

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF COLUMBIA

STATE OF OREGON, ex rel.  
LEAH FELDMAN, DIRECTOR  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY,

Plaintiff,

v.

RESTORCAP, LLC

Defendant.

Case No. [insert]

CONSENT JUDGMENT  
*General Judgment*

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Exhibit A: Vicinity Map

Exhibit B: Property Legal Description

Exhibit C: Upland and Lowland OU Map

Exhibit D: Surveyed Boundaries

Exhibit E: Scope of Work

Exhibit F: Easement and Equitable Servitude

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1. Purpose

This Consent Judgment is filed simultaneously with and for the purpose of resolving the underlying complaint by the State of Oregon. Plaintiff State of Oregon *ex rel.* the Director of the Department of Environmental Quality (“DEQ”) and Defendant RestorCap, LLC (“Defendant”) (collectively, the “Parties”) desire to resolve this action without litigation and have agreed to entry of the Consent Judgment without admission or adjudication of any issue of fact or law. The mutual objectives of the Parties are: (a) to protect public health, safety, and welfare and the environment in accordance with ORS 465.200 through 465.410, and regulations promulgated thereto; (b) to facilitate productive reuse of property; and (c) to provide Defendant with protection from potential liabilities in accordance with applicable law.

2. Stipulations and Findings

A. Defendant stipulates:

(1) To entry of this Consent Judgment;

(2) To perform and comply with all provisions of this Consent Judgment; and

(3) To not litigate, in any proceeding brought by DEQ to enforce this Consent Judgment or to assess penalties for noncompliance with this Consent Judgment, any issue other than Defendant’s compliance with this Consent Judgment.

B. DEQ and Defendant stipulate that, for the purpose of the Consent Judgment:

(1) “Site” or “Facility” as defined in ORS 465.200(13), means: (a) the Property; and (b) the full extent of existing known or unknown contamination by hazardous substances of any media on, above, or below the Property, or that has migrated, might have migrated, or hereafter migrates to anywhere from the Property. The Site has been assigned Environmental Cleanup Site Information (“ECSI”) number 91 by DEQ.

(2) “Property” means the real property located at 1645 Railroad Avenue, St. Helens, Oregon 97051, in Section 9 of Township 4 North and Range 10 West, Columbia County, Oregon, consisting of approximately 175 acres of land located above the ordinary low water line

of Scappoose Bay as illustrated generally in the Vicinity Map provided in Exhibit A to this Consent Judgment and legally described in Exhibit B to this Consent Judgment. All attachments are incorporated into this Consent Judgment by this reference.

(3) For purposes of selecting and implementing remedial actions, the Site has been divided into the Upland Operable Unit (“Upland OU”) and the Lowland/In-water Operable Unit (“Lowland/In-water OU”) as illustrated generally in Exhibit C. The Upland OU is the developed portion of the Site where former fiberboard operations are located. The Lowland/In-water OU includes submerged and submersible wetland, intertidal areas and in-water areas adjacent to the Upland OU. Exhibit D provides the surveyed boundaries of the Upland OU.

(4) “Matters Addressed” means all investigation, removal, and remedial actions taken or to be taken and all remedial action costs incurred or to be incurred at or in connection with a release of hazardous substances at the Facility.

(5) “Existing Hazardous Substance Releases” means: (a) any release of hazardous substances, as defined in ORS 465.200, at the Facility existing as of the date of Defendant’s acquisition of ownership or operation of the Property; (b) any spill or release of oil or hazardous material, as defined in ORS 466.605, at the Facility existing as of the date of Defendant’s acquisition of ownership or operation of the Property; and (c) the entry of oil into the waters of the state, as defined in ORS 468B.300, from the Facility before the date of Defendant’s acquisition of ownership or operation of the Property.

C. DEQ finds, and Defendant neither admits nor denies:

(1) Defendant is a limited liability company organized under the laws of California, and is in the business of redevelopment of former industrial properties and creation of mitigation sites.

(2) The Defendant proposes to purchase the Property that is currently owned by Armstrong World Industries, Inc. (“AWI”). The location of the Property is illustrated generally in the Vicinity Map, Exhibit A to this Consent Judgment. The legal description of the Property is

set forth in **Exhibit B** to this Consent Judgment. All attachments are incorporated into this Consent Judgment by this reference.

(3) Beginning in approximately 1930, the Property was used to manufacture a variety of mineral fiber and wood fiber building products, including ceiling boards and tiles, carpet board, and roof insulation. In 1929, the site was purchased by Fir-Tex Insulation Board Co. (“Fir-Tex”). Fir-Tex constructed a manufacturing plant on the Property where it made wood, paper, and wood fiber products. Dant & Russell acquired Fir-Tex in 1938, but the facility continued to be operated as Fir-Tex until 1956. From 1956 to 1978, Kaiser Gypsum Company, Inc. (“Kaiser”) owned the Property and manufactured wood and mineral fiber products, including ceiling tile and panels, carpet board, roof insulation, sheathing, and expansion joints, and maintained an asphalt coating operation. Owens Corning purchased the Property in August 1978 and manufactured wood fiber and mineral wool building products through 1981, then ceased all operations and mothballed the plant. In early 1987, Owens Corning sold the Property and certain assets to AWI. AWI manufactured acoustical ceiling tiles at the Property until May 2018.

(4) In June 2018, DEQ issued a Record of Decision (“ROD”) that presented the selected remedial action for the Upland OU. The selected remedial action addressed the presence of arsenic and dioxins/furans in upland soil and consists of the following elements: (i) hot spot soil excavation and off-Site disposal; (ii) engineering controls, including capping with buildings, pavement and/or gravel; (iii) grading as appropriate to prevent stormwater not captured by the stormwater conveyance system from flowing from unremediated areas into the lowland area; (iv) long-term monitoring and maintenance of the cap; (v) placement of a demarcation layer in all capping areas prior to placement of adequate paving or a minimum of one foot of clean imported cap material; (vi) institutional controls including a deed restriction in the form of an Easement and Equitable Servitudes (“EES”) and a site management plan (“SMP”); and (vii) periodic land and water use review.

(5) On June 18, 2019, DEQ entered into Consent Judgment No. 19-CV-26021 with AWI. In exchange for a release of liability, the AWI Consent Judgment required that AWI provide payment to DEQ for remedial action costs and natural resource damages for the Lowland/In-water OU and allowed for DEQ to complete a ROD and perform the ROD-required remedial action for the Lowland/In-water OU. It also required AWI to complete remedial design and remedial action to address contaminated soil at the Upland OU portion of the Site. The AWI Consent Judgment designated the following work to be performed: (i) payment of remedial action costs and natural resource damages; (ii) completion of remedial design and remedial action for the Upland OU; (iii) periodic review; and (iv) site restrictions.

(6) On July 16, 2019, DEQ entered into Consent Judgment No. 19-CV-29293 with Owens Corning Sales, LLC (“Owens Corning”). The Owens Corning Consent Judgment required that Owens Corning provide \$1,500,000 payment to DEQ for remedial action costs and natural resource damages, in exchange for a release of liability. Payment was received by DEQ on August 19, 2019.

(7) On November 19, 2019, AWI recorded with the Columbia County Clerk the EES specified in the Upland OU ROD and DEQ-AWI Consent Judgment No. 19-CV-26021 (“Upland EES”).

(8) On February 3, 2020, DEQ issued a Certification of Completion concluding that: (i) AWI provided payment in the amount of \$8,620,000 for remedial action costs and natural resource damages; (ii) AWI satisfactorily completed the implementation of the selected remedial action for the Upland OU as required under the AWI Consent Judgment; and (iii) no further remedial actions are required for the Upland OU to protect the public health, safety, and welfare or the environment, except as provided in the Upland EES.

(9) On March 20, 2020, DEQ entered into Consent Judgment No. 20-CV-11950 with Kaiser Gypsum Company, Inc., Hanson Permanente Cement, Inc., and Lehigh Hanson, Inc. (“Kaiser Gypsum”). The Kaiser Gypsum Consent Judgment required Kaiser Gypsum to provide

\$67,000,000 payment to DEQ for remedial action costs and natural resource damages, in exchange for a release of liability. The settlement was approved by the Circuit Court for the State of Oregon for the County of Multnomah (case #16CV32181) on September 13, 2021 following confirmation of Kaiser Gypsum’s plan for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of North Carolina (case # 16-31602), and payment was made to DEQ on October 12, 2021.

(10) DEQ is performing a remedial investigation and feasibility study and will implement remedial actions for the Lowland/In-water OU using funds received from the Consent Judgments with Owens Corning, AWI, and Kaiser Gypsum. The remedial action will be documented in a ROD and is anticipated to address contaminated soil, sediment and groundwater through excavation, dredging, capping, off-Site disposal, on-Site consolidation, in situ treatment, enhanced natural recovery, monitored natural recovery, long-term monitoring and maintenance, and institutional controls. The remedial action will be designed and constructed in compliance with federal, state and local permitting requirements, and is anticipated to include on-Site and off-Site habitat mitigation and restoration subject to consultations with the permitting agencies and natural resource agencies.

(11) The Defendant intends to bring the Property back into productive use as data center(s), renewable battery storage, warehouse storage, and will explore restoration and mitigation opportunities in the Lowland/In-water OU (in consultation with DEQ), which will create jobs, generate property tax revenue, and benefit the local economy and environment in St. Helens and Columbia County.

(12) The primary contaminants of concern (“COCs”) are dioxins/furans, arsenic, mercury, and polycyclic aromatic hydrocarbons (“PAHs”). The nature and extent of these and other contaminants are described in several remedial investigation reports that are contained in the administrative record for this Site. These contaminants are “hazardous substances” within the meaning of ORS 465.200(16). The presence of hazardous substances at the Property constitutes a

“release” of hazardous substances within the meaning of ORS 465.200(22), and makes the Property a “facility” within the meaning of ORS 465.200(13).

(13) Pursuant to ORS 465.255(1)(b), Defendant could become liable to DEQ and other persons for releases of hazardous substances at or from the Property by becoming the owner or operator of the Property with actual or constructive knowledge of the releases. On December 12, 2023, Defendant applied to DEQ for a “prospective purchaser” agreement under ORS 465.327 and agreed to reimburse DEQ’s costs of technical review and preparation. This Consent Judgment is intended to protect Defendant from potential liability for pre-acquisition releases of hazardous substances at or from the Property, in return for Defendant undertaking certain obligations, as described in this Consent Judgment. In determining to propose this Consent Judgment, DEQ considered reasonably anticipated future land uses at the Property and surrounding properties and consulted with the City of St. Helens Planning Department. This Consent Judgment is entered into pursuant to ORS 465.325 and ORS 465.327.

(14) On [Date], DEQ published notice of this proposed Consent Judgment and provided opportunity for public comment in accordance with ORS 465.320(1) and 465.325(4)(d). [Insert public meeting date and oral comments received, if applicable.] The comment period ended [Date]. Comments were received and considered by DEQ, as documented in the administrative record.

(15) Consistent with ORS 465.327(1):

- (a) Defendant is a “person” within the meaning of ORS 465.200(21);
- (b) Defendant is not currently liable under ORS 465.255, 466.640, or 468B.310 for the Existing Hazardous Substance Releases;
- (c) Removal or remedial action is necessary at the Property to protect human health or the environment;
- (d) Defendant’s ownership and operation of the Property will not cause, contribute to, or exacerbate existing contamination, increase health risks, or interfere with

existing remedial measures in the Upland OU or future remedial measures to be implemented by DEQ in the Lowland/In-water OU; and

(e) A substantial public benefit will result from this Consent Judgment.

(16) Based on the administrative record, the Director of DEQ determines that: (a) the release from liability set forth in Subsection 5.B satisfies the criteria set forth in ORS 465.327(1); (b) the covenant not to sue set forth in Subsection 5.D satisfies the criteria set forth in ORS 465.325(7)(a) and (d); and (c) this Consent Judgment and Defendant's commitments under this Consent Judgment will expedite removal or remedial action, minimize litigation, be consistent with rules adopted under ORS 465.400, and be in the public interest.

3. Work to be Performed

A. Measures to be Undertaken

(1) Defendant will perform the measures to be undertaken for the Site in accordance with the terms and schedules set forth in the Scope of Work ("SOW") attached to and incorporated by reference into this Consent Judgment as **Exhibit E**.

B. Modification of SOW or Related Work Plans

(1) If DEQ determines that modification to the measures specified in the SOW and/or in work plans developed pursuant to the SOW is necessary in order to implement or maintain the effectiveness of the remedies set forth in the Upland OU or Lowland/In-water OU RODs, DEQ may require that such modification be incorporated in the SOW; provided, any such modification may be required pursuant to this paragraph only to the extent that the modification is consistent with the scope of the remedy selected in the Upland OU and Lowland/In-water OU RODs to protect public health and the environment.

(2) Subject to dispute resolution under Subsection 7.M., Defendant will modify the SOW and/or work plans as required by DEQ and implement any work required by the modifications. Before invoking dispute resolution under Subsection 7.M., Defendant and DEQ will make a good-faith effort to resolve any dispute regarding DEQ-requested modifications by

informal discussions for no more than 30 days following notice from DEQ of a requested modification.

C. Additional Measures

Defendant may elect at any time during the term of this Consent Judgment to undertake measures, beyond those required under this Consent Judgment and the SOW, necessary to address the release or threatened release of hazardous substances or associated with habitat enhancement at the Property. Such additional measures are subject to prior approval by DEQ. DEQ's approval will be granted if DEQ determines that the additional measures are consistent with the remedial action objectives in the Upland OU and Lowland/In-water OU RODs and will not threaten human health or the environment.

D. Site Restrictions and Periodic Reviews

(1) Within 30 days of entry of this Consent Judgment, Defendant will record with the County Clerk, Columbia County, the Lowland/In-water OU EES attached to this Consent Judgment as **Exhibit F**. Defendant will provide DEQ a file-stamped copy of the EES within five working days of recording.

(2) Property subject to the Lowland/In-water OU EES may be freely alienated at any time after recording, provided the deed or other instrument of conveyance refers to or incorporates the Easement and Equitable Servitude.

(3) Any deed, title, or other instrument of conveyance regarding the Property must contain a notice that the Property is the subject of this Consent Judgment. Defendant, in any such deed or conveyance, must also reserve such access (by easement, right-of-way, or otherwise) as might be necessary to carry out Defendant's obligations under this Consent Judgment.

(4) At least once every five years, DEQ will review the remedy to ensure that the Property remains protective of public health, safety, and welfare and the environment. Periodic reviews will include evaluation of monitoring data, progress reports, inspection and maintenance

reports, land and water uses, compliance with institutional controls, and any other relevant information.

4. General Provisions

A. Project Managers

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

DEQ Project Manager

Sarah Greenfield  
Department of Environmental Quality  
Northwest Region  
700 NE Multnomah Street, Suite 600  
Portland, Oregon 97232  
(503) 229-5245  
sarah.greenfield@oregon.deq.gov

Defendant Project Manager

Andy Gregg  
General Counsel  
RestorCap, LLC  
337 17<sup>th</sup> Street, Suite 200  
Oakland, CA 94612  
Phone: (714) 580-2004  
Email: [andyg@restorcap.com](mailto:andyg@restorcap.com)

(2) The Project Managers or their respective designees must be available and have the authority to make day-to-day decisions necessary to complete the work described under Section 3.

B. Supervising Contractor

(1) All aspects of the work to be performed by Defendant pursuant to this Consent Judgment must be performed under the direction and supervision of a qualified employee or contractor having experience in hazardous substance remediation and knowledge of applicable state and federal laws, regulations, and guidance.

(2) Before initiation of ground disturbing activities at the Upland OU and/or Lowland/In-water OU associated with work by Defendant under this Consent Judgment, including clearing of vegetation, Defendant will review and comply with the SMP and EES, including notifying DEQ in writing of the name, title, and qualifications of any proposed supervising contractor where required by the SMP or EES. DEQ may for good cause disapprove the proposed contractor. In the event of such disapproval, DEQ will notify Defendant in writing

of the reasons for its disapproval within 14 days of receipt of the initial notice from Defendant. Defendant, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the name, title, and qualifications of an alternate supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above.

(3) If, during the course of work required under this Consent Judgment, Defendant proposes to change its supervising contractor, Defendant will notify DEQ in accordance with the provisions of the preceding paragraph. DEQ may disapprove such contractor, under the terms and schedule specified in the preceding paragraph.

C. DEQ Approvals

(1) Where DEQ review and approval is required for any plan or activity under this Consent Judgment, Defendant may not proceed to implement the plan or activity prior to DEQ approval. Any DEQ delay in granting or denying approval correspondingly extends the time for completion by Defendant. Prior approval is not required in emergencies, provided Defendant notifies DEQ immediately after the emergency and evaluates the impact of its actions.

(2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Consent Judgment, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part, and notify Defendant of its deficiencies and/or request modifications to cure the deficiencies.

(3) DEQ approvals, rejections, or identification of deficiencies will be given in writing within the time specified in the SOW or as soon as practicable, and will state DEQ's reasons with reasonable specificity.

(4) In the event of DEQ disapproval or request for modification of a submission, Defendant will, within 30 days of receipt of the DEQ notice or such longer time as may be specified in the notice, correct the deficiencies and resubmit the revised report or other item for approval.

(5) In the event of two deficient submittals of the same deliverable that are

deficient for the same reasons due to Defendant's failure in good faith to cure the original deficiency, DEQ may modify the submission to cure the deficiency.

(6) In the event of approval or modification of a submission by DEQ, Defendant will implement the action(s) required by the plan, report, or other item, as so approved or modified, or invoke dispute resolution under Subsection 4.M.

D. Access to Property

(1) Defendant will allow DEQ and its officers, agents, authorized representatives, employees, and contractors to enter all portions of the Site owned by or under the control of Defendant at all reasonable times for the purpose of overseeing Defendant's performance under this Consent Judgment and for purposes of performing investigations, removal actions, and/or remedial actions in the Lowland/In-water OU. DEQ's right of access hereunder includes but is not limited to inspecting records relating to work under this Consent Judgment; conducting such tests and taking such samples as DEQ deems necessary; verifying data submitted to DEQ by Defendant; conducting periodic review; and using camera, sound recording, or other recording equipment. DEQ will make available to Defendant, upon Defendant's request, any photographs or recorded or videotaped material taken.

(2) Before undertaking any remedial activity at the Upland OU and/or Lowland/In-water OU, except for in the event of an emergency, DEQ shall provide Defendant at least 72 hours verbal notice of the activity. Prior to staging any equipment or placing any temporary structures on the Property, DEQ shall provide Defendant no less than 30 days written notice of the activity and provide Defendant an opportunity to review and comment on the location and design of remedial activities.

(3) DEQ shall comply with all applicable federal, state, and local laws at all times while on the Property and, subject to ORS 465.315(3), secure all necessary permits and authorizations in connection with remedial activities at the Property. Defendant shall cooperate with DEQ as necessary for DEQ to obtain and remain compliant with all necessary permits and

authorizations.

(4) DEQ shall conduct all activities on the Property in a manner to limit impacts on the Property operations to the extent reasonably practicable taking into consideration Defendant's reasonable privacy and security requirements. DEQ shall provide to Defendant plans for any operations in the upland OU to minimize interference with Defendant's known operations in the Upland OU. DEQ shall restore the surface condition of any areas of the Property disturbed by DEQ's remedial activities to the extent reasonably practicable to the condition they were in prior to commencement of DEQ's activities or better.

(5) DEQ shall be responsible for the health and safety of its agents, employees, contractors, or assigns entering or moving about the Site to perform investigation or removal or remedial action. To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Defendant and its respective directors, members, shareholders, partners, affiliates, officers, representatives, tenants, employees, contractors, agents, successors, and assigns from and against any and all liability for any and all claims to the extent the liability arises from acts or omissions related to DEQ's performance of remedial measures at the Property under this Consent Judgment by the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents. This indemnity does not extend to liability for any claim to the extent caused by wrongful acts or omissions of Defendant or its tenants or agents, or those of a third party, or for any claim to the extent attributable to contamination already existing at the Facility at the time of entry of this Consent Judgment, except to the extent the indemnity claim arises out of gross negligence or intentional misconduct by DEQ that exacerbates existing contamination.

(6) DEQ's activities at the Property may include but are not limited to: (a) sampling and inspecting water, sediment, and/or soil in the Upland OU and/or Lowland/In-water OU; (b) removing, capping, or otherwise remediating contaminated sediment and soil in the Lowland/In-water OU; (c) dewatering contaminated sediment and soil in the upland area; (d)

temporarily storing equipment, vehicles, tools, and other materials; (e) temporarily storing wastewaters and related materials and wastes; (f) restoring the surface condition of areas disturbed by DEQ activities; (g) photographing portions of the Property and structures, objects, materials at the Property as necessary to facilitate remedial measures; and (h) activities necessary for implementation of Lowland/In-water OU remedial actions including (i) sediment dewatering, (j) water management, (k) truck and or rail car loading, (l) temporary offices, (m) contractor parking, and (n) all other activities reasonably required to safely and efficiently complete the remedial actions.

(7) All tools, equipment, and other property brought upon the Property by or at DEQ's direction remain DEQ's property, and shall be removed by DEQ no later than completion of applicable investigation, removal, or remedial activities at the Property. Any activity requiring more than 30 days' consecutive presence or the treating/dewatering of contaminated sediment or soil at the Property must be specifically negotiated with Defendant and is otherwise subject to this Subsection 4.D. In negotiating access for activities for implementation of a Lowland/In-water OU remedial action or otherwise which requires access on or through the Upland OU, Defendant will give reasonable access for such activities subject to DEQ making reasonable accommodations so as to limit interference with then-existing or planned usage or operations on the Upland OU. DEQ shall manage and dispose of all waste generated by DEQ in accordance with all applicable federal, state, and local laws, and DEQ shall be designated as the generator of all such waste. Except with the written consent of Defendant, DEQ may not store, dispose of, or discharge at the Property any waste generated by DEQ's remedial activities.

(8) Defendant, or their authorized representatives, may observe DEQ while DEQ is undertaking investigation, removal, or remedial activities in the Lowland/In-water OU; provided that any observer must have health and safety training consistent with the requirements of the health and safety plan for DEQ's activities and fully indemnifies DEQ, its consultants and Contractors. Upon request with 30 days prior notice, DEQ shall provide Defendant a split or

duplicate sample taken in connection with this Consent Judgment, as well as a copy of all test data, final sample results and analysis reports, toxicity evaluations, and other written reports that arise from DEQ's investigation, removal, or remedial activities at the Property, unless the record is exempt from disclosure under the Oregon Public Records Law. DEQ shall conduct sampling, sample transport, and sample analysis in accordance with the Quality Assurance/Quality Control ("QA/QC") provisions of a work plan consistent with DEQ's *Quality Assurance Policy for the Environmental Cleanup Programs* (DEQ10-LQ-0063-QAG).

(9) DEQ may use its statutory authority to obtain access to property on behalf of Defendant if DEQ determines that access is necessary and that Defendant has exhausted all good faith efforts to obtain access.

E. Records

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

(2) Defendant will preserve all records and documents in possession or control of Defendant or its employees, agents, or contractors that relate in any way to activities under this Consent Judgment for at least five years after their creation. Following this retention period, Defendant will provide DEQ 60 days notice before destruction or other disposal of such records or documents.

(3) Subject to Paragraph 4.E.(4), Defendant may assert a claim of confidentiality under the Oregon Public Records Law regarding any documents or records submitted to or copied by DEQ pursuant to this Consent Judgment. DEQ will treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If Defendant does not make a claim of confidentiality at the time the documents or

records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Defendant.

(4) Defendant will identify to DEQ (by addressor-addressee, date, general subject matter, and distribution) any document, record, or item withheld from DEQ on the basis of attorney-client or attorney work product privilege, except to the extent that such identifying information is itself subject to a privilege. Attorney-client or work product privilege may not be asserted with respect to any records required to be submitted under Paragraph 4.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Defendant.

F. Notice and Samples

(1) Defendant will make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other fieldwork to be conducted under this Consent Judgment at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Defendant will make every reasonable effort to provide a split or duplicate sample to DEQ or allow DEQ to take a split or duplicate of any sample taken by Defendant while performing work under this Consent Judgment. DEQ will provide Defendant with copies of all analytical data from such samples as soon as practicable. Defendant's work under this Consent Judgment shall not interfere with DEQ implementation of any Lowland/In-Water OU remedial action, except with the express written consent of DEQ.

(2) If DEQ or its contractors will be accessing the Property, DEQ or its contractors will, except in an emergency, make every reasonable effort to notify Defendant at least 72 hours before such access (and in an emergency will provide notice as soon as possible before accessing the Property). Upon Defendant's verbal request, DEQ will make every reasonable effort to provide a split or duplicate sample to Defendant or allow Defendant to take a split or duplicate of any sample taken by DEQ, and will provide Defendant with copies of all analytical data for such samples. Defendant will provide DEQ with copies of all analytical data

from such samples as soon as practicable.

G. Quality Assurance

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

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

H. Progress Reports

[This Section Intentionally Omitted]

I. Other Applicable Laws

(1) Subject to ORS 465.315(3), all activities under this Consent Judgment must be performed in accordance with all applicable federal, state, and local laws.

(2) All activities under this Consent Judgment must be performed in accordance with any applicable federal, state, and local laws related to archeological objects and sites and their protection. If archeological objects or human remains are discovered during any investigation, removal, or remedial activity at the Property, Defendant will, at a minimum: (a) stop work immediately in the vicinity of the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that Defendant and its employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing information regarding the discovery

with any member of the public. Any project delay caused by the discovery of archeological object or human remains is a Force Majeure under Subsection 4.L.

J. Reimbursement of DEQ Costs

(1) DEQ will submit to Defendant a monthly invoice of costs on or after [Date] in connection with: (a) development and approval of this Consent Judgment; (b) amendment of the DEQ-AWI Consent Judgment No. 19-CV-26021, EES and SMP that relates to this Consent Judgment and Defendant's acquisition of the Property; (c) DEQ's assistance with any other approvals requested by Defendant or AWI that relate to Defendant's acquisition or redevelopment of the Property; and (d) any activities related to the oversight and periodic review of Defendant's implementation of this Consent Judgment. Each invoice must include a summary of costs billed to date.

(2) DEQ shall not charge or invoice Defendant for work related to the Lowland/In-water OU unless specified in other provisions of this Consent Judgment, Upland OU EES, Lowland/In-water OU EES, or SMP.

(3) DEQ oversight costs payable by Defendant include direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually and reasonably incurred by DEQ under ORS 465.200 *et seq.* DEQ's direct cost summary must include a Land Quality share direct labor summary showing the persons charging time, the number of hours, and the nature of work performed. Indirect costs include those general management and support costs of DEQ and of the Land Quality share allocable to DEQ oversight under this Consent Judgment and not charged as direct, site-specific costs. Indirect charges are based on actual costs and applied as a percentage of direct personal services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to document work performed and expenses incurred under this Consent Judgment and, upon request, will provide copies of such records to Defendant.

(4) Within 30 days of receipt of DEQ's invoice, Defendant will pay the amount of

costs billed by check payable to the “State of Oregon, Hazardous Substance Remedial Action Fund,” or invoke dispute resolution under Subsection 4.M. After 30 days, any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, become a liquidated debt collectible under ORS 293.250 or other applicable law.

(5) Defendant will pay simple interest of 9% per annum on the unpaid balance of any DEQ oversight costs, which interest will begin to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount disputed under Subsection 4.M will begin to accrue 30 days from final resolution of any such dispute.

K. Financial Assurance

[This Section Intentionally Omitted]

L. Force Majeure

(1) If any event occurs that is beyond Defendant’s reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Judgment despite Defendant’s reasonable efforts (“Force Majeure”), Defendant will promptly, upon learning of the event, notify DEQ’s Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Defendant proposes to carry out such measures. Defendant will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Defendant from asserting Force Majeure for the event and for any additional delay caused by the event.

(2) If Defendant demonstrates to DEQ’s satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Judgment as appropriate. Circumstances or events constituting Force Majeure might include but not be limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, fire, explosion, riot, sabotage, war, and delays in

receiving a governmental approval or permit. Normal inclement weather, increased cost of performance or changed business or economic circumstances may not be considered Force Majeure.

M. Dispute Resolution

(1) If Defendant disagrees with DEQ regarding any matter relating to this Consent Judgment, Defendant will promptly notify DEQ in writing of its objection. DEQ and Defendant then will make a good-faith effort to resolve the disagreement within 21 days of Defendant's written objection. At the end of the 21-day period, DEQ will provide Defendant with a written statement of its position from DEQ's Northwest Region Cleanup Program Manager. If Defendant still disagrees with DEQ's position, then Defendant, within 21 days of receipt of DEQ's position from the Cleanup Manager, will provide Defendant's position and rationale in writing to DEQ's Northwest Region Administrator. The Region Administrator may discuss the disputed matter with Defendant and, in any event, will provide Defendant with DEQ's final position in writing as soon as practicable after receipt of Defendant's written position.

(2) If Defendant refuses or fails to follow DEQ's final position pursuant to Paragraph 4.M.(1), and DEQ seeks to enforce its final position, the Parties, subject to Subsection 2.A. and Section 7, are entitled to such rights, remedies, and defenses as are provided by applicable law.

(3) During the pendency of any dispute resolution under this subsection, the time for completion of work or obligations affected by such dispute is extended for a period of time not to exceed the actual time taken to resolve the dispute. Elements of work or obligations not affected by the dispute must be completed in accordance with the applicable schedule.

N. Effect of Consent Judgment

(1) If Defendant fails to comply with this Consent Judgment, DEQ may seek civil penalties under ORS 465.900 and enforcement of this Consent Judgment by this Court. If DEQ

seeks enforcement of this Consent Judgment by this Court, DEQ may seek monetary sanctions, such as civil penalties, only if DEQ has not assessed and collected any civil penalties under ORS 465.900 regarding the same violation.

(2) Subject to Section 2, Defendant does not admit any liability, violation of law, factual or legal findings, conclusions, or determinations asserted in this Consent Judgment.

(3) Nothing in this Consent Judgment is intended to create any cause of action in favor of any person not a party to this Consent Judgment.

(4) Subject to Section 2 and Section 7, nothing in this Consent Judgment prevents DEQ, the State of Oregon, or Defendant from exercising any rights each might have against any person not a party to this Consent Judgment.

(5) If for any reason the Court declines to approve this Consent Judgment in the form presented, this settlement is voidable at the sole discretion of any Party and the terms of the settlement may not be used in evidence in any litigation among or against the Parties.

(6) DEQ and Defendant intend for this Consent Judgment to be construed as a judicially-approved settlement by which Defendant has resolved its liability to the State of Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9613(f)(2), regarding Matters Addressed, and for Defendant not to be liable for claims for contribution regarding Matters Addressed to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

(7) Unless specified otherwise, the use of the term “days” in this Consent Judgment means calendar days.

(8) This Consent Judgment is void and of no effect if Defendant does not complete acquisition of the Property by October 31, 2024.

O. Indemnification and Insurance

(1) Defendant will indemnify and hold harmless the State of Oregon and its

commissions, agencies, officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Judgment of Defendant or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contracts made by Defendant or its agents in carrying out activities under this Consent Judgment.

(2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Defendant and its respective officers, employees, contractors, and agents, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Consent Judgment of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents (except for acts or omissions constituting approval or disapproval of any activity of Defendant under this Consent Judgment). Defendant may not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Judgment.

(3) Before commencing any on-site work under this Consent Judgment, Defendant will obtain and maintain for the duration of this Consent Judgment comprehensive general liability and automobile insurance with limits of \$2 million, combined single limit per occurrence, naming as an additional insured the State of Oregon. Upon DEQ request, Defendant will provide DEQ a copy or other evidence of the insurance. If Defendant demonstrates by evidence satisfactory to DEQ that its contractor(s) or subcontractor(s) maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for a lesser term, Defendant may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

P. Parties Bound

This Consent Judgment is binding on the Parties and their respective successors, agents, and assigns. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Consent Judgment. No change in ownership,

corporate, or partnership status relating to the Property in any way alters Defendant's obligations under this Consent Judgment, unless otherwise approved in writing by DEQ.

Q. Modification

DEQ and Defendant may modify this Consent Judgment by written agreement, subject to approval by this Court. DEQ and Defendant may modify the SOW, Upland OU EES, Lowland/In-water OU EES, or SMP without having to obtain court approval, provided the modification does not negatively impact DEQ's ability to select and implement protective and feasible remedial actions for the Lowland/In-water OU and is consistent with the Upland OU ROD.

R. Recording

Within 14 days of Defendant's acquisition of the property, Defendant will submit a copy or original of this Consent Judgment (whichever is required by the county) to be recorded in the real property records of Columbia County, Oregon. Defendant will provide DEQ with written evidence of such recording within seven days of recording.

S. Service

Each Party designates in Exhibit G the name and address of an agent authorized to accept service of process by mail on behalf of the Party with respect to any matter relating to this Consent Judgment. Each Party agrees to accept service in such manner, and waives any other service requirements set forth in the Oregon Rules of Civil Procedure or local rules of this Court. The Parties agree that Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to approve this Consent Judgment.

5. Releases from Liability and Covenant Not to Sue

A. Pursuant to ORS 465.327(3), this Consent Judgment is a "prospective purchaser agreement" entered as a judicial consent judgment in accordance with ORS 465.325. Thus, this Consent Judgment contains related but independent liability provisions pursuant to both ORS 465.327 and 465.325. The ORS 465.327 liability provisions are set forth below in Subsections

5.B. and 6.B. The ORS 465.325 liability provisions are set forth below in Subsections 5.D., 6.A., and 6.C. In addition to these state law provisions, this Consent Judgment may affect Defendant's rights and liabilities under federal and other laws, as described in Paragraph 4.N.(6) and Subsection 5.E.

B. Pursuant to ORS 465.327, and subject to Subsection 5.C. and the satisfactory performance by Defendant of its obligations under this Consent Judgment, Defendant is not liable to the State of Oregon under ORS 465.200 to 465.545 and 465.900, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases. Defendant bears the burden of proving by a preponderance of the evidence that a hazardous substance release (for all hazardous substances, hazardous materials, and oil described in Paragraph 2.B.(3)) existed as of the date of Defendant's acquisition of ownership or operation of the Property.

C. The release from liability under Subsection 5.B. does not affect liability of Defendant for claims arising from:

- (1) A release of hazardous substances, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property on or after the date of Defendant's acquisition of ownership or operation of the Property;
- (2) Contribution to or exacerbation, on or after the date of Defendant's acquisition of ownership or operation of the Property, of a release of hazardous substance, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property;
- (3) Interference or failure to cooperate, on or after the date of Defendant's acquisition of ownership or operation of the Property, with DEQ or other persons conducting remedial measures under DEQ's oversight at the Property;
- (4) Failure to exercise due care or take reasonable precautions, on or after the date of Defendant's acquisition of ownership or operation of the Property, with respect to any hazardous substance at the Property;
- (5) Disposal or management of hazardous substances or solid waste removed

from the Property by or on behalf of Defendant;

(6) Criminal liability;

(7) Violation of federal, state, or local law on or after the date of Defendant's acquisition of ownership or operation of the Property;

(8) Any matters as to which the State of Oregon is owed indemnification under Paragraph 4.O.(1); and

(9) Claims based on any failure by Defendant to meet any requirements of this Consent Judgment.

D. Pursuant to ORS 465.325, subject to satisfactory performance by Defendant of its obligations under this Consent Judgment, the State of Oregon covenants not to sue or take any other judicial or administrative action against Defendant under ORS 465.200 to 465.545 and 465.900 regarding Matters Addressed, except that the State of Oregon reserves all rights against Defendant with respect to claims and liabilities described in Subsection 5.C.

E. Subject to satisfactory performance by Defendant of its obligations under this Consent Judgment, DEQ releases Defendant from liability to DEQ under any federal or state statute, regulation, or common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, regarding the release or threatened release of hazardous substances addressed in this Consent Judgment, except that DEQ reserves all rights against Defendant with respect to claims and liabilities described in Subsection 5.C.

6. Third-Party Actions

A. This Consent Judgment is a judicially-approved settlement within the meaning of ORS 465.325(6)(b), pursuant to which Defendant has resolved its liability to the State of Oregon and is not liable for claims for contribution regarding Matters Addressed.

B. Subject to the satisfactory performance by Defendant of its obligations under this Consent Judgment, Defendant is not liable to any person under ORS 465.200 to 465.545,

466.640, or 468B.310 regarding Existing Hazardous Substance Releases.

C. Subject to Section 7, Defendant may seek contribution in accordance with ORS 465.325(6)(c)(B).

7. Defendant Waivers

A. Defendant waives any claim or cause of action it might have against the State of Oregon regarding Existing Hazardous Substance Releases, provided Defendant reserves all rights concerning the obligations of DEQ under this Consent Judgment.

B. Defendant waives any rights it might have under ORS 465.260(7) and 465.325(2) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for costs incurred under this Consent Judgment or related to the Property.

8. Benefits and Burdens Run with the Land

A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Judgment run with the land, provided the releases from liability and covenant not to sue set forth in Section 5 limit or otherwise affect the liability only of persons who: (1) are not potentially liable under ORS 465.255, 466.640, or 468B.310 for Existing Hazardous Substance Releases; and (2) expressly assume in writing, and are bound by, the terms of this Consent Judgment applicable to the Property as of the date of their acquisition of ownership or operation.

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

9. Certification of Completion

A. Upon Defendant's recording of the Lowland/In-water OU EES in accordance with the SOW, DEQ will provide public notice and opportunity to comment on a proposed certification decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration

of public comment, the Director of DEQ will issue a final certification decision. The certification decision will subsequently be submitted by DEQ to this Court. A certification of completion does not affect Defendant's remaining obligations under this Consent Judgment.

10. Continuing Jurisdiction

This Court retains jurisdiction over the Parties and the subject matter of this Consent Judgment.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, [Year].

\_\_\_\_\_  
Circuit Court Judge, Columbia County

STATE OF OREGON, DEPARTMENT OF ENVIRONMENTAL QUALITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name]  
Administrator, Operations Division

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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RESTORCAP, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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Partner & General Counsel

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