**GUARANTY AGREEMENT**

This GUARANTY AGREEMENT (“Agreement”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, is by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Guarantor”) for the benefit of the State of Oregon, acting by and through its Department of State Lands (the “Department”), each (a “Party”) and jointly, (the “Parties”).

In consideration of the Department issuing or renewing a removal-fill permit to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Permit Applicant”), Guarantor agrees as follows:

**1. STATEMENT OF GUARANTY**

**1.1 Guaranty of full and prompt payment.** By executing this Joint and Several Personal Guaranty, Guarantor, as Principal, unconditionally and irrevocably guarantees full and prompt Reimbursement to Department. Guarantor’s obligations for Reimbursement are initiated upon Department’s written determination that Permit Applicant has failed to implement the mitigation project required by removal-fill permit number \_\_\_\_\_\_\_\_\_\_\_\_\_ and that Department will need to implement the mitigation. Guarantor also unconditionally and irrevocably guarantees full and prompt payment when due of any and all expenses (including, without limitation, reasonable attorney fees and expenses, whether incurred at the trial or appellate level, in an arbitration or administrative proceeding, in bankruptcy (including, without limitation, any adversary proceeding, contested matter, or motion), or otherwise) reasonably incurred by the Department in pursuing Reimbursement and enforcing any rights under this Agreement.

**1.2 Guaranty to indemnify and hold Department harmless.** Guarantor agrees to indemnify and defend the State of Oregon, the Department and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney fees (“Claims”), arising from or relating to implementation of the mitigation project required by removal-fill permit \_\_\_\_\_\_\_\_\_\_\_\_.

**2. GUARANTY IS PERPETUAL AND ABSOLUTE**

This Agreement is a perpetual and absolute continuing guaranty of payment and is not a guaranty of collection, and represents a continuing obligation of Guarantor and will not be discharged until the Department releases Guarantor, or except by indefeasible payment in cash of the Reimbursement and full performance of Guarantor’s other obligations under this Agreement. Guarantor guarantees that Reimbursement will be made in full to the Department within thirty (30) days of receipt of written demand, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any rights of the Department with respect to the Reimbursement. Time is of the essence. Without limitation, the liability of Guarantor under this Agreement is absolute and unconditional, and The Guarantor waives any discharge of Guarantor’s obligations under this Agreement that may arise BY OPERATION OF LAW.

**3. WAIVER**

**3.1** Guarantor waives:(a) All notices other than demand for payment;(b) The filing of any claim with a court in the event of receivership or bankruptcy of the Permit Applicant;(c) Protest or notice regarding nonpayment of the Reimbursement; and(d) All demands, including, without limitation, any requirement that demand be made on the Permit Applicant as a condition precedent to Guarantor’s obligations under this Agreement.

**3.2** If, in the good-faith exercise of any of its rights and remedies, the Department forfeits any of its rights or remedies, including, without limitation, its right to enter a deficiency judgment against the Permit Applicant or any other Person, the Guarantor hereby consents to such action by the Department and waives any claim based on such action.

**3.3**  If applicable law prevents the Department from collecting interest on the Reimbursement, or to enforce or exercise any other right or remedy with respect to the Reimbursement, Guarantor will pay to the Department, on demand, the amount that otherwise would have been due and payable.

**3.4** Guarantor assumes responsibility for keeping informed of the financial condition of the Permit Applicant and of each other guarantor, if any, and of all other circumstances bearing on the risk of nonpayment of the Reimbursement that diligent inquiry would reveal. The Department will have no duty to advise Guarantor of information known to the Department regarding any condition or circumstance bearing on such risks.

**3.5** The Department will be under no obligation to marshal any assets in favor of Guarantor or otherwise.

**3.6** Until Reimbursement has been fully and indefeasibly paid in cash and performed, Guarantor will have no right of subrogation, and Guarantor waives any right to enforce any remedy that the Department now has or may hereafter have against the Permit Applicant or any other person.

**4. REMEDIES**

**4.1** The Department’s delay in exercising or failure to exercise any right under this Agreement will not operate as a waiver of this Agreement, nor will any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The Department’s remedies under this Agreement are cumulative and not exclusive of any remedies provided by law. The Department’s failure at any time to require strict performance by the Permit Applicant, Guarantor, or any other Person of this Agreement, will not waive, affect, or diminish any right of the Department at any time to demand strict performance thereof. No action by the Department permitted hereunder will in any way affect or impair any of the Department’s rights to seek any remedy provided by law, or the Guarantor’s obligations. Any determination by a court of competent jurisdiction of the amount of Reimbursement will be conclusive and binding on the Guarantor.

**4.2** guarantor understands that the Department does not have to pursue the Permit Applicant or pursue any other remedies before demanding payment from guarantor. guarantor further understands that he or she must pay amounts then due even if the Permit Applicant or any other guarantor does not make the payments or are otherwise relieved of the obligation to make payments.

**5. Assignment, Delegation, Transfer**

The Department may assign or otherwise transfer obligations owing to it under this Agreement. Guarantor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement.

**6. REINSTATEMENT**

This Agreement will remain in full force and effect and continue to be effective into perpetuity notwithstanding the following: (a) The filing of any petition by or against the Permit Applicant for liquidation or reorganization; (b) The Permit Applicant’s insolvency; (c) The Permit Applicant’s making of an assignment for the benefit of creditors; or (d) The appointment of a receiver or trustee for any of the Permit Applicant’s assets, and will, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of any part of the Reimbursement is avoided, rescinded, or reduced in amount, or must otherwise be restored or returned, whether as a “voidable preference,” a “fraudulent transfer,” or otherwise, all as though such Reimbursement had not been made.

**7. GOVERNING LAW AND FORUM**

The laws of the State of Oregon govern all matters arising out of or relating to this Agreement. Any action or suit brought by the Parties relating to this Agreement must be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon.

1. **PROMISE TO MAINTAIN BUSINESS ENTITY**

Guarantor agrees to make all reasonable efforts to maintain the business entity in active status until all mitigation obligations have been satisfied.

1. **DEFINITIONS**

**“Removal-fill permit”** means a permit issued by the Department under the Removal-Fill Law, ORS 196.800 et seq.

**“Joint and Several Personal Guaranty”** means a guaranty executed by a Principal that allows the Department to seek Reimbursement directly from a Guarantor’s personal assets, and that requires Guarantor to indemnify the Department.

**“Principal”** means a shareholder, stockholder, limited partner, general partner, member, trustee, current beneficiary, or other principal of the Permit Applicant.

**“Reimbursement”** means payment to the State of Oregon for expenses incurred by the State of Oregon in implementing the mitigation required by removal-fill permit number \_\_\_\_\_\_\_\_(the “Permit”) if and when the Permit Applicant has failed to implement such mitigation in accordance with the Permit. .

Guarantor enters into this Agreement as of the date first written above.

/s/