

PROSPECTIVE PURCHASER AGREEMENT

DEQ No. 05-03

BETWEEN: Oregon Department of Environmental Quality

AND: SeQuential Retail Station #1 LLC

This Agreement is entered between the Oregon Department of Environmental Quality (DEQ) and SeQuential Retail Station #1 LLC (SeQuential) pursuant to ORS 465.260 and 465.327. This Agreement contains the following provisions:

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1. RECITALS

A. The subject property (Property) is located at 86714 McVay Highway, Eugene, Lane County, Oregon. The legal description of the Property is set forth as Attachment A to this Agreement.

B. The site was formerly known as the Franko #15 service station, and operated as a gasoline service station until August 1991 when the operator and former owner filed Chapter 7 bankruptcy and the property was turned over to the bankruptcy estate. The property has not been in active use since August 1991; it was acquired by Lane County through property tax foreclosure on September 29, 2004. The service station building and canopy remain; however, the property is currently vacant and is not in active use.

C. Environmental concerns at the site include gasoline free product in groundwater and associated human exposure, health risks, and threat of migration of the plume to additional groundwater areas and surface waters, including the nearby Willamette River.

D. An initial site investigation was completed in April 1990. No reports exist from this site investigation but there are references to six borings being drilled and low levels of contamination being detected.

E. A second site investigation was completed at the site in August 1990. Four borings were drilled to depths of 20 to 31.5 feet. The locations of the borings were generally north and south of the gasoline tanks and dispenser islands. All soil samples

collected from the borings detected TPH or gasoline concentrations below the site Soil Matrix Cleanup Level (i.e. 80 mg/kg). The samples collected at the 10 foot depth were also analyzed for BTEX compounds. Benzene was only detected in one sample, near the west dispenser island, at 1.43 mg/kg. The report indicates that groundwater was not encountered in any of the borings.

F. A complaint was received by the Oregon Department of Environmental Quality in February 1991 regarding gasoline in domestic water well for the residence (33556 Bloomberg Road) west of the property. The water well was sampled in May 1991 and analyzed for BTEX compounds. Benzene was detected at 3.3 ug/L, below the drinking water Maximum Contaminant Level of 5.0 ug/L. An additional water well sample was collected in June 1991 and also analyzed for BTEX compounds. Benzene was detected at 40 ug/L, well above the MCL of 5.0 ug/L. The residence was subsequently connected to a municipal water supply in July 1991.

G. Underground storage tanks at the former gasoline service station consisted of one 5,000-gallon, one 7,000-gallon and one 12,000-gallon gasoline tanks, one 550-gallon waste oil tank and one 200-gallon heating oil tank. All five underground storage tanks were decommissioned and removed by the former owner of the property in March 1996 from four separate excavations. Soil samples collected from the gasoline tank excavations detected gasoline-range petroleum hydrocarbons up to 1,800 mg/kg. No benzene was detected in any of the samples. Pit water was sampled and benzene was detected at 2,400 ug/L. Samples collected from the heating oil tank excavation did not detect any petroleum hydrocarbons. Samples collected from the waste oil tank excavation,

or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the Property.

P. In determining to enter this Agreement, DEQ has consulted with Lane County and has considered reasonably anticipated future land uses at the Property and surrounding properties.

Q. SeQuential recognizes that implementation of remedial measures at the Property in the future might interfere with SeQuential's use of the Property.

2. MEASURES TO BE UNDERTAKEN

A. SeQuential will perform the following actions at its own expense:

(1) SeQuential will reimburse DEQ in the amount of \$50,000 for costs incurred by DEQ in conducting investigation and removal and remedial actions related to releases at the Property, and for DEQ oversight costs related to such actions.

(2) SeQuential has applied for a loan from the Oregon Economic and Community Development Department (OECDD) to pay DEQ costs described in Paragraph (2)(A.)(1) above. DEQ will invoice SeQuential beginning ninety (90) days after the OECDD loan is awarded to SeQuential, or 90 days after September 1, 2005, whichever is earlier.

Thereafter, DEQ will invoice SeQuential every ninety (90) days. SeQuential agrees it will pay such invoices within thirty (30) days of receipt.

(3) Lane County has been awarded \$197,520 in grant funds as described in Paragraph 1.J. above. DEQ and SeQuential agree that funds provided by SeQuential to DEQ under this Agreement may be identified as funds that "match" the Brownfield grant awarded by EPA to Lane County. Notwithstanding the preceding sentence, DEQ,

SeQuential and the County intend to seek other sources of funding or contributing actions that could be used to match the Lane County Brownfield Grant.

(4) All funds provided by SeQuential to DEQ under this Agreement shall be used for investigation, removal, remediation and oversight costs at the site incurred by DEQ after the date of the OECDD loan awarded to SeQuential.

(5) DEQ will perform investigation and removal or remedial actions at the site, pursuant to the Intergovernmental Agreement (IGA) between DEQ and Lane County. DEQ's costs for such actions will be reimbursed by the County pursuant to the IGA, and by SeQuential pursuant to this Agreement.

(6) SeQuential will develop the Property into a fueling station, providing a retail outlet for biofuels. The facility will be developed with all required safeguards to assure the fueling station will not contribute to or exacerbate existing contamination at the site.

(7) SeQuential will coordinate site development activities with DEQ pursuant to Subsection 2.C. below to assure that development activities will be consist with and not interfere with investigation and remedial actions that may be performed at the site. DEQ will plan and carry out investigation and removal actions to coordinate with SeQuential's site development actions to the greatest extent practicable.

(8) SeQuential will grant DEQ and its Contractors access to the property to perform continued and future remedial and monitoring activities of soil and groundwater beneath the site.

(9) SeQuential will record and abide by any necessary restrictions on the use of the Property as described in Subsections 2.D., 2.E. and 3.C. below. Such use restrictions may

include restrictions on the use of groundwater, restrictions on the location of structures on the property, and restrictions on the use of the Property for residential purposes.

B. Upon satisfactory completion of actions under Subsection 2.A. above by SeQuential, DEQ will provide a written notice that such measures have been completed. If DEQ issues a determination of No Further Action or a Certificate of Completion for the Property, such determination or Certificate shall serve as notice of completion of the remedial actions required under Subsection 2.A.

C. Any development, construction, or other use of the Property shall be consistent with and shall not interfere with investigative or remedial activities necessary at the Property. To ensure such consistency and prevent exacerbation of existing contamination at the Property, SeQuential must notify DEQ before any material physical changes or disturbances are made to any area of the Property that is subject to use restrictions under Subsections 2.D., 2.E. and 3.C. At DEQ's request, SeQuential must submit for DEQ review and approval, any development, use, and building plans, or other similar and adequate documentation, for the proposed activities before any material changes or disturbances occur to any area of the Property that is subject to such use restrictions.

D. SeQuential shall require all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that might affect the soils, groundwater, other contaminated media, or affect necessary investigative and/or remedial measures, to also submit development and/or construction plans to SeQuential for review by DEQ, pursuant to Subsection 2.C. of this Agreement.

This requirement is necessary to ensure that the actions of others do not exacerbate existing contamination. This review and approval requirement will expire upon the Property receiving an unconditional No Further Action determination or a Certificate of Completion from DEQ.

E. SeQuential shall record and abide by any necessary use restrictions on the Property, which restrictions, pursuant to ORS 465.327(5), shall run with the land. These restrictions are described in Subsection 3.C. of this Agreement. SeQuential shall also impose and abide by any use and/or deed restrictions on the Property required by the final remedy selected for the Property. The final remedy for the Property may incorporate, eliminate, or modify the restrictions in Subsection 3.C. of this Agreement. If the restrictions in Subsection 3.C. of this Agreement are incorporated into the final remedy, they will be restated as such and subject to public notice and comment requirements for proposed remedial actions. Any use restrictions contained in a final remedy selected or approved by DEQ after public participation will supersede the restrictions set forth in Subsection 3.C. of this Agreement.

F. Except as provided in Subsections 2.A.(1) – (5) above, nothing in this Agreement requires or obligates DEQ to take any action at the Property to address either current or future releases of hazardous substances at the Property.

3. GENERAL PROVISIONS

A. DEQ Oversight

DEQ shall provide review, approval/disapproval, and oversight as described in Section 2 and Subsection 3.F. of this Agreement. Where DEQ approval is required for any

plan or activity under this Agreement, SeSequential shall not proceed to implement the plan or activity until DEQ approval is received. DEQ will make good faith efforts to conduct plan and activity review promptly so that any proposed development activities are not unduly delayed.

B. DEQ Access

(1) SeSequential grants an irrevocable right of entry to DEQ and its authorized representatives to enter and move freely about the Property at all reasonable times for purposes of overseeing implementation of this Agreement, or conducting removal or remedial measures DEQ deems necessary.

(2) SeSequential shall allow DEQ to inspect and copy all records in SeSequential's possession or control relating to measures undertaken at the Property under this Agreement. SeSequential shall preserve all such records for six (6) years after the effective date of this Agreement, and, after such six-year period, shall provide DEQ with sixty (60) days notice before destruction or other disposal of such records and make the records available for inspection and copying.

(3) SeSequential may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Agreement. DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 to 192.505. If SeSequential does not make a claim of confidentiality at the time the records are submitted to or copied by DEQ, the records may be made available to the public without notice to SeSequential. DEQ reserves any rights to obtain documents withheld from DEQ as privileged.

C. Use Restrictions

After review of the sample data described above, DEQ may impose use restrictions and/or institutional controls on the Property. Such restrictions would be imposed only as necessary to prevent exposure to contaminated soil, surface water, vapors or groundwater that are contaminated, or to prevent exacerbation of existing contamination.

D. Notice

All reports, notices, and other communications required under or relating to this Agreement shall be directed to:

For DEQ:

Jim Glass
Oregon DEQ
750 Front Street, Suite 120
Salem, Oregon 97301
Tel: (503) 378-8240x249
Fax: (503) 373-7944
Email: glass.jim@deq.state.or.us

For SeQuential:

Ian Hill
Sequential Biofuels
1900 Millrace Dr., Suite 113
Eugene, Oregon 97403
Tel: (541) 485-7994
Fax:
Email: ian@sqbiofuels.com

E. Progress Reports

On a semi-annual basis upon commencement and continuing until completion of the development activities described in this Agreement, SeQuential shall submit to DEQ one (1) copy of a progress report describing its activities at the Property under this Agreement. DEQ anticipates that the progress report will not exceed two (2) pages in length. The progress report shall address, at a minimum, the following:

- (1) Activities undertaken by SeQuential at the Property during the previous reporting period;
- (2) Actions scheduled to be taken by SeQuential in the next reporting period;

(3) Sampling and test results and any other data generated by SeSequential during the previous reporting period; and

(4) A description of any problems experienced by SeSequential during the previous reporting period and the actions taken to resolve them.

F. Dispute Resolution

In the event of any disagreement between DEQ and SeSequential regarding implementation of this Agreement, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and SeSequential shall, in the following order:

(1) Make a good faith effort to resolve the dispute between project managers;

(2) If necessary, refer the dispute for resolution by the immediate supervisors of the project managers; and

(3) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution to DEQ's Administrator of the Land Quality Division or Western Regional Division Administrator, and SeSequential. DEQ's final decision after such dialogue shall be enforceable in accordance with Subsection 3.G. of this Agreement.

G. Enforcement of Agreement and Reservation of Rights

(1) In the event of any failure of SeSequential to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any authority or pursue any claim or cause of action that DEQ might have. SeSequential reserves any defenses or counterclaims it might have in the event of such action by DEQ.

(2) In addition, without limiting the foregoing, upon any failure of SeSequential to comply with any material obligation of this Agreement, DEQ may terminate this

agreement by written notice; provided that before such termination: (a) DEQ initiates dispute resolution in accordance with Subsection 3.F., (b) DEQ gives SeQuential written notice of the deficiency describing what is necessary to correct the deficiency, and (c) SeQuential fails to cure the deficiency within 30 days of the notice, or conclusion of dispute resolution, whichever is later (or such longer period to which DEQ agrees in writing). Failure by DEQ to seek termination of this Agreement upon a failure of SeQuential to comply with any material obligation of this Agreement shall not constitute a waiver by DEQ of that or any other obligation. DEQ may not terminate this Agreement under Subsection 3.G.(2) during the pendency of any action to enforce or construe this Agreement.

(3) Except as provided in Subsections 3.I and 3.J of this Agreement, DEQ and SeQuential reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.

(4) SeQuential does not admit any liability or violation of law by virtue of entering this Agreement.

(5) DEQ reserves its authority to perform remedial measures regarding a release of hazardous substances at or from the Property.

H. Waivers

(1) SeQuential waives any claim or cause of action it might have against the State of Oregon arising from contamination at the Property existing as of the date of acquisition of ownership or operation of the Property.

(2) SeQuential waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred under this Agreement.

I. Hold Harmless and Indemnification

To the extent allowed under Oregon law, SeQuential shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of SeQuential or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by SeQuential or its agents in carrying out activities under this Agreement.

J. Public Notice

(1) Upon execution of this Agreement, DEQ will provide public notice of this Agreement in a local newspaper of general circulation, describing the measures to be undertaken under this Agreement. Copies of the Agreement will be made available to the public. DEQ shall provide SeQuential a draft of such notice and consider any comments by SeQuential on the draft notice, before publication. SeQuential is responsible for the publication costs, if any, of such notice.

(2) Before approval of any remedial action, DEQ will provide public notice and opportunity for comment on the proposed remedy in accordance with ORS 465.320.

K. Recording

(1) Within thirty (30) days of the date SeSequential receives an ownership interest in the Property, SeSequential shall submit a copy or original of this Agreement (whichever is required by the County) to be recorded in the real property records of Lane County, State of Oregon. SeSequential shall provide DEQ with written evidence of such recording within seven (7) days of recording.

(2) Upon any termination of this Agreement, DEQ may record, or require SeSequential to record, notice of such termination in the real property records of Lane County, State of Oregon.

L. Transfer of Interest

Until DEQ issues a No Further Action determination or a Certificate of Completion for the Property and SeSequential completes all obligations required under this Agreement, upon transfer of any interest in the Property, or a portion of the Property, from SeSequential to another person or entity, SeSequential shall provide written notice to the DEQ project manager within thirty (30) days of such transfer.

4. RELEASE FROM LIABILITY

A. Subject to the satisfactory performance by SeSequential of its obligations under this Agreement, SeSequential shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of the hazardous substances described in Section 1 above at the Property existing as of the date of SeSequential's acquisition of its interest in or operation of the Property. SeSequential shall bear the burden

of proving that any hazardous substance release existed before the date of acquisition of its interest in or operation of the Property.

B. The release from liability under Subsection 4.A of this Agreement shall not apply to any liability regarding:

- (1) A release of hazardous substances at the Property after the date of acquisition of an interest in or operation of the Property;
- (2) Contribution to or exacerbation of a release of hazardous substances;
- (3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight at the Property;
- (4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property;
- (5) Violation of federal, state, or local law regarding hazardous substances;
- (6) Any ownership, operation, or release of hazardous substances at the Property by SeQuential before the effective date of this Agreement;
- (7) Any ownership, operation, or other ground of liability of SeQuential for a release of hazardous substances at an off-site location affecting the Property; and
- (8) Any matters as to which the State of Oregon is owed indemnification under Subsection 3.I of this Agreement.

5. PARTIES BOUND

A. This Agreement shall be binding on the signatories and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he

or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property shall in any way alter SeQuential's obligations under this Agreement, unless approved otherwise in writing by DEQ.

B. The benefits and burdens of this Agreement shall run with the land; however, the release from liability set forth in Subsection 4.A of this Agreement shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

6. EFFECTIVE DATE

This Agreement shall be effective upon signature by both parties and when SeQuential enters into the Lease/Purchase Agreement for the Property.

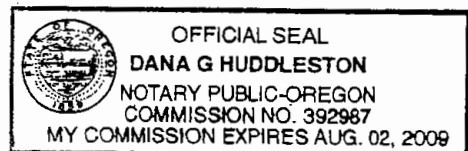
7. SIGNATURES

For SeQuential: [Signature]

Date: 7.14.2005

SUBSCRIBED AND SWORN TO BEFORE ME this 14th day of July, 2005 by Ian J. Hill in his capacity as Manager of SeQuential Biofuels

Dana G. Huddleston
NOTARY PUBLIC FOR OREGON
My Commission expires: 08-02-09



For DEQ:

Alan Kiphut

Date: 7/19/05

Alan Kiphut, Administrator
Land Quality Division
Oregon Department of Environmental Quality

SUBSCRIBED AND SWORN TO BEFORE ME this 19th day of July, 2005 by Alan Kiphut in his capacity as Administrator of the Land Quality Division, Oregon Department of Environmental Quality.

Denise Roth
NOTARY PUBLIC FOR OREGON
My Commission expires: 8-18-07



ATTACHMENT A

PROPERTY DESCRIPTION

Beginning at the Southeast corner of the A.H. Coryell Donation Land Claim No. 59, in Section 10, Township 18 South, Range 3 West of the Willamette Meridian; thence South $89^{\circ} 43' 18''$ West 506.00 feet; thence North $17^{\circ} 41' 30''$ West 926.80 feet to the intersection of the North line of County Road No. 1129 (Bloomberg Road) with the West line of Interstate 5 and the TRUE POINT OF BEGINNING of the following described tract of land; thence South $89^{\circ} 56' 30''$ West 134.00 feet; thence North $18^{\circ} 59' 10''$ West 207.78 feet; thence North $89^{\circ} 43' 20''$ East 138.77 feet to the Westerly right of way of Interstate 5; thence South $17^{\circ} 41' 30''$ East along the Westerly right of way of Interstate 5 206.80 feet to the TRUE POINT OF BEGINNING, in Lane County, Oregon (map# 18-03-10-10-03200).

