

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
[Address]
[City, OR ZIP]
Attention: [Name]

Grantor

[Name]
[Company]
[Address]
[City, State ZIP]

**STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ No. [insert]

[Insert legal name of Respondent]

ORDER ON CONSENT

Respondent.

Pursuant to ORS 465.260(4) and 465.327, the Director, Oregon Department of Environmental Quality (“DEQ”), issues this Order on Consent (“Consent Order”) to [Respondent]

(“Respondent”). This Consent Order contains the following provisions:

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Exhibit A: Vicinity Map

Exhibit B: Property Legal Description

Exhibit C: Scope of Work

Exhibit D: Easement and Equitable Servitude **[if applicable]**

1. Purpose

The mutual objectives of DEQ and Respondent (collectively “Parties”) are: (a) to protect public health, safety, and welfare and the in accordance with applicable provisions of ORS 465.200 through 465.420, regulations promulgated thereto, and (b) to facilitate productive reuse of property; and (c) to provide Respondent with protection from potential liabilities in

accordance with applicable law.

2. Stipulations

A. Respondent consents and agrees:

- (1) To issuance of this Consent Order;
- (2) To perform and comply with all provisions of this Consent Order;
- (3) In any proceeding brought by DEQ to enforce this Consent Order, to not challenge DEQ's jurisdiction to issue and enforce this Consent Order;
- (4) To waive any right Respondent might have, before commencement of action by DEQ to enforce this Consent Order, to seek judicial review or review by the Environmental Quality Commission of this Consent Order;
- (5) To not litigate, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, any issue other than Respondent's compliance with this Consent Order; and
- (6) To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance of any interim or removal measures or phase of work by Respondent discharges Respondent's duty to fully perform all remaining provisions of this Consent Order.

B. DEQ and Respondent stipulate:

- (1) For the purposes of this Consent Order, the "Facility," as defined in ORS 465.200(13), means: (a) the Property; and (b) the full extent of existing known or unknown contamination by hazardous substances of any media on, above, or below the Property, or that has migrated, might have migrated, or hereafter migrates to anywhere from the Property.
- (2) For the purposes of this Consent Order, "Existing Hazardous Substance Releases" means: (a) any release of hazardous substances, as defined in ORS 465.200, at the Facility existing as of the date of Respondent's acquisition of ownership or operation of the Property; (b) any spill or release of oil or hazardous material, as defined in ORS 466.605, at the Facility existing as of the date of Respondent's acquisition of ownership or operation of the Property; and (c) the entry of oil into the waters of the state, as defined in ORS 468B.300, from the Facility before the date of Respondent's acquisition of ownership or operation of the Property.

3. Findings of Fact

DEQ makes the following findings without admission of any such facts by Respondent:

- A. [Identify Respondent; describe corporate or individual status].
- B. The property proposed for acquisition by Respondent, currently owned by [Insert Present Owner], is an approximately [##]-acre site located at [Property Address], [County Name] County, Oregon, in [Section ##, Township ## North/South, Range ## East/West], of the Willamette Meridian (the “Property”). The location of the Property is illustrated generally in the Vicinity Map, Exhibit A to this Consent Order. The legal description of the Property is set forth in Exhibit B to this Consent Order. All exhibits attached to this Consent Order are incorporated by reference.
- C. [Summarize site history]
- D. [Summarize information regarding the release of hazardous substances at the site. Describe the contaminants of concern for each affected media].
- E. [if applicable] Pursuant to ORS 465.320, on [Date], DEQ published notice of a proposed remedial action for the Property and provided opportunity for public comment. Comments received on the proposed remedial action were considered by DEQ, as shown in the administrative record. DEQ’s [Eastern/Northwest/Western] Region Administrator selected the remedial action set forth in a Record of Decision dated [ROD Date] (“ROD”). The remedial action selected in the ROD requires the following:
 - [Summarize the key points of the selected remedy in a bullet list. Provide a separate bullet list for each affected environmental medium, if appropriate]
- F. Pursuant to ORS 465.255(1)(b), Respondent could become liable to DEQ and other persons for releases of hazardous substances at or from the Property by becoming the owner or operator of the Property with actual or constructive knowledge of the releases. On [Date], Respondent applied to DEQ for a “prospective purchaser agreement” under ORS 465.327 and agreed to reimburse DEQ’s costs of technical review and agreement preparation. This Consent Order is intended to protect Respondent from potential liability for pre-acquisition releases of hazardous substances at or from the Property, in return for Respondent undertaking certain obligations, as described in this Consent Order. In determining to propose this Consent Order, DEQ considered reasonably anticipated future land uses at the Property and surrounding properties and consulted with [insert

names of land use planning jurisdictions].

- G. On [Date], DEQ published notice of this proposed Consent Order and provided opportunity for public comment in accordance with ORS 465.320(1) and 465.327(3). [Insert public meeting date and oral comments received, if applicable] The comment period ended [Date]. Comments were received and considered by DEQ, as documented in the administrative record.

4. Conclusions of Law and Determinations

Based on the above findings of fact and the administrative record, DEQ determines, without admission of any such determinations by Respondent, that:

- A. Respondent is a “person” within the meaning of ORS 465.200(21).
- B. The contaminants described in Subsection 3.E. are “hazardous substances” within the meaning of ORS 465.200(16).
- C. The presence of hazardous substances in [media] constitutes a “release” or “threat of release” into the environment within the meaning of ORS 465.200(22).
- D. The Property described in Subsection 3.B. is a “facility” within the meaning of ORS 465.200(13).
- E. Respondent is not currently liable under ORS 465.255, 466.640, or 468B.310 for the Existing Hazardous Substance Releases.
- F. Removal or remedial action is necessary at the Property to protect human health or the environment;
- G. Respondent’s ownership and operation of the Property will not cause, contribute to, or exacerbate existing contamination, increase health risks, or interfere with remedial measures at the Property;
- H. A substantial public benefit will result from this Consent Order; and
- I. The release from liability set forth in Subsection 8.A satisfies the criteria set forth in ORS 465.327(1).

Based upon the above Stipulations, Findings of Fact, Conclusions of Law and Determinations, DEQ ORDERS:

5. Work to be Performed

A. Remedial Design/Remedial Action **[If applicable; in the alternative, incorporate plan for restoration or other productive reuse of the property]**

Respondent will perform the remedial design and remedial action for the Property in accordance with the terms and schedule set forth in the Scope of Work (“SOW”), attached to this Consent Order as Exhibit C, and the terms and schedules set forth in a DEQ-approved work plan.

B. Modification of SOW or Related Work Plans

(1) If DEQ determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary in order to implement or maintain the effectiveness of the remedy set forth in the ROD, DEQ may require that such modification be incorporated in the SOW and/or such work plans; provided, any such modification may be required pursuant to this paragraph only to the extent that the modification is consistent with the scope of the remedy selected in the ROD.

(2) Subject to dispute resolution under Subsection 7.M., Respondent will modify the SOW and/or work plans as required by DEQ and implement any work required by the modifications. Before invoking dispute resolution under Subsection 7.M., Respondent and DEQ will make a good-faith effort to resolve any dispute regarding DEQ-requested modifications by informal discussions for no more than 30 days following notice from DEQ of a requested modification.

C. Additional Measures

Respondent may elect at any time during the term of this Consent Order to undertake measures, beyond those required under this Consent Order and the SOW, necessary to address the release or threatened release of hazardous substances at the Property. Such additional measures are subject to prior approval by DEQ. DEQ’s approval will be granted if DEQ determines that the additional measures are consistent with the remedial action objectives in the ROD and will not threaten human health or the environment.

D. Site Restrictions and Periodic Reviews **[if applicable]**

(1) Within 30 days of the effective date of this Consent Order, Respondent will record with the County Clerk, **[County Name]** County, the Easement and Equitable Servitude attached to this Consent Order as Exhibit D. Respondent will provide DEQ

a file-stamped copy of the Easement and Equitable Servitude within five working days of recording. **[Note: Where EES cannot be completed on same timeline as CO, Respondent may commit to record within specified time period an EES substantially in the same form as exhibit, provided final EES is subject to DEQ approval and is consistent with ROD. Consult with DOJ regarding appropriate wording in a given case.]**

- (2) Property subject to the Easement and Equitable Servitude may be freely alienated at any time after recording, provided the deed or other instrument of conveyance refers to or incorporates the Easement and Equitable Servitude.
- (3) Any deed, title, or other instrument of conveyance regarding the Property must contain a notice that the Property is the subject of this Consent Order. Respondent, in any such deed or conveyance, must also reserve such access (by easement, right-of-way, or otherwise) as might be necessary to carry out Respondent's obligations under this Consent Order.
- (4) At least once every five years, DEQ will review the remedy to ensure that the Property remains protective of public health, safety, and welfare and the environment. Periodic reviews will include evaluation of monitoring data, progress reports, inspection and maintenance reports, land and water uses, compliance with institutional controls, and any other relevant information.

6. Public Participation

Upon issuance of this Consent Order, DEQ will provide public notice of the Consent Order through issuance of a press release, at a minimum to a local newspaper of general circulation, describing the measures required under this Consent Order. Copies of the Consent Order will be made available to the public. DEQ will provide Respondent a draft of such press release and consider any comments by Respondent on the draft press release, before publication.

7. General Provisions

A. Project Managers

- (1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Order must be directed to:

DEQ Project Manager:

[Project Manager's Name]
Department of Environmental Quality
[Eastern/Northwest/Western] Region
[Address]
[City, State Zip]
[Phone: ###-###-###, ext. ##]
[Email:]

Respondent Project Manager

[Name]
[Department]
[Company]
[Address]
[City, State Zip]
[Phone: ###-###-###, ext. ##]
[Email:]

- (2) The Project Managers or their respective designees must be available and have the authority to make day-to-day decisions necessary to complete the work required under this Consent Order.

B. Supervising Contractor

- (1) All aspects of remedial work to be performed by Respondent pursuant to this Consent Order must be performed under the direction and supervision of a qualified employee or contractor experienced in hazardous substance remediation and knowledgeable in applicable state and federal laws, regulations, and guidance.
- (2) Within 30 days of the effective date of this Consent Order, Respondent will notify DEQ in writing of the name, title, and qualifications of any proposed supervising contractor. DEQ may for good cause disapprove the proposed contractor. In the event of such disapproval, DEQ will notify Respondent in writing of the reasons for its disapproval within 14 days of receipt of the initial notice from Respondent. Respondent, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the name, title, and qualifications of an alternative supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above.
- [If appropriate, continue with the following]** DEQ approves [Contractor Name] as a qualified contractor for Respondent for purposes of this Consent Order.
- (3) If, during the course of work required under this Consent Order, Respondent proposes to change its supervising contractor, Respondent will notify DEQ in accordance with the provisions of the preceding paragraph. DEQ may disapprove such contractor, under the terms and schedule specified in the preceding paragraph.

C. DEQ Approvals

- (1) Where DEQ review and approval is required for any plan or activity under this

Consent Order, Respondent may not proceed to implement the plan or activity prior to DEQ approval. Any DEQ delay in granting or denying approval correspondingly extends the time for completion by Respondent. Prior approval is not required in emergencies, provided Respondent notifies DEQ immediately after the emergency and evaluates the impact of its actions.

- (2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Consent Order, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part, and notify Respondent of its deficiencies and/or request modifications to cure the deficiencies.
- (3) DEQ approvals, rejections, or identification of deficiencies will be given in writing within the time specified in the SOW or as soon as practicable, and will state DEQ's reasons with reasonable specificity.
- (4) In the event of DEQ disapproval or request for modification of a submission, Respondent will, within 30 days of receipt of the DEQ notice or such longer time as may be specified in the notice, either correct the deficiencies and resubmit the revised report or other item for approval, or invoke dispute resolution under Subsection 7.M.
- (5) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to Respondent's failure to cure the original deficiency, DEQ may modify the submission to cure the deficiency.
- (6) In the event of approval or modification of a submission by DEQ, Respondent will implement the actions required by the plan, report, or other item, as so approved or modified.

D. Access to Property

- (1) Respondent will allow DEQ to enter all portions of the Property owned by or under the control of Respondent at all reasonable times for the purpose of overseeing Respondent's performance under this Consent Order, including but not limited to inspecting records relating to work under this Consent Order, conducting such tests and taking such samples as DEQ deems necessary, verifying data submitted to DEQ by Respondent, conducting periodic review, and using camera, sound recording, or other recording equipment. DEQ will make available to Respondent, upon Respondent's request, any photographs or recorded or videotaped material taken.

(2) Respondent will seek to obtain access to property not owned or controlled by Respondent as necessary to perform work required in this Consent Order, including access by DEQ for purposes described in Paragraph 7.D.(1). DEQ may use its statutory authority to obtain access to property on behalf of Respondent if DEQ determines that access is necessary and that Respondent has exhausted all good faith efforts to obtain access.

E. Records

(1) In addition to those reports and documents specifically required under this Consent Order, Respondent will provide to DEQ, within 10 days of DEQ's written request, copies of Quality Assurance/Quality Control (QA/QC) memoranda and audits, raw data, final plans, task memoranda, field notes (not made by or at the direction of Respondent's attorney), and laboratory analytical reports relating to activities under this Consent Order.

(2) Respondent will preserve all records and documents in possession or control of Respondent or its employees, agents, or contractors that relate in any way to activities under this Consent Order, for at least five years after certification of completion under Section 12. Upon DEQ's request, Respondent will provide to DEQ, or make available for copying by DEQ, copies of non-privileged records. For a period of 10 years after certification of completion, Respondent will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after certification of completion, Respondent has no further obligation to preserve documents or records.

(3) Subject to Paragraph 7.E.(4), Respondent may assert a claim of confidentiality under the Oregon Public Records Law regarding any document or record submitted to or copied by DEQ pursuant to this Consent Order. DEQ will treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If Respondent does not make a claim of confidentiality at the time the documents or records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Respondent.

(4) Respondent will identify to DEQ (by addressor-addressee, date, general subject matter, and distribution) any document, record, or item withheld from DEQ on the

basis of attorney-client or attorney work product privilege, except to the extent that such identifying information is itself subject to a privilege. Respondent may not assert attorney-client or work product privilege with respect to any records required to be submitted under Paragraph 7.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

F. Notice and Samples

- (1) Respondent will make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other fieldwork to be conducted under this Consent Order at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Respondent will make every reasonable effort to provide a split or duplicate sample to DEQ or allow DEQ to take a split or duplicate of any sample taken by Respondent while performing work under this Consent Order. DEQ will provide Respondent with copies of all analytical data from such samples as soon as practicable.
- (2) If DEQ conducts any sampling or analysis in connection with this Consent Order, DEQ will, except in an emergency, make every reasonable effort to notify Respondent of any excavation, drilling, sampling, or other fieldwork at least 72 hours before such activity. Upon Respondent's verbal request, DEQ will make every reasonable effort to provide a split or duplicate sample to Respondent or allow Respondent to take a split or duplicate of any sample taken by DEQ, and will provide Respondent with copies of all analytical data for such samples. Respondent will provide DEQ with copies of all analytical data from such samples as soon as practicable.

G. Quality Assurance

- (1) Respondent will conduct all sampling, sample transport, and sample analysis in accordance with QA/QC provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Consent Order must be consistent with DEQ's *Environmental Cleanup Quality Assurance Policy* (DEQ10-LQ-0063-QAG). Respondent will make every reasonable effort to ensure that each laboratory used by Respondent for analysis performs such analyses in accordance with such provisions.

- (2) If DEQ conducts sampling or analysis in connection with this Consent Order, DEQ will conduct sampling, sample transport, and sample analysis in accordance with the QA/QC provisions of the approved work plan. Upon written request, DEQ will provide Respondent with copies of DEQ's records regarding such sampling, transport, and analysis.

H. Progress Reports

[Note: Amend this section as appropriate, if monthly rather than quarterly progress reports are desired]

During each calendar quarter following the effective date of this Consent Order, Respondent will deliver to DEQ, on or before the tenth working day of each quarter, a progress report containing:

- (1) Actions taken by Respondent under this Consent Order during the previous three months;
- (2) Actions scheduled to be taken by Respondent in the next three months;
- (3) A summary of sampling, test results, and any other data generated or received by Respondent during the previous three months; and
- (4) A description of any problems experienced by Respondent during the previous three months and actions taken to resolve them.

DEQ may approve less frequent reporting by Respondent, if warranted. Progress reports may be submitted in electronic form. If submitted in hard-copy written form, two copies must be provided to DEQ.

I. Other Applicable Laws

- (1) Subject to ORS 465.315(3), all activities under this Consent Order must be performed in accordance with all applicable federal, state, and local laws.
- (2) All activities under this Consent Order must be performed in accordance with any applicable federal, state, and local laws related to archeological objects and sites and their protection. If archeological objects or human remains are discovered during any investigation, removal, or remedial activity at the Property, Respondent will, at a minimum: (a) stop work immediately in the vicinity of the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that

Respondent and its employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public. Any project delay caused by the discovery of archeological object or human remains is a Force Majeure under Subsection 7.L.

J. Reimbursement of DEQ Costs

- (1) DEQ will submit to Respondent a monthly invoice of costs incurred by DEQ on or after [Date] in connection with any activity related to oversight and periodic review of Respondent's implementation of this Consent Order. Each invoice must include a summary of costs billed to date.
- (2) DEQ oversight costs payable by Respondent include direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually and reasonably incurred by DEQ under ORS 465.200 et seq. DEQ's direct cost summary must include a Land Quality Division ("LQD") direct labor summary showing the persons charging time, the number of hours, and the nature of work performed. Indirect costs include those general management and support costs of DEQ and of the LQD allocable to DEQ oversight under this Consent Order and not charged as direct, site-specific costs. Indirect charges are based on actual costs and applied as a percentage of direct personal services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to document work performed and expenses incurred under this Consent Order and, upon request, will provide copies of such records to Respondent.
- (3) Within 30 days of receipt of DEQ's invoice, Respondent will pay the amount of costs billed by check payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or invoke dispute resolution under Subsection 7.M. After 30 days, any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, becomes a liquidated debt collectible under ORS 293.250 or other applicable law.
- (4) Respondent will pay simple interest of 9% per annum on the unpaid balance of any DEQ oversight costs, which interest begins to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount

disputed under Subsection 7.M begins to accrue 30 days from final resolution of any such dispute.

K. Financial Assurance **[if applicable, for remedial action]**

- (1) Respondent will demonstrate its ability to perform remedial work required under this Consent Order by obtaining and submitting to DEQ for approval one or a combination of the following: (1) a performance bond; (2) a letter of credit equaling the total estimated cost of the work; (3) evidence of an escrow account dedicated to payment of or reimbursement for remedial action costs; or (4) internal financial information (financial test or corporate guarantee) sufficient to satisfy DEQ that its net worth is sufficient to make additional financial assurances unnecessary. If internal financial information is relied upon, the standards used to determine the adequacy of Respondent's resources must be substantially equivalent to those set forth in 40 CFR Part 265, Subpart H. Financial assurance must be submitted within 30 days of DEQ approval of the final remedial design work plan in the amount of the estimated total capital cost of the remedial action.
- (2) Within 30 days of receipt of the financial assurance or other information, DEQ will determine its adequacy and communicate that determination to Respondent. If DEQ determines that such assurance or information is inadequate, Respondent will submit one of the other forms of assurance to DEQ for approval. If internal corporate information is relied upon, Respondent will submit updated financial information annually on the anniversary date of issuance of this Consent Order.
- (3) During implementation of the remedial action, DEQ may require Respondent to revise the cost estimates used to demonstrate Respondent's financial assurance, or Respondent at its own election may revise the cost estimate for the required work from time to time. If a revised cost estimate is significantly higher or lower than the original cost estimate, DEQ may require Respondent to submit revised financial assurance under the terms and schedule set forth in the preceding paragraphs adequate to assure financial capability at the level of the revised cost estimate.
- (4) Except as approved by DEQ, work required under this Consent Order may not be delayed pending submission and/or approval of financial assurance under this subsection.

L. Force Majeure

- (1) If any event occurs that is beyond Respondent's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Order despite Respondent's reasonable efforts ("Force Majeure"), Respondent will promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Respondent from asserting Force Majeure for the event and for any additional delay caused by the event.
- (2) If Respondent demonstrates to DEQ's satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Order as appropriate. Circumstances or events constituting Force Majeure might include but are not limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, delays in receiving governmental approval or permit, unanticipated site conditions, fire, explosion, riot, sabotage, or acts of war. Normal inclement weather, increased cost of performance, or changed business or economic circumstances may not be considered Force Majeure.

M. Dispute Resolution

- (1) Except as provided in Paragraph 7.M.(4), if Respondent disagrees with DEQ regarding any matter during implementation of this Consent Order, Respondent will invoke dispute resolution by promptly notifying DEQ in writing of its objection. DEQ and Respondent then will make a good-faith effort to resolve the disagreement within 14 days of Respondent's written objection. At the end of the 14-day period, DEQ will provide Respondent with a written statement of its position from DEQ's [Eastern/Northwest/Western] Region Cleanup Manager. If Respondent still disagrees with DEQ's position, then Respondent, within 14 days of receipt of DEQ's position from the Region Cleanup Manager, will provide Respondent's position and rationale in writing to DEQ's [Eastern/Northwest/Western] Region Administrator. The Region

Administrator may discuss the disputed matter with Respondent and, in any event, will provide Respondent with DEQ's final position in writing as soon as practicable after receipt of Respondent's written position.

- (2) If Respondent refuses or fails to follow DEQ's final position pursuant to Paragraph 7.M.(1), and DEQ seeks to enforce its final position, the Parties, subject to Sections 2 and 10, are entitled to such rights, remedies, and defenses as are provided by applicable law.
- (3) During the pendency of any dispute resolution under this subsection, the time for completion of work or obligations affected by such dispute is extended for a period of time not to exceed the actual time taken to resolve the dispute. Elements of work or obligations not affected by the dispute must be completed in accordance with the applicable schedule.
- (4) Dispute resolution under this subsection does not apply to: (a) DEQ approval or modification of the remedial design/remedial action work plan required under the SOW (which approval or modification is nonetheless subject to Subsection 7.C.); or (b) DEQ assessment of stipulated penalties under Subsection 7.N. (after dispute resolution has been exhausted, before assessment of a penalty, regarding the alleged violation).

N. Stipulated Penalties

- (1) Subject to Subsections 7.C., 7.L., and 7.M., upon any violation by Respondent of any provision of this Consent Order, and upon Respondent's receipt from DEQ of written notice of violation, Respondent will pay the stipulated penalties set forth in the following schedule:
 - (a) \$5,000 for the first week of violation or delay and \$2,500 per day of violation or delay thereafter, for failure to allow DEQ access to the Property as required under Subsection 7.D. or to provide records as required under Subsection 7.E.
 - (b) \$2,500 for the first week of violation or delay and \$1,000 per day of violation or delay thereafter, for:
 - (i) Failure to submit a final work plan in accordance with the SOW's schedule and terms;
 - (ii) Failure to complete work in accordance with an approved work plan's

- schedule and terms;
 - (iii) Failure to submit a final report, in accordance with an approved work plan's schedule and terms; or
 - (iv) Failure to record or comply with site restrictions.
- (c) \$500 for the first week of violation or delay and \$500 per day of violation or delay thereafter, for:
- (i) Failure to submit a draft work plan in accordance with the SOW's schedule and terms;
 - (ii) Failure to submit draft reports or progress reports in accordance with the SOW's schedule and terms; or
 - (iii) Any other violation of the Consent Order, SOW, or an approved work plan.
- (2) Violations arising out of the same facts or circumstances or based on the same deadline are treated as one violation per day.
- (3) Stipulated penalties do not begin to accrue under this subsection until Respondent receives a notice of violation from DEQ describing the violation and what is necessary to correct it. If the violation was not intentional, is capable of cure, and Respondent corrects the violation within 30 days of receipt of such notice of violation or such other period as may be specified in the notice, DEQ in its sole discretion may waive the stipulated penalties. This opportunity to cure does not apply to violations subject to Subparagraph 7.N.(1)(a).
- (4) Respondent will, within 30 days of receipt of DEQ's written notice or such longer cure period specified in the notice, pay the amount of such stipulated penalty not waived by DEQ in writing as provided in Paragraph 7.N.(3) by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or request a contested case hearing in accordance with Paragraph 7.N.(5). Respondent will pay simple interest of 9% per annum on the unpaid balance of any stipulated penalties, which interest begins to accrue when payment is due. Any unpaid amounts that are not the subject of a pending contested case, or that have been determined owing after a contested case, are a liquidated debt collectible under ORS 293.250 and other applicable law.
- (5) Respondent may request a contested case hearing regarding the penalty assessment in

accordance with OAR Chapter 340, Division 11. The scope of any such hearing must be consistent with the stipulations set forth in Section 2, be limited to the occurrence or non-occurrence of the alleged violation, and not review the amount of penalty assessed. Further penalties regarding the alleged violation subject to the penalty assessment do not accrue from the date DEQ receives a request for a contested case, through disposition of that case.

- (6) If DEQ assesses stipulated penalties pursuant to this subsection for any failure of Respondent to comply with this Consent Order, DEQ may not seek civil penalties for the same violation under ORS 465.900 or any other applicable law.

O. Effect of Consent Order

- (1) In lieu of stipulated penalties under Subsection 7.N., DEQ may assess civil penalties under ORS 465.900 for Respondent's failure to comply with this Consent Order. Penalties do not accrue pending any contested case regarding the alleged violation. In addition to penalties, DEQ may seek any other available remedy for failure by Respondent to comply with any requirement of this Consent Order, including but not limited to termination of this Consent Order or court enforcement of this Consent Order.
- (2) Subject to Section 2, Respondent does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations asserted in this Consent Order.
- (3) Subject to Subsection 2.G. and Section 10, nothing in this Consent Order prevents DEQ, the State of Oregon, or Respondent from exercising any rights each might have against any person not a party to this Consent Order.
- (4) This Consent Order is void and of no effect if Respondent does not complete acquisition of the Property by [Date].
- (5) DEQ and Respondent intend for this Consent Order to be construed as an administrative settlement by which Respondent has resolved its liability to the State of Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f)(2), regarding Existing Hazardous Substance Releases, and for Respondent not to be liable for claims for contribution regarding Existing Hazardous Substance

Releases to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

P. Indemnification and Insurance

- (1) Respondent will indemnify and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of Respondent or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contract made by Respondent or its agents in carrying out activities under this Consent Order.
- (2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Respondent and its officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents (except for acts or omissions constituting approval or disapproval of any activity of Respondent under this Consent Order). Respondent may not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Order.
- (3) Before commencing any on-site work under this Consent Order, Respondent will obtain and maintain for the duration of this Consent Order comprehensive general liability and automobile insurance with limits of \$1 million, combined single limit per occurrence, naming as an additional insured the State of Oregon. Upon DEQ request, Respondent will provide DEQ a copy or other evidence of the insurance. If Respondent demonstrates by evidence satisfactory to DEQ that its contractor(s) or subcontractor(s) maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for a lesser term, Respondent may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

Q. Parties Bound

This Consent Order is binding on the Parties and their respective successors, agents, and assigns. The undersigned representative of each Party certifies that he or she is fully authorized to execute and bind such party to this Consent Order. Respondent will notify

and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the Property during the term of this Consent Order.

R. Modification

DEQ and Respondent may modify this Consent Order by written agreement.

S. Effective Date

The effective date of this Consent Order is the date of signature by the DEQ's Land Quality Division Administrator.

T. Recording

Within 14 days of the effective date of this Consent Order, Respondent will submit a copy or original of this Consent Order (whichever is required by the county) to be recorded in the real property records of [County Name] County, Oregon. Respondent will provide DEQ with written evidence of such recording within seven days of recording.

8. Release from Liability

A. Pursuant to ORS 465.327, and subject to Subsection 8.B. and the satisfactory performance by Respondent of its obligations under this Consent Order, Respondent is not liable to the State of Oregon under ORS 465.200 to 465.545 and 465.900, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases. Respondent bears the burden of proving by a preponderance of the evidence that a hazardous substance release (for all hazardous substances, hazardous materials, and oil described in Paragraph 2.B.(2)) existed as of the date of Respondent's acquisition of ownership or operation of the Property.

B. The release from liability under Subsection 8.A. does not affect liability of Respondent for claims arising from:

(1) A release of hazardous substances, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property on or after the date of Respondent's acquisition of ownership or operation of the Property;

(2) Contribution to or exacerbation, on or after the date of Respondent's acquisition of ownership or operation of the Property, of a release of hazardous substance, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property;

- (3) Interference or failure to cooperate, on or after the date of Respondent's acquisition of ownership or operation of the Property, with DEQ or other persons conducting remedial measures under DEQ's oversight at the Property;
- (4) Failure to exercise due care or take reasonable precautions, on or after the date of Respondent's acquisition of ownership or operation of the Property, with respect to any hazardous substance at the Property;
- (5) Disposal or management of hazardous substances or solid waste removed from the Property by or on behalf of Respondent;
- (6) Criminal liability;
- (7) Violation of federal, state, or local law on or after the date of Respondent's acquisition of ownership or operation of the Property;
- (8) Any matters as to which the State of Oregon is owed indemnification under Paragraph 7.P.(1); and
- (9) Claims based on any failure by Respondent to meet any requirements of this Consent Order.

9. Third-Party Actions

Subject to the satisfactory performance by Respondent of its obligations under this Consent Order, Respondent is not liable to any person under ORS 465.200 to 465.545, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases.

10. Respondent Waivers

- A. Respondent waives any claim or cause of action it might have against the State of Oregon regarding Existing Hazardous Substance Releases; provided, Respondent reserves all rights concerning the obligations of DEQ under this Consent Order.
- B. Respondent waives any rights it might have under ORS 465.260(7) and 465.325(2) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for costs incurred under this Consent Order or related to the Property.

11. Benefits and Burdens Run with the Land

- A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Order run with the land, provided the release from liability set forth in Section 8 limits or otherwise affects the liability only of persons who: (1) are not potentially liable under ORS 465.255,

466.640, or 468B.310 for Existing Hazardous Substance Releases; and (2) expressly assume in writing, and are bound by, the terms of this Consent Order applicable to the Property as of the date of their acquisition of ownership or operation.

- B. Upon transfer of ownership of the Property, or any portion of the Property, from Respondent to another person or entity, Respondent and the new owner will provide written notice to the DEQ Project Manager within 10 days after the transfer. No change in ownership of the Property or the corporate or partnership status of Respondent in any way alters Respondent's obligations under this Consent Order, unless otherwise approved in writing by DEQ.

12. Certification of Completion

- A. Upon Respondent's completion of remedial work in accordance with the SOW, Respondent will submit a final closeout report to DEQ signed by both a Oregon-registered professional engineer and Respondent's Project Manager certifying that the remedial action for the Property has been completed in accordance with this Consent Order. The report must summarize the work performed and include all necessary supporting documentation.
- B. DEQ will preliminarily determine whether the remedial action has been performed for the Property and all oversight costs and penalties have been paid in accordance with this Consent Order. Upon a preliminary determination that the remedial action for the Property has been satisfactorily performed and all costs and penalties paid, DEQ will provide public notice and opportunity to comment on a proposed certification decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, and within 90 days after receiving Respondent's closeout report, DEQ's [Eastern/Northwest/Western] Region Administrator will issue a final certification decision.
- C. This Consent Order is satisfied upon issuance of DEQ's certification of completion for the remedial action and payment by Respondent of any and all outstanding costs and penalties, except that issuance of a certification of completion of the remedial action does not affect Respondent's remaining obligations under this Consent Order or for implementation of measures necessary to long-term effectiveness of the remedial action or other productive reuse of the Property.

13. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

Respondent, [Insert legal name of Respondent]

By: _____ Date: _____

[Name]

[Title]

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by [Name] of [Company], on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

STIPULATED, AGREED, and SO ORDERED:

State of Oregon, Department of Environmental Quality

By: _____ Date: _____

[Name]

Administrator, Land Quality Division

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by _____ [Name] of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____