

The Department of Natural Resources and Environmental Control, Remediation Section (“DNREC-RS”) welcomes your interest in our Prospective Purchaser Program. In order to participate in the Program a prospective purchaser must enter into a Prospective Purchaser Agreement (“PPA” or “Agreement”) with DNREC-RS. The PPA provides a description of the activities to be undertaken by the prospective purchaser in order to investigate and remediate the release of hazardous substances at a site. Upon successful investigation and remediation, as evidenced by the issuance of a Certification of completion of Remedy, the prospective purchaser will obtain liability protection with respect to the environmental condition of the site. **This PPA addresses significant legal issues concerning which a prospective purchaser may desire to consult legal counsel.** DNREC-RS has developed this generic PPA to assist prospective purchasers. It contains language of general applicability. You are welcome to complete the PPA by supplying the specific information requested where indicated. You may also propose additional language to supplement or modify the provisions of the PPA for DNREC-RS’s consideration. Please submit all additions and modifications in the form of a “black-line” draft indicating any additions by underlining and any deletions by striking through the relevant text. All changes to the PPA template, including merely filling in the requested information where indicated, must be approved by DNREC-RS before the final Agreement is executed by the parties. Please do not submit a signed PPA without the approval of DNREC-RS. This PPA will not be deemed finalized until approved by DNREC-RS and executed by the RS Administrator and the prospective purchaser.

## PROSPECTIVE PURCHASER AGREEMENT

This Prospective Purchaser Agreement (“Agreement” or “PPA” is entered into pursuant to the Delaware Hazardous Substance Cleanup Act (“HSCA”), 7 Del. C. c. 91, by and between the Delaware Department of Natural Resources and Environmental Control, Site Investigation and Restoration Section (“DNREC”) and [Name of prospective purchaser] (“Prospective Purchaser” or [name of entity]), [organizational description], [Address], (collectively referred to as the “Parties”). The property that is the subject of this Agreement are located [Address] and is furthered identified as [NCC/KC/SC] tax parcel number [ ] (“the Property”).

### INTRODUCTION

The Parties agree to undertake all required actions and to comply with all of the terms, conditions, and requirements set forth in this Agreement. The purpose of the Agreement is to provide a scope and schedule of activities at the Property to assess and respond to the actual, threatened, or perceived releases of hazardous substances at the Property. Additionally, consistent with 7 Del.C. § 9105(f), this PPA is intended to settle and resolve the potential liability that might otherwise result under HSCA when the Prospective Purchaser takes title to, or begins operations on, the Property.

### I. BACKGROUND/FINDINGS

1. By letter dated [ ] from [DNREC-RS] to [Name of entity] attached hereto as Exhibit 1, DNREC determined that [ ], qualifies as a prospective purchaser in accordance with the provisions of 7 Del.C. §§ 9103(24) and 9105(c)(4).

2. [Name of current owner] is the owner of the Property.
3. Prospective Purchaser affirms that it is not affiliated with any potentially liable person through any of the relationships or any reorganization as set forth at 7 Del. C. § 9105(c)(4)b.5.
4. By entering into this Agreement, the Parties acknowledge and agree that [ ] will be afforded liability protection for any releases of hazardous substances that occurred at the Site prior to the time that [ ] takes title to the Property provided that it satisfies the requirements of 7 Del. C. §§ 9105(c)(4) and 9105(f). Upon satisfactory completion of the activities required by this Agreement, upon request, DNREC shall issue a certification of completion of remedy ("COCR") for the site in accordance with 7 Del. C. § 9108.

## II. DEFINITIONS

5. Unless otherwise expressly provided, this Agreement, terms used in this Agreement that are defined in HSCA or the Regulations Governing Hazardous Substance Cleanup ("Regulations") shall have the meanings assigned to them by HSCA or the Regulations, including any amendments thereto, as of the date of the execution of this Agreement.
6. "Conceptual Site Model and Sampling and Analysis Plan" ("CSM/SAP") means a written description of activities, as issued, approved, modified, or amended by DNREC, to be performed at the Site, or any portion of the Site thereof (*i.e.* an operable unit), to investigate any release or imminent threat of release of any hazardous substances. There may be more than one CSM/SAP if there are multiple operable units on the Site, or if the work otherwise proceeds in a phased approach.
7. "Development activities" means all construction and site preparation work that physically takes place on the Property involving structures or improvements of any kind, and all land disturbing activities including, but not limited to, digging, drilling, excavating, grading, clearing, earth moving, filling, or performing any subsurface work at the Site or an operable unit thereof. Development activities do not include environmental investigations, planning, designing, or engineering work related to the Property or any physical activity performed off the Property in preparation for or related to construction or site preparation work that will occur on the Property.
8. "Existing Environmental Condition" means all known or discovered releases of hazardous substances which are found to be, or to have been, existing at or in the vicinity of the Site prior to [ ]'s entry into this Agreement including those substances and conditions identified or set forth in the documents attached hereto as Exhibit 2 as pertaining to the Property.
9. "Facility Evaluation" means an investigation to identify a release of a hazardous substance and to generate data to perform an initial screening and make a decision regarding future action at the Site.
10. "Feasibility Study" means an evaluation to identify the potential remedial alternatives that are applicable to satisfy the remedial action objectives for the Site.
11. "Final Plan of Remedial Action" ("Final Plan") means DNREC's written determination of the appropriate remedial action at the Site for the current or anticipated land use issued for the protection of public health, welfare and the environment in accordance with HSCA, the Regulations, and all applicable DNREC guidance, policies and procedures.
12. "Long-term Stewardship Activities" ("LTS Activities") mean activities involving the long-term management of environmental media at the Site that are necessary to protect public health and the environment. LTS Activities generally include the establishment and maintenance of physical and legal

controls, implementation entities, authorities, accountability mechanisms, information and data management systems and/or resources that are necessary to ensure that the Site remains protective of public health and the environment. LTS Activities also include all operations and maintenance and monitoring activities, as approved or modified by DNREC, that are required or authorized by the Final Plan.

13. "Parties" means DNREC and [Name of entity or "Prospective Purchaser"].

14. "Proposed Plan of Remedial Action" ("Proposed Plan") means a written plan, issued by DNREC for public comment, describing the appropriate remedial action at the Site for the current or anticipated land use to protect public health, welfare or the environment.

15. "Property" means the property located at [Street Address], which is approximately [ ] acres in size, and is further identified as [NCC/KC/SC] tax parcel number [ ] as depicted on Exhibit 3 attached hereto.

16. "Remedial Action Work Plan" ("RAWP") means a written description of remedial action requirements as set forth in the Final Plan of Remedial Action, as issued, approved, modified, or amended by DNREC, to be performed at the Site, or any operable unit thereof, to implement the Final Plan to address the release of hazardous substances. There may be more than one RAWP if there are multiple operable units on the Site, or if the work proceeds in a phased approach.

17. "Remedial Investigation" means an evaluation that includes the assessment of an actual, threatened, or perceived release of a hazardous substance at the Site to determine the nature, extent, and impact of the actual, threatened, or perceived release, and the evaluation of the feasibility of the proposed development plan to serve as all or a portion of the remedial action.

18. "Site" means the Property and all other areas where hazardous substances released at or from the Property have migrated or otherwise come to be located.

### III. GENERAL PROVISIONS AND PROCEDURES FOR REMEDIAL WORK

19. The Parties acknowledge that all investigations, remedial actions and development activities undertaken on the Property by [ ] must be performed in accordance with this Agreement, all applicable work plans and the Final Plan (including any amendments and/or modifications to said documents).

20. In the event [ ] fails to conduct a DNREC approved Facility Evaluation of the Site within twenty-four (24) months after the execution of this PPA, DNREC shall revoke the Agreement. In such a case, [ ] agrees to reimburse all of DNREC's oversight costs incurred in accordance with Section V of the Agreement.

21. Upon obtaining DNREC's approval to begin development activities, [ ] will perform any such activities on the Property in accordance with all applicable work plans and the Final Plan. In addition, [ ] agrees to reimburse DNREC's oversight costs relating to any development activities in accordance with Section V of this Agreement.

22. Upon successful completion of all investigations and remedial actions at the Site, or any operable unit thereof, and, upon written request to DNREC by [ ], DNREC will issue a Certification of Completion of Remedy ("COCR") for the Site, or any operable unit of the Site, provided that all of the required work has been performed in compliance with the requirements of HSCA, the Regulations and all applicable work plans and the Final Plan. Upon issuance of the COCR, [ ]

shall receive liability protection as set forth in 7 Del.C. §§ 9105(f) and 9108. DNREC reserves the right to withhold issuance of a COCR until all of its oversight costs are reimbursed as required by Section V of this Agreement.

23. If [ ] knowingly violates any terms of this Agreement, DNREC may, in its sole discretion, revoke the Agreement and require [ ] to reimburse all of DNREC's outstanding costs in accordance with Section V of this Agreement.

#### IV. CONCEPTUAL SITE MODEL AND SAMPLING AND ANALYSIS PLAN AND REMEDIAL ACTION WORK PLAN

24. If required by DNREC, prior to performing a Remedial Investigation at the Site, [ ] shall develop a CSM/SAP. The Plan shall describe the activities that will be required to document and address any release or imminent threat of release of hazardous substances at the Site. Specifically, the CSM/SAP, at a minimum, shall include the following:

- a. conceptual plans for the proposed development project;
- b. the nature and scope of the Remedial Investigation ("RI") to be performed on the Site or any operable unit thereof; and
- c. the proposed schedule for the RI at the Site or any operable unit thereof.

25. After the RI is completed and approved, DNREC may require [ ] to prepare a Feasibility Study for its review and approval. If DNREC determines that a Feasibility Study is unnecessary, it will issue a Proposed Plan of Remedial Action ("Proposed Plan") for the Site, or any operable unit thereof. The Proposed Plan must satisfy the requirements of HSCA, the Regulations and all applicable DNREC guidance, policies, and procedures. DNREC will advertise the Proposed Plan for public comment as required by HSCA. If there is no basis for disapproving the Proposed Plan, DNREC will adopt the Proposed Plan as the Final Plan.

26. After DNREC issues the Final Plan for the Site, or any operable unit thereof, the Remedial Action Work Plan ("RAWP") will be issued consistent with the provisions of the Final Plan.

27. The RAWP shall set forth the activities required for the implementation of all remedial actions in accordance with the Final Plan. At a minimum, the RAWP shall include the following:

- a. construction plans for the proposed development project;
- b. a description of the remedial action required by the Final Plan in order to address the release or imminent threat of release of hazardous substances at the Site, or any operable unit thereof, as well as any anticipated land use restrictions or controls, so as to allow the proposed development project to proceed; and
- c. a proposed schedule for implementation of the remedial action at the Site, or any operable unit thereof.

28. DNREC and [ ] acknowledge that in order to protect public health, welfare or the environment, DNREC may require modification or amendment of the CSM/SAP, the RAWP and/or the Final Plan in the event it obtains new information regarding the environmental condition of the Site, or, in the event changes are made to the planned or actual development activities at

the Property. Any such required modifications or amendments will be implemented in accordance with HSCA, the Regulations, all applicable DNREC guidance, policies, and procedures and this Agreement. In the event newly discovered information causes DNREC to amend any applicable plan or plans to require that additional work be performed, [ ] agrees to undertake such additional work.

29. Nothing in this Agreement shall affect [ ]'s right to comment upon or request a hearing with respect to the Proposed Plan or to appeal the Final Plan in accordance with HSCA.

#### IV. DEVELOPMENT ACTIVITIES/REMEDIAL REQUIREMENTS

30. [ ] shall not conduct any remedy or development activities on the Site without DNREC's prior written approval. Additionally, [ ] shall use reasonable efforts to ensure that other persons who obtain DNREC's prior written approval before conducting any development activities or engaging in any other activities on the Property.

31. [ ] may proceed with development activities provided DNREC has determined that [ ] is adequately performing all investigations and remedial actions as specified in the CMP/SAP, any CMMP, the RAWP and the Final Plan for the Site, and that such development activities will not pose a threat to public health, welfare or the environment, will not cause an exacerbation of the Existing Environmental Condition, will not cause or threaten to cause a new release, and will not interfere with any actual or potential remedies performed or to be performed at the Site. If it determines that [ ] has not performed or complied with any of the investigative or remedial action requirements at the Site, DNREC shall have the right to modify or suspend any or all development activities.

32. [ ] shall comply with any land use restrictions established or imposed in connection with the remedy at the Site, and, to the extent it may reasonably do so, it shall require others to comply with any such restrictions.

33. [ ] shall not impede or interfere with the effectiveness or integrity of any institutional controls employed at the Site in connection with any remedy, and, to the extent it may reasonably do so, it shall prohibit others from impeding or interfering with any such institutional controls.

34. [ ] is responsible for conducting any required LTS Activities at the Site and shall remain responsible for such LTS Activities unless DNREC provides written approval permitting the transfer of such responsibility.

#### V. REIMBURSEMENT/PAYMENT OF COSTS

35. DNREC will provide [ ] with cost statements identifying any DNREC oversight costs that are subject to reimbursement.

36. For purposes of this Agreement, oversight costs may include, but are not limited to, costs incurred by DNREC: in preparing this Agreement; in overseeing [ ]'s implementation of the requirements of this Agreement; in performing activities at the Site relating to the implementation of a remedy pursuant to this Agreement; and, in providing Site related public information, conducting community relations, holding public hearings or otherwise complying with public notice and comment requirements under HSCA, the Regulations or other applicable laws or regulations. Oversight costs shall also include all DNREC direct and indirect costs, including but not limited to, time and travel costs of DNREC personnel, and associated indirect costs, contractor costs, including legal costs, costs of

compliance monitoring, collection and analysis of split samples, site visits, inspection of field activities, review and approval of reports and work plans, and preparation of Proposed and Final Plans.

37. If [ ] fails to implement any institutional controls at the Site that are required by the Final Plan, it shall reimburse DNREC for all costs DNREC incurs in establishing or reestablishing such institutional controls.

38. [ ] agrees to pay the costs incurred by DNREC in reviewing any requests for consent to assign or transfer the benefits conferred by this Agreement.

39. Any payments [ ] is required to make pursuant to this Agreement must be submitted to DNREC within ninety (90) days of the date of DNREC's cost statement. DNREC shall have the right to withhold approval of any report, work plan, Final Plan, Environmental Covenant or COCR for the Site if payment is not received within the required ninety (90) days. In the event [ ] has not made payment within one hundred and eighty (180) days, DNREC shall have the right to restrict all development and other activities on the Site.

## VI. SITE ACCESS

40. Commencing upon the date [ ] takes title to the Property, it agrees to provide to DNREC, its authorized employees, representatives, agents, and all other persons performing remedies under DNREC oversight, an irrevocable right of access to the Property at all reasonable times, as well as to any other areas to which access is required for the implementation of remedies at the Site, provided access to such areas is controlled by [ ]. This right of access is intended to permit DNREC's authorized personnel to perform and/or oversee remedies at the Site in accordance with applicable law. Unless an emergency situation or other extraordinary condition exists that poses an immediate risk to public health, welfare or the environment, DNREC agrees to provide reasonable notice to [ ] prior to accessing the Site.

40. [ ] shall require any assignee, successor-in-interest, lessee or sub-lessee of the Property, or a portion of the Property, to provide DNREC with the same irrevocable right of access. Further, [ ] shall make such access a condition of any contractual agreement between it and any such assignee, successor-in-interest, lessee or sub-lessee.

41. [ ] shall ensure that a copy of this Agreement is provided to any current lessee or sub-lessee on the Property as of the effective date of this Agreement. Further, [ ] shall ensure that any subsequent lease, sublease, assignment or transfer of the Property or an interest in the Property includes a provision granting DNREC an irrevocable right of access and that the terms of any such lease, sublease, assignment or transfer comply with the provisions of this Agreement.

## VII. DUE CARE/COOPERATION

42. [ ] shall exercise due care with respect to the Existing Environmental Condition at the Site and shall comply with all applicable local, state, and federal environmental laws and regulation. [ ] recognizes that the implementation of remedies at the Site may interfere with [ ]'s use of the Property. DNREC agrees to use reasonable efforts to minimize any interference with [ ]'s permissible operations while engaged in remedial activities on the Property.

43. [ ] agrees to cooperate fully with DNREC in the implementation of remedies at the Site and agrees that it will not interfere with such remedies. Consistent with its responsibilities under applicable law, [ ] shall comply with any request for

information from DNREC or any administrative subpoena issued by DNREC in accordance with applicable law.

44. In the event [ ] becomes aware of any incident or occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site constituting an emergency situation or presenting an immediate threat to public health, welfare or the environment, [ ] shall immediately take all appropriate actions to prevent, abate, or minimize such release or threat of release, and shall immediately notify DNREC of the facts and circumstances relating to the incident or occurrence.

#### IX. RESERVATION OF RIGHTS

45. DNREC expressly reserves the right to unilaterally terminate this Agreement in the event that:

- a. [ ] violates or fails to satisfy a material term or requirement of this Agreement;
- b. [ ], its successors, assignees, lessees or sub-lessees, exacerbate any existing release(s) or contribute to any new release(s) at the Site, excepting therefrom, any exacerbation resulting from activities of [ ] that were previously approved by DNREC pursuant to the terms of this Agreement, any applicable work plan or the Final Plan;
- c. [ ], its successors, assignees, lessees or sub-lessees, cause a new release or imminent threat of release of a hazardous substance, pollutant or contaminant, at the Site;
- d. liability arises as the result of any alleged criminal conduct; or
- e. liability arises as a result of any alleged violation(s) of any local, state or federal environmental laws or regulations.

46. With respect to any claim or cause of action asserted by DNREC, [ ] shall bear the burden of proving that the claim or cause of action, or any part thereof, is not attributable to the conduct, actions or inactions of [ ] at the Site.

#### VIII. INDEMNIFICATION

47. [ ] shall indemnify the State of Delaware, its agencies, departments, officials, employees, contractors and agents and hold them harmless from any and all claims or causes of action arising from or on account of acts or omissions of [ ], its employees, contractors, consultants, agents, representatives or assignees, or any other persons including, but not limited to, firms, corporations, subsidiaries, companies, partnerships, or other entities, in carrying out activities under this Agreement. The State of Delaware and any agency, department, official, contractor, agent or authorized representative thereof, shall not: (1) be included as a party to any contract entered into by [ ] for the purpose of carrying out any activities related to this Agreement; or (2) be named as additional insured with respect to any insurance policy obtained by [ ], or any of its employees, contractors, consultants, agents or representatives, related in any way to any of the provisions of this Agreement, or to the work activities or other actions taken pursuant to this Agreement.

#### IX. CONTRIBUTION

48. As provided by 7 Del.C. § 9107(c), the Parties agree that [ ] is entitled to protection from contribution actions or claims by other persons for matters addressed in this Agreement.

#### XI. TRANSFER/ASSIGNMENT OF AGREEMENT AND/OR PROPERTY

49. Consistent with the provisions herein, this Agreement may be assigned or transferred to any person legally entitled to its protections, with the prior written consent of DNREC in its sole discretion. In the event of an assignment or transfer of the Property by [ ] (or an assignment or transfer of an interest in the Property), [ ] shall continue to be bound by all of the terms and conditions and subject to all the benefits of the Agreement unless the Parties agree otherwise. In such a case, [ ] and DNREC shall execute a written assignment or transfer document identifying with specificity the nature and effect of the modifications to this Agreement resulting from the assignment or transfer of the Property (or an interest in the Property). Any terms of the Agreement that are unaffected by the assignment or transfer shall remain in full force and effect as to [ ].

50. Prior to any assignment or transfer of the Property, the assignee or transferee must notify DNREC in writing, in a manner and form approved by DNREC, that the assignee or transferee has read and understood this Agreement and that it agrees to be bound by all of its terms, conditions, and requirements.

#### X. DISCLAIMER

51. This Agreement does not constitute any finding by DNREC relating to the risks to public health, welfare or the environment that may be posed by any contamination located on the Site, nor does it constitute any representation or affirmation by DNREC that the Site is fit for any particular purpose.

#### XI. RECORDS RETENTION

52. [ ] agrees to retain, and, if requested, to make available to DNREC, certain records in either electronic or hard copy form for a minimum of ten (10) years from the date of the execution of this Agreement. Such records shall include the following: all business and operating records, contracts, Site studies, investigations, data, and other related materials pertaining to activities and operations conducted at the Site in connection with the use, disposal, remediation, generation, storage, or transport of hazardous substances; all records related to environmental conditions at the Site; and, all records related to activities that could interfere with any remedy. [ ] further agrees that, if it intends to dispose of any such records, it will provide DNREC with notice prior to the end of the ten year retention period, and shall permit DNREC to make copies of such records at DNREC's expense.

#### XII. NOTICE AND SUBMISSIONS

53. Unless otherwise agreed upon by the Parties, any written notice or other submissions required pursuant to the provisions of this Agreement shall be hand delivered or sent certified mail with return receipt requested, to the following:

DNREC-RS  
391 Lukens Drive  
New Castle, DE 19720  
Attn: [Project Manager]

[NAME OF ENTITY] ]  
[street address]

[city, state, zip code]  
Attn: [Name of recipient/title]

XIII. EFFECTIVE DATE

53 This Agreement shall be effective as of the date it is fully executed by the Parties.

XIV. LIST OF EXHIBITS

54. The following exhibits attached hereto, constitute a part of this Agreement:

- a. Exhibit 1 means the Letter from [DNREC ] to [ ] dated [ ].
- b. Exhibit 2 means the list of documents identified and incorporated herein by reference.
- c. Exhibit 3 means the parcel map and the legal description of the Property.

XV. SIGNATORIES AND COUNTERPARTS

55. Each person executing this Agreement on behalf of a Party represents that he or she is fully authorized to enter into the Agreement and to legally bind such Party with respect to the terms, conditions, rights, benefits, protections and obligations contained herein.

56. This Agreement may be executed in multiple counterparts each of which shall be deemed an original but which together shall constitute one and the same instrument. An electronic signature constitutes an original signature pursuant to 6 Del.C. c. 12A.

\*\*\* SIGNATURE PAGE AND EXHIBITS FOLLOW\*\*\*

IT IS SO AGREED:

**Department of Natural Resources and Environmental Control**

By: \_\_\_\_\_  
    , Administrator, Remediation Section  
    Division of Waste and Hazardous Substances

Date: \_\_\_\_\_

**[Name of Entity]**

By: \_\_\_\_\_  
    [Signatory/Title]  
    [Name of Entity]

Date: \_\_\_\_\_

# EXHIBIT 1

## Exhibit 2

# Exhibit 3