
Space above this line for Recorder's use.

After recording, return to:

Oregon DEQ
[ADDRESS]
[CITY, OR 97ZIP]
Att:

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made [DATE], 20[YR] 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] in [NAME OF] County, Oregon in [NAME OF] County Tax Map [#], Tax Lot [#] (the “*Property*”) the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name [PROJECT NAME], ECSI #[] in the files of DEQ’s Environmental Cleanup Program at [REGION & OFFICE LOCATION]. Interested parties may contact the [REGION OFFICE] to review a detailed description of the residual risks present at the Property and found in [REFERENCE RISK ASSESSMENT REPORT OR OTHER PERTINENT REPORT WITH FULL TITLE AND DATE].

B. On [DATE], 20[YR], 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], 20[YR], Grantor entered into a [REFERENCE RD/RA CONSENT ORDER, DECREE, OR AGREEMENT] (*Agreement*) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls. [IF APPLICABLE: The Consent Order includes several additional obligations related to the implementation of the remedy not fully set forth herein, including without limitation, LIST FOR EXAMPLE: development and implementation of a hazard communication plan, maintenance and inspection of the soil cap, soil and

Easement and Equitable Servitudes
[NAME OF GRANTOR]

groundwater management, periodic review of area groundwater use, and contingency planning.]

D. The provisions of this Easement and Equitable Servitudes are intended to further the implementation of the selected remedial action and thereby protect human health and the environment. [THIS IS THE BASIS FOR DEQ'S AUTHORITY. DON'T REMOVE THIS PARAGRAPH]

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, 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 "Property" means the real property described in Exhibit A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's [ISSUANCE OF A NO FURTHER ACTION LETTER / APPROVAL OF THE AGREEMENT 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 described in Attachment A to this Easement and Equitable Servitudes, is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitudes. [NOTE THAT EACH E&ES MUST INCLUDE A LEGAL DESCRIPTION OF THE AREA THAT IS RESTRICTED, A SITE MAP IS OPTIONAL BUT THE LEGAL DESCRIPTION WILL BE CONTROLLING] Each condition and restriction set forth in this Easement and Equitable Servitudes touches and

concerns the Property and the equitable servitudes granted in paragraph 3 and easement granted in paragraph 4 below, shall run with the land for all purposes, shall be binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitudes, and shall inure 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 Easement and Equitable Servitudes.

3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

[INSERT SITE-SPECIFIC RESTRICTIONS BELOW IN ACCORDANCE WITH THE STAFF REPORT, ROD, OR DRAFT CONDITIONAL NFA LETTER AND WHERE APPLICABLE, IMPLEMENTING CONSENT ORDER, DECREE, PPA OR OTHER AGREEMENT. THE FOLLOWING ARE EXAMPLES.]

3.1 **Groundwater Use Restrictions:** Owner shall not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use, as long as the hazardous substance concentrations exceed the acceptable risk level for such use. This prohibition shall 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 shall 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.

3.2 **Soil Cap Engineering Control Use Restrictions:** Except upon prior written approval from DEQ, Owner shall not conduct operations on the Property or use the Property in any way that will or likely will penetrate the soil cap 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 erosion. Owner shall maintain the soil cap in accordance with the monitoring and maintenance plan as specified in [REFERENCE ROD OR EQUIVALENT] and approved in writing by DEQ.

3.3 **Access Restrictions:** Owner shall 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.

3.4 **Land Use Restrictions:** The following operations and uses are prohibited on the Property:

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

3.5 **Use of the Property.** Owner shall not occupy or allow other parties to occupy the Property unless the controls listed in this Paragraph 3 are maintained and an

annual [OR OTHER FREQUENCY] report, including photo-documentation, as specified in [REFERENCE ROD OR EQUIVALENT] is submitted to DEQ documenting that the restrictions and prohibitions of this Easement and Equitable Servitudes are intact and continue to protect public health and the environment.

3.6 **Notice of Transfer.** Owner shall notify DEQ at least ten (10) days before 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, or the start of any development activities or change in use of the Property that might expose human or ecological receptors to hazardous substances at the Property. Notwithstanding the foregoing, Owner shall not commence any development inconsistent with the conditions or restrictions in this Paragraph 3 without prior written approval from DEQ as provided in Paragraph 3.2 or removal of the condition or restriction as provided in Paragraph 5.1 below.

3.7 **Zoning Changes.** Owner shall notify DEQ no less than thirty (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 Easement and Equitable Servitudes, the base zone of the Property is [INSERT ZONING].

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitudes have been or are being complied with. DEQ shall have the right, privilege, and license to 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 Easement and Equitable Servitudes, 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 shall not be deemed a trespass, and DEQ shall not be subject to liability to Owner for such entry and any action taken to abate, mitigate, or cure a violation.

5. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes shall be recited in any deed conveying the Property or any portion of the Property, and shall run 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 in order to protect human health or the environment. [OPTIONAL: YOU CAN ALSO ADD THE SPECIFIC CONDITIONS THAT MUST BE MET, OR REFERENCE THE DOCUMENT THAT SPELLS THEM OUT]

County of _____) ss.
_____)

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:_____

ATTACHMENT A

Legal Description of the Property