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EASEMENT AND EQUITABLE SERVITUDE

State of Oregon, County of Klamath
Recorded 07/07/2004 9.40 a
Vol M04 Pg 44283 - 301
Linda Smith, County Clerk
Fee \$ 111.00 # of Pgs 19

In accordance with ORS 93.808, the Oregon Department of Environmental Quality
approves the conveyance set forth in this instrument.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Sheila Monroe

June 22, 2004

Name

Date

This EASEMENT AND EQUITABLE SERVITUDE is made and entered into this
22nd day of June 2004 between Klamath Investments, Inc. ("Grantor") and
the Oregon Department of Environmental Quality ("DEQ" or "Grantee").

RECITALS

A. Grantor is the owner of certain Subject Property located in Klamath
County, Oregon, described as 3734 Washburn Way, Klamath Falls, being Tax Lot
Number 2700 on Klamath County Assessors' Map 39 9 10 BC. The location is more
described in Attachment A and shown in Attachment B attached hereto and
incorporated herein by this reference (the "Subject Property") to this Easement and
Equitable Servitude.

111CA R Keith C Welch Sr.

B. On June 22, 2004, DEQ entered into **this** agreement under which Grantor has agreed to implement the institutional controls set forth within this Easement.

C. In 1994, a 1,000-gallon gasoline underground storage tank (UST) was decommissioned from the Subject Property. The results from soil and groundwater sampling showed high gasoline contamination in the soil and groundwater. Some petroleum contaminated soil and groundwater was removed. In 2003, site characterization and contaminant delineation activities indicated gasoline contamination remained in the soil and groundwater. Additional soil and groundwater was removed and a risk-based analysis conducted. Results from a 2004 Corrective Action Plan have indicated that gasoline is the only constituent of concern in the soil that poses a risk. There is an area of groundwater contamination centered on the western half of the Subject Property which exceeds the DEQ's generic risk-based concentrations (RBCs).

D. The purpose of the Easement and Equitable Servitude is to record the institutional controls required by DEQ to insure that current and future use of the Subject Property protects human health and the environment from the gasoline-contaminated soil and groundwater that remain beneath the Subject Property. The issuance of the DEQ "No Further Action" (NFA) letter is dependent upon the recording of this easement with Klamath County, and the full compliance by the current and future Owners with all institutional controls set forth in Article 3 of this Easement. Failure to comply with any or all institutional controls will result in the revocation of the NFA.

ARTICLE 1 - GENERAL DECLARATION

Grantor declares that the Subject Property located in Klamath County, State of Oregon, and described in Attachment A and shown in Attachment B to this Easement and Equitable Servitude is and shall be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitude. Each condition and restriction set forth in this Easement and Equitable Servitude shall run with the land for all purposes, shall be binding upon all Owners as set forth in this Easement and Equitable Servitude, and shall inure to the benefit of the State of Oregon.

ARTICLE 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, who is the record owner of fee simple title or a vendee's interest of record to any portion of the Subject Property, including any successor or holder of fee simple title or a vendee's interest of record to any portion of the Subject Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation.

ARTICLE 3 - EQUITABLE SERVITUDE
(RESTRICTIONS ON USE)

3.1 The following use(s) of the property are prohibited:

3.1.1 Residential Uses

According to the Heavy Industrial (IH) zoning code, the "Worker Residential" use is listed as a Conditional Use (Article 53.4). This EES prohibits any residential use of the Subject Property within a 50-foot radius of the following locations: BH-5, Soil-1. For consideration of residential uses on any other location on the property, a sub-surface investigation must be completed. Gasoline concentrations in the sub-surface soil may not exceed 140 milligrams/kilogram (mg/kg), using Method Northwest Total Petroleum Hydrocarbon – Gasoline extended. All other contaminants of potential concern (COPCs) must be tested for, using applicable test methods, and be at or below the DEQ's generic risk-based concentrations (RBCs) for applicable residential pathways.

3.1.2. Use of Shallow Groundwater. No use shall be made of the shallow groundwater at the Subject Property, by extraction through wells or by any other means, which use involves consumption by humans, livestock, or any other use of the shallow groundwater that could reasonably be expected to result in consumption of the shallow groundwater. There shall be no excavation to shallow groundwater within a 100-foot radius of the following locations:

HA-5, BH-5, and PW-01. Groundwater excavation in any other area of the property must include groundwater collection and sampling of gasoline contaminants to ensure there are no unacceptable risks to construction and excavation workers.

3.2 Except upon prior written approval from DEQ, as provided in Section 3.3, no development shall occur on the Subject Property that will or likely will materially disturb the surface of the contaminated sections of Subject Property, including without limitations any excavating, drilling, or scraping.

3.3 Prior to any additional development or re-development of the Subject Property as described in Attachment A and shown in Attachment B, the owner must submit professionally prepared plans for the proposed development to DEQ for review (UST Program or its successor). Prior to any significant change in use of the Subject Property, the owner must submit a proposal for change of use, along with professionally prepared plans for any development required by proposed change in use, to DEQ for review. All such plans (collectively "Plans") must be approved by a professional environmental engineer licensed in the State of Oregon, and must include provisions for

dealing with any contamination on the Subject Property affected by the development or proposal consistent with Recital C of this Easement. Any plans submitted to DEQ must also include plans for (a) worker health and safety, and (b) management of contaminated soil and groundwater excavated or pumped from the Subject Property. The Owner shall pay DEQ's costs associated with any reviews, requests, and/or approvals required by this Easement. Such review by DEQ shall be carried out in a timely manner and minimize delays for such redevelopment.

3.4 The Owner shall be financially responsible for environmental costs accrued during the management of contaminated soil and/or groundwater encountered beneath street name in the course of any maintenance, repair, or installation activities conducted by private, municipal, or any other type of contractor and/or individual.

ARTICLE 4 - EASEMENT

(RIGHT OF ENTRY)

4.1 During reasonable hours, subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Subject Property to determine whether the requirements of this Easement and Equitable Servitude have been or are being complied with.

4.2 DEQ shall endeavor to give the Owner reasonable advance notice of such entry, but DEQ shall not be obligated to give advance notice. No such entry by DEQ

shall be deemed a trespass, and DEQ shall not be subject to liability to the Owner of the Subject Property for such entry.

4.3 Violation of any condition or restriction contained in this Easement shall give the DEQ the right, privilege, and license to enter upon the Subject Property where such violations exists, and to abate, mitigate, or cure such violations at the expense of the Owner, provided (a) written notice of the violation is given to the Owner describing what is necessary to correct violation and the Owner fails to cure the violation within the time specified in such notice.

4.4 Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to the Owner of the Subject Property for such entry and any action taken to abate, mitigate, or cure a violation.

ARTICLE 5 – REMOVAL OF RESTRICTIONS

VACATION AND RELEASE

5.1 Owner may petition the DEQ for removal of any or all of the conditions or restrictions contained herein by submitting such petition to the DEQ in writing, along with evidence, satisfactory to the DEQ in its reasonable discretion, that the circumstances on the Subject Property intended to be addressed in such condition or restriction no longer exists, or has been remediated to a condition no longer subjects to

the DEQ's regulations or jurisdiction, or that no hazard to human health continues to exist on the Subject Property.

5.2 This Easement and Equitable Servitude shall be vacated and released in its entirety upon submittal to DEQ of evidence that for a period of twelve (12) months, the contamination levels in the groundwater and soil are within the "health based risk standards" then in effect for similar properties.

5.3 Any removals, vacation, or release of this Easement and Equitable Servitude may be made either with respect to the entire Subject Property, or at Owner's option, with respect to any portion of the Subject Property that is designated as a separate legal/tax lot.

5.4 DEQ shall execute and deliver to Grantor, or its assigns, or Owner of the Subject Property, such releases or terminations as may be deemed reasonable necessary to effectuate the removal of any condition or restriction on the Subject Property contained herein, or to vacate and release this Easement in its entirety. Any agreement, document, or instrument required by a title company licensed to do business in the State of Oregon to remove this Easement as an exception to title for purpose of title insurance shall be deemed reasonably necessary for purposes of this Article 5.

ARTICLE 6 - GENERAL PROVISIONS

6.1 All conditions and restrictions contained in this Easement and Equitable Servitude 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. DEQ, upon request from the Owner, shall remove any covenant, condition, or restriction, or part thereof, or release part of the Subject Property therefrom, when the same in DEQ's reasonable judgment meets applicable DEQ cleanup standards for residential Subject Property or the same is no longer required in order to protect human health or the environment.

6.2 Any person who at any time after the date of execution of the Easement and Equitable Servitude owns, occupies, or acquires any right, title, or interest in to any portion of the Subject Property is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitude, whether or not any reference to this Easement and Equitable Servitude is contained in the instrument by which such person or entity acquired an interest in the Subject Property.

6.3 The Owner of any of the Subject 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 Subject Property. This provision does not apply to the grant or conveyance of a security interest in the Subject Property.

6.4 The Owner of the Subject Property shall notify DEQ within thirty (30) days following Owner's petitioning for or filing of any document initiating a re-zoning of the Subject Property that would change the base zone of the Subject Property under the City of Portland zoning code or any successor code.

6.5 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitude, DEQ may seek any available legal or equitable remedy to enforce this Easement and Equitable Servitude.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement and
Equitable Servitude as of this date and year first above written.

GRANTOR:

(name)

STATE OF OREGON)

)

County of Klamath)

The foregoing instrument is acknowledged before me this _____ day
of _____, 2004, by _____, as _____ of (entity
name here), for and on its behalf.

NOTARY PUBLIC FOR OREGON

My commission expires:_____

GRANTEE:

Sheila A. MonroeSheila A. Monroe
(Oregon DEQ)

STATE OF OREGON)

)

County of Deschutes)

The foregoing instrument is acknowledged before me this

22nd day of, June 2004, by Sheila Monroe, as
Cleanup Manager of Oregon DEQ, for and on its behalf.

Nancy Swofford

NOTARY PUBLIC FOR OREGON

My commission expires: Feb. 21, 2007

For further information, please contact:

Oregon DEQ UST Section – Shari Harris-Dunning

Eastern Regional Office, 2146 NE Fourth Street

Bend, Oregon 97701

Phone (541) 388-6146, ext. 240

After recording, please return to:

Oregon DEQ

Attention: Shari Harris-Dunning

Eastern Regional Office, 2146 NE Fourth Street

Bend, OR 97701

ATTACHMENT A

AFFECTED SUBJECT PROPERTY DESCRIPTION

Address: 3747 Washburn Way, Klamath Falls, OR

Reference Number:

Parcel Number: Tax Lot Number 2700 on Klamath County Assessors' Map 39 9 10 BC.

The affected area of the subject property is defined as being located within a 50-foot radius of soil boring location "Soil-1", which was located in the southwestern corner of the northeastern quadrant of the property and within a 100-foot radius of the borings identified as BH-5, HA-5 and PW-01. These boring locations were generally located in the area of the former UST excavation. The affected areas are denoted on a map included with Attachment B.

Prior to the recording of the EES, a complete legal description must be entered and exact locations of these boring points provided.

ATTACHMENT B

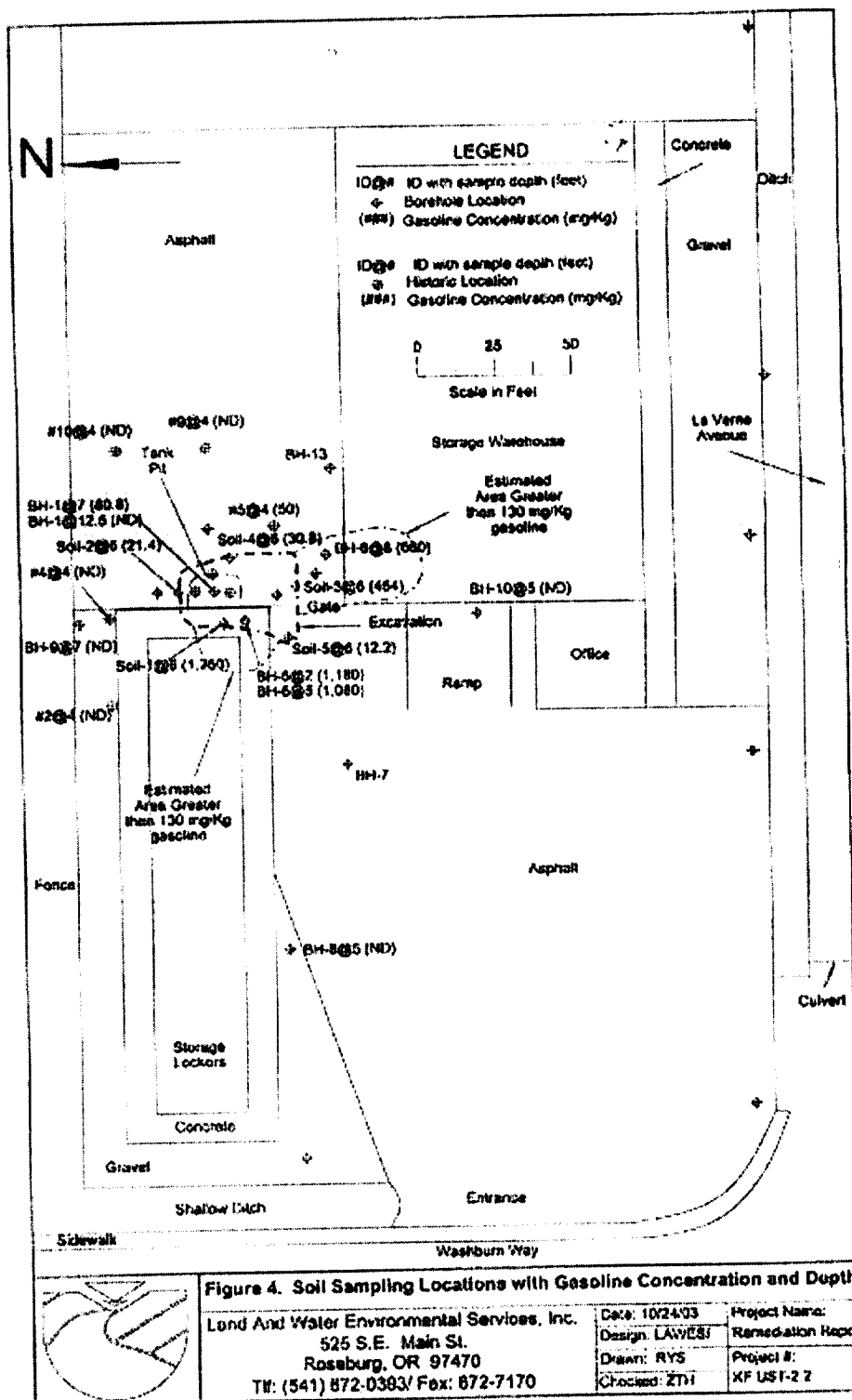


Figure 4. Soil Sampling Locations with Gasoline Concentration and Depth

Land And Water Environmental Services, Inc.
 525 S.E. Main St.
 Roseburg, OR 97470
 Tel: (541) 872-0393 / Fax: 872-7170

Date: 10/24/93
 Design: LAWESJ
 Drawn: RYS
 Checked: ZTH

Project Name:
 Remediation Report
 Project #:
 KF USF-2.2

