

853678

POST-CLOSING ACCESS EASEMENT

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This POST-CLOSING ACCESS EASEMENT ("this **Easement**") is entered into as of September 19, 2012 (the "**Effective Date**"), by and between KOPPERS INC., a Pennsylvania corporation ("**Seller**") and TRP PROPERTIES, LLC, a Nebraska limited liability company ("**Purchaser**"), each of which (with all of their permitted successors and assigns, if any) shall be known for purposes of this Easement as a "**Party**," and both of which together (with all of their permitted successors and assigns) shall be known for purposes of this Easement as the "**Parties**."

Recitals

A. Pursuant to that certain Purchase Agreement dated as of September 7th, 2012, (the "**Purchase Agreement**"), Seller sold to Purchaser (the "**Conveyance**") all of its right, title and interest in and to that certain real property located in the Township of Superior, Douglas County, State of Wisconsin, which real property is more particularly described on Attachment 1 attached hereto (the "**Real Property**").

B. Prior to the Conveyance, wood products were treated and stored on portions of the Real Property over its history, using various preservative solutions that contained petroleum, coal-tar derivatives and/or inorganic preservatives. Prior owners/operators of the Real Property include, but are not limited to, Beazer East, Inc., a Delaware corporation ("**Beazer**") and Seller. Seller began its operations on the Real Property on December 29, 1988. Beazer conducted operations on the Real Property prior to December 29, 1988. Seller ceased wood treating operations on the Real Property in 2006.

C. Certain environmental conditions exist at the Real Property (including the presence of contaminated soils and groundwater) as a result of the wood-treating operations that were conducted on the Real Property prior to the Conveyance (the "**Environmental Conditions**").

D. Under the oversight of the Wisconsin Department of Natural Resources ("**WDNR**"), both Seller and Beazer have conducted certain environmental investigation and remediation activities on the Real Property in response to certain of the Environmental Conditions. Purchaser acknowledges (i) that the Real Property is subject to Wisconsin Hazardous Waste Facility Operation License 03157 (the "**License**"); (ii) that the environmental investigation and remediation activities previously implemented included, among other things, the onsite consolidation of contaminated soils and the construction of covers and engineered liner on certain portions of the Real Property; (iii) that WDNR has issued a conditional approval

Recording Area

Name and Return Address

TRP Properties, LLC
Terry R. Peterson
8202 F Street
Omaha, NE 68127

DCA 306

See Attachment 1

Parcel Identification Number (PIN)

of certain of the environmental remediation measures previously implemented on the Real Property (the “**Conditional Approval**”); (iv) that WDNR's Conditional Approval requires certain operation and maintenance activities on the Real Property; and (v) that, in relation to the License and to certain other environmental laws and regulations, certain remaining environmental investigations and remediation activities be implemented at the Real Property, and that other long term care obligations be undertaken at the Real Property, among which are the continuing monitoring of groundwater and the issuance of a Continuing Obligations Letter that will impose use restrictions and care obligations on portions of the Real Property.

E. Collectively, the remaining activities necessary to address Environmental Conditions at the Real Property (including, without limitation, those arising out of the License, the Conditional Approval, the Continuing Obligations Letter, and the long term care obligations) are referred to as the “**Environmental Obligations.**”

F. As set forth in the Purchase Agreement, Purchaser has agreed to grant Seller and Beazer (together with their respective employees, agents, consultants, contractors, designated representatives, successors, and assigns) access to the Real Property to complete and satisfy any Environmental Obligations that are the responsibility of Seller or Beazer, respectively.

NOW, THEREFORE, in consideration of the foregoing premises, and consummation of the sale of the Real Property, the Parties agree as follows:

1. Purchaser hereby grants, for the benefit of Seller and Beazer (including their respective employees, consultants, agents, contractors and/or designated representatives) (altogether, the “**Grantees**”), and without additional compensation or consideration of any kind, the following easement of record: a non-exclusive right of access to (and from) the Real Property (including without limitation the right to conduct visual inspections, collect samples of soils or groundwater, install additional monitoring wells and to bring equipment and personnel onto the Real Property in connection with such activities), at any reasonable time, with prior notice to Purchaser, for the purpose of performing the Environmental Obligations and such other activities as WDNR (or other regulatory authority) may require with respect to the Environmental Conditions. Purchaser shall be provided with notice that would be sufficient to allow Purchaser, or its designated representative, to be present on the Real Property at any time that either Seller or Beazer is on the Real Property pursuant to the grant under this Section 1.

2. Purchaser hereby further grants, for the benefit of the Grantees, and without additional compensation or consideration of any kind, the following easements of record:

a. The exclusive right to locate at, under, upon, or across the Property, within the two (2) locations indicated by the outlined and crosshatched areas denominated “Possible CAMU location” on Attachment 2 (each, a “**CAMU Restricted Area**”), such structures, improvements, or means as may be desired by the Grantees to enable the pertinent areas to be used as permitted under Paragraph 2.b, below; and

b. The exclusive right to use each CAMU Restricted Area (together with reasonable paths of access to (and from) the same from (and to) public rights-of-way abutting the Real Property) for such activities as may be necessary or desirable to

complete any consolidation of soils and sediments approved by WDNR (or other applicable regulatory authority).

In exercising the exclusive rights granted by this Paragraph 2, neither Grantee may use any CAMU Restricted Area in any way (including in manner, frequency, or intensity) that exceeds what shall be reasonably necessary to accomplish the pertinent consolidation of soils and sediments excavated or removed in connection with WDNR- or USEPA-required remediation of contamination resulting from, or alleged to have resulted from, past industrial or manufacturing activities conducted at the Real Property, whether or not such soils or sediments are physically located on the Real Property at the time of excavation or removal. In addition, the exclusive rights granted by this Paragraph 2 to so locate improvements within and to use the CAMU Restricted Areas shall require, as an expressed condition precedent to such rights, that Seller deliver to Buyer, within five (5) years after the Effective Date of this Easement (the period between the Effective Date of this Easement and the expiration of such five (5) year period being referred to as the “**Notice Period**”), one or more written notices (i) stating that one, or both, of the indicated CAMU Restricted Areas shall be used as provided hereunder, and (ii) if only one, indicating which of the CAMU Restricted Areas shall be so used. If Seller shall not timely deliver any required notice within the Notice Period, then the grant of exclusive rights under this Paragraph 2 shall immediately lapse and be of no further force or effect; if Seller shall indicate, by its notice(s) delivered within the Notice Period, that only one of the CAMU Restricted Areas shall be so used, then the grant of exclusive rights under this Paragraph 2 as to the CAMU Restricted Area not so indicated shall immediately lapse upon expiration of the Notice Period, and shall thereafter be of no further force or effect;

3. So long as Purchaser shall not interfere with or act (or fail to act) in any manner inconsistent with full enjoyment by the Grantees of the easement rights granted under Paragraphs 1 and 2, Purchaser shall retain all rights in the Real Property. Purchaser shall, however, indemnify, defend, and hold harmless Seller from and against all liabilities, claims, demands, and expenses that may arise (whether suffered by Seller, Beazer, or another) in connection with Purchaser’s interfering with or acting (or failing to act) in any manner inconsistent with full enjoyment by the Grantees of the easement rights granted under Paragraphs 1 and 2, except only to the extent that such interference or inconsistency shall be caused by Seller’s own negligent or intentionally wrongful act.

4. Except to the extent caused by Purchaser’s breach of a covenant or obligation under this Easement, Seller shall indemnify, defend, and hold harmless Purchaser from and against all liabilities and expenses in connection with a governmental or third party claim arising out of the presence of Hazardous Materials in soils or sediments which may be placed in the CAMU Restricted Areas.

5. The term of this Easement shall commence on the Effective Date and expire upon the completion of the Environmental Obligations, which may not occur for forty (40) or more years.

6. The Parties shall cooperate with one another in connection with their respective obligations under this Easement in order to minimize interruption of the Purchaser’s business operations on the Real Property; provided, however, Purchaser shall not unreasonably disturb or

interfere with Seller or Beazer, or their respective employees, consultants, agents, contractors and/or designated representatives, in connection with the performance of the Environmental Obligations. Purchaser shall exercise reasonable care to avoid damage to any monitoring wells or other equipment brought on the Real Property in connection with the Environmental Obligations.

7. The covenants contained in and the easement established under this Easement shall bind and inure to the benefit of: all fee simple absolute titleholders of the Real Property (including any portion thereof); Beazer (including its employees, consultants, agents, contractors and/or designated representatives); Seller (including its employees, consultants, agents, contractors and/or designated representatives); and all of the respective successors and assigns of Beazer, Seller, and all fee simple absolute titleholders of the Real Property (including any portion thereof). Such covenants contained in and the easement established under this Easement thus shall constitute covenants that run with the Real Property; and may be amended, modified, or terminated only by the written agreement of all of the following: (i) all parties holding (at the time of such amendment, modification, or termination) fee simple absolute title to any part of the Real Property; and (ii) Seller (its successors and assigns).

8. Together with the Purchase Agreement, the terms and conditions hereof constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all previous communications, whether oral or written, between the Parties.

9. Any notices to be provided under this Easement shall be given in accordance with the applicable provisions of the Purchase Agreement.

10. This Easement shall be governed by and construed under the laws of the State of Wisconsin.

11. No waiver by any Party with respect to performance or satisfaction of any covenant, condition, or obligation arising under this Easement shall be valid unless in writing, and the same shall not be considered a waiver by such Party of the same or any other covenant, condition, or obligation hereunder or of any other untimely performance of the covenant, condition, or obligation so waived.

12. This Easement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

13. The execution and delivery of this Easement by each of the Parties to it has been duly authorized by all necessary action, respectively, of such Parties. Accordingly, this Easement constitutes a valid and binding obligation of each of the Parties, in accordance with its terms. None of the execution, delivery, or performance of any Party's respective obligations under this Easement will violate or conflict with any other agreement by which such Party, respectively, is bound.

14. As used in this Easement, the following terms shall have the indicated meanings:

a. "Environmental Laws" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Materials, relating to

liability for or costs of Remediation or prevention of releases of Hazardous Materials or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act, and the National Environmental Policy Act.

b. "Hazardous Materials" includes any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

c. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, or disposing of Hazardous Materials.

d. "Remediation" includes any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials; any actions to prevent, cure or mitigate any Release of any Hazardous Materials; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Materials.

[Signatures begin on the following page]

ATTACHMENT 1**LEGAL DESCRIPTION OF REAL PROPERTY**

All those certain tracts of or parcels of land situate, lying and being in the County of Douglas, State of Wisconsin, to wit:

PARCEL NO. 1.

Part of the SE-SW of Section 12, Township 48 North, Range 14 West, Town of Superior, lying southeasterly of the right of way of the Burlington Northern Railroad, described as follows:

Commencing at the south one-quarter (S. 1/4) corner of said section 12 which is marked with a railroad spike driven into the bituminous surface; thence N. 00 degrees 43 minutes 16 seconds E. along the east line of said SE-SW for a distance of 644.57' to the southerly right of way line of the Burlington Northern Railway Company; thence S. 61 degrees 44 minutes 00 seconds W. along said right of way line for a distance of 1317.58' to the south line of said Section 12; thence S. 88 degrees 58 minutes 44 seconds E. along the south line of said section 12 for a distance of 1152.54' to the place of beginning.

Above described parcel contains 8.53 acres more or less.

PARCEL NO. 2.

All of the east one half (E. 1/2) of the northwest (NW) one quarter of Section 13, Township 48 North, Range 14 West, Town of Superior, described as follows:

Commencing at the north one quarter (N. 1/4) corner of said Section 13 which is marked with a railroad spike driven into the bituminous surface; thence N. 88 degrees 58 minutes 44 seconds W. along the north line of said Section 13 for a distance of 1331.50' to the northwest (NW) corner of the NE-NW; thence S. 00 degrees 24 minutes 58 seconds W. along the west line of said NE-NW for a distance of 1312.98' to the southwest (SW) corner of the NE-NW; thence continuing S. 00 degrees 24 minutes 58 seconds W. along the west line of the SE-NW for a distance of 914.85' to the easterly right of way of the the Soo Line Railroad; thence S. 15 degrees 36 minutes 27 seconds E. along said right of way for a distance of 436.07' to the South line of the SE-NW; thence S. 89 degrees 07 minutes 30 seconds E. along the south line of said SE-NW for a distance of 1320.00 to the southeast (SE) corner of said SE-NW; thence N. 00 degrees 40 minutes 00 seconds E. along the east line of said SE-NW for a distance of 1311.26' to the northeast corner of said SE-NW; thence continuing N. 00 degrees 40 minutes 00 seconds E. along the east line of the NE-NW for a distance of 1311.26' to the place of beginning.

Above described parcel contains 79.23 acres more or less.

PARCEL NO. 3

All that part of the SW-NE of Section 13, Township 48 North, Range 14 West, Town of Superior, lying westerly of what was formerly the easterly line of the right of way of the Northwestern Coal Company, described as follows:

Commencing at the center 1/4 (C.1/4) corner of said section 13 which is marked with a railroad spike driven into the bituminous surface; thence S. 89 degrees 07 minutes 30 seconds E. 33.00' to the east right of way line of C.T.H. "A"; thence N. 00 degrees 40 minutes 00 seconds E. along the east right of way line of C.T.H. "A" for a distance of 24.33' to the easterly right of way line of the Northwestern Coal Railway Company and the place of beginning; thence N. 00 degrees 40 minutes 00 seconds E. along the right of way of C.T.H. "A" for a distance of 1286.89' to the north line of said SW-NE; thence S. 89 degrees 03 minutes 06 seconds E. along the north line of said SW-NE 468.12' to the easterly right of way line of the Northwestern Coal Company; thence S. 20 degrees 41 minutes 20 seconds W. along said right of way for a distance of 1367.22' to the place of beginning.

Above described parcel contains 7.91 acres more or less.

PARCEL NO. 4

All those parts or parcels of the N. 1/2 of the NE-SW of Section 13, Township 48 North, Range 14 West, Town of Superior, described as follows:

Commencing at the center one quarter corner (C. 1/4) of said section 13 which is marked with a railroad spike driven into the bituminous surface; thence N. 89 degrees 07 minutes 30 seconds W. along the north line of said NE-SW for a distance of 1196.83' to the easterly right of way line of the Soo Line Railway; thence S. 15 degrees 36 minutes 27 seconds E. along said right of way for a distance of 383.26' to the northerly right of way line of the Duluth, Missabe & Iron Range Railway, thence N. 86 degrees 20 minutes 30 seconds E. along said right of way for a distance of 1092.53' to the east line of said NE-SW; thence N. 00 degrees 40 minutes 00 seconds E. along said east line for a distance of 283.77' to the place of beginning.

Above described parcel contains 8.56 acres more or less.

AND

Commencing at the center one quarter corner of said Section 13; thence N. 89 degrees 07 minutes 30 seconds W along the north line of said NE-SW for a distance of 1196.83' to the easterly right of way line of the Soo Line Rail Road; thence continuing N. 89 degrees 07 minutes 30 seconds W. for a distance of 104.29' to the westerly line of the Soo Line Railroad and the place of beginning; thence continuing N. 89 degrees 07 minutes 30 seconds W. for a distance of 18.88' to the northwest corner (NW) of said NE-SW; thence S. 00 degrees 47 minutes 59 seconds W. along the west line of said NE-SW for a distance of 385.86' to the northerly right of way line of the Duluth, Missabe & Iron Range Railway; thence N. 86 degrees 20 minutes 30" E. along said right of way for a distance of 129.92' to the westerly right of way line of the Soo Line Railroad; thence N. 15 degrees 36 minutes 27 seconds W. along said right of way for a distance of 391.68' to the place of beginning.

Above described parcel contains 0.65 acres more or less.

AND

Commencing at the center one quarter corner of said section 13; thence S. 00 degrees 40 minutes 00 seconds W. along the west line of said NE-SW for a distance of 662.25' to the south line of said N. 1/2-NE-SW; thence N. 89 degrees 07 minutes 42 seconds W. along said south line of said N.1/2- NE-SW for a distance of 1003.27' to the easterly right of way line of the Soo Line Railroad; thence N. 15 degrees 36 minutes 27 seconds W. along said right of way for a distance of 205.21' to the southerly right of way line of the Duluth, Missabe & Iron Range Railroad

;thence N. 86 degrees 20 minutes 30 seconds E. along said right of way for a distance of 1063.80' to the east line of said NE-SW; thence S.00 degrees 40 minutes 00 seconds W. along said east line for a distance of 280.81' to the place of beginning. Above described parcel contains 9.90 acres more or less.

AND

Commencing at the center one quarter corner of said section 13 thence S. 00 degrees 40 minutes 00 seconds W. along the north-south quarter line for a distance of 662.25' to the south line of said N.1/2-NE-SW; thence N. 89 degrees 07 minutes 42 seconds W. along the south line of the N. 1/2 of the NE-SW for a distance of 1003.27' to the easterly right of way line of the Soo Line Railroad ; thence continuing N. 89 degrees 07 minutes 42 seconds, W. along the south line of said N.1/2-NE-SW for a distance of 104.29' to the westerly right of way line of the Soo Line Railroad and the place of beginning; thence continuing N. 89 degrees 07 minutes 42 seconds W. along the south line of said N.1/2-NE-SW for a distance of 213.98' to the west line of said NE-SW; thence N. 00 degrees 47 minutes 59 seconds E. along said west line for a distance of 176.16' to the south right of way line of the Duluth Missabe & Iron Range Railroad; thence N. 86 degrees 20 minutes 30 seconds E. along said right of way for a distance of 158.88' to the westerly right of way line of the Soo Line Railroad; thence S. 15 degrees 36 minutes 27 seconds W. along said right of way for a distance of 196.79' to the place of beginning. Above described parcel contains 0.78 acres more or less.

PARCEL NO. 5

Part of the S. 1/2 of the NE-SW of Section 13, Township 48 North, Range 14 West described as follows, to wit:

Commencing at the center one quarter corner (C. 1/4) of said section 13 which is marked with a railroad spike driven into the bituminous surface; thence S. 00 degrees 40 minutes 00 seconds W. along the north-south one quarter line for distance of 662.25' to the north east corner (NE) of said S. 1/2-NE-SW; thence N. 89 degrees 07 minutes 42 seconds W. along said north line for a distance of 411.53' to the place of beginning; thence continuing N. 89 degrees 07 minutes 42 seconds W. for a distance of 591.74' to the easterly right of way line of the Soo Line Railroad; thence S.15 degrees 36 minutes 27 seconds E. along said right of way for a distance of 895.88' to the south line of said NE-SW; thence S. 89 degrees 07 minutes 54 seconds E. along said south line for a distance of 35.77' to a point on a 8 degree 36 minute 04 second degree curve concave northwesterly; (long chord is 513.94' and bears N. 27 degrees 12 minutes 28 seconds E.); thence along the arc of said curve for a distance of 527.11'; thence N. 49 degrees 52 minutes 33 seconds E. for a distance of 307.45' to the north line of the S.1/2-NE-SW and the place of beginning.

Above described parcel is also identified as parcels D and E respectively, on plat annexed to deed to National Lumber & Cresoting Company dated March 12,1928, recorded in the office of the Register of Deeds for said Douglas County, in Book 171 of Deeds on page 208.

Above described parcel contains 3.27 acres more or less.

Being the same property as that described in the survey dated July 19-23, 1988, prepared by Hugh C. McDonald.

EXCEPTING THEREFROM, that part of the above-described Parcel No. 4 described as follows:

That certain parcel of land situated in the North One-half of the Northeast Quarter of the Southwest Quarter (N 1/2 of NE 1/4 of SW 1/4) of Section Thirteen (13), Township Forty-eight (48) North, Range Fourteen (14) West, in the Town of Superior, in Douglas County, Wisconsin, which is situated between the Southerly boundary line of the 100 foot right of way of the Interstate Branch of the Duluth, Missabe and Iron Range Railway Company and the Northerly boundary line of the right of way, heretofore conveyed by Herman Gasser and J. Lillie Gasser, his wife, to the Northwestern Coal Railway Company, by that certain Deed dated August 22, 1907 and recorded on September 16, 1907 at 9:00 a.m., in Volume 99 of Deeds, page 538, as Document #166118A.

Parcel Identification Numbers:

T5-030-01340-00;
T5-030-01353-00;
T5-030-01356-00;
T5-030-01360-00; and
T5-030-01361-00

ATTACHMENT 2 DEPICTION OF CAMU RESTRICTED AREAS

EXHIBIT F/FIGURE 1

