

ATTACHMENT 4

**CERCLA NOTICE, COVENANT, AND ACCESS PROVISIONS
AND OTHER DEED PROVISIONS**

CERCLA NOTICE, COVENANT, AND ACCESS PROVISIONS AND OTHER DEED PROVISIONS

The following CERCLA Notice, Covenant, and Access Provisions, along with the Other Deed Provisions, will be placed in the deed in a substantially similar form to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

1. CERCLA NOTICE – PARCELS E2a, E4.1.2.1, E4.1.2.2, E4.1.2.3, E4.3.1.2, E4.3.2.1, E4.6.1, E4.6.2, E8a.1.1.2, L20.15, L5.6.1, L5.6.2, L9.1.1.2, L9.1.2.2, S3.1.1, S3.1.2, S3.1.3, S3.1.4 AND S4.1.1.

For the Property, the Grantor provides the following notice, description, and covenant:

- A. Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), is provided in Exhibit___ **[FOST Table 6 – Hazardous Substance, Storage, Release and Disposal (Attachment 3) should be included as a deed exhibit]**, attached hereto and made a part hereof. Additional information regarding the storage, release, and disposal of hazardous substances on the property has been provided to the Grantee, receipt of which the Grantee hereby acknowledges. Such additional information includes, but is not limited to, the Finding of Suitability to Transfer (FOST), Former Fort Ord, California, Track 0 Plug-in C and Track 1 Parcels (May 2005) and documents referenced therein.
 - B. Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the property is provided in Exhibit ___ **[FOST Table 5 – Environmental Condition of Property (Attachment 3) should be included as an exhibit in the final deed]**, attached hereto and made a part hereof. Additional information regarding the remedial action taken, if any, has been provided to the Grantee, receipt of which the Grantee hereby acknowledges. Such additional information includes, but is not limited to, the Finding of Suitability to Transfer (FOST), Former Fort Ord, California, Track 0 Plug-in C and Track 1 Parcels (May 2005) and documents referenced therein.
2. CERCLA COVENANT – PARCELS E2a, E4.1.2.1, E4.1.2.2, E4.1.2.3, E4.3.1.2, E4.3.2.1, E4.6.1, E4.6.2, E8a.1.1.2, L20.15, L5.6.1, L5.6.2, L9.1.1.2, L9.1.2.2, S3.1.1, S3.1.2, S3.1.3, S3.1.4 AND S4.1.1

Pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(ii) and (B)), the United States warrants that -

- A. All remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the property has been taken before the date of this deed, and
- B. Any additional remedial action found to be necessary after the date of this deed shall be conducted by the United States.

This warranty shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, Grantee shall not be considered a potentially responsible party solely due to the presence of a hazardous substance remaining on the property on the date of this instrument, provided that Grantee has not caused or contributed to a release of such hazardous substance.

3. CERCLA COVENANT – PARCELS E11a, E11b.6.2, E15.2, E20c.2.1, L20.13.5, L20.14.1.1, L20.14.2, L20.6, AND L31

Pursuant to section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(4)(D)(i)), the United States warrants that any response action or corrective action found to be necessary after the date of this deed for hazardous substances existing on the property prior to the date of this deed shall be conducted by the United States. This warranty shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, Grantee shall not be considered a potentially responsible party solely due to a hazardous substance remaining on the property on the date of this instrument, provided that Grantee has not caused or contributed to a release of such hazardous substance or petroleum product or its derivatives.

4. NOTICE OF RELEASE OR DISPOSAL OF PETROLEUM PRODUCTS OR THEIR DERIVATIVES AND COVENANT – PARCEL L23.5.1

- A. The Grantor has identified a portion of the Property (Parcel L23.5.1) as real property on which no hazardous substances were released or disposed of, but on which petroleum products or their derivatives are known to have been released or disposed of.
- B. Following a complete search of its files and records, the Grantor hereby provides notice that diesel fuel was released from a 4,000-gallon underground storage tank on the Property, which was operated from approximately 1976 to 1990.
- C. The Grantor covenants that all response actions necessary to protect human health and the environment with respect to any petroleum product remaining on the Property have been taken prior to the date of this conveyance.

D. The Grantor covenants that any response action or corrective action found to be necessary under applicable laws and regulations after the date of this conveyance with respect to the discovery of contamination that resulted from a release or disposal prior to conveyance of the Property shall be conducted by the United States. This warranty shall not apply in any case in which the person or entity to whom the Property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, Grantee shall not be considered a potentially responsible party solely due to the presence of a contaminant remaining on the Property on the date of this instrument, provided that Grantee has not caused or contributed to a release of such contaminant.

5. RIGHT OF ACCESS

A. Pursuant to sections 120(h)(3)(A)(iii) and 120(h)(4)(D)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(iii) and §9620(h)(D)(ii)), the United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property after the date of transfer of the Property in any case in which an environmental response action or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

B. In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this covenant, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means, but without significant additional costs to the United States, to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

C. In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents,

contractors of any tier, or servants pursuant to and in accordance with this covenant. In addition, the Grantee, its successors and assigns, shall not interfere with any response action or corrective action conducted by the Grantor on the Property.

D. The U.S. Environmental Protection Agency (US EPA) and the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC), and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice to the Grantee, to enter upon the transferred premises in any case in which a response or corrective action is found to be necessary, after the date of transfer of the Property, or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, the following purposes:

- 1) To inspect field activities of the Grantor and its contractors and subcontractors.
- 2) To conduct any test or survey related to environmental conditions at the former Fort Ord or to verify any data submitted to the US EPA or the DTSC by the Grantor relating to such conditions.

6. "AS IS"

A. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The Grantee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.

B. No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or lead-based paint. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos, lead-based paint, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

C. Nothing in this "As Is" provision will be construed to modify or negate the Grantor's obligation under the CERCLA Covenant or any other statutory obligations.

7. HOLD HARMLESS

A. To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the Grantor, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and

penalties, arising out of the violation of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed by the Grantee, its successors and assigns, and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance.

- B. The Grantee, its successors and assigns, covenant and agree that the Grantor shall not be responsible for any costs associated with modification or termination of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed, including without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property.
- C. Nothing in this Hold Harmless provision will be construed to modify or negate the Grantor's obligation under the CERCLA Covenant or any other statutory obligations.

8. POST-TRANSFER DISCOVERY OF CONTAMINATION

- A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of conveyance, Grantee, its successors or assigns, shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to Grantor's activities, use, or ownership of the Property. If the Grantee, its successors or assigns believe the discovered hazardous substance is due to Grantor's activities, use or ownership of the Property, Grantee will immediately secure the site and notify the Grantor of the existence of the hazardous substances, and Grantee will not further disturb such hazardous substances without the written permission of the Grantor.
- B. Grantee, its successors and assigns, as consideration for the conveyance of the Property, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor's indemnification obligations under applicable laws.

9. ENVIRONMENTAL PROTECTION PROVISIONS

The Environmental Protection Provisions are at Exhibit _____, which is attached hereto and made a part hereof. The Grantee shall neither transfer the property, lease the property, nor grant any interest, privilege, or license whatsoever in connection with the property without the inclusion of the Environmental Protection Provisions contained herein, and shall require the inclusion of the Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license.