

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

BMR-DEXTER LLC

AGREED ORDER

No. DE 14302



TO: BMR-DEXTER LLC
17190 Bernardo Center Drive
San Diego, CA 92128
Attn: Legal Department

TABLE OF CONTENTS

I. INTRODUCTION.....2
II. JURISDICTION.....2
III. PARTIES BOUND.....2
IV. DEFINITIONS.....3
V. FINDINGS OF FACT.....4
VI. ECOLOGY DETERMINATIONS.....7
VII. WORK TO BE PERFORMED.....8
VIII. TERMS AND CONDITIONS.....11
 A. Remedial Action Costs.....11
 B. Designated Project Coordinators.....11
 C. Performance.....12
 D. Access.....13
 E. Sampling, Data Submittal, and Availability.....13
 F. Public Participation.....14
 G. Retention of Records.....15
 H. Resolution of Disputes.....16
 I. Extension of Schedule.....17
 J. Amendment of Order.....18
 K. Endangerment.....19
 L. Reservation of Rights.....20
 M. Transfer of Interest in Property.....20
 N. Compliance with Applicable Laws.....21
 O. Indemnification.....22
IX. SATISFACTION OF ORDER.....22
X. ENFORCEMENT.....22

EXHIBIT A Site Diagram
EXHIBIT B Legal Description of BMR-Dexter LLC Property
EXHIBIT C Schedule of Deliverables

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and BMR-Dexter LLC under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. American Linen owned and operated the Site at the time of disposal or release of hazardous substances. 700 Dexter LLC owned and possessed a hazardous substance, and arranged for treatment of the hazardous substance, at the Site. BMR-Dexter LLC currently owns the Property at 700 Dexter Avenue North, Seattle, Washington. This Order requires BMR-Dexter LLC to submit and implement an interim cleanup action work plan on the Property (if proposed or required and following an additional public comment period), complete a Remedial Investigation/Feasibility Study (RI/FS), prepare draft and final reports for the RI and FS and a draft Preliminary Cleanup Action Plan (CAP).

Starting on November 6, 2012, 700 Dexter LLC participated in the Voluntary Cleanup Program (VCP) at Ecology's Northwest Regional Office. This program enables owners of contaminated sites to meet state cleanup standards independently and to receive technical guidance from Ecology during the process. As part of that process, 700 Dexter LLC submitted a partial draft RI Report dated July 15, 2013, and a partial draft FS dated August 16, 2013. In 2015, 700 Dexter LLC requested to have this site supervised by Ecology under the formal site management program; as a result, Ecology terminated 700 Dexter LLC's participation in the VCP. Subsequently, 700 Dexter LLC was ordered by the United States District Court, Western District of Washington to convey the property to BMR-Dexter LLC, a wholly owned subsidiary of BioMed Realty, L.P. BMR-Dexter LLC took possession of the property on January 12, 2017. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Order is issued pursuant to the Model Toxics Control Act, RCW 70.105D.050(1).

III. PARTIES BOUND

This Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. Each Party certifies that the undersigned representative of such Party is fully

authorized to enter into this Order and to execute and legally bind such Party to comply with this Order. The Parties agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Parties' responsibility under this Order. The Parties shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as American Linen Supply Co Dexter Ave, Ecology Facility/Site ID# 3573 and Cleanup Site ID# 12004, and is located at 700 Dexter Avenue North, Seattle, Washington. The Site is defined by the full lateral and vertical extent of contamination in soil, groundwater, and air (vapor), and possible surface water and sediments attributed, but not limited to, releases from past operations of the commercial laundry and retail gasoline station formerly located on the Property. Based on factors currently known to Ecology, the Site is generally described, but may not be limited to what is shown in the Site Diagram, included as Exhibit A to this Order (the Site Diagram). The Site constitutes a facility under RCW 70.105D.020(8).

B. Property: Refers to the property located at 700 Dexter Avenue North, Seattle, Washington (King County parcel number 224900-0285). A legal description of the Property is attached as Exhibit B to this Order. The Property constitutes a portion of the Site.

C. Parties: Refers to the State of Washington, Department of Ecology, and BMR-Dexter LLC.

D. Potentially Liable Person (PLP): Refers to American Linen, 700 Dexter LLC, and BMR-Dexter LLC.

E. Agreed Order or Order: Refers to this Order and each of the Exhibits to this Order. All Exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all Exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by BMR-Dexter LLC:

A. The Site is located in the South Lake Union neighborhood of Seattle as shown in the Site Diagram (Exhibit A). The Property is comprised of a single tax parcel (224900-0285) in King County and covers an area of approximately 60,000 square feet.

B. The Property was occupied by a single residence from at least 1893 through 1925, when an additional building was built on the Property. In 1930, a refueling facility was constructed on the northwest portion of the Property and consisted of several underground storage tanks (USTs) and two dispenser islands. Additional buildings were constructed on the Property in 1947 and 1966. Four 6,000 gallon USTs containing heating oil were installed on the Property in 1947. The 1930s vintage refueling station was demolished in 1966. An additional refueling facility that included as many as three USTs was installed between 1947 and 1966. Dry cleaning operations began on the Property in 1966. The dry cleaning machines were no longer on the Property by the mid-1990s. After dry cleaning operations ceased, the Property was leased to multiple tenants, including automotive repair shops, a bakery, and a car rental agency. Currently the buildings on the Property have been demolished and the Property is being redeveloped. Planned redevelopment of the Property includes excavation from lot-line to lot-line to accommodate underground parking, and construction of a commercial, mixed-use, and/or residential building.

C. The surrounding properties throughout the site are predominantly used for commercial businesses and multi-family housing. The property to the south is used as a parking and storage lot by the Seattle Department of Transportation. The property to the east is a maintenance facility for vehicles owned by Seattle City Light. The property to the north is a mixed use commercial and multi-family property. The property to the west is occupied by multi-family

residences. The subject Property is currently vacant and BMR-Dexter LLC is anticipating redevelopment.

D. The Site is currently defined by the nature and extent of contamination associated with the following releases: Tetrachloroethene, Trichloroethene, cis-1,2-Dichloroethene, trans-1,2-Dichloroethene, Vinyl Chloride, Gasoline-, Diesel-, and Oil-Range Petroleum Hydrocarbons, and Benzene into soil and groundwater; and Tetrachloroethene, Trichloroethene, cis-1,2-Dichloroethene, trans-1,2-Dichloroethene, and Vinyl Chloride into the air. Other potential contaminants of concern that may define the site include polycyclic aromatic hydrocarbons and metals.

E. The Site is located in the Puget trough of the Pacific Border Physiographic Province in the low-lying South Lake Union neighborhood of Seattle. The physiographic features at the Site are the results of glacial processes with lacustrine deposits closer to Lake Union. The ground surface surrounding the Property slopes from 60 feet above mean sea level at the west Property boundary to 30 feet above mean sea level at the east Property boundary. The current elevation of the Property is below the surrounding grade at 40 feet above mean sea level, which is the elevation of the basement of the demolished buildings.

F. The lithology in the area consists of the following units: (1) fill material consisting of wood, bricks, and furnace slag mixed with sand, silt, and gravel; (2) lacustrine deposits beneath the fill near Lake Union; (3) glacial till consisting of dense silty fine sand with variable gravel and cobbles that outwash toward Lake Union; (4) glacial outwash deposits consisting of clean sand and gravelly sand with interbedded silts; and (5) older glacial till and drift deposits consisting of dense to very dense sandy silt with some gravels.

G. There are four distinct hydrogeologic groundwater units that have been identified for this Site: (1) the upper aquifer, a shallow water-bearing zone comprised of fill materials, lacustrine deposits, and weathered and unweathered glacial deposits; (2) an intermediate water-bearing zone comprised of dense to very dense heterogeneous glacial deposits that function as a

leaky aquitard; (3) a deep aquifer comprised of glacial outwash deposits; and (4) a lower aquitard comprised of very dense, fine grained glacial drift deposits.

H. The shallow unconfined water-bearing zone is encountered at 10 to 20 feet below ground surface. The groundwater flow direction is from the west toward the east, in the direction of Lake Union. The intermediate aquifer is a semi-confining unit that separates the upper shallow zone from the deep outwash aquifer zone. The flow direction in the intermediate aquifer is similar to the shallow unconfined aquifer. The deeper, confined to semi-confined aquifer flows to the east in the direction of Lake Union. Vertical groundwater gradients beneath the Property indicate flow of groundwater is downward, from the upper aquifer into the lower aquifer.

I. There is no surface water present at the Property. The area encompassing the Property is covered with buildings and asphalt, with the ground surface gently sloping toward Lake Union, 0.1 mile to the east. Water from precipitation flows downgradient until captured by stormwater drains.

J. 700 Dexter LLC operated an independent remedial action for soil contamination throughout the Property using electrical resistance heating (ERH) and soil vapor extraction (SVE). The ERH/SVE system heated the soil to a depth of 40 feet below grade (elevation zero feet above mean sea level NAVD 88) throughout the property, causing the contamination in the soil to volatilize into a vapor. A vacuum was applied to SVE wells in the soil to remove contaminated vapor, which was then treated to extract the contamination. This work was completed in January 2014 and 700 Dexter LLC reported that the ERH/SVE system removed over 12,000 pounds of volatile organics from the soil. 700 Dexter LLC was an owner and/or operator during the independent remedial action.

K. After 700 Dexter LLC initiated the independent cleanup activities, a property development began to the southeast that included aquifer dewatering at an elevation of -20 to -40 feet below mean sea level (within the intermediate and deep water-bearing zones). The dewatering has affected groundwater at the Site.

L. Following a suit filed by BioMed Realty, L.P., for specific performance, Judge John Coughenour of the United States District Court, Western District of Washington, found in favor of BioMed Realty, L.P. In December 2016 Judge Coughenour issued a Decree of Specific Performance requiring 700 Dexter LLC to convey the property to BioMed Realty, L.P., in accordance with a 2011 Purchase and Sale Agreement. BioMed Realty, L.P., assigned its right to purchase the Property under the Purchase and Sale Agreement, and 700 Dexter LLC conveyed the property to BMR-Dexter LLC in December 2016. BMR-Dexter LLC currently owns the Property.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by BMR-Dexter LLC.

A. BMR-Dexter LLC is the “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site. The release occurred prior to BMR-Dexter LLC’s ownership of the Property.

C. Based upon credible evidence, Ecology issued a determination of PLP status to 700 Dexter LLC, in a letter dated December 7, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500.

D. Based upon credible evidence, Ecology issued a determination of PLP status to American Linen Supply Co, in a letter dated December 7, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500.

E. Based upon credible evidence, Ecology issued a determination of PLP status to BMR-Dexter LLC, in a letter dated February 13, 2017, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500.

F. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the

foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

G. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, RI/FS, or design of a CAP. Either Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.K (Work to be Performed). Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action(s) itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that BMR-Dexter LLC take the following remedial actions at the Site and that these actions be conducted in accordance with WAC 173-340, unless otherwise specifically provided for herein:

A. BMR-Dexter LLC will submit an Agency Review RI/FS Work Plan in accordance with the Schedule of Deliverables, attached as Exhibit C to this Order (the Schedule of Deliverables).

B. BMR-Dexter LLC shall implement a Final RI/FS Work Plan and its associated Health and Safety Plan prepared pursuant to WAC 173-340-810 and included as an attachment to the Final RI/FS Work Plan; in accordance with the Schedule of Deliverables (Exhibit C) and after Ecology's approval.

C. BMR-Dexter LLC shall prepare and submit an Agency Review RI Report and a Public Review RI Report as required in the Schedule of Deliverables (Exhibit C).

D. BMR-Dexter LLC shall prepare and submit an Agency Review FS Report and a Public Review FS Report as required in the Schedule of Deliverables (Exhibit C).

E. BMR-Dexter LLC shall prepare and submit an Agency Review Draft Preliminary CAP as required in the Schedule of Deliverables (Exhibit C).

F. BMR-Dexter LLC must submit monthly progress reports as Adobe Acrobat files (.pdf format) to Ecology's project coordinator, as established in Section VIII.B (Designated Project Coordinators), via email. These reports will be submitted by the 15th of the month for work performed the previous month. BMR-Dexter LLC will continue to submit monthly progress reports throughout the duration of this Order. BMR-Dexter LLC may request a change to the progress report schedule in accordance with VIII.I (Extension of Schedule) of this Order. Document submissions must be approved by Ecology and are not final until approved. Emergency situations and any conditions significantly delaying work must be reported to Ecology within 24 hours.

G. All data collected during Site investigations must be entered in Ecology's Environmental Information Management (EIM) database by the end of the first full progress report period following receipt of validated data. Validated data is to be received within 60 days of sample collection, unless otherwise approved by Ecology. All historic data and all data presented in the RI, FS, CAP, or any other Site documents is to be entered in Ecology's EIM database. All data used to support a draft document must be entered in Ecology's EIM database 30 days prior to submittal of the draft document for Ecology review. All locations are to include latitude, longitude, and elevation data, and specify the horizontal datum and vertical datum being used.

H. All submittals shall follow the submittal requirements in WAC 173-340-840. This includes showing a survey grid on planimetric views per WAC 173-340-840(4)(f). The horizontal and vertical datums used are to be shown on each planimetric view.

I. Draft reports are to be submitted as Adobe Acrobat files (.pdf format). Text of Ecology review draft reports is to be submitted as Microsoft Word[®] files (.docx or .docm format) so that Word's review tracking feature can be used to make comments. All associated Microsoft Excel[®], AutoCAD[®], and ArcGIS[®] or other electronic files used in preparing the report are to be submitted with draft reports. Ecology may also request paper copy draft reports. Public review

draft and final reports must be submitted as paper copies in the number requested by Ecology, with the report as a .pdf file on a disk bound in the back. File sizes for .pdf files to be posted to Ecology's web site should not exceed 30 megabytes. Spiral bindings are preferred for public review draft and final reports. Comb bindings are acceptable. Three ring binders are not acceptable.

J. All plans or other deliverables submitted by BMR-Dexter LLC for Ecology's review and approval pursuant to the Schedule of Deliverables (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

K. If the Parties agree on an additional interim action under Section VI.G (Ecology Determinations), BMR-Dexter LLC shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined in Exhibit C, Schedule of Deliverables. Ecology will provide public notice and an opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLPs shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and BMR-Dexter LLC is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

L. If Ecology determines that BMR-Dexter LLC has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to BMR-Dexter LLC, perform any or all portions of the remedial action or, at Ecology's discretion, allow BMR-Dexter LLC an opportunity to correct. BMR-Dexter LLC shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

M. Except where necessary to abate an emergency situation, BMR-Dexter LLC shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs in writing with such additional remedial actions.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

BMR-Dexter LLC shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$105,486.49 in remedial action costs related to this Site as of June 30, 2017. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to June 30, 2017, BMR-Dexter LLC shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Tamara Cardona, PhD
Department of Ecology
Toxics Cleanup Program
3190 160th Avenue SE
Bellevue, WA 98008
425-649-7058

The project coordinator for BMR-Dexter LLC is:

John Moshy
BMR-Dexter LLC
17190 Bernardo Center Drive
San Diego, CA 92128
858-485-9840

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and BMR-Dexter LLC, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Either Party may change its respective project coordinator. Written notification shall be given to the other Party at least ten (10) calendar days prior to the change.

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or by a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

BMR-Dexter LLC shall notify Ecology in writing of the identity of any engineer(s), geologist(s), contractor(s), subcontractor(s), and others to be used in carrying out the terms of this Order in advance of their involvement at the Site.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that BMR-Dexter LLC either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing BMR-Dexter LLC's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera or sound recording or other documentary-type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by BMR-Dexter LLC. BMR-Dexter LLC shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by BMR-Dexter LLC where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by BMR-Dexter LLC, unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, BMR-Dexter LLC shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, BMR-Dexter LLC shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by BMR-Dexter LLC pursuant to implementation of this Order. BMR-Dexter LLC shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow BMR-Dexter LLC and/or its authorized representatives to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation of Ecology's rights under Section VIII.D (Access), Ecology shall notify BMR-Dexter LLC prior to any sample collection activity, unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment; or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with BMR-Dexter LLC.

Ecology shall maintain the responsibility for public participation at the Site. However, BMR-Dexter LLC shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, RI/FS reports, CAPs, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets, and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify BMR-Dexter LLC prior to the issuance of all press

releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by BMR-Dexter LLC that do not receive prior Ecology approval, BMR-Dexter LLC shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

Seattle Public Library
Central District
1000 4th Avenue
Seattle, WA 98104

b. Ecology's Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, BMR-Dexter LLC shall preserve all records, reports, documents, and underlying data in their possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon the request of Ecology, BMR-Dexter LLC shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right BMR-Dexter LLC may have under applicable law to limit disclosure of documents protected by the attorney work product privilege

and/or the attorney-client privilege. If BMR-Dexter LLC withholds any requested records based on an assertion of any privilege, BMR-Dexter LLC shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that BMR-Dexter LLC elects to invoke dispute resolution, BMR-Dexter LLC must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), BMR-Dexter LLC has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those fourteen (14) calendar days, then, within seven (7) calendar days, Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating the nature of the dispute; BMR-Dexter LLC's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. BMR-Dexter LLC may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth the nature of the dispute; the disputing Party's (Parties') position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of

receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on BMR-Dexter LLC to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control despite the due diligence of BMR-Dexter LLC, including delays caused by unrelated third parties or Ecology, such as (but not

limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by BMR-Dexter LLC.

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

c. Endangerment as described in Section VIII.K (Endangerment).

Neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of BMR-Dexter LLC.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give BMR-Dexter LLC written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner.

b. Other circumstances deemed exceptional or extraordinary by Ecology.

c. Endangerment as described in Section VIII.K (Endangerment).

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and BMR-Dexter LLC. BMR-Dexter

LLC shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and an opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct BMR-Dexter LLC to cease such activities for such period of time as it deems necessary to abate the danger. BMR-Dexter LLC shall immediately comply with such direction.

In the event BMR-Dexter LLC determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, BMR-Dexter LLC may cease such activities. BMR-Dexter LLC shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, BMR-Dexter LLC shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with BMR-Dexter LLC's cessation of activities, it may direct BMR-Dexter LLC to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this Section, BMR-Dexter LLC's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology or its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against BMR-Dexter LLC to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against BMR-Dexter LLC regarding remedial actions required by this Order, provided BMR-Dexter LLC complies with this Order.

Ecology reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

Although BMR-Dexter LLC is committing to conducting the work required by this Order under the terms of this Order, BMR-Dexter LLC expressly reserves all rights to seek cost recovery or contribution against third parties.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site under BMR-Dexter LLC's control shall be consummated by BMR-Dexter LLC without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to BMR-Dexter LLC's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, BMR-Dexter LLC shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, BMR-Dexter LLC shall notify Ecology of said transfer. Upon transfer of any interest, BMR-Dexter LLC shall notify all transferees of the restrictions on

the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. All actions carried out by BMR-Dexter LLC pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), BMR-Dexter LLC is exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and from any laws requiring or authorizing local government permits or approvals. However, BMR-Dexter LLC shall comply with the substantive requirements of such permits or approvals, if applicable. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

BMR-Dexter LLC has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or BMR-Dexter LLC determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, they shall promptly notify the other Party of their determination. Ecology shall determine whether Ecology or BMR-Dexter LLC shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, BMR-Dexter LLC shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination of the additional substantive requirements that must be met by BMR-Dexter LLC and of how BMR-Dexter LLC must meet those requirements. Ecology shall inform BMR-Dexter LLC in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable

requirements of this Order. BMR-Dexter LLC shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State of Washington to administer any federal law, the exemption shall not apply and BMR-Dexter LLC shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

O. Indemnification

BMR-Dexter LLC agrees to indemnify, save and hold the State of Washington and its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, in each case to the extent arising from or on account of acts or omissions of BMR-Dexter LLC or its officers, employees, agents, or contractors in entering into and implementing this Order. However, BMR-Dexter LLC shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon BMR-Dexter LLC's receipt of written notification from Ecology that BMR-Dexter LLC has completed the remedial activities required by this Order, as amended by any modifications, and that BMR-Dexter LLC has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050 or other applicable law, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. A liable Party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to Twenty-Five Thousand Dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

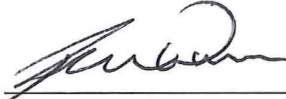
Effective date of this Order: 10/24/17

BMR-DEXTER LLC



Kevin Simonsen
Senior Vice President, Senior Counsel
and Secretary
17190 Bernardo Center Drive
San Diego, CA 92128
(858) 485-9840

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Robert W. Warren, P.Hg., MBA
Section Manager
Toxics Cleanup Program
Northwest Regional Office
(425) 649-7054

EXHIBIT A – Site Diagram



EXHIBIT B – Legal Description of the Property

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 7, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page(s) 61A, in King County, Washington; except the West 7 feet of Lots 5, 6, 7 and 8, condemned in King County Superior Court Cause Number 61981 for street purposes, as provided by Ordinance Number 17628 of the City of Seattle.

EXHIBIT C – Schedule of Deliverables

Deliverable/Milestone	Completion/Due Date
Progress Reports	15 th of every month, beginning after the first full month after the effective date of this Agreed Order
Agency Review Interim Action Work Plan (if proposed)	30 calendar days after the effective date of this Agreed Order
Agency Review Remedial Investigation/ Feasibility Study (RI/FS) Work Plan	45 calendar days after the effective date of this Agreed Order
Public Review Interim Action Work Plan and State Environmental Policy Act Checklist for the Interim Action Work Plan	30 calendar days after receipt of Ecology's comments on the Agency Review Interim Action Work Plan
Draft Final Remedial Investigation Work Plan	30 calendar days after receipt of Ecology's comments on the Agency Review RI/FS Work Plan
Final Interim Action Work Plan	15 calendar days after Ecology's written request to finalize
Implement Interim Cleanup Action	Completed within 365 calendar days of Ecology's approval of the Final Interim Action Work Plan
Validated Data for Interim Action Finalized	60 calendar days after completion of Interim Action field activities
Agency Review Interim Action Report	90 calendar days after the Interim Action construction is complete
Final Interim Action Report	30 calendar days after receipt of Ecology's comments on the Agency Review Interim Action Report
Implement RI Work Plan	30 calendar days after Ecology's written approval of the Final RI/FS Work Plan
Validated Data for RI Finalized	60 calendar days after completion of RI field activities
Agency Review Draft RI Report	90 calendar days after receipt of RI validated data
Public Review Draft RI Report	45 calendar days after receipt of Ecology's comments
Agency Review Draft FS Report	90 calendar days after Ecology's request for the Public Review Draft RI Report
Public Review Draft FS Report	45 calendar days after Ecology's approval of the Agency Review Draft FS Report
Agency Review Draft Preliminary Cleanup Action Plan (CAP)	45 calendar days after Ecology's approval of Public Review Draft FS Report
Public Review Draft Preliminary CAP	30 calendar days after Ecology's approval of the Agency Review Draft Preliminary CAP