

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: EASEMENT, COVENANT TO RESTRICT USE AND ACCESS AGREEMENT

DATE OF DOCUMENT: _____

GRANTOR:

MAILING ADDRESS:

BCH-1 Ltd.
5550 West Executive Drive, Suite 550
Tampa, Florida 33609

GRANTEE:

MAILING ADDRESS:

United States Department of Energy
Office of Legacy Management
ATTN: Dr. Laura E. Kilpatrick
Senior Realty Officer, Asset Management Team
11025 Dover Street, Suite 1000
Westminster, CO 80021

LOCATION:

See Exhibit A

REFERENCE BOOK AND PAGE (if any): _____

EASEMENT, COVENANT TO RESTRICT USE, AND ACCESS AGREEMENT

BCH-1 Ltd.

5550 West Executive Drive, Suite 550

Tampa, Florida 33609

BCH-1 Ltd. hereinafter referred to as (Grantor) for the sum of \$10 and other valuable consideration, receipt of which is hereby acknowledged does hereby grant perpetual access to the easement area defined below (Property) to the **UNITED STATES OF AMERICA** (Grantee), represented by the U.S. Department of Energy, Office of Legacy Management (DOE) in, upon, over, under and across the Property located in the County of Pinellas, State of Florida, as shown on the accompanying Map, Exhibit A.

A. Description of Facts:

A.1. The Pinellas County Site (Site) is north of the Grantor's Property (Property). The Site was once owned by Grantee, under the jurisdictional control of the Department of Energy (DOE). The Site ceased operations in 1997, and the Pinellas County government jointly redeveloped the facility, which is called the Young-Rainey Science, Technology and Research Center. On December 14, 1987, the Grantee reported discharges of chlorinated solvents at the Site to the United States Environmental Protection Agency.

A. 2. The Grantee discovered subsurface contamination originating from the Site in the shallow aquifer under Grantor's Property in 2011. The subsurface contamination consists of the aforementioned chlorinated solvents. The highest concentration of contamination occurs between 24 and 32 feet below the surface of Grantor's Property. Through hydrogeological characterization on Grantor's Property, Grantee has determined the current extent of the plume. Additional groundwater monitoring will determine if the plume is stable and is not migrating.

A. 3. Grantor and Grantee are entering into this Easement, Covenant to Restrict Use, and Access Agreement (Agreement) to require the Grantor to provide notice to Grantee prior to the use of shallow aquifer (between 0 and 40 feet below the Property) groundwater beneath the Property, and to grant perpetual access to Grantee to the Property for monitoring, and well installation/maintenance. The Grantor and Grantee (Parties) are also entering into this Agreement as a corollary to Grantor's Declaration of Restrictive Covenant (DRC) with the Florida Department of Environmental Protection (FDEP) regarding the same property. FDEP is the regulatory agency that has ultimate authority with regard to the management of media and use of the groundwater on the site pursuant to the DRC which will be recorded with this Agreement. DOE has no authority over FDEP to act in these matters and no obligation regarding obtaining or granting FDEP approvals.

A. 4. Grantee believes this Agreement will have minimal to no impact on current or future development of Grantor's Property.

B. Deed Restriction Requirement and Perpetual Access:

B. 1. The Grantee has determined that deed restrictions must be imposed on Grantor's Property to maintain stability and isolation of the plume and to ensure the protection of human health and the environment. These restrictions include obligation of the Grantor to notify DOE prior to proposed well installation, or other (shallow) groundwater uses, such as dewatering, and the right of perpetual access by the Grantee, or Grantee's representatives, to conduct monitoring.

The deed restrictions will apply to the Grantor, future owners, tenants, agents or interested Parties.

B. 2. Grantee will evaluate Grantor's proposal(s) for potential to impact plume and make all necessary arrangements at Grantee's expense to ensure intent of work is met while protecting human health and the environment.

ARTICLE I
GENERAL PROVISIONS

1.1 This Agreement establishes Rights, Conditions, and Restrictions upon the subject Property. Each and all of the Rights, Conditions, and Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest.

1.2 By granting and accepting the terms and conditions of this Agreement, Parties, their successors and assigns, agree to be bound by said terms. Parties also agree that either Party shall be entitled to specific performance of any of the provisions or conditions thereof in any court of competent jurisdiction, provided the curing of any violation has not occurred within thirty (30) days after the Party has provided written notice pursuant to Article 4.2 below, to the violating Party of said violations or deficiencies. Grantor agrees to notify Grantee prior to the conveyance of the property to another party and to assign the requirements of this Agreement to any subsequent holders of any interest in this property.

1.3 All purchasers, lessees, or possessors of any relevant portion of the Property shall be deemed by their purchase, leasing, or possession of such Property to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assigns, that Rights, Conditions, and Restrictions, as herein established, must be adhered to for the benefit of future owners and occupants and that their interest in the Property shall be subject to the Rights, Conditions, and Restrictions contained herein.

1.4 The Grantor agrees that the entire Agreement set out herein shall be recorded and incorporated by reference in each and all deeds and leases of any portion of the Property. This Agreement shall be recorded by the Grantee in the Pinellas County Clerk of the Circuit Court.

1.5 The Grantee shall require each and all independent contractors to obtain and maintain comprehensive general liability insurance coverage of at least \$1,000,000 per occurrence, worker's compensation insurance in accordance with the laws of State of Florida, business automobile liability insurance with a minimum limit of \$1,000,000, professional liability insurance with a minimum limit of \$1,000,000 and, the contractors' pollution legal liability insurance with a minimum limit of \$1,000,000. The Grantee shall require its Contractor to name the Grantor as additional insured under the comprehensive general liability, pollution legal liability and business automobile liability. The Grantee's contractors and subcontractors shall provide the Grantor with the appropriate certificates evidencing insurance coverage prior to entry onto the Property.

1.6 The Grantee agrees to promptly consider and adjudicate any and all claims which may arise out of this Agreement resulting from the actions of the Grantee, duly authorized representatives, or contractors of the Grantee, and to pay for any damage or injury as may be

required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. Section 2671, et seq., or such other legal authority as may be pertinent.

ARTICLE II **RIGHTS, CONDITIONS, AND RESTRICTIONS**

2.1 Said Rights, Conditions, and Restrictions are conveyed subject to existing easements for public roads and highways, public utilities, and pipelines.

2.2 The Grantee, and their authorized representatives, contractors, and subcontractors are granted the right of perpetual access in, upon, over, under and across Grantor's Property, described above, to perform inspection, surveillance, monitoring, characterization, and assessment of any potential contamination of the Property resulting from activities of the Pinellas County Site. Grantee, its successors and assigns agree to notify Grantor within ten (10) days of required access to the Property. Grantee will complete all work within thirty (30) days of commencement of work. Grantee will coordinate access with Grantor, its successors or assigns, to minimize interference of their use and enjoyment of the Property. No future development of the Property will be impaired by Grantee's activities. Grantee's access will be limited to external locations shown in Exhibit A. Existing and future buildings will not be subject to Grantee access.

2.3 There shall be no use of the shallow aquifer (0 to 40 feet below the Property) groundwater without prior, Grantee written approval and Grantor securing appropriate permits as per state and local law. Grantor must submit drilling plans to the Grantee before conducting any drilling on the Property, and Grantee must approve said plans in writing within 10 business days. Grantee reserves the right to construct monitoring wells on the Property.

2.4 Grantor shall consult with Grantee, its successors, or assigns, to ensure monitoring equipment does not interfere with current or future uses of the property.

2.5 Prior to any dewatering activities on the Property, the Grantor shall develop a dewatering plan, and submit it to the Grantee for review and written approval within 10 business days. The dewatering plan must include the appropriate handling, treatment and disposal of any extracted contaminated groundwater at Grantee's expense. Grantee will provide necessary personnel, personal protective equipment (PPE) and conduct training of Grantor's personnel in the use of such equipment. Grantee will provide and operate at its cost, additional equipment/systems to ensure appropriate handling, treatment and disposal of any extracted, contaminated groundwater.

2.6 Subject to the provisions of Articles 1.2 and 4.2 of this Agreement, any violations of the Agreement shall be considered sufficient grounds for Grantee to take enforcement action, including the filing of an administrative or civil action, as provided by law, against the Grantor, its successor or assigns, subject to all applicable defenses. In any enforcement action taken hereunder, Grantee shall only be entitled to receive penalties, including but not limited to, all costs associated with gaining access and maintaining the continued obligations as set forth in this Agreement. Each Party shall pay its own attorney's fees.

2.7 Grantor, its successors or assigns, shall notify the Grantee by certified mail, at least thirty (30) days prior to any conveyance, or intent to convey any interest in the Property.

2.8 Grantee, its successors and assigns, agrees that it shall obtain all necessary permits, licenses, and approvals in connection with the activities to be conducted by the Grantee on the Property.

ARTICLE III
REMOVAL OF RESTRICTIONS

3.1 The Rights, Conditions, and Restrictions detailed in this Agreement, or any portion of them, may, from time to time, be removed from the Property or portions thereof, at the sole discretion of the Grantee, when the Grantee has determined that the Property meets regulatory standards, as approved by the FDEP; otherwise the Rights, Conditions, and Restrictions of this Easement Agreement shall continue in effect in perpetuity.

ARTICLE IV
MISCELLANEOUS

4.1 Whenever any Party to this Agreement seeks to give or serve notice, demand, or other communication with respect to this Agreement, such notice, demand, or communication shall be in writing and shall be sent simultaneously to an authorized representative of Grantor and to the Grantee, by certified mail with return receipt requested.

- a) If to Grantor, such notice, demand or other communication shall be sent to BCH-1 Ltd., Gary W. Harrod, 5550 West Executive Drive, Suite 550, Tampa, FL 33609.
- b) If to the Grantee, such notice, demand or other communication shall be sent to the U.S. Department of Energy, Office of Legacy Management, ATTN: Realty Officer, 2597 Legacy Way, Grand Junction, CO 81503-1789 and U.S. Department of Energy, Office of Legacy Management, ATTN: Pinellas Site Manager, 11025 Dover Street, Suite 1000, Westminster, CO 80021-5573.

4.2 If any portion of this Agreement is determined to be invalid or unenforceable for any reason, the remaining portion of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date last written below.

THIS AGREEMENT, together with all the conditions thereof, is executed by Grantor this

5th day of June, 2013.

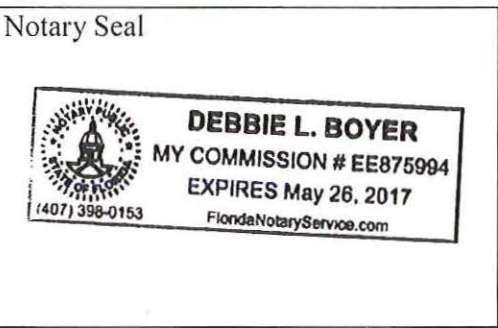
GRANTOR:

BCH-1 Ltd.,

By: [Signature]
Gary W. Harrod
BCH-1 Ltd.

State of Florida,)
) ss.
COUNTY OF Hillsborough)

The foregoing instrument was acknowledged before me this 5 day of June 2013,
by Gary W. Harrod the CEO of
BCH-1 Ltd.



Debbie L. Boyer
(Signature of Notary)

My Commission Expires: 5-26-17

THIS AGREEMENT, together with all the conditions thereof, is executed by Grantee

this 4th day of June, 2013.

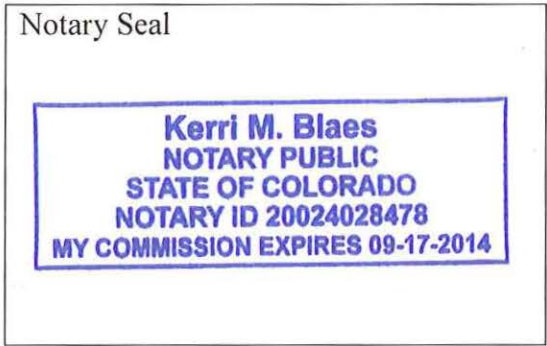
GRANTEE:

**United States of America
Department of Energy, Office of Legacy
Management**

BY: *Laura E. Kilpatrick*
**Dr. Laura E. Kilpatrick
Senior Realty Officer**

State of Colorado,)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 4 day of June 2013,
by Dr. Laura E. Kilpatrick the DOE Sr. Realty Officer of
Dept. of Energy.

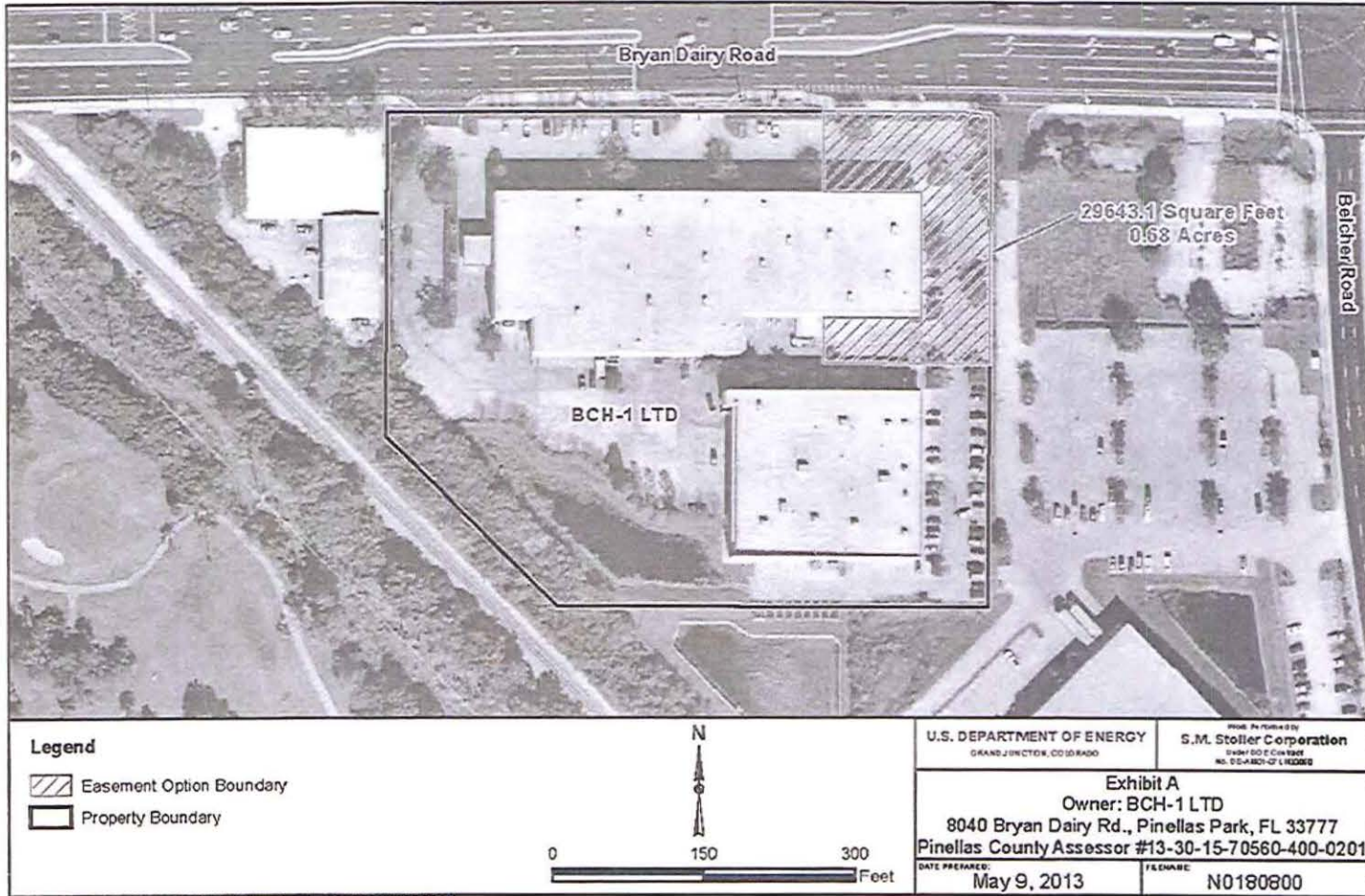


Kerri M Blaes
(Signature of Notary)

My Commission Expires: 9-17-14

EXHIBIT A

MAP OF EASEMENT AREA



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