



08/02/2006 09:29:55 AM

Fee: NO FEE

Space above this line for Recorder's use.

After recording, return to:

Linda Seater, Property Manager
Klamath County Property Sales Dept.
305 Main Street, Rm 238
Klamath Falls, OR 97601

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement, and acceptance of Equitable Servitudes is made and entered into as of the 17th day of July/August 2006, between Klamath County, a political subdivision of the State of Oregon, hereinafter called "**Grantor**" and the State of Oregon, acting by and through the Oregon Department of Environmental Quality (**DEQ**) hereinafter called "**Grantee**".

RECITALS

A. Grantor is the owner of certain real property located at 2077 Oregon Avenue in Klamath Falls, Klamath County, Oregon, referred to as tax lots R-3809-029BC-00200 and R-3809-029BC-00300 the location of which is more particularly described in Attachment A (the "**Property**") to this Easement and Equitable Servitudes, and referenced under the name Batsell Brothers Service Station (a.k.a. Lakeway Exxon), ECSI #4315, LUST# 18-03-2624 in the files of DEQ's Environmental Cleanup Program in the Eastern Region, Pendleton office. Interested parties may contact the Pendleton office to review a detailed description of the residual risks present at the Property and found in the Conditional No Further Action Decision Recommendation memorandum dated March 20, 2006.

B. On March 20, 2006, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Conditional No Further Action Decision Recommendation memorandum for the Property dated March 20, 2006. The remedial action selected requires, among other things: institutional controls prohibiting beneficial groundwater, residential use of the property, and implementation of engineering controls if building is constructed in the south central portion of the site.

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

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's issuance of a Conditional No Further Action letter, 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 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 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 wastewater according to applicable laws.

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

- a. Residential use of any type

3.3 **Construction and/or Expansion Restrictions:** Construction or expansion of current structures into the vicinity of soil sample PL-4 (near former southern pump island) and shown on Attachment B is prohibited unless appropriate measures (i.e. soil removal, vapor barrier) are taken to mitigate the potential for vapor intrusion. Future development of the property should include either a minimum set back of 10 feet for commercial buildings from areas of unacceptable risk, soil excavation of risk area, or engineering controls (e.g., vapor barriers, venting systems) and should be proposed and submitted for DEQ review and approval.

3.4 **Soil Excavation:** In the event that subsurface excavation activities are necessary on the Property or in areas of off-site and documented to have been impacted by the Batsell release, any contaminated soil excavated must be managed in accordance with DEQ Cleanup Rules (OAR 340-122). This includes notification of DEQ, proper oversight to protect workers from unacceptable exposure, and proper handling, characterization, and disposal of any contaminated soil excavated.

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

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 Paragraph 3 without prior written approval from DEQ 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 City of Klamath Falls zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the Property is Neighborhood Commercial.

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.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined in Paragraph 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 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: Klamath County, a political subdivision of the State of Oregon

William R. Brown 8/1/06
William R. Brown, Chairman of the Board, Date

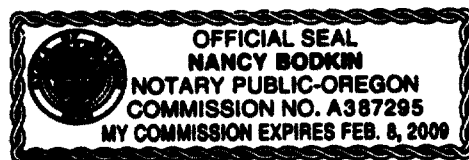
John W. Elliott 8/1/06
John W. Elliott, County Commissioner Date

Out of Office
William A. Switzer, County Commissioner Date

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on August 1, 2006
by William R. Brown, Chairman & John W. Elliott
as Commissioners of Klamath County, a political subdivision
of the State of Oregon

Nancy Bodkin
Notary Public for Oregon
My commission expires: Feb 8, 2009



GRANTEE: State of Oregon, Department of Environmental Quality

By: *Joni Hammond* Date: 7/17/06
Joni Hammond, Administrator, Eastern Region

STATE OF OREGON)
) ss.
County of Umatilla)

The foregoing instrument is acknowledged before me this 17th day of July, 2006, by Joni Hammond of the Oregon Department of Environmental Quality, on its behalf.



Barbara De Mauro
Notary Public for Oregon
My commission expires: MARCH 22, 2009

ATTACHMENT A
Legal Description of the Property

The Southerly 80 feet of Lots 3 and 4, Block 65, Buena Vista Addition to the City of Klamath Falls, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. **Saving and Excepting** a strip of one foot in width off the Easterly end of said premises heretofore conveyed by the Klamath Development Co. to the City of Klamath Falls, Oregon, for street purposes, by Deed recorded in Book 46 at Page 155, Deed Records of Klamath County, Oregon.

AND

Lots 5 and 6, Block 65, Buena Vista Addition to the City of Klamath Falls, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. **Excepting** therefrom the following:

Beginning at a 1/2" iron pin marking the Southwest corner of said Block 65; thence North 140.10 feet to a 1/2" iron pin; thence East 88.26 feet to a 1/2" iron pin; thence East 6.74 feet to a 1/2" iron pin; thence South 140.10 feet to a 1/2" iron pin; thence West 6.74 feet to a 1/2" iron pin; thence West 88.26 feet to the point of beginning.

Subject to covenants, conditions, restrictions, easements, reservations, rights, rights of way and all matters appearing of record.

ATTACHMENT B **Area of Construction and/or Expansion Restrictions**

