



Oregon

Kate Brown, Governor

#017-16

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AGREEMENT FOR PAST AND FUTURE REIMBURSEMENT OF REMEDIAL COSTS FORMER PROGRESS CLEANERS, ECSI #3798

Hudson Investment Company (HIC) is the owner of the former Progress Cleaners site (ECSI #3798, DCID #291), located at 8602 SW Hall Boulevard in Beaverton, Oregon, which was contaminated with dry cleaning solvent during operation of the former dry cleaner. The DEQ Dry Cleaner Program (DCP) performed a cleanup on site and installed remediation equipment that needs ongoing operation. HIC has made a claim for reimbursement to the DCP for HIC's past costs associated with contamination on site. This agreement provides for reimbursement of certain past remedial action costs incurred by HIC, identifies roles and responsibilities for ongoing engineering controls at the site, and establishes a process for reimbursement of future costs incurred by HIC in the event the DCP is unable to fund the repair or replacement of certain controls in a reasonable time frame to maintain safe business operations.

RECITALS

- A. HIC is the owner of a multi-unit commercial property located at or near 8602 SW Hall Boulevard in Beaverton, Oregon. HIC rents units in the property to commercial tenants.
- B. A tenant of the 8602 SW Hall Boulevard property (the "Site") between about 1963 and about 2007 was Progress Dry Cleaners, a dry cleaning business.
- C. Environmental investigations beginning in January 2003 revealed that Progress Dry Cleaners was the source of releases of dry cleaning solvents to the environment, including the release of tetrachloroethene (PCE) to soils and groundwater below HIC's building. Analytical testing near and beneath the Site detected elevated levels of PCE, trichloroethene, cis 1,2-dichloroethene, and vinyl chloride in soil and groundwater. As a result of the hazardous substance releases at the Site, DEQ listed the Site on its Environmental Cleanup Site Information (ECSI) database as Site #3798.
- D. In February 2003, DEQ accepted a Dry Cleaner Environmental Response Application for the Site under ORS § 465.500 *et seq.* Based on information available at the time of this agreement, beginning with the commencement of the DCP, Progress Dry Cleaners complied with the requirements of ORS § 465.500 *et seq.* necessary to exempt dry cleaning owners and dry cleaning operators from liability for cleanup resulting from the release of dry cleaning solvents. As a

result, HIC meets the requirements for the liability exemption defined in ORS § 465.503.

- E. DEQ undertook certain cleanup activities at the Site, resulting in DEQ's determination that implementation of engineering controls has reduced risk from contamination remaining at or near the Site to protective levels. The engineering controls are designed to address vapor intrusion, and include the continued operation of a sub-slab depressurization fan as well as a vapor barrier system comprised of the vapor barrier liner and concrete surface placed over the liner (collectively, "Engineering Controls").

AGREEMENT

I. Reimbursement of Certain Past Remedial Action Costs

DEQ will pay to HIC the sum of \$16,300 within 45 days of this Agreement for monitoring performed at the Site as part of the remedial action undertaken at the Site. Contingent upon DEQ payment to HIC of this amount, HIC releases DEQ from liability to HIC for past costs HIC incurred in response to contamination from dry cleaning solvent releases at the Site.

II. Future Responsibilities and Reimbursement

- A. Responsibility for Operation and Maintenance. During the term of this Agreement, HIC is responsible for operating the sub-slab depressurization fan, and for notifying DEQ if the fan system fails to operate. HIC is also responsible for ensuring that the vapor barrier liner in the slab floor of the building is not breached by coring, sawing or other physical means of intrusion through the concrete surface over the vapor barrier liner. Notwithstanding the foregoing, however, the parties acknowledge that cracks are present in the concrete slab floor and that HIC shall not be responsible for damage to the vapor barrier resulting from those cracks.
- B. Cost of Future Operation of the Sub-Slab Depressurization System: Indoor air sampling data has shown that the former Progress Cleaners site and neighboring space are safe to occupy provided that the sub-slab depressurization fan is operated. HIC has agreed to continuously operate the fan during the term of this Agreement, unless the parties hereto agree otherwise; provided, however, that upon ten (10) calendar days notice to DEQ, HIC may turn off the depressurization fan for the purpose of obtaining air quality samples. To offset HIC's costs in performing O&M responsibilities stated in II.A above, the DEQ will provide HIC with a credit of \$500 per year towards HIC's DCP annual dry cleaner program fees, starting March 1st, 2016, and will show such credit on the Notice of Dry Cleaner Fees sent annually to HIC. DCP annual fees for listed inactive sites such as this one are currently \$500 per year.

C. Repair or Replacement of the Sub-Slab Depressurization Fan. DEQ agrees that the DCP funds will be used to repair or replace the sub-slab depressurization fan if necessary. This is subject to HIC's continued participation in the DCP for the Site and the availability of funds. If due to staff time constraints the DEQ is unable to repair or replace the fan within a reasonable time, then the DEQ, subject to the requirements of Oregon Administrative Rules (OAR) 340-124-0070, will enter a reimbursement agreement with HIC; provided, however, the following conditions are satisfied:

- a) HIC submits a cost proposal to the DCP for performing the repair or replacement;
- b) Upon written notification from DEQ of approval of the proposal, HIC implements the repair or replacement;
- c) Upon completion of the work, HIC submits documentation of expenses incurred consistent with the proposal approved by DEQ;
- d) The DEQ reviews the documentation for compliance with OAR 340-124-0070 and consistency with the proposal and reimburses HIC from the DCP for approved expenses within 60 days.

D. Future indoor Air Monitoring. DEQ shall, at its own expense, sample the interior air space of the former Progress Dry Cleaner unit and the adjacent unit every five years, with the first sampling in 2020, until DEQ notifies HIC in writing that operation of the sub-slab fan is no longer needed to reduce risk from remaining contamination at and near the Site to levels protective of human health. After DEQ notifies HIC that operation of the sub-slab depressurization fan is no longer needed, DEQ shall undertake interior air sampling once each year for two additional years. If that sampling indicates that operation of the fan is still needed to protect human health, this Agreement will remain in effect. If that sampling indicates that operation of the fan is no longer needed, the parties agree that this Agreement shall terminate.

DEQ sampling is subject to HIC's continued participation in the DCP for the Site and the availability of funds. HIC is free to perform its own sampling but any costs incurred would not be reimbursed by the DEQ.

Engineering Control Upgrades in Case of Performance Deficiencies. Since installation of the sub-slab fan in 2008, all twelve rounds of indoor air sampling have shown that operation of the sub-slab fan keeps indoor air concentrations below DEQ Risk-Based Concentrations (RBCs) for occupational air inhalation. However, in the event that Site conditions change and the Engineering Controls, including operation of the sub-slab fan, are no longer sufficient to keep the Site safe for occupancy, DEQ agrees to take action to mitigate exposures above RBCs. This is subject to HIC's continued participation in the DCP for the Site and availability and prioritization of funds. If due to DCP funding or staff time constraints DEQ is unable to take action to mitigate exposures above RBCs within a reasonable time, DEQ, subject to the requirements of OAR chapter 340, division

124, including but not limited to OAR 340-124-0065 and OAR 340-124-0070, will enter a reimbursement agreement with HIC.

- E. DEQ Access to the Site: The current access agreement for the Progress Cleaners Site was signed by DEQ and HIC in November 2013 and expires on November 12, 2015. Actions described above will require DEQ or DEQ's contractors to have access to the Site past that date; provided, however, the DEQ contractors have in place the insurance required by the DEQ's contract with the contractor. DEQ and HIC agree to extend the expiration date of the November 2013 access agreement to December 31, 2020, with the understanding that further extensions will be needed to allow the work described in this Agreement.
- F. No Admission of Liability. This Agreement shall not be construed as an admission by HIC of any liability under ORS 465.255 or any other legal or equitable theory, or as a waiver of any defense to liability as between HIC and any person not a party to this Agreement.
- G. No Waiver. This Agreement is not and shall not be construed as a waiver, release or settlement of claims DEQ may have against any other person for remedial action costs incurred by DEQ for work associated with the Site.
- H. Reservation of Rights. Nothing in this Agreement is intended to offer or confer any rights or remedies on any persons other than parties to it, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties, nor shall any provisions give any third parties any rights of subordination or action against any party to this Agreement.
- I. Hold Harmless. Subject to the terms and conditions of the access agreement between HIC and DEQ, HIC 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 HIC or its officers, employees, contractors, agents, receivers, trustees or assigns. DEQ shall not be considered a party to any contract made by HIC or its agents in carrying out activities under this Agreement.
- J. Attorney Fees. Each party shall bear its own attorneys' fees and expenses incurred before and through the effective date of this Agreement.
- K. Available Funding. The State of Oregon's obligations under Section II of this Agreement are conditioned upon DEQ receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow DEQ to meet its obligations under this Agreement. HIC is not entitled to receive payment under this Agreement from any part of Oregon state government other than DEQ DCP. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DEQ shall employ good-faith efforts to request and seek funding, appropriations, limitations,

allotments, or other expenditure authority sufficient to allow DEQ to perform its obligations throughout the term of this Agreement.

Property Owner

Oregon DEQ

John H. Hudson 7/15/15
Signature Date

Lydia Emer 7-20-15
Signature Date

John H. Hudson, President
Hudson Investment Company

Lydia Emer
Operations Division Administrator

DEQ BUDGET APPROVAL

13310 34679 K00011

(AY) (Index) (PCA) (AObj) (Project)
gdc J. K. [Signature] 8/3/15
(Signature) (Date)