

M05-71974

Klamath County, Oregon

12/28/2005 03:49:10 PM

Pages 8 Fee: \$56.00

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Oregon DEQ
2146 NE Fourth St.
Bend, OR 97701
Att: Toby Scott

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made [DATE], 2005 between JELD-WEN, inc. ("**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 3307 Lakeport Blvd., Klamath Falls in Klamath County, Oregon in Klamath County Tax Map 38S09E Section 19, Tax Lots 300 and 400 (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name Pelican Bay/Jeld-Wen of Oregon, ECSI # 57 in the files of DEQ's Environmental Cleanup Program at Eastern Region Bend Office. Interested parties may contact the Bend Office to review a detailed description of the residual risks present at the Property and found in the Revised Final Feasibility Study Report, Pelican Bay/Jeld-Wen of Oregon, SECOR International Inc., 6/24/04.

B. On December 3, 2004, 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. The remedial action selected requires, among other things, the following restrictions on certain portions of the Property: prohibiting installation of drinking water wells, restricting land uses to non-residential, and restricting soil excavations

C. On April 28, 2005, Grantor entered into Voluntary Remedial Design/Remedial Action Agreement No. LQVC-ER-05-01 (**Agreement**) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls. The Agreement includes several additional obligations related to the implementation of the remedy not fully set forth herein, including without limitation: design, construction and operation of a groundwater extraction system, development and implementation of a hazard communication plan, maintenance and inspection of the cover cap, soil and groundwater management, periodic review of area groundwater use, and contingency planning.

Easement and Equitable Servitudes
JELD-WEN, inc.

56- rest of Cassandra Forester

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.

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 "Parcel A" means the portion of the Property described as such in the figure attached to and incorporated in this Easement and Equitable Servitudes as Attachment B.
- 1.9 "Parcel B" means the portion of the Property described as such in the figure attached to and incorporated in this Easement and Equitable Servitudes as Attachment C.
- 1.10 "Property" means the real property described in Attachment A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's approval of the Agreement described above 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. Each condition and restriction set forth in this Easement and Equitable Servitudes touches

and concerns a portion of 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)

3.1 Groundwater Use Restrictions: Owner shall not extract through wells or by other means or use the groundwater beneath Parcel A and Parcel B of 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 Parcel B of the Property or use Parcel B of the Property in any way that will or likely will penetrate the asphalt cap covering Parcel B, or jeopardize the asphalt 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 asphalt cap in accordance with the monitoring and maintenance plan as specified in the ROD and approved in writing by DEQ.

3.3 Soil Excavation: Owner shall not excavate soil within Parcel A of the Property unless it is conducted under the DEQ-approved soil management plan for the site or with prior approval with DEQ on an individual case-by-case basis.

3.4 Land Use Restrictions: The following operations and uses are prohibited on Parcel A and Parcel B of 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 report, including photo-documentation, as specified in the ROD 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 Parcel A or B of the Property, or the start of any development activities or change in use of Parcel A or B of the Property that might expose human or ecological receptors to hazardous substances at Parcel A or B of 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 Klamath County zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the Property is a combination of Light Industrial or IL (Tax Lot 300) and Heavy Industrial or IH (Tax Lot 400).

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 Parcel A or B 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 Parcel A or B of 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, to the attention of the JELD-WEN, inc., Corporate Development Office, 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.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined in Paragraph 2.2 above, shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and

Equitable Servitudes, whether or not any reference to this Easement and Equitable Servitudes is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

5.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitudes, DEQ, in addition to the remedies described in Paragraph 4 above, may enforce this Easement and Equitable Servitudes as provided in the Agreement or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

GRANTOR: JELD-WEN, inc.

By: *Jason de Vries* Date: 12/16/05

STATE OF OREGON)
County of Klamath) ss.

The foregoing instrument is acknowledged before me this 16 day of December, 2005, by Jason de Vries of JELD-WEN, inc., on its behalf.



Carol Chesnut
NOTARY PUBLIC FOR OREGON
My commission expires: 3-17-06

GRANTEE: State of Oregon, Department of Environmental Quality

By: *Joni Hammond* Date: 12-22-05
Joni Hammond, Administrator, Eastern Region

STATE OF OREGON)
County of Umatilla) ss.

The foregoing instrument is acknowledged before me this 22 day of December, 2005, by Joni Hammond of the Oregon Department of Environmental Quality, on its behalf.



Janette Ingle
NOTARY PUBLIC FOR OREGON
My commission expires: _____

ATTACHMENT A

LEGAL DESCRIPTION LOT 300

A tract of land situated in Lots 3, 4, 5, 6, 7, 8, 10, and 11, Section 19, Township 38 S., R. 9 E.W.M., more particularly described as follows: Beginning at an iron pin located North 7°15' West a distance of 1433.3 feet from the iron pipe marking the center quarter corner of said Section 19; thence South 10°20' East parallel with Lakeport Boulevard a distance of 1396.45 feet to an iron pin on the Northerly right of way line of the Shippington "E" line spur track, said iron pin being 12.5 feet distant at right angles from the center line of said spur track; thence Westerly parallel with and 12.5 feet distant at right angles from said spur track to a point of intersection with the Northerly right of way of the old Earl Fruit Company spur track, said point being 30 feet distant at right angles from the center line of the old Earl Fruit Company spur track; thence Northwesterly parallel with and 30 feet Northeasterly at right angles from the center line of the old Earl Fruit Company spur track on 12°30' curve to the right to a point which is located South 796.8 feet from the Northeast corner of the old Earl Fruit Company tract; thence North a distance of 796.8 feet to the Northeast corner of the old Earl Fruit Company tract; thence South 89°23' West a distance of 1170 feet, more or less, to the intersection of the Westerly line of said Lot 8; thence North 10°20' West (North 10°30' West by deed record) along the Westerly line of said Lot 8 to the line between said Lots 7 and 8; thence North 89°47 1/2' East along said lot line to a point that bears South 86°34' West from the point of beginning; thence North 86°34' East to the point of beginning.

LEGAL DESCRIPTION LOT 400

A tract of land situated in Lots 4 and 5, Section 19, Township 38 South, Range 9 E.W.M., being more particularly described as follows: Beginning at an iron pin on the westerly right of way line of Lakeport Boulevard, said point being South 10°20' East a distance of 1070.88 feet from the gas pipe monument on the northwest corner of "Pelican City" subdivision, said gas pipe monument being North 89°54' West a distance of 1995.5 feet from the northeast corner of said Section 19; thence South 79°40' West at right angles to Lakeport Boulevard a distance of 1055.96 feet to an iron pin, said point being North 7°15' West a distance of 1433.3 feet from the iron pipe marking the center ¼ corner of said Section 19; thence South 10°20' East parallel with Lakeport Boulevard a distance of 1396.45 feet to an iron pin on the northerly right of way line of the Shippington "E" spur tracks; thence easterly along said spur track to its intersection with the westerly right of way line of Lakeport Boulevard; thence North 10°20' West along said right of way to the point of beginning.

ATTACHMENT B

LEGAL DESCRIPTION OF PARCEL "A"

April, 25, 2005

A parcel of land situated in Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon. Being more particularly described as follows:

Commencing at the southwest corner of Lot 7, Block 4 of Pelican City, as recorded at the Klamath County Clerk's office, said point being marked by a 1 inch pipe; thence South 71°09'38" West, 413.97 feet to the TRUE POINT OF BEGINNING; thence South 80°53'14" West, 62.10 feet; thence South 07°54'49" West, 448.87 feet to the northerly right-of-way line of Harbor Isles Blvd.; thence along said northerly right-of-way line, along the arc a 1407.40 foot radius curve to the left through a central angle of 02°19'18" (the long chord of which bears South 79°55'59" West, 57.03 feet) an arc distance of 57.03 feet; thence continuing along said northerly right-of-way line, South 78°46'20" West, 478.73 feet; thence leaving said northerly right-of-way line, North 08°29'23" West, 1053.00 feet; thence North 79°30'20" East, 410.12 feet; thence South 37°47'40" East, 94.40 feet; thence North 80°53'14" East, 262.20 feet; thence South 09°06'46" East, 532.20 feet; to the point of beginning. Basis of bearings is grid North of the Oregon State Plane Coordinate System, South Zone.

Containing 15.6 acres, more or less.

ATTACHMENT C

LEGAL DESCRIPTION OF PARCEL "B" October 6, 2005

A parcel of land situated in Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon. Being more particularly described as follows:

Commencing at the southwest corner of Lot 7, Block 4 of Pelican City, as recorded at the Klamath County Clerk's office, said point being marked by a 1 inch pipe; thence North 85°00'40" West, 996.54 feet to the TRUE POINT OF BEGINNING; thence South 09°11'26" East, 222.44 feet to the northwest corner of the shop building; thence along the westerly line of said building, South 11°53'04" East, 37.78 feet; thence leaving said building, South 73°57'01" West, 84.60 feet; thence North 17°10'47" West, 46.63 feet; thence South 74°51'19" West, 49.00 feet; thence North 16°02'02" West, 210.01 feet to a point that bears South 08°29'23" East from the northwest corner of Parcel "A"; thence North 73°33'21" East a distance of 163.77 feet to the POINT OF BEGINNING;

Containing 0.83 acres, more or less.