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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE STATE OF NEW YORK, and  
JOHN P. CAHILL, as Commissioner of the  
New York State Department of Environmental  
Conservation and Trustee of the Natural Resources,

Plaintiffs,

vs.

98 Civ. **3165**

ESTATE OF WILLIAM S. LASDON,  
NEPERA, INC., and  
WARNER-LAMBERT COMPANY,

Defendants.  
-----X

**CONSENT DECREE BETWEEN STATE OF NEW YORK  
AND ESTATE OF WILLIAM S. LASDON, NEPERA, INC.,  
AND WARNER-LAMBERT COMPANY AND ORDER OF DISMISSAL**

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**BACKGROUND**

A. The State of New York ("State") and John P. Cahill, as Commissioner of the New York State Department of Environmental Conservation and Trustee of the Natural Resources, filed a Complaint in this matter concurrent with the lodging of this Consent Decree pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 42 U.S.C. §§ 9601, et seq. ("CERCLA"), 42 U.S.C. § 9607(a), and New York statutory and common law against the Estate of William S. Lasdon (the "Estate"), Nepera, Inc. ("Nepera") and Warner-Lambert Company ("Warner-Lambert"). The Complaint seeks recovery of costs incurred and to be incurred in responding to the release or threatened

release of hazardous substances and other wastes at or in connection with approximately twenty-nine (29) acres of property located at and near Route 17 in the Village of Harriman, County of Orange, State of New York, approximately one mile southwest of Exit 16 of the New York State Thruway, and the areas of contamination attributable to that site as more fully described in the ROD for Inactive Hazardous Waste Disposal Site No. 336006 (the "Harriman Site"), and at or in connection with approximately thirty (30) acres of property located in the Town of Hamptonburgh, County of Orange, on the southern side of the Orange County Highway 4, approximately 1.5 miles from the Town of Maybrook (the "Maybrook Site"), and other relief.

B. The Parties have stipulated and agreed to the making of this Consent Decree prior to the filing of responsive pleadings or the taking of any testimony, and in partial settlement of the claims raised in the Complaint.

C. In 1986, an environmental investigation resulted in the discovery and removal of buried drums from the Harriman Site.

D. In March 1988, Nepera and Warner-Lambert entered into a Stipulation with the New York State Department of Environmental Conservation (the "DEC") to complete a Remedial Investigation and Feasibility Study ("RI/FS") in order to determine the nature and extent of contamination at the Harriman Site, and to develop a remedy for addressing such contamination. The primary identified soil contaminants were mercury, benzene, toluene, xylene and pyridine-based compounds. The primary identified groundwater contaminants were benzene, toluene and xylene. The work required to be performed at the Harriman Site pursuant to the Stipulation has been completed in accordance with the terms of the Stipulation and accepted by the DEC.

E. In September 1990, with the DEC's oversight and approval, an Interim Remedial Measure of pumping and treating benzene-contaminated groundwater from on-site wells at the Harriman Site was initiated.

F. In accordance with the March 1988 Stipulation for the Harriman Site with Nepera and Warner-Lambert, the DEC continued to prosecute the Estate in an administrative proceeding, Index No. W3-0004-8101, superseded by Index No. W3-0623-92-10, for the performance of additional activities to address contamination at the Harriman Site, including without limitation, the performance of the remedy to be selected for the Harriman Site, and the DEC's oversight costs and expenses of administration. By Order dated March 1, 1994, the Executive Deputy Commissioner of the DEC determined, inter alia, that additional fact finding was required to determine the Estate's liability. The DEC's administrative proceeding is still pending.

G. The DEC issued a Proposed Remedial Action Plan ("PRAP") for the Harriman Site in June 1996; solicited public comments and held a public meeting on the PRAP; and, issued its Record of Decision ("ROD") for the Harriman Site on March 27, 1997, which is attached hereto as Appendix A.

H. In March 1988, Nepera and Warner-Lambert entered into a Stipulation with the DEC to conduct a RI/FS at the Maybrook Site. A treatability study was also initiated to determine whether a biocell technology consisting of in-situ soil vapor extraction and bioremediation can successfully address the soil contamination (primarily consisting of benzene, toluene, xylene and pyridine-based compounds) at the Maybrook Site. A ROD for the Maybrook Site has not yet been issued.

I. In accordance with the March 1988 Stipulation for the Maybrook Site with Nepera and Warner-Lambert, the DEC continued to prosecute the Estate in an administrative proceeding, Index No. W3-0006-8102, superseded by Index No. W3-0624-92-10, for the performance of additional activities to address contamination at the Maybrook Site, including without limitation, the performance of the remedy to be selected for the Maybrook Site, and the DEC's oversight costs and expenses of administration. By Order dated March 1, 1994, the Executive Deputy Commissioner of the DEC determined, inter alia, that the Estate was liable as an operator of the Maybrook Site. The Estate challenged that determination judicially before the Supreme Court of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules, which judicial challenge is still pending.

J. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the United States Environmental Protection Agency ("EPA") placed the Maybrook Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in 1986. The State has acted as the lead enforcement agency at the Maybrook Site and the EPA has recognized the State's role as such. In addition, the terms of this Consent Decree are intended to be consistent with the National Contingency Plan, set forth at 40 C.F.R. Part 300, Appendix A, with respect to the Harriman Site and the Maybrook Site.

K. Pursuant to Article 27, Title 13 of the New York Environmental Conservation Law ("ECL"), the DEC placed the Harriman Site and the Maybrook Site on the New York State Registry of Inactive Hazardous Waste Disposal Sites, Inactive Hazardous Waste Disposal Site Nos. 336006 and 336010, respectively, notwithstanding the assertion of certain legal objections to the listing of the Harriman Site.



L. Certain of the substances identified at the Harriman Site and the Maybrook Site are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 101(14).

M. The State has incurred and continues to incur response costs in responding to the release or threat of release of hazardous substances and other wastes at or in connection with the Harriman Site and the Maybrook Site.

N. Pursuant to an agreement dated as of November 6, 1997 among the Estate, Nepera and Warner-Lambert (the "Private Party Settlement Agreement"), which is attached hereto as Tab 1 and incorporated herein by reference, the Estate has placed the sum of Thirteen Million Dollars (\$13,000,000) in escrow. In accordance with the Private Party Settlement Agreement and an escrow agreement attached hereto as Appendix B, the funds in escrow are to be turned over to a special trust which has been established for the purposes of providing funding for the investigation and remediation of the Harriman Site and the Maybrook Site, future and past response costs, and other environmental claims and related expenses for environmental conditions at or arising from the Harriman Site and the Maybrook Site. This funding obligation of the Estate, and the other obligations of Nepera, Warner-Lambert and the Estate under the Private Party Settlement Agreement, are subject to certain specified conditions, including without limitation, the lodging and entry of this Consent Decree.

O. The purposes of this Consent Decree are to provide for the implementation and funding of the remedy selected for the Harriman Site and to address certain issues relating to the remedy to be selected for the Maybrook Site, and to resolve without further litigation the State's remaining claims for relief with respect to the Matters Addressed, as defined in Paragraphs 61-62. This Consent Decree allows for the turnover of the Estate's funds held in

escrow to the trust for the purposes, inter alia, of paying for past and future response costs at the Harriman Site and the Maybrook Site. This Consent Decree also provides for the implementation of the remedy selected by the DEC for the Harriman Site by the Trust or the Corporate Defendants, utilizing funds to be obtained from the trust, and for the assumption of responsibility by Nepera and Warner-Lambert for payment of response costs at the Harriman Site to the extent that funds are not obtained from the trust for that purpose. With respect to the Maybrook Site, this Consent Decree defines certain additional rights and responsibilities among the Parties, but does not provide for the implementation of the remedy to be selected for the Maybrook Site. Therefore, this is a Partial Consent Decree with respect to the Maybrook Site.

P. The Parties recognize that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup of the Harriman Site and the Maybrook Site, and will settle and avoid further prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and serves the statutory purposes of CERCLA and the ECL.

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

#### **I. DEFINITIONS**

1. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA, regulations promulgated pursuant to CERCLA, or by any court's interpretation thereof, shall have the meaning assigned to them by CERCLA, such regulations or the courts. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

(a) "Consent Decree" or "Decree" means this Decree and all appendices attached hereto and as listed in Paragraph 84;

(b) "Corporate Defendants" mean Nepera and Warner-Lambert;

(c) "Escrow Account" means the fund of monies held in escrow pursuant to the "Escrow Agreement" among the Estate, Nepera and Warner-Lambert and the "Escrow Agents" as defined therein, dated as of November 6, 1997, attached to the Private Party Settlement Agreement as Schedule A, and attached hereto as Appendix B;

(d) "Harriman Future Response Costs" mean those costs of response as set forth in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), that the State incurs after the lodging of this Consent Decree, and that are not inconsistent with the National Contingency Plan, for the oversight, monitoring, or enforcement of activities performed by the Corporate Defendants at the Harriman Site pursuant to this Consent Decree, including reviewing designs, plans, reports and other items submitted by the Corporate Defendants at the Harriman Site pursuant to this Consent Decree, verifying any Remedial Action taken by the Corporate Defendants at the Harriman Site pursuant to this Consent Decree, or otherwise overseeing, monitoring, or enforcing this Consent Decree, including, but not limited to, payroll costs, fringe benefits, indirect costs, contractor costs, travel costs, laboratory costs, and reasonable attorneys fees;

(e) "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto;

(f) "Operation and Maintenance" or "O&M" mean all activities required to maintain and monitor the effectiveness of the Remedial Action as required under the O&M plan approved by the DEC, and the ROD and its schedules, plans or reports;

(g) "Parties" means the State, the Corporate Defendants, and the Estate;

(h) "Past Response Costs" mean response costs which the State incurred with respect to the Harriman Site and the Maybrook Site prior to the lodging of this Consent Decree;

(i) "Remedial Action" means "remedial design" and "remedial action," as those terms are defined in CERCLA and/or the NCP, as required under the ROD and its designs, plans or reports. Remedial Action shall not include Operation and Maintenance;

(j) "Stipulations of Dismissal" shall mean those stipulations of dismissal with prejudice executed by the Parties prior to the lodging of this Consent Decree for the purpose of terminating several pending judicial and administrative proceedings between and among various of the Parties relating, inter alia, to the Harriman Site and the Maybrook Site, which are to be filed in those proceedings upon entry of this Consent Decree. Copies of the Stipulations of Dismissal are attached hereto as Tab 2;

(k) "Trust" means the trust for the Harriman Site and the Maybrook Site established by Indenture of Trust dated March 25, 1998; and

(l) "Waste Material" means any substance which meets the definition of any one or more, or any combination or mixture of any one or more, of the following:

(1) any "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); or

(2) any "pollutant or contaminant" as those terms are defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); or

(3) any "hazardous waste" as that term is defined in New York Environmental Conservation Law ("ECL) § 27-0901(3); or

(4) any "solid waste" as that term is defined in Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27) and in ECL § 27-0701(1).

## **II. JURISDICTION**

2. This Court has jurisdiction over the subject matter and the Parties to this action. Solely for the purposes of this Consent Decree, the Parties waive all objections and defenses that they may have to personal jurisdiction of this Court or to venue in this District. The Parties also agree to be bound by the terms of this Consent Decree and shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND; COOPERATION**

3. This Consent Decree shall apply to and be binding upon all Parties and their successors, successors-in-interest at the Harriman Site and the Maybrook Site, assigns and agents. Each signatory to this Consent Decree certifies that she or he is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind the Party or entity represented by her or him to its terms. Any change in governance, ownership, corporate or legal status of the Corporate Defendants or the Estate, including, but not limited to, any transfer of assets or real or personal property, merger, acquisition or dissolution shall in no way alter their respective responsibilities under this Consent Decree. In the event of the inability to pay or

insolvency of one of the Corporate Defendants, or in the event that for any other reason whatsoever one of the Corporate Defendants does not meet its obligations under this Consent Decree, the remaining Corporate Defendant shall satisfy all obligations of the other Corporate Defendant under this Consent Decree. Nothing in this Consent Decree shall inure to the benefit of any person or entity other than the Parties and their successors, successors-in-interest at the Harriman Site and the Maybrook Site, assigns and agents, nor shall any such person or entity be deemed a third party beneficiary of this Consent Decree.

4. Consistent with the purposes of Section 122(d)(1)(B) of CERCLA, the participation by any Party in this Consent Decree shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, except to enforce this Consent Decree, or as otherwise provided in the Federal Rules of Evidence. Nothing in this Paragraph 4 shall affect or diminish the Corporate Defendants' agreement not to contest liability with regard to the Maybrook Site pursuant to Paragraph 37 herein.

5. Nothing in this Consent Decree is intended to affect, increase, diminish, settle or release any rights, responsibilities, allocation or interests of the Corporate Defendants as between each other.

6. The Corporate Defendants and the Estate agree to cooperate with the State and each other, and commit whatever resources are necessary to comply with their obligations under this Consent Decree.

7. The Parties hereby agree that neither this Consent Decree nor any obligation of the Parties herein is in any way contingent on settlements or any other agreements made by or with ~~any other~~ Party or Parties to this action or any other person or any insurer.

#### **IV. PAYMENT AND REMEDIAL TRUST**

8. In order to resolve its liability for the State's response costs incurred and to be incurred at the Harriman Site and the Maybrook Site, the Estate has placed the sum of Thirteen Million Dollars (\$13,000,000) in escrow and has agreed that, pursuant to the Escrow Agreement, the Escrow Agents will turn over said funds (including income earned thereon) to the Trust, or to the Trust and a portion of the funds to the State in reimbursement of the State's Past Response Costs, within fifteen (15) days after the entry of this Consent Decree or the filing and entry of all Stipulations of Dismissal, whichever shall occur last.

9. The State has had an opportunity to review and approve the Trust and its Indenture of Trust for the sole purpose of effectuating the goals of CERCLA and the ECL, and agrees that the Trust is to be used for the purposes set forth in the Indenture of Trust, providing funding solely for activities relating to the investigation and remediation of the Harriman Site and the Maybrook Site, and for the payment of future and past response costs and other environmental claims and related expenses for environmental conditions at or arising from the Harriman Site and the Maybrook Site. Pursuant to such Indenture of Trust, and inherent therein, the State is an interested and necessary party to all accountings and other proceedings relating to the Trust and has standing to make judicial application to seek enforcement of its terms.

10. The State and the Corporate Defendants anticipate that the Trust, utilizing funds contributed by the Estate, will perform some or all of the response actions, or fund some or

all of the response costs, addressed in this Consent Decree, including without limitation, the performance of response actions and payment of response costs at the Harriman Site under Section V; the performance of response actions and payment of response costs at the Maybrook Site, following any future enforcement action by the State against the Corporate Defendants or by mutual agreement under Section VI; and the payment of the State's response costs under Section VII. Notwithstanding any other provision of this Consent Decree, if the Trust performs such a response action or pays such a response cost, the Corporate Defendants shall have no obligation to do so. In addition, if the Trust pays a response cost for a response action that the Corporate Defendants have performed or for which the Corporate Defendants have arranged the performance, the Corporate Defendants shall be considered agents of the Trust with respect to that response action.

## **V. REMEDIATION OF HARRIMAN SITE**

### **A. Implementation of ROD**

11. Subject to Paragraph 10 herein, the Corporate Defendants, with DEC oversight and subject to DEC approval, shall perform the Remedial Action and O&M at the Harriman Site as set forth in the ROD attached hereto as Appendix A, including, without limitation, the preparation of the remedial design work plans, performance of the remedial design, completion of construction of the remedy, and implementation of O&M activities.

12. The implementation of the Remedial Action and O&M, pursuant to Paragraph 11, shall be conducted in compliance and consistent with all applicable provisions of CERCLA; the NCP; applicable EPA guidance documents relating to the performance of the Remedial Action and O&M; the New York State ECL; regulations promulgated thereunder;



DEC Technical and Administrative Guidance Memoranda, as appropriate; and in compliance with the requirements of Paragraphs 13-35 below.

**B. Remedial Design**

13. Not later than 120 days from the Effective Date of this Consent Decree, the Corporate Defendants shall select a contractor to conduct the preparation of the remedial design plans ("Remedial Designs") as well as the construction and implementation of the Remedial Action.

14. Within sixty (60) days from Corporate Defendants' selection of their contractor, the Corporate Defendants shall submit to the DEC detailed remedial design work plans ("Work Plans") and schedule for the investigation of mercury loading to the West Branch of the Ramapo River, and the Work Plans and schedule for pilot studies to ensure proper design of an in-situ soil vapor extraction system and the groundwater treatment program. Revisions to submittals of the Work Plans required as a result of DEC review and DEC written comments shall be made by the Corporate Defendants within forty-five (45) days of receipt of said DEC comments.

15. Within sixty (60) days from Corporate Defendants' selection of their contractor, the Corporate Defendants shall submit to the DEC 100% Remedial Designs for the implementation of the drum removal program in Area F and the sediment excavation program on the Avon Parcel. Revisions to submittal of these 100% remedial designs required as a result of DEC review and DEC written comments shall be made by the Corporate Defendants within forty-five (45) days of receipt of said DEC comments.

16. The Corporate Defendants shall submit to the DEC the Remedial Designs for the remedy to mitigate mercury loading to the West Branch of the Ramapo River, if necessary; the in-situ soil vapor extraction system; and the groundwater treatment program at the following percentages of completion and according to the following time schedule:

<u>SUBMITTAL</u>	<u>DATE DUE</u>
30% Remedial Designs of in-situ soil vapor extraction system, remedy for mercury loading, if any, and groundwater treatment program ("RDs")	180 days after DEC approval of the Work Plans required in Paragraph 14 herein
95% RDs	90 days after receipt of DEC's comments regarding the 30% RDs
100% RDs	30 days after receipt of DEC's comments regarding the 95% RDs

17. Each Remedial Design for which the Corporate Defendants are responsible shall be prepared by and have the signature and seal of a professional engineer licensed to practice in New York State who shall certify that the Remedial Design was prepared in accordance with this Decree.

18. The Remedial Design shall include the following:

(a) A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

(1) the construction and operation of an in-situ soil vapor extraction system, wells and any other structures or facilities;

(2) the removal and proper disposal of the drums in Area F, and the collection, treatment and/or proper disposal of any soil, sediments or other materials contaminated thereby as required by the ROD;

(3) the collection, treatment, and/or proper disposal of contaminated groundwater and/or Non-Aqueous Phase Liquids ("NAPL") and, if necessary, the associated construction and operation of additional extraction wells and any other structures, facilities or engineered wetlands;

(4) the collection, treatment, and/or proper disposal of contaminated sediment on the Avon Parcel;

(5) the design and construction of a remedy, if any, to mitigate mercury loading into the West Branch of Ramapo River;

(6) the adoption of institutional controls, including, without limitation, physical security and posting of the Harriman Site as well as deed restrictions; and

(7) monitoring to protect public health and the environment during implementation of the Remedial Action.

(b) "Biddable quality" documents for the Remedial Action including, but not limited to, documents, plans and specifications prepared, signed, and sealed by a professional engineer. These biddable quality documents shall be consistent with the ROD and all applicable local, state and federal laws, rules and regulations as required by the NCP;

(c) Quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Designs;

(d) A time schedule for completing construction of the Remedial Action;

(e) The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Action, including a schedule for periodic sampling of groundwater monitoring wells on-site and hydraulic monitoring;

(f) A description of operation, maintenance and monitoring activities to be undertaken after the DEC has approved construction of the Remedial Action;

(g) A contingency plan to be implemented if any element of the Remedial Designs fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

(h) A community health and safety plan for the protection of persons at and in the vicinity of the Harriman Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 C.F.R. Part 1910 by a certified health and safety professional and allow an opportunity for public input; and

(i) A citizen participation plan which incorporates appropriate activities outlined in the DEC's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

**C. Remedial Action Construction and Reporting**

19. Within forty-five (45) days after the DEC approval of the Remedial Design for the drum removal program in Area F and the sediment excavation program on the Avon Parcel, the Corporate Defendants shall initiate the implementation of such programs.

20. Within forty-five (45) days after the DEC approval of the 100% Remedial Designs for the in-situ soil vapor extraction system, remedy for mercury loading, if any, and

groundwater treatment program, the Corporate Defendants shall initiate the implementation of these Remedial Actions.

21. The dates set forth in this Section V may be extended for good cause upon approval by the DEC.

22. The Corporate Defendants shall implement the Remedial Action in accordance with the approved Remedial Designs.

23. During implementation of all construction activities for the Remedial Action, the Corporate Defendants shall have on-site a full time representative who is qualified to supervise the work.

24. Within ninety (90) days after completion of the construction activities identified in each Remedial Design, the Corporate Defendants shall submit to the DEC a detailed operation and maintenance plan ("O&M Plan"); "as built" drawings and a final engineering report (each including all approved changes made to the Remedial Design during construction); and a certification that the Remedial Design was implemented and that all construction activities were completed in accordance with the DEC approved Remedial Design. The O&M Plan, "as-built" drawings, final engineering report and certification must be prepared, signed and sealed by a professional engineer.

25. Upon DEC's approval of the O&M Plan, the Corporate Defendants shall implement the O&M Plan in accordance with the requirements of DEC's approval of such plan.

26. After receipt of the Corporate Defendants' "as-built" drawings, final engineering report, and certification, the DEC shall notify the Corporate Defendants in writing

within forty-five (45) days whether the DEC is satisfied that all construction activities have been completed in compliance with the approved Remedial Design.

**D. Progress Reports**

27. By the fifteenth day of each month, beginning the month after entry of this Consent Decree and until final construction certification is approved pursuant to Paragraphs 24-26 herein, the Corporate Defendants shall submit to the State copies of written monthly progress reports that:

(a) Describe the actions which have been taken to achieve compliance with this Consent Decree during the preceding month;

(b) Include a summary of all results of sampling and tests conducted pursuant to this Consent Decree and all other data received or generated by their contractors or agents related to the work under this Consent Decree in the previous month;

(c) Identify all work plans, reports and other deliverables required by this Consent Decree which were completed and submitted during the previous month;

(d) Describe all actions including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of the Remedial Action;

(e) Include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule or implementation of their obligations under this Consent Decree, and a description of efforts made to mitigate those delays or anticipated delays;

(f) Include any modifications to any work plans that the Corporate Defendants have proposed to the DEC or that have been approved by the DEC; and

(g) Describe all activities undertaken in support of the citizen participation plan during the previous month and those to be undertaken in the next month.

28. The Corporate Defendants shall allow the DEC to attend, and, insofar as practicable, to provide the DEC at least three (3) business days' advance notice of any of the following: pre-bid meetings, non-privileged job progress meetings, substantial completion meeting, sampling, inspections and final inspection and meeting.

**E. Review of Submittals**

29. The DEC shall review each of the Corporate Defendants' submittals, pursuant to Paragraphs 19-28 herein ("Remedial Action Construction and Reporting" and "Progress Reports"), to determine whether it was prepared and whether the data and other information in the submittal was generated or done in accordance with this Consent Decree. The DEC shall notify the Corporate Defendants in writing of its approval or disapproval of each such submittal.

30. If the DEC disapproves any submittal, it shall so notify the Corporate Defendants in writing and shall specify the reasons for its disapproval. Within the time period specified in the written notice that such submittal has been disapproved, the Corporate Defendants shall, subject to the dispute resolution procedures provided in Section IX herein, make a revised submittal to the DEC that addresses and resolves all DEC's stated reasons for disapproving the submittal or explains the basis for the Corporate Defendants' disagreement with DEC's position.

31. After receipt of the revised submittal, the DEC shall notify the Corporate Defendants in writing of its approval or disapproval. In the event the Corporate Defendants disagree with the DEC's disapproval of the revised submittal, the parties shall confer together to resolve their differences. If after conferring, there remains a dispute between the DEC and the Corporate Defendants, the matter shall be resolved in accordance with the dispute resolution procedures provided in Section IX herein.

32. The DEC reserves the right to require any modification, amplification, or expansion of any design, plan, report and other pre-construction submittal, including, without limitation, the Remedial Designs, if the State determines that such submittal is inadequate for purposes of protecting human health or the environment or satisfying requirements or obligations of the ROD.

33. All plans, reports and other submittals, including, without limitation, the Remedial Designs, required to be submitted to the DEC under this Section concerning the Harriman Site shall, upon approval or modification by the DEC, be incorporated into and become enforceable parts of this Consent Decree.

**F. Access**

34. The Corporate Defendants hereby consent to the entry upon the Harriman Site which is under their control, upon reasonable terms including advance notice when practicable, by any duly authorized employee or contractor of the DEC or any other duly authorized State agency for the sole purposes of inspection, sampling and testing to ensure the Corporate Defendants' compliance with this Consent Decree. If the DEC makes a reasonable request for additional sampling, the Corporate Defendants shall obtain the samples and provide



splits to the DEC as requested, with consideration given to coordination with scheduled sampling events or site activities. The analytical results of any split samples obtained by the DEC shall be provided to the Corporate Defendants within ten (10) days of receipt of such results. During implementation of the remedy, the Corporate Defendants shall permit the DEC full access to all records and job meetings. During construction activities, the Corporate Defendants shall provide the DEC office space at the Harriman Site, including use of a telephone.

**G. Future Sentry Wells**

35. The State reserves the right to require the installation and monitoring of additional sentry wells between the Harriman Site and existing or future public drinking water supplies as necessary to ensure that such water supplies are not being contaminated by the Harriman Site.

**VI. REMEDICATION OF MAYBROOK SITE**

**A. Selection of Remedy for Maybrook Site**

36. Following the approval of the treatability and feasibility studies by the State and the EPA, the State may develop and make available for public comment, a PRAP for the Maybrook Site. After the close of the public comment period and after the modification or revision, if any, of the remedial investigation, treatability and feasibility studies, the State may select, based upon all reports, data and information available, a final Remedial Action in a ROD for the Maybrook Site.

**B. Future Issues Relating to the Maybrook Site**

37. Subject to Paragraph 10 herein, the Corporate Defendants agree that, solely in response to, and for the purposes of, any future enforcement or administrative action by

the State to compel the Corporate Defendants to implement the ROD for the Maybrook Site, or to recover the State's response costs for its implementation of the ROD, the Corporate Defendants (1) shall not contest that they are liable under CERCLA for the costs of response actions to be incurred by the State at the Maybrook Site which are not inconsistent with the NCP; (2) shall not contest that they are liable under ECL § 27-1313(5)(a) for the reasonable expenses to be incurred by the State at the Maybrook Site; and (3) shall not contest that they are liable under ECL § 27-1313(3)(a) for implementing a remedial program at the Maybrook Site. The State shall bring a future enforcement action in this Court to compel the Corporate Defendants to implement the ROD for the Maybrook Site, or to recover the State's response costs under CERCLA or reasonable expenses under the ECL incurred after the lodging of this Consent Decree with this Court, unless the State and the Corporate Defendants agree otherwise.

38. Except as provided in Paragraph 37 of this Consent Decree, the State and the Corporate Defendants reserve all of their rights and defenses with respect to all issues relating to the selection, design and construction of a remedial program at the Maybrook Site as well as the post-construction operation and maintenance of such remedial program, the amount of any costs of response as defined by CERCLA and the NCP and any reasonable expenses under the ECL to be incurred by the State at the Maybrook Site after the lodging of this Consent Decree with this Court, as well as the recoverability of particular costs thereof.

39. The State and the Corporate Defendants agree to Nepera's development of the Maybrook Site as a Nature Conservancy, provided, however, that the State reserves its right to challenge such development based upon relevant criteria as applied at the time of such proposed development. The Corporate Defendants agree to cooperate with the State in order to

achieve this goal following the completion of the Remedial Action for the Maybrook Site. To the extent that funds are not obtained from the Trust, each of the Corporate Defendants in its sole discretion may expend or dedicate resources for this purpose, including conveyance by Nepera of legal title to the Maybrook Site to the DEC at DEC's sole discretion, or to a not-for-profit conservation organization, authority or fund which is capable of developing the Maybrook Site as a Nature Conservancy.

#### **VII. PAYMENT OF STATE'S RESPONSE COSTS**

40. Within fifteen (15) days of the entry of this Consent Decree or the entry of all Stipulations of Dismissal in accordance with Paragraph 69(g) herein, whichever occurs later, the Corporate Defendants and the Estate shall take all reasonable efforts to cause the Escrow Agents to pay the sum of Five Hundred Fifty Thousand Dollars (\$550,000) to the State in full and complete satisfaction of its Past Response Costs in accordance with Section XXI ("Payments to State"), Paragraph 74 herein, Paragraph 6 of the Escrow Agreement and as intended by the Corporate Defendants and the Estate as set forth in the Private Party Settlement Agreement and the Escrow Agreement. The dispute resolution procedures of Section IX herein shall not apply to this paragraph.

41. The State will provide the Corporate Defendants with an annual written statement of Harriman Future Response Costs. The statement provided to the Corporate Defendants shall provide summaries of time spent by the State's personnel, along with rates of compensation, fringe benefits, indirect costs, non-personnel expenses and any other costs incurred by the State.

42. Subject to Paragraph 10, within forty-five (45) days of receipt of such annual statement, the Corporate Defendants shall pay or take all reasonable steps to cause the payment of the sum set forth in the statement or identify to the State in writing those expenditures to which they, in good faith, object. Any such objection shall specifically identify the contested Harriman Future Response Costs and the basis for such objection. If the Corporate Defendants' objections are not resolved by the parties within thirty (30) days of receipt of the Corporate Defendants' written objections, the Corporate Defendants shall pay or take all reasonable steps to cause the payment of the uncontested amount. Simultaneously with the payment of the uncontested amount or after the 30-day negotiation period has expired, the Corporate Defendants shall initiate the dispute resolution procedures of Section IX herein. By accepting payment of part of a disputed claim, the State does not waive any rights to assert a claim for the amount in dispute and reserves its right to seek to recover attorneys fees incurred in successfully defending a challenge to the State's costs. The Corporate Defendants do not waive any rights to contest the State's entitlement to such fees, and reserves their rights to recover attorneys fees.

#### **VIII. FORCE MAJEURE**

43. The Corporate Defendants shall not be in default of compliance with this Consent Decree or be subject to any proceeding or action under this Consent Decree, if they do not comply with any requirement of this Consent Decree due to any events which constitute a force majeure. For purposes of this Consent Decree, a "force majeure" is defined as an act of God, war, riot, accident, or labor dispute, or any other event that is beyond the Corporate Defendants' reasonable control. For purposes of this Section, Force Majeure shall not include

increased costs or expenses associated with the Corporate Defendants' compliance with the terms of this Consent Decree, changed financial circumstances of the Corporate Defendants or nonattainment of the requirements of this Consent Decree. In the event of a force majeure, the Corporate Defendants shall be obligated to perform the affected activities or obligations within a time period which shall not exceed the time period of the delay reasonably attributed to the force majeure. In the event of a dispute, the Corporate Defendants shall bear the burden of proving that any delay results from circumstances which constitute a force majeure, the delay could not have been overcome by due diligence, and the proposed length of the delay is reasonably attributed to the force majeure.

44. The Corporate Defendants shall notify the State in writing as soon as practicable after any of the Corporate Defendants becomes aware that circumstances constituting a force majeure have occurred or are likely to occur, but not later than ten (10) business days after any of the Corporate Defendants becomes aware that circumstances constituting a force majeure have occurred or are likely to occur. Such written notice shall be accompanied by all available pertinent documentation, and shall contain the following: 1) a description of the circumstances constituting the force majeure; 2) the actions (including pertinent dates) that the Corporate Defendants have taken or plan to take to minimize or prevent any delay; and 3) the schedule for implementation of any actions to achieve completion of the delayed activities. Failure to comply with the notification requirement of this Paragraph through no fault of the State shall render the provisions of Paragraph 43 null and void insofar as they may entitle the Corporate Defendants to an extension of time.

## IX. DISPUTE RESOLUTION

45. The State and the Corporate Defendants shall endeavor to resolve all disputes that arise under or with respect to this Consent Decree by means of informal good faith negotiations.

46. In the event that the State and the Corporate Defendants do not resolve their dispute by informal negotiations after reasonable efforts, the State shall make a determination in writing with respect to the subject of the dispute referencing this provision of the Consent Decree. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is extended by agreement between the State and the Corporate Defendants.

47. In the event that the State and the Corporate Defendants do not resolve a dispute by informal negotiations, all determinations by the State, including, without limitation, approval or disapproval of work performed in implementing the Remedial Action, the submittals and requirements for the revision or supplementation of plans, and the reports and field work for the Harriman Site, or the applicability or amount of stipulated penalties, shall be final and binding upon the Corporate Defendants unless within thirty (30) days of receipt of the State's determination, the Corporate Defendants file a petition with this Court for review of a disputed matter in accordance with Paragraph 48 below.

48. The filing of a petition by the Corporate Defendants pursuant to this Section shall not stay or excuse the timely performance of work or the timely transmission of submittals with respect to the disputed issue, except by agreement of the State or upon the Corporate Defendants' application to this Court for an order staying such performance, and then

only until the Court rules on the application for a stay. The Corporate Defendants shall have the burden of establishing, before the Court, the necessity and appropriateness of such a stay or excuse.

49. With respect to any dispute pertaining to the selection or adequacy of a response action at the Harriman Site and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Corporate Defendants shall bear the burden of demonstrating to the Court that the State's decision is arbitrary or capricious or otherwise not in accordance with law. With respect to all other disputes, judicial review shall be governed by applicable principles of law. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between the State and the Corporate Defendants arising under and with respect to this Consent Decree and shall apply to all provisions of this Consent Decree, except Paragraph 40 concerning payment of the State's Past Response Costs.

#### **X. STIPULATED PENALTIES**

50. Except as provided in Section VIII herein ("Force Majeure"), in the event the Corporate Defendants fail to comply with any requirement of this Consent Decree through no fault of the State, including, without limitation, the completion of the Remedial Action for the Harriman Site and the timely transmittal to the DEC of all necessary Remedial Designs and other plans or reports as required under Paragraphs 19-28 ("Remedial Action Construction and Reporting" and "Progress Reports"), the Corporate Defendants shall pay a stipulated penalty to the State for each calendar day each such failure continues in the amounts set forth below:

<u>Number of Days of Non-Compliance</u>	<u>Stipulated Penalties Per Violation Per Day</u>
1-10	\$ 250
11-20	\$ 500
greater than 20	\$ 1000

51. Any stipulated penalty shall begin to accrue on the day after completed performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent simultaneous accrual of separate penalties for separate violations of this Consent Decree.

52. Following the State's determination that the Corporate Defendants have failed to comply with the requirements of this Consent Decree, the State shall give the Corporate Defendants written notification of the same and describe the noncompliance. The notice shall also indicate the amount of penalties already due and the amount of penalties to be due.

53. All stipulated penalties owed under this Consent Decree shall be payable within forty-five (45) calendar days of receipt of the notification of noncompliance from the State, unless the Corporate Defendants invoke the dispute resolution procedures of Section IX herein. Penalties shall accrue from the date of violation regardless of when the State has notified the Corporate Defendants of a violation. Payment of stipulated penalties shall be made in accordance with Section XXI herein ("Payments to State").

54. If the Corporate Defendants fail to pay stipulated penalties when due, the State may institute proceedings to collect the penalties and accrued interest. The Corporate Defendants shall pay the interest on the unpaid balance at the prime rate and such interest shall



be paid each fiscal year until the unpaid balance, including accrued interest, is paid. The interest on such unpaid balance shall begin to accrue on the day after such payment was due.

55. The payment of stipulated penalties shall not alter in any way the Corporate Defendants' obligations under this Consent Decree. Nothing in this Consent Decree nor the payment of stipulated penalties by the Corporate Defendants shall alter, prohibit or limit in any way the State's right to seek to enjoin the continued violation of this Consent Decree which may include additional penalties as determined by this Court, or any other right at law or equity available to the State. Any decision by the State not to seek payment of a Stipulated Penalty shall not be deemed to be a waiver by the State of any future right to seek the payment of a later Stipulated Penalty based on a similar or repeated event.

56. The Corporate Defendants may dispute the State's right to the stated amount of penalties solely by invoking the dispute resolution procedures of Section IX herein. Penalties shall continue to accrue up to a maximum of thirty (30) days following the filing of a petition, as provided for in Paragraph 48, but payment thereof shall be deferred during the dispute resolution period. The penalty shall be rescinded with respect to issues upon which the Corporate Defendants prevail, or with respect to which this Court determines that it would be equitable to rescind the penalty, taking into account the circumstances pursuant to which the Corporate Defendants failed to comply with this Consent Decree, disputed a determination by the State, or otherwise incurred stipulated penalties under this Consent Decree.

#### **XI. COVENANTS NOT TO SUE**

57. In consideration of, and contingent upon, the Corporate Defendants' compliance with the provisions of this Consent Decree, and subject to the Reservation of Rights

and Reopeners set forth in this Consent Decree, the State covenants not to sue, execute judgment, or take any civil, judicial or administrative action under federal or state law against the Corporate Defendants arising out of or relating to the Matters Addressed by this Consent Decree, as defined in Section XIII herein, except for future issues relating to the Maybrook Site, as described in Paragraph 37 herein. Subject to the Reservation of Rights and Reopeners in this Consent Decree, the Corporate Defendants agree not to assert any claims or causes of action against the State, or to seek against the State any response costs, damages, contributions or attorneys fees arising out of this litigation for any Matters Addressed by this Consent Decree.

58. The covenants not to sue for the Matters Addressed relating to the Harriman Site shall become effective upon entry of this Consent Decree, but shall be conditioned (a) as to Past Response Costs, upon full payment to the State pursuant to Paragraph 40 herein; and (b) as to the implementation of the Remedial Action and the State's associated Harriman Future Response Costs, upon the completion of construction of the Remedial Action at the Harriman Site and approval by the DEC.

59. The covenants not to sue for the Matters Addressed relating to the Maybrook Site shall become effective upon entry of this Consent Decree, but shall be conditioned upon full payment to the State pursuant to Paragraph 40 herein.

## **XII. REOPENERS**

60. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this Court seeking to compel the Corporate Defendants (a) to perform further response actions

relating to the Harriman Site, or (b) to reimburse the State for additional costs of response incurred at the Harriman Site if:

- (1) conditions at the Harriman Site, previously unknown to the State, are discovered after the Effective Date of this Consent Decree, or
  - (2) information, in whole or in part previously unknown to the State, is received after the Effective Date of this Consent Decree,
- and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action selected for the Harriman Site is not protective of human health or the environment. In any such future proceedings in this action or in any future new action regarding Reopeners, the Corporate Defendants hereby reserve all of their rights under law to defend themselves and contest any assertions by the State.

### **XIII. MATTERS ADDRESSED AND RESERVATION OF RIGHTS**

61. The "Matters Addressed" relating to the Harriman Site include all claims against the Corporate Defendants seeking implementation of the Remedial Action at the Harriman Site, and O&M, as more fully described in the DEC's ROD for the Harriman Site, and all claims for response costs, past and future, which have been incurred or will be incurred for investigation and remediation as a result of the release or threatened release or disposal of Waste Material at or from the Harriman Site.

62. The "Matters Addressed" relating to the Maybrook Site include all claims against the Corporate Defendants for response costs which were incurred by the State prior to the lodging of this Consent Decree with this Court, for investigation and remediation as a result of the release or threatened release or disposal of Waste Material at or from the Maybrook Site and

all claims regarding the liability vel non of the Corporate Defendants for the payment of the State's future response costs incurred after the lodging of this Consent Decree with this Court.

63. The "Matters Addressed" relating to the Harriman Site and the Maybrook Site do not include, and the State reserves all of its rights against the Corporate Defendants, and the Corporate Defendants reserve all of their rights and defenses against the Estate, except as provided in the Private Party Settlement Agreement, with respect to the following matters:

(a) liability for any future disposal of additional Waste Material at either the Harriman Site or the Maybrook Site; and,

(b) liability for any violation of federal or state law which occurs during or after the implementation of the Remedial Action at the Harriman Site or the Maybrook Site; and,

(c) liability for injury to, destruction of or loss of natural resources damages as a result of the release or threatened release of hazardous substances at or from the Harriman Site or the Maybrook Site; and,

(d) liability for any future criminal activity or conduct with respect to the Harriman Site or the Maybrook Site; and,

(e) claims based on a failure by the Corporate Defendants to satisfy any of the terms of this Consent Decree; and,

(f) except as provided in Paragraph 37 herein, claims regarding future issues relating to the Maybrook Site as described in Paragraph 38 herein; and,

(g) liability for the State's future response costs at the Harriman Site in the event the State assumes the performance of the Remedial Action or O&M after the State determines that the Corporate Defendants are no longer performing the Remedial Action or

O&M, are seriously or repeatedly deficient or late in their performance of the Remedial Action or O&M, or are implementing the Remedial Action or O&M in a manner that may cause an endangerment to human health or the environment; and,

(h) summary abatement orders, pursuant to the State's powers under State law, to protect the public health or the environment.

64. The "Matters Addressed" do not include, and the Corporate Defendants reserve all of their rights and defenses with respect to claims against any party other than the State with regard to: (a) any response costs or other relief for the release of Waste Material emanating or arising from the Harriman Site or the Maybrook Site; and (b) any response costs or other relief for the release of Waste Material emanating or arising from adjacent or nearby facilities, and migrating onto or about the Harriman Site or the Maybrook Site.

#### **XIV. CORPORATE DEFENDANTS' CONTRIBUTION PROTECTION**

65. The Corporate Defendants are entitled to the full extent of protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C.

§ 9613(f)(2), or any other applicable federal or state law, for the Matters Addressed by this Consent Decree (Section XIII).

#### **XV. ESTATE'S RELEASE AND CONTRIBUTION PROTECTION**

66. The Estate, its past, present and future trustees, executors, beneficiaries, agents, successors, or assigns thereof shall be fully discharged and released from all claims, causes of action, suits, sums of money, controversies, agreements, promises, trespasses, damages, judgments, and demands whatsoever with respect to the Harriman Site and the Maybrook Site, including claims for cost recovery, past or future response costs, further remedial

or removal measures, natural resource damages, restitution, compensatory damages, interest, injunctive relief, fines or penalties, under the common law or any State or federal statutes administered or enforced by the State, which ever had, were or could have been raised from the beginning of the world to the date when the Escrow Agents, as defined in the Escrow Agreement attached hereto as Appendix B, transfer certain monies, as described in Paragraph 8 herein, to the Trust; provided however, that this release is limited to any and all issues and claims which have or could have been raised in this Complaint filed in federal court simultaneously with this Consent Decree, DEC Administrative Complaint for the Maybrook Site Against the Estate of William S. Lasdon, Index No. W3-0624-92-10, superseding Index No. W3-0006-8102, or any of the pending actions, to which the State and the Estate are parties, as listed in Paragraph 69(d), (e), (f) of this Consent Decree, relating to the Harriman Site and the Maybrook Site.

67. The Estate is entitled to the full extent of protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or any other applicable federal or state law, for any matters set forth in Paragraph 66 of this Consent Decree.

#### **XVI. EFFECT OF SETTLEMENT**

68. By entering this Consent Decree, this Court expressly finds that the settlement reached among the Parties was at arm's length and is in good faith, is a fair and reasonable settlement of the liability of the Corporate Defendants and the Estate, and serves the statutory purposes of CERCLA and the ECL.

## XVII. DISMISSALS

69. The Estate, the Corporate Defendants, and the State have executed the

Stipulations of Dismissal for the following pending actions and proceedings:

(a) Warner-Lambert Company v. Estate of William S. Lasdon, 87 Civ. 9227

(S.D.N.Y.);

(b) Estate of William S. Lasdon v. Warner-Lambert Company et al, 88 Civ.

2821 (S.D.N.Y.);

(c) Nepera, Inc. v. Estate of William S. Lasdon, 88 Civ. 0239 (S.D.N.Y.);

(d) Estate of William S. Lasdon v. Thomas Jorling et al, Index No. 94-18582

(N.Y. Sup. Ct.);

(e) Claims of the State, Nepera and Warner-Lambert in In the Matter of

William S. Lasdon, File No. 3519/84 (N.Y. Surr. Ct.); and

(f) DEC Administrative Complaint for the Harriman Site Against the Estate

of William S. Lasdon, Index No. W3-0623-92-10, superseding Index No. W3-0004-8102..

(g) The Stipulations of Dismissal shall be effective among the Parties upon

the entry of this Consent Decree by the Court. The Parties shall file the Stipulations of Dismissal

in each respective pending action and proceeding as soon as possible, but no later than, fifteen

(15) days following the entry of this Consent Decree.

70. All claims in this action shall be dismissed with prejudice, subject only to

the terms specified in Section XII ("Reopeners"), Section XIII ("Matters Addressed and

Reservation of Rights"), and Section XXV ("Retention of Jurisdiction").

### **XVIII. INDEMNIFICATION**

71. The State does not assume any liability by entering into this Consent Decree. The Corporate Defendants shall indemnify and hold the State and its representatives, officials, agents, representatives, employees and contractors harmless for all claims, suits, actions, damages and costs of every name and description (including, without limitation, attorneys fees and other litigation expenses) arising from or on account of acts or omissions of the Corporate Defendants, their directors, employees, agents, contractors, subcontractors or any persons acting on their behalf or under their control, in carrying out their obligations under this Consent Decree. The Corporate Defendants shall not indemnify the State or the DEC, and their representatives and employees in the event that such claim, suit, action, damage or cost relates to or arises from any grossly negligent or malicious acts or omissions on the part of the State or the DEC or their representatives and employees.

### **XIX. COMPLIANCE WITH APPLICABLE LAW**

72. The Corporate Defendants shall perform all activities or obligations required under this Consent Decree in compliance with applicable laws and regulations. The Corporate Defendants shall also exercise good faith efforts to obtain any permits, easements, rights-of-way, rights-of-entry, approvals or authorizations that are necessary, in order to perform their obligations under this Consent Decree. If the Corporate Defendants' good faith efforts are unsuccessful, the State, consistent with its lawful authority, shall assist the Corporate Defendants to obtain the necessary authorizations.



## **XX. PUBLIC RELATIONS**

73. The Corporate Defendants shall cooperate with the DEC in providing information regarding the Remedial Action at the Harriman Site to the public. As reasonably requested by the DEC, the Corporate Defendants shall participate in preparing such information for dissemination to the public or at public meetings which may be held or sponsored by the State to explain activities at or relating to the Harriman Site.

## **XXI. PAYMENTS TO STATE**

74. All payments made to the State pursuant to the terms of this Consent Decree shall be by check made payable to the "New York State Hazardous Waste Remedial Fund" and mailed to the following address:

New York State Department of Law  
Environmental Protection Bureau  
120 Broadway - 26th Floor  
New York, New York 10271  
Attention: Kathryn C. Macdonald, AAG

A copy of the check and covering letter shall be sent to the persons identified in Section XXII herein ("Communications").

## **XXII. COMMUNICATIONS**

75. All written reports and communications required by this Consent Decree shall be transmitted by United States Postal Service, private courier service, or hand delivery to the addresses listed below.

76. Copies of all communications from the Corporate Defendants to the State shall be sent to each of the following:

Susan D. McCormick, P.E.  
Project Director  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
50 Wolf Road  
Albany, New York 12233

Lou Oliva, Esquire  
New York State Department of Environmental Conservation  
Office of Legal Affairs  
1 Hunters Point Plaza  
4740 21st Street  
Long Island City, New York 11101-5407

New York State Department of Law  
Environmental Protection Bureau  
120 Broadway - 26th Floor  
New York, New York 10271  
Attention: Kathryn C. Macdonald, AAG

77. Copies of all communications from the State to the Corporate Defendants

shall be sent to each of the following:

Warner-Lambert Company:

Charles S. Carey  
Director of Environmental Compliance  
Warner-Lambert Company  
201 Tabor Road  
Morris Plains, New Jersey 07950  
973-540-3964

Jonathan D. Britt, Esquire  
Vice President & Associate General Counsel  
Warner-Lambert Company  
201 Tabor Road  
Morris Plains, New Jersey 07950  
973-540-4466

with a copy to:

Daniel H. Squire, Esquire  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
202-663-6060

Nepera, Inc.:

Maurice A. Leduc  
Director of Regulatory Affairs  
Nepera, Inc.  
Route 17  
Harriman, New York 10926  
914-782-1221

Peter E. Thauer, Esquire  
Vice President - Law and Environmental  
General Counsel and Secretary  
Cambrex Corporation  
One Meadowsland Plaza  
East Rutherford, New Jersey 07073  
201-804-3000

with a copy to:

John Sebastian Vaneria, Esquire  
Vaneria Sesti & Geipel LLP  
641 Lexington Avenue  
New York, New York 10022  
212-753-1800

78. The Corporate Defendants and the State reserve the right to designate other persons or different addresses on notice to the others.

79. No informal notice, guidance, suggestions or comments by the State regarding reports, plans, specifications, schedules or any other writing submitted by the Corporate Defendants shall be construed as relieving the Corporate Defendants of their obligation to obtain such formal approvals as may be required by this Consent Decree.

80. The DEC and the Corporate Defendants shall each designate their own field representative who shall be responsible for participating in making field decisions. Field decisions shall not modify the requirements of this Consent Decree or the Harriman ROD. The DEC or the Corporate Defendants may designate a new field representative upon written notice to the others.

#### **XXIII. EFFECTIVE DATE**

81. The Effective Date of this Consent Decree shall be the date when this Consent Decree is entered by this Court.

#### **XXIV. MODIFICATIONS**

82. No modification shall be made to this Consent Decree without written notification, which shall set forth the nature of and reasons for the requested modification, to and written approval of the State and the Corporate Defendants. Nothing in this Section shall be deemed to alter this Court's power to enforce this Consent Decree. No oral modification of this Consent Decree shall be effective. Any modification made in accordance with Paragraph 33 shall not be subject to this Paragraph.

#### **XXV. RETENTION OF JURISDICTION**

83. The Court hereby retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the purpose of enabling any of the Parties to (1) apply to this Court at any time for any further order, direction or relief needed for the interpretation or modification of this Consent Decree, (2) effectuate or enforce compliance with the terms of this Consent Decree and the attached Appendices; and (3) resolve disputes in accordance with Section IX herein.

**XVI. APPENDICES**

84. The following appendices are attached to and incorporated into, and shall become an enforceable part of, this Consent Decree:

Appendix A - the ROD for the Harriman Site; and

Appendix B - the Escrow Agreement.

In the event there is a conflict or inconsistency between the terms of this Consent Decree and any of the Appendices, the terms of this Consent Decree shall control and be binding upon all Parties.

FOR THE STATE OF NEW YORK:

DENNIS C. VACCO  
Attorney General of the State  
of New York

Dated:

5/1/98

By:

Kathryn C. Macdonald  
Kathryn C. Macdonald  
Assistant Attorney General  
State of New York  
120 Broadway - 26th Floor  
New York, NY 10271

FOR THE DEFENDANT NEPERA, INC.

Peter E. Thauer  
Peter E. Thauer

DATED: April 2, 1998

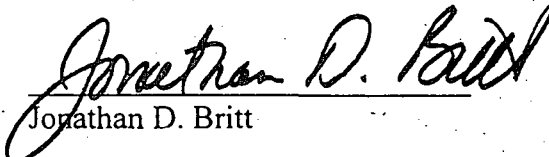
STATE OF New Jersey  
COUNTY OF Bergen ) SS:

On the 2 day of April, 1998, before me personally came Peter E. Thauer, to me known, who, being by me duly sworn, did depose and say that he resides at 5 Denison Drive, Saddle River, N.J.; that he is the VICE - PRESIDENT of Nepera Inc., the corporation described in and which executed the foregoing instrument; and that he has sufficient authority and has been duly authorized to execute and affix the corporate seal to said instrument on the corporation's behalf.

Elaine V. Flynn  
NOTARY PUBLIC

ELAINE V. FLYNN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 8, 2001

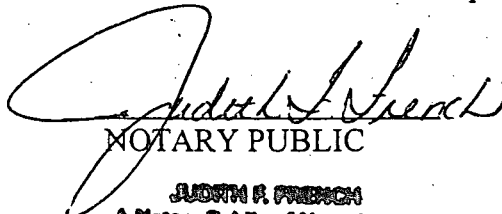
FOR THE DEFENDANT  
WARNER-LAMBERT COMPANY

  
Jonathan D. Britt

DATED: March 27, 1998

STATE OF N.J.)  
COUNTY OF Morris) SS:

On the 27 day of March, 1998, before me personally came  
Jonathan D. Britt, to me known, who, being by me duly sworn, did depose and  
say that he resides at  
201 Tabor Road, Morris Plains, NJ 07950 that he is the  
VP and Associate General Counsel, Corp. Litigation of Warner-Lambert Company, the  
corporation described in and which executed the foregoing instrument; and that he has sufficient  
authority and has been duly authorized to execute and affix the corporate seal to said instrument  
on the corporation's behalf.

  
NOTARY PUBLIC  
JUDITH F. FRENCH  
A Notary Public of New Jersey  
My Commission Expires May 4, 2002

FOR THE DEFENDANT ESTATE OF  
WILLIAM S. LASDON

Manette S. Lasdon

DATED: April 30, 1998

STATE OF NEW YORK  
COUNTY OF WESTALBANY SS:

On the 30<sup>th</sup> day of APRIL, 1998, before me personally came  
MANETTE LAITMAN, to me known, who, being by me duly sworn, did depose and  
say that she resides at  
656 PARK AVE, NEW YORK, N.Y.; that she is the  
Executrix of the Estate of William S. Lasdon, the Estate described in and which executed the  
foregoing instrument; that as Executrix she has the power and authority to execute said  
instrument on behalf of the Estate; and that she signed her name thereto pursuant to her authority  
as Executrix.

Joel H. Sachs  
NOTARY PUBLIC

JOEL H. SACHS  
Notary Public, State of New York  
No. 50373-000  
Qualified in Westchester County  
Commission Expires May 01, 1998



SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
United States District Judge

**ESCROW AGREEMENT**

This Escrow Agreement (the "Agreement") is made and entered into as of November 6, 1997, by and among the ESTATE OF WILLIAM S. LASDON (the "Estate"), WARNER-LAMBERT COMPANY ("Warner-Lambert") and NEPERA, INC. ("Nepera") (collectively, the "Settling Parties") and Joel H. Sachs, John S. Vaneria, and Daniel H. Squire (collectively, the "Escrow Agents").

WHEREAS, the Settling Parties are parties to a Settlement Agreement dated on or about the date of this Agreement, resolving certain environmental claims;

WHEREAS, the Settlement Agreement provides that the Estate shall pay or cause to be paid Thirteen Million Dollars (\$13,000,000) in settlement (the "Payment") and further provides that the Payment shall be held in escrow in accordance with an the Escrow Agreement annexed to the Settlement Agreement as Schedule "A" and incorporated therein;

WHEREAS, the Settling Parties have agreed to enter this Agreement as Schedule "A" to the Settlement Agreement, in accordance with and consistent with all terms of the Settlement Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein and in the Settlement Agreement, the Settling Parties agree as follows:

1. Definitions and Construction. For purposes of this Agreement, all terms not specifically defined herein that are defined in the Settlement Agreement shall have the respective meanings stated therein and any ambiguities in this Agreement shall be resolved in a manner consistent with the Settlement Agreement.

2. Appointment of Agent. The Settling Parties hereby designate the Escrow Agents to act as herein specified, and the Escrow Agents accept their appointment as Escrow Agents hereunder, until the complete transfer of the Payment and any interest earned thereon, in accordance with the provisions of Section 6 hereof. The Settling Parties hereby irrevocably authorize the Escrow Agents to take such action on their behalf under the provisions of this Agreement and to exercise such powers and to perform such duties hereunder as are specifically delegated to or required of the Escrow Agents by the terms hereof and such other powers as are reasonably incidental thereto.

3. Deposit into Escrow.

In accordance with Paragraph 3 of the Settlement Agreement, within ten (10) days after the effective date of the Settlement Agreement, the Estate will deposit by wire transfer, to an account to be established at Citibank, N.A., or at another institution if agreed to in writing by the Escrow Agents, funds in the amount of Thirteen Million Dollars (\$13,000,000), pending transfer of

the Payment and any interest earned thereon to the Trust, to the Trust and the State of New York, or to the Estate.

4. Investment.

The Escrow Agents shall have the right to direct the investment of the Payment and any interest earned thereon in, and only in, the following instruments and securities: (i) United States government securities or securities of agencies of the United States government which are guaranteed by the United States government; (ii) securities of governmental agencies, if the same are covered by a bank repurchase agreement; (iii) certificates of deposit; (iv) tax-free municipal bonds of issuers that have a class of short-term obligations rated in one of the three highest debt rating categories for short-term debt by Standard & Poors, Moody's or Fitch; and (v) tax-free money market mutual funds meeting the requirements of Rule 2a-7 under the Investment Company Act of 1940, none of which shall have maturities longer than one year. The Escrow Agents shall not be liable for any loss sustained as a result of any investment made pursuant to this provision, or as a result of any liquidation of such investment prior to its maturity.

5. Taxes, etc. on the Payment in Escrow. The Estate agrees to pay and discharge promptly, and in any event prior to delinquency, all taxes, charges, liens and assessments that accrue during the escrow period against the Payment and any interest earned thereon, except that the Estate shall not be required to pay and discharge any such tax, charge, lien or assessment as long as the validity thereof shall be contested by and at the sole cost and expense of the Estate in good faith and if necessary by appropriate legal proceedings. If the Payment and any interest earned thereon, or any portion thereof, are turned over to the Trust, or to the Trust and the State of New York, in accordance with Section 6 herein, then the Trust shall reimburse the Estate, and in the event the Trust does not reimburse the Estate, Warner-Lambert and Nepera (together, the "Companies") shall reimburse the Estate, for all such taxes, charges, liens and assessments that accrue during the escrow period against the Payment and any interest earned thereon.

6. Termination.

This Agreement, and the obligations under this Agreement of each party hereto with respect to the Payment, and any interest earned thereon, shall terminate at such time as either (a) or (b) below occurs:

(a) In accordance with Paragraph 3 of the Settlement Agreement, the Escrow Agents transfer or cause the transfer of the Payment and any interest earned thereon to the Trust, or to the Trust and the State of New York, within fifteen (15) days after the entry of a Consent Agreement by the federal district court or administrative body as set forth in Paragraph 5 of the Settlement Agreement and entry of all Stipulations of Dismissal upon which the Settlement Agreement is contingent as set forth in Paragraph 4 of the Settlement Agreement, whichever shall occur last.

(b) The Escrow Agents transfer or cause the return of the Payment and any interest earned thereon to the Estate within fifteen (15) days after either (i), (ii) or (iii) below occurs:

(i) In accordance with Paragraphs 3 and 14 of the Settlement Agreement, within six (6) months of the effective date of the Settlement Agreement, the Parties are unable to negotiate and execute the various Stipulations of Dismissal of the Pending Proceedings as set forth in Paragraph 4 of the Settlement Agreement, the Parties are unable to negotiate and submit to a federal court or administrative body of competent jurisdiction a Consent Agreement as set forth in Paragraph 5 of the Settlement Agreement, and the Companies are unable to negotiate and execute a Trust Agreement as set forth in Paragraph 3 of the Settlement Agreement; provided that this Agreement shall not terminate, and the Escrow Agents will retain the Payment and any interest earned thereon, for an extended period pursuant to an agreement in writing among the Parties to extend the six-month period, during the period that an application by any Party or the State of New York to extend the six-month period is pending before the Surrogate's Court, County of Westchester, or pursuant to a Surrogate Court's order extending the six-month period.

(ii) In accordance with Paragraph 5 of the Settlement Agreement, the court or administrative body to which the Consent Agreement is submitted refuses to enter same.

(iii) In accordance with Paragraph 4 of the Settlement Agreement, the Pending Proceedings are not dismissed in accordance with the Stipulations of Dismissal with Prejudice.

7. Obligations of the Escrow Agent. It is agreed that the duties and obligations of the Escrow Agents are those herein specifically provided and no other. The Escrow Agents shall not have any duty to inquire into the terms and provisions of any agreement, other than this Agreement and, as expressly provided herein, the Settlement Agreement. The Escrow Agents' duties are ministerial in nature and the Escrow Agents shall not incur any liability whatsoever so long as they have acted in good faith except for gross negligence.

(a) The Settling Parties represent to the Escrow Agents that the Settling Parties (by their duly authorized representatives) are authorized to enter into this Agreement and that the Escrow Agents are entitled to rely on these representations without the need to confirm the authority of the representatives.

(b) The Escrow Agents may consult with counsel of their choice, and shall not be liable for any action taken, suffered or omitted by them in accordance with the advice of such counsel. The Escrow Agents shall not be bound by any modification, amendment, termination, cancellation, rescission or suppression of this Agreement unless the same shall be in writing and signed by the Settling Parties and, if their rights or duties as Escrow Agents hereunder are affected thereby, by the Escrow Agents as well.

(c) In the event that the Escrow Agents shall be uncertain as to their duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in their opinion, conflict with any of the provisions of this Agreement, they shall be entitled to refrain from taking any action, and their sole obligation shall be to keep safely all property held in escrow until they shall be directed otherwise in writing by the Settling Parties or by a final judgment of a court order of competent jurisdiction.

(d) The Escrow Agents shall not incur any liability for following the instructions herein contained or expressly provided for, or other written instructions given jointly by the Settling Parties.

(e) The Escrow Agents shall not have any responsibility for the genuineness or validity of any document or other item deposited with them and any liability for action in accordance with any written instructions given to them hereunder and believed by them to be signed by the proper parties.

(f) The Escrow Agents shall not be required to institute legal proceedings of any kind and shall not be required to initiate or defend any legal proceedings which may arise in respect of the subject matter of these instructions.

(g) The Escrow Agents shall not be responsible or liable in any manner whatsoever for the performance of or by the Settling Parties of their respective obligations under this Agreement or the Settlement Agreement, nor shall the Escrow Agents be responsible or liable in any manner whatsoever for the failure of the other parties to this Agreement or of any third party to honor any of the provisions of this Agreement or the Settlement Agreement.

(h) The Escrow Agents may continue to represent the Settling Parties, respectively, who designated them as Escrow Agents, even if a dispute arises under this Agreement or the Settlement Agreement.

(i) The Escrow Agents may incur expenses incidental to the investment of, accounting for, and distribution of the Payment and the interest earned thereon, and otherwise incidental to their duties as Escrow Agents, which expenses they shall pay from the interest earned on the Payment before their distribution of the Payment and the interest earned thereon in accordance with this Agreement.

(j) The Escrow Agents shall take action pursuant to this Escrow Agreement by unanimous consent, and if they are unable to reach such unanimous consent, they shall refer any and all disputes to the Surrogate's Court of the State of New York for resolution.

8. Release of Escrow Agent. Any Escrow Agent may at any time resign hereunder by giving written notice of his resignation to the parties hereto, at least ten (10) calendar days prior to the date specified for such resignation to take effect, and the Settling Party who designated that

Escrow Agent may designate a successor Escrow Agent who shall sign this Agreement, shall be bound by its terms and conditions, and shall succeed to all duties and responsibilities of the resigning Escrow Agent under this Agreement. If a successor Escrow Agent is not designated before the effective date of the resignation, all property then held by the resigning Escrow Agent hereunder shall be delivered to the other Escrow Agents or their designees, whereupon all the resigning Escrow Agent's obligations hereunder shall cease and terminate. If all Escrow Agents resign, and no successor Escrow Agents shall have been designated by their respective resignation dates, all obligations of the Escrow Agents hereunder shall nevertheless cease and terminate. The Escrow Agents' sole responsibility thereafter shall be to keep safely all property then held by them and to deliver the same to a person or entity designated by the Settling Parties or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

9. Indemnity of Escrow Agent. The Settling Parties agree to indemnify, defend and hold the Escrow Agents harmless from and against any and all loss, damage, tax, liability and expense that may be incurred by the Escrow Agents arising out of or in connection with their acceptance of appointment or performance of duties as Escrow Agents hereunder, including, without limitation, the legal costs and expenses of defending themselves against any claim or liability in connection with their performance hereunder, except as caused by their gross negligence.

10. Construction of the Instruments by Escrow Agent. In accepting the terms hereof, it is agreed and understood between the parties hereto that the Escrow Agents will not be called upon to construe any contract or instrument in connection herewith and shall be required to act in respect of the deposits herein made only as directed herein.

11. Fees of Escrow Agents. The Escrow Agents shall not be paid for their services under this Agreement, pursuant to Section 7(i) or otherwise, except that they may be paid directly by the Settling Parties, respectively, who designated them as Escrow Agents.

12. Notices. Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally or sent by telefax (with confirmation of transmission), by recognized courier service (with receipt acknowledged) or by registered or certified mail, postage prepaid, as follows:

(a) If to the Settling Parties, to the individuals identified in the Settlement Agreement.

(b) If to the Escrow Agents, to the individuals listed in this Agreement as Escrow Agents, who are also listed as recipients of notice in the Settlement Agreement.

Such notice, request, demand, waiver, consent, approval or other communication shall be deemed to have been given as of the date so delivered personally or by courier, telefaxed or five (5) business days after deposited in the mail.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written.

WARNER-LAMBERT COMPANY

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NEPERA, INC.

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESTATE OF WILLIAM S. LASDON

Dated:

11/12/97

By: Nanette Laitman  
Name: Nanette LAITMAN  
Title: ELECTRICIAN

ESCROW AGENTS

Dated:

\_\_\_\_\_  
Joel H. Sachs

Dated:

\_\_\_\_\_  
John S. Vaneria

Dated:

\_\_\_\_\_  
Daniel H. Squire

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written.

WARNER-LAMBERT COMPANY

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NEPERA, INC.

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

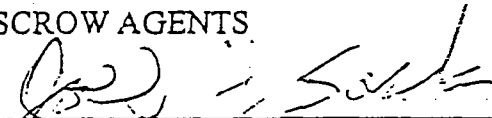
ESTATE OF WILLIAM S. LASDON

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESCROW AGENTS

Dated: 11/12/97

  
\_\_\_\_\_  
Joel H. Sachs

Dated:

\_\_\_\_\_  
John S. Vaneria

Dated:

\_\_\_\_\_  
Daniel H. Squire



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written.

WARNER-LAMBERT COMPANY

Dated: 10/4/97

By: Jonathan D. Britt  
Name: JONATHAN D BRITT  
Title: Assistant Secretary & Vice President & Associate General Counsel  
NEPERA, INC.

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESTATE OF WILLIAM S. LASDON

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESCROW AGENTS

Dated:

\_\_\_\_\_  
Joel H. Sachs

Dated:

\_\_\_\_\_  
John S. Vaneria

Dated: 10/20/97

Daniel H. Squire  
\_\_\_\_\_  
Daniel H. Squire

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written.

WARNER-LAMBERT COMPANY

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: 6 November 1997

NEPERA, INC.

By: Peter E. Thaler  
Name: PETER E. THALER  
Title: VICE PRESIDENT

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESTATE OF WILLIAM S. LASDON

Dated:

Joel H. Sachs

Dated: 6 November 1997

John S. Vaneria  
John S. Vaneria

Dated:

Daniel H. Squire



PRIVATE PARTY  
SETTLEMENT AGREEMENT

This Private Party Settlement Agreement, dated as of this 6th day of November, 1997 (this "Agreement"), is by and between the ESTATE OF WILLIAM S. LASDON (the "Estate"), WARNER-LAMBERT COMPANY ("Warner-Lambert"), and NEPERA, INC. ("Nepera"). (The signatories to this Agreement are referred to herein singularly as a "Party" and collectively as "Parties").

W I T N E S S E T H:

WHEREAS, Warner-Lambert and Nepera (collectively "the Companies") have commenced litigation and/or asserted claims against the Estate and the Estate has commenced litigation and/or asserted claims against the Companies in the certain legal proceedings defined in paragraph "1" below (the "Pending Proceedings");

WHEREAS, it has been alleged that the Parties are "Responsible Parties" as that term is defined under New York State environmental laws and regulations and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as related to that certain real property located in the Village of Harriman, County of Orange, State of New York, that is the subject of certain of the Pending Proceedings (the "Harriman Site") and that certain real property located in the Town of Hamptonburgh, County of Orange, State of New York, that is the subject of certain of the Pending Proceedings (the "Maybrook Site") (hereinafter, collectively "the Sites");

WHEREAS, the Estate, on the one hand, and the Companies on the other, without admitting any responsibility or liability with respect to the Sites or to each other, and without admitting any liability under New York State environmental laws and federal environmental laws (including, without limitation, the Resource Conservation and Recovery Act ("RCRA")), wish to resolve all environmental claims as defined herein that have been or could be asserted by the Estate against the Companies or by the Companies against the Estate concerning the Sites, and to resolve certain environmental claims, as defined herein, concerning other potential hazardous waste or hazardous substance site(s);

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the Parties hereto stipulate and agree as follows:

1. Definition of Terms used in this Agreement

Whenever terms listed below are used in this Agreement, the following definitions shall apply:

1.1 The term "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et. seq.

1.2 The term "EPA" means the United States Environmental Protection Agency and any successors, departments or agencies thereof.

1.3 The term "NYSDEC" means the New York State Department of Environmental Conservation and any successors, departments or agencies thereof.

1.4 The term "response" shall have the meaning as set forth in CERCLA, 42 U.S.C. § 9601(25).

1.5 The term "ROD" shall mean the Record of Decision duly issued in connection with the Harriman Site, including all attachments thereto, or the Record of Decision to be issued for the Maybrook Site, as specified herein.

1.6 The term "DEC Administrative Proceedings" means the proceeding commenced on or about June 8, 1987, bearing Index No. W3-0006-8102, relating to the Maybrook Site, and the proceeding commenced on or about June 8, 1987, bearing Index No. W3-0004-8101, relating to the Harriman Site.

1.7 The term "Surrogate's Court Claims" means those claims served and filed by the State of New York, Nepera and Warner-Lambert in the Westchester County Surrogate's Court Proceeding encaptioned In the Matter of William S. Lasdon, File No. 3519/84.

1.8 The term "Estate's Article 78 Proceeding" means that proceeding encaptioned Estate of William Lasdon v. Landon Marsh, as Commissioner of the New York State Department of Environmental Conservation, now pending before the Supreme Court of the State of New York, County of Westchester, Index No. 94-18582.

1.9 The term "Warner-Lambert Action" means that action commenced by Warner-Lambert on or about December 28, 1987 in the United States District Court for the Southern District of New York, Civil Action No. 87 Civ. 9227 (KTD) entitled Warner-Lambert Company v. Estate of William S. Lasdon.

1.10 The term "Estate Action" means that action commenced by the Estate against Warner-Lambert in the Supreme Court of the State of New York, County of Westchester, which case was removed by Warner-Lambert to the United States District Court for the Southern District of New York, as a case related to the Warner-Lambert Action, which related case bears Civil Action No. 83 Civ. 2821 (KTD) entitled Estate of William S. Lasdon v. Warner-Lambert Company et al.

1.11 The term "Nepera Action" means that action commenced by Nepera on or about January 13, 1988 in the United States District Court for the Southern District of New York, Civil Action No. 83 Civ. 0239 (MJL) entitled Nepera, Inc. v. Estate of William S. Lasdon.

1.12 The term "Pending Proceedings" means each action and proceeding defined in subparagraphs 1.6 through 1.11 above.

1.13 The term "waste material" shall mean (a) any "hazardous substance" as defined under § 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any "pollutant or contaminant" under § 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under § 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any mixture containing constituents noted in (a), (b) or (c) above.

## 2. Denial of Liability

2.1 The Parties enter into this Agreement to accomplish the settlement and compromise of disputed and contested claims and Pending Proceedings. Accordingly, nothing in this Agreement is intended to, nor shall be, an admission by any Party of any liability or responsibility of any kind to any other Party hereto or to any third party. Except as provided in paragraph 22 below, nothing in this Agreement is intended to, nor shall create any right on behalf of any third party under this Agreement, nor shall any third party be deemed a third-party beneficiary of this Agreement.

## 3. Settlement Payment

3.1 In accordance with Section II(c) and/or III(d) of the Stipulation dated February 15, 1990 in the Surrogate's Court proceeding encaptioned In the Matter of William S. Lasdon, File No. 3519/84, the Estate shall pay or cause to be paid the sum of Thirteen Million and no/100 (\$13,000,000.00) Dollars ("the Payment") in accordance with this paragraph 3.

3.2 The Payment shall be held in escrow by escrow agents for the Parties (the "Escrow Agents") in accordance with an Escrow Agreement of even date herewith, which Escrow Agreement is attached hereto as Schedule "A" and incorporated herein (the "Escrow Agreement").

3.3 The Payment shall be made to the Escrow Agents by wire transfer to an account to be designated in the Escrow Agreement, within ten (10) days of the effective date of this Agreement.

3.4 In accordance with the terms of the Escrow Agreement and subject to subparagraph 3.6 below, the Payment and any interest accumulated thereon shall be transferred to a Trust to be established for the purposes of providing funding for the investigation and remediation of the Harriman and Maybrook Sites, future and past response costs, and other environmental claims and related expenses associated with the Sites (the "Trust"). The Trust shall be established by means of a trust agreement which NYSDEC deems satisfactory to ensure that the funds in the Trust are accounted for properly and shall contain such other reasonable terms as agreed upon by the trustees (the "Trust Agreement").

3.5 Subject to subparagraph 3.6 below, the Escrow Agents will transfer the Payment and any interest earned thereon to the Trust within fifteen (15) days after the entry of a Consent Agreement by a federal court or administrative body as set forth in paragraph 5 below or the filing and entry of all Stipulations of Dismissal upon which this Agreement is contingent as set forth in paragraph 4 below, whichever shall occur last.

3.6 Notwithstanding subparagraphs 3.4 and 3.5 above, within fifteen (15) days of entry of the Consent Agreement by a federal court or administrative body or entry of all Stipulations of Dismissal, whichever shall occur last, the Escrow Agents will transfer a portion of the Payment to the State of New York, rather than to the Trust, in reimbursement of the State's past response costs, if and to the extent one or more of the Parties becomes obligated to pay or assure the payment of such costs pursuant to such Consent Agreement.

3.7 If the Agreement becomes null, void and of no effect pursuant to paragraph 14 below, then within fifteen (15) days of such event, the Escrow Agents will return the Payment and any interest accrued thereon to the Estate and such funds shall continue to be held in accordance with the February 15, 1990 Stipulation referenced in subparagraph 3.1 above. In such case, the Parties hereto waive objection to such transfer of funds and release the Escrow Agents from any claims of liability resulting from such transfer of funds to the Estate.

4. Dismissal of the Pending Proceedings

4.1 Prior to lodging of the Consent Agreement as set forth in paragraph 5 below, each Party shall execute a Stipulation of Dismissal with Prejudice for each Pending Proceeding (as defined in paragraph 1.12 above) to which it is a party. Additionally, each Party shall endeavor to obtain the execution of each such Stipulation of Dismissal with Prejudice by the State of New York relevant to those Pending Proceedings to which the State of New York is a party.

4.2 The subsequent filing and entry of Stipulations of Dismissal with Prejudice for all Pending Proceedings following the entry of a Consent Agreement as set forth in paragraph 5, below, is a condition of the enforcement of the Agreement. In the event that the Pending Proceedings are not dismissed with prejudice in accordance with this Agreement, all terms and conditions of this Agreement and the releases set forth herein shall be null, void and of no force and effect.

5. Settlement with the State of New York

5.1 Following the execution of this Agreement, the Parties agree to utilize their best efforts to execute an agreement with NYSDEC in the form of either a judicial consent decree to be entered in a United States District Court of competent jurisdiction or an administrative consent decree or order, as set forth in CERCLA section 113(f), 42 U.S.C. §9613(f) (the "Consent Agreement"), pursuant to which the Companies will agree to implement the ROD issued for the Harriman Site and will admit liability as to the Maybrook Site, provided, however, that the Parties shall not be obligated to enter the Consent Agreement unless the terms of the Consent Agreement are acceptable to the Parties and the NYSDEC acting in good faith to reach an acceptable agreement.

5.2 The Consent Agreement shall reference and incorporate by such reference this Agreement and the Stipulations of Dismissal to be filed and entered as set forth in paragraph 4 above.

5.3 In the event the Consent Agreement is not lodged for any reason set forth in paragraph 5.1 above or because the court or administrative body to which it is submitted refuses to enter same, all terms and conditions of this Agreement and the releases set forth herein shall be null, void and of no force and effect and within fifteen (15) days from notice of the Court's decision, the Escrow Agents shall transfer all funds accumulated in escrow pursuant to paragraph 3 above to the Estate where said funds shall continue to be held in accordance with the February 15, 1990



Stipulation referenced in subparagraph 3.1 above. In such case, the Parties hereto waive objection to such transfer and waive and release the Escrow Agents from any claims of liability resulting from such transfer of funds to the Estate.

6. Release of the Estate

6.1 In consideration for the mutual performance of the obligations created by this Agreement and the Payment to be made in accordance with paragraph 3 above, the Companies and each of them hereby release and covenant not to sue the Estate for any and all of the following claims arising from the past ownership of, operation of, or transport or generation of wastes from the Harriman Site and the Maybrook Site which each at any time has had, now has or may have in the future:

- (a) Claims under Sections 107 and 113 of CERCLA in connection with the Harriman Site, the Maybrook Site, those sites listed on Schedule "B" attached hereto and incorporated herein, and any other hazardous waste or hazardous substance sites known, or unknown;
- (b) Claims under the New York Environmental Conservation Law in connection with the Harriman Site, the Maybrook Site, those sites listed on Schedule "B" attached hereto and incorporated herein, and any other hazardous waste or hazardous substance sites known, or unknown;
- (c) Claims for contribution or indemnity under any other federal or state statutory law or common law doctrine with respect to response actions at the Harriman Site, the Maybrook Site, those sites listed on Schedule "B" attached hereto and incorporated herein, and any other hazardous waste or hazardous substance sites known, or unknown;
- (d) Penalties imposed by any governmental agency in connection with response actions performed at the Harriman Site, the Maybrook Site, those sites listed on Schedule "B" attached hereto and incorporated herein, and any other hazardous waste or hazardous substance sites known, or unknown;
- (e) Claims for attorney's fees in connection with response actions at the Harriman Site, the Maybrook Site, those sites listed on Schedule "B" attached hereto and incorporated herein, and any other hazardous waste or hazardous substance sites known, or unknown and in connection with the Pending Proceedings or any future

action which may be commenced for the purpose of implementing the provisions of this Agreement; and

- (f) All claims ~~for~~ past costs and reasonably foreseeable future costs with regard to any other environmental claims, actions, causes of action, suits, debts, contracts, controversies, or demands, as defined in subparagraph 6.2 below, whatsoever, whether known or not known, suspected or concealed at the Harriman Site, Maybrook Site, those sites listed on Schedule "B" attached hereto and incorporated herein, and any other hazardous waste or hazardous substance sites known, or unknown.

6.2 "Environmental claims, actions, causes of action, suits, debts, contracts, controversies, and demands," as used in this Agreement, including paragraphs 6.1(f) above and 7.1(f) below, shall mean any claims wherever, whenever and by whomever asserted involving allegations of actual or threatened environmental contamination, including, but not limited to, claims for natural resource damages, arising as a result of the generation, transportation or disposal of waste material, i.e. contamination of, *inter alia*, groundwater, surface water, soil, soil vapor, plant or animal life, or the atmosphere, including but not limited to:

- (a) any claim of actual or threatened personal or bodily injury allegedly resulting from actual or threatened environmental contamination;
- (b) any claim of actual or threatened property damage including, *inter alia*, diminished value, loss of use, and/or loss of quality of life, allegedly resulting from actual or threatened environmental contamination; or
- (c) any claim alleging liability for the investigation, study, prevention, mitigation or remediation of actual or threatened environmental contamination, or responsibility for the investigation, study, prevention, mitigation, or remediation of actual or threatened personal or bodily injury or property damage allegedly resulting from actual or threatened environmental contamination, including, *inter alia*, claims based upon any federal, state or local law, regulation, ordinance, directive, order or guideline relating to the protection of human health and/or the environment or upon the common law.

6.3 Should the Estate commence claims or proceedings against the Companies concerning any hazardous waste or hazardous substance sites other than the Harriman Site, the Maybrook Site or those sites listed on Schedule "B" to this Agreement (i.e., claims or proceedings concerning sites other than those with respect to which the Estate releases the Companies pursuant to subparagraph 7.1 below), the Companies' release of, and covenant not to sue the Estate as set forth in subparagraph 6.1 above shall cease to be of force and effect only as related to the sites concerning which the Estate bases such claims or proceedings.

7. Release of the Companies

7.1 In consideration for the mutual performance of the obligations created by this Agreement, the Estate hereby releases and covenants not to sue the Companies for any and all of the following claims arising from the past ownership of, operation of or transport or generation of wastes from the Harriman Site and the Maybrook Site which it, at any time, has had, now has or may have in the future:

- (a) Claims under Sections 107 and 113 of CERCLA in connection with the Harriman Site, the Maybrook Site and those sites listed on Schedule "B" attached hereto and incorporated herein;
- (b) Claims under the New York Environmental Conservation Law in connection with the Harriman Site, the Maybrook Site and those sites listed on Schedule "B" attached hereto and incorporated herein;
- (c) Claims for contribution or indemnity under any other federal or state statutory law or common law doctrine with respect to response actions at the Harriman Site, the Maybrook Site and those sites listed on Schedule "B" attached hereto and incorporated herein;
- (d) Penalties imposed by any governmental agency in connection with response actions performed at the Harriman Site, the Maybrook Site and those sites listed on Schedule "B" attached hereto and incorporated herein;
- (e) Claims for attorney's fees in connection with response actions at the Harriman Site, the Maybrook Site and those sites listed on Schedule "B" attached hereto and incorporated herein, and in connection with the Pending Proceedings or any future action which may be commenced for the purpose of implementing the provisions of this Agreement; and

- (f) All claims for past costs and reasonably foreseeable future costs with regard to any other environmental claims, actions, causes of action, suits, debts, contracts, controversies, or demands whatsoever, whether known or not known, suspected or concealed at the Harriman Site, Maybrook Site, and those sites listed on Schedule "B" attached hereto and incorporated herein.

8. Indemnification and Defense of the Estate by the Companies

8.1 In consideration for the mutual performance of the obligations created by this Agreement, the Companies and each of them hereby agree to indemnify and provide a defense for the Estate against any and all claims, damages, judgments, causes of action, orders, liabilities, losses, costs and/or expenses with respect to the Harriman Site and the Maybrook Site and each of the Companies individually agrees to so indemnify and provide a defense for the Estate with respect to those sites listed by each of the Companies, respectively; on Schedule "B" to this Agreement and incorporated herein by reference, in the event that the Estate may be alleged to be a responsible party under CERCLA, or a party liable under any other federal, state or local environmental statute, ordinance, regulation, or common law doctrine bearing on liability for damage to the environment made against or imposed on the Estate by any person or public or private entity including, but not limited to, the United States and/or the State of New York, or a party liable under claims asserted by any other person or entity arising from the past ownership of, operation of, or transport or generation of wastes from the Harriman Site and the Maybrook Site, either by way of complaint, third-party complaint, cross-claim, counterclaim, administrative proceeding, or other proceeding:

- (a) under Sections 107 or 113 of CERCLA;
- (b) under the New York Environmental Conservation Law;
- (c) under any other federal or state statutory law or common law doctrine in connection with environmental claims (as defined in subparagraph 6.2 herein), including, but not limited to, claims for contribution and/or indemnity; and/or
- (d) arising out of the performance of response actions.

8.2 Notwithstanding the above paragraph 8.1, the Companies do not agree to provide a defense for the Estate or to reimburse the Estate for the costs of defense in connection with claims or proceedings in ~~the~~ Surrogate's Court of the State of New York, or in any other probate court with jurisdiction over the Estate unless and except to the extent that such claims or proceedings are environmental claims (as defined in subparagraphs 6.2 above) which are covered by the indemnity provision of this Agreement set forth in subparagraph 8.1 above and are commenced against the Estate in such court.

8.3 The obligations of the Companies to indemnify and provide a defense for the Estate under this Agreement are conditioned upon the Estate providing written notice to the Companies requesting such indemnification and defense within fifteen (15) days after the Estate knows of the claim against the Estate that is the basis for the Estate's request. Such request shall also explain, to the extent known by the Estate, the basis for the claim and any relevant evidence to aid the Companies in evaluating such request.

8.4 The Estate shall fully cooperate with the Companies' defense of the Estate by making available documents and/or information in its possession or control and by making available witnesses within its control.

8.5 In the event that this Agreement is rendered null, void and of no force and effect pursuant to subparagraphs 4.2 or 5.3 above, or paragraph 14 below, the Estate shall reimburse the Companies for all reasonable damages, judgments, causes of action, orders, liabilities, losses, costs and expenses which the Companies have incurred on behalf of the Estate pursuant to this paragraph 8 and paragraph 9 below in connection with the obligations of the Companies to defend and indemnify the Estate.

8.6 Except as expressly stated in this Agreement, the Companies do not agree to indemnify or provide a defense for the Estate against any other claims, damages, judgments, causes of action, orders, liabilities, costs and/or expenses.

## 9. Defense of Indemnified Claims

9.1 In connection with the obligations of the Companies to defend the Estate as set forth in paragraph 8 above, the Companies shall supply a complete legal and factual defense to the Estate through qualified counsel to be chosen by the Companies and acceptable to the Estate, as to which acceptance shall not be unreasonably withheld; in the event that the Companies do not provide counsel within thirty (30) days after demand therefore, the Estate may retain counsel and other experts and/or consultants

necessary to defend itself, and the Companies shall be obligated to pay the costs incurred for such counsel.

9.2 In the event the Companies undertake defense of the Estate as contemplated in this Agreement, upon the conclusion of any action in which such defense is provided, all documents and/or information supplied by the Estate to counsel designated as "confidential" by the Estate and all copies thereof and all analyses, compilations, summaries, extracts or other work product which reflect or include information derived from documents or testimony designated as "confidential" by the Estate shall, at the Estate's option, be returned to the Estate or such material shall be certified by the Companies to have been destroyed.

#### 10. Schedule of Sites Incorporated Herein By Reference

10.1 Warner-Lambert represents as to itself, and Nepera represents as to itself, that attached hereto as Schedule "B" and incorporated herein by reference is a full and complete list of hazardous waste or hazardous substance sites with respect to which each of the Companies, respectively, has potential liability arising from operations at the Harriman Site or the Maybrook Site, and at which, as of the date of this Agreement, each (a) has an obligation pursuant to a consent decree, consent order, settlement agreement, or other written agreement with a governmental agency to perform response actions, or to provide reimbursement of response costs, which obligation has not yet been satisfied (including without limitation, an obligation to take any further actions pursuant to such agreement), or (b) is the defendant or respondent in a judicial or administrative proceeding in which a public or private party is seeking to compel it to perform response actions, or to provide reimbursement for response costs, or (c) has received a written demand from a governmental agency to perform a response action, or to provide reimbursement for response costs, which demand has not been satisfied. A notice as to the recipient's potential liability, absent such a demand, does not constitute a demand for purposes of this paragraph 10.

10.2 Notwithstanding subparagraph 10.1 above, expressly excluded from the representations contained in this paragraph 10, and therefore from the indemnification in paragraph 8 above, is the Route 17M "Pyridium Disposal Site" (EPA # II-CERCLA-95-0203).

11. Assignment of Claims

The Estate hereby assigns to the Companies any and all environmental claims (as defined in subparagraph 5.2 above), cross-claims, counterclaims and third-party claims for contribution and indemnity, reimbursement, or insurance of any kind against any public or private entity in connection with the Harriman Site, the Maybrook Site, and those sites listed on schedule "B" to this Agreement, which the Estate has or may have asserted, or now has or may in the future have the authority to assert against any other party.

12. Reopeners

This Agreement constitutes the full agreement of the Parties and there shall be no reopeners unless same are agreed to in writing by all Parties hereto. Absent such written agreement, the Parties expressly agree that there shall be no reopeners based on an increase or decrease in the estimated or actual response costs relating to the Harriman Site or the Maybrook Site, or based on any NYSDEC or EPA decision with respect to the Harriman ROD or the Maybrook ROD, if any.

13. Mutual Cooperation

The Parties hereby acknowledge that their mutual cooperation in the performance of this Agreement is a critical and essential element of this Agreement, and in consideration thereof, each Party agrees to cooperate in good faith to effectuate the purposes and obligations of this Agreement, including the expeditious negotiation and entry of a Consent Agreement as set forth in paragraph 5 above, the negotiation and entry of Stipulations of Dismissal with Prejudice of all Pending Proceedings as set forth in paragraph 4 above, the negotiation and entry of a Trust Agreement as set forth in paragraph 3 above, the making of the Payment as set forth in paragraph 3 above and all other reasonable actions necessary to effectuate such purposes and obligations as promptly as possible.

14. Time of the Essence

14.1 If, within six (6) months of the effective date of this Agreement, the Parties are unable to (a) negotiate and execute Stipulations of Dismissal of the Pending Proceedings as set forth in paragraph 4 above, (b) negotiate and submit to a federal court or administrative body of competent jurisdiction a Consent Agreement as set forth in paragraph 5 above, which Consent Agreement shall reference and incorporate such Stipulations of Dismissal, or (c) the Companies are unable to negotiate and execute

a Trust Agreement as set forth in paragraph 3 above, this Agreement shall be null, void and of no effect and the Payment and all interest accrued thereon while held in escrow shall be transferred immediately to the Estate in accordance with subparagraph 3.7 above.

14.2 Notwithstanding subparagraph 14.1 above, the Agreement shall not become null, void and of no effect, and the Escrow Agents will retain the Payment and any interest earned thereon, if (a) the Parties have entered an agreement in writing to extend the six-month period, which any Party may refuse to enter at its sole discretion, or (b) a Party or the State of New York has made application to the Surrogate's Court of the State of New York to extend the six-month period, which application is pending, or (c) the Surrogate's Court has issued an order extending the six-month period. The Escrow Agents thereafter will retain the funds for an extended period (a) in accordance with the Parties' written agreement, (b) while such application to the Surrogate's Court is pending, or (c) pursuant to the Surrogate's order, respectively.

15. Schedule "C."

In accordance with paragraph III(e) of the February 15, 1990 Stipulation referenced in subparagraph 3.1 above, and as set forth in the letter attached hereto as Schedule "C" and executed by the Parties concurrently with this Agreement, the Parties consent to the distribution of Twenty-Two Million and no/100 (\$22,000,000.00) Dollars of principal from the Marital Trust on the earlier of February 2, 1998 or the lodging of a Consent Agreement as set forth in paragraph 5 above. For the purpose of this paragraph 15, "Marital Trust" shall have the meaning set forth in that letter attached hereto as Schedule "C."

16. Effective Date Of This Agreement

This Agreement shall become effective as of the date first written above. All releases, indemnification obligations and covenants not to sue contained in this Agreement are conditioned upon the satisfactory performance by the Parties of their obligations under this Agreement.

17. Notices

All notices required to be given under this Agreement shall be in writing, sent by certified mail or by overnight courier to the Party to whom the notice is directed, at the addresses stated below, and shall be deemed to have been given when received by the Party.



If To Warner Lambert:

Jonathan D. Britt, Esq.  
Corporate Litigation  
Warner-Lambert Company  
201 Tabor Road  
Morris Plains, New Jersey 07950  
(201) 540-4466

and

Daniel H. Squire, Esq.  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
(202) 663-6060

If to Nepera:

Peter F. Thauer, Esq.  
Vice President - Law and Environmental  
General Counsel and Secretary  
Cambrex Corporation  
One Meadowlands Plaza  
East Rutherford, New Jersey 07073  
(201) 804-3000

and

John Sebastian Vaneria, Esq.  
Vaneria, Sesti & Geipel, LLP  
641 Lexington Avenue  
New York, New York 10022  
(212) 753-1800

If to the Estate:

Joel H. Sachs, Esq.  
Donna E. Frosco, Esq.  
Keane & Beane, P.C.  
One North Broadway  
White Plains, New York 10601  
(914) 946-4777

18. Amendments

This Agreement may be amended only by the written consent of all Parties hereto.

19. Construction of this Agreement

All Parties to this Agreement and their counsel have reviewed and revised this Agreement and the normal rules of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement.

20. Confidentiality of this Agreement

The Parties acknowledge that this Agreement constitutes a settlement of vigorously contested disputes and controversies, and they agree that this Agreement should not be admissible in any subsequent proceedings or actions by one Party against another Party except as may be necessary to enforce the terms of this Agreement. The Parties also agree that all aspects of this Agreement are confidential and that the terms of this Agreement shall not be disclosed to any person or entity whatsoever, except (1) by consent of all Parties, (2) as may be required by law or to effectuate this Agreement (3) or as may be required for financial accounting, insurance or other similar business purpose. If disclosure is necessary or required, the disclosing Party shall take all possible care (including, but not limited to, the use of protective orders, confidentiality agreements and the like) to preserve the confidentiality of this Agreement to the greatest extent possible.

21. Integration Clause

This Agreement, including any stipulations or agreements incorporated herein by reference, constitute the complete and final expression of the terms of this Agreement. All prior agreements, representations and negotiations, either oral or written, are superseded hereby, except that nothing contained herein shall be deemed to affect the validity of the February 15, 1990 Surrogate's Court Stipulation referenced in paragraph 3, above, which shall continue in full force and effect.

## 22. Binding Agreement

This Agreement shall be binding on the Parties, their heirs, successors, agents, assigns, parents, and/or affiliates. The rights granted under this Agreement, including without limitation, the releases herein, shall inure to the benefit of the Parties, their heirs, successors, successors-in-interest at the Sites, agents, assigns, parents, and/or affiliates. Any change in ownership, corporate, or legal status of a Party including, but not limited to, any transfer of assets, transfer of real or personal property, merger, acquisition or dissolution, shall not alter a Party's responsibilities under this Agreement. This Agreement shall be fully binding in a court of competent jurisdiction.

## 23. Relationship of the Parties

This Agreement does not create and shall not be construed to create any agency, joint venture or partnership relationship between or among the Parties hereto. Nothing contained in this Agreement is intended to affect, increase, diminish, settle or release any rights, responsibilities, liabilities, allocations or interests of the Companies as between each other.

## 24. Authorization and Enforceability

24.1 Each Party represents that it has sufficient knowledge of the actual and potential liabilities and claims that are the subject of this Agreement to enter into this Agreement and each Party enters this Agreement based on, and after consideration of, such knowledge.

24.2 Each of the Companies represents and warrants to the other Parties that the execution, delivery and performance of this Agreement has been duly authorized on its behalf and is within its corporate power and authority and that the person signing on behalf of each of the Companies has sufficient authority and has been duly authorized to execute this Agreement.

24.3 The signatory on behalf of the Estate represents that she has the power and authority to execute this Agreement on behalf of the Estate.

24.4 Each Party represents and warrants to the other Parties that this Agreement constitutes legal, valid and binding obligations enforceable against such Party in accordance with its terms.

25. No Waiver

The failure of a Party to insist on strict performance of any term of this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

26. Titles and Headings

Titles and headings to paragraphs or sections herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

27. Execution

This Agreement and the Escrow Agreement shall be executed in triplicate originals and one fully executed original shall be provided to each Party, provided that each original may include signature pages executed separately by the Parties and affixed to that original.

28. Governing Law

This Agreement and all amendments hereof, shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed therein.

Dated: 11/4/97

Warner-Lambert Company

[Seal]

By: Jonathan D. Britt

Name: Jonathan D. Britt

Title: Assistant Secretary and  
Vice President - Associate General  
Counsel

STATE OF NEW JERSEY )

COUNTY OF MORRIS )

) SS:

On the 11th day of November, 1997, before me personally came  
Jonathan D. Britt

to me known, who, being by me duly sworn, did depose and say that  
he resides at 7 Surrey Road, Summit, New Jersey 07901

that he is the Asst. Secretary & V.P. & Assoc. General Counsel of Warner-Lambert  
Company, the corporation described in and which executed the  
foregoing instrument; that he has sufficient authority and has been  
duly authorized to execute and affix the corporate seal to said  
instrument on the corporation's behalf.

[Seal]

Victoria R. Scully  
NOTARY PUBLIC

VICTORIA R. SCULLY  
A Notary Public of New Jersey  
My Commission Expires January 31, 1998

Nepera, Inc.

Dated: Nov. 6, 1997

[Seal]

By: Peter E. Thawer

Name:

Title:

STATE OF ~~NEW YORK~~ New Jersey )  
COUNTY OF Bergen ) SS:

On the 6 day of Nov., 1997, before me personally came  
PETER E. THAWER

to me known, who, being by me duly sworn, did depose and say that  
he resides at 5 DENISON DRIVE, SADDLE RIVER, NJ

that he is the VICE PRESIDENT of Nepera, Inc., the  
corporation described in and which executed the foregoing  
instrument; that he has sufficient authority and has been duly  
authorized to execute and affix the corporate seal to said  
instrument on the corporation's behalf.

[Seal]

Elaine V. Flynn  
NOTARY PUBLIC

ELAINE V. FLYNN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 8, 2001

Dated: DEC. 15, 1997

Estate of William S. Lasdon

By: *Nannette Laitman*

Name: Nannette Laitman

Title: Executrix of the Estate of William S. Lasdon

STATE OF NEW YORK)

COUNTY OF NEW YORK ) SS.:

On the 15<sup>TH</sup> day of DECEMBER, 1997, before me personally came Nannette Laitman, to me known, who, being by me duly sworn, did depose and say that she resides at 650 PARK AVE, NEW YORK, N.Y.

and that she is the Executrix of the Estate of William S. Lasdon, the Estate described in and which executed the foregoing instrument; that as Executrix she has the power and authority to execute this Agreement on behalf of the Estate; and that she signed her name thereto pursuant to her authority as Executrix.

*Joel Sachs*  
NOTARY PUBLIC

JOEL H. SACHS  
Notary Public, State of New York  
No. 60-8736000  
Qualified in Westchester County  
Commission Expires May 31, 1998

38 20 *A. M. J.* 11/12/97

**ESCROW AGREEMENT**

This Escrow Agreement (the "Agreement") is made and entered into as of November 6, 1997, by and among the ESTATE OF WILLIAM S. LASDON (the "Estate"), WARNER-LAMBERT COMPANY ("Warner-Lambert") and NEPERA, INC. ("Nepera") (collectively, the "Settling Parties") and Joel H. Sachs, John S. Vaneria, and Daniel H. Squire (collectively, the "Escrow Agents").

WHEREAS, the Settling Parties are parties to a Settlement Agreement dated on or about the date of this Agreement, resolving certain environmental claims;

WHEREAS, the Settlement Agreement provides that the Estate shall pay or cause to be paid Thirteen Million Dollars (\$13,000,000) in settlement (the "Payment") and further provides that the Payment shall be held in escrow in accordance with an the Escrow Agreement annexed to the Settlement Agreement as Schedule "A" and incorporated therein;

WHEREAS, the Settling Parties have agreed to enter this Agreement as Schedule "A" to the Settlement Agreement, in accordance with and consistent with all terms of the Settlement Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein and in the Settlement Agreement, the Settling Parties agree as follows:

1. Definitions and Construction. For purposes of this Agreement, all terms not specifically defined herein that are defined in the Settlement Agreement shall have the respective meanings stated therein and any ambiguities in this Agreement shall be resolved in a manner consistent with the Settlement Agreement.

2. Appointment of Agent. The Settling Parties hereby designate the Escrow Agents to act as herein specified, and the Escrow Agents accept their appointment as Escrow Agents hereunder, until the complete transfer of the Payment and any interest earned thereon, in accordance with the provisions of Section 6 hereof. The Settling Parties hereby irrevocably authorize the Escrow Agents to take such action on their behalf under the provisions of this Agreement and to exercise such powers and to perform such duties hereunder as are specifically delegated to or required of the Escrow Agents by the terms hereof and such other powers as are reasonably incidental thereto.

3. Deposit into Escrow.

In accordance with Paragraph 3 of the Settlement Agreement, within ten (10) days after the effective date of the Settlement Agreement, the Estate will deposit by wire transfer, to an account to be established at Citibank, N.A., or at another institution if agreed to in writing by the Escrow Agents, funds in the amount of Thirteen Million Dollars (\$13,000,000), pending transfer of



the Payment and any interest earned thereon to the Trust, to the Trust and the State of New York, or to the Estate.

4. Investment.

The Escrow Agents shall have the right to direct the investment of the Payment and any interest earned thereon in, and only in, the following instruments and securities: (i) United States government securities or securities of agencies of the United States government which are guaranteed by the United States government; (ii) securities of governmental agencies, if the same are covered by a bank repurchase agreement; (iii) certificates of deposit; (iv) tax-free municipal bonds of issuers that have a class of short-term obligations rated in one of the three highest debt rating categories for short-term debt by Standard & Poors, Moody's or Fitch; and (v) tax-free money market mutual funds meeting the requirements of Rule 2a-7 under the Investment Company Act of 1940, none of which shall have maturities longer than one year. The Escrow Agents shall not be liable for any loss sustained as a result of any investment made pursuant to this provision, or as a result of any liquidation of such investment prior to its maturity.

5. Taxes, etc. on the Payment in Escrow. The Estate agrees to pay and discharge promptly, and in any event prior to delinquency, all taxes, charges, liens and assessments that accrue during the escrow period against the Payment and any interest earned thereon, except that the Estate shall not be required to pay and discharge any such tax, charge, lien or assessment as long as the validity thereof shall be contested by and at the sole cost and expense of the Estate in good faith and if necessary by appropriate legal proceedings. If the Payment and any interest earned thereon, or any portion thereof, are turned over to the Trust, or to the Trust and the State of New York, in accordance with Section 6 herein, then the Trust shall reimburse the Estate, and in the event the Trust does not reimburse the Estate, Warner-Lambert and Nepera (together, the "Companies") shall reimburse the Estate, for all such taxes, charges, liens and assessments that accrue during the escrow period against the Payment and any interest earned thereon.

6. Termination.

This Agreement, and the obligations under this Agreement of each party hereto with respect to the Payment, and any interest earned thereon, shall terminate at such time as either (a) or (b) below occurs:

(a) In accordance with Paragraph 3 of the Settlement Agreement, the Escrow Agents transfer or cause the transfer of the Payment and any interest earned thereon to the Trust, or to the Trust and the State of New York, within fifteen (15) days after the entry of a Consent Agreement by the federal district court or administrative body as set forth in Paragraph 5 of the Settlement Agreement and entry of all Stipulations of Dismissal upon which the Settlement Agreement is contingent as set forth in Paragraph 4 of the Settlement Agreement, whichever shall occur last.

(b) The Escrow Agents transfer or cause the return of the Payment and any interest earned thereon to the Estate within fifteen (15) days after either (i), (ii) or (iii) below occurs:

(i) In accordance with Paragraphs 3 and 14 of the Settlement Agreement, within six (6) months of the effective date of the Settlement Agreement, the Parties are unable to negotiate and execute the various Stipulations of Dismissal of the Pending Proceedings as set forth in Paragraph 4 of the Settlement Agreement, the Parties are unable to negotiate and submit to a federal court or administrative body of competent jurisdiction a Consent Agreement as set forth in Paragraph 5 of the Settlement Agreement, and the Companies are unable to negotiate and execute a Trust Agreement as set forth in Paragraph 3 of the Settlement Agreement; provided that this Agreement shall not terminate, and the Escrow Agents will retain the Payment and any interest earned thereon, for an extended period pursuant to an agreement in writing among the Parties to extend the six-month period, during the period that an application by any Party or the State of New York to extend the six-month period is pending before the Surrogate's Court, County of Westchester, or pursuant to a Surrogate Court's order extending the six-month period.

(ii) In accordance with Paragraph 5 of the Settlement Agreement, the court or administrative body to which the Consent Agreement is submitted refuses to enter same.

(iii) In accordance with Paragraph 4 of the Settlement Agreement, the Pending Proceedings are not dismissed in accordance with the Stipulations of Dismissal with Prejudice.

7. Obligations of the Escrow Agent. It is agreed that the duties and obligations of the Escrow Agents are those herein specifically provided and no other. The Escrow Agents shall not have any duty to inquire into the terms and provisions of any agreement, other than this Agreement and, as expressly provided herein, the Settlement Agreement. The Escrow Agents' duties are ministerial in nature and the Escrow Agents shall not incur any liability whatsoever so long as they have acted in good faith except for gross negligence...

(a) The Settling Parties represent to the Escrow Agents that the Settling Parties (by their duly authorized representatives) are authorized to enter into this Agreement and that the Escrow Agents are entitled to rely on these representations without the need to confirm the authority of the representatives.

(b) The Escrow Agents may consult with counsel of their choice, and shall not be liable for any action taken, suffered or omitted by them in accordance with the advice of such counsel. The Escrow Agents shall not be bound by any modification, amendment, termination, cancellation, rescission or suppression of this Agreement unless the same shall be in writing and signed by the Settling Parties and, if their rights or duties as Escrow Agents hereunder are affected thereby, by the Escrow Agents as well.

(c) In the event that the Escrow Agents shall be uncertain as to their duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in their opinion, conflict with any of the provisions of this Agreement, they shall be entitled to refrain from taking any action, and their sole obligation shall be to keep safely all property held in escrow until they shall be directed otherwise in writing by the Settling Parties or by a final judgment of a court order of competent jurisdiction.

(d) The Escrow Agents shall not incur any liability for following the instructions herein contained or expressly provided for, or other written instructions given jointly by the Settling Parties.

(e) The Escrow Agents shall not have any responsibility for the genuineness or validity of any document or other item deposited with them and any liability for action in accordance with any written instructions given to them hereunder and believed by them to be signed by the proper parties.

(f) The Escrow Agents shall not be required to institute legal proceedings of any kind and shall not be required to initiate or defend any legal proceedings which may arise in respect of the subject matter of these instructions.

(g) The Escrow Agents shall not be responsible or liable in any manner whatsoever for the performance of or by the Settling Parties of their respective obligations under this Agreement or the Settlement Agreement, nor shall the Escrow Agents be responsible or liable in any manner whatsoever for the failure of the other parties to this Agreement or of any third party to honor any of the provisions of this Agreement or the Settlement Agreement.

(h) The Escrow Agents may continue to represent the Settling Parties, respectively, who designated them as Escrow Agents, even if a dispute arises under this Agreement or the Settlement Agreement.

(i) The Escrow Agents may incur expenses incidental to the investment of, accounting for, and distribution of the Payment and the interest earned thereon, and otherwise incidental to their duties as Escrow Agents, which expenses they shall pay from the interest earned on the Payment before their distribution of the Payment and the interest earned thereon in accordance with this Agreement.

(j) The Escrow Agents shall take action pursuant to this Escrow Agreement by unanimous consent, and if they are unable to reach such unanimous consent, they shall refer any and all disputes to the Surrogate's Court of the State of New York for resolution.

8. Release of Escrow Agent. Any Escrow Agent may at any time resign hereunder by giving written notice of his resignation to the parties hereto, at least ten (10) calendar days prior to the date specified for such resignation to take effect, and the Settling Party who designated that

Escrow Agent may designate a successor Escrow Agent who shall sign this Agreement, shall be bound by its terms and conditions, and shall succeed to all duties and responsibilities of the resigning Escrow Agent under this Agreement. If a successor Escrow Agent is not designated before the effective date of the resignation, all property then held by the resigning Escrow Agent hereunder shall be delivered to the other Escrow Agents or their designees, whereupon all the resigning Escrow Agent's obligations hereunder shall cease and terminate. If all Escrow Agents resign, and no successor Escrow Agents shall have been designated by their respective resignation dates, all obligations of the Escrow Agents hereunder shall nevertheless cease and terminate. The Escrow Agents' sole responsibility thereafter shall be to keep safely all property then held by them and to deliver the same to a person or entity designated by the Settling Parties or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

9. Indemnity of Escrow Agent. The Settling Parties agree to indemnify, defend and hold the Escrow Agents harmless from and against any and all loss, damage, tax, liability and expense that may be incurred by the Escrow Agents arising out of or in connection with their acceptance of appointment or performance of duties as Escrow Agents hereunder, including, without limitation, the legal costs and expenses of defending themselves against any claim or liability in connection with their performance hereunder, except as caused by their gross negligence.

10. Construction of the Instruments by Escrow Agent. In accepting the terms hereof, it is agreed and understood between the parties hereto that the Escrow Agents will not be called upon to construe any contract or instrument in connection herewith and shall be required to act in respect of the deposits herein made only as directed herein.

11. Fees of Escrow Agents. The Escrow Agents shall not be paid for their services under this Agreement, pursuant to Section 7(i) or otherwise, except that they may be paid directly by the Settling Parties, respectively, who designated them as Escrow Agents.

12. Notices. Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally or sent by telefax (with confirmation of transmission), by recognized courier service (with receipt acknowledged) or by registered or certified mail, postage prepaid, as follows:

(a) If to the Settling Parties, to the individuals identified in the Settlement Agreement.

(b) If to the Escrow Agents, to the individuals listed in this Agreement as Escrow Agents, who are also listed as recipients of notice in the Settlement Agreement.

Such notice, request, demand, waiver, consent, approval or other communication shall be deemed to have been given as of the date so delivered personally or by courier, telefaxed or five (5) business days after deposited in the mail.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written.

WARNER-LAMBERT COMPANY

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NEPERA, INC.

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESTATE OF WILLIAM S. LASDON

Dated:

11/12/97

By: *Nanette Laitman*  
Name: Nanette LAITMAN  
Title: ELECTRICIAN

ESCROW AGENTS

Dated:

\_\_\_\_\_  
Joe H. Sachs

Dated:

\_\_\_\_\_  
John S. Vaneria

Dated:

\_\_\_\_\_  
Daniel H. Squire

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written.

WARNER-LAMBERT COMPANY

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NEPERA, INC.

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


ESTATE OF WILLIAM S. LASDON

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESCROW AGENTS

Dated: 11/12/97

  
\_\_\_\_\_  
Joel H. Sachs

Dated:

\_\_\_\_\_  
John S. Vaneria

Dated:

\_\_\_\_\_  
Daniel H. Squire

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written.

WARNER-LAMBERT COMPANY

Dated: 10/4/97

By: Jonathan D. Britt  
Name: JONATHAN D BRITT  
Title: ASSISTANT SECRETARY & VICE PRESIDENT & ASSOCIATE GENERAL COUNSEL  
NEPERA, INC.

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESTATE OF WILLIAM S. LASDON

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESCROW AGENTS

Dated:

\_\_\_\_\_  
Joel H. Sachs

Dated:

\_\_\_\_\_  
John S. Vaneria

Dated: 10/20/97

Daniel H. Squire  
\_\_\_\_\_  
Daniel H. Squire

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written.

WARNER-LAMBERT COMPANY

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: 6 November 1997

NEPERA, INC.

By: Peter E. Thaler  
Name: PETER E. THALER  
Title: VICE PRESIDENT

Dated:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESTATE OF WILLIAM S. LASDON

Dated:

Joel H. Sachs

Dated: 6 November 1997

John S. Vaneria  
John S. Vaneria

Dated:

Daniel H. Squire



SCHEDULE B

Sites Listed by Nepera:

1. Harriman Site
2. Maybrook Site
3. Scientific Chemical Processing (SCP) Site, located at 216 Paterson Plank Road, Carlstadt, Bergen County, New Jersey
4. Town of Walkkill Landfill, (New York State Registry of Inactive Hazardous Waste Sites), located at Banke Road, Orange County, New York
5. Kin-Buc Sanitary Landfill (USEPA Site), located at Meadon Road, Edison, New Jersey
6. New York City Landfills (5 Landfills each on the NYS Registry of Inactive Hazardous Waste Disposal Sites):
  - a) Pelham Bay - Bronx County: Site #2-03-001
  - b) Edgemere - Queens County: Site #2-49-004
  - c) Brookfield Avenue - Richmond County: Site #2-43-008
  - d) Fountain Avenue - Kings County: Site #2-24-003
  - e) Pennsylvania Avenue - Kings County: Site #2-24-002
7. Berry's Creek/Peach Island Creek Superfund Site, Carlstadt, New Jersey (related to waste dumping at SCP Carlstadt Site)
8. Lone Pine Landfill - USEPA Site, located at Burke Road, Freehold Township, Monmouth County, New Jersey
9. Warwick Site, a/k/a Penaluna Landfill, located at Penaluna Road, Warwick, New York (USEPA Site)
10. Helen Kramer Landfill, located at Mantua, New Jersey (New Jersey and USEPA Site)

Sites Listed by Warner-Lambert:

1. Harriman Site
2. Maybrook Site
3. Scientific Chemical Processing (SCP) Site, located at 216 Paterson Plank Road, Carlstadt, Bergen County, New Jersey

# KEANE & BEANE, P.C.

ONE NORTH BROADWAY  
WHITE PLAINS, NEW YORK 10601  
(914) 946-4777  
TELEFAX (914) 946-6868

Schedule C

EDWARD F. BEANE  
DAVID GLASSER  
RONALD A. LONGO  
RICHARD L. O'ROURKE  
LAWRENCE PRAGA  
JOEL H. SACHS\*  
STEVEN A. SCHURKMAN\*  
JUDSON K. SIEBERT

\*ALSO ADMITTED IN FL.  
\*\*ALSO ADMITTED IN NJ  
□ALSO ADMITTED IN CT  
†ALSO ADMITTED IN DC & CA  
°ALSO ADMITTED IN MA

THOMAS F. KEANE, JR.  
(1932-1991)

JOSEPH A. DETRAGLIA  
FREDERIC B. EISMAN  
DONNA E. FROSCO\*\*†  
DEBBIE G. JACOBS  
LANCE H. KLEIN\*\*

NICHOLAS M. WARD-WILLIS\*\*\*

OF COUNSEL

PETER A. BORROK\*  
JOHN F. BURKHARDT  
ERIC F. JENSEN

November 4, 1997

Jonathan D. Britt, Esq.  
Haworth Hotel  
225 College Avenue  
Holland, Michigan 49423

Kathryn Macdonald, Esq.  
Assistant Attorney General  
NYS Department of Law  
120 Broadway  
New York, NY 10271

John S. Vaneria, Esq.  
641 Lexington Avenue  
New York, NY 10022

Re: Estate of William S. Lasdon  
Surrogate's Court County of Westchester  
File No. 1519/84

Dear Madam and Gentlemen:

We are the attorneys for the Trustees of the Inter Vivos Trusts created by William S. Lasdon under a Trust Agreement dated May 11, 1983, as amended by a First Amendment dated May 5, 1984 (the "Inter Vivos Trusts"). We have informed you that our clients wish to make a distribution of principal in the amount of \$22,000,000. from the Inter Vivos Trust created for the benefit of Mildred Lasdon (the "Marital Trust") for the purpose of (1) funding in part the various trusts for the benefit of members of her family to which Mrs. Lasdon appointed the principal of the Marital Trust by the terms of her Last Will and Testament and (2) distributing the sum of \$314,813. to Mrs. Nanette Laitman (Mrs. Lasdon's daughter) in satisfaction of a bequest to her under the Will. We have requested that Nepera, Inc., Warner-Lambert Company and the State of New York consent to this distribution pursuant to paragraph III(e) of the February 15, 1990 Stipulation freezing the assets of the Estate of William S. Lasdon and the Inter Vivos Trusts.


700113

Please sign the enclosed copy of this letter where indicated below to evidence the consent of each of your respective clients, Nepera, Inc., Warner-Lambert Company and the State of New York, to the distribution of \$22,000,000. of principal from the Marital Trust for the (1) funding in part the various trusts as aforesaid and (2) distributing the sum of \$214,813. to Mrs. Nanette Laitman (Mrs. Lasdon's daughter) in satisfaction of a bequest to her. It is our understanding that the consent of each of your respective clients to this distribution is being given upon the condition that this consent not be used as a precedent or ground for any further withdrawals, or applications for withdrawals, of principal from the Inter Vivos Trusts.

Consistent with that certain Settlement Agreement between the Estate of William S. Lasdon, Nepera, Inc. and Warner-Lambert Company, this letter, as executed by you consenting to such distributions, shall be held in escrow by this firm until the earlier of February 2, 1998 or the filing of a Consent Agreement as set forth in that Settlement Agreement.

Thank you for your cooperation.

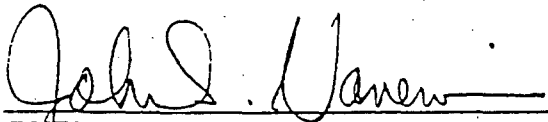
Very sincerely yours,

  
David Glasser

DG/mc

THE UNDERSIGNED HEREBY CONSENT TO THE AFOREMENTIONED DISTRIBUTION OF \$22,000,000. FROM THE MARITAL TRUST:

STATE OF NEW YORK  
DEPARTMENT OF LAW



JOHN S. VANERIA, ESQ.  
Attorney for Nepera, Inc.

By: \_\_\_\_\_  
KATHRYN C. MACDONALD, ESQ.  
Assistant Attorney General

\_\_\_\_\_  
JONATHAN D. BRITT, ESQ.  
Attorney for Warner-Lambert

KEANE & BEANE, P. C.

Please sign the enclosed copy of this letter where indicated below to evidence the consent of each of your respective clients, Nepera, Inc., Warner-Lambert Company and the State of New York, to the distribution of \$22,000,000. of principal from the Marital Trust for the (1) funding in part the various trusts as aforesaid and (2) distributing the sum of \$314,813. to Mrs. Nanette Laitman (Mrs. Lasdon's daughter) in satisfaction of a bequest to her. It is our understanding that the consent of each of your respective clients to this distribution is being given upon the condition that this consent not be used as a precedent or ground for any further withdrawals, or applications for withdrawals, of principal from the Inter Vivos Trusts.

Consistent with that certain Settlement Agreement between the Estate of William S. Lasdon, Nepera, Inc. and Warner-Lambert Company, this letter, as executed by you consenting to such distributions, shall be held in escrow by this firm until the earlier of February 2, 1998 or the filing of a Consent Agreement as set forth in that Settlement Agreement.

Thank you for your cooperation.

Very sincerely yours,

  
David Glasser

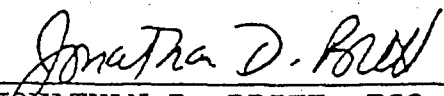
DG/mc

THE UNDERSIGNED HEREBY CONSENT TO THE AFOREMENTIONED DISTRIBUTION OF \$22,000,000. FROM THE MARITAL TRUST:

STATE OF NEW YORK  
DEPARTMENT OF LAW

\_\_\_\_\_  
JOHN S. VANERIA, ESQ.  
Attorney for Nepera, Inc.

By: \_\_\_\_\_  
KATHRYN C. MACDONALD, ESQ.  
Assistant Attorney General

  
\_\_\_\_\_  
JONATHAN D. BRITT, ESQ.  
Attorney for Warner-Lambert

Daniel H. Squire, Esq.  
John S. Vaneria, Esq.  
Kathryn Macdonald, Esq.  
October 31, 1997  
Page 2

Please sign the enclosed copy of this letter where indicated below to evidence the consent of each of your respective clients, Nepera, Inc., Warner-Lambert Company and the State of New York, to the distribution of \$22,000,000. of principal from the Marital Trust for the (1) funding in part the various trusts as aforesaid and (2) distributing the sum of \$314,813. to Mrs. Nanette Laitman (Mrs. Lasdon's daughter) in satisfaction of a bequest to her. It is our understanding that the consent of each of your respective clients to this distribution is being given upon the condition that this consent not be used as a precedent or ground for any further withdrawals, or applications for withdrawals, of principal from the Inter Vivos Trusts.

Consistent with that certain Settlement Agreement between the Estate of William S. Lasdon, Nepera, Inc. and Warner-Lambert Company, this letter, as executed by you consenting to such distributions, shall be held in escrow by this firm until the earlier of February 2, 1998 or the filing of a Consent Agreement as set forth in that Settlement Agreement.

Thank you for your cooperation.

Very sincerely yours,

DG/mc

David Glasser

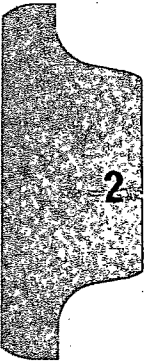
THE UNDERSIGNED HEREBY CONSENT TO THE AFOREMENTIONED DISTRIBUTION OF \$22,000,000. FROM THE MARITAL TRUST:

STATE OF NEW YORK  
DEPARTMENT OF LAW

JOHN S. VANERIA, ESQ.  
Attorney for Nepera, Inc.

By: Kathryn C. Macdonald  
KATHRYN/C. MACDONALD, ESQ.  
Assistant Attorney General

JONATHAN D. BRITT, ESQ.  
Attorney for Warner-Lambert



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
WARNER-LAMBERT COMPANY,

Plaintiff,

-against-

STANLEY F. LASDON, MILDRED D.  
LASDON and NANETTE L. LAITMAN,  
as Executors of the ESTATE OF  
WILLIAM S. LASDON, Deceased,

Defendants.  
-----X

STIPULATION OF  
DISMISSAL WITH  
PREJUDICE

87 Civ. 9227 (KTD)

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties in the above-captioned action, that all claims asserted in the Complaint shall be and hereby are dismissed, with prejudice, pursuant to Federal Rules of Civil Procedure Rule 41(a), with each party bearing its own costs and attorneys' fees.

Dated: White Plains, New York  
March 27, 1998

KEANE & BEANE, P.C.

By: Joel H. Sachs

JOEL H. SACHS (JHS 3954)  
Attorneys for Defendants  
One North Broadway  
White Plains, NY 10601  
(914) 946-4777

SKADDEN ARPS SLATE MEAGHER  
& FLOM

By: John Gardiner

JOHN GARDINER (JG 8715)  
SKADDEN ARPS SLATE MEAGHER  
& FLOM  
Attorneys for Plaintiff  
919 Third Avenue  
New York, NY 10022  
(212) 735-3000

SO ORDERED:

KEVIN T. DUFFY, U.S.D.J.

700118

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
STANLEY F. LASDON, MILDRED D.  
LASDON and NANETTE L. LAITMAN,  
as Executors of the ESTATE OF  
WILLIAM S. LASDON, Deceased,

Plaintiffs,

-against-

WARNER-LAMBERT COMPANY,

Defendant.  
-----X'

STIPULATION OF  
DISMISSAL WITH  
PREJUDICE

88 Civ. 2821 (KTD)

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties in the above-captioned action, that all claims asserted in the Complaint shall be and hereby are dismissed, with prejudice, pursuant to Federal Rules of Civil Procedure Rule 41(a), with each party bearing its own costs and attorneys' fees.

Dated: White Plains, New York  
March 27, 1998

KEANE & BEANE, P.C.

SKADDEN ARPS SLATE MEAGHER  
& FLOM

By: 

JOEL H. SACHS (JHS 3954)  
Attorneys for Plaintiffs  
One North Broadway  
White Plains, NY 10601  
(914) 946-4777

By: 

JOHN GARDINER (JG8715)  
SKADDEN ARPS SLATE MEAGHER  
& FLOM  
Attorneys for Defendant  
919 Third Avenue  
New York, NY 10022  
(212) 735-3000

SO ORDERED:

\_\_\_\_\_  
KEVIN T. DUFFY, U.S.D.J.



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
)  
)  
NEPERA, INC., )  
)  
Plaintiff, )  
)  
- against - )  
)  
STANLEY S. LASDON, )  
MILDRED D. LASDON, )  
NANETTE L. LAITMAN, )  
)  
as Executors of the Estate )  
of William S. Lasdon, Deceased, )  
)  
Defendants. )  
)  
-----X

STIPULTION OF  
DISMISSAL WITH PREJUDICE

88 Civ. 0239 (MJL)

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, attorneys of record for the parties in the above-captioned action, as follows:

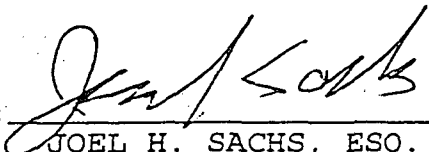
1. The above-captioned action hereby is settled in accordance with the terms of the Private Party Settlement Agreement dated as of 6 November 1997; and


2. All claims and counterclaims asserted in the above-captioned action are dismissed with prejudice and with each party bearing its own costs and attorneys' fees.

Dated: 2 April 1998  
New York City

KEANE & BEANE, P.C.

By:

  
\_\_\_\_\_  
JOEL H. SACHS, ESQ.  
(JHS 3954)  
Attorneys for Defendants  
One North Broadway  
White Plains, New York 10601  
(914) 946-4777

  
\_\_\_\_\_  
JOHN SEBASTIAN VANERIA, ESQ.  
(JSV 1333)  
Attorney for Plaintiff  
641 Lexington Avenue  
New York, New York 10022  
(212) 753-1800

SO ORDERED:

\_\_\_\_\_  
MARY J. LOWE, U.S.D.J.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
In the Matter of the Application of  
ESTATE OF WILLIAM F. LASDON,

Petitioner,

for a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules,

- against -

LANGDON MARSH, as Commissioner of the  
New York State Department of  
Environmental Conservation,

Respondent.  
-----X

**STIPULATION OF  
DISCONTINUANCE  
WITH PREJUDICE**

Index No. 94-18582  
Assigned To:  
Cowhey, J.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties in the above-captioned proceeding that as no party hereto is an infant or incompetent person for whom a committee or conservator has been appointed, and no person not a party has an interest in the subject matter, the above-captioned proceeding be and same hereby is discontinued with prejudice, without cost to either party as against the other;

IT IS FURTHER STIPULATED AND AGREED that the Estate's execution of the Consent Decree to be filed in the United States District Court for the Southern District of New York shall constitute complete satisfaction of the March 1, 1994 and September 19, 1994 Orders issued by Langdon Marsh, in his capacities as Executive Deputy Commissioner of the New York State DEC and thereafter as Commissioner of DEC, arising from the DEC Administrative Complaint for the Maybrook Site against the Estate of William S. Lasdon, Index No. W3-0624-92-10 (superseding Index No. W3-0006-8102) with respect to (i) Marsh's determination that the 1988 Stipulation entered into by the DEC Staff and Petitioner was not binding as to the theories of liability that could be raised against the Petitioner; (ii) Marsh's determination that William Lasdon was an operator of the Maybrook site, in his capacity as an officer, director and shareholder of Old Nepera from

1952 until 1956; (iii) Marsh's determination that the Estate is responsible for implementing an inactive hazardous waste disposal site remedial program at the Maybrook site notwithstanding the fact that the Estate disputes the validity of such Orders.

Dated: White Plains, New York

March 3, 1998  
of 3/3/98

KEANE & BEANE, P.C.

DENNIS C. VACCO, ESQ.  
Attorney General of the  
State of New York

By:

Joel H. Sachs

JOEL H. SACHS  
Attorneys for Petitioner  
One North Broadway  
White Plains, NY 10601  
(914) 946-4777

By:

Kathryn C. Macdonald 4/2/98

KATHRYN C. MACDONALD  
Assistant Attorney General  
NYS Department of Law  
Environ. Protection Bureau  
Attorneys for Respondent  
120 Broadway, 26th Floor  
New York, New York 10271

SO ORDERED:

James R. Cowhey, J.S.C.

SURROGATE'S COURT OF THE STATE  
OF NEW YORK: COUNTY OF WESTCHESTER

-----X  
)  
In the Matter of the )  
)  
Account of Proceedings of )  
Mildred D. Lasdon, Nanette L. Laitman, )  
Stanley S. Lasdon, as Executors of )  
Last the Will and Testament of )  
)  
WILLIAM S. LASDON, )  
)  
Deceased. )  
)  
-----X

File No. 3519/84  
STIPULATION OF  
WITHDRAWAL OF  
CLAIMS AND OBJECTIONS

WHEREAS, MILDRED D. LASDON, NANETTE L. LAITMAN and STANLEY S. LASDON (collectively, the "Executors") commenced the above-captioned accounting proceeding on or about September 22, 1989 by filing with this Court a Petition for a Voluntary Accounting and an Account of their Acts and Proceedings as Executors of the Last Will and Testament of WILLIAM S. LASDON, Deceased, covering the period December 9, 1984 through January 31, 1989 (the "Estate Accounting"); and

WHEREAS, MILDRED D. LASDON, NANETTE L. LAITMAN, STANLEY S. LASDON and CHEMICAL BANK have appeared before the Court in the Estate Accounting as the co-Trustees (collectively, the "Trustees") of certain inter vivos trusts (the "Inter Vivos Trusts") created under a Trust Agreement dated May 11, 1983, as amended by a First Amendment dated May 5, 1984 by WILLIAM S. LASDON, as Grantor; and

WHEREAS, the STATE OF NEW YORK (the "State"), NEPERA, INC. ("Nepera") and WARNER-LAMBERT COMPANY ("Warner-Lambert") have presented certain claims (the "Environmental Claims") to the Executors relating to, and seeking contribution and indemnity for certain costs incurred or to be incurred in connection with, the investigation and remediation of two (2) allegedly inactive hazardous waste disposal sites located in Harriman, New York (the "Harriman Site") and Maybrook, New York ("the Maybrook Site"); and

WHEREAS, the State, Nepera and Warner-Lambert have appeared before this Court as respondents in the Estate Accounting; and

WHEREAS, the Executors, the Trustees, the State, Nepera and Warner-Lambert (collectively the "Parties") entered into a certain Stipulation dated as of February 15, 1990, which was filed with this Court February 27, 1990 (the "1990 Stipulation"); and

WHEREAS, the 1990 Stipulation has governed the conduct of the Estate Accounting and the rights of the Parties to the distribution of assets of the ESTATE OF WILLIAM S. LASDON (the "Estate") and of the Inter Vivos Trusts from the date of the execution of the 1990 Stipulation until the date hereof; and

WHEREAS, the Executors and Trustees have informed the Court that STANLEY S. LASDON died January 31, 1993, a resident of the County of New York, State of New York, and that Letters Testamentary were duly issued February 26, 1993 by the Surrogate's Court of New York County to Gene S. Lasdon, Jeffrey S. Lasdon and Susan Lasdon Abrams; and

WHEREAS, Gene S. Lasdon, Jeffrey S. Lasdon and Susan Lasdon Abrams, as Executors of the Estate of Stanley S. Lasdon, Deceased Trustee, and the surviving Trustees commenced accounting proceedings on or about September 22, 1994 by filing with this Court their Petitions for Voluntary Accountings and Intermediate Accounts of the Acts and Proceedings of the deceased Trustee and the surviving Trustees of the Inter Vivos Trusts covering the period from February 22, 1985 through December 31, 1993 (the "Trust Accountings"); and

WHEREAS, the Executors and Trustees have informed the Court that MILDRED D. LASDON died March 16, 1997 a resident of Palm Beach County, Florida, and that Letters Testamentary were duly issued March 26, 1997 by the Probate and Guardianship Division, Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County to Nanette L. Laitman, Bonnie L. Eletz and Cathy A. Seligman; and

WHEREAS, Trustee CHEMICAL BANK represents that it is now known by merger as THE CHASE MANHATTAN BANK; and

WHEREAS, Nepera, Warner-Lambert and the Estate entered into a Private Party Settlement Agreement dated November 6, 1997 which provides for the full and mutually agreeable settlement of the Environmental Claims interposed by Nepera and Warner-Lambert against the Estate (the "Private Party Settlement Agreement"); and

WHEREAS, the State, Nepera, Warner-Lambert and the Estate have entered into a Consent Decree lodged in the United States District Court for the Southern District of New York (the "Consent Decree") which provides, inter alia, for the orderly and mutually agreeable settlement of the Environmental Claims interposed by the State against the Estate and ratifies the withdrawal of the Environmental Claims interposed by Nepera and Warner-Lambert against the Estate;

NOW, THEREFORE, in accordance with the provisions of the Private Party Settlement Agreement and the Consent Decree, the Estate, Trustees, the State, Nepera and Warner-Lambert hereby agree and stipulate as follows:

1. The State, Nepera and Warner-Lambert hereby withdraw with prejudice the Environmental Claims against the Estate.



2. The State, Nepera and Warner-Lambert hereby withdraw with prejudice their objections to the judicial settlement of the Estate Accounting.

3. The State, Nepera and Warner-Lambert hereby withdraw with prejudice their objections to the judicial settlement of the Trust Accountings.

4. These withdrawals of claims and objections to the Estate Accounting and Trust Accountings by the State, Nepera and Warner-Lambert are made without cost to any party as against the others.

5. These withdrawals of claims and objections by the State are made without prejudice to the rights of the State to interpose new claims with respect to the contamination of sites other than the Harriman Site and Maybrook Site.

6. These withdrawals of claims and objections by Nepera and Warner-Lambert are made with full reservation of all of their rights under the Private Party Settlement Agreement.

7. This Stipulation of Withdrawal of Claims and Objections is intended in all respects to be consistent with the terms and conditions of the Private Party Settlement Agreement and the Consent Decree; nothing herein shall be deemed to alter the rights and responsibilities of the Estate, Nepera or Warner-

Lambert under the Private Party Settlement Agreement or of the Parties under the Consent Decree, both of which shall survive this Stipulation of Withdrawal of Claims and Objections.

8. The 1990 Stipulation shall be of no further force or effect as to the Parties.

Dated: As of April 21, 1998  
White Plains, New York

STATE OF NEW YORK

By: Kathryn C. Macdonald  
Kathryn C. Macdonald, Esq.  
Assistant Attorney General  
State of New York

Paul H. Juni  
for Skadden Arps Slate Meagher  
& Flom  
Attorneys for  
Warner-Lambert Company

By: David Glaser  
Keane & Beane, P.C.  
Attorneys for the  
Estate of William S. Lasdon

By: John Sesti  
Vanessa Sesti & Geipel LLP  
Attorneys for  
Nepera, Inc.

By: David Glaser  
Keane & Beane, P.C.  
Attorneys for the Trustees

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X  
In the Matter of a Significant  
Threat to the Environment at an  
Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
of the Environmental Conservation  
Law of the State of New York (the  
"ECL") and Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New  
York ("6 NYCRR") Part 375 by

STIPULATION OF  
DISCONTINUANCE  
WITH PREJUDICE

W-3-0623-92-10  
(Harriman)

ESTATE OF WILLIAM S. LASDON,

Respondent.  
-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties in the above-captioned administrative proceeding that as no party hereto is an infant or incompetent person for whom a committee or conservator has been appointed, and no person not a party has an interest in the subject matter, the above-captioned administrative proceeding be and same hereby is discontinued with prejudice, without cost to either party as against the other.

Dated: White Plains, New York  
March 3, 1998  
APRIL

KEANE & BEANE, P.C.

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: 

JOEL H. SACHS  
Attorneys for Respondent  
One North Broadway  
White Plains, NY 10601  
(914) 946-4777

By: 

LOUIS OLIVA  
Assistant Counsel  
Attorney for Petitioner  
200 White Plains Rd. 5th Floor  
Tarrytown, New York 10591-5805  
(914) 332-1835

SO ORDERED:

\_\_\_\_\_  
EDWARD BUHRMASER, A.L.J.