

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
700 NE Multnomah St., Suite 600
Portland, OR 97232
Attention: Kevin Dana

Grantor

ESP Holding Company LLC
2601 Crestview Drive
Newberg, OR 97132
Attention: Devin Black

**STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ No. 23-05

STEELHAMMER, LLC

ORDER ON CONSENT

Respondent.

Pursuant to ORS 465.260(4) and 465.327, the Director, Oregon Department of Environmental Quality ("DEQ"), issues this Order on Consent ("Consent Order") to Steelhammer, LLC ("Respondent"). This Consent Order contains the following provisions:

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Exhibit A: Vicinity Map

Exhibit B: Property Legal Description

Exhibit C: Scope of Work

1. Purpose

The mutual objectives of DEQ and Respondent (collectively “Parties”) are: (a) to protect public health, safety, and welfare and the environment in accordance with applicable provisions of ORS 465.200 through 465.420, and regulations promulgated thereto, and (b) to facilitate productive reuse of property; and (c) to provide Respondent with protection from potential liabilities in accordance with applicable law.

2. Stipulations

A. Respondent consents and agrees:

(1) To issuance of this Consent Order;

- (2) To perform and comply with all provisions of this Consent Order;
- (3) In any proceeding brought by DEQ to enforce this Consent Order, to not challenge DEQ's jurisdiction to issue and enforce this Consent Order;
- (4) To waive any right Respondent might have, before commencement of action by DEQ to enforce this Consent Order, to seek judicial review or review by the Environmental Quality Commission of this Consent Order;
- (5) To not litigate, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, any issue other than Respondent's compliance with this Consent Order; and
- (6) To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance of any interim or removal measures or phase of work by Respondent discharges Respondent's duty to fully perform all remaining provisions of this Consent Order.

B. DEQ and Respondent stipulate:

- (1) For the purposes of this Consent Order, the "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.
- (2) For the purposes of this Consent Order, "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 Respondent'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 Respondent'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 Respondent's acquisition of ownership or operation of the Property.

3. Findings of Fact

DEQ makes the following findings without admission of any such facts by Respondent:

- A. Steelhammer, LLC is a limited liability company registered in Colorado.
- B. The property proposed for acquisition by Respondent, which is currently owned by AFF

II Portland LLC, is an approximately 4.46-acre site located at 8424, 8504, and 8524 N. Crawford Street, Portland, Multnomah County, Oregon, in Section 12, Township 01 North, Range 01 West, of the Willamette Meridian (the “Property”). The location of the Property is illustrated generally in the Vicinity Map, Exhibit A to this Consent Order. The legal description of the Property is set forth in Exhibit B to this Consent Order. All exhibits attached to this Consent Order are incorporated by reference. A prior owner, Mainland Steel Hammer, LLC, and DEQ, entered into a consent judgement regarding the Property (*See State of Oregon v. Mainland Steel Hammer, LLC, Consent Judgment*, dated February 28, 2017). That consent judgement is null and void and of no further force or effect.

- C. The Property is currently not in use. It was most recently used as an industrial facility that included business offices, warehouses, production areas, and outdoor storage spaces. In the late 1800s through approximately 1905, the Property was occupied by residential development. Since approximately 1905, the Property has been associated with industrial and commercial uses, including the Portland Steel Shop Building Co. (1995), Lauther’s Mercantile (1911), Portland Collapsible Box Co. (1911), Portland Chain Manufacturing Co. (1935-1950), Portland Manufacturing Co (1969), Peninsula Pattern Works (1960s to 1970s), Rope Master Skookum (1985), and Columbia Forge & Machine Works (1981-2023).
- D. Respondent or its successor will convert the current industrial/commercial nature of the site to urban residential uses in conformity with the St. John’s neighborhood master plan. Respondent will provide significant public benefit by restoring the property to beneficial use and by appropriately managing or disposing of any contaminated media exposed or excavated during construction (via a DEQ-approved contaminated media management plan), and further mitigating exposure to contaminated media through placement of hardscape or clean soil or gravel, thereby, substantially reducing the public’s exposure to impacted soil. Respondent will establish stormwater controls on the Property in conformance with DEQ and City of Portland Bureau of Environmental Services guidelines and standards.
- E. Known contaminants at the Property associated with the historical industrial and commercial uses include polychlorinated biphenyls (PCBs), polycyclic aromatic

hydrocarbons (PAHs), and metals, including arsenic and iron. These contaminants impact soil and have not been found to affect groundwater.

- F. Pursuant to ORS 465.255(1)(b), Respondent 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 August 10, 2023, Respondent applied to DEQ for a “prospective purchaser agreement” under ORS 465.327 and agreed to reimburse DEQ’s costs of technical review and agreement preparation. This Consent Order is intended to protect Respondent from potential liability for pre-acquisition releases of hazardous substances at or from the Property, in return for Respondent undertaking certain obligations, as described in this Consent Order. In determining to propose this Consent Order, DEQ reviewed current zoning information available on-line from Multnomah County and considered reasonably anticipated future land uses at the Property and surrounding properties. This Consent Order is entered into pursuant to ORS 465.325 and ORS 465.327.
- G. On October 1, 2023, DEQ published notice of this proposed Consent Order and provided opportunity for public comment in accordance with ORS 465.320(1) and 465.327(3). The comment period ended October 31, 2023. No comments were received.

4. Conclusions of Law and Determinations

Based on the above findings of fact and the administrative record, DEQ determines, without admission of any such determinations by Respondent, that:

- A. Respondent is a “person” within the meaning of ORS 465.200(21).
- B. The contaminants described in Subsection 3.E. are “hazardous substances” within the meaning of ORS 465.200(16).
- C. The presence of hazardous substances in soil constitutes a “release” or “threat of release” into the environment within the meaning of ORS 465.200(22).
- D. The Property described in Subsection 3.B. is a “facility” within the meaning of ORS 465.200(13).
- E. Respondent is not currently liable under ORS 465.255, 466.640, or 468B.310 for the Existing Hazardous Substance Releases.
- F. Removal or remedial action is necessary at the Property to protect human health or the environment;

- G. Respondent's ownership and operation of the Property will not cause, contribute to, or exacerbate existing contamination, increase health risks, or interfere with remedial measures at the Property;
- H. A substantial public benefit will result from this Consent Order; and
- I. The release from liability set forth in Subsection 8.A satisfies the criteria set forth in ORS 465.327(1).

Based upon the above Stipulations, Findings of Fact, Conclusions of Law and Determinations, DEQ ORDERS:

5. Work to be Performed

A. Measures to be Undertaken

- (1) In conjunction with development of the Property, in areas that have been graded or where soil has been removed, Respondent will sample exposed ground surface soils and evaluate analytical data from such areas, and depending on the results of such sampling, Respondent will determine if soil capping is necessary to prevent exposure of contaminated soils to human and ecological receptors.
- (2) Respondent will implement a Soil Cap Management Plan ("SCMP") approved by DEQ for the Property and record an Easement & Equitable Servitudes on the Property memorializing the existence and requirements of the SCMP for current and future owners and operators.
- (3) Respondent will not conduct or allow operations or conditions on the Property, including without limitation, excavation, drilling, scraping or uncontrolled erosion, that causes contaminated soils to come into contact with humans, groundwater, or stormwater leaving the Property, except in conformance with, as applicable, (a) the CMMP referenced in the Scope of Work ("SOW"), (b) the SCMP, and (c) any future DEQ-approved work plans developed for carrying out the SOW.
- (4) Respondent will implement stormwater management measures during performance of the SOW and as part of development activities.
- (5) Respondent will perform the measures to be undertaken for the Property in accordance with the terms and schedule set forth in the SOW, attached to this Consent Order as Exhibit C, and the terms and schedules that may be set forth in any future applicable

DEQ-approved work plan.

B. Modification of SOW or Related Work Plans

- (1) If DEQ determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary in order to protect public health and the environment, DEQ may require that such modification be incorporated in the SOW and/or such work plans; provided, any such modification may be required pursuant to this paragraph only to the extent that the modification is necessary to protect public health and the environment.
- (2) Subject to dispute resolution under Subsection 7.M., Respondent 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., Respondent 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

Respondent may elect at any time during the term of this Consent Order to undertake measures, beyond those required under this Consent Order and the SOW, necessary to address the release or threatened release of hazardous substances at the Property. Such additional measures are subject to prior approval by DEQ. DEQ's approval will be granted if DEQ determines that the additional measures will not threaten human health or the environment.

D. Site Restrictions and Periodic Reviews

- (1) If DEQ determines that institutional controls, including but not limited to a soil cap, is required at the Property for the protection of human health and the environment, Respondent agrees to timely file with the County Clerk, Multnomah County, an Easement and Equitable Servitude approved by DEQ to memorialize any such restrictions or institutional controls. Respondent will provide DEQ a file-stamped copy of the Easement and Equitable Servitude within five working days of recording.
- (2) Property subject to the Easement and Equitable Servitude may be freely alienated at any time after recording, provided the deed or other instrument of conveyance refers to or incorporates the Easement and Equitable Servitude.

- (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 Order. Respondent, 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 Respondent's obligations under this Consent Order.
- (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.

6. Public Participation

Upon issuance of this Consent Order, DEQ will provide public notice of the Consent Order through issuance of a press release, at a minimum to a local newspaper of general circulation, describing the measures required under this Consent Order. Copies of the Consent Order will be made available to the public. DEQ will provide Respondent a draft of such press release and consider any comments by Respondent on the draft press release, before publication.

7. General Provisions

A. Project Managers

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

DEQ Project Manager:

Kevin Dana
Department of Environmental Quality
Northwest Region
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5369
Email: Kevin.Dana@deq.oregon.gov

Respondent Project Manager

Devin Black
Environmental Program Manager
Steelhammer, LLC
1001 Bannock Street
Denver, CO 80204
Phone: 720-922-7343, ext. 23
Email: dblack@resight-ai.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 required under this Consent Order.

B. Supervising Contractor

- (1) All aspects of remedial work to be performed by Respondent pursuant to this Consent Order must be performed under the direction and supervision of a qualified employee or contractor experienced in hazardous substance remediation and knowledgeable in applicable state and federal laws, regulations, and guidance.
- (2) DEQ approves Lynn D. Green, EVREN Northwest, Inc, as a qualified contractor for Respondent for purposes of this Consent Order.
- (3) If, during the course of work required under this Consent Order, Respondent proposes to change its supervising contractor, Respondent 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 Order, Respondent 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 Respondent. Prior approval is not required in emergencies, provided Respondent 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 Order, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part, and notify Respondent 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, Respondent 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 Respondent's failure 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, Respondent will implement the actions required by the plan, report, or other item, as so approved or modified, or invoke dispute resolution under Subsection 7.M.

D. Access to Property

- (1) Respondent will allow DEQ to enter all portions of the Property owned by or under the control of Respondent at all reasonable times for the purpose of overseeing Respondent's performance under this Consent Order, including but not limited to inspecting records relating to work under this Consent Order, conducting such tests and taking such samples as DEQ deems necessary, verifying data submitted to DEQ by Respondent, conducting periodic review, and using camera, sound recording, or other recording equipment. DEQ will make available to Respondent, upon Respondent's request, any photographs or recorded or videotaped material taken.
- (2) Respondent will seek to obtain access to property not owned or controlled by Respondent as necessary to perform work required in this Consent Order, including access by DEQ for purposes described in Paragraph 7.D.(1). DEQ may use its statutory authority to obtain access to property on behalf of Respondent if DEQ determines that access is necessary and that Respondent has exhausted all good faith efforts to obtain access.

E. Records

- (1) In addition to those reports and documents specifically required under this Consent Order, Respondent will provide to DEQ, within 10 days of DEQ's written request, copies of Quality Assurance/Quality Control (QA/QC) memoranda and audits, raw data, final plans, task memoranda, field notes (not made by or at the direction of Respondent's attorney), and laboratory analytical reports relating to activities under this Consent Order.
- (2) Respondent will preserve all records and documents in possession or control of Respondent or its employees, agents, or contractors that relate in any way to activities under this Consent Order, for at least five years after certification of completion under Section 12. Upon DEQ's request, Respondent will provide to DEQ, or make available for copying by DEQ, copies of non-privileged records. For a period of 10 years after

certification of completion, Respondent will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after certification of completion, Respondent has no further obligation to preserve documents or records.

- (3) Subject to Paragraph 7.E.(4), Respondent may assert a claim of confidentiality under the Oregon Public Records Law regarding any document or record submitted to or copied by DEQ pursuant to this Consent Order. 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 Respondent 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 Respondent.
- (4) Respondent 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. Respondent may not assert attorney-client or work product privilege with respect to any records required to be submitted under Paragraph 7.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

F. Notice and Samples

- (1) Respondent will make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other fieldwork to be conducted under this Consent Order at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Respondent 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 Respondent while performing work under this Consent Order. DEQ will provide Respondent with copies of all analytical data from such samples as soon as practicable.
- (2) If DEQ conducts any sampling or analysis in connection with this Consent Order, DEQ will, except in an emergency, make every reasonable effort to notify Respondent of any excavation, drilling, sampling, or other fieldwork at least 72 hours before such activity. Upon Respondent's verbal request, DEQ will make every reasonable effort to

provide a split or duplicate sample to Respondent or allow Respondent to take a split or duplicate of any sample taken by DEQ, and will provide Respondent with copies of all analytical data for such samples. Respondent will provide DEQ with copies of all analytical data from such samples as soon as practicable.

G. Quality Assurance

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

H. Progress Reports

During each calendar quarter following the effective date of this Consent Order, Respondent will deliver to DEQ, on or before the tenth working day of each quarter, a progress report containing:

- (1) Actions taken by Respondent under this Consent Order during the previous three months;
- (2) Actions scheduled to be taken by Respondent in the next three months;
- (3) A summary of sampling, test results, and any other data generated or received by Respondent during the previous three months; and
- (4) A description of any problems experienced by Respondent during the previous three months and actions taken to resolve them.

DEQ may approve less frequent reporting by Respondent, if warranted. Progress reports may be submitted in electronic form. If submitted in hard-copy written form, two copies must be provided to DEQ.

I. Other Applicable Laws

- (1) Subject to ORS 465.315(3), all activities under this Consent Order must be performed in accordance with all applicable federal, state, and local laws.
- (2) All activities under this Consent Order 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, Respondent 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 Respondent 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 7.L.

J. Reimbursement of DEQ Costs

- (1) DEQ will submit to Respondent a monthly invoice of costs incurred by DEQ on or after October 31, 2023 in connection with any activity related to oversight and periodic review of Respondent's implementation of this Consent Order. Each invoice must include a summary of costs billed to date.
- (2) DEQ oversight costs payable by Respondent 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 Division ("LQD") 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 LQD allocable to DEQ oversight under this Consent Order 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 Order and, upon request, will provide copies of

such records to Respondent.

- (3) Within 30 days of receipt of DEQ's invoice, Respondent 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 7.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, becomes a liquidated debt collectible under ORS 293.250 or other applicable law.
- (4) Respondent will pay simple interest of 9% per annum on the unpaid balance of any DEQ oversight costs, which interest begins to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount disputed under Subsection 7.M begins to accrue 30 days from final resolution of any such dispute.

K. [Section Intentionally Deleted]

L. Force Majeure

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

changed business or economic circumstances may not be considered Force Majeure.

M. Dispute Resolution

- (1) Except as provided in Paragraph 7.M.(4), if Respondent disagrees with DEQ regarding any matter during implementation of this Consent Order, Respondent will invoke dispute resolution by promptly notifying DEQ in writing of its objection. DEQ and Respondent then will make a good-faith effort to resolve the disagreement within 14 days of Respondent's written objection. At the end of the 14-day period, DEQ will provide Respondent with a written statement of its position from DEQ's Northwest Region Cleanup Program Manager. If Respondent still disagrees with DEQ's position, then Respondent, within 14 days of receipt of DEQ's position from the Cleanup Manager, will provide Respondent's position and rationale in writing to DEQ's Northwest Region Administrator. The Region Administrator may discuss the disputed matter with Respondent and, in any event, will provide Respondent with DEQ's final position in writing as soon as practicable after receipt of Respondent's written position.
- (2) If Respondent refuses or fails to follow DEQ's final position pursuant to Paragraph 7.M.(1), and DEQ seeks to enforce its final position, the Parties, subject to Sections 2 and 10, 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.
- (4) Dispute resolution under this subsection does not apply to DEQ approval or modification of any work plan required under the SOW (which approval or modification is nonetheless subject to Subsection 7.C.).

N. [Section Intentionally Deleted]

O. Effect of Consent Order

- (1) DEQ may assess civil penalties under ORS 465.900 for Respondent's failure to comply with this Consent Order. Penalties do not accrue pending any contested case regarding the alleged violation. In addition to penalties, DEQ may seek any other available

remedy for failure by Respondent to comply with any requirement of this Consent Order, including but not limited to termination of this Consent Order or court enforcement of this Consent Order.

- (2) Subject to Section 2, Respondent does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations asserted in this Consent Order.
- (3) Subject to Section 2 and Section 10, nothing in this Consent Order prevents DEQ, the State of Oregon, or Respondent from exercising any rights each might have against any person not a party to this Consent Order.
- (4) This Consent Order is void and of no effect if Respondent does not complete acquisition of the Property by October 1, 2024.
- (5) DEQ and Respondent intend for this Consent Order to be construed as an administrative settlement by which Respondent 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 Existing Hazardous Substance Releases, and for Respondent not to be liable for claims for contribution regarding Existing Hazardous Substance Releases to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

P. Indemnification and Insurance

- (1) Respondent 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 Order of Respondent or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contract made by Respondent or its agents in carrying out activities under this Consent Order.
- (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 Respondent and its officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order 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 Respondent under this Consent Order). Respondent may not be considered a party to

any contract made by DEQ or its agents in carrying out activities under this Consent Order.

- (3) Before commencing any on-site work under this Consent Order, Respondent or Contractor will obtain and maintain for the duration of this Consent Order 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, Respondent will provide DEQ a copy or other evidence of the insurance. If Respondent 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, Respondent may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

Q. Parties Bound

This Consent Order 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 Order. Respondent will notify and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the Property during the term of this Consent Order.

R. Modification

DEQ and Respondent may modify this Consent Order by written agreement.

S. Effective Date

The effective date of this Consent Order is the date of signature by the DEQ's LQD Division Administrator.

T. Recording

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

8. Release from Liability

- A. Pursuant to ORS 465.327, and subject to Subsection 8.B. and the satisfactory performance by Respondent of its obligations under this Consent Order, Respondent 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. Respondent 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.(2)) existed as of the date of Respondent's acquisition of ownership or operation of the Property.

B. The release from liability under Subsection 8.A. does not affect liability of Respondent 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 Respondent's acquisition of ownership or operation of the Property;
- (2) Contribution to or exacerbation, on or after the date of Respondent'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 Respondent'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 Respondent'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 Respondent;
- (6) Criminal liability;
- (7) Violation of federal, state, or local law on or after the date of Respondent's acquisition of ownership or operation of the Property;
- (8) Any matters as to which the State of Oregon is owed indemnification under Paragraph 7.P.(1); and
- (9) Claims based on any failure by Respondent to meet any requirements of this Consent Order.

9. Third-Party Actions

Subject to the satisfactory performance by Respondent of its obligations under this Consent Order, Respondent is not liable to any person under ORS 465.200 to 465.545, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases.

10. Respondent Waivers

- A. Respondent waives any claim or cause of action it might have against the State of Oregon regarding Existing Hazardous Substance Releases; provided, Respondent reserves all rights concerning the obligations of DEQ under this Consent Order.
- B. Respondent 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 Order or related to the Property.

11. Benefits and Burdens Run with the Land

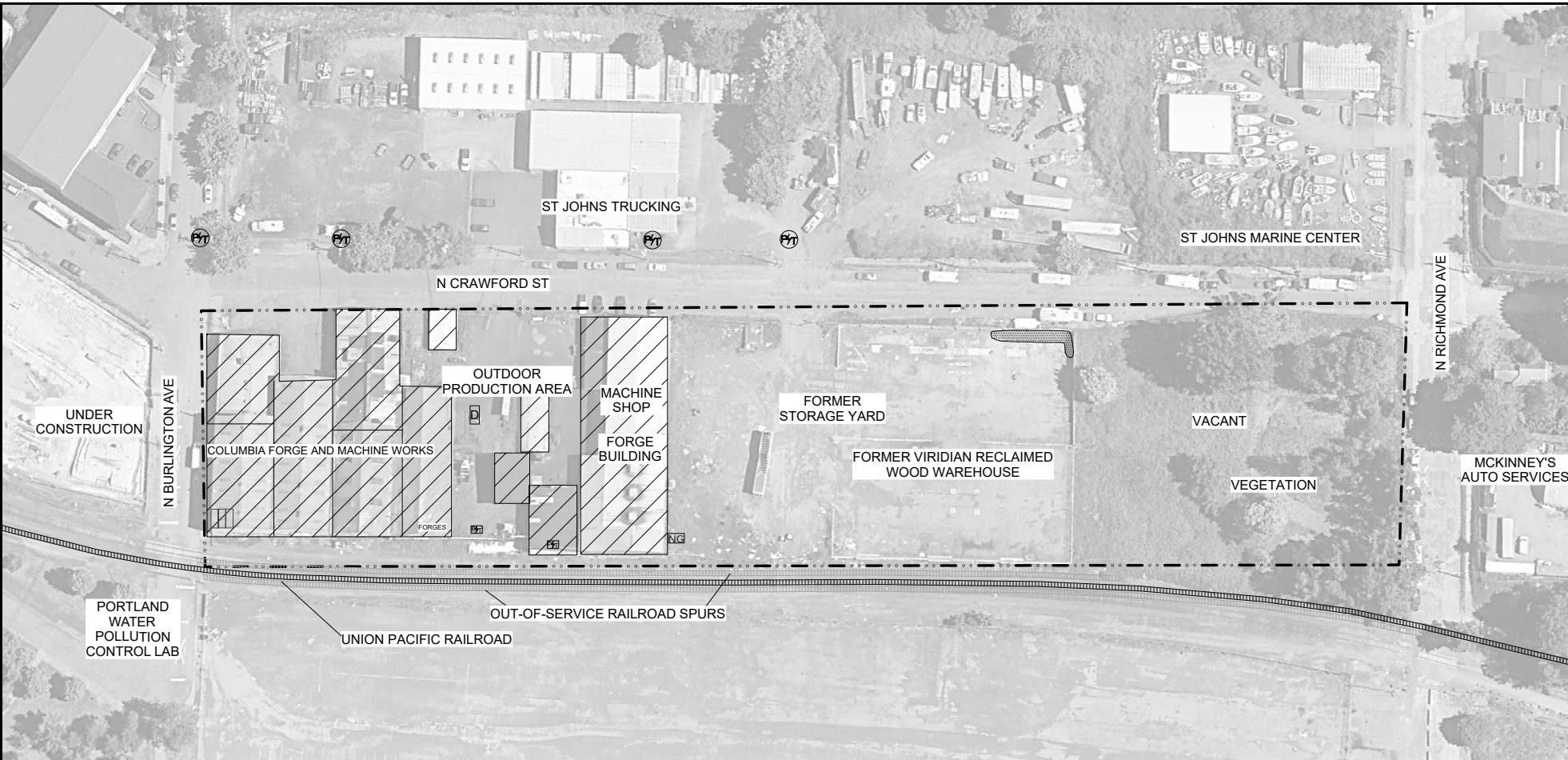
- A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Order run with the land, provided the release from liability set forth in Section 8 limits or otherwise affects the liability only of persons who: (1) are not potentially liable under ORS 465.255, 466.640, or 468B.310 for Existing Hazardous Substance Releases; and (2) expressly assume in writing, and are bound by, the terms of this Consent Order 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 Respondent to another person or entity, Respondent 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 Respondent in any way alters Respondent's obligations under this Consent Order, unless otherwise approved in writing by DEQ.

12. Certification of Completion







- A. Upon Respondent's completion of remedial work in accordance with the SOW, Respondent will submit a final closeout report to DEQ signed by both a Oregon-registered professional engineer and Respondent's Project Manager certifying that the remedial action for the Property has been completed in accordance with this Consent Order. The report must summarize the work performed and include all necessary

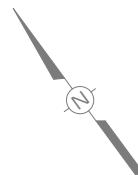
supporting documentation.

- B. DEQ will preliminarily determine whether the remedial action has been performed for the Property and all oversight costs and penalties have been paid in accordance with this Consent Order. Upon a preliminary determination that the remedial action for the Property has been satisfactorily performed and all costs and penalties paid, 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, and within 90 days after receiving Respondent's closeout report, DEQ's Northwest Region Administrator will issue a final certification decision.
- C. This Consent Order is satisfied upon issuance of DEQ's certification of completion for the remedial action and payment by Respondent of any and all outstanding costs and penalties, except that issuance of a certification of completion of the remedial action does not affect Respondent's remaining obligations under this Consent Order or for implementation of measures necessary to long-term effectiveness of the remedial action or other productive reuse of the Property.



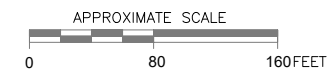
LEGEND:

-  SUBJECT BUILDINGS
-  SUBJECT PROPERTY BOUNDARIES
-  POLE TRANSFORMER
-  PAD TRANSFORMER
-  NATURAL GAS METER
-  SOLID WASTE RECEPTACLE



NOTES:

1. BASE MAP DEVELOPED FROM AN AERIAL PHOTOGRAPH MAP DATED 2021 AND ENW FIELD NOTES.
2. ALL BUILDING, STREET, AND FEATURE LOCATIONS ARE APPROXIMATE.
3. SYMBOLS REPRESENT LOCATION AND DO NOT ALWAYS REPRESENT EXACT SHAPE, SIZE, OR ORIENTATION



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EXHIBIT A
 VICINITY MAP

STEEL HAMMER
 8424-8524 N CRAWFORD STREET
 PORTLAND, OREGON

Exhibit B

PARCEL I:

Part of Section 12, Township 1 North, Range 1 West of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the intersection of the Southerly line of N. Crawford Street and the Westerly line of N. Richmond Avenue; thence Southerly along the Westerly line of N. Richmond Avenue to the Northerly line of N. Bradford Street; thence Westerly along the Northerly line of N. Bradford Street to the center line of vacated N. John Avenue; thence Northerly along the center line of vacated N. John Avenue to the Southerly line of N. Crawford Street; thence Easterly along the Southerly line of N. Crawford Street to the point of beginning.

PARCEL II:

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 5, and Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 6, all in ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH that portion of vacated N. Leavitt Avenue and that portion of the Westerly one-half of vacated N. John Avenue lying between the Northeasterly line of N. Bradford Street and the Southwesterly line of N. Crawford Street.

EXHIBIT C

Scope of Work

The Respondent agrees to perform the following:

1. Within 60 days of Respondent becoming fee owner of the Property, Respondent will prepare a Contaminated Media Management Plan (CMMP) establishing procedures for identifying, handling, characterizing, and disposing of potentially contaminated soil or ground water, if encountered, at the Property during future construction and maintenance activities. The CMMP will identify chemical constituents of interest, relevant risk-based concentration (RBC) standards, analytical methods for waste profiling, procedures for decontamination, site control, stockpiling, transport and disposal, and reporting. Respondent will submit the CMMP to DEQ for review and approval.
2. To facilitate redevelopment of the Property, Respondent expects removal of soils, and grading and capping of areas of the Property will be needed. Prior to site redevelopment, Respondent will submit a Work Plan to DEQ that includes:
 - a. Proposed removal actions, construction of hardscape, and/or grading plans associated with planned redevelopment efforts.
 - b. A sampling and analytical plan, including collection and analysis of soil samples, using the incremental sampling and discrete sampling methods, as appropriate, from graded areas or areas where soil was removed, to determine if contamination remains present at levels above urban residential use RBCs for urban residential properties.
 - i. Subsequent to removal actions or grading within the boundaries of the Property, if constituents of interest remain within three feet of the proposed redevelopment ground surface, Respondent will delineate, by survey, areas where soil impacts are present at concentrations greater than applicable urban residential use RBCs. Respondent will place a high visibility geotextile fabric for demarcation of the area where soil concentrations exceed applicable RBCs, prior to developing the area to proposed redevelopment grade with a hardscape (asphalt, concrete, building, etc.) or clean soil or gravel overlay, as may be appropriate.
 - c. An anticipated schedule of completion of redevelopment activities.
 - d. Proposed stormwater source control measures to be implemented as part of site redevelopment, and demonstration of effectiveness of controls as part of a Source Control Assessment Report (including investigation of overland flows and preferential groundwater transport potential, if any), in accordance with the 2005 Portland Harbor Joint Source Control Strategy, 2009 DEQ Guidance for Evaluating the Stormwater Pathway at Upland Sites, applicable NPDES stormwater permit requirements, and Oregon Environmental Cleanup Law. Source Control Assessment activities will commence within six months of completion of onsite redevelopment activities, with submission of a final report within 60 days of receipt of the final of four quarters of stormwater monitoring data.

Respondent will implement the Work Plan following DEQ's approval. Respondent will submit a Remedial Investigation Report (RI Report) within 60 days of receipt of all anticipated soil analytical results. The RI Report will include residual human health risk assessment and ecological scoping and include identification of any engineering or institutional controls necessary to protect human or ecological health, if any.

3. If a soil or hardscape cap is required to mitigate a potential exposure pathway (e.g., dermal contact) and/or minimize the potential for surface water impacts, Respondent will prepare a Soil Cap Management Plan (SCMP). This SCMP will detail inspection and maintenance actions required to maintain the integrity of any soil or hardscape cap necessary to mitigate a potential exposure pathway or as required to mitigate potential sources of contamination to the adjacent Willamette River. Respondent will submit the SCMP to DEQ for review and approval within 60 days of submitting the RI Report to DEQ.
4. In the event the proposed use of the Property changes prior to commencement of redevelopment activities (i.e., from urban residential to industrial), Respondent will notify DEQ within 30 days of the changed use. Respondent will begin review of site data, determine if remedial actions are necessary to protect human health, revise the RI Report, and implement necessary measures with DEQ's approval and oversight.