
Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
[Address]
[City, OR ZIP]
Attention: [Name]

Grantor

[Name]
[Company]
[Address]
[City, State ZIP]

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on [Date], 20[Year] between [Name of Grantor] ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "Grantee").

RECITALS

A. Grantor is the owner of certain real property located at [Address, City, Zip] in [Name of] County, Oregon in [Name of] County Tax Map [#], Tax Lot [#] (the "**Property**") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name [Project Name], [ECSI #[#] –OR– USTC File No. [#]] in the files of DEQ's [Environmental Cleanup Program] at [Eastern/Northwest/Western] Region office located at [Office Address, City], Oregon, and telephone [Region Phone #]. Interested parties may contact the [Eastern/Northwest/Western] Region office to review a detailed description of the risks from contamination remaining at the Property and described in [Reference risk assessment report or other pertinent report with full title, author, and date].

B. On [Date], 20[Year], the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Record of Decision (ROD) for the Property [full title and date or substitute other decision document]. The remedial action selected requires, among other things: [specify ROD requirement(s) for institutional control(s)]

C. On [DATE = Date of CAP, CSM, PPA, etc. through which they agreed to having an EES], 20[YR], Grantor entered into a [Reference RD/RA Consent Order, Consent Judgment, or Agreement] ("**Order / Judgment / Agreement**") with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

Commented [PMNote1]: Each EES must include a legal description of the area that is restricted. A site map is optional but the legal description will be controlling.

D. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

E. Nothing in this Easement and Equitable Servitude constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitude.

1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Engineering control" has the meaning set forth in OAR 340-122-0115
- 1.6 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.7 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.8 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's [issuance of a No Further Action letter with conditions / approval of the [Agreement/Order/Judgment] described above / other action by DEQ (specify)], grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

Commented [PMNote2]: : After completing the EES, double-check that these terms are actually used somewhere else in the document; delete terms that are not used elsewhere. Tank cleanup sites may only need to include DEQ and Owner. Property is defined in Recital A and does not need to be repeated here.

3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1. [First Restriction. Copy/paste examples from the end of this document as appropriate. Edit the examples to tailor them to your site-specific conditions.]

3.X Use of the Property. Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

Commented [PMNote3]: Insert site-specific restrictions below in accordance with the staff report, ROD, or draft conditional NFA letter and where applicable, implementing consent order, judgment, PPA or other agreement. There are examples provided at the end of this document that you can cut, paste, and edit as needed. Additional restrictions may be added if appropriate.

Commented [PMNote4]: Include this section on use of property in all EES documents as is.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

5. RELEASE OF RESTRICTIONS

5.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2. Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

6. GENERAL PROVISIONS

6.1. **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided

in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2. **Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the [Name of] County zoning code or any successor code. As of the date of this EES, the base zone of the Property is [insert zoning].

6.3. **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide the Owner with a monthly statement and direct labor summary. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this EES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

6.4. **Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES. In addition, Owner will maintain records documenting inspection and reporting as outlined in the DEQ approved [insert title and date of DEQ approved plan]. Owner will submit inspector records to DEQ within 30 days of receipt of a notice letter from DEQ of its periodic review of compliance with this EES. Reports provided to DEQ in response to this notification must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include a photographic log that supports the report's narrative.

Commented [PMNote5]: Delete or edit this section as applicable

6.5. **Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.6. **Effect of Recording.** Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.7. **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES as provided in the [Order/Judgment/Agreement] or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

6.8. IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and

Equitable Servitude as of the date and year first set forth above.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: [Name of Grantor]

By: _____ Date: _____
[Name, Title]

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by [Name] of [Company], on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

GRANTEE: State of Oregon, Department of Environmental Quality

By: _____ Date: _____
[Name], [Tanks, Cleanup and Emergency Response] Manager,
[Eastern/Northwest/Western] Region

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by _____ [Name] of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

EXHIBIT A

Legal Description of the Property

[Insert legal description of the area that is restricted]

SECTION 3 EXAMPLES:

3.1. **Groundwater Use Restrictions.** [Owner may not extract through wells or by other means or use the [shallow] groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws. [Extraction of groundwater from a deeper aquifer is also prohibited. -OR- Owner may extract groundwater from a deeper aquifer provided: (a) the well is located at least 100 feet from the edge of the contaminated shallow groundwater; (b) the well is located hydraulically upgradient of the contaminated groundwater; and (c) the well is constructed with a deep annulus seal. The location and construction of the well must be approved by DEQ before the well is installed.]]

3.2. **Soil Cap Engineering Control.** [Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate any soil cap at the Property or jeopardize the soil cap's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or uncontrolled erosion. Owner will maintain the soil cap, if applicable, in accordance with the monitoring and maintenance plan as specified in [reference ROD or equivalent] and approved in writing by DEQ.]

3.3. **Vapor Barrier Engineering Control Use Restrictions.** [Except upon prior written approval from DEQ, Owner must not conduct operations on the Property or use the Property in any way that will or likely will penetrate the vapor barrier or jeopardize the vapor barrier's protective function as an engineering control that prevents intrusion of sub-slab vapor at concentrations exceeding applicable risk-based concentrations, including without limitation any excavation, drilling, scraping, or erosion.]

3.4. **Access Restrictions.** [Owner must install and maintain a fence around the Property and post warning signs at the Property as necessary to prohibit entry and warn of potential hazards of exposure to contaminants at levels that exceed acceptable risk levels[, in accordance with the [plan/ROD].]

Commented [PMNote6]: These are some examples and options for inclusion in Section 3. Select those that apply to your site and tailor them to site-specific conditions as appropriate. Additional restrictions can be inserted in Section 3 if needed.

3.5. **Warnings.** [Owner will post warning signs at the Property as necessary to warn of potential hazards of exposure to contaminants at levels that exceed acceptable risk levels specified in the [plan/ROD].]

3.6. **Building Maintenance.** [Owner will routinely inspect and maintain the condition of buildings on the Property to ensure that asbestos-containing materials, such as cement asbestos board siding and asbestos-containing roofing, do not degrade to a friable condition. Owner will comply with applicable law when undertaking any activity that might disturb asbestos-containing material.]

3.7. **Land Use Restrictions.** [The following operations and uses are prohibited on the Property: Ground floor urban residential/residential use of any type. -OR-

- a. Residential use of any type; and
- b. Agricultural (food-crop) use of any type.]