

FOR SETTLEMENT PURPOSES ONLY DRAFT 5/21/2009 rev

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

MDEQ Reference No.: AOC-RRD-09-002

Sphinx Luna Pier, LLC

ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE

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I. STATEMENT OF PURPOSE

1.1 This Administrative Agreement and Covenant Not to Sue is executed by and between the State of Michigan, through the Michigan Department of Attorney General (MDAG), and the Michigan Department of Environmental Quality (MDEQ), and Sphinx Luna Pier, LLC (Sphinx). Upon execution, this Agreement shall apply and be binding upon the State, the MDEQ, Sphinx, and their respective successor entities. This Agreement is entered under the authority of the MDAG to compromise and settle claims of the State.

1.2 In entering into this Agreement, it is the mutual intent of the Parties: (a) that Sphinx expedite response activities at the Property; (b) that Sphinx undertake necessary measures to prevent exacerbation of or contribution to any contamination existing at the Facility; (c) that Sphinx not interfere with the implementation of response activities at the Property; (d) to provide for the reuse or redevelopment of the Property in a manner that is in the public interest.

II. DENIAL OF LIABILITY

2.1 The execution of this Agreement by Sphinx is neither an admission of liability with respect to any issue dealt with in this Agreement nor is it an admission of any factual allegations or legal determinations stated or implied herein.

III. DEFINITIONS

The terms used in this Agreement shall have the following meanings:

3.1 "Administrative Agreement and Covenant Not to Sue" or "Agreement" means this document, its attachments, and any reports, Submissions and any attachment thereto, made pursuant to this document. Upon approval by the MDEQ, all attachments to this document and any Submissions submitted under this document are incorporated into and made an enforceable part of this document.

3.2 "Day" means a calendar day, unless otherwise noted.

3.3 "Facility" means any area of the Property where a hazardous substance, in concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the NREPA, MCL 324.20120a(1)(a) or (17), and further defined in the Part 201 Rules, or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA, has been released, deposited or disposed of, or otherwise comes to be located; and any other area, place, or property where a hazardous substance, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the hazardous substance from the Property.

3.4 "Free Product" means a regulated substance in a liquid phase equal to or greater than 1/8 inch of measurable thickness, that is not dissolved in water, and that has been released into the environment.

3.5 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

3.6 "Oversight costs" means all costs incurred by the State after the MDEQ submits a written notification that Sphinx has not complied with the agreement and the notification states that the oversight cost will begin to accrue. Oversight costs will not be billed unless one or more violations exceed a 30 day period of cure. Oversight costs may be billed once a 30 day cure period has been exceeded if any violation has not been cured. Oversight costs will continue until any and all violations of the agreement have been resolved and verified to the satisfaction of the MDEQ, in accordance with this agreement. Oversight costs include costs to modify, oversee, enforce, monitor, and document compliance with this Agreement including but not limited to, costs incurred to: monitor response activities at the Facility, observe and comment on field

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activities, review and comment on Submissions, collect and analyze samples, evaluate data, purchase equipment and supplies to perform monitoring activities, attend and participate in meetings, prepare and review costs reimbursement documentation or performing the response activities required by this Agreement that are not performed in compliance with this Agreement by Sphinx.

3.7 "Part 201" means Part 201, Environmental Remediation, of the NREPA, 1994 PA 451, as amended, MCL 324.20101 *et seq*, and the Administrative Rules promulgated thereunder.

3.8 "Part 211" means Part 211, Underground Storage Tank Regulations, of the NREPA, 1994 PA 451, as amended, MCL 324.21101 *et seq*, and the Michigan Underground Storage Tank Rules (MUSTR) thereunder.

3.9 "Part 213" means Part 213, Leaking Underground Storage Tanks, of the NREPA 1994 PA 451, as amended, MCL 324.21301 *et seq*.

3.10 "Party" means either Sphinx or the State. "Parties" means Sphinx and the State.

3.11 "Property" means the property located at 4180 Luna Pier Road, Luna Pier, Monroe County, Michigan, and more specifically described in Attachment A.

3.12 "State" or "State of Michigan" means the Michigan Department of Attorney General and the Michigan Department of Environmental Quality, and any authorized representative acting on their behalf.

3.13 "Submissions" means all work plans, documents, schedules, submissions, and reports to be submitted to the MDEQ pursuant to this Agreement.

3.14 "Surface waters of the state" means lakes, rivers, and streams and all other watercourses, including the Great Lakes, within the jurisdiction of this state.

3.15 Unless otherwise defined herein, all terms used in this Agreement which are defined in Part 201, the Part 201 Rules, Part 211, MUSTR or Part 213 shall have the same meaning in this Agreement as in Parts 201, Part 211 and 213 of the NREPA and the Part 201 Rules and MUSTR.

IV. BACKGROUND INFORMATION CONCERNING THE PROPERTY

4.1 The Property, located at 4180 Luna Pier Road, Luna Pier, Michigan, is presently owned by Sphinx.

4.2 The Property was previously operated as a retail gasoline and diesel station/truck stop from about 1996 through 2006.

4.3 On November 17, 2006, prior to Sphinx's ownership, a petroleum sheen was detected on Lake Erie, the source of which was subsequently determined to be a release of diesel fuel from the Property. The diesel fuel had migrated from the Property, through the storm sewers leading to Lake Erie. The MDEQ placed placards (red tags) on the underground storage tank (UST) systems on November 21 and 22, 2006, pursuant to Section 21316a to prevent delivery of additional petroleum products to the UST systems. The red tags remain in place and UST system operations at the Property cannot resume until the red tags are removed.

4.4 In November 2006, the owner of the Property was Elite Management & Investment, LLC. The Property was subject to a mortgage held by Comerica Bank.

4.5 In February 2007, Trigild Company was appointed by the Wayne County Circuit Court as the receiver for the Property due to non-payment of the mortgage to Comerica Bank.

4.6 On February 14, 2008, Sphinx purchased the Property from Trigild Company.

4.7 On February 29, 2008, Sphinx submitted a document that was intended to satisfy the baseline environmental assessment requirement of Part 201 to the MDEQ (Disclosure). The Disclosure failed to satisfy the Part 201 requirements for reasons including but not limited to:

- (a) Failing to define the nature and extent of existing contamination.
- (b) Failing to provide a means of distinguishing existing contamination from contamination resulting from any future release of hazardous substances

V. IMPLEMENTATION OF RESPONSE ACTIVITIES

5.1 Performance Objectives

Sphinx shall perform all necessary response activities at the Facility to meet the performance objectives outlined in this Agreement.

- (a) To the extent that Sphinx is the owner of part or all of the Facility, Sphinx shall achieve and maintain compliance with Section 20116 of the NREPA.
- (b) Sphinx shall perform free product investigation. The performance objective of the free product investigation is to define the extent of free product at the Facility.
- (c) Sphinx shall remove free product from the Facility. The performance objective of the free product removal is to remove all free product at the Facility as identified by the initial free product investigation and any additionally discovered free product. For the purposes of this Agreement, all free product will be considered removed when no free product exists as determined by compliance monitoring under this Agreement in any of the monitoring wells or collection devices located on the Facility for a period of two (2) consecutive years.
- (d) Sphinx shall prevent discharge to the surface waters of the state of any regulated substance that is in a liquid phase and is not dissolved in water.

5.2 (a) The initial free product investigation shall be implemented within thirty (30) days of the effective date of this Agreement and performed in accordance with Attachment B.

(b) Upon completion of the investigation outlined in Attachment B, if the extent of free product is not defined, within thirty (30) days of notification by the MDEQ that the extent of free product has not been defined, Sphinx shall submit to the MDEQ for review and approval, a work plan to complete the definition of the extent of free product at the Facility.

5.3 (a) Sphinx shall remove all free product at the Facility in accordance with the procedures outlined in Attachment B. Free product removal shall continue until no free product exists in any of the monitoring wells or collection devices on the Facility for a period of two (2) consecutive years. Free product monitoring shall be conducted on a monthly basis in accordance with the Agreement.

(b) The requirement to submit quarterly free product recovery status reports shall continue until the two (2) year monitoring period specified in Paragraph 5.3(a) is complete in accordance with Section XXII.

5.4 (a) Sphinx shall monitor catch basins that discharge to the storm sewer and remove any regulated substance that is in a liquid phase and not dissolved in water according to Attachment C.

(b) If there is a discharge to surface waters of the state of any regulated substance that is in a liquid phase and not dissolved in water according to Attachment C, Sphinx shall install permanent structural controls as necessary to prevent any additional discharge to waters of the state. Such permanent structural controls shall be installed subject to permitting required by the Water Bureau of the MDEQ, and shall be maintained by Sphinx until the MDEQ notifies Sphinx that such permanent control structures are no longer needed.

5.5 Sphinx shall develop any additional work plan required by this Agreement and perform the associated response activities contained in each work plan in accordance with the requirements of this Agreement. Sphinx shall assure that all work plans for conducting response activities are designed to achieve the performance objectives identified in Paragraph 5.1. Upon MDEQ approval, each component of each work plan and any approved modifications shall be deemed incorporated into this Agreement and made an enforceable part of this Agreement. If there is a conflict between the requirements of this Agreement and any MDEQ-approved work plan, the requirements of this Agreement shall prevail.

5.6 The MDEQ shall approve or disapprove all work plans in accordance with the procedures specified in Section VIII (Submissions and Approvals) of this Agreement. Each work plan shall include a detailed description of the tasks to be conducted during the response activity, including the methodology and specifications, and a schedule for implementation and completion of the response activity(s) and submission of a Final Report to the MDEQ within sixty (60) days of completion of the response activities except response activities required under Paragraphs 5.1(b), 5.1(c), 5.2 and 5.3 which shall comply with the provisions of Section XXII of this Agreement. Upon MDEQ approval of the work plan, Sphinx shall implement each work plan in accordance with the MDEQ-approved schedule pursuant to the procedures provided for in this Agreement.

VI. ACCESS/SUCCESSORS-IN-INTEREST/NOTICE RESPONSIBILITIES

6.1 Commencing upon the effective date of this Agreement, Sphinx shall provide the right of access to the MDEQ, and their authorized officers, employees, representatives, or other persons performing MDEQ-approved response activities to enter the Facility and associated properties at all reasonable times to the extent access to the Facility and any associated properties

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are owned, controlled by, or available to Sphinx. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Property, MDEQ staff and its authorized employees, agents, representatives, contractors, and consultants shall be allowed to enter the Property and associated properties for the purpose of conducting any activity to which access is required for the implementation of this Agreement or to otherwise fulfill any responsibility under state or federal laws with respect to the Facility, including, but not limited to, the following:

- (a) Monitoring response activities or any other activities taking place pursuant to this Agreement at the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Assessing the need for, or planning, or conducting, investigations relating to the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, or planning, or conducting, response activities at or near the Facility;
- (f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of the response activity;
- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents related to environmental conditions; and
- (h) Assuring the protection of public health, safety, and welfare, and the environment.

6.2 Sphinx shall ensure that assignees, successors-in-interest, lessees, and sublessees of the Property shall provide the same access and cooperation.

6.3 Any change in the ownership or corporate status of Sphinx shall not alter Sphinx's responsibilities under this Agreement. Sphinx shall be responsible for any non compliance with this Agreement by its contractors, subcontractors, and representatives.

6.4 Sphinx shall ensure that a copy of this Agreement is provided to any subsequent purchasers, assignees, successors-in-interest, lessees, and sublessees. Sphinx will also provide a copy of this Agreement to any contractor or subcontractor whose contract obligations may affect Sphinx's ability to comply with this Agreement.

VII. RECORD RETENTION/ACCESS TO INFORMATION

7.1 Sphinx agrees to preserve, during the life of this Agreement and for five (5) years after termination of this Agreement, unless a longer period is required by law: all records and documents in their possession or in the possession of their divisions, officers, employees, agents, contractors, successors, and assigns which relate in any way to this Agreement. Upon request from the MDEQ, Sphinx shall make such records available to the MDEQ for inspection or shall provide copies of any such records to the MDEQ. Sphinx shall obtain permission from the MDEQ, in writing, prior to the destruction of any records related to environmental conditions and shall provide the MDEQ with the opportunity to take possession of any such records.

VIII. SUBMISSIONS AND APPROVALS

8.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Agreement to be submitted by Sphinx to the MDEQ for approval, the following process and terms of approval shall apply.

8.2 Any work plan, proposal, or other document required to be submitted by this Agreement shall include all of the information required by the applicable statute and or rule, and all of the information required by the applicable paragraph(s) of this Agreement.

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8.3 The MDEQ may approve, disapprove, or approved with specific modifications, the required work plan, proposal, or other document. Upon MDEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document, shall be incorporated by reference into this Agreement and shall be enforceable in accordance with the provisions of this Agreement.

8.4 All Submissions required by this Agreement shall comply with all applicable laws and regulations and the requirements of this Agreement and shall be delivered to the MDEQ in accordance with the schedules set forth in this Agreement. All submissions delivered to the MDEQ pursuant to this Agreement shall include a reference to the Sphinx Luna Pier LLC and MDEQ Reference No. AOC-RRD-09-002.

8.5 In the event the MDEQ disapproves a work plan, proposal, or other document, it shall notify Sphinx, in writing, of the specific reasons for such disapproval. Sphinx shall submit, within thirty (30) days of receipt of such disapproval a revised work plan, proposal, or other document which adequately addresses the reasons for the MDEQ's disapproval.

8.6 In the event the MDEQ approves with specific modifications, a work plan, proposal, or other document, it shall notify Sphinx, in writing, of the specific modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The MDEQ may require Sphinx to submit, prior to implementation and within ten (10) days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications however, if necessary, Sphinx may request an extension of time. Such request shall not be unreasonably denied.

8.7 Any delays caused by Sphinx's failure to submit a work plan, proposal, or other document required to be submitted by this Agreement shall in no way affect or alter Sphinx's responsibility to comply with any other deadline(s) specified in this Agreement.

8.8 No informal advice, guidance, suggestions, or comments by the MDEQ regarding reports, plans, specifications, schedules or any other writing submitted by Sphinx will be construed as relieving Sphinx of the obligation to obtain written approval, if and when required by this Agreement.

IX. REIMBURSEMENT OF COSTS

9.1 Sphinx shall reimburse the State for all oversight costs incurred by the State. The State and Sphinx agree that Sphinx's annual reimbursement will not exceed \$10,000 and that all outstanding State oversight costs will be carried forward to the next billing period until all costs are paid by Sphinx. MDEQ may extend the billing period, but in any case Sphinx's annual obligation for reimbursement will not exceed \$10,000 on a per annum basis but can be billed and reimbursed on a cumulative basis. Following the Effective Date of this agreement, the MDEQ will periodically provide Sphinx with a summary report (Summary Report) that identifies all oversight costs incurred through the dates specified in the Summary Report. Any such demand will set forth, with reasonable specificity, the nature of the costs incurred. Sphinx shall reimburse the MDEQ for such costs within thirty (30) days of Sphinx's receipt of a written demand from the MDEQ.

9.2 Sphinx shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to Sphinx may result in the MDEQ incurring additional oversight costs, which will be included in the annual demand for payment of oversight costs.

9.3 All payments made pursuant to this Agreement shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent by first class mail to the Revenue Control Unit at the address listed in Paragraph 10.5 of Section X (Stipulated Penalties). Sphinx Luna Pier, the MDEQ Reference No. AOC-RRD-09-002, and the

RRD Account Number 448955 shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator at the address listed in Paragraph 16.2(a). Costs recovered pursuant to this section and payment of stipulated penalties pursuant to Section X (Stipulated Penalties) shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

9.4 If Sphinx fails to make full payment to the MDEQ for oversight costs as specified in Paragraphs 9.1, interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which Sphinx makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by Sphinx to an MDEQ demand for reimbursement of costs, Sphinx shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of the NREPA.

X. STIPULATED PENALTIES

10.1 Sphinx shall be liable for stipulated penalties in the amounts set forth in Paragraphs 10.2 and 10.3 for failure to comply with the requirements of this Agreement, unless excused under Section XVII (Delays in Performance). "Failure to Comply" by Sphinx shall include failure to complete Submissions and notifications as required by this Agreement and, failure to perform response activities in accordance with MDEQ-approved plans, this Agreement, and all applicable requirements of law and this Agreement within the specified implementation schedules established by or approved under this Agreement.

10.2 The following stipulated penalties shall accrue per violation per day for any violation of Section V (Implementation of Response Activities):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 100.00	1 st through 14 th day
\$ 250.00	15 th through 30 th day
\$ 2,000.00	31 st day and beyond

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10.3 Except as provided in Paragraph 10.2 and Section XVII (Delays in Performance) and Section XV (Dispute Resolution), if Sphinx fails or refuses to comply with any other term or condition of this Agreement, Sphinx shall pay the MDEQ stipulated penalties of one hundred dollars (\$100.00) a day for each and every failure or refusal to comply.

10.4 All penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs, and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

10.5 Except as provided in Section XV (Dispute Resolution), Sphinx shall pay stipulated penalties owed to the State no later than thirty (30) days after Sphinx's receipt of a written demand from the State. All payments made pursuant to this Agreement shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent by first class mail to:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, Michigan 48909-8157

Via courier:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933-2125

To ensure proper credit, all payments made pursuant to this Agreement must reference Sphinx Luna Pier, the MDEQ Reference No. AOC-RRD-09-002 and the RRD Account Number 448955. Interest, at the rate provided for in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period on the day after payment was due until the date upon which Sphinx makes full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties within

thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Agreement.

10.6 The payment of stipulated penalties shall not alter in any way Sphinx's obligation to perform the response activities required by this Agreement.

10.7 If Sphinx fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if Sphinx violates this Agreement. For any failure or refusal of Sphinx to comply with the requirements of this Agreement, the State also reserves the right to pursue any other remedies to which it is entitled under this Agreement or any applicable law including, but not limited to, seeking civil fines, injunctive relief, red tagging, the assessment of late report penalties, the specific performance of response activities, reimbursement of costs, exemplary damages pursuant to Section 20119(4) of the NREPA in the amount of three (3) times the costs incurred by the State as a result of Sphinx's violation of or failure to comply with this Agreement.

10.8 Notwithstanding any other provision of this section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Agreement.

XI. COVENANTS NOT TO SUE

11.1 In consideration of the actions that will be performed by Sphinx under the terms of this Agreement, and except as specifically provided for in this section and Section XIII (Reservation of Rights), the State of Michigan hereby covenants not to sue or to take further administrative action against Sphinx for:

(a) Free product removal that Sphinx performs pursuant to MDEQ-approved work plans under this Agreement.

(b) Payment of oversight costs.

(c) Liability under Section 20126(1)(c) for response activity and response activity costs (excluding free product recovery and oversight costs) related to the presence of

regulated substances and/or hazardous substances on the surface or a subsurface soil or groundwater or the waters of this state.

11.2 The covenants not to sue shall take effect under this Agreement as follows:

(a) With respect to liability under Section 20126(l)(c), the covenant not to sue under Paragraph 11.1(c) shall take effect upon execution of this agreement by the state.

(b) With respect to Sphinx's liability under section 20126(1)(c) and related claims for free product removal performed in compliance with MDEQ approved work plans under this Agreement, the covenant not to sue shall take effect upon MDEQ approval that free product removal activities have been completed in accordance with Section XXII.

(c) Payment of oversight costs upon receipt of payment.

11.3 The covenants not to sue extend only to Sphinx and do not extend to any other person.

XII. VOIDANCE OF THE AGREEMENT AND REMEDIES FOR BREACH OF THE AGREEMENT

12.1 This Agreement may become void if Sphinx fails to complete implementation of the free product removal required in Section V (Implementation of Response Activities), in accordance with MDEQ approved schedules, except as may be provided by Sections XVII (Delays in Performance) and XIX (Modifications) of this Agreement, Voidance under this Section is at the MDEQ and MDAG's discretion.

XIII. RESERVATION OF RIGHTS

13.1 The covenants not to sue apply only to those matters specified in Paragraph 11.1 of Section XI (Covenants Not to Sue). The State expressly reserves, and this Agreement is without prejudice to, all rights to take administrative action or to file an action with respect to the following:

(a) Enforcement of this Agreement;

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- (b) Liability not covered under Section XI including but not limited to Part 201 and any other violations of State or Federal Law;
- (c) Criminal Liability;
- (d) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility.
- (e) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment.

13.2 This Agreement is not and shall not be interpreted to be a permit, or a modification of any permit, under any federal, state, or local law or regulation, nor shall it in any way relieve Sphinx or any other person from any obligation to obtain a permit and comply with the requirements of any applicable permit. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

13.3 Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the State may have against any person, firm, corporation, or other entity not a Party to this Agreement. Nothing in this Agreement is intended to create any rights, claims, or defenses in persons or entities that are not a Party to this Agreement and all Parties to this Agreement expressly reserve all rights and claims each may have against, and all defenses each may have to claims of, persons and entities that are not a Party to this Agreement.

13.4 The Parties agree that nothing in this Agreement shall be construed as a statement, representation, finding, or warranty by the State that the Property is fit for any particular use or

that the response activities performed in accordance herein will result in the achievement of the performance objectives or remedial criteria established by law.

13.5 Nothing in this Agreement shall in any way limit the power and authority of the State to take appropriate action to: (a) protect public health, safety, or welfare or the environment; or (b) prevent, abate, or minimize a release or threatened release associated with the Property.

13.6 Nothing in this Agreement shall in any way limit or affect the State's right to take judicial or administrative action against any person(s) not a party to this agreement, who may be liable under Parts 201 and 213 of the NREPA. Furthermore, this Agreement shall not be construed as discharging the liability of any other person or entity.

13.7 Notwithstanding any other provision of this Agreement, the MDEQ and the Attorney General shall retain all of their information gathering, inspection, access, and enforcement authorities and rights under Part 201 of the NREPA and any other applicable statutes or regulations.

13.8 The MDEQ and MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Agreement.

13.9 Failure by the MDEQ or the MDAG to enforce any term, condition, or requirement of this Agreement in a timely manner shall not:

(a) Provide or be construed to provide a defense for Sphinx's noncompliance with any such term, condition, or requirement of this Agreement.

(b) Estop or limit the authority of the MDEQ or the MDAG to enforce any such term, condition, or requirement of this Agreement, or to seek any other remedy provided by law.

13.10 This Agreement does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Sphinx in accordance with the work plans required by this Agreement will result in the achievement of the performance objectives stated in Paragraph 5.1, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

13.11 In any action under this Agreement or otherwise related to this Facility brought by the State, the State shall first prove a prima facie case against Sphinx. Sphinx shall bear the burden of proof of showing by a preponderance of the evidence in accordance with Sections 20126 and 20129 that Sphinx is not liable under Section 20126(1) excluding 20126(1)(c).

XIV. INDEMNIFICATION/INSURANCE

14.1 Sphinx shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any and all claims or causes of action arising from or on account of acts or omissions of Sphinx, its officers, employees, agents, or contractors in connection with the Property.

14.2 This Agreement shall not be construed as an indemnity by the State for the benefit of Sphinx or any other person.

14.3 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract entered into by Sphinx or on behalf of Sphinx in carrying out actions pursuant to this Agreement. Neither Sphinx nor any contractor shall be considered an agent of the State.

14.4 Sphinx waives any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement or set-off of any payments made or to be made to

the State that arise from, or on account of, any contract, agreement, or arrangement between Sphinx and any other person for performance of response activities at the Property, including claims on account of construction delays.

14.5 Prior to commencing any response activities on or near the Property, Sphinx shall secure, and maintain, until agreed upon by the MDEQ, comprehensive general liability insurance with limits of one million dollars (\$1,000,000.00), combined single limit, naming the MDEQ, the Attorney General, and the State of Michigan as additional insured parties. If Sphinx demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, Sphinx needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the method used to insure, Sphinx shall provide the MDEQ and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's, and the State of Michigan's status as additional insured parties. In addition, Sphinx shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of Sphinx in furtherance of this Agreement. Prior to commencement of the work under this Agreement, Sphinx shall provide to the MDEQ satisfactory proof of such insurance.

XV. DISPUTE RESOLUTION

15.1 Unless otherwise expressly provided in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Agreement except for Paragraph 10.8 and Section XIII (Reservation of Rights) which is not disputable under this Agreement. However, the procedures set forth in this

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Section shall not apply to actions by the State to enforce obligations of Sphinx that have not been disputed in accordance with this Section. Engagement of a dispute resolution between the Parties shall not be cause for Sphinx to delay the performance of any compliance requirements or response activity.

15.2 Except for undisputable matters identified in Paragraph 15.1 of this Agreement, any dispute that arises under this Agreement with respect to the MDEQ's disapproval, denial, modification, or other decision concerning requirements of this Agreement, shall in the first instance be the subject of informal negotiations between the Project Coordinator representing the MDEQ and Sphinx. A dispute shall be considered to have arisen on the date that a Party to this Agreement receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. The period of informal negotiations shall not exceed twenty (20) days from the date a Party receives a Notice of Dispute, unless that time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty (20) days or within the agreed-upon time period, the District Supervisor will thereafter provide the MDEQ's Statement of Position, in writing, to Sphinx. In the absence of initiation of formal dispute resolution by the Sphinx under Paragraph 15.3, the MDEQ's position as set forth in the MDEQ's Statement of Position shall be binding on the Parties.

15.3 If Sphinx and the MDEQ cannot informally resolve a dispute under Paragraph 15.2, Sphinx may initiate formal dispute resolution by submitting a written Request for Review to the RRD Chief, with a copy to the MDEQ Project Coordinator and District Supervisor requesting a review of the disputed issues. When Sphinx issues a Request for Review, the

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Request must be submitted within ten (10) days of Sphinx's receipt of the Statement of Position issued by the MDEQ pursuant to Paragraph 15.2. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting Sphinx's position; and supporting documentation upon which Sphinx bases its position. When the RRD Chief receives a Request for Review, the District Supervisor will have twenty (20) days to submit a written rebuttal to the RRD Chief, with a copy to Sphinx. Within twenty (20) days of the RRD Chief's receipt of the District Supervisor's rebuttal, the RRD Chief will provide the MDEQ's Statement of Decision, in writing, to Sphinx, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision.

15.4 The written statement of the RRD Division Chief issued under Paragraph 15.3 shall be binding on the Parties unless, within fifteen (15) days after receipt of MDEQ's written statement of decision, Sphinx files a petition for judicial review in a court of competent jurisdiction that shall set forth a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule if any, within which the dispute must be resolved to ensure orderly implementation of this Agreement. Nothing in this Agreement affects the limitations on the timing of judicial review of MDEQ decision regarding the selection, extent or adequacy of any response activity as provided for in Part 201 of the NREPA.

15.5 An administrative record of the dispute shall be maintained by the MDEQ. The administrative record shall include all of the information provided by Sphinx pursuant to Paragraph 15.4, as well as any other documents relied upon by the MDEQ in making its final

decision pursuant to Paragraph 15.4. Where appropriate, the MDEQ shall allow submission of supplemental statements of position by the Parties to the dispute.

15.6 Any judicial review of a MDEQ Statement of Decision, pursuant to Paragraph 15.4, shall be limited to the administrative record. In proceeding on any dispute regarding the selection, extent, or adequacy of any response activities, Sphinx shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute initiated by Sphinx, Sphinx shall bear the burden of persuasion on factual issues. Nothing herein shall prevent the MDEQ from arguing that a court should apply the arbitrary and capricious standard of review to any dispute under this Agreement.

15.7 Notwithstanding the invocation of dispute resolution proceedings, stipulated penalties and oversight costs shall accrue from the first day of any failure or refusal to comply with any term or condition of this Agreement, but payment shall be stayed pending resolution of the dispute. Stipulated penalties and oversight costs shall be paid within thirty (30) days after the resolution of the dispute. Sphinx shall pay that portion of a demand for payment of stipulated penalties and oversight costs that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section X (Stipulated Penalties).

XVI. COMMUNICATION

16.1 Unless the MDEQ is otherwise notified in writing, the Project Coordinator for Sphinx shall be Tarek Gayar, Managing Member. The MDEQ Project Coordinator shall be James Coger, Geologist, unless Sphinx is notified otherwise in writing. The Project Coordinators shall be responsible for overseeing the implementation of this Agreement. To the maximum extent practicable, all communications between Sphinx and the MDEQ, and all

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documents, reports, approvals and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Coordinators.

16.2 Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Agreement, shall be in writing and shall be distributed as follows:

(a) Three copies of all documents to be submitted to the MDEQ should be sent to:

Department of Environmental Quality
Jackson District Office
Remediation and Redevelopment Division
301 East Louis Glick Highway
Jackson, Michigan 49201
Telephone: 517- 780-7407
Fax: 517- 780-7855
Attn.: Mr. James Coger, Geologist

(b) Documents to be submitted to Sphinx should be sent to:

Sphinx Luna Pier, LLC
2600 Telegraph Road, Suite 200B
Southfield, Michigan 48033
Attn: Mr. Tarek Gayer, Managing Member

16.3 Matters related to the violation(s) of the terms and conditions of this Agreement are to be made in writing to:

Mitch Adelman, District Supervisor, or his successor
MDEQ Remediation and Redevelopment Division
Jackson District Office
301 East Louis Glick Highway
Jackson Michigan 49201-1556

16.4 Matters specified in this Agreement to the RRD Division Chief are to be made in writing and sent to:

Andrew Hogarth, Chief, or his successor
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing Michigan 48909-7926

XVII. DELAYS IN PERFORMANCE

17.1 Sphinx shall perform the requirements of this Agreement within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of Sphinx's obligations under this Agreement in accordance with this Section XVII (Delays in Performance).

17.2 For the purpose of this Agreement, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of and without the fault of Sphinx, such as: an act of God; and acts or omissions of third parties that could not have been avoided or overcome by Sphinx's due diligence and that delay the performance of an obligation under this Agreement. "Force Majeure" does not include among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of Sphinx's actions or omissions.

17.3 When circumstances occur that Sphinx believes constitutes a Force Majeure, Sphinx shall notify the MDEQ by telephone within forty-eight (48) hours of discovering the event, if that event causes or may cause a delay in its compliance with any provision of this Agreement. Verbal notice shall be followed by written notice within ten (10) Days and shall describe in detail the anticipated length of delay, the precise cause or causes of the delay, the measures taken by Sphinx to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Sphinx shall adopt all reasonable measures to avoid or minimize any such delay.

17.4 Failure of Sphinx to comply with the notice requirements of Paragraph 17.3 shall render this Section XVII (Delays in Performance) void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 17.3 of this Agreement.

17.5 If the Parties agree that the delay or anticipated delay was beyond the control of Sphinx, this may be so stipulated and this Agreement will be modified accordingly pursuant to Section XVIII (Modifications) of this Agreement. If the Parties to this Agreement are unable to reach such agreement, the dispute shall be resolved in accordance with Section XV (Dispute Resolution) of this Agreement. The burden of proving that a delay was beyond the reasonable control of Sphinx, and that all the requirements of this Section XVII (Delays in Performance) have been met by Sphinx, is on Sphinx.

17.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Sphinx qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XVIII. MODIFICATIONS

18.1 This Agreement may only be modified according to the terms of this Section. The procedure for modifying this Agreement shall be as follows:

(a) Any Submission or attachments to Submissions required under this Agreement shall only be modified by written agreement between Sphinx and the MDEQ's Project Coordinators.

(b) The Project Coordinators can agree, in writing, to extend any deadline contained in this Agreement. Any extension of more than three (3) months must be granted in accordance with subparagraph (c) below.

(c) Modification of any other provision of this Agreement shall be made by written agreement between Sphinx, the Division Chief of the RRD, and the Michigan Department of Attorney General.

XIX. APPLICABLE LAW

19.1 All actions, including, but not limited to, response activities, required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable State and federal laws and regulations, including but not limited to: Parts 31, 201, 211, and 213 of the NREPA and their administrative rules and amendments; laws relating to occupational safety and health, and other federal and State environmental laws. Other agencies may also be called upon to review the conduct of response activities under this Agreement.

19.2 To the extent Sphinx complies with this agreement and Part 201, the state considers Sphinx to have resolved its liability under section 20126(1)(c) such that it receives the benefit of the provisions of Section 20142.

XX. APPLICATION

20.1 This Agreement shall apply to and be binding on Sphinx, the MDEQ, and the Michigan Department of Attorney General. Further, this Agreement is only for the benefit of Sphinx, the MDEQ, and the Michigan Department of Attorney General, and shall not be enforceable by or interpreted to be for the benefit of any other person.

XXI. SEVERABILITY

21.1 The provisions of this Agreement shall be severable, and if any provision is declared by a court of competent jurisdiction to be inconsistent with federal or State law, and therefore unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

XXII. LETTER OF COMPLETION

22.1 When Sphinx believes the response activities required by Paragraphs 5.1(b), 5.1(c), 5.2 and 5.3 of this Agreement have been achieved, Sphinx shall submit a certification to that effect to the MDEQ Project Coordinator. Such certification shall be signed by Sphinx's Project Coordinator and shall verify that the response activities required by Paragraphs 5.1(b), 5.1(c), 5.2 and 5.3 of this Agreement have been completed pursuant to MDEQ-approved work plans.

22.2 Sphinx's obligations under Paragraphs 5.1(b), 5.1(c), 5.2 and 5.3 of this Agreement shall terminate only after Sphinx has submitted the certifications required under Paragraph 22.1 and the Director of the MDEQ or his or her designee has issued a Letter of Completion verifying that Sphinx's obligations pursuant to said Paragraphs have been terminated. Termination of the obligations with respect to Paragraph 5.1(b), 5.1(c), 5.2 and 5.3 of this Agreement shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.

XXIII. SEPARATE DOCUMENTS

23.1 This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXIV. EFFECTIVE DATE

24.1 This Agreement shall become effective on the date that the MDEQ signs it. All dates for performing obligations under this Agreement shall be calculated from this Agreement's effective date. For this Agreement's purposes, "day" means a calendar day unless otherwise noted.

XXV. REMOVAL OF RED TAGS

25.1 The red tags placed on the UST systems at the Property on November 21 and 22, 2006 shall be removed within seven (7) days of the effective date of this Agreement.

XXVI. SIGNATORIES

26.1 Each undersigned individual represents and warrants that he or she is fully authorized by the Party he or she represents to enter into this Agreement and to legally bind such Party to the terms and conditions of this Agreement.

THE MDEQ AND SPHINX AGREE TO ALL TERMS AND CONDITIONS
HERETOFORE SET FORTH.

IT IS SO STIPULATED:

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

By: Todd Adams
Todd Adams (P36819)
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
Department of Attorney General

June 8, 2009
Date

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Andrew W. Hogarth
Andrew W. Hogarth, Chief
Remediation and Redevelopment Division
Department of Environmental Quality

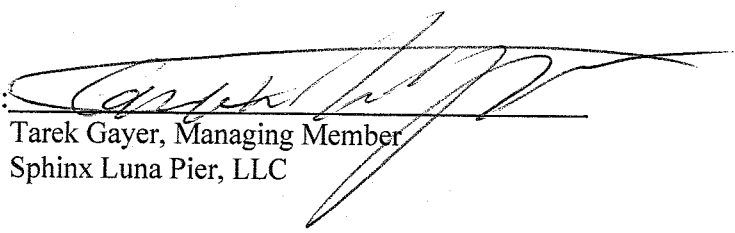
06/09/2009
Date

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IT IS SO STIPULATED:

SPHINX LUNA PIER, LLC

By:


Tarek Gayer, Managing Member
Sphinx Luna Pier, LLC

Date

6/2/09