

Ken Gray

From: Farrukh Mohsen [fmohsen@exponent.com]
Sent: Friday, August 24, 2007 3:25 PM
To: Ken Gray
Cc: Gary Brugger
Subject: RE: Windfall Lien
Attachments: Scan001.PDF

Last one.

Farrukh

From: Superfund & Nat Res Damages Litigation [mailto:ENVIRON-SUPERFUND_NAT_RES@MAIL.ABANET.ORG]
On Behalf Of Ken Gray
Sent: Tuesday, August 21, 2007 10:35 AM
To: ENVIRON-SUPERFUND_NAT_RES@MAIL.ABANET.ORG
Subject: Windfall Lien

Has EPA asserted a Windfall Lien under CERCLA sec. 107(r)(2)? If you are aware, can you share with me the circumstances? (I am aware of the EPA Guidance and the EPA FAQ.) Please do not "Reply to All" unless you really intend to share your response with everyone on the list-serve.

Thank you.

Kenneth F. Gray, Esq.

Pierce Atwood LLP

One Monument Square

Portland, ME 04101

207-791-1212 direct

207-791-1350 fax

<mailto:kgray@pierceatwood.com>

<http://www.pierceatwood.com/bios/gray.html>

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8/24/2007

Region Files "Windfall Lien" Pursuant to Section 107(r) of CERCLA. On April 22, 2004, Region 2 filed its first Notice of Federal Lien pursuant to Section 107(r) of CERCLA, relating to real property at the H.S. Finishing Products Corporation Site ("Site") located in Brooklyn, New York. In 2003, EPA performed a removal action at the abandoned Site to stabilize and dispose of deteriorating drums of hazardous waste and to pump out hazardous wastes from uncovered electroplating vats. EPA has unreimbursed response costs of approximately \$227,000. In December 2002, an individual made a successful bid of \$405,000 for the property at a tax auction, then learned that EPA was undertaking cleanup at the property. The individual then assigned its bid to an affiliated company, Dean Street Corporation, who took title to the property in May 2003, only after EPA's removal action was complete. Because the current owner purchased the property after the disposal at the Site took place, it may be a bona fide prospective purchaser under CERCLA.

The Region has reason to believe that the current owner is intending to sell the property imminently, and that the prospective sale price represents a substantial increase over the amount it paid. In order to secure repayment of the lesser of EPA's unrecovered response costs or the increase in fair market value attributable to EPA's cleanup at the property, EPA sought to, and did, file the notice of lien prior to a sale of the property by the current owner. EPA sent Dean Street Corp. notice of the lien and an opportunity for hearing after filing the lien. Informal discussions concerning the proposed lien commenced soon after filing. (Staff contact: Beverly Kolenberg, ORC (212) 637-3167; management contact: Tom Lieber, ORC (212) 637-3158.)

HS Finishing Windfall Lien Documentation and CERCLIS Coding

CERCLIS Data Entered:

Measure 11 Windfall Lien Filed

Actual Start	04/23/04	Date EPA Filed the Windfall Lien in Court
Actual Complete	tbd	Date Windfall Lien is removed by the Court

Measure 12 Windfall Lien Resolution Assessed

Actual Start	05/21/04	Date of Conference Meeting where Party agreed to settle
Actual Complete	09/24/04	Date EPA sent the final proposed agreement to the purchaser
Qualifier	FP	Final Proposed Agreement Sent to Purchaser
Date All Info Received	06/15/04	Date EPA received all information needed

Measure 13 Windfall Lien Resolution Agreement Finalized

Actual Complete	09/29/04	Date Consent Agreement was signed by the RA
Past Costs Recovered	\$181,682	Past costs sought is \$227,000; EPA will recover \$181,682

Measure 5 Issuance of Comfort/Status Letter

Not Applicable

CERCLIS Coding Screens and Definitions:

Measure 11 107(r) Windfall Lien

Actual Start	Date WL was filed in Court by EPA
Actual Complete	Date WL is removed by the Court

Measure 12 Windfall Lien Assessment

Actual Start	Date EPA receives WL resolution request.
Actual Complete	Date EPA sends final proposed agreement to purchaser for signature
Qualifier Required	RD Request Denied; WR Withdrawal of Request by Requesting Party; or FP Final Proposed Agreement Sent to Purchaser
Subaction Actual Complete	Date All Necessary Information is Received at EPA

Measure 13 Windfall Lien Resolution Agreement Finalized

Actual Complete	Date Consent Agreement is signed by the RA
Enforcement Instrument Category	Windfall Lien
Financial Screen	Enter Past Costs \$ Recovered Amount

Measure 5 Issuance of Comfort/Status Letter

Actual Start	Date EPA receives request for WL Comfort/Status Letter
Actual Complete	Date RA signs a WL Comfort/Status Letter

Source: September 29, 2004 Conversation with Beverley Kolenberg, Region 2 ORC

Prepared by: Pam Keyzer, ERRD, PSB 10/01/04

Clackamas County Official Records
Sherry Hall, County Clerk

2005-100314

NOTICE OF LIEN WAIVER

After Recording Return To:
Robert J. Sullivan, P.C.
One SW Columbia, Suite 1600
Portland, OR 97258



00894549200501003140320321

NO FEE

10/10/2005 02:56:40 PM

L-LSW Cnt=1 Stn=11 TINAJAR
This is a no fee document

Agenda No.: 9-22-05 IV 1
and/or
Board Order No.: _____

MEMORANDUM NOTICE OF LIEN WAIVER

DATED: October ¹³, 2005

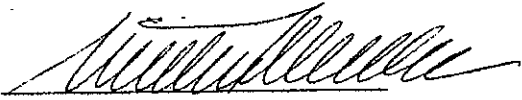
Pursuant to a Purchase and Sale Agreement dated September 8, 2005, the State of Oregon, acting by and through its Department of Environmental Quality, as Trustee for itself and as Trustee for the United States Environmental Protection Agency ("Seller") sold to Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, State of Oregon ("Purchaser"), Seller's interest in that certain property in Clackamas County, Oregon, more particularly described in the attached Exhibit A (the "Property"). As a condition of sale, and in consideration for the sale proceeds, the United States Environmental Protection Agency, ("EPA") and Purchaser executed and delivered an Agreement for Release and Waiver of Liens, CERCLA §107(r) and §107(l) dated 10-6, 2005 (the "Agreement"), a copy of which is attached as Exhibit B. Paragraph 39 of that document required the recording of this Notice informing successors in title that EPA selected a remedy for the Site as described in the Record of Decision, Northwest Pipe and Casing Company/Hall Process Company Soil Operable Unit (OU 1)(June 2000) and the Record of Decision, Northwest Pipe and Casing Company/Hall Process Company Groundwater Operable Unit (OU 2)(September 2001), that potentially responsible parties entered Consent Decrees to settle their obligations at the Site, that EPA has performed a response action at the Site, and that EPA has released and waived its Section 107(r) and its Section 107(l) lien for the Property in this Agreement. Consent Decrees were filed in the United States District Court under case name *United States of America and State of Oregon v. Wayne C. Hall, Jr.* as Case No. 97-683-HA (D. Or.), and in the United States Bankruptcy Court under the case name *In re: Northwest Pipe & Casing Company*, Case No. 385-04996-P11; *Northwest Pipe & Casing Company v. United States of America and State of Oregon*, Adversary Proceeding No. 95-3509.

N/C
LAWYERS 160016816162C

DRAFT

IN WITNESS WHEREOF, Purchaser has caused this Notice to be executed as of the day and year first above written.

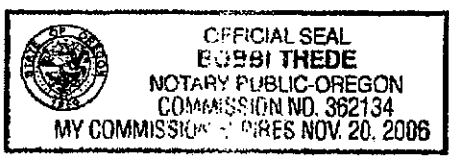
Clackamas County Development Agency,
the Urban Renewal Agency of
Clackamas County, State of Oregon

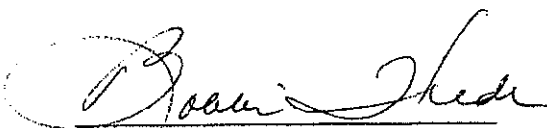
By: 

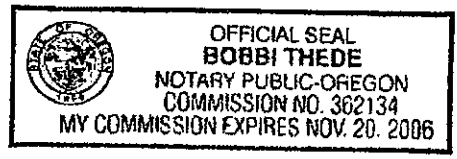
As its: Chair
Date: 10/6/05

STATE OF OREGON)
) ss.
County of Clackamas)

On this 6th day of October, 2005, before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by Martha Schrader Chair, on behalf of the Clackamas County Development Agency.




Notary Public for Oregon



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

In the Matter of :)
NORTHWEST PIPE & CASING/ HALL)
PROCESSING COMPANY) CERCLA -120-2005-0233
SUPERFUND SITE, aka)
Northwest Pipe and Casing Superfund Site) **Agreement for Release and Waiver**
) **of Liens, CERCLA § 107(r) and § 107(l)**
)
)
UNDER THE AUTHORITY OF THE)
COMPREHENSIVE RESPONSE,) Clackamas County Development Agency,
COMPENSATION, AND LIABILITY) Purchaser
ACT, 42 U.S.C. §§ 9601, *et seq.*)

I. INTRODUCTION

1. This Agreement for the Release and Waiver of Liens under Sections 107(l) and 107(r) of CERCLA, 42 U.S.C. §§ 9607(l) and (r), hereafter "Agreement," is made and entered into by and between the Environmental Protection Agency ("EPA") and the Clackamas County Development Agency ("CCDA"), collectively, the "Parties" this ___ day of _____, 2005.
2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.*
3. This Agreement concerns the real property formerly known as the "Hall Property" (hereafter "Property") located at 9571 Mather Road in Clackamas County, Oregon, the location of which is more particularly described in Attachment A.

4. The Property constitutes a portion of the Northwest Pipe and Casing/Hall Processing Company Superfund Site (hereafter, "Site").¹ The Site encompasses approximately 53 acres in Clackamas County, Oregon.
5. The Property was owned by Wayne C. Hall, Jr. ("Hall") before the entry of the Hall Consent Decree between Wayne C. Hall, Jr., the United States and the State of Oregon (hereafter, the "Hall CD").
6. Title to the Property was conveyed in fee simple absolute by Hall to the Oregon Department of Environmental Quality ("DEQ"), as trustee, free and clear of all liens and encumbrances and subject only to matters of record disclosed in the Ticor Title Insurance Report No. C657957-EM, pursuant to the Hall CD. DEQ has held the Property, as trustee, for the benefit of EPA, DEQ and NWP in accordance with the terms of the Hall CD and the Northwest Pipe and Casing Consent Decree ("NWP CD") since the conveyance by Hall to DEQ in 1997.²
7. The Hall CD does not allow DEQ to convey the Property to any other agency of the State of Oregon or any other entity except as expressly permitted by and in accordance with the terms of the NWP CD and the Hall CD.³

¹The Northwest Pipe and Casing/Hall Processing Company Superfund Site ("Site") was designated by EPA as the Northwest Pipe and Casing Superfund Site in 1992 and renamed in 1997.

²The Property plays a significant role in the Consent Decree between Northwest Pipe Company (also known as Northwest Pipe and Casing Co.) ("NWP"), the United States and the State of Oregon (hereafter, the "NWP CD"), and in the Consent Decree.

³In an Oregon Department of Justice ("ODOJ") Memorandum dated May 13, 1997, "Notification of Property Acquisition by DEQ as Trustee," from Larry Edelman to Terry Meehan, ODOJ opined that the Property was not subject to the State surplus lands statute:

Agreement for Release and Waiver of Liens under CERCLA §§ 107 (l) and (r)

8. The Hall CD does not allow the Property to be sold unless EPA and DEQ each approve a sale in writing. The Hall CD further requires that proceeds from the sale of the Property be paid to EPA.
9. The NWP CD, among many other things, provides for DEQ to market the Property; provides that any sale of the Property be subject to the written approval of both EPA and DEQ; and further provides that proceeds from a sale of the Property after closing costs be paid to EPA.
10. To enable the Property to be marketed, DEQ had the Property appraised on October 9, 2002. The fair market value of the Property was estimated at \$3.50 per square foot based on a market valuation in 2002. The Property was reappraised in July of 2005 and the likely value range found to be approximately the same as in 2002.
11. Settling Purchaser, the Clackamas County Development Agency, is a municipal corporation organized under ORS chapter 457.
12. Settling Purchaser has entered into a Purchase and Sale Agreement with DEQ dated September 8, 2005 (the "Purchase and Sale Agreement") pursuant to which Settling Purchaser has agreed to purchase and DEQ has agreed to sell the Property. Settling Purchaser's obligation to purchase the Property pursuant to the Purchase and Sale Agreement is subject to Settling Purchaser receiving from EPA a waiver of EPA's right to

It is our view and the intent of the parties that the property [Property] in question will *not* be subject to ORS 270.100 *et seq.* because the state, through DEQ, will be holding title as trustee and will be required to comply with the express terms of the Consent Decree pertaining to marketing and sale.

The Memorandum concluded that DEQ has "broad statutory authority that allows it to hold title to contaminated real property and to recover cleanup costs from the sale of such property when clean."

assert a lien against the Property under Sections 107(l) and 107(r) of CERCLA, 42 U.S.C. §§ 9607 (l) and (r), for response costs in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Property. EPA is willing to grant such a lien waiver pursuant to this Agreement in consideration for Purchaser's commitments under this Agreement and payment of the sale proceeds by DEQ to EPA. Upon payment of the sale proceeds by DEQ to EPA, the sale proceeds will serve as the consideration for this Agreement.

13. The Parties agree to undertake all actions required by the terms and conditions of this Agreement.
14. The release and waiver of EPA's right to assert or perfect the liens pursuant to Sections 107(l) and 107(r) of CERCLA, 42 U.S.C. §§ 9607(l) and (r), in exchange for the consideration to be provided by the Settling Purchaser to EPA, which consideration is satisfactory to the Administrator, is in the public interest.

II. DEFINITIONS

15. "Bona Fide Prospective Purchaser" or "BFPP" shall mean a person as described in CERCLA § 101(40).
16. "CCDA" shall mean the Clackamas County Development Agency, a municipal corporation organized under ORS chapter 457.
17. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 to 9675.

18. "DEQ" shall mean the Oregon Department of Environmental Quality.
19. "Effective Date" shall mean the date upon which this Agreement has been executed by both parties and delivered to Settling Purchaser by the escrow agent at closing of the purchase of the Property.
20. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
21. "Hall Property" or "Property" shall mean the real property as defined in paragraph 25, below, of this Agreement.
22. "Lien" or "liens" shall mean the right(s) the United States has, or may have, on the Property for unrecovered response costs incurred by the United States at the Site as set forth at 42 U.S.C. Section 9607(r)(2), CERCLA Section 107(r)(2) for the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Property; as well as the right(s) the United States has, or may have, on the Property for unrecovered response costs incurred by the United States at the Site before Settling Purchaser acquired ownership of the Property as set forth at 42 U.S.C. Section 9607(l), CERCLA Section 107(l).
23. "NWP" shall mean the Northwest Pipe and Casing Company, also known as the Northwest Pipe Company.
24. "Parties" shall mean EPA and CCDA.
25. "Property" or "Hall Property" shall mean the parcel, encompassing approximately 31 acres, located at 9751 Mather Road in Clackamas County, Oregon, the location of which is more

particularly described in Attachment A.

26. "PRP" shall mean any person who is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
27. "Settling Purchaser" shall mean CCDA.
28. "Site" shall mean the Northwest Pipe and Casing/Hall Processing Company Superfund Site. The Site name, originally the "Northwest Pipe and Casing Superfund Site," was changed after Consent Decrees were entered with the PRPs to better reflect the parties responsible for the portion of the Site known as the Hall Property. No Consent Decrees were modified to reflect the change in the Site name; they continue to use the original Site name. The Site encompasses approximately 53 acres, of which 31 acres make up the Property which is held by the DEQ in trust for the benefit of EPA, DEQ and NWP until such time as the Property is sold.
29. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

30. CERCLA response action at the Property has been performed by EPA as a part of a fund-lead response action for the Site and additional CERCLA response action may be conducted at the Site in the future in response to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Property.

31. Unrecovered response costs have been incurred by the United States for the response action that has taken place at the Property. These costs are roughly estimated at \$ 2 million after the receipt of the sale proceeds from the sale of the Hall Property.
32. Settling Purchaser is aware of the fund-lead response action for the Site and will acquire ownership of the Property after January 11, 2002, the date of the enactment of the Brownsfields Amendments to CERCLA. Disposal of those hazardous substances at the Property for which EPA undertook fund-lead response action occurred prior to Settling Purchaser's offer to acquire the Property.
33. Settling Purchaser is aware of, and has knowledge of, contamination on the Property.
34. Settling Purchaser has asserted that it meets the definition of a bona fide prospective purchaser under 42 U.S.C. § 9601(40) as follows: (i) all disposal of hazardous substances at the Property occurred prior to Settling Purchaser's offer to acquire the Property; (ii) Settling Purchaser has conducted all appropriate inquiry as described in 42 U.S.C. § 9601(40)(B) as documented in the "Phase I Environmental Site Assessment, Former Northwest Pipe and Casing Company," report prepared by GeoDesign and dated September 23, 2005; (iii) no notices as described in 42 U.S.C. § 9601(40)(C) are required with respect to hazardous substances at the Property because EPA has investigated the environmental condition of the site and implemented response action; (iv) Settling Purchaser will satisfy the requirements of 42 U.S.C. § 9601(40)(D), (E) and (F) by complying with the terms and conditions of this Agreement and the Easement and Equitable Servitude, hereafter EES, attached to this Agreement as Attachment B, which is to be executed and recorded at

closing.; (v) Settling Purchaser hereby agrees to comply with any request for information or administrative subpoena issued by EPA under chapter 42 of the U.S. Code and (vi) Settling Defendant hereby represents and warrants that it is not liable, or affiliated with any other person who is liable, for response costs at the Property through any relationship described in 42 U.S.C. § 9601(40)(H).

35. Settling Purchaser is entering the Agreement with EPA for mutually agreeable consideration.

IV. PAYMENT

36. In consideration of and in exchange for EPA's release and waiver of any lien it has or may have under Sections 107(l) and (r) of CERCLA with respect to the Property, Settling Purchaser agrees to pay to DEQ, upon closing under the Purchase and Sales Agreement with DEQ, the sum of \$ 3,375,000.00 for the purchase of the Property. The proceeds of the sale will be paid by DEQ to EPA as described in the NWP CD and its attachments.

V. RELEASE AND WAIVER OF SECTIONS 107(l) and (r) LIENS

37. Subject to the Reservation of Rights in Section VIII of this Agreement, EPA hereby releases and waives any lien(s) it may have on the Property, or may otherwise have the right to assert against the Property, now or in the future under Sections 107(l) and 107(r) of CERCLA, 42 U.S.C. §§ 9607(l) and (r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of hazardous substances that were disposed of

at the Site before Settling Purchaser acquired ownership of the Property.

VI. ACCESS/NOTICE /INSTITUTIONAL CONTROLS

38. Settling Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by Settling Purchaser, for the purposes of performing and overseeing response actions at the Property under federal law. EPA agrees to provide reasonable notice to Settling Purchaser of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, except for release and waiver of liens in accordance with Section V of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901("RCRA"), *et seq.*, with respect to the Site and the Property.
39. Within 30 days of the Effective Date, Settling Purchaser shall submit to EPA for review and approval a notice to be filed with the Office of the County Clerk, Clackamas County, State of Oregon, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA selected a remedy for the Site on as described in the Record of Decision, Northwest Pipe and Casing Company/Hall Process Company Soil Operable Unit (OU 1)

(June 2000) and the Record of Decision, Northwest Pipe and Casing Company/Hall Process Company Groundwater Operable Unit (OU 2) (September 2001), that potentially responsible parties entered Consent Decrees to settle their obligations at the Site, that EPA has performed a response action at the Site, and that EPA has released and waived its Section 107(r) lien and its Section 107(l) lien for the Property in this Agreement. Such notice(s) shall identify the United States District Court and the United States Bankruptcy Court in which the Consent Decrees were filed, the names and civil action numbers of the cases, and the dates the Consent Decree were entered by the Courts. The Settling Purchaser shall record the notice(s) within fourteen (14) days of EPA's approval of the notice(s). The Settling Purchaser shall provide EPA with a certified copy of the recorded notice(s) within seven (7) days of recording such notice(s).

40. Settling Purchaser shall implement and comply with any and all land use restrictions and institutional controls on the Property as set forth in the EES, which is to be executed and recorded at closing.
41. For so long as the Settling Purchaser is an owner or operator of the Property, Settling Purchaser shall comply with the EES and ensure that any lessees, sublessees and other parties with rights to use the Property comply with the EES and Paragraph 38 of this Agreement.
42. The Settling Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the effective date of this Agreement.

VII. BFPP STATUS

43. Settling Purchaser shall take and maintain all steps necessary to maintain status as a "Bona Fide Prospective Purchaser" as that term is defined in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), for the Property which is the subject of this Agreement, by complying with all of the requirements for a Bona Fide Prospective Purchaser as set forth in Section 101(40), including, without limitation, the exercise of "appropriate care" by taking "reasonable steps" as set forth in Section 101(40)(D), 42 U.S.C. § 9601(40)(D), and the implementation of and compliance with any land use restrictions and institutional controls as set forth in Section 101(40)(F), 42 U.S.C. § 9601(40)(F) for so long as Settling Purchaser retains any ownership interest in the Property.

VIII. RESERVATION OF RIGHTS

44. This Agreement does not release and waive or compromise any right of EPA or the United States other than the release and waiver by EPA of its right to assert or perfect a windfall lien pursuant to Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), and its right to assert or perfect a lien pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 107(l), for costs incurred or to be incurred by EPA in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Property, subject to receipt of consideration as provided in Section IV. EPA and the United States reserve, and this Agreement is without prejudice to, all rights against Settling Purchaser with respect to all other matters, including but not limited to, the following:

- (a) claims based on a failure by Settling Purchaser, assignees, successors in interest or any lessees, sublessees or other parties with rights to use the Property to meet a requirement of this Agreement, including but not limited to Section IV, Payment, and Section VI, Access/Notice/Institutional Controls;
- (b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;
- (c) liability under CERCLA, including Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, which arises due to failure of Settling Purchaser or assignees, successors in interest or any lessees, sublessees, or other parties with rights to use the Property to comply with Section 101(40) of CERCLA, 42 U.S.C. § 9601(40); and
- (d) liability under CERCLA resulting from the release or threat of release of hazardous substances that were disposed of at the Property after the Settling Purchaser acquired ownership of the Property.

45. Nothing in this Agreement is intended as a release and waiver for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, other than the release and waiver of the Section 107(l) and (r) liens in Section V of this Agreement, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement. The United States reserves the right to compel

potentially responsible parties to perform or pay for response actions at the Site.

46. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Purchaser acknowledges that it is purchasing Property where response actions may be required.

IX. PARTIES BOUND

47. This Agreement shall apply to and be binding upon EPA, and shall apply to and be binding upon the Settling Purchaser and any person who acquires an interest in the Property. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party. Any change in ownership or corporate status involving the Property shall in no way alter the release and waiver of the lien under this Agreement.

X. WAIVER OF CLAIM FOR REIMBURSEMENT

48. Settling Purchaser waives and shall not assert any claim for reimbursement from the United States with respect to the payment required by Section IV, Payment, of this Agreement, including but not limited to any direct or indirect claim for reimbursement of such payment from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law, or from any department, agency or instrumentality of the United

States under CERCLA Sections 107 or 113. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PAYMENT OF COSTS

49. If the Settling Purchaser fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV, Payment, Settling Purchaser shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XII. DISCLAIMER

50. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor constitutes any representation by EPA that the Property is fit for any particular purpose.

XIII. COUNTERPARTS

51. This Agreement may be executed in counter parts, each of which shall be considered an original and together which shall form the final Agreement.

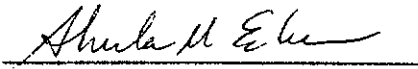
XIV. ATTORNEY GENERAL APPROVAL

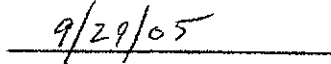
52. The Attorney General of the United States or his designee has issued prior written approval of the settlement embodied in this Agreement.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:





Sheila Eckman
Unit Manager

Date

Office of Environmental Cleanup, Region X
Region X

IT IS SO AGREED:

CLACKAMAS COUNTY DEVELOPMENT AGENCY

BY:





Martha Schrader
Chair

Date

EXHIBIT "A"
Legal Description

PARCEL I:

Part of the William T. Matlock Donation Land Claim No. 37, in Section 9, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point on the Southerly line of the William T. Matlock Donation Land Claim No. 37, in Section 9, Township 2 South, Range 2 East, of the Willamette Meridian, which is North 68° East, 50.165 chains from the Southwest corner of said claim; thence North 68° East along claim line 165.12 feet to the Southeast corner of land conveyed to Elvrage G. McIntosh and Dorothy M. McIntosh, his wife, by deed recorded November 8, 1945, in Book 355, Page 46, Clackamas County Records, and true beginning point of the land herein described; thence continue North 68° East along claim line 321.75 feet, more or less, to the Southwest corner of land conveyed to Earl A. Hemphill and Nancy Jane Hemphill, his wife, by deed recorded May 5, 1945, in Book 343, Page 495, said Records; thence North 22° West along the West line of said Hemphill land 1,319.22 feet to the Northwest corner thereof; thence South 68° 05' West, 321.75 feet, more or less, to the Northeast corner of said McIntosh land; thence South 22° East along the East line thereof 1,319.69 feet to the true point of beginning.

EXCEPTING THEREFROM that part thereof within the public road.

PARCEL II:

Part of the William T. Matlock Donation Land Claim No. 37, in Section 9, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe which is North 68° 00' East, 50.165 chains and North 22° West, 151.9 feet from the Southwest corner of said Donation Land Claim, said point of beginning also being at the Southwest corner of that certain tract of land described in Deed to Wayne C. Hall, Sr. and Wayne C. Hall, Jr., recorded March 4, 1960, in Book 568, Page 186, Deed Records; thence North 22° West, 1,168.1 feet to an iron pipe; thence North 68° East, 165.12 feet to a point; thence South 22° East, 1,168.1 feet to an iron pipe; thence South 68° West, 165.12 feet to the place of beginning.

PARCEL III:

A part of the William T. Matlock Donation Land Claim No. 37, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point in the Southerly boundary of the said Matlock Donation Land Claim No. 37, a distance of 40.41 chains North 68° East from the Southwesterly corner of said claim; running thence North 68°
(Continued)

Exhibit "A"
Legal Description

East tracing claim boundary 643.83 feet; thence North 22° West, 1,320 feet to an iron rod; thence South 68° West, 643.85 feet; thence South 22° East, 1,320 feet to the place of beginning, being the Westerly one-half of a certain tract of land conveyed to Mary Celia Langerberg by deed recorded in Book 100, Page 403, Deed Records of Clackamas County.

EXCEPTING THEREFROM that portion described in deed to Southern Pacific Company recorded September 2, 1964, in Book 645, Page 683, Deed Records; FURTHER EXCEPTING THEREFROM that portion described in Findings of Fact, Conclusions of Law and Judgment filed October 15, 1964, under Suit No. 60187 in the State Circuit Court for the County of Clackamas in favor of Southern Pacific Company and recorded October 20, 1964, in Book 648 Page 156, Deed Records; FURTHER EXCEPTING THEREFROM any additional portions lying within the Southern Pacific Company's railroad right-of-way.

ATTACHMENT B

Easement and Equitable Servitude

20

After recording, return certified copies to:

Grantor

Clackamas County Development Agency
9101 SE Sunnybrook Boulevard
Clackamas, OR, 97015
Att: Gary Cook

Grantee

Oregon DEQ
2020 S.W. Fourth, Suite 400
Portland, OR 97201
Att: Deborah Bailey

EASEMENT AND EQUITABLE SERVITUDE

This Easement and Equitable Servitude is made September , 2005 between Clackamas County Development Agency (Grantor) and the Oregon Department of Environmental Quality (DEQ or Grantee).

RECITALS

A. Grantee has conveyed to Grantor, and Grantor is now the owner of certain real property located at 9571 Mather Road in Clackamas County, Oregon (the "Property") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitude, and referenced under the name Northwest Pipe and Casing, ECSI #139 in the files of DEQ's Environmental Cleanup Program, Northwest Region Office, 2020 S.W. Fourth St., Suite 400, Portland, OR 97201.

B. A detailed description of the residual risks present at the Property is presented in "Human Health and Ecological Baseline Risk Assessment, Northwest Pipe and Casing/Hall Process Company, Clackamas, Oregon," prepared by Weston for the United States Environmental Protection Agency (EPA) dated August 1998, and available at the DEQ office referred to above. The document is also available through EPA under CERCLIS Identification Number ORD 980988307.

C. The Property forms a part of a National Priority List (NPL) site consisting of the Property and portions of two adjacent properties to the north owned by the Oregon Department of Transportation (ODOT) and Northwest Development Company. EPA documents refer to the ODOT and Northwest Development property as "Parcel A" and the Property as "Parcel B." The obligations of Grantor under this Easement and Equitable Servitude run to the Property only and not to any other portion of the NPL site.

D. Prior to conveyance of the Property to Grantor, Grantee held title to the Property in trust for EPA, Grantee, and others, pursuant to the terms of certain Consent Decrees dated April 23, 1997, in United States of America and State of Oregon v. Wayne

Easement and Equitable Servitude
Clackamas County Development Agency

C. Hall, Jr. (D. Or.), and April 24, 1997, in Northwest Pipe & Casing Co. v. United States of America and State of Oregon, Adv. Pro. No. 95-3509 (Bankr. D. Or.). In addition, DEQ and EPA have entered into an agreement, dated May 4, 2001, and titled "Superfund State Contract Between EPA and the State of Oregon for Remedial Action at the Northwest Pipe and Casing Company / Hall Process Company Superfund Site," (the "Contract") relating to environmental remediation activities at the NPL site, including the Property. EPA has agreed to permit the conveyance of the Property to Grantor provided that Grantor assumes certain continuing obligations as described in this Easement and Equitable Servitude, and that EPA be given the right to enforce the terms of this Easement and Equitable Servitude as a third party beneficiary.

E. In June 2000, the EPA with concurrence from the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Soil Operable Unit on the Property set forth in the Record of Decision (ROD) for the Property (Record of Decision, Northwest Pipe and Casing Company/Hall Process Company, Soil Operable Unit [OU1], Clackamas County, Oregon, June 2000). The remedial action selected requires, among other things: a monitoring and maintenance program for a soil cap on the Property, deed restrictions, security fencing and warning signs (while the site is vacant) to warn of the subsurface contaminant hazards, ensure the integrity of the soil cap and limit and manage land uses and activities which could compromise the cap's protectiveness. A "Long-Term Soils Response Action" was not selected for the site.

F. In September 2001, the EPA with concurrence from the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Groundwater Operable Unit on the Property set forth in the Record of Decision (ROD) for the Property (Record of Decision, Northwest Pipe and Casing Company/Hall Process Company, Groundwater Operable Unit (OU2), Clackamas County, Oregon, September 2001). The remedial action selected requires, among other things: placing and enforcing institutional controls on the Property to ensure access for treatment systems operations and monitoring purposes and to limit future use of contaminated groundwater. These institutional controls include property use restrictions or restrictive easements and warning signs and are described more fully in this Easement and Equitable Servitude.

G. Beginning June 18, 2001, remedial actions were performed on the Northwest Pipe and Casing site. Remedial actions conducted included soil and debris excavation, treatment, disposal, backfilling and reseeded work (June to December 2001); construction of a soil cap and a mitigation wetlands and construction of a groundwater treatment system on the Property (April 2003 to July 2004). DEQ and EPA conducted a joint inspection on July 20, 2004, and concluded that construction was complete for both OU1, the soil remedy, and OU2, the groundwater remedy.

H. As of the Date of this Easement and Equitable Servitude there is in existence the "Soil Cap", "Groundwater Treatment System," and a mitigation "Wetland" defined below and described in the document titled "Preliminary Close Out Report, Northwest Pipe and Casing/Hall Process Company, Clackamas, Oregon" dated June 4,

2004, and in other site related documents. These documents may be found at the Northwest Region Office of DEQ.

I. On September ,2005, Grantor entered into a Prospective Purchaser Agreement (PPA) with DEQ, under which Grantor agreed to implement the required institutional controls.

J. The provisions of this Easement and Equitable Servitude are intended to protect human health and the environment

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 "EPA" means the United States Environmental Protection Agency, and its employees, agents, and authorized representatives. "EPA" also means any successor or assign of EPA under the laws of the United States, including but not limited to any entity or instrumentality of the United States authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by EPA.

1.3 "Groundwater" means any water, except capillary moisture, beneath the land surface and within the boundaries of the Northwest Pipe and Casing property, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

1.4 "Groundwater treatment system" means the Groundwater Circulation Wells, Monitoring Wells, treatment infrastructure, including all above and below ground structures, equipment, materials, utilities, storage areas and roadways for access to the groundwater treatment system, that have been constructed, or that may in the future be constructed, on the Property to implement the remedy selected in the Record of Decision, Northwest Pipe and Casing Company/Hall Process Company, Groundwater Operable Unit (OU2), Clackamas County, Oregon, September 2001

1.5 "Owner" means any person or entity, including Grantor, who at any time owns 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, 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.

1.6 "Soil Cap" means the two feet of soil that was placed over the entire Property to address the potential for direct contact exposure to site contaminants.

1.7 "Wetland" means the 0.7 acre emergent wetland and 0.3 acre forested wetland constructed on the property as a mitigation wetland.

2. GENERAL DECLARATION

Grantor, in consideration of DEQ's agreement to enter into a PPA, and for other good and valuable consideration, grants to DEQ an Easement for access and accepts the Equitable Servitude described in this instrument and, in so doing, declares that the Property described in Attachment A to this Easement and Equitable Servitude, is now subject to and shall in the future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitude. Each condition and restriction set forth in this Easement and Equitable Servitude touches and concerns the Property and the equitable servitudes granted in paragraph 3 and easement granted in paragraph 4 below, shall run with the land for all purposes, shall be binding upon all current and future Owners of the Property as set forth in this Easement and Equitable Servitude, and shall inure 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 Easement and Equitable Servitude.

3. EQUITABLE SERVITUDE (RESTRICTIONS ON USE)

3.1 **Groundwater Use Restrictions:** No use shall be made of groundwater at the Property, by extraction through wells or by other means, which use involves consumption or other beneficial use of the groundwater, as long as the contaminant concentrations exceed risk-based cleanup levels for the beneficial use. This prohibition shall not apply to extraction of groundwater associated with groundwater treatment or monitoring activities either conducted by EPA or its authorized representatives or approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner shall properly characterize and manage any groundwater that is generated during such monitoring, treatment, or dewatering activities.

3.2 **Soil Cap Use Restrictions:** No use shall be made on or of the Property that will, or likely will, penetrate the soil cap or jeopardize the soil cap's functional integrity, including without limitation any excavation, drilling, or scraping, except as provided in Section 3.8 of this Easement and Equitable Servitude. Owner shall maintain the soil cap in accordance with a Soil Cap Monitoring and Maintenance Plan approved in writing by DEQ and EPA, dated August 31, 2005. If Owner disturbs soils on or beneath the soil cap during site development or maintenance activities, or during any other activities, Owner shall manage such soil in accordance with the Waste Management Plan approved in writing by DEQ and EPA, dated September 2005. Before undertaking

any activities that may result in disturbance of soils beneath the soil cap, the Owner shall prepare a health and safety plan to advise any employees working below the soil cap of the soil and groundwater contaminant hazards and appropriate protective measures to be taken.

3.3. Wetland Use Restrictions: Except upon prior written approval from DEQ, no operations or uses shall be made on or of the Property that will or likely will impair the proper functioning of the one-acre wetlands present on the northeastern portion of the property as depicted in Figure 3-4 titled 'Final Wetland', of the "Combined Final Remedial Action Report for OU1 -- Soil and Interim Remedial Action Report for OU2 -- Groundwater, Northwest Pipe and Casing/Hall Process Company Superfund Site", dated September 8, 2004.

3.4 Access Restrictions: Owner shall control access to the Property as necessary to protect the soil cap, groundwater treatment system, and wetlands consistent with Section 4 of this Easement and Equitable Servitude.

3.5 Land Use Restrictions: The following operations and uses are prohibited on the Property:

- 3.4.a Residential use of any type; and
- 3.4.b Agricultural [food-crop] use of any type.

3.6 Construction Restrictions: Prior to building construction, Owner shall review groundwater data to determine whether vapor intrusion controls must be incorporated into buildings on site to prevent migration of site contaminants in to buildings on-site. As long as this restriction continues on the property, Owner must consult with DEQ to determine whether such controls are required. DEQ will evaluate current on-site groundwater data to determine whether migration of contaminants in concentrations above risk-based concentrations for indoor air is likely. If such migration is determined to be likely, vapor intrusion controls will be required.

3.7 Notice of Transfer. Owner shall notify DEQ and EPA at least thirty (30) days before the effective date of any conveyance, grant, gift, contract for, or other transfer, in whole or in part, of Owner's fee interest in the Property, except when such transfer is as security for the payment of an obligation to a person or entity that does not possess or control the use of the Property.

3.8 Development. Any development, construction, or other use (including, but not limited to, tenancies and leaseholds, of any nature) of the Property shall be consistent with and shall not interfere with investigative or remedial activities necessary at the Property, or the remedial actions that are or have been performed at the time of the proposed development or other actions at the Property pursuant to the RODs. To ensure remedial actions are not adversely affected at the Property, any development, construction, or other use (including, but not limited to, tenancies and leaseholds, of any

nature) of the property must comply with this Easement and Equitable Servitude granted by Grantor to DEQ, and the following provisions:

(1) Owner shall notify DEQ and EPA prior to undertaking any development of the Property that involves the construction of new structures or expansion of the foundation of existing structures, paving or the material expansion of existing paving, trenching for placement of utility lines or for other purposes, or other actions that may impact the existing soil cap or groundwater treatment system. Development activities must proceed in compliance with the approved Waste Management Plan and Soil Cap Monitoring and Maintenance Plan. Owner does not need to provide notice for minor activities, e.g., installation of fence posts, street signs, and plantings or other such activities, that go no deeper than 2 feet below ground surface.

(2) The notice required by (1) above shall be submitted to the agencies at least 90 days prior to the date any ground disturbing activities are scheduled to begin. At DEQ's or EPA's request within 30 days of receipt of such notice, Owner must submit for DEQ and EPA review and approval, a development plan for any development, use, and /or other proposed activities. Any proposed relocation of monitoring wells, production wells, piping, or other components of the groundwater treatment system must be approved in writing by EPA before any such actions may be undertaken. Owner must receive written approval from DEQ and EPA before proceeding with development.

(3) The development plan required by (2) above shall, at a minimum, include the following:

- Conceptual site development plans showing buildings; foundation type (e.g., spread footings, slab-on-grade, or pilings); any proposed excavation; concrete, asphalt, and landscaped areas; and corridors for subsurface utility lines.
- Any proposed relocation of or modifications to existing facilities that are part of remedial actions at the property.
- Site grading plan that develops appropriate erosion prevention and sediment control measures to prevent contaminated surface soil from being transported by surface water from the property.
- Evaluation of potential risk from exposure to hazardous substances during and after development.
- Plans consistent with the Waste Management Plan describing how soil generated by the activities will be managed during and after the proposed activities.
- Plans consistent with the Waste Management Plan and the Soil Cap Monitoring and Maintenance Plan describing measures that will be taken to restore or replace the existing soil cap in areas where the cap will be impacted by construction or development activities.

any activities that may result in disturbance of soils beneath the soil cap, the Owner shall prepare a health and safety plan to advise any employees working below the soil cap of the soil and groundwater contaminant hazards and appropriate protective measures to be taken.

3.3. Wetland Use Restrictions: Except upon prior written approval from DEQ, no operations or uses shall be made on or of the Property that will or likely will impair the proper functioning of the one-acre wetlands present on the northeastern portion of the property as depicted in Figure 3-4 titled 'Final Wetland', of the "Combined Final Remedial Action Report for OU1 -- Soil and Interim Remedial Action Report for OU2 -- Groundwater, Northwest Pipe and Casing/Hall Process Company Superfund Site", dated September 8, 2004.

3.4 Access Restrictions: Owner shall control access to the Property as necessary to protect the soil cap, groundwater treatment system, and wetlands consistent with Section 4 of this Easement and Equitable Servitude.

3.5 Land Use Restrictions: The following operations and uses are prohibited on the Property:

3.4.a Residential use of any type; and

3.4.b Agricultural [food-crop] use of any type.

3.6 Construction Restrictions: Prior to building construction, Owner shall review groundwater data to determine whether vapor intrusion controls must be incorporated into buildings on site to prevent migration of site contaminants in to buildings on-site. As long as this restriction continues on the property, Owner must consult with DEQ to determine whether such controls are required. DEQ will evaluate current on-site groundwater data to determine whether migration of contaminants in concentrations above risk-based concentrations for indoor air is likely. If such migration is determined to be likely, vapor intrusion controls will be required.

3.7 Notice of Transfer. Owner shall notify DEQ and EPA at least thirty (30) days before the effective date of any conveyance, grant, gift, contract for, or other transfer, in whole or in part, of Owner's fee interest in the Property, except when such transfer is as security for the payment of an obligation to a person or entity that does not possess or control the use of the Property.

3.8 Development. Any development, construction, or other use (including, but not limited to, tenancies and leaseholds, of any nature) of the Property shall be consistent with and shall not interfere with investigative or remedial activities necessary at the Property, or the remedial actions that are or have been performed at the time of the proposed development or other actions at the Property pursuant to the RODs. To ensure remedial actions are not adversely affected at the Property, any development, construction, or other use (including, but not limited to, tenancies and leaseholds, of any

nature) of the property must comply with this Easement and Equitable Servitude granted by Grantor to DEQ, and the following provisions:

(1) Owner shall notify DEQ and EPA prior to undertaking any development of the Property that involves the construction of new structures or expansion of the foundation of existing structures, paving or the material expansion of existing paving, trenching for placement of utility lines or for other purposes, or other actions that may impact the existing soil cap or groundwater treatment system. Development activities must proceed in compliance with the approved Waste Management Plan and Soil Cap Monitoring and Maintenance Plan. Owner does not need to provide notice for minor activities, e.g., installation of fence posts, street signs, and plantings or other such activities, that go no deeper than 2 feet below ground surface.

(2) The notice required by (1) above shall be submitted to the agencies at least 90 days prior to the date any ground disturbing activities are scheduled to begin. At DEQ's or EPA's request within 30 days of receipt of such notice, Owner must submit for DEQ and EPA review and approval, a development plan for any development, use, and /or other proposed activities. Any proposed relocation of monitoring wells, production wells, piping, or other components of the groundwater treatment system must be approved in writing by EPA before any such actions may be undertaken. Owner must receive written approval from DEQ and EPA before proceeding with development.

(3) The development plan required by (2) above shall, at a minimum, include the following:

- Conceptual site development plans showing buildings; foundation type (e.g., spread footings, slab-on-grade, or pilings); any proposed excavation; concrete, asphalt, and landscaped areas; and corridors for subsurface utility lines.
- Any proposed relocation of or modifications to existing facilities that are part of remedial actions at the property.
- Site grading plan that develops appropriate erosion prevention and sediment control measures to prevent contaminated surface soil from being transported by surface water from the property.
- Evaluation of potential risk from exposure to hazardous substances during and after development.
- Plans consistent with the Waste Management Plan describing how soil generated by the activities will be managed during and after the proposed activities.
- Plans consistent with the Waste Management Plan and the Soil Cap Monitoring and Maintenance Plan describing measures that will be taken to restore or replace the existing soil cap in areas where the cap will be impacted by construction or development activities.

- A schedule describing when planned construction or development actions are expected to be performed.

(4) The development plan may describe development that will occur in phases or may apply to only a portion of the Property. Once a development plan, or portion of a development plan, has been approved by DEQ and EPA, development activities described in the approved plan, or approved portion of the plan, may proceed without separate notice to the agencies for implementation of each development activity, provided that such activities are consistent with the development plan, the Waste Management Plan, and the Soil Cap Monitoring and Maintenance Plan.

(5) Owner will cause its tenants, licensees and other occupants of the Property to comply with the terms of this Paragraph.

3.9 **Zoning Changes.** Owner shall notify DEQ no less than thirty (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 Clackamas County zoning code or any successor code. As of the date of this Easement and Equitable Servitude, the base zone of the Property is I-2, Light Industrial. Any use or development of the Property following a zone change must ensure that conditions at the Property are protective of human health and the environment for the proposed use or development and must be consistent with the remedies and institutional controls selected for the Soil and Groundwater Operable Units. Any zoning change that would change the base zone to Residential or Partial Residential may require additional remedial action for the Property for which Owner would be responsible.

3.10 **Partition.** Owner shall notify DEQ and EPA no less than thirty (30) days before Owner's petitioning for or filing of any document initiating a partition of the Property, or relating to a possible partition of the Property. The restrictions in this Easement and Equitable Servitude shall run with any partitions of the Property.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ and EPA shall have the right to enter upon any portion of the Property for the following:

- (1) to determine whether the requirements of this Easement and Equitable Servitude have been or are being complied with;
- (2) to determine whether the provisions of the Waste Management Plan, the Soil Cap Monitoring and Maintenance Plan, the Prospective Purchaser Agreement, and the Record of Decision have or are being complied with;
- (3) to install, maintain, operate, repair, replace, remove, and decommission any and all components of the Groundwater Treatment System,;
- (4) to conduct all investigation, removal, and remedial measures described in the Record of Decision; and

- (5) to conduct all other investigation, removal, and remedial measures that DEQ or EPA may require in the future at the Property.

Violation of any condition or restriction contained in this Easement and Equitable Servitude shall give to DEQ and EPA the right, privilege, and license to enter upon the Property where such violation exists and to abate, mitigate, or cure such violation at the expense of the Owner, provided written notice of the violation is given to the Owner describing what is necessary to correct the violation and the Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ or EPA shall 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.

5. THIRD PARTY BENEFICIARY RIGHTS OF EPA

5.1 EPA shall have the right, but shall not be obliged, to monitor and to enforce, by all means available in law or equity, the terms of this Easement and Equitable Servitude as a third party beneficiary of the agreement between Grantor and Grantee contained in this Easement and Equitable Servitude.

5.2 EPA's rights provided in this paragraph 5 are in addition to, and not in derogation of, all rights of DEQ to enforce the terms of this Easement and Equitable Servitude. Nothing in this paragraph 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 paragraph 5 to represent or act on behalf of the other in the enforcement of rights granted under this Easement and Equitable Servitude.

5.3 Grantee represents that it has notified EPA of EPA's status as a third party beneficiary under paragraph 5 of this Easement and Equitable Servitude.

6. GENERAL PROVISIONS

6.1 The existence of this Easement and Equitable Servitude, the date of its recording, the name of the Grantee, EPA's status as a third party beneficiary, and any other information needed to locate it in the Deed Records of Clackamas County shall be recited in any deed conveying the property or any portion of the Property, and shall run 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 Clackamas County, certifying that the condition or restriction is no longer required in order to protect human health or the environment.

6.2 Upon recording of this Easement and Equitable Servitude, all future Owners, as defined in Paragraph 2.2 above, shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and

Equitable Servitude, whether or not any reference to this Easement and Equitable Servitude is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitude, DEQ, in addition to the remedies described in Paragraph 4 above, may enforce this Easement and Equitable Servitude or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitude.

*(The remainder of this page is intentionally left blank.
Signature page follows.)*

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

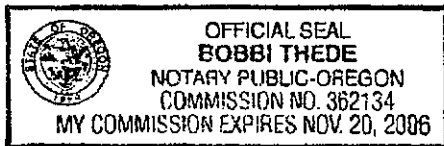
GRANTOR: CLACKAMAS COUNTY DEVELOPMENT AGENCY

MS By: *Martha Schrader* Date: 10-6-05
Martha Schrader, Chair

STATE OF OREGON)
County of Clackamas) ss.

The foregoing instrument is acknowledged before me this 6 day of September, 2005, by ~~Gary Cook the Manager~~ of CLACKAMAS COUNTY DEVELOPMENT AGENCY, on its behalf.

**Martha Schrader, Chair*



Bobbi Thede
NOTARY PUBLIC FOR OREGON
My commission expires: 11/20/06

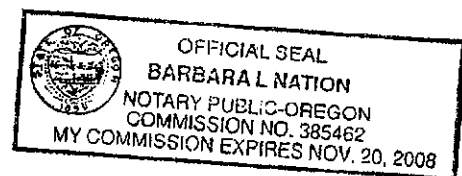
GRANTEE: State of Oregon, Department of Environmental Quality

By: *Alan Kiphut* Date: 9/2/05
Alan Kiphut, Administrator,
Land Quality Division

STATE OF OREGON)
County of Clackamas) ss.

The foregoing instrument is acknowledged before me this 2 day of September, 2005, by Alan Kiphut of the Oregon Department of Environmental Quality, on its behalf.

Barbara L Nation
NOTARY PUBLIC FOR OREGON
My commission expires: 11/20/08



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:)	
AMERICAN CREOSOTE WORKS SITE,)	
Jackson, TN)	[Docket Number]
)	Agreement for Release
)	Of Lien, CERCLA § 107 (l) & (r)
UNDER THE AUTHORITY OF THE)	Jackson Energy Authority
COMPREHENSIVE ENVIRONMENTAL)	
RESPONSE, COMPENSATION, AND)	
LIABILITY ACT OF 1980, 42 U.S.C.)	
§ 9601, <u>et seq.</u> , as amended.)	

I. INTRODUCTION

This Agreement for Release of Lien (“Agreement”) is made and entered into by and between the Environmental Protection Agency (“EPA”) and Jackson Energy Authority (“Jackson Energy”) (collectively “the Parties”).

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*

The American Creosote Site (“Site”) is a 46.6 acre property located at 307 Meadow Street in Jackson, Madison County, Tennessee. The Site’s owner is American Creosote Works, Inc. (“ACW”), a dissolved Tennessee Corporation which operated a wood treatment facility on the Site from 1930 to 1981. In 1982, ACW filed for bankruptcy. From 1983 to the present EPA has conducted various response and enforcement actions in connection with the Site , incurring response costs in excess of \$8,000,000. In March 2000, EPA recorded and perfected a federal lien on the Site property pursuant to CERCLA Section 107 (l), 42 U.S.C. § 9607(l) (“CERCLA § 107(l) lien”), by filing its notice of lien with the Clerk of Court for Madison

County, Tennessee. Jackson Energy intends to purchase the Site.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to release, subject to reservations and limitations contained in Sections V, VI, VII, VIII, and XVII, the CERCLA § 107(l) lien on the property and any potential lien against the Site under Section 107(r) of CERCLA, 42 U.S.C. § 9607 (r), which may arise when Jackson Energy becomes owner of the Site (“CERCLA § 107(r) lien”).

The Parties agree that Jackson Energy’s entry into this Agreement, and the actions undertaken by Jackson Energy in accordance with the Agreement, do not constitute an admission of any liability by Jackson Energy. The release of these liens, in exchange for provision by Jackson Energy to EPA of payment and other consideration satisfactory to the Administrator, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. “Bona Fide Prospective Purchaser” shall mean a person as described in CERCLA Section 101 (40), 42 U.S.C. § 9601(40).
2. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
3. “Institutional Controls” shall mean and include the activities specified in Section X of this Agreement.
4. “Parties” shall mean EPA and Jackson Energy.

5. "Site" shall mean the American Creosote Site, encompassing approximately 46.6 acres, located at 307 Meadow Street in Jackson, Madison County, Tennessee, which is described in Exhibit 1 of this Agreement.

6. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

7. In March 2000, EPA recorded and perfected a CERCLA § 107(l) lien on the Site property, by filing the lien notice with the Clerk of Court for Madison County, Tennessee. At the time EPA filed its CERCLA Section 107(l) lien on the Site, ACW was listed as the owner. According to recent real estate appraisals done for the Site, the fair market value of the 46.6 acre property is \$54,000 (Exhibit 2).

8. Jackson Energy is a public utility company organized under Tennessee Code Annotated §65-22-101 for the purpose of supplying electricity to the general public, and whose place of business is 119 East College Street, Jackson, Madison County, Tennessee. Jackson Energy asserts that its acquisition of the Site represents a \$60 million dollar investment in the infrastructure of the town and neighboring areas which will improve internet, cable and telephone access to local residents.

9. Madison County and the City of Jackson have tax liens on the Site property that date back to 1981.

10. Madison County and the City of Jackson will release their tax liens on the Site in exchange for Jackson Energy's payment of \$ 33,962.65.

IV. PAYMENT

11. In consideration of and in exchange for EPA's release of any lien it has or may have under Section 107 (l) and (r) of CERCLA, Jackson Energy agrees, within seven (7) days of the effective date of this Agreement, to pay to EPA the sum of \$ 11,037.35 . Jackson Energy shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region, EPA Docket number, and Site/Spill ID# 0472, and name and address of Jackson Energy. Payment should be sent to U.S. Environmental Protection Agency, Region 4, Superfund Accounting, Attn: Superfund Collection Officer, P.O. Box 100142, Atlanta, GA 30384. Notice of payment shall be sent to those persons listed in Section XIII (Notices and Submissions).

12. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. RELEASE OF LIEN

13. Subject to the Reservation of Rights in Section VIII of this Agreement, upon payment of the amount specified in Section IV (Payment), EPA agrees to release the lien it has on the Site under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), and the potential lien that it has on the Site under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r) for costs incurred or to be incurred by the United States in responding to hazardous substances that were disposed of at the Site before Jackson Energy acquired ownership of the property.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

14. Commencing upon the effective date of this Agreement, Jackson Energy agrees to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by Jackson Energy, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to Jackson Energy of the timing of response actions to be undertaken at the Site. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") *et. seq.*, and any other applicable statute or regulation, including any amendments thereto.

15. With respect to any part of the Site owned or controlled by Jackson Energy, within 15 days after the effective date of this Agreement or the date of acquisition of the Site, whichever date is later, Jackson Energy shall submit to EPA for review and approval a notice to be filed with the Clerk of Courts for Madison County, State of Tennessee, which shall provide notice to all successors-in-title, that EPA selected a remedy for the Site on September 30, 1996, and that said remedy is being financed by the Hazardous Substance Superfund. Jackson Energy shall record the notice within 10 days of EPA's approval of the notice. Jackson Energy shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice.

16. Jackson Energy shall ensure that assignees, successors in interest, lessees, and sublessees of the Site shall provide the same access and cooperation, including any Access and Institutional Control requirements described in Sections VI and X of this Agreement. Jackson Energy shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Site as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Site or an interest in the Site are consistent with this Section.

VII. CERTIFICATION

17. By entering into this agreement, Jackson Energy certifies that it intends to achieve and maintain status as a “Bona Fide Prospective Purchaser”, by complying with all the requirements for Bona Fide Prospective Purchaser as set forth in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), for the Site which is the subject of this Agreement. Further, Jackson Energy acknowledges the requirement of CERCLA that it exercise appropriate care by taking “reasonable steps” as set forth in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), in order to maintain its status as a Bona Fide Prospective Purchaser of such Site for so long as Jackson Energy retains any ownership interest in the property. Jackson Energy also certifies that, to the best of its knowledge and belief, it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site.

VIII. RESERVATION OF RIGHTS

18. The release of lien set forth in Section V above does not pertain to any matters other than those expressly specified in Section V (Release of Lien). EPA reserves and the Agreement is without prejudice to all rights against Jackson Energy with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Jackson Energy to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section VI (Access/Notice to Successors in Interest), Section VII (Certification) and Section X (Institutional Controls);

(b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment;

(c) liability for violations of local, state or federal law or regulations;

(d) liability under CERCLA, including Sections 106 and 107(a) and (l), 42 U.S.C. §§ 9606 and 9607(a) and (l), which arises due to Jackson Energy's failure to comply with Section 101(40), 42 U.S.C. § 9601(40), including the obligation to make "all appropriate inquiry" pursuant to Section 101(40)(B), the obligation to provide all legally required notices pursuant to Section 101(40)(C), the obligation to exercise "appropriate care" pursuant to Section 101(40)(D), the obligation to provide "full cooperation, assistance, and access" pursuant to Section 101(40)(E), the obligation to comply with any "land use restrictions" pursuant to Section (40)(F), the obligation to comply with any request for information pursuant to Section 101(40)(G) and all requirements of 107(r) of CERCLA; and

(e) liability under CERCLA including Section 106 and 107 (a) and (l), 42 U.S.C. §§ 9606 and 9607(a) and(l), resulting from the disposal or threat of disposal of hazardous substances, pollutants, or contaminants at the Site after Jackson Energy acquires the Site.

19. With respect to any claim or cause of action asserted by the United States, Jackson Energy shall bear the burden of proving by a preponderance of the evidence that it exercised "appropriate care" by taking "reasonable steps" as those terms are defined in CERCLA.

20. Nothing in this Agreement is intended as a release for any claim or cause of action,

administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

21. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than Jackson Energy to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA. Jackson Energy acknowledges that it is purchasing a Site where response actions may be required.

IX. PARTIES BOUND

22. This Agreement shall apply to and be binding upon EPA and Jackson Energy. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

X. INSTITUTIONAL CONTROLS

23. Commencing on the effective date of this Agreement, Jackson Energy shall refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures already performed or which may be performed at the Site. Such restrictions include, but are not limited to:

- (A) Protection of on-site monitoring wells - Approximately thirty (30) groundwater monitoring wells exist on-site. All wells are stick-up type, and are to be protected due to ongoing groundwater monitoring activities. Jackson Energy agrees to protect from damage and interference all on-site groundwater monitoring wells.

(B) Protection of capped area - In 1999, approximately 8 acres of soil in the former processing area of the Site were treated (solidified/stabilized), returned to the former treatment area, and capped. Jackson Energy agrees not to disturb the capped area of the Site, except for mowing and cap maintenance activities.

24. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the Record of Decision (ROD), ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Jackson Energy shall cooperate with EPA's and the State of Tennessee's efforts to secure such governmental controls.

XI. DISCLAIMER

25. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

XII. PAYMENT OF COSTS

26. If Jackson Energy fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), it shall be liable for all litigation and other enforcement costs incurred by the United States and the state to enforce this Agreement or otherwise obtain compliance.

XIII. NOTICES AND SUBMISSIONS

27. Jackson Energy shall send notice to EPA and the United States Department of Justice ("DOJ") in accordance with Section IV, and by sending notice to:

Ms. Paula V. Batchelor
U.S. EPA, Region IV
Waste Management Division
Program Services Branch
61 Forsyth St., S.W.
Atlanta, Georgia 30303

Section Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(Referencing Case No. 90-11-2-07859)

XIV. EFFECTIVE DATE

28. The effective date of this Agreement shall be the date upon which EPA issues written notice to Jackson Energy that EPA has fully executed the Agreement ~~after review of and response to any public comments received.~~

XVI. ATTORNEY GENERAL APPROVAL

29. The Attorney General of the United States or his designee has issued prior written approval of the settlement embodied in this Agreement.

XVII. EXHIBITS

30. Exhibit 1 shall mean the description of the Site which is the subject of this Agreement.

31. Exhibit 2 shall mean the Site appraisal.

Agreement for Release of Lien, CERCLA §107 (l) & (r)
Jackson Energy Authority

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

J. I. Palmer
Regional Administrator
Region 4

Date

IT IS SO AGREED:

BY:

Name

Date

ENVIRONMENTAL PROTECTION AGENCY
REGION III

RECEIVED

2007 MAR 21 PM 3:56

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

IN THE MATTER OF

Elkton Farm Firehole Site

Proceeding Under the Authority of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980, et seq.

Docket No. CERC-03-2006-0234LL

42 U.S.C. § 107(r)
Agreement for Release and
Waiver of Lien

Re: Herron 393 LLC

AGREEMENT FOR RELEASE AND WAIVER OF LIEN

I. INTRODUCTION

This Release and Waiver of Lien ("Agreement") is made and entered into by and between the Environmental Protection Agency ("EPA") and Herron 393, LLC, a Maryland limited liability company having its principal place of business at Pond Road Center, 4345 Route 9, Suite 28, Freehold, NJ 07728 ("Settling Purchaser").

This Agreement is entered pursuant to the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"); delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the EPA Regional Administrators.

In entering into this Agreement, the mutual objectives of EPA and Settling Purchaser are: a) to facilitate EPA's ongoing Removal Action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at Elkton Farm Firehole Site ("Site"), in accordance with the September 28, 2005 "Request for Funding for Removal and Exemption from the \$2 Million and One Year Statutory Limit for a Removal Action, Elkton Farms Firehole Site" (the "EPA Action Memorandum"), and b) to address issues related to the release and waiver of any lien EPA may have under Section 107(r) of CERCLA, 42 U.S.C. Section 9607 at the Elkton Farm Property against the Settling Purchaser which could arise out of EPA's Work at the Elkton Farm Firehole Site.

The Settling Purchaser consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Agreement.

The release and waiver of a 107(r) lien, in exchange for provision by the Settling Purchaser to EPA of consideration satisfactory to the Administrator, is in the public interest.

II. STATEMENT OF FACTS

1. This Agreement pertains to an area of approximately three hundred and ninety-three (393) acres that is located in Elkton, Cecil County, Maryland and that is further defined below and shown on the attached map (Exhibit A). This area will hereinafter be referred to as the "Elkton Farm Property."
2. The Settling Purchaser acquired the Elkton Farm Property on or about August 9, 2006. At the time that the Settling Purchaser acquired the Elkton Farm Property it was being used as a farm which includes tillable fields and several unused farm structures.
3. EPA is conducting a CERCLA Removal action on a portion of the Elkton Farm Property, also shown on the attached map and which will hereinafter be referred to as the "Elkton Farm Firehole Site," pursuant to the EPA Action Memorandum. EPA is focusing on an area presently comprising approximately fifty five acres to respond to the release or threat of release of hazardous substances, including, but not limited to, Munitions and Explosives of Concern ("MEC"), Unexploded Ordnance ("UXO") or Discarded Military Munitions ("DMM") or related debris, as more specifically set forth in the EPA Action Memorandum (the "EPA Work"). (In 1992 EPA undertook a Removal Action to address drums of chemicals in a farm building elsewhere on the Elkton Farm Property. This work was unrelated to the Elkton Farm Firehole Site being addressed in the September 28, 2005 Action Memorandum.)
4. The Settling Purchaser agrees to undertake all actions required by, and comply with all requirements of, this Agreement including any amendments hereto.
5. Portions of the Elkton Farm Property, although still farmed, are under investigation by the Maryland Department of the Environment ("MDE") and EPA with respect to wastes which were left behind as a result of various historical uses such as burning munitions in the early to mid 1940s and combusting and cleaning of rocket motors in the late 1950s. EPA has assigned Site No. MD-A3DH to the Elkton Farm Firehole Site.
6. Settling Purchaser is not, and has never been, named as a potentially responsible party ("PRP") at the Elkton Firehole Site or elsewhere at the Elkton Farm Property. Moreover, Settling Purchaser is not affiliated with any person or entity named as a PRP at the Elkton Firehole Site or elsewhere at the Elkton Farm Property.
7. Settling Purchaser represents that, and for the purposes of this Agreement, EPA relies on Settling Purchaser's representations that, Settling Purchaser's involvement with the Elkton Farm Property prior to the effective date of this Agreement was limited to inspecting and auditing the Elkton Farm Property in accordance with CERCLA's All Appropriate Inquiry standards, obtaining rezoning, and performing environmental and other due diligence in connection with Settling Purchaser's planned purchase of the Elkton Farm Property.
8. Settling Purchaser has informed EPA that:

- a) Settling Purchaser entered into its purchase and sale agreement for the Elkton Farm Property on August 10, 2004.
 - b) Once any cleanup of the Elkton Farm Property is complete, Settling Purchaser will be redeveloping this part of Elkton, Maryland with the development of approximately 70,000 square feet of commercial space, approximately 1,465 dwelling units, and a significant amount of open green space and recreational fields. Settling Purchaser and Cecil County expect that the Settling Purchaser will ultimately deed the open green space and recreational fields to the County.
 - c) The Elkton Farm Firehole Site occupies a portion of the planned open green space and recreational fields.
 - d) This revitalization will create both construction jobs and, ultimately, commercial employment.
 - e) The residential development will create housing options for the anticipated increased capacity at Aberdeen Proving Ground.
 - f) Settling Purchaser is negotiating with Cecil County and Maryland officials regarding the possibility of the Settling Purchaser creating a new regional public water and sewer system on the Elkton Farm Property (including a portion of the Elkton Farm Firehole Site), serving the planned development on the Elkton Farm Property as well as neighboring areas.
9. Based on Settling Purchaser's Phase I Report and appropriate inquiry for the Elkton Farm Property; Settling Purchaser believes that all hazardous substances and/or munitions waste present at the Elkton Farm Property were disposed of before the date Settling Purchaser entered into its purchase and sale agreement in August, 2004, and that disposal at the Elkton Farm Firehole Site has ceased (apart from activities which are part of the EPA's removal action at the Site).
10. Cecil County, Maryland has informed EPA that it supports the Settling Purchaser's proposed redevelopment plan.

II. DEFINITIONS

- 11. "Bona Fide Prospective Purchaser" or "BFPP" shall mean a person as described in CERCLA § 101(40).
- 12. "Days" as used herein shall mean calendar days unless specified otherwise. All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.
- 13. "Elkton Farm Property" or "Property" shall mean the approximately three hundred and ninety-three (393) acre property which is located in Elkton, Cecil County, Maryland; as of the effective date of this Agreement is owned by the Settling Purchaser; and is further defined in the attached map (Exhibit A).

14. "Elkton Farm Firehole Site" or "Site" shall mean the property on which EPA is conducting a CERCLA Removal Action pursuant to the EPA Action Memorandum. The Elkton Farm Firehole Site includes the approximately 55 acre portion of the Elkton Farm Property south of Zeitler Road on which EPA is presently focusing its work ("EPA Work Area"), and includes adjacent areas at which EPA determines munitions wastes may have been blown, disposed of, or otherwise migrated (including, potentially, treed areas west of the farm field; the farm field east of the EPA Work Area; and the 1000 foot "potential blow out area" extending beyond the boundaries of the fireholes within the EPA Work Area). The Elkton Farm Firehole Site as presently identified is more precisely shown on the attached map (Exhibit A).
15. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
16. "EPA Action Memorandum" shall mean the September 28, 2005 EPA "Request for Funding for Removal and Exemption from the \$2 Million and One Year Statutory Limit for a Removal Action, Elkton Farm Firehole Site."
17. "EPA Work" shall mean all work performed by EPA to carry out the EPA Action Memorandum.
18. "Parties" shall mean EPA and Herron 393, LLC.
19. "Settling Purchaser" shall mean Herron 393, LLC.
20. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

III. BFPP STATUS

21. Settling Purchaser shall continue to take and maintain all steps necessary to achieve and maintain status as a "Bona Fide Prospective Purchaser" as that term is defined in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), for the Elkton Farm Firehole Site, by complying with all of the requirements for a Bona Fide Prospective Purchaser as set forth in Section 101(40), including, without limitation, exercising "appropriate care" by taking "reasonable steps" as set forth in of CERCLA, 42 U.S.C. § 9601(40)(D), including implementation of and compliance with any land use restrictions and institutional controls ((if required by EPA and as discussed in Paragraphs 33 and 34 below), for so long as Settling Purchaser retains any ownership interest in property comprising the Elkton Farm Firehole Site.

IV. PARTIES BOUND

22. This Agreement shall apply to and be binding upon EPA and its agents, and upon Settling Purchaser and to the Settling Purchaser's successors and assigns of the Elkton Farm Firehole Site ("Settling Purchaser's Successors and Assigns"). Neither a change in ownership or corporate or partnership status of the Settling Purchaser, nor a change in ownership or control of the Elkton Farm Property, shall in any way alter Settling Purchaser's responsibilities under this Agreement.
23. In the event that Settling Purchaser files for or is placed into bankruptcy, Settling Purchaser shall notify EPA within three days of such event.
24. The undersigned representative of Settling Purchaser certifies that he or she is fully authorized to enter into the terms of this Agreement and to execute and legally bind Settling Purchaser to this Agreement.

V. PAYMENT

25. a. In consideration of and in exchange for EPA's release of any lien it has or may have under Section 107(r) of CERCLA, below, Settling Purchaser agrees to make the payments or perform the work set forth below. Settling Purchaser shall pay to EPA the sum of \$50,000 within thirty (30) days of the effective date of this Agreement. Within one year of the effective date of this Agreement, Settling Purchaser shall pay to EPA an additional \$55,000 or perform work that will further the goals of the EPA as set forth in the EPA Action Memorandum (or a combination thereof) and given effect through issuance of an Administrative Settlement and Order on Consent ("AOC") for Work ("AOC Work"), as set forth in Paragraphs 25.b - 27 below. Within two years of the effective date of this Agreement, Settling Purchaser shall pay to EPA an additional \$55,000 or perform additional AOC Work (or a combination thereof). Within three years of the effective date of this Agreement, Settling Purchaser shall pay to EPA an additional \$53,850 plus all accrued interest or perform additional AOC Work (or a combination thereof). With respect to the first and second annual payments, and final installment payment, (collectively known as "Additional Payments"), the Interest due with each installment shall be calculated from the effective date of this Agreement in accord with the Superfund Interest Rate pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis. Settling Purchaser shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing EPA Docket No. CERC-03-2006-0234LL and the name and address of the Settling Purchaser. Payment should be sent to:

U.S. Environmental Protection Agency,
Attn: Superfund Accounting,
P.O. Box 360863M,
Pittsburgh, PA 15251

Notice of payment shall be sent to:

Docket Clerk (3RC00)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

The amount paid by Settling Purchaser pursuant to this Agreement shall be deposited into a Special Account and shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

b. The Parties recognize that Settling Purchaser may perform work that will further the goals of the EPA as set forth in the EPA Action Memorandum. The Parties further recognize that, upon issuance of an Administrative Settlement and Order on Consent ("AOC") for Work ("AOC Work"), and EPA's acceptance of the work and the Settling Purchaser's calculation of the amount expended as set forth in Paragraph 27 below, one or more of the Additional Payments may be reduced in whole or in part.

1) The Parties recognize that the AOC Work will not address activities that relate solely to the development and construction of any wastewater treatment facilities or water supply facilities on the Property.

2) The Parties recognize that the AOC Work shall address tasks addressed in EPA's Action Memorandum, which include (but are not limited to): a) geophysical, magnetometer survey, flag, dig, investigative and other response activities related to munitions waste, b) development and implementation of sampling plans as approved by EPA, c) final disposition of excavated soils and other materials in accordance with plans approved by the EPA, and d) other costs required by or approved by EPA.

26. Following a proposal by the Settling Purchaser to perform AOC Work, EPA and Settling Purchaser shall in good faith negotiate the terms of an AOC with the Settling Purchaser to accomplish such Work.

27. No later than 45 days before an Additional Payment would be due, the Settling Purchaser shall submit documentation to EPA's Designated Project Coordinator to show that the direct costs to complete the AOC Work have equaled or exceeded the amount of the Additional Payment(s) that would otherwise be due under. If EPA accepts Settling Purchaser's calculation, then the Additional Payment(s) shall not be due and owing. EPA shall not unreasonably withhold its acceptance of the Settling Purchaser's calculation of the amount of Additional Payments that it claims should no longer be paid.

VI. DESIGNATED EPA PROJECT COORDINATOR

28. The Project Coordinator for EPA is:

Charles E. Fitzsimmons
On-Scene Coordinator
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
410-305-3027

29. EPA shall have the right to change its Project Coordinator at any time without prior notice to Settling Purchaser. EPA's intent is to notify the Settling Purchaser as soon as practicable following any such change of its Project Coordinator.

VII. RELEASE AND WAIVER OF SECTION 107(r) LIEN

30. Subject to the Reservation of Rights in Section IX of this Agreement, and in consideration of the payments specified in Section V (Payment), EPA hereby releases and waives any lien it may have against the Settling Purchaser, its successors and assigns on the Elkton Farm Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA at the Property acquired by Settling Purchaser in responding to the release or threat of release of hazardous substances that were disposed of at the Site (as well as response costs incurred as part of its 1992 Removal Action on the Property) before the Settling Purchaser acquired ownership of the Property, including but not limited to EPA's costs of doing EPA Work.

VIII. ACCESS/NOTICE/INSTITUTIONAL CONTROLS

31. Upon the effective date of this Agreement, Settling Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, a right of access at all reasonable times to the Site and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by Settling Purchaser, for the purposes of performing and overseeing response actions at the Property under federal law. EPA agrees to provide reasonable notice to Settling Purchaser of the timing of response actions to be undertaken at the Property.
32. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901("RCRA"), *et seq.*
33. Settling Purchaser recognizes that land use restrictions and institutional controls may ultimately be required on the Elkton Farm Firehole Site. Settling Purchaser will work with EPA to implement any such land use restrictions and institutional controls in accordance with all applicable laws; the provisions Section 101(40) of CERCLA, 42 U.S.C. § 9601(40); information obtained as a result of further site characterization and investigation; and the final proposed use of the Property.
34. For so long as the Settling Purchaser is an owner or operator of the Elkton Farm Firehole Site, a) Settling Purchaser shall ensure that assignees, successors in interest, and any

lessees, sublessees and other parties with rights to use the Elkton Farm Firehole Site shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, and b) Settling Purchaser shall ensure that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Elkton Farm Firehole Site shall implement and comply with any land use restrictions and institutional controls (including deed restrictions, if any) on the Elkton Farm Firehole Site in connection with a response action, during which time the Settling Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Elkton Farm Firehole Site.

IX. RESERVATION OF RIGHTS

35. Except as expressly provided in this Agreement, (1) each party reserves all rights, claims, interests and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Agreement.
36. This Agreement does not release and waive or compromise any right of EPA or the United States other than the release and waiver by EPA of its right to assert or perfect a lien against the Elkton Farm Property pursuant to Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in carrying out the EPA Work as well as costs incurred by EPA as part of the 1992 Removal Action. EPA and the United States reserve, and this Agreement is without prejudice to, all rights against Settling Purchaser with respect to all other matters, including but not limited to, the following:
 - a. claims based on a failure by Settling Purchaser or any of Settling Purchaser's successors in interest, lessees, sublessees or other parties with rights to use the Elkton Farm Firehole Site to meet a requirement of this Agreement,
 - b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;
 - c. liability under CERCLA, including Sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, which arises due to failure of Settling Purchaser or Settling Purchaser's assignees, successors in interest or any lessees, sublessees, or other parties with rights to use the Elkton Farm Firehole Site to meet the requirements of Section 101(40), 42 U.S.C. § 9601(40); and
 - d. liability under CERCLA resulting from the release or threat of release of hazardous substances that may be disposed of at the Site after the Settling Purchaser acquires ownership of the Elkton Farm Property.
37. Nothing in this Agreement is intended as a release and waiver for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, other than the release and waiver of the Section 107(r) lien in Section VI, which the United States may have against any person, firm, corporation or other entity not a party to

this Agreement. The United States reserves the right to compel potentially responsible parties to perform or pay for response actions at the Site.

38. Nothing in this Agreement shall limit the authority of the EPA On Scene Coordinator as outlined in the NCP and CERCLA. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Purchaser acknowledges that it has purchased property where response actions may be required.

X. OTHER CLAIMS

39. Nothing in this Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not bound by this Agreement for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Elkton Farm Firehole Site.
40. This Agreement does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
41. By consenting to the issuance of this Agreement, the Settling Purchaser waives and shall not assert any claim to reimbursement it may have under Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612.

XI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

42. The effective date of this Agreement shall be the date on which it is signed by EPA and written notice is given to the Settling Purchaser.
43. This Agreement may be amended by mutual agreement of EPA and the Settling Purchaser. Such amendments shall be in writing and shall have as their effective date the date on which EPA signs such amendments.

XII. DISCLAIMER

44. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Elkton Farm Property nor constitutes any representation by EPA that the Elkton Farm Property is fit for any particular purpose.

XIII. ATTORNEY GENERAL APPROVAL

45. The Attorney General of the United States or his designee has issued prior written

approval of the settlement embodied in this Agreement.

IT IS SO AGREED:

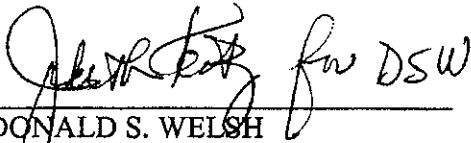
FOR SETTLING PURCHASER:



HERRON 393, LLC
David Meiskin, Managing Member
Pond Road Center
4345 Route 9, Suite 28
Freehold, NJ 07728

Date 12-29-06

FOR EPA:



DONALD S. WELSH
Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Date 3/21/07