

2014-005435

Klamath County, Oregon



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After recording, return to:

Grantee

Oregon DEQ
800 SE Emigrant Ave., Suite 330
Pendleton, OR 97801
Attention: Katie Robertson

AGREEMENT
TO
FACILITATE CLEANUP AND PRODUCTIVE REUSE OF PROPERTY

DEQ No. 14-06

BETWEEN: Oregon Department of Environmental Quality

AND: Kenneth Hess

This Agreement to Facilitate Cleanup and Productive Reuse of Property ("Agreement") is entered between the Oregon Department of Environmental Quality ("DEQ") and Kenneth Hess ("Purchaser") pursuant to ORS 465.327. This Agreement contains the following provisions:

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Exhibit A – Legal Description of Property

Exhibit B – Easement and Equitable Servitude

1. RECITALS

- A. The property (“Property”) subject to this Agreement is located at 2720 Old Fort Road in Klamath Falls, Oregon. The legal description of the Property is set forth in Exhibit A to this Agreement.
- B. The Property is located within the North Ridge Estates (NRE) Site, Operational Unit No. 1 (OU1). The NRE Site is located approximately three miles north of the City of Klamath Falls, Klamath County, Oregon. The NRE Site encompasses approximately 171 acres and has been divided into two operational units. The NRE Site, OU1 encompasses the 125 acre footprint of a former Marine Recuperation Barracks and includes all areas where asbestos-containing material (ACM) and/or asbestos have been observed and/or detected within that footprint. NRE Site, OU1 is referred to in this Agreement as the “Site or NRE Site, OU1.”
- C. The second operable unit at NRE is commonly referred to as Operable Unit No. 2 and encompasses an approximately 46 acre area that is geographically distinct from the NRE Site, OU1. Operable Unit No. 2 includes the former firing range. The NRE Site, Operable Unit No. 2 is not included in the definition of Site as defined in this Agreement.

- D. The Marine Recuperation Barracks was built in 1944 by the United States Department of Defense and consisted of approximately 82 buildings. The United States Navy closed the barracks and declared the Marine Recuperation Barracks as surplus in 1946. The Marine Recuperation Barracks buildings were sided with cement asbestos board and contained asbestos insulation, roofing material, floor tiles, and other asbestos-containing material. Heat was provided to the buildings through a series of boilers, tanks, and buried steam pipes covered with asbestos-containing insulation.
- E. In or around 1977, the Site was transferred into the ownership of the MBK Partnership. Various persons and entities conducted building construction and demolition, including salvage activities, which resulted in the release of asbestos and/or ACM. A majority of the Marine Recuperation Barracks buildings were demolished in the mid- to late-1970s and the 1980s.
- F. In 1978, DEQ responded to a complaint of accumulated asbestos debris at the property and observed heavy equipment driving over four to six acres of demolition debris described as a great amount of "white, fluffy" insulation materials being blown by strong winds. Because the local landfill reportedly would not accept asbestos materials, and due to concern about health risks to workers removing such a large quantity of materials, DEQ agreed to allow the property owner to dispose of ACM on-site. An Environmental Protection Agency (EPA) Compliance Order was issued in September 1979 and required coverage and maintenance of the disposal site to conform to the National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements for inactive waste sites. Among records available for review, there is no indication that NESHAP requirements for proper disposal were met. There is also no evidence that locations of ACM disposal sites were recorded on property deeds or similar documents, as required by the September 1979 EPA order. These activities occurred before either the state or federal environmental cleanup laws had been adopted.

- G. Residential home construction began in what is known as the North Ridge Estates subdivision in 1993. Some lots were sold and developed, and are now occupied for residential use.
- H. Beginning in June 2001, DEQ documented openly accumulated ACM present throughout the neighborhood. The piping and fragment samples were found to contain from 10% to 90% asbestos. Multiple efforts were made by DEQ to resolve the contamination issues with the developer. DEQ was unable to reach agreement with the MBK Partnership to assess and cleanup the hazardous substances released at the Site. DEQ referred the Site to the EPA, in April 2003, to address the immediate threats to NRE residents.
- I. Among the households situated within the footprint of the contaminated area, most are vacant. Some families continue to live within the footprint subsequent to permanent relocation implemented in June 2006.
- J. EPA performed time-critical removal actions at the NRE Site, OU1 each year from 2003 through 2013.
- K. ACM is present at the NRE Site, OU1 as both dispersed material scattered widely across the 125-acre OU1 and concentrated material in burial areas with depths ranging from 4 inches bgs to 10 feet bgs. The total amount of buried material in these locations across NRE Site, OU1 has been estimated to be approximately 76,064 cubic yards.
- L. Asbestos and ACM contamination remains present at the NRE Site. The primary media affected are soil and air. The primary exposure route is the inhalation of asbestos fibers by a receptor.
- M. EPA issued the following documents: the Remedial Investigation report (dated January 18, 2010); the Feasibility Study (dated March 25, 2010); the Proposed Plan (dated April 2, 2010); the Pre-Final Remedial Design: Basis of Design Report and Technical Specifications (dated November 2012); Final Remedial Design: Basis of Design Report and Technical Specifications (dated January 2014).

N. EPA issued the Record of Decision, North Ridge Estates Operable Unit 1 dated September 2011. The Director of the DEQ concurred with the selected remedy in a letter dated September 16, 2011. The remedial action selected in the ROD requires the following:

- Excavate the majority of surface and subsurface contaminated soils to a minimum depth of 2 feet bgs.
- Cap remaining soils on the NRE Site, OU1 parcels after soil removal with a two foot clean soil cap and/or appropriate alternative cap.
- Consolidate and place all excavated contaminated soils or materials in one or more on-site repositories. Cap the repositories with a two foot clean soil cap.
- Apply institutional and engineering controls.
- Perform interior cleaning of homes, if necessary, after excavation and capping actions are complete.

O. The State of Oregon used its one-time nomination to place NRE on the Superfund list in September 2010. EPA initiated the Superfund listing proposal for NRE in March 2011. EPA presented the NRE Site to the National Priorities Panel, in March 2013, including a request for appropriation of CERCLA remedial action funding. EPA received a portion of necessary funding to complete remedial actions in March 2014.

P. The contaminants described in Subsection 1.L. are "hazardous substances" within the meaning of ORS 465.200(16). The presence of hazardous substances at the Property constitutes a "release" of hazardous substances within the meaning of ORS 465.200(22), and makes the Property a "facility" within the meaning of ORS 465.200(13). Remedial action is necessary at the Property to protect human health or the environment.

Q. Pursuant to ORS 465.255(1)(b), Purchaser 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 April 7, 2014, Purchaser applied to DEQ for entry of this Agreement.

- R. Purchaser is an individual, and a "person" within the meaning of ORS 465.200(21). Purchaser is not currently liable under ORS 465.255, 466.640, or 468B.310 for the release of hazardous substances existing at the facility as of the date of this Agreement.
- S. The Property is current a large lot rural residential home. The Property will continue to be a residential home.
- T. DEQ determines that a "substantial public benefit" will result from this Agreement, within the meaning of ORS 465.327(1)(d). The substantial public benefit resulting from this agreement is the continued residential use of the Property.
- U. Based upon the information submitted by Purchaser, DEQ determines that the proposed reuse or redevelopment activities at the Property will not contribute to or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the Property.
- V. In determining to enter this Agreement, DEQ considered reasonably anticipated future land uses at the Property and surrounding properties and consulted with Klamath County.

2. STIPULATIONS

- A. For the purposes of this Agreement, the "Facility," as defined in ORS 465.200(13), means: (a) the NRE Site, OU1; and (b) the full extent of existing known or unknown contamination by hazardous substances of any media on, above, or below the NRE Site, OU1, or that has migrated, might have migrated, or hereafter migrates to anywhere from the NRE Site, OU1. In addition, the boundaries of NRE Site, OU1 are defined in EPA's Record of Decision dated September 26, 2011 and may be changed through subsequent EPA pronouncement(s) based on the results of remedial actions.
- B. For the purposes of this Agreement, "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 Purchaser'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 Purchaser'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 Purchaser's acquisition of ownership or operation of the Property.

C. Nothing in this Agreement obligates DEQ to conduct or pay for any removal or remedial activities of any kind regarding the Property or releases from the facility.

3. MEASURES TO BE UNDERTAKEN

A. Site Restrictions

- (1) At a time determined by DEQ, but not sooner than 60 days after of EPA's completion of remedial action field work on the property, Purchaser will provide an executed and notarized Easement and Equitable Servitude for the Property containing the site restriction determined to be necessary by DEQ to protect human health and the environment. The Easement and Equitable Servitude will be generally in the form provided in Exhibit B, but may contain variations as determined necessary by DEQ based on individual property conditions.
- (2) DEQ is responsible for recording the Easement and Equitable Servitude documents with the County Clerk, Klamath County and paying associated fees. DEQ will provide the Defendant with a copy of the file stamped document within two weeks of receipt.
- (3) 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.
- (4) Any deed, title, or other instrument of conveyance regarding the Property must contain a notice that the Property is the subject of this Agreement. The seller, 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 its obligations under this Agreement.
- (5) At least once every five years, EPA and 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.

B. Additional Measures

Purchaser may elect at any time during the term of this Agreement to undertake measures, beyond those required under this Agreement 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 EPA and/or DEQ.

C. Property Activities

Any development, construction, or other use of the Property must be consistent with and may not interfere with investigative or remedial activities necessary at the Property. To ensure such consistency and prevent exacerbation of existing contamination at the Property, Purchaser will ensure that all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that might affect the soils, groundwater, other contaminated media, or affect necessary investigatory and/or remedial measures, will: (1) notify DEQ before such activity; and (2) submit development and/or construction plans for review by DEQ. These requirements may expire upon the Property receiving a Certificate of Completion determination from DEQ in accordance with Section 8.

4. GENERAL PROVISIONS

A. Project Managers

To the extent possible, all reports, notices, and other communications required under or relating to this Agreement must be directed to:

DEQ Project Manager:

Katie Robertson
Department of Environmental Quality
800 SE Emigrant, Suite 330
Pendleton, OR 97801
Phone: 541-278-4620
E-mail: robertson.katie@deq.state.or.us

Purchaser Project Manager:

Kenneth Hess
28364 South Western Ave.#453
Rancho Palos Verdes, CA 90275
Phone: 310-292-1139
Email: kennyhess3@gmail.com

B. DEQ Approvals

- (1) Where DEQ approval is required for any plan or activity under this Agreement, Purchaser may not proceed to implement the plan or activity prior to DEQ approval. DEQ will make a reasonable effort to conduct its review promptly to prevent undue delays of any proposed development activity. Any DEQ delay in granting or denying

- approval correspondingly extends the time for completion by Purchaser. Prior approval is not required in emergencies, provided Purchaser 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 Agreement, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part, and notify Purchaser of its deficiencies and/or request modifications to cure the deficiencies.
 - (3) DEQ approvals, rejections, or identification of deficiencies will be given in writing 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, Purchaser 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 4.F.
 - (5) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to Purchaser's failure in good faith 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, Purchaser will implement the action(s) required by the plan, report, or other item, as so approved or modified.

C. Access to Property

- (1) Purchaser will allow DEQ, EPA, and their officers, agents, authorized representatives, employees, and contractors to enter the Property for the purpose of performing remedial activities.
- (2) Such remedial activities at the Property may include but are not limited to:
 - (a) Sampling and inspecting air, water, and/or soil at the Property;
 - (b) Constructing, operating, or maintaining piping, utilities, soil borings, test pits, and/or excavations at the Property;
 - (c) Removing contaminated soils from the Property;
 - (d) Temporarily storing equipment, vehicles, tools, and other materials at the Property;

- (e) Temporarily storing wastewaters and related materials and wastes;
 - (h) Restoring the surface condition of areas disturbed by remedial activities and repairing any structures or improvements damaged by remedial activities; and
 - (i) Photographing portions of the property and structures, objects, and materials at the Property as necessary to facilitate remedial measures.
- (3) All tools, equipment, and other materials brought upon the Property by or at the direction of DEQ or EPA remain property of DEQ or EPA, respectively, and will be removed by DEQ or EPA upon completion of remedial activities at the Property.
 - (4) No later than completion of remedial activities at the Property, DEQ and EPA will restore the surface condition of areas disturbed by remedial activities, to the maximum extent reasonably practicable, to a condition equivalent to the condition existing before remedial activities.
 - (5) DEQ and EPA will coordinate their activities with the Purchaser and any tenant to minimize, to the maximum extent reasonably practicable, any impairment of access by residents or business invitees on the Property and any inconvenience to or disruption of residents on the Property due to activities of DEQ or EPA.
 - (6) Before undertaking any remedial activity at the Property, except for emergencies, system failures, or time-critical repairs, DEQ and EPA will provide the Purchaser and any tenant at least 48 hours verbal notice of the activity.
 - (7) The Purchaser, or its authorized representative, may observe DEQ and EPA while DEQ and EPA are undertaking remedial activities at the Property; provided, any observer must have health and safety training consistent with the requirements of the applicable health and safety plan.
 - (8) The Purchaser will not interfere with or otherwise limit any activity conducted at the Property pursuant to and consistent with this Agreement by DEQ, EPA, or their officers, employees, agents, contractors, or authorized representatives. This obligation

also applies to and is binding upon any and all tenants of the Purchaser at the Property.

- (9) DEQ is not responsible for costs or expenses related to future construction, development, use, or occupation of the Property if the activities are not necessary to a removal or remedial action performed by DEQ including but not limited to (a) demolition, design, engineering, permitting, construction, grading, excavation, and modifications, including architectural, structural, fixtures, utilities, or engineering modifications and HVAC modifications; (b) landscaping modifications; or (c) construction worker health or safety measures. DEQ is responsible for costs or expenses of the foregoing activities to the extent such activities are undertaken by DEQ to complete a removal or remedial action. The Purchaser will bear the costs of the management and disposal of disturbed soils required to accommodate future construction, development, use, or occupation of the Property and the subsequent repair of the 2-foot soil cap after the completion of EPA's remedial actions on the Property.

D. Records

- (1) Purchaser will preserve all records and documents in possession or control of Purchaser or its employees, agents, or contractors that relate in any way to activities under this Agreement for at least five years after receiving a No Further Action determination from DEQ. Upon DEQ's request, Purchaser will provide to DEQ, or make available for copying by DEQ, copies of non-privileged records.
- (2) Purchaser will permit DEQ to inspect and copy all records, files, photographs, documents, and data relating to work under this Agreement, except that Purchaser may not be required to permit DEQ inspection or copying of items subject to attorney-client or attorney work product privilege.
- (3) Purchaser 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. DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Purchaser.

E. Force Majeure

- (1) If any event occurs that is beyond Purchaser's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Agreement despite Purchaser's reasonable efforts ("Force Majeure"), Purchaser 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 Purchaser proposes to carry out such measures. Purchaser will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Purchaser from asserting Force Majeure for the event and for any additional delay caused by the event.
- (2) If Purchaser 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 Agreement as appropriate. Circumstances or events constituting Force Majeure might include but not be limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, fire, explosion, riot, sabotage, war, and delays in receiving a governmental approval or permit. Normal inclement weather, increased cost of performance or changed business or economic circumstances may not be considered Force Majeure.

F. Dispute Resolution

- (1) If Purchaser disagrees with DEQ regarding any matter relating to this Agreement, Purchaser will promptly notify DEQ in writing of its objection. DEQ and Purchaser then will make a good-faith effort to resolve the disagreement within 14 days of Purchaser's written objection. At the end of the 14-day period, DEQ will provide Purchaser with a written statement of its position from DEQ's Eastern Region Cleanup Manager. If Purchaser still disagrees with DEQ's position, then Purchaser, within 14 days of receipt of DEQ's position from the Region Cleanup Manager, will provide Purchaser's position and rationale in writing to DEQ's Eastern Region Administrator. The Region Administrator may discuss the disputed matter with

Purchaser and, in any event, will provide Purchaser with DEQ's final position in writing as soon as practicable after receipt of Purchaser's written position.

- (2) If Purchaser refuses or fails to follow DEQ's final position pursuant to Paragraph 4.F.(1), and DEQ seeks to enforce its final position, the Parties, subject to Section 6, 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.

G. Effect of Agreement

- (1) In the event of any failure of the Purchaser to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260 and 465.900 or exercise any authority or pursue any claim or cause of action that DEQ might have. Purchaser reserves any defenses or counterclaims it might have in the event of such action by DEQ.
- (2) Except as provided in Section 6, DEQ and Purchaser reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.
- (3) Purchaser does not admit any liability or violation of law by virtue of entering this Agreement.
- (4) DEQ reserves its authority to perform remedial measures regarding a release of hazardous substances at or from the Property.
- (5) This Agreement is effective upon the latter signature of a party ("Effective Date"), provided this Agreement is void and of no effect if Purchaser does not complete acquisition of ownership or operation of the Property by December 31, 2014.
- (6) DEQ and Purchaser intend for this Agreement to be construed as an administrative settlement by which Purchaser 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 matters addressed by this Agreement, and for Purchaser not to be liable for claims for

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

H. Indemnification

Purchaser 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 Agreement of Purchaser or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contract made by Purchaser or its agents in carrying out activities under this Agreement.

I. Public Notice

Upon execution of this Agreement, DEQ will provide public notice of this Agreement in a local newspaper of general circulation, describing the measures to be undertaken under this Agreement. Copies of the Agreement will be made available to the public. DEQ will provide Purchaser a draft of such notice and consider any comments by Purchaser on the draft notice before publication.

J. Parties Bound

This Agreement is binding on the signatories and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement.

K. Modification

This Agreement may be modified only by written agreement of DEQ and Purchaser.

L. Recording

Within 30 days of the Purchaser taking ownership of the Property, DEQ will submit an original of this Agreement to be recorded in the real property records of Klamath County, State of Oregon. DEQ will provide Purchaser with written evidence of such recording within 30 days of recording.

M. Transfer of Interest

Purchaser will provide written notice to the DEQ project manager within 10 days after the transfer of any interest in the Property, or any portion of the Property, from Purchaser to another person or entity.

5. RELEASE FROM LIABILITY

- A. Pursuant to ORS 465.327, and subject to Subsection 5.B. and the satisfactory performance by Purchaser of its obligations under this Agreement, Purchaser 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. Purchaser bears the burden of proving by a preponderance of the evidence that a hazardous substance release (for all hazardous substances, hazardous materials, and oils described in Subsection 2.L.) existed as of the date of Purchaser's acquisition of ownership or operation of the Property.
- B. The release from liability under Subsection 5.A does not affect liability of Purchaser 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 Purchaser's acquisition of ownership or operation of the Property;
 - (2) Contribution to or exacerbation, on or after the date of Purchaser'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 Purchaser'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 Purchaser'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 Purchaser;
 - (6) Criminal liability;
 - (7) Violation of federal, state, or local law on or after the date of Purchaser's acquisition of ownership or operation of the Property;
 - (8) Any matters as to which the State of Oregon is owed indemnification under Subsection 4.H.; and

(9) Claims based on any failure by Purchaser to meet any requirements of this Agreement.

6. WAIVERS

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

7. BENEFITS AND BURDENS RUN WITH THE LAND

The benefits and burdens of this Agreement run with the land; however, the release from liability set forth in Section 5 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 a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property; and (2) assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

8. COMPLETION OF WORK

Upon satisfactory completion of measures to be undertaken under Section 3, DEQ will issue a Certificate of Completion for the Property, conditioned as appropriate to reflect Purchaser's remaining obligations under this Agreement or to ensure long-term effectiveness of the remedy.

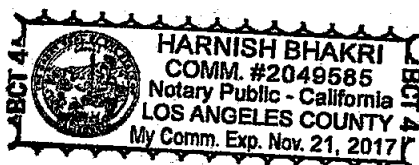
9. SIGNATURES

Kenneth Hess

Date: 5-3-2014

California H.S.
STATE OF OREGON)
County of Los Angeles) ss.

The foregoing instrument is acknowledged before me this 3rd day of April, 2014, by Kenneth Hess.



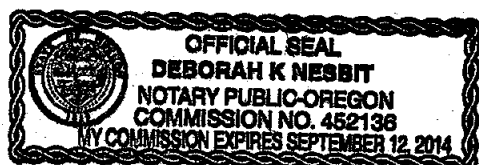
Harnish Bhakri
NOTARY PUBLIC FOR OREGON - California H.S.
My commission expires: Nov 21, 2017

Lydia Emer David Livengood
David Livengood, ~~Interim~~ Administrator
Operations Division
Oregon Department of Environmental Quality

Date: 5-7-14

STATE OF OREGON)
County of Multnomah) ss.

The foregoing instrument is acknowledged before me this 7th day of May, 2014, by Lydia Emer David Livengood of the Oregon Department of Environmental Quality, on its behalf.



Deborah Nesbit
NOTARY PUBLIC FOR OREGON
My commission expires: 09/12/2014

Exhibit A – Legal Description of Property

**Lot 1 in Block 1 of Tract 1267, NORTH RIDGE ESTATES, according to the official plat thereof
on file in the office of the County Clerk of Klamath County, Oregon.**

Exhibit B – Easement and Equitable Servitude

NOTE: This document is the boilerplate Easement and acceptance of Equitable Servitudes (EES) for residential and vacant properties located *partially* within NRE Site, OU1 and do not have a repository located on the property. This document will be modified with each specific property's legal owner, legal description, and any other site specific condition. The document will also be updated with additional information and resources developed by EPA or DEQ during the remedial action (e.g. soil media management plan, dig notice, reporting). However, the overall language, conditions, and restrictions are not expected to change from those presented in this document.

Space above this line for Recorder's use.

After recording, return to:

Oregon DEQ
800 SE Emigrant Ave., Suite 330
Pendleton, OR 97801
Attention: Katie Robertson

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on [Date], 20[Year] between [Name of Grantor] ("Grantor" or "Owner") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "Grantee").

RECITALS

A. Grantor is the owner of certain real property located at [Address] in Klamath Falls, Klamath County, Oregon in Klamath County Tax Map 38S9E15[xx], Tax Lot [#] (the "**Property**") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name North Ridge Estates (NRE) Site, Operable Unit No. 1 (OU1), ECSI No. 2335 in the files of DEQ's Eastern Region office located at 800 SE Emigrant Ave., Suite 330, Pendleton, Oregon, and telephone 541-276-4063. Interested parties may contact the Eastern Region office to review a detailed description of the risks from contamination remaining at the Property and described in the Environmental Protection Agency's (EPA's) Record of Decision (ROD) dated September 2011.

B. EPA issued the Record of Decision, NRE Operable Unit 1 dated September 2011 for the Property. The Director of the DEQ concurred with the selected remedy in a letter dated September 16, 2011. The remedial action selected requires, among other things: excavation of the majority of surface and subsurface contaminated soils to a minimum depth of 2 feet below ground surface; capping of remaining soils on the NRE Site, OU1 parcels after soil removal with clean soils; consolidating and placing all excavated contaminated soils or materials in one or more on-site repositories; and applying institutional and engineering controls.

C. On [DATE], Grantor entered into a Consent Judgment [Note: change to PPA when appropriate] with DEQ, under which Grantor agreed to implement the required institutional controls.

D. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

E. Nothing in this EES constitutes an admission by Grantor of any liability for the contamination described in the EES.

1. DEFINITIONS

- 1.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.2 "Ecological receptor" has the meaning set forth in Oregon Administrative Rule (OAR) 340-122-0115.
- 1.3 "Engineering control" has the meaning set forth in OAR 340-122-0115.
- 1.4 "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States, together with its employees, contractors, agents, and authorized representatives.
- 1.5 "Hazardous substance" has the meaning set forth in Oregon Revised Statute (ORS) 465.200.
- 1.6 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.7 "Property" means the real property described in Exhibit A to this EES.
- 1.8 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115 and Section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(24).
- 1.9 "Restricted Area" means the real property described in Exhibit B to this EES.

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's issuance of a Certificate of Completion with conditions and approval of the Consent Judgment described above [note: Insert "Prospective Purchaser Agreement No. XX" when appropriate], grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1. **Engineering Control Use Restrictions.** Except upon prior written approval from DEQ or EPA, as determined appropriate by the agencies, or other delegated entity [e.g., North Ridge Estates Home Owner Association], Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate any of the surface source controls, including but not limited soil or rock barrier/cover (cap), asphalt or concrete cap, and geosynthetic multi-layer caps at the Property or jeopardize the surface source controls' protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or uncontrolled erosion. Owner will maintain the surface source controls, in accordance with the *Soil Management Plan*, the *Operations & Maintenance (O&M) Plan* dated [insert], and approved in writing by DEQ and EPA.

3.2 **Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

4. EASEMENT (RIGHT OF ENTRY)

4.1. During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. In accordance with Subsection 4.2, Owner agrees to provide EPA access to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ and EPA will use best efforts to notify the Owner 48 hours before their entry to the Property. DEQ and EPA may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided written notice of the violation is given to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ or EPA to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass, and neither DEQ nor EPA shall be subject to liability to the Owner of the Property for such entry and any action taken to abate, mitigate, or cure a violation.

4.2. Access

A. Owner will allow DEQ, EPA, and their officers, agents, authorized representatives, employees, and contractors to enter the Property for the purpose of performing remedial activities. Such remedial activities at the Property may include but are not limited to:

- (1) Sampling and inspecting air, water, and/or soil at the Property;
- (2) Constructing, operating, or maintaining piping, utilities, soil borings, test pits, and/or excavations at the Property;
- (3) Removing contaminated soils from the Property;
- (4) Temporarily storing equipment, vehicles, tools, and other materials at the Property;
- (5) Temporarily storing wastewaters and related materials and wastes;
- (6) Restoring the surface condition of areas disturbed by remedial activities and repairing any structures or improvements damaged by remedial activities; and
- (7) Photographing portions of the property and structures, objects, and materials at the Property as necessary to facilitate remedial measures.

B. All tools, equipment, and other materials brought upon the Property by or at the direction of DEQ or EPA remain property of DEQ or EPA, respectively, and will be removed by DEQ or EPA upon completion of remedial activities at the Property.

C. No later than completion of remedial activities at the Property, DEQ and EPA will restore the surface condition of areas disturbed by remedial activities, to the maximum extent reasonably practicable, to a condition equivalent to the condition existing before remedial activities.

D. DEQ and EPA will coordinate their activities with the Owner and any tenant to minimize, to the maximum extent reasonably practicable, any impairment of access by residents or business invitees on the Property and any inconvenience to or disruption of residents on the Property due to activities of DEQ or EPA.

E. Before undertaking any remedial activity at the Property, except for emergencies, system failures, or time-critical repairs, DEQ and EPA will provide the Owner and any tenant at least 48 hours verbal notice of the activity.

F. The Owner, or its authorized representative, may observe DEQ and EPA while DEQ and EPA are undertaking remedial activities at the Property; provided, any observer must have health and safety training consistent with the requirements of the applicable health and safety plan.

G. The Owner will not interfere with or otherwise limit any activity conducted at the Property pursuant to and consistent with this Agreement by DEQ, EPA, or their officers, employees, agents, contractors, or authorized representatives. This obligation also applies to and is binding upon any and all tenants of the Owner at the Property.

K. DEQ is not responsible for costs or expenses related to future construction, development, use, or occupation of the Property if the activities are not necessary to a removal or remedial action performed by DEQ including but not limited to (a) demolition, design,

engineering, permitting, construction, grading, excavation, and modifications, including architectural, structural, fixtures, utilities, or engineering modifications and HVAC modifications; (b) landscaping modifications; or (c) construction worker health or safety measures. DEQ is responsible for costs or expenses of the foregoing activities to the extent such activities are undertaken by DEQ to complete a removal or remedial action. The Owner will bear the costs of the management and disposal of disturbed soils required to accommodate future construction, development, use, or occupation of the Property and the subsequent repair of the 2-foot soil cap after the completion of EPA's remedial actions on the Property.

5. THIRD PARTY BENEFICIARY RIGHTS OF EPA

5.1 EPA shall have the right, but shall not be obligated, to monitor and to enforce, by all means available in law or equity, the terms of this EES as a third party beneficiary of this EES.

5.2. EPA's rights provided in this Section 5 are in addition to, and not in derogation of, all rights of DEQ to enforce the terms of this EES. Nothing in this Section 5 shall be construed to create, either expressly or by implication, the relationship of agency between EPA and DEQ and neither EPA nor DEQ is authorized by this Section 5 to represent or act on behalf of the other in the enforcement of rights granted under this EES.

5.3. Grantor represents that it has notified EPA of EPA's status as a third party beneficiary under Section 5 of this EES.

6. RELEASE OF RESTRICTIONS

6.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the EPA and DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the discretion of DEQ and EPA, and will require their joint approval in writing unless DEQ and EPA agree otherwise in writing.

6.2. Upon a determination pursuant to Subsection 6.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

7. GENERAL PROVISIONS

7.1. **Notice of Transfer/Change of Use.** Owner must notify DEQ and EPA within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ and EPA a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development

inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ and EPA as provided in Subsection 3 of his EES or removal of the condition or restriction as provided in Subsection 6.1, unless DEQ and EPA agree otherwise in writing. This subsection does not apply to the grant or conveyance of a security interest in the Property.

7.2. **Zoning Changes.** Owner must notify DEQ and EPA no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Klamath County zoning code or any successor code. As of the date of this EES, the base zone of the Property is low density residential (RL) [note: Walle, Selim, & Bailey properties are suburban residential (RS)].

7.3. **Inspection and Reporting.** Owner will immediately notify DEQ and EPA of any condition or occurrence at the Property that does not conform with provisions of this EES. Notification provided to DEQ and EPA must include sufficient detail to allow DEQ and EPA to determine compliance with EES requirements and include a photographic log.

7.4. **Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ and EPA, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

7.5. **Effect of Recording.** Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

7.6. **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon and the United States, in addition to the remedies described in Sections 4 and 5, may enforce this EES through any available means, seeking any available legal or equitable remedies. For the State of Oregon, such means may be as provided in the Consent Judgment and may include civil penalties as set forth in ORS 465.900. [Note: For PPA "For the State of Oregon, such means may be as provided in the PPA and may include available legal or equitable remedies to enforce this EES as set forth in ORS 465.900"]

7.7. **IN WITNESS WHEREOF** Grantor and Grantee have executed this Easement and Equitable Servitude as of the date and year first set forth above.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS
CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: [Name of Grantor]

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: _____

GRANTEE: State of Oregon, Department of Environmental Quality

By: _____ Date: _____
David Anderson, Cleanup Program Manager, Eastern Region

STATE OF OREGON)
) ss.
County of Deschutes)

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

NOTARY PUBLIC FOR OREGON
My commission expires: _____

EXHIBIT A

Legal Description of the Property

[Redacted]

EXHIBIT B

Legal Description of the Restricted Area of the Property

[Redacted]