



MISSOURI DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:
Oakland Redevelopment, LLC
Kansas City, Missouri

Respondent

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive Environmental
Response, Compensation, and Liability Act, as
amended, 42 U.S.C §§ 9604, 9606(a), 9607 and
9622, and Sections 260.370.3(5), 260.375(14), (15)
(29), (30) and 260.530, RSMo

ORDER ON CONSENT FOR REMOVAL ACTION

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Order on Consent for Removal Action (“Order”) is entered into voluntarily by the Missouri Department of Natural Resources (“MDNR”) and Oakland Redevelopment, LLC, a Missouri limited liability company (“Respondent”). This Order provides for the voluntary performance of a removal action by the Respondent and the reimbursement of certain response costs incurred by the State of Missouri in connection with the Quality Heights I Site (the “Site”) in Kansas City, Missouri, whose legal description and street addresses is attached hereto as **Appendix A**.

2. This Order requires the Respondent to conduct a removal action, pursuant to the Missouri Hazardous Waste Management Law, Section 260.350 to 260.430, RSMo (“MHWML”) and the Missouri Hazardous Substance Emergency law, Section 260.500 to 260.550 and 40 CFR 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (“NCP”). It further requires the Respondent to reimburse Future Response Costs, as defined herein, incurred by the MDNR in developing and negotiating this Order and overseeing this removal action.

3. This Order is issued under the authority of Sections 260.370.3(5) and 260.375(14), (15), (29) and (30), 260.510 and 260.530 RSMo, and under the authority provided to the states under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (“CERCLA”). For purposes of entering into this Order, Respondent agrees that MDNR has jurisdiction to issue this Order and jurisdiction over the activities required by this Order.

4. MDNR and Respondent recognize that the Respondent is voluntarily agreeing to enter into this Order and perform the removal action in a manner that is protective of human health and the environment in order to accomplish redevelopment of existing rental residential housing and that Respondent specifically denies any liability associated with the Waste Material or other hazardous substances at the Site addressed under this Order, which such Waste Material and other hazardous substances pre-dated Respondent’s ownership of the Site and the Effective Date of this Order. This Order has been negotiated in good faith and the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent action or proceeding by MDNR or any person other than any proceeding to implement or enforce this Order, the validity of the findings of facts, conclusions of law (including, but not limited to, Paragraph 11(d)), and determinations in Sections IV and V of this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon MDNR and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent

including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order.

6. Respondent is liable for carrying out all activities required by this Order. The actions undertaken by Respondent in accordance with this Order will constitute full and complete satisfaction of Respondent's (and certain other entities involved with the purchase, redevelopment and leasing of the Site) investigation and remediation obligations, if any, under CERCLA and Missouri statutes with respect to the Pre-Existing Environmental Conditions at the Site. The MDNR reserves its right under Missouri statutes to require Respondent to perform investigatory and remedial work with respect to contamination, if any, first introduced to the Site after the Effective Date. The MDNR further reserves its right under Missouri law to investigate and affect remediation of any other contamination at the Site that pre-dates the Effective Date and that is outside the scope of this Order and the Remedial Action Plan. Respondent shall notify the MDNR as soon as practicable of any contamination encountered during implementation of the Work that is outside the scope of the Order and the Remedial Action Plan.

7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Order, terms used in this Order which are defined in the MHWML and CERCLA or in regulations promulgated under the MHWML or CERCLA shall have the following meaning assigned to them in the MHWML or CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. "Covered Matters" shall mean (i) all hazardous substances, pollutants and contaminants, including all Waste Material, existing at the Site prior to the Effective Date, (ii) the Work, (iii) environmental investigatory and other work performed by or on behalf of Respondent at the Site prior to the Effective Date, and (iv) Future Response Costs.
- c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal or State Holiday, the period shall run until the close of business of the next working day.

- d. “Developer” shall mean McCormack Baron Salazar, Inc., a Missouri corporation, which has been retained by the Respondent to be the developer of the Site.
- e. “Effective Date” shall be the effective date of this Order as provided in Section XXX.
- f. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the State of Missouri incurs on or after May 1, 2011 in developing and negotiating this Order, reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs and laboratory costs.
- g. “Interest” shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).
- h. “Investor” shall mean Wincopin Circle LLLP, a Maryland limited liability limited partnership, which is an equity investor in the redevelopment of the Site.
- i. “Lender” shall mean the Missouri Housing Development Commission, a body corporate and politic of the State of Missouri, which is financing a portion of the redevelopment.
- j. “MHWML” shall mean the Missouri Hazardous Waste Management Law, Sections 260.350 to 260.430 RSMo, as amended.
- k. “MDNR” shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State of Missouri.
- l. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- m. “Order” shall mean this Order on Consent for Removal Action and all appendices attached hereto or incorporated by reference. Unless otherwise specifically stated, in the event of a conflict between this Order and any appendix, the Order shall control.

- n. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral.
- o. “Parties” shall mean MDNR and Respondent.
- p. “Pre-Existing Environmental Conditions” shall mean all hazardous substances, pollutants and contaminants, including all Waste Material, existing at the Site prior to the Effective Date.
- q. “Property Manager” shall mean McCormack Baron Ragan Management Services, Inc., a Missouri corporation, which has been retained by the Respondent to oversee leasing, management and operation of the Site. The term also includes any new or successor property manager or management company that may be retained in the future by Respondent for the Site.
- r. “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- s. “Respondent” shall mean Oakland Redevelopment, LLC, a Missouri limited liability company, the owner of the Site.
- t. “Respondent Parties” shall mean Respondent, Developer, Lender, Investor and Property Manager, and their respective members, partners, shareholders, officers, directors, employees, agents, representatives, successors and assigns.
- u. “Section” shall mean a portion of this Order identified by a Roman numeral.
- v. “Site” shall mean the Quality Heights I Site, located in Kansas City, Jackson County, Missouri at the addresses identified on **Appendix A** and depicted generally on the map attached as **Appendix B**.
- w. “State” shall mean the State of Missouri.
- x. “Remedial Action Plan” or “RAP” shall mean the MDNR-approved remedial action plan for implementation of the removal action at the Site required under this Order as set forth in **Appendix C** to this Order and any modifications thereto made in accordance with this Order. The Remedial Action Plan does not, however, include or apply to the following portion of the Site: “TRACT 5, QUALITY HEIGHTS NORTH, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.”

- y. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. §6903(27); 4) any “hazardous waste” under the MHWML, and 5) any hazardous substance under Section 260.500(5) RS Mo.
- z. “Work” shall mean all activities Respondent is required to perform under the Remedial Action Plan and this Order.

IV. FINDINGS OF FACT

9. Background.

The Site is an existing development of forty (40) rental residential units (houses) which were constructed in approximately 1988. Investigations into historical uses of the Site indicate that the Site has been used primarily for residential purposes dating back to at least 1939.

From the time of its original development for rental residential units in 1988 until the date of this Order, the Site was owned by Quality Heights Associates, L.P. Effective on the date of this Order, Respondent is the owner of the Site. The Respondent, whose sole member is a non-profit entity, was formed for the purpose of owning, developing, rehabilitating, leasing, managing and operating the Site for use as low-income housing in compliance with the provisions of Section 42 of the Internal Revenue Code of 1986 (the “Code”).

The Site adjoins another residential development, Quality Heights II, consisting of 68 rental units (townhomes) which were constructed in approximately 1997. From the time of its development for residential units in 1997 until the date of this Order, Quality Heights II was owned by Quality Heights II Associates, L.P. Effective on the date of this Order Respondent is the owner of Quality Heights II. Quality Heights II was enrolled in the Missouri Brownfields/Voluntary Cleanup Program in connection with its development. Quality Heights II underwent remediation associated with lead-impacted fill material and Polycyclic Aromatic Hydrocarbons (PAHs) and received a Certificate of Completion from MDNR in 1997. In connection with the issuance of the Certificate of Completion, certain engineering controls and institutional controls were utilized and memorialized in a deed restriction recorded with the Jackson County Recorder of Deeds. The Site was not included in the investigation and remediation of Quality Heights II under the Missouri Brownfields/Voluntary Cleanup Program.

The Site and Quality Heights II are being acquired, financed and renovated using Federal and State Low Income Housing Tax Credits and HOME funds. As part of this transaction, the Site and Quality Heights II are now both owned by the Respondent, whose sole member is a non-profit entity, and the units on both the Site and Quality Heights II will

continue to be leased for residential purposes. The requirements of this Order pertain only to the Site (Quality Heights I).

10. Site Conditions

A substantial renovation of the existing 40 rental residential housing units is planned for the Site. In preparation for redevelopment of the Site, testing of surface and subsurface soil and testing of groundwater at the Site was performed in 2010 and 2011 to evaluate the potential presence of hazardous substances at the Site.

Although hazardous substances were detected in groundwater samples from the Site, none were found above Default Target Levels (DTLs). DTLs are levels considered safe for any and all uses of property. The results of soil testing at the Site indicated that surface and subsurface soil at the Site contains lead and PAHs exceeding Missouri's Risk Based Corrective Action Guidance (MRBCA) Tier 1 Risk Based Target Levels (RBTLs) applicable to residential use of property. DTLs and RBTLs were developed and are used by the Department. Lead concentrations in soil also exceed the U.S. Environmental Protection Agency ("EPA") Regional Screening Levels ("RSL's") applicable to residential soil and the EPA Time-Critical Removal Action Level. Fill material consisting of silty loam mixed with pieces of brick, rock, cinders and glass was identified in several areas on the Site, particularly on the southeast portion of the Site. No evidence of specific or discrete releases of lead, PAH's or other hazardous substances was identified by research into historical activities at the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

11. Based on the Findings of Fact set forth above, and solely for purposes of this Order:

- a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes [a] "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- c. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. The Respondent is a responsible party under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a), for performance of response action and for response costs to be incurred at the Site.
- e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

- f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

12. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including all appendices to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND STATE PROJECT MANAGER

13. Respondent has designated Genesis Environmental Solutions Inc as the contractor to perform the Work. MDNR has been notified of this selection and has been provided with the qualification(s) of such contractor and MDNR has approved this contractor for the Work. Respondent shall also notify MDNR of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least thirty (30) days prior to commencement of Work by such other contractor. MDNR retains the right to disapprove of any such subcontractor(s) retained by Respondent. If MDNR disapproves of a selected subcontractor, Respondent shall retain a different contractor and shall notify MDNR of that contractor's name and qualifications within thirty (30) days of MDNR's disapproval.

14. Respondent has designated Riverfront Environmental Inc. as the Project Coordinator who will be responsible for administration of all actions by Respondent required by this Order. MDNR has been notified of this selection and has been provided with the qualification(s) of such contractor and MDNR has approved this contractor as the Project Coordinator. To the extent possible, the Project Coordinator shall be present on Site or readily available during Site work. Receipt by Respondent's Project Coordinator of any notice or communication from MDNR relating to the Work shall constitute receipt by Respondent.

15. MDNR has designated Valerie Wilderof the Hazardous Waste Program, as its state Project Manager (PM). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the PM at P.O. Box 176, Jefferson City, MO 65102.

16. MDNR and Respondent shall have the right, to change their respective designated PM, contractor or Project Coordinator. Respondent shall notify MDNR fourteen (14) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. MDNR retains the right to disapprove any different contractor or Project Coordinator proposed by Respondent. If MDNR disapproves of the new contractor or Project Coordinator proposed by Respondent, Respondent shall retain a

different contractor or Project Coordinator and shall notify MDNR of that person's name, address, telephone number, and qualifications within thirty (30) days following MDNR's disapproval.

VIII. WORK TO BE PERFORMED

17. Respondent shall perform all actions necessary to implement the removal action at the Site, as set forth in the Remedial Action Plan. The actions to be implemented generally include, but are not limited to, the following:

- a. Excavation of impacted soil up to a depth of 12 inches around the existing building foundations and existing flatwork (concrete sidewalks and driveways) and placement of a 12- inch clean soil cap on the excavated areas.
- b. Placement of a 12-inch clean soil cap on top of existing impacted soil in areas of the Site where excavation does not take place or where not already covered by hardscape.
- c. Placement of a witness barrier, consisting of orange-mesh plastic webbing, on top of impacted soil and beneath the 12-inch clean soil cap.
- d. Relocation of some excavated soil on-Site (in areas identified on a map attached to the RAP) with coverage by a witness barrier and 12-inch clean soil cap.
- e. A right of way, owned by the City of Kansas City ("City"), exists between the sidewalk and each city street. Soils within the right of way will be included within the remediation outlined above. The City will be notified of the remedial actions that will be performed in the right of way and, if necessary, an access agreement will be negotiated for Work in the rights of way.
- f. Proper off-site disposal of impacted soil that is not relocated on-Site.
- g. An operations and maintenance program (O&M Program) will be developed for the impacted soils to be left in-place below hardscape and the clean soil cap within Quality Heights I and Quality Heights II. The O&M Program will include visual inspections of the surface cover on a regular basis to ensure the integrity of the cap. Visual inspections will be conducted by property management personnel to assess the condition of the cover and the potential for exposure pathways. Any deficiencies will be repaired or corrected on a timely basis. The O&M Program will also provide steps to be taken in the event future disturbance of the surface cover is required to assure that the surface

cover is returned to an acceptable condition. Any disturbance of contaminated soil beneath the witness barrier will be managed to prevent an exposure risk.

- h. Within thirty (30) days of the Effective Date, an Environmental Covenant will be recorded with the Jackson County Recorder of Deeds pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039, RS Mo which:
- Prohibits unrestricted residential use of the Site unless approved in writing by MDNR.
 - Prohibits use of groundwater at the Site for drinking, domestic or other purposes, except for investigative purposes
 - Requires that leases for the rental units prohibit tenants from digging or otherwise disturbing soil, including gardening and landscaping activities
 - Prohibits on-Site excavation or disturbance of the soil cap by any other person unless performed in accordance with a MDNR-approved Soil Operations and Management (“O&M”) Plan.
 - Specifically identifies the locations on the Site where impacted soil from excavation activities was buried and covered with a witness barrier and a twelve-inch cap of clean soil.
 - Specifically identifies the following portion of the Site as being a non-characterized, non-remediated parcel for which residential use is prohibited unless characterized and remediated to levels appropriate for unrestricted use as approved in writing by MDNR: “TRACT 5, QUALITY HEIGHTS NORTH, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.”
- i. A Community Relations Plan (CRP) will be developed and implemented for the residents of the Site and Quality Heights II to communicate the results of the subsurface investigations performed onsite related to the presence of lead and PAH impacted soils and the Remedial Action Plan. This CRP will be developed and implemented in conjunction with the Kansas City Health Department, the Missouri Department of Health and Senior Services, and the Missouri Department of Natural Resources.

In the event of any conflict between the summary of the Work in this Paragraph 17 and the Remedial Action Plan, the terms of the Remedial Action Plan (**Appendix C**) shall control.

18. Remedial Action Plan Implementation

- a. MDNR has approved the Remedial Action Plan (**Appendix C**). The Remedial Action Plan has been developed in accordance with the U.S. EPA Superfund Lead-Contaminated Residential Site Handbook, August 2003, and describes in detail the work that is to be completed by the Respondent pursuant to this Order. Completion of the Remedial Action Plan and Completion Date, as defined below, are fully enforceable under this Order. Respondent shall not commence any Work except in conformance with the terms of this Order. It is presently anticipated that the removal action will be performed in two separate phases, with both phases completed by the Fall of 2012, however the enforceable due date for completion of the activities in the Remedial Action Plan is July 31, 2015 (“**Completion Date**”).
- b. Respondent shall pay to MDNR a one-time payment of five thousand dollars (\$5,000.00) to be used to fund regular inspections of the risk reduction and exposure control measures and the Environmental Covenant implemented at the site pursuant to the Remedial Action Plan for as long as MDNR determines is necessary.
- c. Respondent shall file this Order and the Environmental Covenant with the Jackson County Recorder of Deeds within thirty (30) days of the Effective Date and provide to MDNR evidence of such recording, to include a true copy of the documents as filed and stamped by the Jackson County Recorder of Deeds.

19. Health and Safety Plan. Within sixty (60) days after the Effective Date, Respondent shall submit for MDNR review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work required under this Order. This plan shall be prepared in accordance with MDNR’s Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. If MDNR determines that it is appropriate, the plan shall also include contingency planning.

20. Quality Assurance and Sampling.

- a. All sampling and analyses performed pursuant to this Order shall conform to the procedures and meet the requirements of the MDNR Quality Management Plan. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “US EPA’s Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001”), or equivalent documentation as

determined by MDNR. MDNR will consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

- b. Any sampling for environmental data requires a Quality Assurance Project Plan (QAPP) and Sampling and Analysis Plan (SAP) to ensure the quality of the data collected. MDNR will allow the use of EPA’s Generic Quality Assurance Project Plan for Region 7’s Superfund Lead-Contaminated Sites, dated June 2007, provided that a site specific SAP is developed with Data Quality Objectives outlined and submitted for MDNR’s review and approval prior to any environmental samples being collected.
- c. Upon request by MDNR, Respondent shall have such a laboratory analyze samples submitted by MDNR for QA monitoring. Respondent shall provide to MDNR the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
- d. Upon request by MDNR, Respondent shall allow MDNR or its authorized representatives to take split and/or duplicate samples. Respondent shall notify MDNR not less than ten (10) days in advance of any sample collection activity, unless shorter notice is agreed to by MDNR. MDNR shall have the right to take any additional samples that MDNR deems necessary. Upon request, MDNR shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent’ implementation of the Work.

21. Reporting.

- a. Respondent shall submit a monthly written progress report to MDNR concerning actions undertaken pursuant to this Order, beginning on the first day of the month following the Effective Date. Unless otherwise directed in writing by the PM, such progress reports shall continue to be submitted on the first day of each month until the Final Report, referenced in Paragraph 22 herein, is approved by MDNR. These reports shall briefly describe all significant developments during the preceding month, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

- b. Respondent shall submit two (2) copies of all plans, reports or other submissions required by this Order or the RAP. Upon request by MDNR, Respondent shall submit such documents in electronic form.
- c. If the Respondent owns or controls property at the Site it shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to MDNR of the proposed conveyance, including the name and address of the transferee. Upon written approval of MDNR, Respondent may assign its rights and obligations under this Order to the transferee. If the Respondent owns or controls property at the Site, the Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

22. Final Report. Within sixty (60) days after completion of all Work required by this Order, Respondent shall submit for MDNR review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports. The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

23. Off-Site Shipments of Waste Materials.

- a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility’s state and to the Missouri PM.
 - i. Respondent shall include in the written notification the following information: 1) the name and location of the facility

to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

- ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information by Paragraph 23(a) and (b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
- b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location in Missouri, Respondent shall obtain MDNR's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C, § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

24. Respondent shall, commencing on the Effective Date, provide MDNR, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property under the control of Respondent, for the purpose of conducting any activity it is authorized to perform under this Order or Missouri law.

25. Notwithstanding any provision of this Order, MDNR retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

26. Respondent shall provide to MDNR, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to Work at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to MDNR, for purposes of investigation,

information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

27. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to MDNR under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9640(e)(7), and 40 C.F.R. §2.203(b). MDNR will review confidentiality requests pursuant to Chapter 610, RSMo and apply these federal statutes and regulations to the extent allowed by Chapter 610, RSMo. Documents or information determined to be confidential by MDNR will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to MDNR, or if MDNR has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

28. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent assert such a privilege in lieu of providing documents, they shall provide MDNR with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports, or information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

29. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydro-geologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

30. Until ten (10) years after Respondent's receipt of MDNR's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after Respondent's receipt of MDNR's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to performance of the Work.

31. At the conclusion of this document retention period, Respondent shall notify MDNR at least ninety (90) days prior to the destruction of any such records, or documents,

and upon request by MDNR, Respondent shall deliver any such records or documents to MDNR. Respondent may assert that certain documents, records, or other information are privileged under the attorney-client or any other privilege recognized by federal law. If Respondent assert such a privilege, they shall provide MDNR with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports, or information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

XII. COMPLIANCE WITH OTHER LAWS

32. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by MDNR, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (“ARARs”) under federal environmental or state environmental or facility siting laws. MDNR acknowledges and agrees that implementation of the approved Remedial Action Plan required under this Order shall be deemed compliant with ARARs under this Section.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

33. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of hazardous substances from the Site that constitutes an emergency situation or may reasonably be expected to present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate, or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the PM Valerie Wilder and the MDNR 24-Hour Environmental Emergency Response Hotline (573) 634-2436 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph or directed by MDNR, and MDNR is required to take such action instead, Respondent shall reimburse MDNR all reasonable costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Future Response Costs).

34. In addition, in the event of any release of a hazardous substance from the Site in such quantities or under such circumstances that are reportable under Missouri statute or CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*, Respondent shall immediately notify the PM at (573) 522-1795 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to MDNR within seven (7) days after each release, setting forth

the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release.

XIV. AUTHORITY OF STATE PROJECT MANAGER

35. The PM shall be responsible for overseeing Respondent's implementation of the Remedial Action Plan and this Order. The PM shall have the authority vested in a On-Scene Coordinator by the NCP, including the authority to modify, halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site, provided, however, that (i) the PM shall not order or direct, and MDNR shall not halt or conduct any Work (or be reimbursed by Respondent for such Work) required under this Order so long as Respondent is performing such Work in accordance with the Remedial Action Plan and, if Respondent is not performing the Work in accordance with this Order and the RAP, until the PM has notified Respondent of the deficiency and afforded Respondent a reasonable opportunity to cure such deficiency, and (ii) the PM shall not modify the Remedial Action Plan or any other plan approved by MDNR as of the Effective Date, or order or direct Respondent to perform any removal action at the Site that is not reasonably within the scope of the approved Remedial Action Plan (Appendix C). Absence of the PM from the Site shall not be cause for stoppage of work unless specifically directed by the PM.

XV. PAYMENT OF FUTURE RESPONSE COSTS

36. Payments for Future Response Costs.

- a. Respondent shall reimburse the MDNR for all Future Response Costs which are not inconsistent with the NCP, incurred by the MDNR with respect to this Order. It is estimated that MDNR oversight costs will not exceed \$25,000. On a periodic basis, MDNR will send Respondent a bill requiring payment that includes a standard MDNR-prepared cost summary, which includes direct and indirect costs incurred by MDNR and its contractors. Respondent shall make all payments within forty-five (45) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 38 of this Order.
- b. Respondent shall make all payments required by this Paragraph by a certified or cashiers check or checks made payable to "MDNR Hazardous Waste Fund" referencing the Site name – Quality Heights I. Respondent shall send certified checks or money orders to:
Missouri Department of Natural Resources
Attention: Section Chief, Superfund Section
Hazardous Waste Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

37. In the event that the payments for Future Response Costs are not made within 45 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the state of Missouri by virtue of Respondent's failure to make timely payments under this Section.

38. Respondent may contest payment of any Future Response Costs billed under Paragraph 36 if it determines that MDNR has made a mathematical error, or if it believes MDNR incurred such costs as a direct result of an MDNR action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the PM. Any such objection shall specifically identify the contested Future Response Costs and basis for objection. In the event of an objection, Respondent shall within the 45-day period pay all uncontested Future Response Costs to MDNR in the manner described in Paragraph 36. Simultaneously, Respondent shall establish an interest-bearing escrow account funds in a federally-insured bank duly chartered in the State of Missouri or Kansas and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the MDNR PM a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information concerning the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If MDNR prevails in the dispute, within five (5) days of the resolution of the dispute, Respondent shall pay that portion of the costs (plus associated accrued interest) to MDNR in the manner described in Paragraph 36. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to MDNR in the manner described Paragraph 36. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding Respondent's obligation to reimburse MDNR for Future Response Costs.

XVI. FORCE MAJEURE

39. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure* or is waived in writing by the PM or MDNR. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

40. If any event occurs that will delay the scheduled date for performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify MDNR orally within three (3) days of when Respondent first knows that the event will

cause such a delay. Within seven (7) days thereafter, Respondent shall provide to MDNR in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent’s rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall, unless otherwise agreed by the PM or MDNR, preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

41. If MDNR agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by MDNR for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If MDNR does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, MDNR will notify Respondent in writing of its decision. If MDNR agrees that the delay is attributable to a *force majeure* event, MDNR will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVII. STIPULATED PENALTIES

42. Respondent shall be liable to MDNR for stipulated penalties in the amounts set forth in Paragraphs 43 and 44 for failure to comply with the requirements of this Order specified below, including the Remedial Action Plan, unless excused under Section XVI (*Force Majeure*) or by written consent of the PM or MDNR. “Compliance” by Respondent shall include completion of the activities required under this Order, the Remedial Action Plan, or any other plan approved under this Order, in accordance with applicable requirements of law and within the specified time schedules established by and approved under this Order and the Remedial Action Plan. Notwithstanding the foregoing, MDNR may extend the time for performance or waive the imposition of any penalty, or any portion thereof, in its discretion.

43. Stipulated Penalty Amounts – Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 43(b), (c) and (d):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ <u>500.00</u>	1 st through 14 th day
\$ <u>1,000.00</u>	15 th through 30 th day
\$ <u>2,000.00</u>	31 st day and beyond

- b. Start Date for first phase of work: December 1, 2011
- c. Start Date for second phase of work: August 1, 2012
- d. Completion Date: July 31, 2015

44. Stipulated Penalty Amounts – Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports required under this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ <u>250.00</u>	1 st through 14 th day
\$ <u>500.00</u>	15 th through 30 th day
\$ <u>2,000</u>	31 st day and beyond

45. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not begin to accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), until the date that MDNR notifies Respondent of any deficiency; and 2) with respect to a decision by the MDNR Management Official at the Division Director level or higher, until the date that the MDNR Management Official issues a final decision regarding such dispute. Nothing in this Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

46. Following MDNR’s determination that Respondent has failed to comply with a requirement of this Order, MDNR shall give Respondent written notification of the failure and describe the noncompliance and allow Respondent a reasonable opportunity to cure such deficiency without penalty. MDNR may send Respondent a written demand for payment of the penalties.

47. All penalties accruing under this Section shall be due and payable to MDNR within thirty (30) days of Respondent’s receipt from MDNR of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XXVII (Dispute Resolution). All payments to MDNR under this Section shall be paid by certified or cashiers check(s) made payable to Jackson County Treasurer (Trustee for the Jackson County School Fund)” and sent to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri, 65102-0899, Attention Joann Horvath, Financial Services Division. Checks shall indicate that the payment is for stipulated penalties, and shall reference the name and address of the party(s) making payment and the MDNR Site Name (Quality Heights I).

48. The payment of penalties shall not alter in any way Respondent’s obligation to complete performance of the Work required under this Order.

49. If Respondent fails to pay stipulated penalties when due, MDNR may institute proceedings to collect the penalties, including any interest accrued. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of MDNR to seek

any other remedies or sanctions available by virtue of Respondent's violation of state or federal law, including, but not limited to, penalties pursuant to Sections 106(b) and 122(I) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(I), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that MDNR shall not seek civil penalties pursuant to Section 106(b) or 122(I) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Order. Notwithstanding any other provision of this Section, MDNR may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVIII. COVENANT NOT TO SUE BY MDNR

50. In consideration of the voluntary removal and other actions that will be performed and paid for by Respondent and the payments that will be made to MDNR by Respondent for Future Response Costs under the terms of this Order, and except as otherwise specifically provided in this Order, MDNR covenants not to sue or to take administrative action against Respondent Parties, or any of them, pursuant to common law or any Missouri or federal environmental statute for or with respect to the Covered Matters, including Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, and including any action for natural resource damages. The covenant in the preceding sentence applies to the Respondent Parties, other than Respondent, only as to liability that arises out of Respondent Parties' relationship to Respondent or actions taken by Respondent Parties on behalf of Respondent. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue shall extend only to Respondent Parties and does not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY MDNR

51. Except as specifically provided in this Order, nothing in this Order shall limit the power and authority of MDNR or the state of Missouri to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent MDNR from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. Notwithstanding the foregoing, neither the PM nor MDNR shall order, require or direct any of the Respondent Parties to perform or pay for any investigatory, removal or remedial action at the Site for or with respect to Pre-Existing Environmental Conditions that are outside the scope of this Order or the Remedial Action Plan.

52. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. MDNR reserves and this Order is

without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. criminal liability;
- c. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site, and
- d. liability for costs incurred or to be incurred by any other government agency other than the MDNR.

XX. COVENANT NOT TO SUE BY RESPONDENT

53. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the state of Missouri, or its contractors or employees, with respect to the Remedial Action Plan, Future Response Costs, or this Order, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S. C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provisions of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the Missouri Constitution, the Missouri Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law, or
- c. any claim against the state of Missouri pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, or Future Response Costs.

54. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section III of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXI. OTHER CLAIMS

55. By issuance of this Order, the State and MDNR assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The State or MDNR shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

56. Except as expressly provided in Section XVIII (Covenant Not to Sue by MDNR), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent Parties or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the State for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

57. No action or decision by MDNR pursuant to this Order shall not give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. CONTRIBUTION

58.

- a. The Parties agree that this Order constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for the Covered Matters addressed in this Order.
- b. The Parties agree that this Order constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent Parties have, as of the Effective Date, resolved their liability, if any, to the State for the Work, Future Response Costs and those response actions taken or costs paid prior to the Effective Date which are described in the Remedial Action Plan.
- c. Nothing in this Order precludes the State or Respondent Parties from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Order. Nothing in this Order diminishes the right of the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and enter into settlements that give rise to contribution protection pursuant Section 113(f)(2).

XXIII. INDEMNIFICATION

59. Respondent shall indemnify, save and hold harmless the State, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on its behalf or under its control, in carrying out actions pursuant to this Order. This indemnity includes, without limitation, attorney fees and other expenses of

litigation and settlement, arising from or on account of such claims made against the State. The State shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the State.

60. The State shall give Respondent notice of any claim for which the State plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

61. Respondent waives all claims against the State for damages or reimbursement or for set-off of any payments made to or to be made to the State of Missouri, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance or Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the State with respect to any and all claims for damages or reimbursements arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

62. At least ten (10) days prior to commencing any on-Site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one (1) million dollars, combined single limit, naming MDNR as an additional insured. Within the same time period, Respondent shall provide MDNR with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to MDNR that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need to provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

63. Within 30 days of the Effective Date, Respondent shall, establish an escrow account in the amount of four hundred five thousand dollars (\$405,000.00) in order to secure the full and final completion of Work by Respondent. The Missouri Housing Development Corporation (MHDC) may act as the escrow agent. Funds held in escrow may only be disbursed by the escrow agent for costs incurred directly by Respondent in performing the Work required under the Remedial Action Plan.

64. The escrow agreement in **Appendix D** is in form and substance satisfactory to MDNR. In the event that MDNR determines at any time that the financial assurance provided pursuant to this Section is inadequate to secure the cost of completing the Work, Respondent shall, within 30 days of receipt of notice of MDNR's determination, obtain and present to MDNR for approval another form of financial assurance or additional source of funding that is acceptable to MDNR. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

65. If Respondent subsequently seeks to ensure completion of the Work through a guarantee, Respondent shall (i) demonstrate to MDNR's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) submit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by MDNR, to MDNR. For the purposes of this Order, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount used in the relevant calculations shall be the current cost estimate of \$405,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to MDNR by means of passing a financial test.

66. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 65 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security held in escrow provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to MDNR, in accordance with the requirements of this Section, and may reduce the amount of funds held in escrow after receiving written approval from MDNR.

67. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by MDNR, provided that MDNR determines that the new form of assurance meets the requirements of this Section.

XXVI. MODIFICATIONS

68. Subject to Section XIV (Authority of the State Project Manager) the PM may make modifications to Remedial Action Plan or other plan or schedule in writing or by oral direction. Any oral modifications will be memorialized in writing by MDNR promptly, but shall have as its effective date, the date of the PM's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

69. If Respondent seeks permission to deviate from the Remedial Action Plan or any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to MDNR for approval outlining the proposed modification and its basis. Respondent

may not proceed with the requested deviation until receiving oral or written approval from the PM pursuant to Paragraph 68.

70. No informal advice, guidance, suggestion, or comment by the PM or other MDNR representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVII. DISPUTE RESOLUTION

71. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

72. If Respondent objects to any MDNR action taken pursuant to this Order, it shall notify MDNR in writing of its objection(s) within ten (10) days of such action, unless the objection(s) has/have been resolved informally. MDNR and Respondent shall have thirty (30) days from MDNR's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of MDNR.

73. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an MDNR management official will issue a written decision on the dispute to Respondents. MDNR's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with MDNR's decision, whichever occurs.

XXVIII. NOTICE OF COMPLETION OF WORK

74. When MDNR determines, after MDNR's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, such as compliance with the Environmental Covenant, payment of Future Response Costs and record retention, MDNR shall provide written notice to Respondent. If MDNR determines that any such Work has not been completed in accordance with this Order, MDNR will notify Respondent, provide a reasonably specific list of deficiencies, and may allow Respondent a reasonable opportunity to correct such deficiencies. Respondent shall implement the corrective action and shall submit

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Hazardous Waste Program
MO Dept. of Natural Resources

a modified Final Report in accordance with the MDNR notice. Failure by Respondent to implement the approved Remedial Action Plan shall be a violation of this Order.

XXIX. INTEGRATION/APPENDICES

75. This Order and its appendices constitute(s) the final, complete, and exclusive agreement and understanding among the Parties with respect to this Order. The parties acknowledge that there are no representations, agreements, or understandings relating this Order other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order:

- | | |
|------------|--------------------------------------|
| APPENDIX A | Legal Description and Site Addresses |
| APPENDIX B | Site Map |
| APPENDIX C | Remedial Action Plan |
| APPENDIX D | Escrow Agreement |

XXX. EFFECTIVE DATE

76. This Order shall be effective five (5) days after the Order is signed by the MDNR Division of Environmental Quality Director or his/her designee.

XXXI. WAIVER OF APPEAL

77. Respondent waives its right to appeal or otherwise contest this Order.

The undersigned representative(s) of Respondent certify(s) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party it (they) represent(s) to this document.

Agreed this 10th day of June, 2011.

RESPONDENT:

OAKLAND REDEVELOPMENT, LLC, a Missouri limited liability company

By: BHCS Oakland Heights GP, LLC, a Missouri limited liability company,
its Managing Member

By: Blue Hills Community Services Corporation, a Missouri non profit corporation,
its Sole Member

By 
Joanne Bussinger, Executive Director

It is so ORDERED and Agreed this 10th day of June, 2011.

BY: Leanne Tippet Mosby DATE: 6/10/11
Name Leanne Tippet Mosby
Director Division of Environmental Quality
Missouri Department of Natural Resources

EFFECTIVE DATE: _____

APPENDIX A
LEGAL DESCRIPTION AND STREET ADDRESSES

PARCEL 2:

TRACT 1, QUALITY HEIGHTS NORTH, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF, TOGETHER WITH THAT PART OF THE WEST ½ OF THE VACATED ALLEY LYING NEXT EAST OF AND ADJACENT THERETO, SAID ALLEY VACATED BY ORDINANCE NO. 64009, FILED JUNE 14, 1989, AS DOCUMENT NO. K-882184 IN BOOK K-1923 AT PAGE 2197.

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MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

QUALITY HEIGHTS I

STREET ADDRESSES

BLDG. #	ST. #	STREET
1	2419	WOODLAND AVE.
2	2421	WOODLAND AVE.
3	1800	E 24TH TERR
4	1806	E 24TH TERR
5	1812	E 24TH TERR
6	1818	E 24TH TERR
7	2420	MICHIGAN AVE.
8	2417	MICHIGAN AVE.
9	2415	MICHIGAN AVE.
10	2413	MICHIGAN AVE.
11	2409	MICHIGAN AVE.
12	2410	MICHIGAN AVE.
13	2406	MICHIGAN AVE.
14	1815	E 24TH ST.
15	1809	E 24TH ST.
16	1900	E 24TH ST.
17	1904	E 24TH ST.
18	1908	E 24TH ST.
19	2325	MICHIGAN AVE.
20	2323	MICHIGAN AVE.
21	2449	EUCLID AVE.
22	2451	EUCLID AVE.
23	2000	E 25TH ST.
24	2006	E 25TH ST.
25	2012	E 25TH ST.
26	2018	E 25TH ST.
27	2456	GARFIELD AVE.
28	2452	GARFIELD AVE.
29	2448	GARFIELD AVE.
30	2444	GARFIELD AVE.
31	2440	GARFIELD AVE.
32	2436	GARFIELD AVE.
33	2025	E 24TH TERR
34	2021	E 24TH TERR
35	2445	GARFIELD AVE.
36	2449	GARFIELD AVE.
37	2453	GARFIELD AVE.
38	2457	GARFIELD AVE.
39	2100	E 25TH ST.
40	2106	E 25TH ST.

APPENDIX B
SITE MAP

APPENDIX C
MDNR-APPROVED REMEDIAL ACTION PLAN

APPENDIX D
ESCROW AND DISBURSING AGREEMENT

THIS ESCROW AND DISBURSING AGREEMENT (ENVIRONMENTAL ESCROW ACCOUNT) (“Agreement”), made as of the 10th day of June, 2011, by and among **OAKLAND REDEVELOPMENT, LLC**, a Missouri limited liability company, whose address is 3101 Broadway, Suite 770, Kansas City, Missouri 64111 (“Owner”), and **MISSOURI HOUSING DEVELOPMENT COMMISSION**, a body corporate and politic of the State of Missouri, with offices at 3435 Broadway, Kansas City, Missouri 64111 (“MHDC”), and **FIRST AMERICAN TITLE INSURANCE COMPANY, NATIONAL COMMERCIAL SERVICES**, whose address is 1600 South Brentwood, Suite 410, St. Louis, Missouri 63144 (“Title Company”).

PRELIMINARY STATEMENTS

This Agreement is being entered into in order to set out certain disbursement requirements of Title Company, MHDC and Owner.

Owner shall deposit with MHDC \$405,000.00 (“Owner Cash”).

Substantially all of Owner’s Cash shall be disbursed under this Disbursing Agreement in accordance with the provisions of that certain Contract for Environmental Excavation and Disposal dated June 10, 2011 between Owner and Genesis Environmental Solutions Inc., a Missouri corporation (“Contractor”)(the “Genesis Contract”), all of the covenants, terms and conditions of which are incorporated herein by reference as if set forth verbatim. Additional amounts of Owner’s Cash shall be disbursed as directed by Owner and MBS.

The primary purpose of the disbursement of the Owner Cash is for the payment of services to be provided by Contractor pursuant to the Genesis Contract (the “Contracted Services”) related to the remediation of the Quality Heights I Site (the “Property”) located in **Kansas City, Jackson County, Missouri**, all of which land is more particularly described on **Exhibit “A”** attached hereto. The remediation of the Property will be performed in accordance with the terms of a Remedial Action Plan dated June 3, 2011, defined below, which has been approved by the Missouri Department of Natural Resources (“MDNR”).

The Contracted Services are based on the terms and conditions of that certain Order on Consent for Removal Action dated June 10, 2011 by and between MDNR and the Owner (the “OCRA”) and that certain Remedial Action Plan (RAP), Quality Heights I, Kansas City, Missouri (June 3, 2011) prepared by Riverfront Environmental (the “RAP” and together with the “OCRA,” the “Remediation Requirements”).

NOW THEREFORE, in consideration of the premises, covenants, and conditions herein contained, the parties hereto agree as follows:

**ARTICLE I
COVENANTS AND DUTIES OF TITLE COMPANY**

At no cost to any of the other parties hereto, **except for recording costs**, Title Company shall provide the following services:

- (1) Pursuant to that certain Disbursing Agreement for the MHDC Loan described therein dated June 13, 2011 ("MHDC Disbursing Agreement"), Title Company will issue to MHDC its ALTA Loan Policy 2006 (adopted 06/14/06) in the amount of \$2,157,000.00 ("MHDC Policy") insuring MHDC, its successors and assigns, as the holder of a first mortgage lien on the Property subject to permitted exceptions and including certain endorsements. In addition, Title Company will issue date down endorsements pursuant to Article I(2) of the MHDC Disbursing Agreement ("Date Down Endorsement").
- (2) Promptly notify MHDC and Owner of any mechanics' or materialmen's claims or liens of which it or any of them become(s) aware.
- (3) Issue a Date Down Endorsement at the time of each disbursement of Owner's Cash as provided for in this Agreement affirmatively insuring against loss or damage sustained by reason of the enforcement or attempted enforcement of any and all mechanics' liens or materialmen's claims, filed against the Property and having priority to a date prior to the respective title endorsement of the MHDC Policy, including, without limitation any liens listed on such title endorsement, always provided, a bond or a cash escrow equal to **1.5** times the amount of any lien which has been filed against the Property has been deposited with the Title Company by the Owner or Contractor in consideration for such affirmative coverage.
- (4) Promptly deliver to Owner copies of all lien waivers, receipts and requisitions that it receives from the Contractor.
- (5) All the parties hereto agree that the functions and duties assumed by Title Company herein include only those described in this Agreement. The Title Company does not insure that the Contracted Services will be performed and completed in accordance with the Remediation Requirements; neither does the Title Company assume any liability for the same other than the notifications and deliveries as set forth hereunder.

In consideration of the foregoing and as inducement therefor, Owner does hereby indemnify and hold Title Company harmless of and from any and all loss, cost, damage and expense of every kind including attorneys' fees, which Title Company shall or may suffer or incur or become liable for related to this transaction arising directly or indirectly out of or on account of any such mechanics' or materialmen's lien or liens, or claim or in connection with Title Company's enforcement of its rights under this Agreement, unless and except to the extent that any such lien or claim results from Title Company's or its employees' or agents' negligence or default under this Agreement. Notwithstanding the foregoing, it is understood that the Owner's agreement of indemnity is limited to liens arising from work beyond the scope of the Genesis Contract. All representations, agreements of indemnity and waivers are also to the benefit of any party insured under any policy issued by Title Company related to this transaction and any action brought hereunder may be instituted in the name of Title Company or said insured or both. Owner agrees that in the event a lien or claim arises for which it is responsible under this Agreement, it will provide satisfactory security to Title Company with respect to said lien or claim while Owner works to resolve said lien or claim. The indemnities provided herein shall survive termination of this Agreement.

ARTICLE II COVENANTS AND DUTIES OF MHDC

MHDC agrees, in reliance upon the covenants of Title Company set forth in Article I hereinabove, as follows:

- (1) Pursuant to Section XXV of the OCRA, act as the disbursing agent for the Owner in connection with the receipt and disbursement of Owner Cash established hereunder.
- (2) Not more than once per month, MHDC shall make disbursements only as specifically permitted under this Agreement, the Genesis Contract and as directed by Owner. MHDC shall not have any fiduciary obligations as an escrow agent with respect to any and all funds received and disbursed by it pursuant to this Agreement.
- (3) All the parties hereto agree that the functions and duties assumed by MHDC herein include only those described in this Agreement. MHDC does not insure that the Contracted Services will be performed and completed in accordance with the Remediation Requirements; neither does MHDC assume any liability for the same other than the procurement of such documentation, from time to time, as one of the conditions precedent to each disbursement hereunder.
- (4) Owner specifically covenants and agrees with MHDC not to perform nor enter into additional contracts for additional work or approve change order(s) increasing the contract price in excess of that permitted as set forth in Section IV of the Genesis Contract, **UNLESS CHANGE ORDERS ARE APPROVED BY OWNER AND MBS IN WRITING, AND IMMEDIATELY AVAILABLE FUNDS ARE SECURED TO MHDC BY OWNER TO PAY FOR SUCH INCREASED COST.**
- (5) Owner and Title Company will promptly notify MHDC of any and all mechanics' and materialmen's claims, and other liens and encumbrances of which they become aware.
- (6) Upon written request, MHDC agrees to provide the parties hereto and MDNR with a report showing the payments made to the Contractor and the balance remaining of the Owner's Cash.

ARTICLE III DISBURSEMENT DOCUMENTATION

Prior to each disbursement of Owner's Cash hereunder, the parties hereto will provide the following documentation:

- (A) For disbursements to the Contractor:
 - (1) The parties hereto agree to follow the procedures provided for in Section III, Payment of the Genesis Contract which is attached hereto as "**Exhibit B.**" Owner agrees to provide written direction to MHDC for each disbursement request made by Contractor.
 - (2) At the time the Contractor submits a draw request, Owner will deliver or cause to be delivered to MHDC and the Title Company copies of the signed Draw Forms, together with any

change orders to be approved, and such lien waivers, receipts or other requisitions as may be required by the Title Company from the Owner for any preceding disbursement.

(3) Owner will submit to the Title Company and MHDC all inspection reports made since the preceding disbursement.

(4) Promptly upon receipt, Title Company will by written notice to MHDC and Owner at each of their respective offices, confirm (i) that it has received the foregoing documentation properly executed by all of the necessary parties thereto; (ii) that it has searched the public records; and (iii) that no liens or other encumbrances have been filed as of the date of such search, or that it will affirmatively insure against any such liens or encumbrances.

(5) Upon receipt from Title Company of each such notice, MHDC will disburse such Owner's Cash in accordance with the approved Draw Forms.

(B) For disbursements to other parties (excluding the Contractor):

(1) MHDC will disburse such Owner's Cash at the written direction of Owner.

ARTICLE IV MISCELLANEOUS

Further, the parties hereto agree that:

(1) In addition to the disbursement documentation required in Article IV of this Agreement, Owner shall deliver to MHDC and Title Company prior to any disbursement of proceeds, Contractor's general lien waiver together with such other documentation as shall be satisfactory to MHDC and the Title Company in order to substantiate payment for all work and labor done and all materials furnished for and all services rendered pursuant to the Genesis Contract which were included in such disbursement.

(2) Each of the parties hereto must set up and maintain accurate and complete books, accounts and records in respect to this transaction in accordance with generally accepted accounting principles. Each of the parties hereto shall have the right to inspect and examine such books and records of each of the other parties in respect to this transaction, during reasonable business hours, and any party shall, at the request of any other party, furnish all such information as the requesting party may require.

(3) The Genesis Contract is incorporated in this Agreement by reference. In the event of any inconsistency by and among any of the provisions of the Genesis Contract and this Agreement, the corresponding provisions in this Agreement shall prevail both in equity and at law.

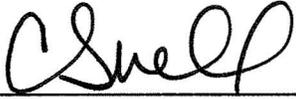
(4) This Agreement shall be governed and construed in accordance with the laws of the State of Missouri.

(5) This document may be signed in counterparts.

(This space intentionally left blank.)

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written.

(SEAL)
ATTEST/WITNESS:



MISSOURI HOUSING DEVELOPMENT
COMMISSION

By: 

Marilyn V. Lappin, Director of Finance

OWNER:

OAKLAND REDEVELOPMENT, LLC, a Missouri limited liability company

By: **BHCS OAKLAND HEIGHTS GP, LLC**, a Missouri limited liability company, its Managing Member

By: **BLUE HILLS COMMUNITY SERVICES CORPORATION**, a Missouri non profit corporation, its Sole Member

(SEAL)
ATTEST/WITNESS:

Sherry A. Ell

By: Joanne Bussinger
Joanne Bussinger, Executive Director

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 2:

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2
EXHIBIT "B"

DRAW PROCEDURES

GENESIS CONTRACT, SECTION III

1. The Contractor represents that the estimated total cost of the Work will not exceed Three Hundred Eighty-Four Thousand Five Hundred Eleven and 53/100 Dollars (\$384,511.53) (the "**Contract Price**"). Contractor acknowledges that the estimated Contract Price has been established at the time of execution of this Contract based on expected quantities of Environmental Media that will need to be excavated, abated and/or disposed of, which have been determined by Contractor based on the Remedial Action Plan, the Scope of Work, the other information provided to Contractor by Owner and Owner's Consultants prior to execution of this Contract and Contractor's own inspection of the Site. The Contractor and Owner stipulate and agree that Owner shall not be required to pay under this Contract more than an amount equal to the applicable unit prices set forth in Exhibit B, attached hereto and incorporated herein by reference, for the actual quantity of Work required of the Contractor in the applicable unit price category; *provided, however*, under no circumstance shall such amount exceed the estimated Contract Price set forth above unless Contractor has provided written notice to Owner of, and Owner has approved in writing, (i) the additional Work required of Contractor beyond the estimated quantities of Environmental Media and (ii) the resulting adjustment to the estimated Contract Price, which shall be based upon the unit prices set forth in Exhibit B and the actual quantity of additional Work required of the Contractor in the applicable unit price category. The foregoing amount to be paid by Owner to Contractor for performance of the Work hereunder shall constitute full and complete compensation for performance of the Work required by this Contract, including without limitation, compensation for all applicable taxes, permits and approvals required in connection with the Work. With respect to the unit prices established in Exhibit B, the Contractor acknowledges that these unit prices are fully loaded unit prices, which include all fee, profit, overhead, general conditions, insurance costs, and all other costs associated with the performance of the Work covered by the applicable unit price. The unit prices established in Exhibit B will not be increased or decreased based upon the actual amount of Work performed even though the quantities may be substantially increased or decreased as a result of the conditions encountered at the Project site.

2. The unit prices in Exhibit B include (and the Contractor shall pay) all Federal, State or local taxes and all sales, consumer, use and similar taxes applicable to the Work (or relating to the performance of any services, furnishing of any materials or ownership, use or transfer of any property in connection with the Work) and all taxes on the wages of any employees or workers used in connection with the Work. Contractor shall be solely responsible and liable for payment of any such taxes and shall indemnify and hold Owner and Owner's Representative harmless on account of any such taxes assessed against Owner and/or Owner's Representative under authority of any law. Contractor warrants that title to all Work will pass to the Owner, free and clear of all liens and encumbrances, upon incorporation into the Work or upon payment by the Owner therefor, whichever is earlier.

3. Periodic payments for the performance of Contractor's Work shall be made as follows. Contractor shall submit a payment application to Owner's Representative on not later than the last Thursday day of each month. Each monthly payment application shall request payment only for Work then performed by Contractor, materials then installed by Contractor as part of its Work on the

Project (unless otherwise agreed by Owner's Representative), and Work completed as of the date of the payment application and authorized by a written Change Order signed by Owner's Representative. Each monthly payment application shall itemize the Work as directed by Owner's Representative, assign a completed percentage for each item of the Work included (based upon the extended unit prices set forth in Exhibit B), and indicate the total amount previously invoiced by Contractor through the date of the current request for payment. Provided the payment application is in proper form and is received by Owner's Representative within the time required by this paragraph, and except to the extent Owner's Representative takes exception to the payment application, Owner shall make payment to Contractor of the approved amounts requested in the payment application minus retainage of ten percent (10%) within forty-five (45) days after receipt of the payment application.

4. As a prerequisite to payment hereunder, Contractor shall provide with each payment application to Owner's Representative a sworn statement identifying every Subcontractor performing any Work or providing any labor or materials with respect to the Project, the original subcontract price agreed to between Contractor and each Subcontractor for the Work to be performed by such Subcontractor, the amount, if any, by which each subcontract has been adjusted by approved Change Orders, the amounts previously paid by Contractor to each Subcontractor, the balance remaining due, as of the date of each payment application, with respect to each adjusted contract price and the attribution of such adjusted subcontract price to the Work.

5. In connection with each payment application, Owner shall withhold retainage on a line item basis equal to ten percent (10%) of the amount requested for each Subcontractor identified in Contractor's payment applications, which retention shall be released or reduced as follows: (a) the retention held by the Owner with respect to each Subcontractor shall be retained until Substantial Completion of all of the Work to be performed by such Subcontractor; (b) upon Substantial Completion of such Work (and compliance by Contractor and the applicable Subcontractor with any other conditions established in the Contract Documents for release of retainage), the Owner shall reduce the retainage held with respect to such Subcontractor's Work to an amount equal to 150% of any Work not then completed by such Subcontractor as of the date when Substantial Completion is achieved with respect to such Subcontractor's Work, and the Owner shall make payment of the retention to be released with the next scheduled payment following Substantial Completion of the Subcontractor's Work; and (c) the Owner shall make payment of all remaining amounts with respect to a Subcontractor's Work on Final Completion of such Work and compliance by Contractor and the applicable Subcontractor with all other conditions established in the Contract Documents with respect to such payment. Contractor acknowledges and agrees that: (i) Owner's release, reduction and/or payment of retention pursuant to these provisions on a line item basis with respect to each separate Subcontractor is without prejudice to, and with the express reservation of, Owner's rights and remedies, as set forth in the Contract Documents or established pursuant to applicable law, to withhold from and/or set-off against any future payments otherwise due to Contractor and/or any Subcontractor such amounts as are appropriate to protect Owner from damages caused by delayed, defective, deficient or nonconforming Work or any other act, omission, negligence, breach of contract or breach of warranty, and that Owner's release, reduction or payment of retention pursuant to these provisions does not constitute an acceptance of the Work or a waiver or release by Owner of any claims or rights belonging to Owner with respect to such Work or the requirements of the Contract Documents; (ii) the release, reduction and/or payment of retention by Owner pursuant to these provisions does not establish the date or time for the commencement of any warranties or guarantees with respect to the Work, and that the commencement of any such warranty or guarantee periods will be governed by the other, applicable provisions of the Contract; and (iii) Owner's release, reduction and/or payment of retention pursuant to these provisions on a line item basis with respect to each separate Subcontractor does not establish any direct contractual or other relationship between any Subcontractor and Owner

and does not establish any obligation by Owner to pay or to verify the payment of any amounts directly to any Subcontractor, which obligation shall remain the sole responsibility of Contractor.

6. Contractor hereby agrees and is required to make payment, no later than ten (10) days after receipt of payment from Owner, to each Subcontractor of all amounts identified in each payment application as intended for said Subcontractor. If Contractor does not intend to pay a Subcontractor for Work performed by such entity for the Project, Contractor shall so notify Owner's Representative in writing and explain the reason for the Contractor's decision not to make such payment. Owner shall thereafter withhold from Contractor the amounts so noted until Contractor represents that such payment will be made to the applicable Subcontractor, materialman or supplier. Contractor shall indemnify and hold harmless Owner and Owner's Representative from and against any costs, damages or expenses (including reasonable attorneys fees) incurred by Owner or Owner's Representative as a result of claims made by any Subcontractor who has performed Work for the Project but who Contractor decides not to pay for such Work.

7. Each payment application submitted by Contractor shall be accompanied by (1) a partial conditional lien waiver executed by the Contractor covering the entire amount of the payment requested by such payment application, conditioned only upon the receipt of the amounts set forth in such payment application; (2) a partial unconditional waiver of lien executed by the Contractor covering all payments made by Owner to the Contractor in all preceding payment applications; (2) partial conditional waivers of lien executed by each Subcontractor performing work or furnishing supplies or materials for the Project covering the entire amount of the payment requested by Contractor on behalf of such Subcontractor in the relevant payment application, conditioned only upon receipt of the amounts requested on behalf of such Subcontractor as set forth in such payment application; and (4) partial unconditional waivers of lien executed by each Subcontractor performing work or furnishing supplies or materials for the Project, which partial waivers of lien shall be equal to the amount of all payments made by the Owner to the Contractor on behalf of such Subcontractor in all preceding payment applications. In addition, in connection with each payment application, Contractor shall provide evidence itemizing the actual quantities of each item of Work performed by Contractor for which there is an applicable unit price category contained in Exhibit B

8. Contractor acknowledges and agrees that the purpose of the retainage withheld by the Owner under this Contract is to ensure the proper performance of the Contract and that this performance requires, among other things: (1) proper and full performance of all the Work required by and/or reasonably inferable from the Contract Documents, including completion of punchlist items and Work to be completed after Substantial Completion; (2) prompt correction of Work that does not comply with the requirements of the Contract Documents; (3) timely completion of the Work and the provision of adequate labor and supervision to complete the Work within the Contract Time and in accordance with the current approved schedule for the performance of the Work; (4) timely and full payment of all Subcontractors, sub-subcontractors, materialmen and suppliers providing Work on the Project, in the amounts and in the times required by this Contract; (5) provision of any items required by the Contract Documents upon completion of the Work (which items if not provided to the Owner will cause real and substantial damage to the Owner and its use and occupancy of the Project); and (6) proper coordination and integration of the Work provided by each separate trade or Subcontractor with all other Work (which coordination and integration may include Work to be performed by individual trades or Subcontractors after the Substantial Completion of the Work assigned to them). Contractor accordingly agrees: (i) that Owner may use the retainage withheld pursuant to this Contract to pay for any costs and damages incurred by the Owner as a result of the failure of the Contractor or its Subcontractors properly to perform the Contract, including but not limited to any failure to perform the specific requirements described in this paragraph above, and (ii) any "substitute security" offered by the Contractor or any subcontractor pursuant to the provisions of RSMo. 436.336 shall provide for

payment to the Owner of all such costs and damages incurred by the Owner, shall reference the obligations in this paragraph and shall be subject to the Owner's reasonable approval.

9. Within thirty (30) days of Substantial Completion of a Phase of the Work or the entire Work, as applicable, retainage shall be reduced to one hundred fifty percent (150%) of the estimated cost of all Work still to be completed or corrected at Substantial Completion. Final release of the remaining retainage amount shall not be made until the time for final payment as set forth herein. As used herein, the terms "**Substantial Completion**" and "**Substantially Complete**" (whether capitalized or lower case) shall mean the stage in the progress of the Work when the relevant Phase or the entire Work (as applicable) is sufficiently complete in accordance with this Contract so that Owner can utilize that Phase of the Work or the entire Work (as applicable) for its intended use.

10. Final payment, including the release of any retention required by this Contract or any other amounts due under this Contract, shall not be due and owing until the Work is Finally Complete. As used herein, the terms "**Finally Complete**" and "**Final Completion**" shall mean the proper and full completion of all of the Work, including but not limited to, issuance of all required approvals and certificates by any authorities with jurisdiction over the Project, removal of all debris, rubbish, tools and surplus materials from the Project site and correction of all property damage caused by Contractor or any Subcontractor. Upon Final Completion of all Work, the Contractor shall submit a final payment application to the Owner's Representative for all amounts remaining due under this Contract. Such payment application shall be accompanied by: (1) an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with all Work performed on the Project, for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied; (2) executed unconditional lien waivers signed by the Contractor, all Subcontractors or others who have performed work on the Project and all suppliers or materialmen who individually have furnished supplies or materials to the Project and who may be entitled to a lien or other encumbrance against the Project or the Owner's property, waiving all liens, claims or other encumbrances against the Project or the Owner relating to the Work performed pursuant to this Contract; (3) evidence itemizing the actual quantities of each item of Work performed by Contractor for which there is an applicable unit price category contained in Exhibit B; and (4) any and all documentation, reports or test results of any type or kind whatsoever required by the EPA, OSHA, MDNR or any other local, municipal, state or federal requirements, Laws, rules or regulations or applicable institutional guidelines relating to the excavation, removal, disposing or handling of any Hazardous Materials. Payment of the Contract Price shall be paid by the Owner to the Contractor within thirty (30) days of Owner's approval of the invoice.

11. Notwithstanding anything herein, Owner shall have the right to charge back against Contractor, and to deduct from any payments due Contractor pursuant to this Contract, all amounts incurred by Owner as a result of any failure by Contractor to comply with the terms of this Contract or as a result of any negligence or unsatisfactory Work by Contractor or its subcontractors, including but not limited to all costs incurred by Owner to correct defective or non-conforming Work, all amounts paid by Owner to any subcontractor or supplier as a result of Contractor's failure to make payment to such person or entity. No payment made by Owner pursuant to this Contract, including final payment, nor any partial or entire use or occupancy of the Work by Owner shall be considered as, or deemed to imply, acceptance of any such Work.