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04/05/2013 10:02:25 AM

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After recording, return to:

Oregon DEQ
475 NE Bellevue Drive, Suite 110
Bend, OR 97701
Attn: Joe Klemz

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made March 28, 2013 between Kathleen Kay Walsh ("**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 8110 Highway 39, Klamath Falls, Klamath County, Oregon in Klamath County Tax Map 39 09 25A Tax Lot 1100 (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name Heritage Villa, LUST File No. 18-97-0005 in the files of DEQ's Leaking Underground Storage Tank Program in the Eastern Region's 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 DEQ's *Conditional No Further Action Decision Document* dated April 1, 2013.

B. 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.

C. Nothing in this Easement and Equitable Servitude constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitude.

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 "Engineering control" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.6 "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.
- 1.7 "Property" means the real property described in Exhibit A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's issuance of a Conditional No Further Action determination, 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 must 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.

2.2 Each condition and restriction set forth in this Easement and Equitable Servitudes touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitudes, and inures 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 may extract the groundwater from a deeper aquifer at the Property provided that: (a) the well is located at least 100 feet from the edge of the contaminated shallow groundwater (see Attachment B – Extent of Petroleum contamination); (b) the well is located hydraulically up-gradient (north) of the contaminated groundwater (see Attachment C); and (c) the well is constructed with a

deep annulus seal. The location and construction of the well must be approved by DEQ before the well is installed.

3.2 **Land Use Restrictions:** Residential use of any type is prohibited in the structure labeled as the "Garage" on the site map included as Attachment B.

3.3 **Contaminated Media Management Plan:** Any subsurface activities that are likely to encounter contaminated soil or groundwater must be performed in accordance with the Contaminated Media Management Plan (CMMP); the CMMP is on file in DEQ's Bend office, 475 NE Bellevue Drive, Suite 110, Bend, OR 97701. Any proposed deviations from the Contaminated Media Management Plan are required to be reviewed and approved by DEQ.

3.4 **Structure Limitations:** Owner may not construct or expand structures on the Property within the locality of the facility (see Attachment B) unless appropriate engineering measures (e.g., passive venting, vapor barrier) are taken to mitigate the potential for vapor intrusion. Structure labeled as "Garage" in Attachment B may be used for Occupational purposes if appropriate engineering measures are taken to mitigate the potential for vapor intrusion. Proposed measures are required to be submitted for DEQ review and approval.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to the Property. DEQ may 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 EES, 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 to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

5. RELEASE OF RESTRICTIONS

5.1 Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2 Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

6. GENERAL PROVISIONS

6.1 Notice of Transfer/Change of Use. Owner must notify DEQ within 10 days after 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. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2 Zoning Changes. Owner must 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 EES, the base zone of the Property is Rural Community Commercial (RUC-C).

6.3 Reference in Deed. A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs 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 to protect human health or the environment.

6.4 Effect of Recording. Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.5 Enforcement and Remedies. Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

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

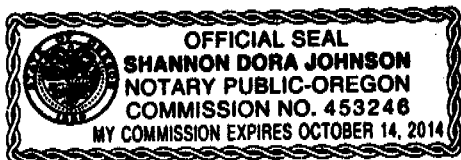
BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS
THIS CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: Kathleen Kay Walsh

By: Kathleen Kay Walsh Date: 3-18-13
Kathleen Kay Walsh, Owner

STATE OF OREGON)
) ss.
County of Klamath)

The foregoing instrument is acknowledged before me this 18 day of
MARCH, 2013, by Kathleen Kay Walsh.



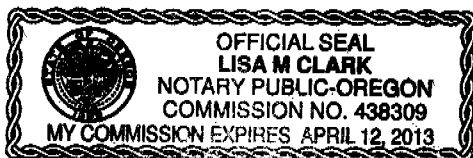
[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: OCT 14 2014

GRANTEE: State of Oregon, Department of Environmental Quality

By: Linda Hayes-Gorman Date: 3/28/2013
Linda Hayes-Gorman, Administrator, Eastern Region

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument is acknowledged before me this 28 day of
MARCH, 2013, by Linda Hayes-Gorman of the Oregon Department of Environmental
Quality, on its behalf.



Lisa M Clark
NOTARY PUBLIC FOR OREGON
My commission expires: 4/12/13

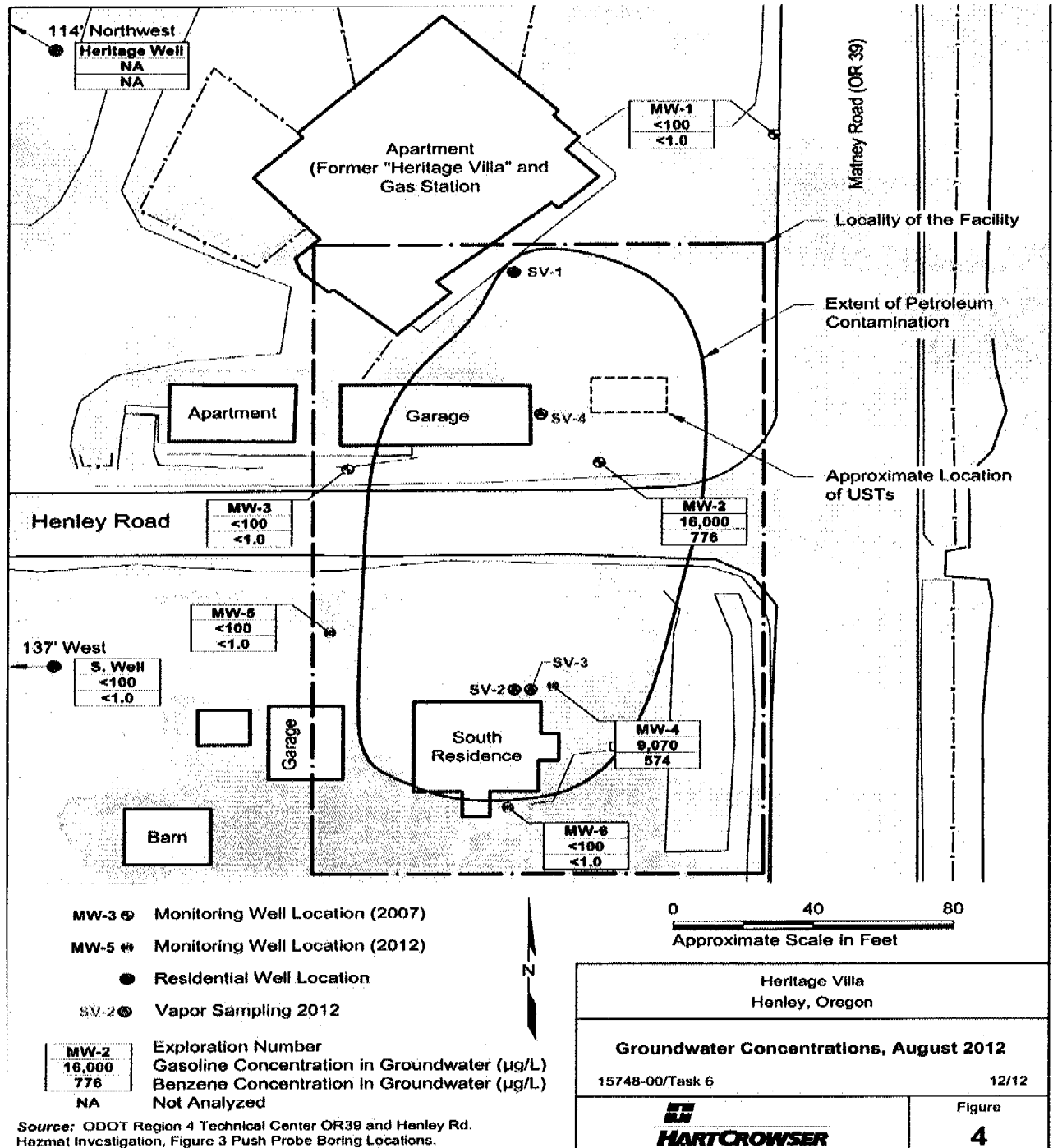
ATTACHMENT A

Legal Description of the Property

Henley Lots 1 & 2

ATTACHMENT B

Site Map & GW Restriction Area



ATTACHMENT C

Groundwater Gradient Map

