



00118705201200056290070076

05/23/2012 02:26:31 PM

Fee: \$67.00

Space above this line for Recorder's use.

*After recording, return to:*

Oregon DEQ  
475 NE Bellevue Drive, Suite 110  
Bend, Oregon 97701-7415  
Attn: Cliff Walkey

## EASEMENT AND EQUITABLE SERVITUDE

This grant of Easement and acceptance of Equitable Servitude is made May 18, 2012 between the North Ridge Estates Receivership, LLC, represented by Daniel J. Silver ("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 real property located at 4300 Old Fort Road in Klamath County, Oregon, in Klamath County Tax Map # R-3809-015AO-00304-000, Tax Lot # 50 (the "Property"), the location of which is more particularly described in Exhibit A to this Easement and Equitable Servitude. The Property is located within the site referenced under the name North Ridge Estates, ECSI # 2335, in the files of DEQ's Environmental Cleanup Program at the DEQ's eastern regional office located in Bend, Oregon. Interested parties may contact the DEQ Bend office to review a detailed description of residual risks present at the Property and found in Final Remedial Investigation Report, North Ridge Estates, Klamath County, Oregon (CDM, 2010a).

B. On September 22, 2011, the United States Environmental Protection Agency ("EPA") selected a remedial action for the Property, as set forth in the Record of Decision ("ROD") for the Property, *North Ridge Estates Record of Decision for Operable Unit 1* (September 22, 2011). On September 16, 2011, DEQ provided state concurrence for the ROD. The ROD requires, among other things, that institutional controls be implemented at Operable Unit 1 of North Ridge Estates to: (a) prevent disruption of residual asbestos contamination within parcels and consolidated asbestos-containing material within onsite repositories; and (b) maintain capped areas and ensure they are not damaged, exposure does not occur, and caps remain protective. The ROD provides that institutional controls for specific properties within North Ridge Estates may be determined during remedial design. The ROD further provides that EPA will perform sampling of surface water and groundwater on or near Operable Unit 1 to confirm there are no impacts to these media.

C. This Easement and Equitable Servitude is intended to implement at the Property institutional controls consistent with the ROD, and thereby protect human health and the environment.

## 1. DEFINITIONS

- 1.1 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.2 "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.
- 1.3 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.4 "Engineering control" has the meaning set forth in OAR 340-122-0115.
- 1.5 "EPA" means the United States Environmental Protection Agency and its employees, agents, and authorized representatives. "EPA" also means any successor or assign of EPA under the laws of the United States, including but not limited to any entity or instrumentality of the United States authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by EPA.
- 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, but 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 Recital A and Exhibit A to this Easement and Equitable Servitude.
- 1.9 "Remedial Action Costs" has the meaning set forth in ORS 465.200.

## 2. GENERAL DECLARATION

Grantor grants to DEQ an Easement for access and accepts the Equitable Servitude described in this instrument and, in so doing, declares that the Property described in Exhibit A to this Easement and Equitable Servitude is now subject to and in the future will 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 touches and concerns the Property and the equitable servitudes granted in Paragraph 3 and easement granted in Paragraph 4 run with the land for all purposes, are binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitude, and 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 Servitude.

### 3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 *Groundwater Use Restrictions.* Owner may not extract groundwater through wells or by other means, or use groundwater at the Property for consumption or other beneficial use, as long as hazardous substance concentrations exceed the acceptable risk levels for such use determined through EPA remedial design or EPA sampling and analysis of groundwater at the Property. Owner may request written approval from EPA or DEQ to extract or use groundwater at the Property if determined appropriate after remedial design or further sampling and analysis. This prohibition shall not apply to extraction of groundwater for purposes of groundwater monitoring activities approved by DEQ or EPA.

3.2 *Engineering Controls.* Except upon prior written approval from DEQ and EPA, or until further written notice from DEQ and EPA, Owner may not conduct operations on the Property or use the Property in any way that might penetrate any barrier to underlying contamination at the Property (e.g., soil caps) or jeopardize the barrier's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation excavation, drilling, scraping, or uncontrolled erosion. Owner will maintain the barrier, if applicable, in accordance with the monitoring and maintenance plan as specified in the ROD or by EPA after remedial design.

3.3 *Warnings.* Owner will post warning signs at the Property as necessary to warn of potential hazards of exposure to contaminants at levels that exceed acceptable risk levels specified in the ROD.

3.3 *Land Use Restrictions.* Except upon prior written approval from DEQ and EPA, or until further written notice from DEQ and EPA, Owner may not conduct operations on the Property or use the Property in any way that might physically breach the existing cap at the Property covering buried asbestos-containing material. The location of the existing cap is shown on Exhibit B to this Easement and Equitable Servitude.

### 4. EASEMENT (RIGHT OF ENTRY)

4.1 During reasonable hours and subject to reasonable security requirements, DEQ and EPA may enter upon and inspect any exterior land surface of the Property to: (a) determine whether the requirements of this Easement and Equitable Servitude are complied with; and (b) conduct any investigation, removal, or remedial action consistent with the ROD. DEQ and EPA 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 Servitude, provided DEQ or EPA 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 or EPA may not be deemed a trespass, and DEQ and EPA are not be subject to liability to Owner for such entry and any action taken to abate, mitigate, or cure a violation.

4.2 DEQ reserves any authority under applicable law to enter buildings on the Property to determine compliance with laws applicable to asbestos abatement.

## 5. GENERAL PROVISIONS

5.1 *Notice of Transfer.* Owner will notify DEQ at least 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 before 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 may not commence any development inconsistent with the conditions or restrictions in this Paragraph 3 without prior written approval from DEQ or EPA or removal of the condition or restriction as provided in Paragraph 5.6.

5.2 *Zoning Changes.* Owner will notify DEQ no less than 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 Servitude, the base zone of the Property is RL (Residential Low-Density). Any use or development of the Property following a zone change must ensure conditions at the Property are protective of human health and the environment for the proposed use or development and must be consistent with the remedies and institutional controls selected for the Property.

5.3 *Cost Recovery.* Owner will pay costs incurred by DEQ after the date of recording of this Easement and Equitable Servitude for oversight of implementation of and compliance with this Easement and Equitable Servitude. . Owner will reimburse DEQ's routine costs to inspect, review, and oversee implementation of this Easement and Equitable Servitude for up to a maximum of 2 hours of DEQ oversight each calendar year. Routine costs do not include remedial action costs, including DEQ oversight costs, which result from a violation of any condition or restriction contained within this Easement and Equitable Servitude. Owner will pay all DEQ remedial action costs actually and reasonably incurred by DEQ as a result of a violation of this Easement and Equitable Servitude. DEQ costs include direct and indirect costs. Direct costs include site-specific expenses and legal costs actually and reasonably incurred by DEQ under ORS 465.200 *et seq.* Indirect costs are general management and support costs of DEQ allocable to DEQ oversight of this Easement and Equitable Servitude 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. DEQ will establish a cost recovery account specific to the Property for tracking and invoicing DEQ project costs. DEQ will provide the Owner with an invoice and direct labor summary, on a monthly basis or at such other frequency as appropriate to the level of DEQ oversight. Owner will pay the amount billed, within 30 days of receipt of a DEQ invoice. If Owner disagrees that a specific

billing is for costs that are actually and reasonably incurred, Owner may, within 30 days of receipt of a DEQ invoice, request that DEQ review the invoice. Within 30 days of Owner's request, DEQ will provide a written determination whether the costs are appropriately invoiced. The obligation to reimburse DEQ's costs may be temporarily or permanently assigned to a third party (e.g., homeowners association, trust, etc.) pursuant to written agreement between the party and DEQ.

5.4 *Building Maintenance.* Owner will routinely inspect and maintain the condition of buildings on the Property to ensure that asbestos-containing materials, such as cement asbestos board siding and asbestos-containing roofing, do not degrade to a friable condition. Owner will comply with applicable law when undertaking any activity that might disturb asbestos-containing material.

5.5 *Inspection and Annual Reporting.* Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this Easement and Equitable Servitude. In addition, Owner will prepare and submit an annual report to DEQ that describes the condition of existing asbestos-containing building materials and integrity of the cap covering buried asbestos containing materials described in Exhibit B. Annual reports must include sufficient detail to allow DEQ to determine compliance with Easement and Equitable Servitude requirements, and include a photographic log that supports the report's narrative.

5.6 Each condition and restriction contained in this Easement and Equitable Servitude must be recited in any deed conveying the Property or any portion of the Property, and runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ and EPA, 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.

5.7 Upon the recording of this Easement and Equitable Servitude, all future Owners, as defined in Paragraph 1.7, are 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 an instrument by which such person or entity occupies or acquires an interest in the Property.

5.8 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitude, DEQ, in addition to the remedies described in Paragraph 4 above, may seek any available legal or equitable remedy to enforce this Easement and Equitable Servitude.

5.9 EPA may, but is not obliged, to monitor and enforce, by all means available in law or equity, the terms of this Easement and Equitable Servitude, as a third-party beneficiary of the agreement between Grantor and Grantee in this Easement and Equitable Servitude. EPA's rights provided in this paragraph are in addition to but not in derogation of rights of DEQ to enforce the terms of this Easement and Equitable

Servitude. Nothing in this paragraph may be construed to create, either expressly or by implication, an agency relationship between DEQ and EPA. Neither DEQ nor EPA is authorized by this paragraph to represent or act on behalf of the other in the enforcement of rights granted under this Easement and Equitable Servitude. Grantee represents that it has notified EPA of EPA's status as a third-party beneficiary under this Easement and Equitable Servitude.

5.10 *Reservation of Rights.* Notwithstanding any provision of this Easement and Equitable Servitude, DEQ and EPA retain all of their access and enforcement authorities under any applicable statute or rule.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

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

GRANTOR:

North Ridge Receivership, LLC, represented by Daniel J. Silver

By: [Signature]  
Daniel J. Silver

Date: May 18, 2012

STATE OF WASHINGTON)

County of Thurston <sup>ss.</sup>)

The foregoing instrument is acknowledged before me this 18<sup>th</sup> day of May, 2012, by Daniel J. Silver of North Ridge Receivership, LLC, on its behalf.

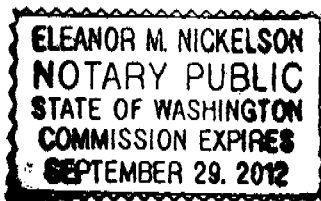
[Signature]

NOTARY PUBLIC FOR

Residing at Lacey, WA

My commission expires: 9/29/12

WASHINGTON



GRANTEE:

State of Oregon, Department of Environmental Quality

By: Sheila Monroe  
Sheila Monroe, Cleanup Manager, Eastern Region

Date: 5/10/12

STATE OF OREGON )

) ss.  
County of Wasco )

The foregoing instrument is acknowledged before me this 10<sup>th</sup> day of May, 2012, by Sheila Monroe of the Oregon Department of Environmental Quality, on its behalf.



Mary E Bowen  
NOTARY PUBLIC FOR OREGON  
My commission expires: 6-20-15