

#### CONMY FESTE LTD.

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Paul M. Hubbard Kim E. Brust† Michael M. Thomas Robert J. Schultz Jeremy D. Holmes Stephannie N. Stiel Douglas W. Murch Charles A. Feste, Retired E.T. Conmy, Jr. (1912 - 2006)

Also Licensed in Minnesota † Certified Civil Trial Specialist -National Board of Trial Advocacy Regional Hearing Clerk (8RC) U.S. EPA, Region 8 1595 Wynkoop Street

August 13, 2009

Denver, Colorado 80202-1129

Re: Proposed Assessment of Civil Penalty against Old Orchard, LLC and Meridian Commercial Construction, LLC

Enclosed for filing are the following documents:

- 1. Old Orchard, LLC Motion to Amend Answer;
- 2. Old Orchard, LLC Unopposed Amended Answer;

Affidavit of Kim E. Brust; and

4. Affidavit of Service by Mail.

Regards,

Encls.

Kim E. Brust KEB/rg

cc: Peggy Livingston James R. Bullis 2009 AUG 17 RM 3: 13

FILED EPA REGION VIII HEARING CLERK

Established in 1879

# AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA )

2009 AUG 17 PM 3:13

) ss.

COUNTY OF CASS

FILED EPA REGION VIII HEARING CLERK

Rhonda Golden, being first duly sworn, deposes and says that on August 12, 2009, she served the attached:

# MOTION TO AMEND ANSWER, UNOPPOSED AMENDED ANSWER OF OLD ORCHARD, LLC AND REQUEST FOR HEARING, AND AFFIDAVIT OF KIM E. BRUST

Re: Proposed Assessment of Civil Penalty against Old Orchard, LLC and Meridian Commercial Construction, LLC Our file no. K102-013

upon the following:

Mr. James R. Bullis Montgomery, Goff & Bullis 4650 38<sup>th</sup> Avenue South Suite 110 PO Box 9199 Fargo, ND 58106-9199

Peggy Livingston Senior Enforcement Attorney 1595 Wynkoop Street Denver, CO 80202-1129

by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States Mail at Fargo, North Dakota.

Rhonda Golden

Subscribed and sworn to before me this 13/2 day of August, 2009. Notary Public

A L) SAREE T REVELING Notary Public State of North Dakota Commission Expires Sept. 22, 2010

# UNITED STATES ENVIRONMENT PROTECTION AGENGY09 AUG 17 PM 3: 13 REGION 8

In the Matter of:	)	EPA REGION VIII MEARING CLERK
	)	
Old Orchard, LLC	)	OLD ORCHARD, LLC MOTION TO
and	)	AMEND ANSWER
Meridian Commercial Construction, LLC,	)	
	)	Docket No.: CWA 08-2009-0015
Respondents.	)	

Old Orchard, LLC, hereby moves for leave to file the attached Unopposed Amended

Answer. An Affidavit of Kim E. Brust is submitted in support of this motion.

Dated this 13 day of August, 2009.

Kim E. Brust For CONMY FESTE LTD. 406 Main Avenue, Suite 200 PO Box 2686 Fargo, ND 58108-2686 Telephone: (701) 293-9911 North Dakota ID No.: 03556

ATTORNEYS FOR RESPONDENTS

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#### UNITED STATES ENVIRONMENT PROTECTION AGENCY REGION 8 2009 AUG 17 PM 3: 13

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In the Matter of:	)	EPA REGION VIII HEARING CLERK
	)	UNOPPOSED AMENDED ANSWER
Old Orchard, LLC	)	OF OLD ORCHARD, LLC AND
and	)	<b>REQUEST FOR HEARING</b>
Meridian Commercial Construction, LLC,	)	
	)	Docket No.: CWA 08-2009-0015
Respondents.	)	

Old Orchard, LLC, for its Answer to the Complaint alleges:

1. All allegations contained in the Complaint are denied, except as admitted, qualified or explained in this Answer.

2. Admits the allegations contained in paragraphs 1 through 3, 5 through 23, and 25 through 32.

3. Denies the allegations contained in paragraph 4 that it owns the property in question and affirmatively alleges that ownership of the referenced property was transferred by means of various deeds on January 6, 2006.

4. Denies the allegations of paragraph 24 as it relates to Old Orchard, LLC.

5. With regard to the allegations contained in paragraph 33, admits that Old Orchard, LLC, did not obtain or apply for permanent authorization for discharge as alleged, but states that Meridian Commercial Construction, LLC was responsible for obtaining or applying for

permanent authorization.

6. With respect to the allegations contained in paragraph 34, denies that the actions on the part of Old Orchard, LLC constitute a violation of 40 C.F.R. § §122.21(c) and 122.26(c) and

sections 308 and 402(p) of the Act, 33 U.S.C. § §1318 and 1342(p).

7. Denies the allegations contained in paragraphs 35 through 38 as they relate to Old Orchard, LLC.

WHEREFORE, Old Orchard, LLC requests a hearing with respect to the allegations of

the Complaint and the appropriateness of the proposed penalty.

Dated this 13 day of August, 2009.

Kim E. Brust For CONMY FESTE LTD. 406 Main Avenue, Suite 200 PO Box 2686 Fargo, ND 58108-2686 Telephone: (701) 293-9911 North Dakota ID No.: 03556

ATTORNEYS FOR RESPONDENTS

# UNITED STATES ENVIRONMENT PROTECTION AGENC2009 AUG | 7 PM 3: | 3 REGION 8

FILED

In the Matter of: Old Orchard, LLC and Meridian Commercial Construction, LLC, Respondents. EPA REGION VIII HEARING CLERK Docket No.: CWA 08-2009-0015

Kim E. Brust, being first duly sworn, deposes an says:

1. I am one of the attorneys for Old Orchard, LLC, and have filed this Affidavit in support of the Motion to Amend Answer.

2. The original Answer erroneously admitted paragraph 4 of the Complaint. I have now learned through my client that the tract of land which he owns is not the addresses listed in paragraph 4 of the Complaint. Copies of deeds showing the transfer of the property at issue in the Complaint are attached as Exhibit "1" to this Affidavit.

3. I have spoken with all parties. They have authorized me to state that they do not oppose the Motion to Amend Answer.

Dated this 13 day of August, 2009.

Kim E. Brust

Kim E. Drust

Subscribed and sworn to before me this 13 day of August, 2009.

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Notary Public

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### QUIT CLAIM DEED

THIS INDENTURE is made this 6<sup>th</sup> day of January, 2006, between Old Orchard LLC, a North Dakota limited liability company, Grantor, and Borg Properties 45<sup>th</sup>, LLC, a North Dakota limited liability company, Grantee, whose post office address is 73 Broadway, PO Box 932, Fargo, ND 58107-0932.

For ten dollars and other good and valuable consideration, Grantor does hereby QUIT CLAIM to Grantee the following described real property in the Southwest Quarter, Section 22, Township 139 North, Range 49 West, Cass County, North Dakota:

All unplatted land lying between the southerly boundaries of Lots 1 and 2, Block 1, King Addition to the City of Fargo, and the South line of said Section 22;

#### -AND-

All unplatted land lying between the westerly boundary of Lot 7, Block 1, King Addition to the City of Fargo, and the West line of said Section 22.

(This legal description was prepared by Paul M. Hubbard and Daniel A. Bueide.)

IN TESTIMONY WHEREOF, Grantor has caused this deed to be executed in its name by one or more officers for the day and year first above written.

OLD ORCHARD LLC

Gorman H. King, Jr., President

STATE OF NORTH DAKOTA ) ) ss COUNTY OF CASS )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January, 2006 by O'Gorman H. King, Jr., President, of Old Orchard LLC, a North Dakota limited liability company.

MICHELLE BUEIDE Notary Public (SEAL) State of North Dakota ommission Expires Feb. 4, 2006

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Notary Public

	EXHIBIT	
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I certify that the requirement for a report or statement of full consideration paid does not apply as this transaction is exempt under N. D. Cent. Code 11-18-02.2(6)(i). Signed: \_\_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

Grantee or Agent

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Properties wpd

## WARRANTY DEED

THIS INDENTURE is made this 6<sup>th</sup> day of January, 2006, between Old Orchard LLC, a North Dakota limited liability company, Grantor, and Borg Properties 45<sup>th</sup>, LLC, a North Dakota limited liability company, Grantee, whose post office address is 73 Broadway, PO Box 932, Fargo, ND 58107-0932.

For ten dollars and other good and valuable consideration, Grantor does hereby GRANT to Grantee the following described real property in Cass County, North Dakota:

Lots 1, 2 and 7, Block 1, King Addition to the City of Fargo, Cass County, North Dakota;

## -AND-

Lots 3, 4 and 5, except that portion of said Lot 5, Block 1, King Addition to the City of Fargo, Cass County, North Dakota, being further described as follows: Beginning at the northwest corner of said Lot 5; thence North 87 degrees 38 minutes 18 seconds East on the north line of said Lot 5 for a distance of 20.00 feet; thence South 02 degrees 21 minutes 42 seconds East for a distance of 239.58 feet; thence South 42 degrees 35 minutes 00 seconds West for a distance of 28.31 feet to the southeast corner of Lot 6 of said Block 1 and the west line of said Lot 5; thence North 02 degrees 21 minutes 42 seconds West on the west line of said Lot 5 for a distance of 259.62 feet to the point of beginning.

(This legal description was prepared by Ulteig Engineers, 3350 38th Avenue South, Fargo, ND 58104.)

Subject to easements, restrictions and reservations of record.

Grantor does covenant with the Grantee that it is well seized in fee of the property and has good right to sell and convey it, and that the property is free from all incumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection. The Grantor will warrant and defend the property in the quiet and peaceable possession of the Grantee, against all persons lawfully claiming or to claim the whole or any part thereof.

IN TESTIMONY WHEREOF, Grantor has caused this deed to be executed in its name by one or more officers for the day and year first above written.

OLD ORCHARD LLC

Gorman H. King, Jr., President

#### STATE OF NORTH DAKOTA ) ss COUNTY OF CASS )

The foregoing instrument was acknowledged before me this 6th<sup>th</sup> day of January, 2006 by O'Gorman H. King, Jr., President, of Old Orchard LLC, a North Dakota limited liability company.

MICHELLE BUEIDE Notary Public State of North Dakota (SEAL) My Commission Expires Feb. 4, 2006

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Notary Public

I certify that a report of the full consideration paid for the property described in this deed has been filed with the North Dakota State Board of Equalization.

Date: 1-6-06 Signed: Grantee or Agent

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Properties, wpd

STATE OF NORTH DAKOTA ) ss COUNTY OF CASS ) The foregoing instrument was acknowledged before me this 6thth day of January, 2006 by O'Gorman H. King, Jr., President, of Old Orchard LLC, a North Dakota limited liability company, on behalf of the limited liability company MICHELLE BUEIDE Notary Public State of North Dakota (SEAL) Notary Public My Commission Expires Feb. 4, 2006 I certify that a report of the full consideration paid for the property described in this deed has been filed with the North Dakota State Board of Equalization. Date: Signed: Grantee or Agent

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