiffs and not the Settling Defendants in connection with the Future Treatment Obligation under this Settlement Agreement.

6.10 In consideration of the representations and warranties of Settling Plaintiffs, the delivery of valid and binding Release and Indemnity Agreements in the form of the attached Exhibit C, or where applicable Exhibit D, by Settling Plaintiffs to Settling Defendants, the delivery of valid and binding Stipulations of Dismissal in the form of the attached Exhibit I by Settling Plaintiffs to Settling Defendants, Settling Plaintiffs' compliance with the other provisions of this Settlement Agreement and the occurrence of the Effective Date, each Settling Defendant shall cause an amount equal to its respective share of the Aggregate Settlement Payment as determined by the Defendants' Allocation to be paid within 10 Business Days following the Effective Date to the Escrow Account subject to the Escrow Agreement for payment by the Escrow Agent to the Settling Plaintiffs pursuant to the terms of this Settlement Agreement and the Escrow Agreement. The Payment Obligation of each Settling Defendant is fully satisfied when its respective share of the Aggregate Settlement Payment is transferred into the Escrow Account.

6.11 In further consideration of the representations and warranties of Settling Plaintiffs, the delivery of valid and binding Release and Indemnity Agreements in the form of the attached

## SETTLEMENT AGREEMENT

Exhibit C, or where applicable Exhibit D, by Settling Plaintiffs to Settling Defendants, the delivery of valid and binding Stipulations of Dismissal in the form of the attached Exhibit I by Settling Plaintiffs to Settling Defendants, Settling Plaintiffs' compliance with the other provisions of this Settlement Agreement, and the occurrence of the Effective Date, Settling Defendants further agree to the obligations set forth in the Treatment Protocol attached as Exhibit F. Notwithstanding anything to the contrary, the following wells of United Water of New York are ineligible for future treatment under the Future Treatment Obligation: Pomona 38, Monsey 30, Birchwood 70, Eckerson 71, and Willow Tree 56.

6.12 Settling Defendants will have no Future Treatment Obligation under this Settlement Agreement or the Treatment Protocol with respect to a specific well if the presence of MTBE or TBA in or at that well is attributable either to (i) intentional misconduct of a Settling Plaintiff or its subsidiaries, affiliates, employees or agents, (ii) intentional discharge, dumping or disposal by any persons or entities other than the Settling Defendants, or (iii) the use of MTBE or TBA in the future in connection with products, processes, or uses other than gasoline. The mere fact of a release from an underground storage tank ("UST") leak or from an UST overfill, in and of itself, will not constitute an intentional discharge, dumping or disposal by a third party.

6.13 In accordance with the Treatment Protocol, prior to the initiation of any treatment pursuant to the Future Treatment Obligation, Settling Defendants may propose to a Settling Plaintiff a buy-out option in lieu of treatment that the Settling Plaintiff may accept, which if accepted, will completely satisfy all present and future obligations of Settling Defendants under this Settlement Agreement with respect to the well subject to that buy-out.

6.14 Settling Plaintiff will assign to Settling Defendants rights against all potentially responsible parties with respect to any treatment or a buy-out provided under the Treatment Protocol to the extent of the share of the treatment or buy-out provided by Settling Defendants under the Treatment Protocol.

6.15 If a conflict or inconsistency arises between the terms of this Settlement Agreement and the Treatment Protocol in connection with the eligibility, treatment, discharge or satisfaction of the Future Treatment Obligation, the terms of the Treatment Protocol shall govern.

## SETTLEMENT AGREEMENT

6.16 Settling Plaintiffs and Settling Defendants shall direct the Escrow Agent to communicate in writing to the Settling Defendants and the Mediator the identity of each Settling Defendant that deposits funds into the Escrow Account and the amount of each such deposit. The Mediator, using the confidential Defense Allocation, shall determine whether each Settling Defendant has met its Payment Obligation under the terms of this Settlement Agreement and shall inform Settling Plaintiffs and Settling Defendants of the identity of any Settling Defendants who have not met its Payment Obligation. The Escrow Agent shall cause the release of the Aggregate Settlement Payment from Escrow to the Settling Plaintiffs in accordance with the Escrow Agreement no sooner than ten (10) Business Days following the Effective Date.

6.17 If for any reason, one or more Settling Defendants exercise a right of withdrawal or termination under Article VII or Article IX of this Settlement Agreement following the payment of funds by said Settling Defendants into Escrow, the funds will be returned to each Settling Defendant who exercised a right of withdrawal or termination under this Settlement Agreement with interest according to the payments made by said Settling Defendants under the Defendants' Allocation.

6.18 The Aggregate Settlement Payment includes Settling Plaintiffs' attorneys fees and costs.

6.19 If an appeal or collateral attack is made on this Settlement Agreement and/or any court finding that this Settlement Agreement is a good faith settlement, thereby preventing the occurrence of the Effective Date, and all other preconditions for the occurrence of the Effective Date have been satisfied, the payments described in Paragraph 6.10 above shall be made into Escrow within ten (10) Business Days of the receipt of the pleading or other paper that prevents and/or delays the Effective Date from otherwise occurring. The sums paid into Escrow pursuant to this paragraph shall be deposited into an interest bearing depository account or other investment permitted by the Escrow Agreement pending the occurrence of the Effective Date or the termination of the Settlement Agreement.

## SETTLEMENT AGREEMENT

### VII. SETTLING DEFENDANTS RIGHT OF TERMINATION

7.1 In the event fewer than 100% of all Settling Plaintiffs accept these terms and validly execute this Settlement Agreement and deliver valid and binding Settlement Agreements, Release and Indemnity Agreements and Stipulations of Dismissal as provided herein by the Date of Execution of this Settlement Agreement and/or the period permitted to cure deficiencies in their submission following the Date of Execution as set forth in Paragraph 6.6 above, each Settling Defendant, individually at its sole option, may terminate its participation under this Settlement Agreement, without prejudice to any parties and without any further obligation under the terms of this Settlement Agreement, by giving written notice to counsel for Settling Plaintiffs and counsel for Settling Defendants as set forth in the Notices provision of this Settlement Agreement on or before May 6, 2008 or ten (10) days of receipt of notification from the Mediator of the identity and allocated shares of interest of those Plaintiffs declining to execute this Settlement Agreement or who failed to submit the required Releases and Stipulations of Dismissal within the period permitted under this Settlement Agreement, whichever is later.

7.2 In the event this Settlement Agreement is not terminated by Settling Defendants and continues with less than 100% participation by Settling Plaintiffs, the amount of the Aggregate Settlement Payment to be paid by Settling Defendants shall be reduced by the percentage amount allocated to any Settling Plaintiff who did not accept the terms of the Settlement Agreement and failed to validly execute this Settlement Agreement in addition to any other reductions to the Aggregate Settlement Payment under the terms of this Settlement Agreement, and any Future Treatment Obligations shall not extend to such Settling Plaintiffs who failed to execute or otherwise comply with this Settlement Agreement and any wells owned, operated, or accessed by said Settling Plaintiff on or before the Date of Execution of this Settlement Agreement.

7.3 In the event that Settling Defendants withdraw from this Settlement Agreement under the provisions of paragraph 7.1 above or Article IX herein in sufficient numbers that remaining in the settlement are Settling Defendants whose allocated shares represent less than 85% of the Aggregate Settlement Payment, the remaining Settling Defendants may individually elect to withdraw from and terminate this Settlement Agreement without prejudice and with no further

## SETTLEMENT AGREEMENT

obligations under these terms by providing written notification to counsel for Settling Plaintiffs and counsel for Settling Defendants as set forth in the Notices provision of this Settlement Agreement and the Escrow Agent on or before May 6, 2008 or ten (10) Business Days of receipt of notification of all Settling Defendants who terminated their participation in this Settlement Agreement under the provisions of paragraph 7.1 above or Article IX herein, whichever is later.

### **VIII. SETTling DEFENDANTS' RELEASE OF CLAIMS**

Within 10 Business Days of the Effective Date, those Settling Defendants who asserted claims against Settling Plaintiffs arising from the Released Claims in declaratory judgment actions or counterclaims agree to provide releases and stipulations of dismissal with prejudice as to those Settling Defendants to those Settling Plaintiffs against whom such declaratory judgment actions or counterclaims were brought, including any claims for fees and costs arising from the litigation that is subject to this Settlement Agreement.

### **IX. GOOD FAITH DETERMINATIONS**

9.1 Within 30 days following the Date of Execution and following the delivery to Settling Defendants as set forth herein of the executed Release and Indemnity Agreements and Stipulations of Dismissal by Settling Plaintiffs, the parties shall cause a motion to be filed in MDL 1358, seeking the court's order approving each Settling Plaintiff's settlement that may require such an order to extinguish claims for contribution and indemnity against Settling Defendants, as a good faith settlement under applicable law in connection with those cases that are pending in MDL 1358.

9.2 Within 10 days of filing the motion in MDL 1358 referred to in paragraph 9.1 above, the parties shall cause applicable procedures to be commenced or motions to be filed in those courts other than in MDL 1358 where cases subject to this Settlement Agreement are pending and the applicable law may require a court finding that the Settlement Agreement is a good faith settlement or other procedure in order to extinguish claims for contribution and indemnity against Settling Defendants, seeking to have the Settlement Agreement adjudged a good faith settlement.

## SETTLEMENT AGREEMENT

9.3 If any court finds any of the Settling Plaintiff's settlements not to be in good faith, any Settling Defendant to this Settlement Agreement may, within 30 days of written notice of such event, declare in writing to those listed under the Notice provision of this Settlement Agreement that this Settlement Agreement is void as to that Settling Defendant. Notwithstanding this provision, a Settling Defendant may seek an appeal of such ruling without prejudice to its ability to terminate its participation under the provisions of paragraph 9.4 below.

9.4 If any appellate court (including any Court of Appeals or Supreme Court) finds that this Settlement Agreement does not constitute a good faith settlement in connection with any Settling Plaintiff, any Settling Defendant to this Settlement Agreement may, within 30 days of written notice of such event, declare in writing to those listed under the Notice provision of this Settlement Agreement that this Settlement Agreement is void as to that Settling Defendant.

9.5 If this Settlement Agreement becomes void due to the exercise of any provision of Article IX following the payment of the Aggregate Settlement Payment, or any part thereof, into Escrow pursuant to paragraph 6.19 above, then the funds with any accrued interest shall be repaid to the Settling Defendants who terminated their participation under this Settlement Agreement according to the payments made by the Settling Defendants into Escrow. In such event, the parties shall take such steps and execute such documents as may be required to restore the Settling Plaintiffs and such Settling Defendant to their respective positions as if this Settlement Agreement had never been entered into.

9.6 If any appellate court were to find that any trial court lacked subject matter jurisdiction to decide the good faith of this Settlement Agreement, then the Settling Plaintiffs and Settling Defendants shall execute and file such motions or other papers with a court or courts of competent jurisdiction as may be necessary to obtain a final order(s) finding that the settlement is a good faith settlement under applicable law. The funds in Escrow will remain in Escrow until following the granting of all good faith approvals and the occurrence of the Effective Date or until the Settlement Agreement is terminated as set forth in the Escrow Agreement.

9.7 Settling Defendants agree that, Article XIII herein notwithstanding, in the event either Settling Defendants or Settling Plaintiffs must provide a court and/or non-settling defendants

## SETTLEMENT AGREEMENT

with the Allocation of Settlement Proceeds in connection with establishing the good faith nature of the settlements under this Article IX, Settling Plaintiffs agree to provide the Allocation of Settlement Proceeds and Settling Defendants agree to join in a motion seeking to have the Allocation of Settlement Proceeds filed under seal and produced pursuant to orders of confidentiality.

### **X. NO ASSIGNMENT WITHOUT CONSENT**

Except as otherwise provided in Exhibit F, neither the Settling Defendants, on the one hand, nor Settling Plaintiffs, on the other hand, may assign their rights or obligations under this Settlement Agreement without the consent of the other(s). That consent shall not be unreasonably withheld; provided, however, that no such assignment shall relieve the Settling Defendants or Settling Plaintiffs of their obligations under this Settlement Agreement. A merger, or divestiture of a subsidiary or division, or merger or reorganization of a Settling Defendant or Settling Plaintiff shall not be deemed an assignment for purposes of this Settlement Agreement. If some or all of the Settling Defendants seek to assign to a third party the responsibility for fulfilling their Future Treatment Obligations, Settling Plaintiffs shall not withhold consent to such an assignment unless Settling Plaintiffs can show that the third party is incapable of fulfilling or guaranteeing the performance of the Future Treatment Obligations.

### **XI. NO VICARIOUS LIABILITY FOR FUTURE TREATMENT**

Neither Settling Plaintiffs nor the Settling Defendants shall be vicariously liable for actions or inactions of any contractor selected by any Settling Defendants and approved by any Settling Plaintiffs to design, construct, or operate any treatment facility in the future pursuant to this Settlement Agreement and Treatment Protocol, except that the contracting party with any such contractor, shall be responsible for enforcing the terms of the underlying contract.

## SETTLEMENT AGREEMENT

### **XII. ALTERNATIVE DISPUTE RESOLUTION PROCESS**

12.1 In the event of any dispute between any parties to this Settlement Agreement arising out of or relating to this Settlement Agreement, Treatment Protocol, or Escrow Agreement, those parties agree to try in good faith to settle the dispute by negotiation and/or mediation.

12.2 If the dispute cannot be resolved to those parties' mutual satisfaction through negotiation and/or mediation within thirty (30) days, the dispute shall be resolved through binding arbitration. It is the intent of the parties that any dispute between any parties to this Settlement Agreement arising out of or relating to this Settlement Agreement, Treatment Protocol, or Escrow Agreement which is not promptly resolved through negotiation or mediation shall be resolved through binding arbitration and that the arbitration be structured in such a way as to minimize costs and delay. The arbitration shall be conducted in accordance with the Judicial Arbitration and Mediation Service ("JAMS") Comprehensive Arbitration Rules and Procedures ("JAMS RULES") as attached hereto as Exhibit J with the following stipulations:

12.2.1 The arbitration hearing shall be held before a single arbitrator to be selected by the parties. The parties shall endeavor to agree upon an arbitrator as soon as practicable after the Date of Execution. If the parties are unable to select a single arbitrator, then, no later than 10 days after the first dispute is referred to arbitration pursuant to paragraph 12.2 above, the single arbitrator will be selected by David Geronemus, Esq., or if David Geronemus, Esq. is unavailable to make a selection, then by the President of JAMS. The single arbitrator selected should be a person who has some experience or fluency in the technical areas which are the subject of the Treatment Protocol. If for any reason the selection procedures above fail, then each party to the dispute shall select an arbitrator, and those arbitrators shall select a third arbitrator utilizing the technical criteria above, who shall be the single arbitrator for the dispute. If the two arbitrators are unable to agree upon a third arbitrator within 15 days, the third arbitrator shall be selected by the President of the Bar Association of the City of New York utilizing the same technical criteria referred to above. Any reference to an "arbitrator" in this Settlement Agreement shall be deemed a reference to an arbitrator selected pursuant to this paragraph.

## SETTLEMENT AGREEMENT

12.2.2 The arbitrator selected must be free of any interest affecting his/her impartiality and must make all appropriate disclosures to the parties.

12.2.3 The arbitrator(s) may impose reasonable and equitable time limits on each arbitrating party's presentation at the arbitration hearing, and shall endeavor to complete the hearing in ten (10) business days or less from the day the hearing is commenced.

12.2.4 The arbitration decision shall be rendered not later than thirty (30) days after the final day of the hearing and shall be judicially enforceable and binding in accordance with New York law.

12.2.5 Summaries of any expert testimony, along with copies of all documents to be submitted as exhibits, shall be exchanged at least ten (10) business days before the arbitration hearing under procedures set up by the arbitrator.

12.2.6 Except as otherwise specified herein or in the Treatment Protocol, there shall be no discovery or dispositive motion practice except as may be permitted by the arbitrator(s), who may authorize only such discovery as is shown to be necessary to ensure a fair hearing.

12.2.7 The arbitrator(s) may retain a technical expert to aid in deciding the dispute between the parties, in which event the technical expert shall be chosen by agreement of the arbitrating parties or, absent such agreement, by the arbitrator(s) (subject to the arbitrating parties' right to disqualify the expert for conflict of interest). Arbitration costs and fees shall be divided equally between the Settling Plaintiff(s) on one hand and the Settling Defendant(s) on the other hand, and paid subject to reallocation as set forth in the next subparagraph. As among multiple Settling Plaintiffs, or multiple Settling Defendants, participating in the same arbitration, the costs and fees to be paid by each side shall be allocated among the multiple parties on that side in accordance with their relative allocations for purposes of the payments to or distributions from the Aggregate Settlement Payment, or as may be agreed to among the Settling Defendants or Settling Plaintiffs.

12.2.8 Arbitration costs, arbitrator's fees and reasonable attorneys' fees and costs shall be awarded to the prevailing parties, if any, by the arbitrator(s).

## SETTLEMENT AGREEMENT

12.2.9 For disputes concerning construction and/or interpretation of this Settlement Agreement or Treatment Protocol, the arbitrator's decision shall be governed by JAMS Rule 24(c).

12.2.10 The parties to this Settlement Agreement agree that any decision by the arbitrator that is not overturned by a reviewing court under applicable law shall have the same issue preclusion effect as a final judgment rendered by a court of competent jurisdiction.

12.2.11 The parties to this Settlement Agreement agree, notwithstanding the common law and to the fullest extent permitted by law, that the arbitrator may order the parties to take actions required to implement the terms of this Settlement Agreement or refrain from taking actions that are contrary to the terms of this Settlement Agreement.

### **XIII. CONFIDENTIALITY PROVISIONS**

The parties to this Settlement Agreement shall keep confidential the content of the negotiations, points of discussion, documents, communications, and supporting data utilized or prepared in connection with, or exchanged at, the mediation that preceded this Settlement Agreement as well as all other negotiations and settlement discussions taking place outside of the mediation, including but limited to other negotiations and settlement discussions occurring prior to, contemporaneous with, or after the mediation in this case, as contemplated by Federal Rule of Evidence 408, except as otherwise required by law.

### **XIV. NOTICES**

All notices, requests, demands, claims, and other communications that are required or may be given pursuant to this Settlement Agreement must be in writing and delivered personally against written receipt, by a recognized overnight delivery service, or by telecopy, to the parties at the addresses below (or to the attention of such other, different or additional person or entity or such other address as any party may provide to the other party by notice in accordance with this paragraph). Any such notice or other communication will be deemed to have been given (i) if personally delivered, when so delivered, against written receipt, (ii) if sent by a nationally

## SETTLEMENT AGREEMENT

recognized overnight delivery service which guarantees next day delivery, one Business Day after being so sent, or (iii) if given by telecopier, once such notice or other communication is transmitted to the facsimile number specified below and the appropriate answer back or telephonic confirmation is received, provided that such notice or other communication is promptly thereafter delivered in accordance with the provisions of clauses (i) or (ii) hereof, in each case addressed to the intended recipient as set forth below. Any notice, request, demand, claim, or other communication given hereunder using any other means (including mail, electronic or otherwise) shall not be deemed to have been duly given unless and until there is evidence that such notice, request, demand, claim or other communication actually is received by the individual for whom it is intended. Further, nothing in this Settlement Agreement nor by serving as a Designated Representative for notice purposes shall be construed as creating an attorney-client relationship between any of the Designated Representatives for notice purposes identified below and any party to this Settlement Agreement, unless such attorney-client relationship existed beforehand.

### FOR SETTLING PLAINTIFFS:

Robert Gordon, Esq.  
Weitz and Luxenberg PC  
180 Maiden Lane  
New York, NY 10038  
Telephone: (212) 558-5500  
FAX: (212) 344-5461

Scott Summy, Esq.  
Baron & Budd PC  
3102 Oaklawn Avenue, Suite 1100  
Dallas, Texas 75219  
Telephone: (214) 521-3605  
FAX: (214) 520-1181

Victor M. Sher, Esq.  
Sher Leff LLP  
450 Mission Street, Ste. 400  
San Francisco, CA 94105  
Telephone: (415) 348-8300, ext. 100  
FAX: (415) 348-8333

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### FOR SETTLING DEFENDANTS:

David B. Garten  
or Current Vice President and General Counsel  
Chevron Global Downstream LLC  
6111 Bollinger Canyon Road, Suite 485, Rm 4730  
San Ramon CA 94583  
Telephone: (925) 543-1630  
FAX: (925) 543-2313

Steve Leifer, Esq.  
Baker Botts LLP  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400  
Telephone: (202) 639-7723  
FAX: (202) 585-1040

and:

Sheila L. Birnbaum, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, NY 10036  
Telephone: (212) 735-2450  
FAX: (917) 777-2450

### **XV. WARRANTY OF AUTHORITY**

Each person who executes this Settlement Agreement on behalf of a corporation, partnership, joint venture, unincorporated association, public authority, municipal corporation, government, other entity, or minor child, represents and warrants to each party that he or she has the authority to do so and has enclosed a certified copy of the requisite board or legislative resolution, power of attorney, secretary's certificate, or other documentation evidencing the authority of each person below to enter into this Settlement Agreement on behalf of the respective settling person or entity indicated below.

### **XVI. GOVERNING LAW**

Except as otherwise provided, this Settlement Agreement and all actions arising out of or in connection with this Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of law or choice of law provisions thereof. With regard to those Settling Plaintiffs in the California cases subject to

## SETTLEMENT AGREEMENT

this Settlement Agreement, this Settlement Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of law or choice of law provisions thereof because they do not have New York counsel representing them in connection with this Settlement Agreement.

### **XVII. WAIVER**

With respect to the release of the Released Claims, Settling Plaintiffs expressly waive any rights or benefits available under section 1542 of the California Civil Code, which provides as follows, or any other similar statute or law:

**A GENERAL RELEASE DOES NOT EXTEND TO  
CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
THE TIME OF EXECUTING THE RELEASE, WHICH IF  
KNOWN BY HIM OR HER MIGHT HAVE  
MATERIALLY AFFECTED HIS OR HER  
SETTLEMENT WITH THE DEBTOR.**

The parties understand and acknowledge the significance and consequence of the specific waiver of California Civil Code section 1542 described above and of any similar statute or law.

### **XVIII. NO ADMISSION**

This Settlement Agreement is a compromise of disputed claims and fully and finally settles all claims by Settling Plaintiffs against the Released Parties, and prevents any further action in connection with the Released Claims against the Released Parties in the litigation that is the subject of this Settlement Agreement or in any other litigation. Neither the payment of any consideration hereunder nor anything contained in this Settlement Agreement, the Treatment Protocol, the Escrow Agreement, or the Release and Indemnity Agreement shall be interpreted or construed to be admission of liability or of any facts on the part of, nor to the prejudice of, any of

## SETTLEMENT AGREEMENT

the Settling Plaintiffs, Settling Defendants, and/or Released Parties. The Released Parties expressly deny any and all liability associated with or related to the Released Claims.

### **XIX. WARRANTY OF RIGHTS**

Settling Plaintiffs, and each of them, represents and warrant to the Settling Defendants that they, respectively, have exclusive right and title to the wells listed on the attached Exhibits B and G. Settling Plaintiffs further represent and warrant to the Settling Defendants that each Settling Plaintiff has full authority to release the Released Claims in favor of the Released Parties as set forth in this Settlement Agreement and the Release and Indemnity Agreement.

### **XX. ENTIRE AGREEMENT**

Each party to this Settlement Agreement, individually and collectively, declares and represents that no promises, inducements, or other agreements not expressly contained herein between (1) Settling Plaintiffs and (2) Settling Defendants have been made with regard to the settlement of the Released Claims; that this Settlement Agreement contains the entire agreement between (1) Settling Plaintiffs and (2) Settling Defendants with respect to said subject matter; and that the terms of this Settlement Agreement, including all words, phrases, sentences, and paragraphs, including the recitals hereto, are contractual and not recitals only, and are material to the execution of this Settlement Agreement. All prior agreements and understandings, oral agreements and writings between (1) Settling Plaintiffs and (2) Settling Defendants regarding the matters set forth herein, including without limitation, that certain Outline of Proposed Settlement Terms ("Term Sheet") entered into among Settling Plaintiffs and the Settling Defendants on or about December 7, 2007, are expressly superseded hereby and are of no further force or effect. No part of this Settlement Agreement may be altered, amended, or modified in any respect, except by a writing duly executed by Settling Plaintiffs and the Settling Defendants.

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### **XXI. BINDING EFFECT**

This Settlement Agreement hereto shall be binding upon and inure to the benefit of the Released Parties and the Settling Plaintiffs.

### **XXII. FURTHER DOCUMENTS**

To the extent any documents are required to be executed by any of the parties to this Settlement Agreement to effectuate this Settlement Agreement, each party agrees to execute and deliver such other and further documents as may be required to carry out the terms of this Settlement Agreement.

### **XXIII. REPRESENTATION**

Each party to this Settlement Agreement represents and acknowledges that it has been represented by counsel with respect to this Settlement Agreement and any and all matters covered by or related to such Settlement Agreement. Each party has been fully advised with respect to all rights which are affected by this Settlement Agreement.

### **XXIV. NEUTRAL CONSTRUCTION**

The parties to this Settlement Agreement agree that this Settlement Agreement was negotiated fairly between them at arms' length and that the final terms of this Settlement Agreement are the product of the parties' negotiations. The parties agree that this Settlement Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Settlement Agreement therefore should not be construed against a party or parties to it on the grounds that the party or parties drafted or was more responsible for drafting the provision(s).

## SETTLEMENT AGREEMENT

### **XXV. VOLUNTARY AND KNOWING EXECUTION**

Each party signing represents and warrants that it read, knows, and understands the contents of this Settlement Agreement, has executed this Settlement Agreement voluntarily, and has not been influenced by any person or persons or attorney acting on behalf of any other party.

### **XXVI. HEADINGS, NUMBER AND GENDER**

Headings are used herein for convenience only and shall have no force or effect in the interpretation or construction of this Settlement Agreement. As used in this Settlement Agreement, the singular shall include the plural, and the masculine shall include the feminine and neuter genders.

### **XXVII. TIME IS OF THE ESSENCE**

Time is of the essence for each and every provision of this Settlement Agreement.

### **XXVIII. GOOD FAITH EFFORT**

The parties to this Settlement Agreement shall use their respective good faith efforts to comply with their obligations under this Settlement Agreement.

### **XXIX. NO WAIVER; REMEDIES**

No failure on the part of any party to this Settlement Agreement to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

## SETTLEMENT AGREEMENT

### **XXX. SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

All representations and warranties of the parties to this Settlement Agreement have been and will be relied on by the other parties to this Settlement Agreement notwithstanding any investigation made by them.

### **XXXI. PAYMENT OF ATTORNEYS' FEES AND COURT COSTS**

Each party to this Settlement Agreement shall be responsible for the payment of its own court costs, attorneys' fees, and all other expenses, costs, and fees in connection with the matters referred to in this Settlement Agreement, except as expressly set forth herein.

### **XXXII. ATTORNEYS' FEES AND COSTS TO ENFORCE AGREEMENT**

If any action is required to be taken by any party to enforce any decision of an arbitrator as provided in this Settlement Agreement, the prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs.

### **XXXIII. ADMISSIBILITY OF AGREEMENT**

The parties expressly agree that this Settlement Agreement is a protected communication under Federal Rule of Evidence 408 and any equivalent code or common law rule of evidence of any state; however, the same shall be admissible in (i) an arbitration or any proceeding to enforce an arbitral decision under this Settlement Agreement, (ii) a proceeding the sole purpose of which is to enforce the terms of this Settlement Agreement and its Exhibits hereto, (iii) any proceeding to establish an insurance or reinsurance claim by a Settling Defendant or Released Party, (iv) any proceeding to establish an appropriate set-off or credit to a judgment entered or to be entered in favor of a Settling Plaintiff against an entity other than a Settling Defendant or any Released Parties, or (iv) other proceeding where such admission is necessary to effectuate the terms of this Settlement Agreement.

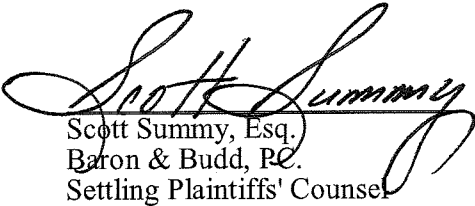
SETTLEMENT AGREEMENT

**XXXIV. EXECUTION BY COUNTERPARTS**

This Settlement Agreement may be executed in one or more counterparts. All counterparts will constitute one instrument binding on the signatories upon execution of one or more counterparts by all parties. Counsel for any party shall be authorized to assemble a composite counterpart which shall consist of one copy of each page, except the signature pages, together with multiple counterpart signatures pages executed on behalf of every party to this Settlement Agreement. The composite counterpart may then be used by any party for all purposes as the complete signed and executed Settlement Agreement among the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Settlement Agreement as of March 12, 2008.

Approved as to Form:

  
Scott Summy, Esq.  
Baron & Budd, P.C.  
Settling Plaintiffs' Counsel

LIST OF EXHIBITS, SIGNATURE PAGE INDEX, SIGNATURE PAGES

AND EXHIBITS FOLLOW THIS PAGE