

NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:)
EFG CLERMONT TERRACE, LLC'S)
ACQUISITION OF THE NATIONAL) COVENANT NOT TO SUE
ENVELOPE COMPANY, UNION) AGREEMENT
TOWNSHIP SITE)
) ISRA CASE NUMBERS:
) E20080198; E20100217
)
)
)
)
)

I. INTRODUCTION

1. This Covenant Not to Sue Agreement (the "**Agreement**") is hereby entered into by and between the NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ("**NJDEP**") and EFG CLERMONT TERRACE, LLC or its duly authorized assignee ("**Purchaser**") on this Sixteenth (16th) day of January, 2013.

2. This Agreement is entered into pursuant to the authority vested in the Commissioner of NJDEP by N.J.S.A. 13:1D-1 et. seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23-11 et seq. ("**Spill Act**"), the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. ("**ISRA**"), the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. ("**SRRA**"), and the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq. ("**Brownfields Act**").

II. DEFINITIONS

1. "**Agreement**" has the meaning provided in Section I.1 of this Agreement.
2. "**Areas of Concern**" has the meaning provided in the Brownfields Act.
3. "**ARRCS**" means the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1 et seq.
4. "**Brownfield Site**" has the meaning provided in the Brownfields Act.
5. "**Brownfields Act**" has the meaning provided in Section I.2 of this Agreement.

6. “**CERCLA**” means the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.

7. “**Contamination**” or “**Contaminant**” has the meaning provided at N.J.A.C. 7:26C-1.3.

8. “**DEP Account**” has the meaning provided in Section III.8.C of this Agreement.

9. “**Effective Date**” means the later of the following: i) the date this Agreement is fully executed by the Parties; or, ii) the date thirty (30) days after the NJDEP publishes notice of this Agreement in accordance with N.J.S.A. 58:10-23.11e2.

10. “**EPA**” means the United States Environmental Protection Agency.

11. “**Excluded Matters**” shall mean the following:

A. contamination located off of or outside of the physical boundaries of the Property;

B. groundwater contamination, whether located under the Property or located outside of the physical boundaries of the Property;

C. surface water, sediment or other natural resources, whether located within or outside of the physical boundaries of the Property; and/or

D. natural resource damage liabilities of any kind or manner, including without limitation, natural resource damage assessments.

Notwithstanding the foregoing, Excluded Matters shall not include Areas of Concern that are caused directly by Purchaser’s actions or which arise as a result of a new discharge or release of hazardous substances first commencing after Purchaser takes legal title to the Property. The intent of the Parties is that Purchaser shall have no responsibility or liability, including responsibility for remediation, for Excluded Matters.

12. “**Hazardous Substances**” shall have the meaning provided in the Spill Act.

13. “**Impact to Ground Water Remediation Standard**” shall have the meaning provided in the Remediation Standards N.J.A.C 7:26D or as developed pursuant to N.J.A.C. 7:26D-1.1(b).

14. “**ISRA**” has the meaning provided in Section I.2 of this Agreement.

15. “**LSRP**” means an individual who is licensed as a Licensed Site Remediation Professional by the Site Remediation Professional Licensing Board pursuant to SRRA.

16. “**NEC**” means the National Envelope Corporation - East, a New Jersey corporation, successor by merger with National Equities Corp., a New Jersey corporation.

17. “**NJDEP**” has the meaning provided in Section I.1 of this Agreement.
18. “**On-Site Soil Contamination**” means any contamination existing within soils above consolidated bedrock on or under the Property as of the Effective Date, including saturated soils. On-Site Soil Contamination does not include any Excluded Matters.
19. “**Parties**” means collectively, NJDEP and Purchaser.
20. “**Property**” means of the National Envelope Company Site, consisting of approximately 15.21 acres of land located at 400 Clermont Terrace in Union Township, Union County, New Jersey and designated as Block 606, Lot 3.
21. “**Purchaser**” has the meaning provided in Section I.1 of this Agreement.
22. “**Qualifying Successors and Assigns**” has the meaning provided in Section IV.3.B of this Agreement.
23. “**RAO**” means a written Response Action Outcome as that term is defined at N.J.A.C. 58:10B-1.
24. “**RCRA**” means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.
25. “**Remediation Fund**” has the meaning provided in Section III.7. of this Agreement.
26. “**Remediation Funding Source**” has the meaning provided in Section IV.1.B of this Agreement.
27. “**Remediation Standards**” means the Remediation Standards, N.J.A.C. 7:26D-1 et seq.
28. “**Remediation Trust Fund Agreement**” shall mean an agreement that complies with the requirements set forth at N.J.A.C 7:26C-5.4 and conforms with the model document available at http://www.nj.gov/dep/srp/guidance/rfsguide/rem_trust_fund_model.htm , a copy of which is attached as Exhibit A
29. “**Responsible Party**” has the meaning provided in Section IV.1.H of this Agreement.
30. “**Scope of Work**” means the remedial plan for the On-Site Soil Contamination attached hereto at Exhibit B.
31. “**Spill Act**” has the meaning provided in Section I.2 of this Agreement.
32. “**SRRA**” has the meaning provided in Section I.2 of this Agreement.

33. “**Stipulation**” has the meaning provided in Section III.8 of this Agreement.
34. “**Tech Regs**” means the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.
35. “**Trustee**” has the meaning provided in Section III.5 of this Agreement.

III. FINDINGS

1. The Property is a former envelope manufacturing facility that occupies an area of approximately 15.21 acres, and includes an approximately 240,000 square-foot structure that was built in approximately 1951 with an addition constructed in 1965. The Property was operational until June 19, 2008.

2. The Property is the subject of environmental site remediation activities under the oversight of NJDEP pursuant to ISRA case numbers E20080198 and E20100217.

3. The ISRA site remediation activities have revealed the presence of soil and groundwater contamination related to the former operations at the Property.

A. On-Site Soil Contamination has been identified at the Property.

B. In addition, contamination of soils outside of the boundaries of the Property and contamination of groundwater underneath the Property and outside of the boundaries of the Property have been identified, including: chlorinated solvents in soil gas and groundwater associated with sewer lines servicing the Property and associated with the culverted stream; chlorinated solvents in soil gas and groundwater emanating from the Property; and, chlorinated solvents in groundwater below, immediately upgradient of the Property, all of which resulted in whole or in part from the former operations at the Property.

4. The Property was formerly operated by NEC and/or a related or predecessor entity. During its operations at the Property, NEC used the Property for the manufacture and printing of paper envelopes. The Property is currently owned by NEC.

5. On June 10, 2010, NEC and other related entities filed for bankruptcy protection under Chapter 11 with the United States Bankruptcy Court, District of Delaware Case Number: 10-11891. On December 13, 2011, the case was converted to a Chapter 7 proceeding. On December 15, 2011, the Bankruptcy Court appointed Alfred T. Giuliano as the Chapter 7 Trustee(the “**Trustee**”).

6. On January 13, 2012, the Trustee filed a motion with the Bankruptcy Court seeking permission to abandon the Property. On February 9, 2012, EPA and NJDEP objected to the motion.

7. On March 8, 2012, the Bankruptcy Court determined that Trustee had been obligated to spend \$2,000,000 on environmental remediation at or associated with the Property and ruled that such obligation would not be relieved by abandonment. The Court further

determined that as of the date the case was converted to Chapter 7, \$564,624 had already been spent on environmental remediation in connection with the Property, leaving the balance of the environmental remediation obligation at \$1,435,376, which amount is hereinafter referred to as the “**Remediation Fund**”.

8. On May 16, 2012, the Trustee, EPA and NJDEP entered into a “Stipulation and Agreement Among the Chapter 7 Trustee, the United States, on behalf of the Environmental Protection Agency, and the State of New Jersey, Department of Environmental Protection, Regarding the Chapter 7 Trustee’s Motion to Abandon Certain Real Property, and Specifying the Use of and Distributions from an Environmental Remediation Fund” (the “**Stipulation**”). The Stipulation includes, among other items, the following terms:

A. NJDEP and EPA consent to the abandonment of the Property.

B. Trustee agrees that the abandonment will not be effective sooner than September 1, 2012 and the Trustee will make reasonable efforts to convey the Property to a third-party in an effort to facilitate environmental remediation.

C. Within 15 days of Court approval of the Stipulation, the Trustee will deposit \$1,000,000 of the Remediation Fund in a special account set up by NJDEP (the “**DEP Account**”).

D. Within 7 days of abandonment or sale of the Property to a third-party, but no later than April 1, 2013, the Trustee will deposit the remainder of the Remediation Fund in the DEP Account.

E. The Stipulation will serve to satisfy any requirement by NJDEP to file a proof of claim in the case and any such claim shall be deemed satisfied by the Stipulation.

F. EPA and NJDEP will not object to the Trustee making payments from the Remediation Fund for certain payments, including real estate tax payments, estimated to be at least \$185,472.95, subject to limitations set forth in the Stipulation.

G. NJDEP will use the funds in the DEP Account solely for environmental remediation in connection with the Property or for other measures taken to protect public health and environment in connection with the Property. DEP shall either directly use the funds to undertake such measures, transfer the funds to a third party to undertake such measures, or use the funds to reimburse a third party for the costs of undertaking such measures.

9. On June 13, 2012, the Bankruptcy Court approved the Stipulation.

10. On September 13, 2012, the Trustee deposited \$1,000,000 in the DEP Account.

11. On June 13, 2012, the Bankruptcy Court authorized the Trustee to abandon the Property so long as the abandonment would not be effective prior to September 1, 2012.

12. On October 2, 2012, Purchaser entered into a Property Transfer Agreement to acquire the Property from NEC (“**Purchase Agreement**”). The Purchase Agreement prohibits the Trustee from proceeding with the abandonment of the Property during the term of the Purchase Agreement. On November 14, 2012, the Bankruptcy Court approved the sale of the Property to Purchaser pursuant to the terms of the Purchase Agreement.

13. Purchaser intends to perform pre-acquisition due diligence to evaluate the conditions of the Property, including conditions related to contamination, and the suitability of the Property for redevelopment for residential multi-family use.

14. Purchaser’s redevelopment plan involves demolition of the existing building and remediation of the On-Site Soil Contamination, as more particularly described in the Scope of Work, and construction of a residential multi-family development. Purchaser intends that the remediation of the On-Site Soil Contamination will be coordinated and completed with the redevelopment of the property.

15. The Parties recognize that the Property is a former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant, and, as such, meets the definition of a “**Brownfield Site**” as defined at N.J.S.A. 58:10B-1.

16. The Parties acknowledge that Purchaser did not discharge hazardous substances at the Property, did not own the Property at the time of any such discharges, and is, as of the date of this Agreement, in no way responsible for hazardous substances at the Property. Purchaser qualifies for immunity from liability for damage, to or the loss of, natural resources both on and off of the Property in accordance with N.J.S.A. 58:10-23.11f22.a.

17. The Parties acknowledge that the redevelopment of the Property will promote the health and general welfare of the community and environment through the anticipated remediation of the Property. The Parties further acknowledge that in the absence of this Agreement that Purchaser would not acquire, redevelop or perform remediation at the Property.

18. The Parties acknowledge that the entry into this Agreement is in the public interest, prevents the abandonment of the Property by the Trustee, promotes the acquisition and redevelopment of the Property, and will promote the remediation of the Property by a third-party consistent with EPA and NJDEP’s position in the Stipulation.

IV. AGREEMENT

In consideration of the Findings, which are expressly incorporated herein, and in exchange for the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following:

1. Purchaser’s Obligations.

A. Within fifteen (15) days of taking legal title to the Property, Purchaser shall retain a LSRP to oversee the remediation for On-Site Soil Contamination and issue RAOs for soil contamination associated with Areas of Concern that are located solely within the property boundary. For Areas of Concern that are not located solely within the property boundary, the LSRP will issue a statement that the soil was remediated as per this Agreement.

B. Within thirty (30) days of taking legal title to the Property, Purchaser will establish a remediation funding source in accordance with N.J.A.C. 7:26C-5 in the amount of \$1,500,000 (the "**Remediation Funding Source**") to fund Purchaser's remediation of the On-Site Soil Contamination, which will be administered pursuant to the Remediation Trust Fund Agreement. The Remediation Funding Source, both at establishment and as it may be disbursed from time to time to fund remediation of the On-Site Soil Contamination, will satisfy Purchaser's remediation funding source requirements under this Agreement and as may be required of Purchaser under ISRA, the Brownfields Act, the Spill Act, SRRA or any other environmental law for Purchaser's remedial activities. Purchaser agrees to establish and maintain financial assurance that may be required as a condition of a remedial action permit if an engineering control is established as part of the remedy for the site, in accordance with N.J.A.C. 7:26C-7.

C. Purchaser shall be able to draw upon the Remediation Funding Source from time to time to pay or to reimburse Purchaser, as the case may be, for any and all costs and expenses, including but not limited to professional and consulting fees, for the remediation of the On-Site Soil Contamination, in accordance with N.J.A.C. 7-26C-5.12.

a. Upon issuance of RAOs and statements that the soil was remediated as per this Agreement any and all funds remaining in the Remediation Funding Source shall be released to Purchaser.

b. For purposes of this Paragraph, expenses for installation of routine landscaping and for construction of parking lots and buildings that serve as engineering controls will not be eligible for disbursement from the Remediation Funding Source.

D. Upon taking legal title to the Property, Purchaser will diligently prosecute the demolition of the building and remediation of the On-Site Soil Contamination.

a. The demolition of the building and remediation of the On-Site Soil Contamination will generally conform with the schedule set forth in the Scope of Work, and will conform with ARRCs, the Tech Regs, the Remediation Standards, other applicable laws, rules, and NJDEP guidance.

b. The remediation of the On-Site Soil Contamination will be performed in a manner that is consistent with the proposed residential multi-family use of the Property and may involve a Restricted Use Remedial Action as that term is defined at N.J.S.A. 7:26E-1.8.

c. On-Site Soil Contamination will be remediated consistent with Impact to Ground Water Soil Remediation Standards pursuant to the Remediation Standards and

the Tech Regs, or to such other alternative remediation standard as permitted by the Remediation Standards, the Tech Regs NJDEP guidance, or as approved by NJDEP.

d. Purchaser shall implement and comply with any land use restrictions and institutional controls on the Property and shall maintain any and all engineering controls implemented at the Property pursuant to the remediation of the On-Site Soil Contamination as required by the Tech Regs and ARRCS.

e. Purchaser shall require that any residential development of the Property include, at the time of construction and at no current or future costs to NJDEP, appropriate engineered vapor mitigation measures consistent with the NJDEP Vapor Guidance to address vapor intrusion from underlying groundwater contamination.

E. Purchaser's obligation for the remediation of the On-Site Soil Contamination shall not terminate upon the depletion of the funds within the Remediation Funding Source or within the DEP Account. Purchaser acknowledges that in the event that both the Remediation Funding Source and the DEP Account are completely depleted that it will remain responsible to obtain a RAO for the On-Site Soil Contamination or for Areas of Concern that are not located solely within the property boundary issue a statement that the soil was remediated as per this Agreement.

F. Purchaser agrees to provide NJDEP with its development plans and agrees to make reasonable modifications that may be necessary to accommodate NJDEP's remediation efforts concerning the Excluded Matters, which do not affect the use of the Property and do not increase the costs for the development or maintenance of the Property.

a. Purchaser may assert that its development plans that have not been publicly disclosed are confidential by stamping or otherwise marking the plans "CONFIDENTIAL" and confidential designation complies with N.J.A.C.7:26C-15.

b. NJDEP shall not disclose such confidential plans to any person other than NJDEP employees, representatives and legal counsel whose activities necessitate such access.

c. NJDEP shall maintain and store the confidential plans in accordance with the procedures set forth at N.J.A.C. 7:26C-15.9.

d. NJDEP may disclose the confidential plans after it has obtained the written consent of the Purchaser. Notwithstanding the foregoing, the giving of consent by the Purchaser to disclose shall not be deemed to waive the assertion of confidentiality with regard to further disclosures unless the authorized disclosure is of such nature as to render the disclosed information accessible to the general public.

G. Purchaser and Qualifying Successors and Assign shall provide reasonable access to the Property to NJDEP to allow NJDEP to conduct its remediation efforts concerning the Excluded Matters. NJDEP shall use commercially reasonable efforts to minimize any

interference with Purchaser's development of the Property, including without limitation, conducting work at times and in a manner that will not unreasonably interfere with Purchaser's development efforts.

H. In the event that Purchaser does not take legal title to the Property, Purchaser shall, at no cost to NJDEP, provide NJDEP with copies of its due diligence data related to the environmental conditions at the Property to the extent that such information is not subject to any confidentiality restrictions.

I. Purchaser waives any claims to any funds that NJDEP may recover from prior owners or their affiliates, predecessors and/or other related entities (collectively, "Responsible Parties") relating to prior ownership of the Property, operations at the Property, and discharges of hazardous substances at or otherwise related to the Property. Further, Purchaser agrees to provide NJDEP with any non-privileged and non-confidential information that Purchaser may discover relating to discharges of hazardous substances by any Predecessor or during a Responsible Party's period of ownership and/or operations at the Property.

J. Notwithstanding the foregoing or any other provision of this Agreement, Purchaser shall only be obligated to perform remediation of the On-Site Soil Contamination and will not be responsible or liable for any Excluded Matters.

2. NJDEP Obligations

A. In the event that, at any time prior to the issuance of a RAO for the On-Site Soils Contamination or the issuance of a statement that On-Site Soils Contamination has been remediated consistent with this Agreement, the costs for the remediation of the On-Site Soil Contamination exceed the amount of the Remediation Funding Source, initially established at \$1,500,000 NJDEP agrees to provide funding from the DEP Account for the remediation of the On-Site Soil Contamination as more fully set forth below:

a. As of the date of this Agreement, NJDEP represents that

- i. the DEP Account currently consists of \$1,000,000; and
- ii. pursuant to the terms of the approved Stipulation, upon Purchaser's taking title to the Property but in no event later than April 1, 2013, the Trustee will deposit the remainder of the Remediation Fund, approximately \$249,903, into the DEP Account.

b. NJDEP will take no action to deplete the DEP Account or allow Trustee to reduce the Remediation Fund without prior written consent from Purchaser or as otherwise permitted under this Agreement.

c. Upon written notice from Purchaser that the Remediation Funding Source has been fully depleted and that further costs are necessary to complete the remediation of the On-Site Soil Contamination, NJDEP will disburse funds from the DEP Account to Purchaser to pay or to reimburse Purchaser on a 50% basis for any and all costs and expenses,

including professional and consulting fees, for the remediation of the On-Site Soil Contamination as follows:

i. From time to time, not to exceed quarterly, Purchaser will provide NJDEP with a request for disbursement from the DEP Account, which will include: i) a description of the On-Site Soil Contamination remediation activities that are the subject of the request for disbursement; and, ii) copies of invoices or other billing statements for such activities. The description of the remediation activities will include a statement from the LSRP indicating that the subject activities are consistent with the Scope of Work, the Tech Regs or are otherwise appropriate for the remediation of the On-Site Soil Contamination.

ii. Upon receipt of the request for disbursement from the DEP Account, NJDEP will have ninety (90) days to submit to Purchaser a written objection to one or more specific cost items or portions thereof detailed in the request for disbursement. NJDEP's objections shall be limited to whether the request for disbursement satisfies the requirements of Section IV.2.A.c.i.

iii. In the event that NJDEP does not timely submit an objection to Purchaser's request for disbursement from the DEP Account, NJDEP shall be deemed to have consented to the request for disbursement, and NJDEP shall within ninety (90) days of receipt of the request for disbursement disburse the requested funds to Purchaser on a 50% basis, that is Purchaser shall receive \$0.50 for every dollar of costs identified in the request for disbursement.

iv. In the event that NJDEP objects to all or any portion of a request for disbursement from the DEP Account, NJDEP shall disburse the uncontested portion, if any, to Purchaser on the 50% basis (described above), and shall disburse the contested funds upon resolution of the objection.

v. At the time that Purchaser receives a RAO or the LSRP issues a statement that the soil was remediated as per this Agreement for the remediation of the On-Site Soil Contamination, any and all funds remaining in the DEP Account shall immediately be released to NJDEP for remediation of the Excluded Matters.

vi. For purposes of this Paragraph, expenses for installation of routine landscaping and for construction of parking lots and buildings that serve as engineering controls will not be eligible for disbursement from the DEP Account. Additionally, expenses for the design and/or installation of engineering controls such as vapor barriers shall not be eligible for disbursement from the DEP Account.

B. NJDEP may diligently pursue any claims it may have against any and all Responsible Parties relating to contamination associated with the former ownership of and/or operations at the Property.

C. The NJDEP shall, at no cost to Purchaser, remediate the Excluded Matters, subject to the following:

a. The Parties acknowledge that NJDEP's remediation of the Excluded Matters may be subject to the availability of funds remaining in the DEP Account or as otherwise recovered from Responsible Parties or from such other responsible parties;

b. NJDEP will use its best efforts in its remediation of the Excluded Matters to not interfere with Purchaser's demolition of the building, remediation of On-Site Soil Contamination, and development of the Property; and

c. Excluding NJDEP inspections, the NJDEP will give Purchaser a minimum of thirty (30) days notice in advance of any remediation of the Excluded Matters occurring on or affecting the Property. Purchaser will reasonably accommodate the NJDEP on staging equipment and personnel for such remedial activities.

D. The NJDEP acknowledges and agrees that Purchaser shall only be obligated to perform remediation of the On-Site Soil Conditions and that Purchaser shall not be responsible or liable for any Excluded Matters.

3. NJDEP's Covenant Not to Sue Purchaser and Purchaser's Qualifying Successors.

A. NJDEP covenants not to sue or to take any further administrative, legal or equitable action against Purchaser for the remediation of the On-Site Soil Contamination or Excluded Matters (or payment of associated cleanup costs) or restoration of natural resources impacted by the On-Site Soil Contamination or Excluded Matters (or payment of associated compensation costs), under the Spill Act, ISRA, SRRA, the Brownfields Act, CERCLA, RCRA, common law or any other local state or federal statute regulation or other authority. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon Purchaser performing its obligations set forth in Section IV.1 of this Agreement.

B. This covenant not to sue extends to Purchaser's affiliates, and Qualifying Successors, and Assigns, including but not limited to subsequent owners, lessees and operators at the Property, and their affiliates. For purposes of this Agreement, "**Qualifying Successors and Assigns**" include any assignee of Purchaser and any future title owner, lessee, operator, mortgagee or other holder of a security interest in the Property, affiliates thereof, and their assigns who:

a. are not in any way responsible for contamination at or emanating from the Property;

b. have no corporate relationship to, or other legal affiliation with persons who are in any way responsible for contamination at the Property or persons that have responsibility to remediate the Property, except to the extent such responsibility arises solely from Purchaser's obligations under this Agreement; and,

c. did not own the Property or did not operate at the Property prior to the date of this Agreement.

d. agree to implement and comply with any unfulfilled obligation pursuant to this Agreement.

4. Contribution Protection. By entering into this Agreement, Purchaser shall be protected to the greatest extent possible from any claims, including contribution claims, regarding the Property, the On-Site Soil Contamination, the Excluded Matters or any other matters addressed under this Agreement, as such protection is available under law, including but not limited to the Spill Act at N.J.S.A. 58:10-23.11f.a(2)(b) and CERCLA at 42 U.S.C. § 9613(f)(2).

A. When effective, this Agreement will constitute a settlement within the meaning of N.J.S.A. 58:10-23.11f.a(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to Purchaser from contribution actions. The Parties agree that by executing this Agreement the Purchaser is entitled, upon fully satisfying its obligations under this Agreement, to protection from contribution actions or claims for matters addressed in this Agreement.

B. In order for the Purchaser to obtain protection under N.J.S.A. 58:10-23.11f.a(2)(b) from contribution claims concerning the matters addressed in this Agreement, NJDEP will publish notice of this Agreement in the New Jersey Register and on NJDEP's website on February 19, 2013, in accordance with N.J.S.A. 58:10-23.11e2. Such notice shall include the following information:

- a. the name of this Agreement;
- b. the name and location of the Property;
- c. the name of the Purchaser; and
- d. a summary of the terms of this Agreement.

C. NJDEP, in accordance with N.J.S.A. 58:10-23.11e2, will arrange for written notice of this Agreement to all other potentially responsible parties of whom the NJDEP has notice as of the date the NJDEP publishes notice of this Agreement in the New Jersey Register.

5. Reservation of Rights. All rights not specifically waived hereunder are reserved by the Parties, including but not necessarily limited to NJDEP's right to pursue any responsible party for cleanup and removal costs, and to pursue any Responsible Party for remediation of the Property.

6. Termination. If Purchaser fails to acquire the Property by May 16, 2013, this Agreement will terminate in its entirety unless extended by mutual written agreement of the parties. In such event of termination, Purchaser's sole obligation to NJDEP under this Agreement will be to provide NJDEP with copies of its due diligence materials as provided at Section IV.1.G of this Agreement.

7. Notices and Submissions.

A. Any notices, information or other correspondence required to be submitted by one party to another under this Agreement shall be deemed submitted either when hand delivered or as of the date of receipt by certified mail, return receipt requested, express mail or facsimile.

B. Submissions to NJDEP shall be addressed to:

NJDEP

Edward Putnam, Assistant Director
New Jersey Department of Environmental Protection
Remedial Response Element
401 E. State Street, 5th Floor
P.O. Box 028
Trenton, New Jersey 08625

With a copy (which shall not constitute notice) to:

Richard F. Engel, Deputy Attorney General
Division of Law
Richard J. Hughes Justice Complex
P.O. Box 093
Trenton, NJ 08625

C. Submissions to Purchaser shall be addressed to:

General Counsel
EFG Clermont Terrace, LLC
520 Capitol Mall, Suite 200
Sacramento, California 95814
with a copy (which shall not constitute notice) to:

Lawrence F. Jacobs, Esq.
Wilentz, Goldman & Spitzer, PA
90 Woodbridge Center Drive
Woodbridge, NJ 07095

and

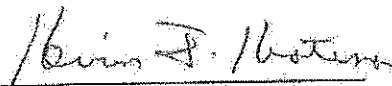
Curtis B. Toll, Esq.
Greenberg Traurig, LLP
2700 Two Commerce Square
2100 Market Street
Philadelphia, PA 19103

8. Modifications. No modification or waiver of this Agreement shall be valid except by written amendment to this Agreement duly executed by Purchaser and NJDEP.

9. Binding Effect. This Agreement shall be binding on each signatory, Qualifying Successors and Assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in ownership or corporate status by any signatory or of the Property shall alter the signatory's responsibilities under this Agreement.

10. Counterparts. This Agreement may be executed in counterparts.

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

By: 
Kevin F. Kratina, Assistant Director, Site Remediation

Date: January 16, 2013.

EFG CLERMONT TERRACE, LLC

By: 
Michael D. McMullen, Executive Vice President

Date: January 14 2013.

Exhibit A

REMEDIATION TRUST FUND AGREEMENT

TO: New Jersey Department of Environmental Protection
Site Remediation Program
Bureau of Enforcement and Investigations
Mail Code 401-05G
P.O. Box 420
Trenton, NJ 08625-0420
Attn: Remediation Funding Source Coordinator

RE: NJDEP Site Name:
NJDEP Site Location:
NJDEP PI #:
ISRA CASE #: E _____

Remediation Trust Fund Agreement, "Agreement", entered into as of _____ [date] by and between _____, known as "Grantor" and _____, the "Trustee".

WHEREAS, the [Responsible Person], is required to post a remediation funding source in accordance with N.J.S.A. 58:10B 3 and N.J.A.C. 7:26C-5 et seq. or financial assurance in accordance with N.J.S.A. 58:10C-19 and N.J.A.C 7:26C-5 et seq.

WHEREAS, the Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means _____ who enters into this Agreement and any successors or assigns of the Grantor. The name, address and title of the Grantor is:

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee, who has the authority to act as a Trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. The name, address and title of the Trustee is:

(c) The term "Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designee.

(d) The term "Beneficiary" means the New Jersey Department of Environmental Protection.

(e) The term "Licensed Site Remediation Professional" means an individual who has been issued a license pursuant to N.J.S.A. 58:10C.

Section 2. Identification of Site(s)

This Agreement pertains to the site(s) identified on Schedule "A".

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of the Department. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee and the Department, described in Schedule "B", attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in Trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Remediation.

The Trustee shall make payment from the Fund as the Department or retained Licensed Site Remediation Professional (LSRP) identified on Schedule "D" shall direct, in writing, to provide for the payment of the costs of remediation of the Site(s) submitted in accordance with N.J.A.C. 7:26C-5.12. The Trustee shall reimburse the Grantor or other persons, as specified by the Department or LSRP, from the Fund for expenditures in such amounts, as the Department or LSRP shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the Department or LSRP specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund, as defined herein.

Section 5. NJDEP's Use of the Remediation Funding Source.

Upon the Trustee's receipt from the Department of a written determination that the [Responsible Person] has failed to perform the remediation of the Site, the Trustee shall disburse the monies from the Fund as directed by the Department in writing to the Department or another person designated by the Department in accordance with N.J.A.C. 7:26C-5.13.

Section 6. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 7. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the Department as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a 2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 8. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a 1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Powers of Trustee.

Without in any way limiting the powers and discretion's conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the

application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 10. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid by the Grantor.

Section 11. Annual Valuation.

The Grantor and Trustee shall, annually, at least thirty (30) calendar days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust and the continuation of the Trust for the next 12-month period. Any securities in the Fund shall be valued at market value as of no more than sixty (60) calendar days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) calendar days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 12. Advice of Counsel.

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 13. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor. This compensation is not payable from the fund.

Section 14. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the Department and the present Trustee by certified mail ten (10) calendar days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 10.

Section 15. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Schedule "C". The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the Department to the Trustee shall be in writing and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Department, except as provided for herein.

Section 16. Amendment of Agreement.

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the

Trustee and the Department or by the Trustee and the Department if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement, as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the Department or of the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act of omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the Department issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law.

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date first above written:

[NAME OF GRANTOR]

DATE: _____

BY: _____

TITLE: _____

DATE: _____

[NAME OF TRUSTEE]

BY: _____

TITLE: _____

Schedule A

**Site Information: NJDEP Program Interest Name, Site Address, Site County
Program Interest Number and applicable case number**

Schedule B

Instructions to the Grantor and Trustee:

Include here the initial amount of money the received and required.

\$ _____ in cash

Schedule C

**All orders, requests and instructions by the Grantor to the Trustee shall be in writing,
signed by such persons identified below – this should include named Grantor and
individuals named by the Grantor to**

Schedule D

**Identify the retained Licensed Site Remediation Professional licensed pursuant to N.J.S.A.
58:10C.**

CERTIFICATION

**The person with the obligation to establish the remediation funding source has the
obligation to execute and submit the certification required by N.J.A.C 7:26C-1.5(b)2, not
any other person establishing the remediation funding source pursuant to N.J.A.C. 7:26C-5
et seq.**

I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B 3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-5 shall be maintained in the appropriate amount and form until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement that I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for all resulting penalties.

By: _____

Date:

Name: [TYPE FULL NAME OF INDIVIDUAL SIGNING CERTIFICATION]
Title: [TYPE TITLE OF INDIVIDUAL SIGNING CERTIFICATION]

Exhibit B

Scope of Work

Remedial Investigation/Remedial Action Work Plan for On-Site Soil Contamination

1. *LSRP Retention*
2. *Conduct sampling to define soil contamination location and concentrations*
3. *Characterize conditions under building slab*
4. *Quantify volume and nature of soil to be removed from suspected source areas.*
5. *Prepare RAWP for soil remediation consistent with Agreement*

Schedule – within 6 months of taking legal title to Property

Demolition and Site Preparation for Remedial Action

1. *Permitting*
2. *Asphalt and above-grade concrete removal and disposal*
3. *Building Demolition*
4. *Demolition oversight*
5. *Asbestos abatement*
6. *Management of regulated building materials*
7. *Site security*
8. *Install silt fence and soil erosion controls*
9. *Clearing and grubbing*
10. *Abandonment of Monitoring Wells destroyed during site work*

Schedule – within nine (9) months following taking legal title to Property

Remediation

1. *Site security*
2. *Soil Erosion and Sediment Control Permit, if necessary*
3. *Install silt fence and soil erosion controls*
4. *Soil Excavation, including:*
 - a. *Soil / structural shoring*
 - b. *Soil excavation, loading, and disposal*
 - c. *Excavation dewatering and treatment (if needed)*
5. *Treatment or disposal of excavated soil*
6. *Confirmation sampling*

7. *Installation of engineering controls*
8. *Place and compact controlled backfill*
9. *Overlot grading*
10. *LSRP and DEP fees*

Schedule – within twelve (12) months following the later of Building Demolition or completion of an approved, final Remedial Investigation/Remedial Action Work Plan for On-Site Soil Contamination

- Remedial Action Permit*
- Post excavation Monitoring Well replacement*
- Establish and Maintain Institutional and Engineering Controls, and associated ongoing requirements*
- Record Deed Notice*
- Response Action Outcome for on-site soil and statement that soil was remediated as per this Agreement*

Schedule – within nine (9) months following Soil Excavation