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Fee: \$61.00

Retained @ County
David W. Wilson

Space above this line for Recorder's use.

After recording, return to:

Oregon DEQ
2146 NE 4th Street, Suite 104
Bend, Oregon 97701
Att: Cliff Walkey

RECEIVED

JAN 12 2007

Eastern Region - Bend

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made December 20, 2006 between Union Pacific Railroad Company ("**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 in Klamath County, Oregon and identified in Klamath County Tax Map 38 09 33 Index (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name Union Pacific Klamath Falls Railyard, ECSI # 297 in the files of DEQ's Environmental Cleanup Program at the Eastern Region Bend, Oregon office. Interested parties may contact the Bend, Oregon office to review a detailed description of the residual risks present at the Property and found in DEQ's Record of Decision (ROD), which is dated April 21, 2006.

B. On April 21, 2006, 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 Record of Decision Recommended Remedial Action for the Union Pacific Klamath Falls Railyard. The remedial action selected requires, among other things, that restrictive covenants be implemented as follows:

Land Use Restrictions

There is a general prohibition for excavation of soils in the former evaporative pond area, which is capped with asphalt without prior notification and consultation with DEQ. In addition, no penetration or other activity which compromises the structural integrity of the asphalt cap in the former evaporative pond area is permitted without prior notification and consultation with DEQ.

Easement and Equitable Servitudes
Union Pacific Klamath Falls

61

Site Groundwater Restrictions

Appropriation of site groundwater is generally prohibited without prior notice and consultation with DEQ and without obtaining necessary other jurisdictional approvals and/or permits. In addition, notice of the nature and manner of site groundwater impacts from hazardous substances will be provided in the Easement and Equitable Servitude, to adjacent property owners, and appropriate agencies.

Reporting All listed controls and use restrictions must be maintained and an annual report must be submitted to the DEQ that includes photo-documentation. This report must be sufficient in scope and content to demonstrate that restrictions and prohibitions of this Easement and Equitable Servitude are intact and continue to be protective of public health and the environment.

D. Grantor entered into a Consent Order with DEQ on December 20, 2006, which addresses several obligations related to the implementation of the remedy not fully set forth herein, development and implementation of a Site Monitoring and Maintenance Plan (SMMP); development and implementation of maintenance, inspection and reporting for Institutional Control; and, contingency planning. The Consent Order specifies Respondent's commitment to fully implement required remedial actions at the Union Pacific Klamath Falls Railyard. In addition, the Consent Order establishes and clarifies roles and responsibilities for implementation of Institutional Controls.

E. 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 Exhibit A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's approval of the Remedial Design/Remedial Action Consent Order, 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 the 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 **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, or scraping. The former evaporative pond area will be capped with asphalt which constitutes an Engineering Control in this specific area within the site boundary (Attachment B). Owner shall maintain the integrity of the soil cap in accordance with the Site Monitoring and Maintenance Plan (SMMP) as specified in the Union Pacific Klamath Falls Record-of-Decision (DEQ, 4/21/06); the final Remedial Design/Remedial Action (RD/RA) Agreement on Consent (Consent Order), and, as approved by DEQ in writing.

3.2 **Use of the Property.** Owner shall not 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 Site Monitoring and

Maintenance Plan 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.

3.3 **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 3.1 or removal of the condition or restriction as provided in Paragraph 5.1 below.

3.4 **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 zoned Industrial Use, except for an approximately 1,600 square foot area at the eastern property boundary that is zoned Light Industrial.

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. Prior to entering the Property pursuant to this provision, DEQ's employees and contractors shall complete a Union Pacific approved course on railroad safety. While on the Property, DEQ, its employees and contractors shall, at all times, comply with Respondent's safety rules.

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 enforce this Easement and Equitable Servitudes as provided in the Agreement on Consent, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

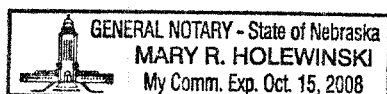
IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

GRANTOR: Union Pacific Railroad Company

By: Robert Grimaila Date: 12/18/06
Robert Grimaila
Sr. Assistant Vice President-Safety, Environmental, & Security Practices

STATE OF Nebraska)
~~OREGON~~) ss.
County of Douglas)

The foregoing instrument is acknowledged before me this 18th day of December, 2006, by Robert Grimaila of Union Pacific Railroad Company, on its behalf.



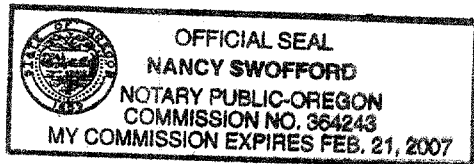
Mary R. Holewinski
NOTARY PUBLIC FOR OREGON
My commission expires: October 15, 2008

GRANTEE: State of Oregon, Department of Environmental Quality

By: Joni Hammond Date: 1-19-07
Joni Hammond, Administrator, Eastern Region

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument is acknowledged before me this 19th day of January, 2007, by Nancy Swofford of the Oregon Department of Environmental Quality, on its behalf.



Nancy Swofford
NOTARY PUBLIC FOR OREGON
My commission expires: 2-21-07

ATTACHMENT A

Legal Description of the Property

ATTACHMENT B

MAP OF SOIL CAP AT FORMER EVAPORATIVE POND AREA

EXHIBIT A

Union Pacific Railroad Company
Klamath Falls, Oregon
Assessor Map No. 38 09 33CA
June, 2007

Parcel 1: Deed Restriction

That portion of the Union Pacific Railroad Company's Klamath Falls Rail Yard located in the Southwest quarter of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, City of Klamath Falls, Klamath County, Oregon, lying within the following described tract:

BEGINNING at the intersection of the Northeasterly line of South Sixth Street and the West line of Block 1 of Industrial Addition to the City of Klamath Falls, said beginning point bearing N00°39'15"W 43.40 feet from the Southwesterly corner of said Block 1; thence N55°33'45"W along the Northeasterly line of South Sixth Street 240.00 feet to an angle point in said line; thence, continuing along said Northeasterly line, N63°51'41"W 100.00 feet to a point; thence, leaving said Northeasterly line, N72°59'15"E 125.00 feet; thence N43°41'00"E 179.30 feet; thence N89°20'45"E 40.39 feet to the said West line of Block 1 of Industrial Addition to the City of Klamath Falls; thence S00°39'15"E along said West line 346.50 feet to the **POINT OF BEGINNING**.

The area of land to which this description applies contains 1.05 acres (45,570 sq. ft.).

Basis of Bearings is the West line of Block 1 of Industrial Addition to the City of Klamath Falls. Said line bears N00°39'15"W per Parcel 2 of Indenture to State of Oregon recorded February 5, 1958 in Deed Book 458, Page 345 of Klamath County Deed Records, said indenture being a portion of Oregon Department of Transportation File 9727.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

John V. Thatcher

OREGON
JULY 19, 1994
JOHN V. THATCHER
2681

RENEWAL: 7/01/08
SIGNED: 6-25-07

EXHIBIT B

DEED RESTRICTION

UNION PACIFIC RAILROAD CO.
KLAMATH FALLS RAIL YARD

SW 1/4 SECTION 33.
T38S, R9E, W.M.
KLAMATH FALLS,
KLAMATH COUNTY, OREGON
JUNE, 2207

N89°20'45"E
40.39'

WANTLAND AVE.

346.50'

BLOCK 1

ADAMS STREET

INDUSTRIAL

S00°39'15"E

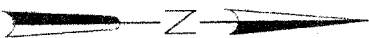
ADDITION

SOUTH SIXTH STREET

N00°39'15"W 43.40'

SW CORNER BLOCK 1,
INDUSTRIAL ADDITION
TO THE CITY OF
KLAMATH FALLS.

1"=80'



PARCEL 1
DEED RESTRICTION TRACT
AREA = 45,570 S.F.

CH2MHILL