
Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
700 Multnomah St, Suite 600
Portland, OR 97323
Attention: Sarah Eagle

Grantor

Din/Cal 4, Inc.
3411 Richmond Avenue, Ste 500,
Houston, Texas, 77046

**STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ No. 25-03

Din/Cal 4, Inc.

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 Din/Cal 4, Inc.

("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

Exhibit D: Easement and Equitable Servitude

1. Purpose

The mutual objectives of DEQ and Respondent (collectively “Parties”) are: (a) to protect public health, safety, and welfare in accordance with applicable provisions of ORS 465.200 through 465.420, 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. Din/Cal 4, Inc. is a Texas corporation.
- B. The property proposed for acquisition by Respondent, currently owned by SMC LLC, an Oregon limited liability company, is an approximately 1.54-acre site located at 755 East Broadway, Eugene, OR 97401, Lane County, Oregon, in Section 32, Township 17 South, Range 3 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.
- C. The Property was developed in approximately 1902, as a single-family residence with associated outbuildings. By 1932, the Property was redeveloped with industrial buildings on the eastern portion and operated through at least 1975 as the Crystal Ice Storage and Coal Company/Crystal Ice Storage and Oil Company (“former Crystal Ice operations”). The industrial buildings were demolished in 1978. The current motel building was constructed sometime between 1967 and 1970. The Property is currently developed with an approximately 15,000 square foot vacant motel building, an approximately 1,500 square foot motel lobby, and surrounded by paved parking areas on the western portion, and a vacant, grassy lot on the eastern portion. The Property is currently not in use, except for paid public parking in the parking lot of the former motel. Releases have been documented associated with the former Crystal Ice operations (LUST No. 20-91-4203). In 1991, four underground storage tanks (“USTs”) were removed from the southeast corner of the Property and two USTs were removed from the southwest-adjointing off-site property, each associated with LUST No. 20-91-4203. Releases were identified in connection with both clusters of USTs. In January 2001, following remedial action to address the UST releases, the Property received a No Further Action determination for the LUST from DEQ.
- D. In preparation for Property development, in 2024, limited site investigations were conducted in August 2024 and November 2024 by Terracon Consultants, Inc. The site investigations included soil, groundwater, and soil gas sampling. Based

on the results of these investigations, gasoline, lead, mercury, benzene, ethylbenzene, naphthalene, and xylenes were detected in soil at concentrations less than applicable DEQ risk-based concentrations (“RBCs”) but exceed their respective DEQ Clean Fill screening criteria. In groundwater samples collected from permanent groundwater monitoring wells, constituents of concern were not detected at concentrations greater than applicable DEQ RBCs. Gasoline, benzene, and chloroform were detected in samples collected from temporary groundwater monitoring wells at concentrations exceeding the DEQ vapor intrusion RBCs for residential and/or commercial receptors. Gasoline, aliphatic petroleum hydrocarbons, 1, 3-butadiene, acrolein, and benzene were detected in soil gas samples collected from the Property at concentrations greater than DEQ vapor intrusion RBCs for residential and/or commercial receptors.

- E. The primary concerns of impact to human health and the environment are the potential exposure to occupants of the proposed development to impacted soil vapors. Contaminants of concern in soil vapor include petroleum hydrocarbons, benzene, 1, 3-butadiene, acrolein in soil gas. Although not detected at concentrations greater than DEQ RBCs, gasoline, lead, benzene, ethylbenzene, naphthalene, and xylenes have been detected in soil at concentrations greater than DEQ Clean Fill Screening Levels.
- 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 November 6, 2024, 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 considered reasonably anticipated future land uses at the Property and surrounding properties and consulted with the City of Eugene’s local planning authority.
- G. On March 3, 2025, 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 April 2, 2025. Comments were received and considered by DEQ, as documented in the administrative record.

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, soil gas, and groundwater 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

Respondent will perform the measures to be undertaken for the Property in accordance with the terms and schedule set forth in the Scope of Work (“SOW”), attached to this

Consent Order as Exhibit C, and the terms and schedules set forth in a 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 implement or maintain the effectiveness of the SOW and/or work plans, 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 consistent with the SOW.
- (2) Subject to dispute resolution under Subsection 7.L., 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.L., 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 are consistent with the remedial action objectives in the SOW and will not threaten human health or the environment.

D. Site Restrictions and Periodic Reviews

- (1) Within 30 days of DEQ's final approval of an Easement and Equitable Servitude, Respondent will record with the County Clerk, Lane County, the Easement and Equitable Servitude in a form substantially similar to the template attached to this Consent Order as Exhibit D. 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:

Sarah Eagle
Project Manager
Oregon Department of Environmental
Quality
165 E. 7th Avenue, Suite 100
Eugene, OR 97401
Phone: 971-357-5275
Email: Sarah.eagle@deq.oregon.gov

Respondent Project Manager:

Connor Ellis
Group Manager
Terracon Consultants, Inc.

700 NE 55th Ave,
Portland, OR 97213
Phone: (503) 742-7184
Email: Connor.Ellis@terracon.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 the 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) Within 30 days of the effective date of this Consent Order, Respondent will notify DEQ in writing of the name, title, and qualifications of any proposed supervising contractor. DEQ may for good cause disapprove the proposed contractor. In the event of such disapproval, DEQ will notify Respondent in writing of the reasons for its disapproval within 14 days of receipt of the initial notice from Respondent. Respondent, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the name, title, and qualifications of an alternative supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above. DEQ approves Connor Ellis of Terracon Consultants, 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, either correct the deficiencies and resubmit the revised report or other item for approval, or invoke dispute resolution under Subsection 7.L.
- (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.

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.
- (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 192.311 through 192.360. 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 *Quality Assurance Policy for the Environmental Cleanup Programs* (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.

Exhibit C

- (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 until receipt of the Certification of Completion, 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.K.

J. Reimbursement of DEQ Costs

- (1) DEQ will submit to Respondent a monthly invoice of costs incurred by DEQ on or after November 6, 2024, 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.L. 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.L begins to accrue 30 days from final resolution of any such dispute.

K. 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.

L. Dispute Resolution

- (1) Except as provided in Paragraph 7.L.(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 Western Region Cleanup Manager. If Respondent still disagrees with DEQ's position, then Respondent, within 14 days of receipt of DEQ's position from the Region Cleanup Manager, will provide Respondent's position and rationale in

writing to DEQ's Western 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.L.(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: (a) DEQ approval or modification of the work to be performed required under the SOW (which approval or modification is nonetheless subject to Subsection 7.C); or (b) DEQ assessment of stipulated penalties under Subsection 7.N (after dispute resolution has been exhausted, before assessment of a penalty, regarding the alleged violation).

M. Stipulated Penalties

- (1) Subject to Subsections 7.C., 7.K., and 7.L., upon any violation by Respondent of any provision of this Consent Order, and upon Respondent's receipt from DEQ of written notice of violation, Respondent will pay the stipulated penalties set forth in the following schedule:
 - (a) \$5,000 for the first week of violation or delay and \$2,500 per day of violation or delay thereafter, for failure to allow DEQ access to the Property as required under Subsection 7.D. or to provide records as required under Subsection 7.E.
 - (b) \$2,500 for the first week of violation or delay and \$1,000 per day of violation or delay thereafter, for:
 - (i) Failure to submit a final work plan in accordance with the SOW's schedule and terms;
 - (ii) Failure to complete work in accordance with an approved work plan's schedule and terms;

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- (iii) Failure submit a final report, in accordance with an approved work plan's schedule and terms; or
 - (iv) Failure to record or comply with site restrictions.
- (c) \$500 for the first week of violation or delay and \$500 per day of violation or delay thereafter, for:
 - (i) Failure to submit a draft work plan in accordance with the SOW's schedule and terms;
 - (ii) Failure to submit draft reports or progress reports in accordance with the SOW's schedule and terms; or
 - (iii) Any other violation of the Consent Order, SOW, or an approved work plan.
- (2) Violations arising out of the same facts or circumstances or based on the same deadline are treated as one violation per day.
- (3) Stipulated penalties do not begin to accrue under this subsection until Respondent receives a notice of violation from DEQ describing the violation and what is necessary to correct it. If the violation was not intentional, is capable of cure, and Respondent corrects the violation within 30 days of receipt of such notice of violation or such other period as may be specified in the notice, DEQ in its sole discretion may waive the stipulated penalties. This opportunity to cure does not apply to violations subject to Subparagraph 7.M.(1)(a).
- (4) Respondent will, within 30 days of receipt of DEQ's written notice or such longer cure period specified in the notice, pay the amount of such stipulated penalty not waived by DEQ in writing as provided in Paragraph 7.M.(3) by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or request a contested case hearing in accordance with Paragraph 7.M.(5). Respondent will pay simple interest of 9% per annum on the unpaid balance of any stipulated penalties, which interest begins to accrue when payment is due. Any unpaid amounts that are not the subject of a pending contested case, or that have been determined owing after a contested case, are a liquidated debt collectible under ORS 293.250 and other applicable law.
- (5) Respondent may request a contested case hearing regarding the penalty assessment in accordance with OAR Chapter, 340 Division 11. The scope of any such hearing must be consistent with the stipulations set forth in Section 2, be limited to the occurrence

or non-occurrence of the alleged violation subject to the penalty assessment do not accrue from the date DEQ receives a request for a contested case through disposition of that case.

- (6) If DEQ assesses stipulated penalties pursuant to this subsection for any failure of Respondent to comply with this Consent Order, DEQ may not seek civil penalties for the same violation under ORS 465.900 or any other applicable law.

N. Effect of Consent Order

- (1) In lieu of stipulated penalties under Subsection 7.M, 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 Subsection 2.G. 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 December 31, 2025.
- (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).

O. 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 will obtain and maintain for the duration of this Consent Order comprehensive general liability and automobile insurance with limits of \$1 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).

P. 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.

Q. Modification

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

R. Effective Date

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

S. Recording

Within 14 days of the effective date of this Consent Order, 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 Lane 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.N.(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 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 SOW 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 work 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 SOW 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 Western Region Administrator will issue a final certification decision.
- C. This Consent Order is satisfied upon issuance of DEQ's certification of completion for the work and payment by Respondent of any and all outstanding costs and penalties, except that issuance of a certification of completion of the SOW does not affect Respondent's remaining obligations under this Consent Order or for implementation of measures necessary to long-term effectiveness of the work or other productive reuse of the Property.

13. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

Respondent, Din/Cal 4, Inc.

By: _____ Date: _____

Brandon Nicols

Vice President - Development

STATE OF CALIFORNIA)

) ss.

County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by Brandon Nicols of Din/Cal 4, Inc. on its behalf.

NOTARY PUBLIC FOR OREGON

My commission expires: _____

STIPULATED, AGREED, and SO ORDERED:

State of Oregon, Department of Environmental Quality

By: _____ Date: _____

Michael Kucinski

Interim Administrator, Land Quality Division

STATE OF OREGON)

) ss.

County of _____)

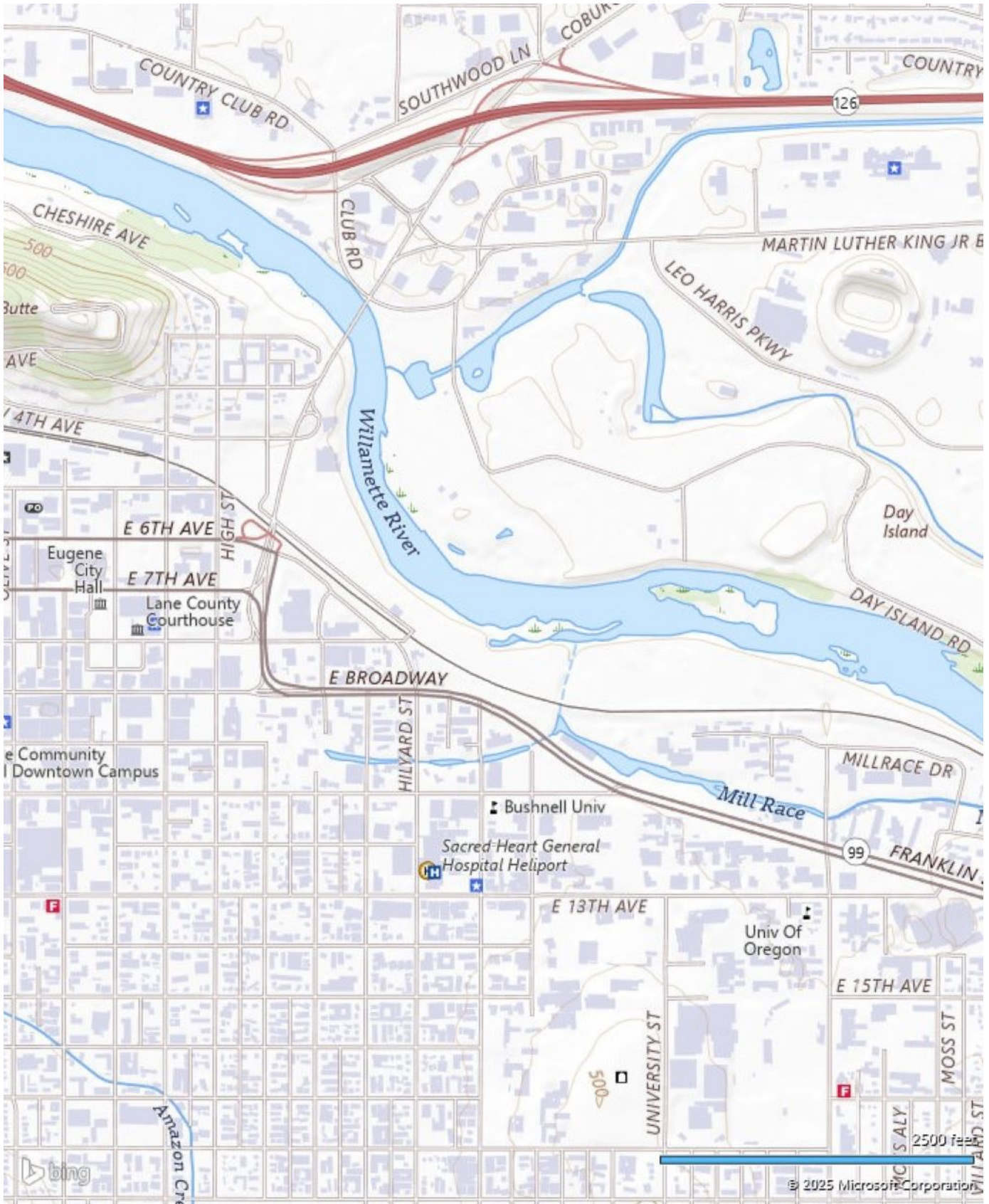
The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by _____ Michael Kucinski of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON

My commission expires: _____

Exhibit A

Type text here



*First American***OTIRO PO-05 Owner's Policy of Title Insurance
Oregon – 2021 v. 01.00 (07-01-2021)**

File No. NCS-1219455-OR1

Policy Number: 1219455-O

The Land referred to herein below is situated in the County of Lane, State of Oregon, and is described as follows:

PARCEL 1: (MAP 17-03-32-24-01600; APN 0283232)

BEGINNING AT THE INTERSECTION OF THE EASTERLY LINE OF HILYARD STREET EXTENDED AND THE SOUTHERLY LINE OF 8TH STREET AND RUNNING THENCE EASTERLY TO THE SOUTHERLY RIGHT-OF-WAY LINE OF THE SOUTHERN PACIFIC RAILROAD, THENCE ALONG SAID RIGHT-OF-WAY LINE TO ITS INTERSECTION WITH THE WESTERLY LINE OF ALDER STREET, THENCE ALONG THE WESTERLY LINE OF ALDER STREET TO ITS INTERSECTION WITH THE NORTHERLY LINE OF 9TH STREET OR BROADWAY, THENCE ALONG SAID NORTHERLY LINE OF 9TH STREET TO ITS INTERSECTION WITH THE EASTERLY LINE OF HILYARD STREET EXTENDED, THENCE ALONG THE EASTERLY LINE OF HILYARD STREET EXTENDED TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT CERTAIN PARCEL OF LAND OWNED BY C.H. FARMER AND HIS WIFE DORA E. FARMER, CONVEYED TO THEM BY R.S. SHELLEY AND ROSE B. SHELLEY BY DEED DATED JUNE 4, 1942, RECORDED AT PAGE 360, OF VOLUME 232, DEED RECORDS LANE COUNTY, OREGON, DESCRIBED AS FOLLOWS TO WIT: BEGINNING AT A POINT IN THE NORTH LINE OF 9TH STREET IN THE CITY OF EUGENE, LANE COUNTY, OREGON, 100 FEET WEST OF THE INTERSECTION OF THE NORTH LINE OF 9TH STREET WITH THE WEST LINE OF COUNTY SURVEY 114 AND RUN THENCE WEST 50 FEET ALONG THE NORTH LINE OF 9TH STREET, THENCE NORTH 100 FEET, THENCE WEST 50 FEET, THENCE SOUTH 100 FEET, TO THE PLACE OF BEGINNING; A PORTION OF WHICH SAID FARMER TRUST HAS BEEN DEED BY THE OWNERS THEREOF BY DEED DATED FEBRUARY 11, 1944, AND RECORDED IN VOLUME 262, PAGE 96, DEED RECORDS, LANE COUNTY, OREGON.

ALSO EXCEPTING THEREFROM IMPROVEMENTS CONVEYED TO LESTER L. HANKS AND IVA PEARL HANKS, AKA IVA HANKS; AND K.D. CAMPBELL AND STEPHEN C. PRATT, SUCCESSOR TRUSTEES OF THE C.F. AND MARY RUTH CAMPBELL TRUST, IN DEED RECORDED FEBRUARY 19, 1992, IN REEL 1745, AS RECEPTION NO. 9209549, LANE COUNTY OFFICIAL RECORDS, IN LANE COUNTY, OREGON.

PARCEL 2: (MAP 17-03-32-24-01601; APN 1023660)

BEGINNING ON THE WEST LINE OF COUNTY SURVEY NO. 114, LANE COUNTY, OREGON, AT A POINT WHERE THE SAME INTERSECTS THE SOUTHERLY BOUNDARY OF THE RIGHT-OF-WAY OF THE OREGON AND CALIFORNIA RAILROAD COMPANY AND RUNNING THENCE SOUTH ON THE LINE BETWEEN COUNTY SURVEY NOS. 113 AND 114 TO THE SOUTHWEST CORNER OF SAID COUNTY SURVEY NO. 114, THENCE EAST ON THE SOUTH LINE OF SAID COUNTY SURVEY NO. 114 TO APPOINT WHERE THE SAME INTERSECTS THE SOUTHERLY BOUNDARY OF SAID OREGON AND CALIFORNIA RAILROAD COMPANY RIGHT-OF-WAY, THENCE NORTHWESTERLY ON SAID LINE OF SAID RIGHT-OF-WAY TO THE PLACE OF BEGINNING. ALSO BEGINNING AT THE NORTHEAST CORNER OF COUNTY SURVEY NO. 113, LANE

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Form 50122541 (5-17-22)

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*First American*

OTIRO PO-05 Owner's Policy of Title Insurance
Oregon – 2021 v. 01.00 (07-01-2021)

COUNTY, OREGON, THENCE SOUTH ON THE EAST LINE OF SAID COUNTY SURVEY NO. 113, 183.5 FEET, THENCE WEST 33 FEET, THENCE NORTH TO THE NORTH LINE OF SAID COUNTY SURVEY NO. 113 AND THENCE EAST ON SAID NORTH LINE TO THE PLACE OF BEGINNING.

EXCEPT THEREFROM THE FOLLOWING DEEDED TO EUGENE CRYSTAL ICE AND STORAGE COMPANY, TO WIT: BEGINNING AT A POINT ON THE NORTH LINE OF 9TH AVENUE EAST IN THE CITY OF EUGENE 156 FEET EAST OF A POINT 23 3/4 FEET NORTH OF THE SOUTHWEST CORNER OF COUNTY SURVEY NO. 114 AND RUNNING THENCE NORTH 180 FEET MORE OR LESS TO THE SOUTHERLY LINE OF THE SOUTHERN PACIFIC COMPANY'S RIGHT-OF-WAY THENCE ALONG THE SOUTHERLY LINE OF SAID RIGHT-OF-WAY SOUTH 51° 11' EAST 285.00 FEET MORE OR LESS TO THE NORTH LINE OF 9TH AVENUE EAST, THENCE WEST ALONG THE NORTH LINE OF 9TH AVENUE EAST, 224.4 FEET MORE OR LESS TO THE PLACE OF BEGINNING.

ALSO EXCEPT THEREFROM EUGENE UNPLATTED DESCRIPTION 2, PAGE 551, VOL. 1, MORE FULLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF 9TH STREET IN THE CITY OF EUGENE, LANE COUNTY, OREGON, 100 FEET EAST OF THE INTERSECTION OF THE NORTH LINE OF 9TH STREET WITH THE WEST LINE OF COUNTY SURVEY NO. 114 AND RUNNING THENCE EAST 50 FEET ALONG THE NORTH LINE OF 9TH STREET, THENCE NORTH 100 FEET, WEST 50 FEET, THENCE SOUTH 100 FEET TO THE PLACE OF BEGINNING, ALL IN THE CITY OF EUGENE, LANE COUNTY, OREGON.

ALSO EXCEPTING THEREFROM THAT LAND CONVEYED TO THE CITY OF EUGENE, IN DEED RECORDED MARCH 19, 2007, AS INSTRUMENT NO. 2007-018256, LANE COUNTY DEEDS AND RECORDS, IN LANE COUNTY, OREGON.

NOTE: THIS LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 1, 2008.

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Form 50122541 (5-17-22)

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Draft Scope of Work for the Department of Environmental Quality – Prospective Purchaser Agreement

February 27, 2025

The following scope of work for the Prospective Purchaser Agreement (PPA) was developed to address documented site impacts and to ensure that the site will be protective of human health and the environment during and following the completion of redevelopment activities. Din/Cal 4, Inc. (DC4) is the prospective purchaser for the site. The scope of work (SOW) consists of the following elements:

1. Develop a Site Management Plan;
2. Vapor Intrusion Mitigation System (VIMS);
3. Develop a Long-Term Site Management Plan;
4. Decommission the On-site Groundwater Monitoring Wells; and
5. Prepare a Construction Completion Report.

1.0 Develop a Site Management Plan

A Site Management Plan (SMP) will be prepared to outline proper soil handling procedures for any proposed or future earthwork at the site. The SMP will provide guidance in the event that environmentally impacted soil, groundwater, or other environmental features (e.g., remnant underground storage tank components) are inadvertently encountered during earthwork activities. The SMP may include the following components: notifications, contaminated soil excavation and disposition, equipment decontamination, sampling and analysis plan, waste profiling assistance, end use of excavation soils, communication protocols, documentation, and reporting. DC4 will maintain a copy of the SMP. Prior to site redevelopment, a draft SMP will be submitted to DEQ for review and comment. The draft SMP will be revised based on DEQ comments and resubmitted as a final SMP.

2.0 VIMS

As a part of site redevelopment, the construction of the new on-site building will incorporate a passive VIMS consisting of a sub-slab venting network and a vapor membrane compatible with contaminants in subsurface soil, soil gas, and/or groundwater (i.e., petroleum constituents). Although the VIMS will be installed as a passive system, the system will be designed and constructed to accommodate conversion to an active system, if warranted.

The VIMS will be constructed within the building footprint in areas where the subsurface is in direct contact with overlying enclosed portions of the building and in sections of the proposed parking garage where potential pathways of least resistance exist (i.e., stairwells, elevator shafts, trash collection rooms, etc.).

The VIMS services performed at the site will consist of elements as discussed in the following subsections.

VIMS Design

The VIMS will be designed in general accordance with the DEQ's *Draft Guidance for Assessing and Remediating Vapor Intrusion into Buildings*, updated March 2024. Terracon will coordinate with the building architect to identify potential conflicts between the VIMS design and the proposed building components. Terracon will prepare VIMS design plans and specifications to include a scaled layout of the system and corresponding system details, along with specifications for materials, installation, and quality control measures for submittal to DEQ for review and comment. Once DEQ's comments are received and incorporated, the design documents can serve as a bid document to obtain the most qualified contractor for installation of the VIMS.

VIMS Construction and Performance Monitoring

Prior to construction of the DEQ-approved VIMS, a VIMS Workplan will be prepared and will detail task-specific elements of the VIMS construction and performance monitoring , including construction observations and associated reporting, and VIMS performance monitoring, as detailed in the following subsections. In addition, the VIMS Workplan will include protocols for reporting VIMS performance monitoring results to DEQ; evaluating the results of the VIMS performance monitoring; converting the VIMS from passive to active, if necessary; and coordination of scope, design, or schedule changes with DEQ. A draft VIMS Workplan will be submitted to DEQ for review and comment. The draft VIMS Workplan will be revised based on DEQ comments and resubmitted as a final VIMS Workplan.

Construction Observations

During construction, field observation services will be conducted to document construction of the proposed system and to ensure that the system is appropriately constructed. Field observation and documentation will be conducted by Terracon personnel, or their associates, and in accordance with the manufacturer's system warranty requirements. Manufacturer-trained personnel will be provided for these services. In addition, engineering support will be available during the construction of the VIMS, in the event that modifications to the VIMS design are required based on unforeseen building details and/or modifications.

VIMS Installation Observation Report

A VIMS Installation Observation Report will be prepared following the final VIMS observation at the completion of the VIMS construction. This report will provide a summary of field activities observed during the VIMS installation. A draft VIMS Installation Observation Report will be submitted to DEQ for review and comment. Following receipt and incorporation of comments from DEQ, a final VIMS Installation Observation Report will be submitted.

VIMS Performance Monitoring

Performance monitoring of the VIMS will be conducted upon completion of VIMS installation and building envelope construction. Performance monitoring will be conducted in accordance with a VIMS Performance Monitoring Sampling and Analysis Plan that will be submitted to DEQ as part of the VIMS Workplan. Specifically, VIMS performance monitoring will consist of an assessment of the VIMS operation immediately after the building envelope construction is completed, and compliance monitoring to be conducted on a quarterly basis for approximately one year following completion of the initial performance monitoring, to account for post-construction subsurface equilibration and temporal variability.

3.0 Develop a Long-term Site Management Plan

Following construction of the VIMS and completion of VIMS performance monitoring demonstrates that the VIMS is operating per design specifications and providing sufficient mitigation to protect human health, a Long-term Site Management Plan will be prepared. The Long-term Site Management Plan will include but may not be limited to the following elements:

- Long-term maintenance/inspection requirements for the VIMS;
- Notifications of building operators of maintenance/inspection requirements;
- Procedures to protect the functionality of the VIMS during future site work;
- Procedures for converting the VIMS from passive to active and operating in an active mode, if necessary;
- Protocols for coordinating changes to the VIMS with DEQ;

- A description of all contaminated media remaining at the site; and
- Guidance in the event that environmentally impacted soil, groundwater, or other environmental features (e.g., remnant underground storage tank components) are inadvertently discovered during future earthwork, including notifications, impacted media handling and disposition, equipment decontamination, sampling protocols, waste profiling, end use of excavated soils, communication protocols, documentation, and reporting.

A draft Long-term Site Management Plan will be submitted to DEQ for review and comment. The draft Long-term Site Management Plan will be revised based on DEQ comments and resubmitted as a final Long-term Site Management Plan.

An Easement and Equitable Servitude (EES) will be recorded on the property deed, which will require continued implementation of the Long-term Site Management Plan, until DEQ determines the continued actions under that plan are no longer necessary. The Long-term Site Management Plan will be included by reference in the EES.

4.0 Decommission the On-Site Groundwater Monitoring Wells

DC4 assumes that the on-site groundwater monitoring wells that were installed in November 2024 (MW-2 through MW-4) will not be sampled in the future. Prior to site redevelopment, the monitoring wells will be decommissioned by an Oregon-licensed well driller in accordance with Oregon Administrative Rule (OAR) *Chapter 690 Division 240-0510 Abandonment of Monitoring Wells*. Auger cuttings generated from the decommissioning activities will be containerized in 55-gallon drums prior to disposal by a qualified waste disposal contractor. Following decommissioning, the Oregon-licensed well driller will submit monitoring well decommissioning reports to the Oregon Water Resources Department (OWRD). A draft well decommissioning report, which will document well decommissioning activities and will include copies of the decommissioning reports submitted to OWRD, will be prepared for submittal to DEQ. Following receipt and incorporation of comments from DEQ, a final monitoring well decommissioning report will be submitted.

5.0 Construction Completion Report

Upon completion of the SOW, DC4 will prepare a Construction Completion Report describing the work performed under the PPA and in satisfaction of the SOW requirement. This report will be submitted to DEQ for review and approval.

6.0 Schedule

The SMP will be prepared and submitted to DEQ for review and approval and the monitoring wells will be decommissioned prior to earthwork or other redevelopment activities on the site.

The VIMS design will be prepared and submitted to DEQ for review and approval prior to construction of the proposed development. The actual schedules of each element of the SOW will be based on the availability of subcontractors and the DEQ Project Manager. Construction observation of the VIMS will be scheduled according to the project construction schedule.

The Long-term Site Management Plan will be submitted to DEQ for review and approval prior to the completion of construction at the site. Following DEQ approval of the Long-term Site Management Plan, the EES will be recorded for the site.

The Construction Completion Report will be submitted to DEQ for review and approval following completion of the SOW items described above.

Exhibit D

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ

[Address]

[City, OR ZIP]

Attention: [Name]

Grantor

[Name]

[Company]

[Address]

[City, State ZIP]

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on [Date], 20[Year] between [Name of Grantor] ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "Grantee").

RECITALS

A. Grantor is the owner of certain real property located at [Address, City, Zip] in [Name of] County, Oregon in [Name of] County Tax Map [#], Tax Lot [#] (the "**Property**") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name [Project Name], [ECSEI #[#] –OR– USTC File No. [#]] in the files of DEQ's [Environmental Cleanup Program] at [Eastern/Northwest/Western] Region office located at [Office Address, City], Oregon, and telephone [Region Phone #]. Interested parties may contact the [Eastern/Northwest/Western] Region office to review a detailed description of the risks from contamination remaining at the Property and described in [Reference risk assessment report or other pertinent report with full title, author, and date].

B. On [Date], 20[Year], the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Record of Decision (ROD) for the Property [full title and date or substitute other decision document]. The remedial action selected requires, among other things: [specify ROD requirement(s) for institutional control(s)]

C. On [DATE = Date of CAP, CSM, PPA, etc. through which they agreed to having an EES], 20[YR], Grantor entered into a [Reference RD/RA Consent Order, Consent Judgment, or Agreement] ([**"Order / Judgment / Agreement"**]) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

D. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

E. Nothing in this Easement and Equitable Servitude constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitude.

1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Engineering control" has the meaning set forth in OAR 340-122-0115
- 1.6 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.7 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.8 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's [issuance of a No Further Action letter with conditions / approval of the [Agreement/Order/Judgment] described above / other action by DEQ (specify)], grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1. **[First Restriction.** Insert site-specific restrictions in accordance with the staff report, ROD, or draft conditional NFA letter and where applicable, implementing consent order, judgment, PPA or other agreement.]

3.X Use of the Property. Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

5. RELEASE OF RESTRICTIONS

5.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2. Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

6. GENERAL PROVISIONS

6.1. **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with

the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2. **Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the [Name of] County zoning code or any successor code. As of the date of this EES, the base zone of the Property is [insert zoning].

6.3. **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide the Owner with a monthly statement and direct labor summary. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this EES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

6.4. **Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES. In addition, Owner will maintain records documenting inspection and reporting as outlined in the DEQ approved [insert title and date of DEQ approved plan]. Owner will submit inspector records to DEQ within 30 days of receipt of a notice letter from DEQ of its periodic review of compliance with this EES. Reports provided to DEQ in response to this notification must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include a photographic log that supports the report's narrative.

6.5. **Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.6. **Effect of Recording.** Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.7. **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES as provided in the [Order/Judgment/Agreement] or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

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

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: [Name of Grantor]

By: _____ Date: _____
[Name, Title]

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by [Name] of [Company], on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

GRANTEE: State of Oregon, Department of Environmental Quality

By: _____ Date: _____
[Name], [Tanks, Cleanup and Emergency Response] Manager,
[Eastern/Northwest/Western] Region

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by _____ [Name] of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

EXHIBIT A

Legal Description of the Property

[Insert legal description of the area that is restricted]