



00062608200900038030070072

03/17/2009 10:16:36 AM

Fee: \$51.00

---

Space above this line for Recorder's use.

**After recording, return to:**

Oregon DEQ  
300 SE Reed Market Road  
Bend, OR 97702  
Attn: Joe Klemz

**EASEMENT AND EQUITABLE SERVITUDES**

This grant of Easement and acceptance of Equitable Servitudes is made March 13, 2008 between Bonnie Jo Hamilton and Stephen & Jo Anna Schwarz, co-owners ("**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 3640 Summers Lane, Klamath Falls, in Klamath County, Oregon in Klamath County Tax Map R-3909-010AD, Tax Lot 1600 (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name O'Harra Summers Lane ARCO in the files of DEQ's Underground Storage Tank Cleanup Program at 300 SE Reed Market Road, Bend, OR 97702. Interested parties may contact the Bend office to review a detailed description of the residual risks present at the Property and are described in the GeoDesign Inc., report *Final Groundwater Monitoring and Closure Report, Former Summers Lane Service Station, 3640 Summers Lane, Klamath Falls, Oregon, November 30, 2007*.

B. On March 11, 2008, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the conditional closure letter for the Property *Conditional No Further Action, Summers Lane ARCO, LUST LOG #18-98-0032, Facility ID #676, Klamath County, March 11, 2008*. The remedial action selected requires, among other things: *that any contaminated soil and/or groundwater generated must be managed in accordance with DEQ Cleanup Rules (OAR 340-122); proper oversight to protect workers from unacceptable exposure; and proper handling, characterization, and disposal of any contaminated media generated during excavation activities*.

C. On March 11, 2008, Grantor entered into this agreement (**Agreement**) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls. The Conditional No Further Action letter includes several additional obligations related to the implementation of the remedy not fully set

forth herein, including without limitation: development and implementation of a hazard communication plan prior to initiating any sub-surface work; soil and groundwater management; notification to local utilities and city/county departments; and notification to adjacent property owners.

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 for "beneficial uses of water".
- 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 issuance of a Conditional No Further Action required 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 set forth in this Easement and Equitable Servitudes, shall be binding upon all current and future owners of the Property, 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 waste water 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 Use of the Property.** Owner shall not occupy or allow other parties to occupy the Property unless the controls listed in this Paragraph 3 of this Easement and Equitable Servitudes are intact and continue to protect public health and the environment.

**3.4 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.

**3.5 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 *Neighborhood Commercial*.

**3.6 Cost Recovery.** Owner shall pay DEQ's costs for activities to enforce compliance with the provisions in this E&ES. This E&ES shall constitute the binding agreement by the Owner and DEQ to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing

DEQ project costs. DEQ will provide the Owner with a monthly statement and direct labor summary. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this E&ES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

#### **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 Notice of this Easement and Equitable Servitudes shall be included 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 1.7 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 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:**

\_\_\_\_\_  
Bonnie Jo Hamilton

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_ )

County of \_\_\_\_\_ )

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, by Bonnie Jo Hamilton.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

My commission expires: \_\_\_\_\_

GRANTOR:

Stephen Schwarz <sup>3/3/09</sup>  
Stephen Schwarz Date 10/14/08

Jo Anna Schwarz <sup>3-2-09</sup>  
Jo Anna Schwarz Date 10-14-08

STATE OF OREGON )  
County of CLATSOP ) ss.  
OREGON



The foregoing instrument is acknowledged before me this 3RD day of MARCH, 2008, by Stephen Schwarz and Jo Anna Schwarz.

(W)

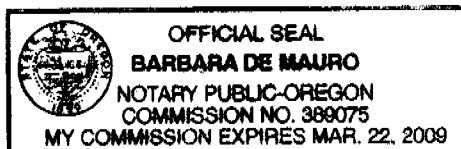
Michael Collins  
NOTARY PUBLIC FOR OREGON  
My commission expires: NOV 4 2011

GRANTEE: State of Oregon, Department of Environmental Quality

By: Mitch Wolgamott Date: 30 MAY 08  
Mitch Wolgamott, Acting Administrator, Eastern Region

STATE OF OREGON )  
County of UMATILLA ) ss.

The foregoing instrument is acknowledged before me this 30<sup>th</sup> day of MAY, 2008, by Mitch Wolgamott of the Oregon Department of Environmental Quality, on its behalf.



Barbara De Mauro  
NOTARY PUBLIC FOR OREGON  
My commission expires: MARCH 22, 2009

## Legal Description of the Property

Klamath County Property ID: R541952 (Real Estate)  
Map Tax Lot: R-3909-010AD-01600-000

