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06/07/2016 01:15:27 PM

Fee: \$77.00

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
400 E. Scenic Drive, Suite 307
The Dalles, OR 97058
Attention: Bob Schwarz

Grantor

Badorek Enterprises
4238 Onyx Street
Klamath Falls, OR 97603
Attention: Charles Kujawski and Kari Quirke

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on 5/20, 2016 between Badorek Enterprises ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "**Grantee**").

RECITALS

Grantor is the owner of certain real property located at 2933 Hilyard Avenue, Klamath Falls, 97603 in Klamath County, Oregon, Tax Lot 800 (the "**Property**") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name Hamilton Metals, ECSI # 1492 in the files of DEQ's Environmental Cleanup Program at Eastern Region office located at 400 E. Scenic Drive, Suite 307, The Dalles, Oregon, and telephone 541-298-7255. Interested parties may contact the Eastern Region office to review a detailed description of the risks from contamination remaining at the Property and described in the *Remedial Activities and Soil Removal Report*, PBS Engineering and Environmental, June 2015. On July 31, 2015, the Director of the Oregon Department of Environmental Quality or delegate approved the remedial action for the Property set forth in a July 31, 2015 *Staff Memorandum to Document Basis for Environmental Strategy*. The remedial action selected requires inspection and maintenance of the gravel cover that was installed in 2015.

A. On May 8, 2009, Grantor entered into an Agreement with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

B. This EES is intended to further the implementation of the selected remedial action and 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.

Charles Kujawski
Returned at Counter

1. DEFINITIONS

- 1.1 "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.
- 1.2 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.3 "Engineering control" has the meaning set forth in OAR 340-122-0115
- 1.4 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.5 "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.
- 1.6 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's approval of work conducted to improve site environmental conditions, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property 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 EES.

2.2 Each condition and restriction set forth in this EES 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 EES, 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 EES.

3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1 **Gravel Cover Engineering Control.** Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate any gravel cover at the Property or jeopardize the gravel cover's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or uncontrolled erosion. Owner will maintain the gravel cover in good condition.

Note: A polyethylene liner exists beneath the gravel cover and its integrity should not be compromised. The liner delineates the base of the gravel cover and if encountered documents penetration of the gravel cover.

3.2 Stormwater containment swale. A stormwater containment swale was built along the east side of the property. The purpose of this swale is to prevent offsite migration of stormwater. Owner will maintain this containment swale in good condition.

3.3 Allowable land uses. This property may not be used for residential or agricultural purposes.

3.4 Groundwater use. Groundwater wells may not be installed without prior approval of DEQ.

3.5 Use of the Property. Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

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 Section 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 Heavy Industrial.

6.3. **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner 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 EES 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.

6.4. **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.

6.5. **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.

6.6. **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 3, may enforce this EES or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

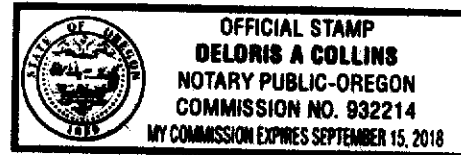
6.7. **IN WITNESS WHEREOF** Grantor and Grantee have executed this Easement and Equitable Servitude as of the date and year first set forth above.

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

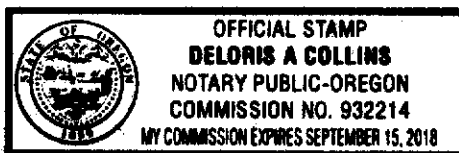
GRANTOR: Badorek Enterprises

By: Charles Kujawski Kari Quirke Date: 6/2/16
Charles Kujawski and Kari Quirke, Owners

STATE OF OREGON)
County of Clatsop) ss.



The foregoing instrument is acknowledged before me this 2nd day of June, 2016, by Charles Kujawski of Badorek Enterprises, on its behalf.

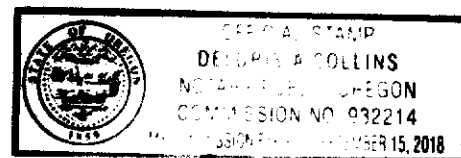


Deloris A. Collins
NOTARY PUBLIC FOR OREGON
My commission expires: Sept 15, 2018

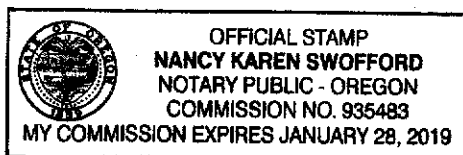
GRANTEE: State of Oregon, Department of Environmental Quality

By: David Anderson Date: 5/20/2016
David Anderson, Cleanup Manager, Eastern Region

STATE OF OREGON)
County of Deschutes) ss.



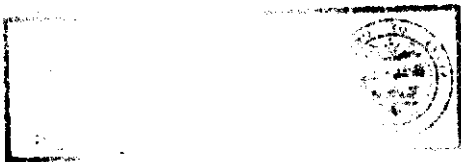
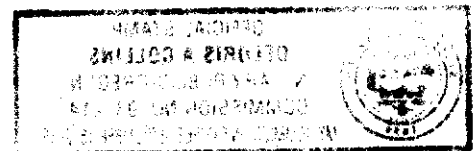
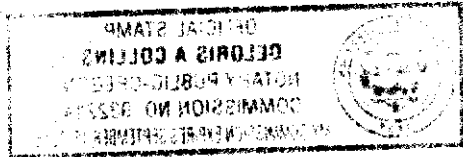
The foregoing instrument is acknowledged before me this 20th day of May, 2016, by Nancy Karen Swofford of the Oregon Department of Environmental Quality, on its behalf. David Anderson (witness)



Nancy Karen Swofford
NOTARY PUBLIC FOR OREGON
My commission expires: Jan. 28, 2019

EXHIBIT A

Legal Description of the Property





Engineers



Planners



Surveyors

Property Description

A parcel of land situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a 5/8" iron pin at the southeast corner of Parcel 3 of Land Partition 43-97, said point being on the west right of way line of the Oregon - California & Eastern Railroad spur; thence along said west right of way line South 00°14'05" West 431.08 feet; thence North 89°06'00" West 25.00 feet; thence South 15°50'10" West 206.54 feet to the north right of way line of Hilyard Avenue; thence along said north right of way line North 89°06'00" West 164.24 feet; thence North 00°58'27" East 354.14 feet; thence North 89°13'01" West 53.00 feet; thence North 00°09'48" East 276.00 feet to the south line of Parcel 2 of Land Partition 43-97; thence along said south line and the south line of Parcel 3 of said Land Partition South 89°13'01" East 293.56 feet to the point of beginning, containing 3.59 acres, with bearings based on C.S. 6123.

July 19, 2001

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TL 102

TL 103

TL 104

TL 500

TL 800

TL 700

TL 900

HILYARD AVENUE

DELAWARE AVENUE

TL 5000

TL 5200

TL 7900

TL 8000

TL 8100

TL 8200

OCE R/R SPUR

AVALON STREET

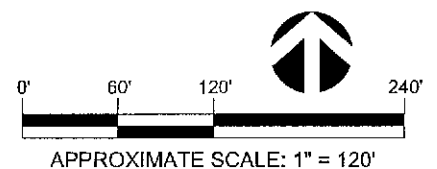
LEGEND

—— TAX LOT 800 BOUNDARY

- - - - APPROXIMATE TAX LOT BOUNDARY LINES

NOTE: MAP INCLUDES PORTIONS OF KLAMATH COUNTY
TAX MAPS 390903CC AND 390903CD

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PROJECT #
80534.000

DATE
NOV. 2015

TAX LOT 800 (T39R9E, SEC3 CC)

2933 HILYARD STREET
KLAMATH FALLS, OR

FIGURE

1