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04/12/2023 10:30:21 AM

Fee: \$107.00

Space above this line for Recorder's use.

After recording, return to: Grantor

Grantee

Oregon Department of Environmental Quality
475 NE Bellevue Drive, Suite #110
Bend, OR 97701

Grantor

Swan Lake Moulding Company
P.O. Box 428
Klamath Falls, OR 97601

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on March 10, 2023 between Swan Lake Moulding Company ("***Grantor***") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "***Grantee***").

RECITALS

Grantor is the current owner of approximately 0.65 acre of real property located at 2710 South Sixth Street, Klamath Falls, Klamath County, Oregon, (the "Property" or "Site"); the location of which is more particularly described in Exhibit A to this EES. The Property is identified in Klamath County Assessor records as Tax Lot 1700 in Section 3-BB, Township 39 South and Range 9 East (R-3909-003BB-1700). The Property consists of a single-story 3,200 square-foot, commercial restaurant building on a concrete slab foundation near the eastern border with landscape planters and asphalt pavement covering the rest of the Property. The Property is referenced under the name "Burger King," LUST ID 18-13-0476 in the files of DEQ's Environmental Cleanup Program at Eastern Region office located at 475 NE Bellevue Drive, Suite #110 Bend, Oregon, and telephone #541-388-6146. Interested parties may contact the Eastern Region office to review a detailed description of the risks from contamination remaining at the Property.

The property is located within the City of Klamath Falls. The Site is zoned General Commercial by the City of Klamath Falls.

A. DEQ issued a conditional No Further Action letter for the Property selecting the remedial action for the Property. The remedial action selected requires the institutional control and engineering controls described in Section 3, including a requirement that all future commercial or urban residential building construction on the Property will require a passive vapor barrier liner to prevent vapor intrusion.

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.

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 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.
- 1.7 "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 issuance of a conditional No Further Action 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 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 (RESTRICTIONS ON USE)

3.1. **Vapor Barrier Liner.** Except upon prior written approval from DEQ, Owner will install a passive vapor barrier liner under all future commercial or urban residential structures

intended for human occupancy at the Property. Based on environmental investigations approved by the DEQ, petroleum hydrocarbons in the gas phase are present in subsurface soil, groundwater and soil pore space at concentrations above risk based concentrations for urban residential, occupational and construction/excavation worker exposure scenarios. The petroleum in soil, groundwater and soil gas is attributable to releases from a former service station that operated on the Property, a heating oil tank release from an adjacent property east of the Site (Klamath Animal Clinic), and releases from an off-site service station northwest of the Property on the western side of Washburn Way.

3.2 Groundwater Use Restriction. Contaminated soil and groundwater may present a risk to site construction or excavation workers. Property owner may not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater cleanup treatment or monitoring activities approved by DEQ or for temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property.

3.3 Contaminated Media Management Plan. If contaminated soil or groundwater is removed by an owner or operator, it must be managed and disposed per all applicable local, County, State and Federal rules and the DEQ-approved contaminated media management plan for this Property.

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, in a form suitable for recording.

6. GENERAL PROVISIONS

6.1. **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 City of Klamath Falls zoning code or any successor code. As of the date of this EES, the base zone of the Property is General Commercial use.

6.2. **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.

6.3. **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.

6.4. **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 enforce this EES as provided in State law, orders, judgments, agreements or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

6.5. **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.

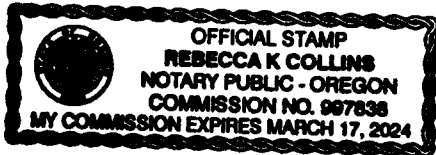
GRANTOR: Swan Lake Moulding Company

By: Terry Scroggin
Terry Scroggin, President

Date: 3-14-2023

STATE OF OREGON)
) ss.
County of Klamath)

The foregoing instrument is acknowledged before me this 14th day of March, 2023, by Terry Scroggin of Swan Lake Moulding Company, on its behalf.



Rebecca K Collins
NOTARY PUBLIC FOR OREGON
My commission expires: 03-17-2024

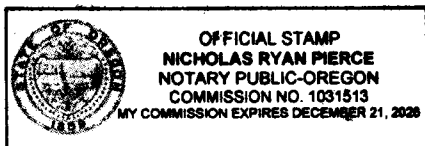
GRANTEE: State of Oregon, Department of Environmental Quality

By: David Anderson
David Anderson, Tanks, Cleanup and Emergency Response Manager, Eastern Region

Date: 4/4/2023

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument is acknowledged before me this 4th day of April, 2023, by David Anderson David Anderson of the Oregon Department of Environmental Quality, on its behalf.



Nicholas Ryan Pierce
NOTARY PUBLIC FOR OREGON
My commission expires: 12-21-2026

EXHIBIT A

Legal Description of the Property

Parcel 1 of Land Partition 1-09, replat of Land Partition 22-08 in the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, filed December 22, 2010 in Volume 2010-014490, Microfilm Records of Klamath County, Oregon.