EQUITABLE SERVITUDE AND EASEMENT

This Equitable Servitude and Easement is made March , 2000 between Brothers Oil Company, an Oregon corporation (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 (Property) located in Crescent, Oregon, described as Lots Thirteen (13) and Fourteen (14), Block Twenty-nine (29), Crescent, Klamath County, Oregon.
- B. The Property, at the time of the execution of this Equitable Servitude and Easement, contains an area of soil contaminated with hazardous materials, particularly oil and gas, and its byproducts.

 Groundwater, both on the Property and off of it, is contaminated.
- C. DEQ has installed three monitoring wells at the site, including one that is located within a right-of-way belonging to the State of Oregon Department of Transportation (ODOT).
- D. A Final Risk Assessment has not yet been completed for the site.
- E. DEQ may do some or all of the following either at, or in connection with the Property—
 - complete its Final Risk Assessment, intended to be completed by October 2000
 - continue to monitor on-site and off-site groundwater contamination, intended to be completed sometime during 2002
 - take such further action deemed to be reasonable in cost and technologically feasible to monitor or remediate the contamination, although no such further action is contemplated at this time
- F. The provisions of this Equitable Servitude and Easement are intended to protect human health and the environment.

1. GENERAL DECLARATION

Grantor declares that all of Grantor's real property described in A, above, shall be and is subject to this Equitable Servitude and Easement, and may be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, only subject to terms herein. Each condition and restriction set forth in this Equitable Servitude and Easement shall run with the land for all purposes, shall be binding upon all Owners, and shall inure to the benefit of DEQ, until such time as DEQ releases or abandons its interest, in a writing signed by its authorized representative, acknowledged before a notary public, and filed in the appropriate real property records of Klamath County, Oregon.

DEQ is granted the right to do any and all acts reasonably deemed by it to be necessary or desirable in order to accomplish the action described in E, above. These rights include, but are not limited to—

- The right of ingress and egress to, on, into, under, and over the Property for persons, vehicles, and equipment as reasonably needed
- The posting of any notices on or attached to the property for proper notification of remaining soil and groundwater contamination
- Any acts reasonably related to maintenance and/or replacement of a water line at the Property

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- The right to operate a low-pressure septic system at the Property and the right to require any Owner to operate the septic system in a manner reasonably required by DEQ, and only as approved by DEQ
- The right to be free from interference in its activities at the Property
- The right to require any Owner, or other occupant or user of the Property, to abide by any restrictions imposed on the property by DEQ before or after completion of its Remedial Action, including but not limited to restrictions on excavation and use of groundwater
- Any other activity reasonably deemed by DEQ to be necessary or desirable to protect human health and the environment.

2. DEFINITIONS

- 2.1 "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.
- 2.2 "Owner" means any person or entity, including Grantor and all successors to Grantor, who is the owner, or record owner, of fee simple title or a vendee's interest in the Property, or any portion of the Property, or any lessee of the same. "Owner" does not include any entity or person who holds such interest solely for the security for the performance of an obligation.

3. GENERAL PROVISIONS

- 3.1 All conditions and restrictions contained in this Equitable Servitude and Easement shall run with the land, until such time as any condition or restriction is removed by written certification from DEQ that the condition or restriction is no longer required in order to protect human health or the environment.
- 3.2 Any person who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Equitable Servitude and Easement, whether or not any reference to this Equitable Servitude and Easement is contained in the instrument by which such person or entity acquired an interest in the Property.
- 3.3 The Owner of any portion of the Property 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 the Owner's interest in the Property.

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- 3.4 The Owner of the Property shall notify DEQ within thirty (30) days following Owner's petitioning for or filing of any document initiating a rezoning of the Property.
- Upon any violation of any condition or restriction contained in this Equitable Servitude and Easement, DEQ, in addition to any remedies provided at law, may enforce this Equitable Servitude and Easement or may seek any other available legal or equitable remedy to enforce this Equitable Servitude and Easement.

IN WITNESS WHEREOF Grantor and Grantee have executed this Equitable Servitude and Easement as

of the date and year first set forth above.	o navo oncomos mas squassos son mass and sussement as
GRANTOR:	Brothers Oil Company, an Oregon corporation.
	RICHARD A. DAVIS -
	Print Name:
STATE OF OREGON)	Keehan h. Nowas
County of Des Chules ss.	
County of 125 (County of 125	25 1256
The foregoing instrument is acknowle of the Grantor Brothers Oil Company, and is authorized	dged before me this day of 7000, 2000, by
of the Grantor, Brothers Oil Company, and is authorized	to sign this document on its behalf.
OFFICIAL SEAL	16 G Dell
RAY A BABB NOTARY PUBLIC-OREGON	NOTARY PUBLIC FOR OREGON
COMMISSION NO. 306706 MY COMMISSION EXPIRES DEC. 19, 2001	My commission expires:
	~ 11 (a)
GRANTEE: Accepted by—	/ Xullu
	State of Oregon Department of Environmental Quality
	Estimational apparet
STATE OF OREGON) ss.	
County of)	
The foregoing instrument is acknowled	dged before me this 4 day of AHRIL, 2000, by
<u>YAUL YMAN</u> , who declared that h	ie is the DUTSION HAMINISTRATOR OF ECD
of the Grantee, Oregon Department of Environmental Q	uality, and is authorized to sign this document on its
OFFICIAL SEAL DENISE ROTH	,
NOTARY PUBLIC OREGON COMMISSION NO. 324757	Denye Both
MY COMMISSION EXPIRES JUNE 27, 2003	NOTARY PUBLIC FOR OREGON
	My commission expires: 637.03
After Recording, return certified copy to:	
David Anderson, 8th Floor 811 SW 6th Avenue	
Portland, OR 97204	

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Linda Smith,

County Clerk

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State of Oregon, County of Klamath Recorded 04/14/00, at 12:30 ρ· m.

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