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PROSPECTIVE PURCHASER AGREEMENT

DEQ No. 98-05

BETWEEN: Oregon Department of Environmental Quality

AND: Port City Development Center *p/c 10/8*

EFFECTIVE DATE: 9.10.98 (Date of last signature below)

This Agreement is entered between the Oregon Department of Environmental Quality (DEQ) and Port City Development Center pursuant to ORS 465.260 and 465.327. This Agreement contains the following provisions:

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## 1. RECITALS

A. The Wagstaff Battery facility (Property) is located at 2124 N. Williams Avenue in Portland. The legal description of the Property is set forth in Attachment A to this Agreement.

B. Wagstaff Battery manufactured and distributed batteries at the Property between 1962 and 1991. During operations lead ignot, lead and lead oxide were used. During environmental investigations between 1992 and 1997 lead and total petroleum hydrocarbons (TPH) have been detected in soils at the Property. These substances are "hazardous substances" within the meaning of ORS 465.200(15). The presence of hazardous substances at the Property constitutes a "release" of hazardous substances within the meaning of ORS 465.200(21), and makes the Property a "facility" within the meaning of ORS.465.200(12).

The owner of the Property, Mr. Chad Hindman conducted remedial activities under DEQ oversight to address most of the contamination identified through environmental investigations. In February, 1998 DEQ issued a letter to Mr. Hindman indicating that under current site conditions, no further remedial action was necessary. DEQ agreed to allow some contaminated soil in place, without further action, on the condition that additional action may be required if site conditions were to change. Port City Development Center plans to alter site conditions such that removal or remedial action shall be necessary at the Property to protect human health or the environment.

C. On May 13, 1998, Port City Development Center applied to DEQ for entry of this Agreement. Port City Development Center is a non-profit organization and therefore the advance deposit to reimburse DEQ's costs of technical review and agreement preparation was

waived. Port City Development Center shall be invoiced monthly for these costs and shall make payments in accordance with Section 3.F of this Agreement.

D. Port City Development Center is a non-profit corporation and a "person" within the meaning of ORS 465.200(20). According to information provided by Port City Development Center, Port City Development Center is not currently liable under ORS 465.255 for the release of hazardous substances existing at the facility as of the date of this Agreement.

E. Port City Development Center shall work under the oversight of DEQ's Voluntary Cleanup Program to perform the investigation and remedial activities described in Section 2 of this Agreement. Port City Development Center intends to develop the Property for use as a vocational work center for developmentally disabled youths and adults in the Portland metropolitan area. Port City Development Center employs approximately 84 developmentally disabled individuals and an additional 22 supervisors. By moving to this new Property, Port City Development Center will be able to have sufficient space to develop and implement a School- to- Work program which will give disabled high school students an opportunity to develop their work skills, upon anticipation of entering the workforce after graduation. Based upon this information, DEQ has determined that Port City Development Center's proposed activities at the facility will not contribute to or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the Property. DEQ further has determined that a "substantial public benefit" will result from this Agreement, within the meaning of ORS 465.327 (1)(d).

F. In determining to enter this Agreement, DEQ has consulted with the City of Portland and has considered reasonably-anticipated future land uses at the Property and surrounding properties.

G. Port City Development Center recognizes that implementation of remedial measures at the Property might interfere with Port City Development Center's use of the Property.

2. MEASURES TO BE UNDERTAKEN

A. Port City Development Center shall work under the oversight of DEQ's Voluntary Cleanup Program to perform necessary investigation and remedial actions for surface and subsurface soils contamination at the Property, in accordance with ORS 465.200 through 465.455 and related regulations, as provided herein:

- (1) Dry well area: A pocket of lead contaminated soil is located in the area to the east of Building #1, where historic discharges of water, dilute sulfuric acid, and lead have occurred. This pocket of contamination is located at approximately three to twenty feet below the ground surface. DEQ, as per its February 24, 1998 letter for the Property, approves leaving this pocket of contamination in place because the removal of this contamination would endanger the integrity of the building, and the contamination does not threaten human health, safety, welfare and the environment. Port City Development Center shall work under DEQ oversight to ensure that the contaminated soil remains isolated from human contact such that no exposure pathways are created. Consistent with this obligation, Port City Development Center is responsible for maintaining the integrity of a protective cap (e.g., soil, sidewalk,

etc.) along the entire eastern side of Building #1, extending two feet from the outside wall of the building. If physical changes are made to this two foot strip along the eastern side of Building #1 which result in exposing contaminated soils, Port City Development Center shall further evaluate the contamination, and is responsible for any remediation DEQ determines to be necessary.

- (2) Sump #1: A pocket of lead and TPH contaminated soil exists below Sump #1 in the northern portion of Building #1. Port City Development Center shall make physical alterations to the floor in the northern portion of Building #1, thereby changing the conditions of the Property. To prevent exposure of contaminated soils, Port City Development Center shall place and maintain a protective concrete cap over the sump. In the event that Port City Development Center significantly alters the northern portion of Building #1 such that the majority of the ground surface below the building structure is exposed, Port City Development Center shall be one of the parties potentially responsible for investigating and remediating any contaminated soils which may be discovered. Remedial activities may include: capping, treatment in place, or excavation and disposal. Such activities shall occur under DEQ's oversight and direction.

- (3) Remediation of contaminated soils, if necessary, shall include any measures necessary to prevent leaching or migration of soil contamination to any other media.

B. Any development, construction, or other use of the Property shall be consistent with and shall not interfere with any investigative or remedial activities necessary at the Property, or existing contamination. To ensure such consistency and prevent exacerbation of

existing contamination at the Property, Port City Development Center shall submit for DEQ review and approval, development, use, and building plans, or other similar and adequate documentation, before any material physical changes or disturbances are made to the Property in the areas identified in Section 2.A. of this Agreement. In order to provide for adequate review of activities proposed on the Property, Port City Development Center shall, upon request, provide DEQ with the following: an aerial view map of the plans; a design map showing depth levels of any proposed activity; and any other information deemed necessary by DEQ. This review and approval requirement will expire upon the Property receiving a No Further Action determination regarding all contaminated media.

C. Port City Development Center shall require all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that might affect the areas identified in Section 2A of this Agreement, or affect necessary investigatory and/or remedial measures, to also submit development and/or construction plans to Port City Development Center, for review by DEQ, as per Subsection 2.B. of this Agreement. This requirement is necessary to ensure that the actions of others do not interfere with remedial activities or exacerbate existing contamination. This review and approval requirement will expire upon the Property receiving a No Further Action determination from DEQ regarding all contaminated media.

D. Port City Development Center shall record and abide by use restrictions on the Property, which restrictions, pursuant to ORS 465.327(5), shall run with the land. These restrictions are described in Subsection 3.C. of this Agreement. Port City Development Center shall also impose and abide by any use and/or deed restrictions on the Property required by the

final remedy selected for the Property. The final remedy for the Property may incorporate, eliminate, or modify the restrictions in Subsection 3.C. of this Agreement. If the restrictions in Subsection 3.C. of this Agreement are incorporated into the final remedy, they will be restated as such and subject to public notice and comment requirements for proposed remedial actions. Any use restrictions contained in a final remedy selected or approved by DEQ after public participation shall supersede the restrictions set forth in Subsection 3.C. of this Agreement.

E. Port City Development Center shall diligently pursue the development and uses of the Property described in Subsection 1.E. of this Agreement.

### 3. GENERAL PROVISIONS

#### A. DEQ Oversight

DEQ shall provide review, approval/disapproval, and oversight as described in Section 2 and Subsection 3.F.(2) of this Agreement. Where DEQ approval is required for any plan or activity under this Agreement, Port City Development Center shall not proceed to implement the plan or activity until DEQ approval is received.

#### B. DEQ Access

(1) Port City Development Center grants an irrevocable right of entry to DEQ and its authorized representatives to enter and move freely about the Property at all reasonable times for purposes of overseeing implementation of this Agreement and conducting remedial measures DEQ deems necessary.

(2) Port City Development Center shall allow DEQ to inspect and copy all records in Port City Development Center's possession or control relating to measures undertaken at the Property under this Agreement. Port City Development Center shall preserve all such records for

six (6) years after the effective date of this Agreement, and, after such six-year period, shall provide DEQ with sixty (60) days notice before destruction or other disposal of such records and make the records available for inspection and copying.

(3) Port City Development Center may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Agreement. DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410, *et seq.* If Port City Development Center does not make a claim of confidentiality at the time the records are submitted to or copied by DEQ, the records may be made available to the public without notice to Port City Development Center. DEQ reserves any rights to obtain documents withheld from DEQ as privileged.

C. Use Restrictions

(1) Port City Development Center shall abide by the following use restrictions on the Property:

(a) Surface water run off shall be directed away from the former dry well so as to prevent infiltration of rainwater to this area which has known soil contamination.

(b) Contaminated soils may not be disturbed without prior written approval from DEQ, unless such soil disturbance is related to investigation, removal, or remedial activities performed in accordance with a DEQ-approved work plan for such activity. Disturbance of soils includes excavation, grading, paving, construction, or any other activity that might expose or move contaminated soils at the Property.



(2) Port City Development Center shall ensure that all employees, agents, occupants, and authorized users of the Property abide by the use restrictions set forth in Paragraph 3.C (1). Pursuant to ORS 465.327(5), such use restrictions shall run with the land.

(3) The use restrictions required under this Subsection are in addition to and not in lieu of any institutional controls or other remedial measures that DEQ might deem necessary as part of a final remedial action at the Property.

D. Project Managers

All reports, notices, and other communications required under or relating to this Agreement shall be directed to:

Shelia Monroe  
DEQ - Voluntary Cleanup Program  
2020 SW 4<sup>th</sup> Avenue, Suite 400  
Portland, OR 97204  
Phone: 229-5445

George Scott  
Port City Development Center  
1847 E. Burnside  
Portland, OR 97214  
Phone: 236-9515

E. Progress Reports

Prior to beginning any construction on the Property requiring action pursuant to Section 2 of this Agreement, Port City Development Center shall begin regular reporting to DEQ. On a quarterly basis for the duration of this Agreement, or until the Property receives a No Further Action determination from DEQ, Port City Development Center shall submit to DEQ two (2) copies of a progress report describing its activities at the Property under this Agreement. DEQ anticipates that the progress report will not exceed two (2) pages in length. The progress report shall address, at a minimum, the following:

(1) Activities undertaken by Port City Development Center at the Property during the previous quarter;

(2) Actions scheduled to be taken by Port City Development Center in the next quarter;

(3) Sampling and test results and any other data generated by Port City Development Center during the previous quarter; and

(4) A description of any problems experienced by Port City Development Center during the previous quarter and the actions taken to resolve them.

F. DEQ Costs

(1) DEQ shall submit to Port City Development Center a monthly statement of costs incurred after the effective date of this Agreement by DEQ in connection with the oversight of Port City Development Center's implementation of this Agreement.

(2) DEQ oversight costs payable by Port City Development Center shall include both direct and indirect costs. The Cleanup Law Rewrite Surcharge is also a part of DEQ's oversight costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs. Indirect costs include general management, support, and program development costs of DEQ and the Waste Management and Cleanup Division allocable to DEQ oversight of this Agreement and not charged as direct site-specific costs. Indirect costs are based on a percentage of direct personal service costs. The Cleanup Law Rewrite Surcharge is 12% of direct personal services expenditures.

(3) Within thirty (30) days of receipt of the monthly statement, Port City Development Center shall pay the amount of costs billed by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund." Port City Development Center shall pay simple interest of 9% per annum on the unpaid balance of any oversight costs, which interest

shall begin to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked.

G. Dispute Resolution

In the event of any disagreement between DEQ and Port City Development Center regarding implementation of this Agreement, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and Port City Development Center shall, in the following order:

- (1) Make a good faith effort to resolve the dispute between project managers;
- (2) If necessary, refer the dispute for resolution by the immediate supervisors of the project managers; and
- (3) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution to DEQ's Administrator of the Waste Management and Cleanup Division or Northwest Regional Division Administrator, and Port City Development Center's Executive Director. DEQ's final decision after such dialogue shall be enforceable in accordance with Subsection 3.H. of this Agreement.

H. Enforcement of Agreement and Reservation of Rights

- (1) In the event of any failure of Port City Development Center to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any authority or pursue any claim or cause of action that DEQ might have. Port City Development Center reserves any defenses or counterclaims it might have in the event of such action by DEQ.

(2) Except as provided in Subsections 3.I and 3.J of this Agreement, DEQ and Port City Development Center reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.

(3) Port City Development Center does not admit any liability or violation of law by virtue of entering this Agreement.

(4) DEQ reserves its authority to perform remedial measures regarding a release of hazardous substances at or from the Property.

I. Waivers

(1) Port City Development Center waives any claim or cause of action it might have against the State of Oregon arising from contamination at the Property existing as of the date of acquisition of ownership or operation of the Property.

(2) Port City Development Center waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred for the work defined in Section 2 of this Agreement.

J. Hold Harmless and Indemnification

Port City Development Center shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of Port City Development Center or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by Port City Development Center or its agents in carrying out activities under this Agreement.

K. Public Notice

(1) Upon execution of this Agreement, DEQ will provide public notice of this Agreement in a local newspaper of general circulation, describing the measures to be undertaken under this Agreement. Copies of the Agreement will be made available to the public. DEQ shall provide Port City Development Center a draft of such notice and consider any comments by Port City Development Center on the draft notice, before publication. Port City Development Center is responsible for the publication costs, if any, of such notice per Subsection 3.F. of this Agreement.

(2) Before approval of any remedial action, DEQ will provide public notice and opportunity for comment on the proposed remedy in accordance with ORS 465.320.

L. Recording

Within fourteen (14) days of the effective date of this Agreement, Port City Development Center shall submit a copy or original of this Agreement (whichever is required by the county) to be recorded in the real property records of Multnomah County, State of Oregon. Port City Development Center shall provide DEQ with written evidence of such recording within seven (7) days of recording.

M. Transfer of Ownership

Upon transfer of ownership of the Property, or a portion of the Property, from Port City Development Center to another person or entity, Port City Development Center and the new owner shall provide written notice to the DEQ project manager within thirty (30) days of such transfer.

4. RELEASE FROM LIABILITY

A. Subject to the satisfactory performance by Port City Development Center of its obligations under this Agreement, Port City Development Center shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of a hazardous substance at the Property existing as of the date of Port City Development Center's acquisition of ownership or operation of the Property. Port City Development Center shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of ownership or operation of the Property.

B. The release from liability under Subsection 4.A of this Agreement shall not apply to any liability regarding:

(1) A release of hazardous substances at the Property after the date of acquisition of ownership or operation of the Property; provided, "release" does not include the migration, at or from the Property, of hazardous substances which existed on the Property before Port City Development Center acquired the Property;

(2) Contribution to or exacerbation of a release of hazardous substances;

(3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight, at the Property;

(4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property;

(5) Violation of federal, state, or local law;

(6) Any ownership, operation, or release of hazardous substances at the Property by Port City Development Center before the effective date of this Agreement;

(7) Any ownership, operation, or other ground of liability of Port City Development Center for a release of hazardous substances at an off-site location affecting the Property; and

(8) Any matters as to which the State of Oregon is owed indemnification under Subsection 3.I of this Agreement.

5. PARTIES BOUND

A. This Agreement shall be binding on the signatories and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property shall in any way alter Port City Development Center's obligations under this Agreement, unless approved otherwise in writing by DEQ.

B. The benefits and burdens of this Agreement shall run with the land; however, the release from liability set forth in Subsection 4.A of this Agreement shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

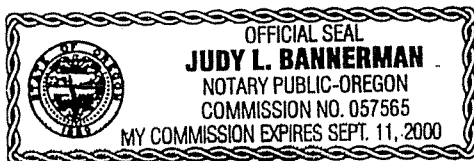
6. SIGNATURES

George Scott

George Scott  
Executive Director  
Port City Development Center

Date: 9-1-98

SUBSCRIBED AND SWORN TO BEFORE ME this 1 day of  
September, 1998 by George Scott.



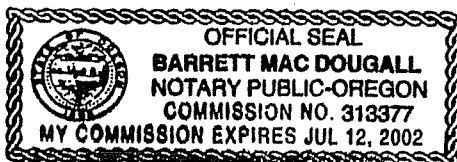
Judy L. Bannerman  
NOTARY PUBLIC FOR OREGON  
My Commission expires: 9-11-00

Langdon Marsh

Langdon Marsh  
Director  
Oregon Department of Environmental Quality

Date: 9-10-98

SUBSCRIBED AND SWORN TO BEFORE ME this 10<sup>th</sup> day of  
September, 1998 by Langdon Marsh, in his capacity as Director of the  
Oregon Department of Environmental Quality.



Barrett MacDougall  
NOTARY PUBLIC FOR OREGON  
My Commission expires: 7-12-02





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*John T.*

# PROSPECTIVE PURCHASER AGREEMENT

DEQ No. 98-05

BETWEEN: Oregon Department of Environmental Quality

COUNTY COUNSEL FOR  
MULTNOMAH COUNTY, OR

AND: Port City Development Center *p/c 10/8*

EFFECTIVE DATE: 9.10.98 (Date of last signature below)

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Attachment A -- Legal Description of Property	

## 1. RECITALS

A. The Wagstaff Battery facility (Property) is located at 2124 N. Williams Avenue in Portland. The legal description of the Property is set forth in Attachment A to this Agreement.

B. Wagstaff Battery manufactured and distributed batteries at the Property between 1962 and 1991. During operations lead ignot, lead and lead oxide were used. During environmental investigations between 1992 and 1997 lead and total petroleum hydrocarbons (TPH) have been detected in soils at the Property. These substances are "hazardous substances" within the meaning of ORS 465.200(15). The presence of hazardous substances at the Property constitutes a "release" of hazardous substances within the meaning of ORS 465.200(21), and makes the Property a "facility" within the meaning of ORS.465.200(12).

The owner of the Property, Mr. Chad Hindman conducted remedial activities under DEQ oversight to address most of the contamination identified through environmental investigations. In February, 1998 DEQ issued a letter to Mr. Hindman indicating that under current site conditions, no further remedial action was necessary. DEQ agreed to allow some contaminated soil in place, without further action, on the condition that additional action may be required if site conditions were to change. Port City Development Center plans to alter site conditions such that removal or remedial action shall be necessary at the Property to protect human health or the environment.

C. On May 13, 1998, Port City Development Center applied to DEQ for entry of this Agreement. Port City Development Center is a non-profit organization and therefore the advance deposit to reimburse DEQ's costs of technical review and agreement preparation was

waived. Port City Development Center shall be invoiced monthly for these costs and shall make payments in accordance with Section 3.F of this Agreement.

D. Port City Development Center is a non-profit corporation and a "person" within the meaning of ORS 465.200(20). According to information provided by Port City Development Center, Port City Development Center is not currently liable under ORS 465.255 for the release of hazardous substances existing at the facility as of the date of this Agreement.

E. Port City Development Center shall work under the oversight of DEQ's Voluntary Cleanup Program to perform the investigation and remedial activities described in Section 2 of this Agreement. Port City Development Center intends to develop the Property for use as a vocational work center for developmentally disabled youths and adults in the Portland metropolitan area. Port City Development Center employs approximately 84 developmentally disabled individuals and an additional 22 supervisors. By moving to this new Property, Port City Development Center will be able to have sufficient space to develop and implement a School-to-Work program which will give disabled high school students an opportunity to develop their work skills, upon anticipation of entering the workforce after graduation. Based upon this information, DEQ has determined that Port City Development Center's proposed activities at the facility will not contribute to or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the Property. DEQ further has determined that a "substantial public benefit" will result from this Agreement, within the meaning of ORS 465.327 (1)(d).

F. In determining to enter this Agreement, DEQ has consulted with the City of Portland and has considered reasonably-anticipated future land uses at the Property and surrounding properties.

G. Port City Development Center recognizes that implementation of remedial measures at the Property might interfere with Port City Development Center's use of the Property.

2. MEASURES TO BE UNDERTAKEN

A. Port City Development Center shall work under the oversight of DEQ's Voluntary Cleanup Program to perform necessary investigation and remedial actions for surface and subsurface soils contamination at the Property, in accordance with ORS 465.200 through 465.455 and related regulations, as provided herein:

- (1) Dry well area: A pocket of lead contaminated soil is located in the area to the east of Building #1, where historic discharges of water, dilute sulfuric acid, and lead have occurred. This pocket of contamination is located at approximately three to twenty feet below the ground surface. DEQ, as per its February 24, 1998 letter for the Property, approves leaving this pocket of contamination in place because the removal of this contamination would endanger the integrity of the building, and the contamination does not threaten human health, safety, welfare and the environment. Port City Development Center shall work under DEQ oversight to ensure that the contaminated soil remains isolated from human contact such that no exposure pathways are created. Consistent with this obligation, Port City Development Center is responsible for maintaining the integrity of a protective cap (e.g., soil, sidewalk,

etc.) along the entire eastern side of Building #1, extending two feet from the outside wall of the building. If physical changes are made to this two foot strip along the eastern side of Building #1 which result in exposing contaminated soils, Port City Development Center shall further evaluate the contamination, and is responsible for any remediation DEQ determines to be necessary.

- (2) Sump #1: A pocket of lead and TPH contaminated soil exists below Sump #1 in the northern portion of Building #1. Port City Development Center shall make physical alterations to the floor in the northern portion of Building #1, thereby changing the conditions of the Property. To prevent exposure of contaminated soils, Port City Development Center shall place and maintain a protective concrete cap over the sump. In the event that Port City Development Center significantly alters the northern portion of Building #1 such that the majority of the ground surface below the building structure is exposed, Port City Development Center shall be one of the parties potentially responsible for investigating and remediating any contaminated soils which may be discovered. Remedial activities may include: capping, treatment in place, or excavation and disposal. Such activities shall occur under DEQ's oversight and direction.

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C. Port City Development Center shall require all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that might affect the areas identified in Section 2A of this Agreement, or affect necessary investigatory and/or remedial measures, to also submit development and/or construction plans to Port City Development Center, for review by DEQ, as per Subsection 2.B. of this Agreement. This requirement is necessary to ensure that the actions of others do not interfere with remedial activities or exacerbate existing contamination. This review and approval requirement will expire upon the Property receiving a No Further Action determination from DEQ regarding all contaminated media.

D. Port City Development Center shall record and abide by use restrictions on the Property, which restrictions, pursuant to ORS 465.327(5), shall run with the land. These restrictions are described in Subsection 3.C. of this Agreement. Port City Development Center shall also impose and abide by any use and/or deed restrictions on the Property required by the

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E. Port City Development Center shall diligently pursue the development and uses of the Property described in Subsection 1.E. of this Agreement.

### 3. GENERAL PROVISIONS

#### A. DEQ Oversight

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(2) Port City Development Center shall allow DEQ to inspect and copy all records in Port City Development Center's possession or control relating to measures undertaken at the Property under this Agreement. Port City Development Center shall preserve all such records for

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(a) Surface water run off shall be directed away from the former dry well so as to prevent infiltration of rainwater to this area which has known soil contamination.

(b) Contaminated soils may not be disturbed without prior written approval from DEQ, unless such soil disturbance is related to investigation, removal, or remedial activities performed in accordance with a DEQ-approved work plan for such activity. Disturbance of soils includes excavation, grading, paving, construction, or any other activity that might expose or move contaminated soils at the Property.



(2) Port City Development Center shall ensure that all employees, agents, occupants, and authorized users of the Property abide by the use restrictions set forth in Paragraph 3.C (1). Pursuant to ORS 465.327(5), such use restrictions shall run with the land.

(3) The use restrictions required under this Subsection are in addition to and not in lieu of any institutional controls or other remedial measures that DEQ might deem necessary as part of a final remedial action at the Property.

D. Project Managers

All reports, notices, and other communications required under or relating to this Agreement shall be directed to:

Shelia Monroe  
DEQ - Voluntary Cleanup Program  
2020 SW 4<sup>th</sup> Avenue, Suite 400  
Portland, OR 97204  
Phone: 229-5445

George Scott  
Port City Development Center  
1847 E. Burnside  
Portland, OR 97214  
Phone: 236-9515

E. Progress Reports

Prior to beginning any construction on the Property requiring action pursuant to Section 2 of this Agreement, Port City Development Center shall begin regular reporting to DEQ. On a quarterly basis for the duration of this Agreement, or until the Property receives a No Further Action determination from DEQ, Port City Development Center shall submit to DEQ two (2) copies of a progress report describing its activities at the Property under this Agreement. DEQ anticipates that the progress report will not exceed two (2) pages in length. The progress report shall address, at a minimum, the following:

(1) Activities undertaken by Port City Development Center at the Property during the previous quarter;

(2) Actions scheduled to be taken by Port City Development Center in the next quarter;

(3) Sampling and test results and any other data generated by Port City Development Center during the previous quarter; and

(4) A description of any problems experienced by Port City Development Center during the previous quarter and the actions taken to resolve them.

F. DEQ Costs

(1) DEQ shall submit to Port City Development Center a monthly statement of costs incurred after the effective date of this Agreement by DEQ in connection with the oversight of Port City Development Center's implementation of this Agreement.

(2) DEQ oversight costs payable by Port City Development Center shall include both direct and indirect costs. The Cleanup Law Rewrite Surcharge is also a part of DEQ's oversight costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs. Indirect costs include general management, support, and program development costs of DEQ and the Waste Management and Cleanup Division allocable to DEQ oversight of this Agreement and not charged as direct site-specific costs. Indirect costs are based on a percentage of direct personal service costs. The Cleanup Law Rewrite Surcharge is 12% of direct personal services expenditures.

(3) Within thirty (30) days of receipt of the monthly statement, Port City Development Center shall pay the amount of costs billed by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund." Port City Development Center shall pay simple interest of 9% per annum on the unpaid balance of any oversight costs, which interest

shall begin to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked.

G. Dispute Resolution

In the event of any disagreement between DEQ and Port City Development Center regarding implementation of this Agreement, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and Port City Development Center shall, in the following order:

- (1) Make a good faith effort to resolve the dispute between project managers;
- (2) If necessary, refer the dispute for resolution by the immediate supervisors of the project managers; and
- (3) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution to DEQ's Administrator of the Waste Management and Cleanup Division or Northwest Regional Division Administrator, and Port City Development Center's Executive Director. DEQ's final decision after such dialogue shall be enforceable in accordance with Subsection 3.H. of this Agreement.

H. Enforcement of Agreement and Reservation of Rights

- (1) In the event of any failure of Port City Development Center to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any authority or pursue any claim or cause of action that DEQ might have. Port City Development Center reserves any defenses or counterclaims it might have in the event of such action by DEQ.

(2) Except as provided in Subsections 3.I and 3.J of this Agreement, DEQ and Port City Development Center reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.

(3) Port City Development Center does not admit any liability or violation of law by virtue of entering this Agreement.

(4) DEQ reserves its authority to perform remedial measures regarding a release of hazardous substances at or from the Property.

I. Waivers

(1) Port City Development Center waives any claim or cause of action it might have against the State of Oregon arising from contamination at the Property existing as of the date of acquisition of ownership or operation of the Property.

(2) Port City Development Center waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred for the work defined in Section 2 of this Agreement.

J. Hold Harmless and Indemnification

Port City Development Center shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of Port City Development Center or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by Port City Development Center or its agents in carrying out activities under this Agreement.

K. Public Notice

(1) Upon execution of this Agreement, DEQ will provide public notice of this Agreement in a local newspaper of general circulation, describing the measures to be undertaken under this Agreement. Copies of the Agreement will be made available to the public. DEQ shall provide Port City Development Center a draft of such notice and consider any comments by Port City Development Center on the draft notice, before publication. Port City Development Center is responsible for the publication costs, if any, of such notice per Subsection 3.F. of this Agreement.

(2) Before approval of any remedial action, DEQ will provide public notice and opportunity for comment on the proposed remedy in accordance with ORS 465.320.

L. Recording

Within fourteen (14) days of the effective date of this Agreement, Port City Development Center shall submit a copy or original of this Agreement (whichever is required by the county) to be recorded in the real property records of Multnomah County, State of Oregon. Port City Development Center shall provide DEQ with written evidence of such recording within seven (7) days of recording.

M. Transfer of Ownership

Upon transfer of ownership of the Property, or a portion of the Property, from Port City Development Center to another person or entity, Port City Development Center and the new owner shall provide written notice to the DEQ project manager within thirty (30) days of such transfer.

4. RELEASE FROM LIABILITY

A. Subject to the satisfactory performance by Port City Development Center of its obligations under this Agreement, Port City Development Center shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of a hazardous substance at the Property existing as of the date of Port City Development Center's acquisition of ownership or operation of the Property. Port City Development Center shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of ownership or operation of the Property.

B. The release from liability under Subsection 4.A of this Agreement shall not apply to any liability regarding:

(1) A release of hazardous substances at the Property after the date of acquisition of ownership or operation of the Property; provided, "release" does not include the migration, at or from the Property, of hazardous substances which existed on the Property before Port City Development Center acquired the Property;

(2) Contribution to or exacerbation of a release of hazardous substances;

(3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight, at the Property;

(4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property;

(5) Violation of federal, state, or local law;

(6) Any ownership, operation, or release of hazardous substances at the Property by Port City Development Center before the effective date of this Agreement;

(7) Any ownership, operation, or other ground of liability of Port City Development Center for a release of hazardous substances at an off-site location affecting the Property; and

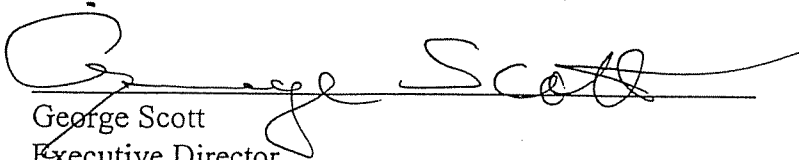
(8) Any matters as to which the State of Oregon is owed indemnification under Subsection 3.I of this Agreement.

5. PARTIES BOUND

A. This Agreement shall be binding on the signatories and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property shall in any way alter Port City Development Center's obligations under this Agreement, unless approved otherwise in writing by DEQ.

B. The benefits and burdens of this Agreement shall run with the land; however, the release from liability set forth in Subsection 4.A of this Agreement shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

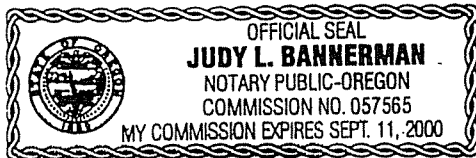
6. SIGNATURES

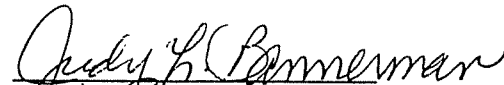


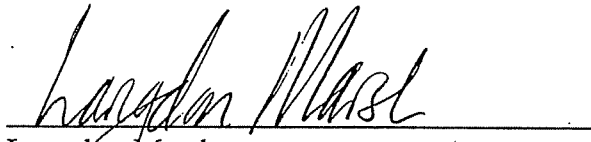
George Scott  
Executive Director  
Port City Development Center

Date: 9-1-98

SUBSCRIBED AND SWORN TO BEFORE ME this 1 day of  
September, 1998 by George Scott.



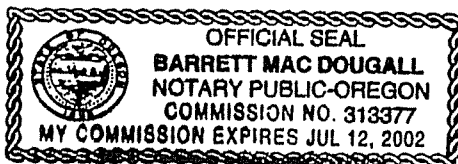
  
NOTARY PUBLIC FOR OREGON  
My Commission expires: 9-11-00

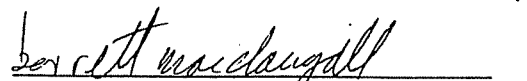


Langdon Marsh  
Director  
Oregon Department of Environmental Quality

Date: 9-10-98

SUBSCRIBED AND SWORN TO BEFORE ME this 10<sup>th</sup> day of  
September, 1998 by Langdon Marsh, in his capacity as Director of the  
Oregon Department of Environmental Quality.



  
NOTARY PUBLIC FOR OREGON  
My Commission expires: 7-12-02