BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 14-09-24-03

IN THE MATTER OF AUTHORIZING THE BOARD CHAIR TO EXECUTE AN EASEMENT AND EQUITABLE SERVITUDES DOCUMENT WITH THE DEPT. OF ENVIRONMENTAL QUALITY AS GRANTEE FOR COUNTY PROPERTY IDENTIFIED AS MAP NO. 17-06-25-14-01100

WHEREAS Lane County acquired the property through property tax foreclosure and

WHEREAS portions of the property have been contaminated with petroleum due to migration from an adjoining property and

WHEREAS the State Dept. of Environmental Quality is requesting the County to execute an Easement and Equitable Servitudes document imposing use and notification provisions on the property and

WHEREAS execution of the document will allow any future owner of the property to acquire it without liability for existing contamination and to develop it within the guidelines set forth in the document

NOW, THEREFORE, the Board of County Commissioners of Lane County ORDERS as follows:

1. That pursuant to ORS Chapter 275.090 the Board Chair is authorized to executed the attached Easement and Equitable Servitudes document with Lane County as Grantor and the Dept. of Environmental Quality as Grantee

ADOPTED THIS 24th day of Sept., 2014

Pat Farr, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 9-24-14

LANE COUNTY OFFICE OF LEGAL COUNSEL
EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made January 23, 2014, between Lane County, the (“Grantor”) and the Oregon Department of Environmental Quality (“DEQ” or “Grantee”).

RECITALS

A. The Grantor is the owner of certain real property located at 88771 Territorial Hwy, Elmira, OR 97437, Lane County Tax Map #17062514 Lot #01100 (the “Property”). The legal description of the Property is set out in Exhibit A and the location is shown on Exhibit B to this Easement and Equitable Servitudes. This site is referenced under the file name Elmira Family Store, USTC #20-98-7017 in the files of DEQ’s Environmental Cleanup Program at DEQ’s Western Region office located at 750 Front Street NE, Suite 120, Salem, Oregon, and telephone (503) 378-8240. Interested parties may contact the Western Region office to review a detailed description of the residual risks present at the Property.

B. On January 23, 2014, Conceptual Site Model, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in this Easement and Equitable Servitudes for the Property. The remedial action selected requires institutional controls: Groundwater Use Restriction, Use of Property Restriction, Notice of Property Transfer, and Notice of filing for initiating of rezoning designation.

C. On January 23, 2014, Conceptual Site Model, the Grantor entered into an agreement (Agreement) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

D. This Easement and Equitable Servitudes is intended to further the implementation of the selected remedial action and protect human health and the environment.

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

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 "Hazardous substance" has the meaning set forth in ORS 465.200.

1.3 "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.

1.4 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's issuance of a risk-based corrective action remedy, 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 Exhibit 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, shall be binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitudes, 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. Excluding the existing water well, property owners shall not extract groundwater through wells or by other means for any purpose in the area of known groundwater contamination or within 100 feet of area of known groundwater contamination.
contamination from the former Elmira Family Store & Gas Station as shown and outlined in Exhibit C, **unless the following conditions are met**:

- Prior to any modification of an existing water supply well or installation of any new supply water wells within the areas identified above, the Owner must obtain approval from both DEQ and the Oregon Water Resources Department for well design and location. This includes the total well depth, casing depth, screening interval, and ground to surface seal depth and construction methods. An example of a well design that may be approved (the Bradley property replacement Water Supply Well Report) is attached as Exhibit E). In this example the well seal depth exceeds the minimum requirements of the Oregon Water Resources Department well construction regulations, however this seal design is recommended to help protect any new wells from shallow groundwater contamination.

This prohibition shall not apply to extraction of groundwater associated with temporary dewatering activities related to construction or development of the Property, or to 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 Use of the Property

Owner shall not occupy or allow other parties to occupy any structure which is greater than 3 feet below-ground level for residential/urban residential or commercial purposes in the area identified in Exhibit C, **unless the following conditions are met**:

- Prior to any additional development or re-development of the Property that might encounter contaminated soil or groundwater, Owner must submit professionally prepared plans for the proposed (re-)development to DEQ for review (UST/WREC\(^1\) or its successor). In addition, to the (re-)development plan, a Health and Safety Plan should also be written and submitted. Any (re-)development plans must consider: The preliminary Conceptual Site Model in the October 31, 2012, Ash Creek and Associates Site Investigation Report; the June 18, 2013, DEQ - Risk Based Conclusion Table as outlined in Exhibit D; and, the site-specific Contaminated Media Management Plan.

### 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,

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1 UST/WREC: Underground Storage Tank/Western Region Environmental Cleanup Programs

Easement and Equitable Servitudes
Lane Co
January 23, 2014
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. RELEASE OF RESTRICTIONS

5.1 Owner may request release of any or all of the conditions or restrictions contained in this Easement and Equitable Servitudes 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 Easement and Equitable Servitudes 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 Easement and Equitable Servitudes 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 Easement and Equitable Servitudes 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 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 City of Elmira, Lane County zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the property is Rural Residential (2 Acre Minimum (RR2).

6.3 Reference in Deed. A reference to this Easement and Equitable Servitudes, 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 Easement and Equitable Servitudes 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

Easement and Equitable Servitudes
Lane Co
January 23, 2014
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 Easement and Equitable Servitudes, all future Owners are 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.

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

Address: 88771 Territorial Hwy, Elmira, OR 97437

Parcel Number: Lane County Tax Map #17062514 Lot #1100

Public Land Survey: SE 1/4 of the NE 1/4 Section 25, Township 17 South, Range 6 West, Lane County Tax Lot 01100

Legal Property Description:

<table>
<thead>
<tr>
<th>TAX LOT</th>
<th>PARCEL NO.</th>
<th>LEGAL DESCRIPTION</th>
<th>DEED RECORD</th>
<th>ACRES REMAINING</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 06 25 14</td>
<td>1100</td>
<td>Beginning at a point in the East line of County Rd # 155, 67.5 ft S12°31'W of a point 67.5 ft East of the intersection of the North line of Taylor St with the West line of Main St; also known as Territorial Rd, in Elmira; run thence East 645.20 ft to an iron pin; thence South 121.19 ft to an iron pin; thence N89°37'40&quot;W 569.07 ft to an iron pin; thence N61°00'30&quot;W 100.0 ft to a point on the East line of said Territorial Rd; thence along said East line N12°31'30&quot;W 104.34 ft to the POB, all in Lane County, Oregon.</td>
<td>1974 R683/11554</td>
<td>1.79</td>
</tr>
<tr>
<td></td>
<td></td>
<td>EXCEPT: 0.68 ac to parcel 1103 by R1134/850350 &amp; R1335/853705 for 1985.</td>
<td>1986 R1347/8615537*</td>
<td>1.11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cont m/l</td>
<td>1992 de R1770/9234022</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT B

PROPERTY TAX LOT MAP
<table>
<thead>
<tr>
<th>Date</th>
<th>Pathway</th>
<th>Receptor</th>
<th>Is Pathway Complete?</th>
<th>Is ORBC Exceeded?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/28/2013</td>
<td>Ingestion, Dermal Contact and Inhalation</td>
<td>Residential and/or Urban Residential</td>
<td>No</td>
<td>No</td>
<td>No soil contamination within three feet of ground surface was detected above DEQ GRRCs. DEQ recommends future construction and excavation worker exposures follow and HABP guidelines</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupational</td>
<td>No</td>
<td>No</td>
<td>No soil contamination within three feet of ground surface was detected above DEQ GRRCs. DEQ recommends future construction and excavation worker exposures follow and HABP guidelines</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Construction Work</td>
<td>No</td>
<td>No</td>
<td>No soil contamination within three feet of ground surface was detected above DEQ GRRCs. DEQ recommends future construction and excavation worker exposures follow and HABP guidelines</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Excavation Worker</td>
<td>No</td>
<td>No</td>
<td>No soil contamination within three feet of ground surface was detected above DEQ GRRCs. DEQ recommends future construction and excavation worker exposures follow and HABP guidelines</td>
</tr>
<tr>
<td></td>
<td>Volatilization to Outdoor Air</td>
<td>Residential and/or Urban Residential</td>
<td>Yes</td>
<td>No</td>
<td>Below DEQ - GRRCs for Occupational use. Future Residential exposures have been mitigated through institutional controls (see E&amp;EB), and HABP</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupational</td>
<td>No</td>
<td>No</td>
<td>Below DEQ - GRRCs for Occupational use. Future Residential exposures have been mitigated through institutional controls (see E&amp;EB), and HABP</td>
</tr>
<tr>
<td></td>
<td>Vapor Intrusion Into Buildings</td>
<td>Residential and/or Urban Residential</td>
<td>Yes</td>
<td>Restricted</td>
<td>Below DEQ - GRRCs for Occupational use. Future Residential exposures have been mitigated through institutional controls (see E&amp;EB), and HABP</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupational</td>
<td>No</td>
<td>Restricted</td>
<td>Below DEQ - GRRCs for Occupational use. Future Residential exposures have been mitigated through institutional controls (see E&amp;EB), and HABP</td>
</tr>
<tr>
<td></td>
<td>Leaching to Groundwater</td>
<td>Residential and/or Urban Residential</td>
<td>Restricted</td>
<td>Yes</td>
<td>Soil contamination exceeds DEQ GRRCs. However shallow groundwater is not currently used and future exposures have been mitigated through groundwater use limitations (see E&amp;EB)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupational</td>
<td>No</td>
<td>Yes</td>
<td>Soil contamination exceeds DEQ GRRCs. However shallow groundwater is not currently used and future exposures have been mitigated through groundwater use limitations (see E&amp;EB)</td>
</tr>
<tr>
<td>Groundwater</td>
<td>Ingestion &amp; Inhalation From Tap Water</td>
<td>Residential and/or Urban Residential</td>
<td>Yes</td>
<td>Restricted</td>
<td>Shallow groundwater is not currently used. Future drinking water exposures have been mitigated through use limitations and well location/design (see E&amp;EB)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupational</td>
<td>Restricted</td>
<td>Yes</td>
<td>Shallow groundwater is not currently used. Future drinking water exposures have been mitigated through use limitations and well location/design (see E&amp;EB)</td>
</tr>
<tr>
<td></td>
<td>Volatilization to Outdoor Air</td>
<td>Residential and/or Urban Residential</td>
<td>Yes</td>
<td>Restricted</td>
<td>Future exposures have been mitigated through institutional controls (see E&amp;EB), CMMP and HABP</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupational</td>
<td>No</td>
<td>Restricted</td>
<td>Future exposures have been mitigated through institutional controls (see E&amp;EB), CMMP and HABP</td>
</tr>
<tr>
<td></td>
<td>Vapor Intrusion Into Buildings</td>
<td>Residential and/or Urban Residential</td>
<td>Future</td>
<td>Yes</td>
<td>Only TPW and one DOPC were found to exceed residential GRRCs in the orovispea, indoor air sampling did not exceed GRRGs. Future Residential exposures have been mitigated through institutional controls (see E&amp;EB), CMMP and HABP</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupational</td>
<td>No</td>
<td>No</td>
<td>Only TPW and one DOPC were found to exceed residential GRRCs in the orovispea, indoor air sampling did not exceed GRRGs. Future Residential exposures have been mitigated through institutional controls (see E&amp;EB), CMMP and HABP</td>
</tr>
<tr>
<td></td>
<td>Groundwater in Excavation</td>
<td>Occupational</td>
<td>Future</td>
<td>No</td>
<td>Below DEQ - GRRCs and future exposures have been mitigated through the E&amp;EB, the CMMP, and the HABP</td>
</tr>
<tr>
<td></td>
<td>Ecological</td>
<td>Terrestrial &amp; Surface Water</td>
<td>No</td>
<td>No</td>
<td>Ecological valuable habitat exists on the property. However soil and groundwater sample results collected on the property and near the seasonal spring were below all respective E&amp;EBs. As such, this pathways was not considered to be complete.</td>
</tr>
</tbody>
</table>

Notes:
GRRCs: Generic Risk Based Concentration
CMMP: Contaminated Media Management Plan
E&EB: Screening Level Values for Ecological Receptors
E&EB: Easement and Equitable Servitudes (institutional control required with Marion Co. limiting or restricting property usage)
EXHIBIT E

REPLACEMENT WELL CONSTRUCTION LOG

LANE 71981

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 531.355 & OAR 690-205-0310)

WELL LABEL # L07775
START CARD # 007654

(1) LAND OWNER
Owner Well ID: 3285
First Name: Last Name: Ensign
Company: Family Store
Address: 18741 Territorial Hwy.
City: Lane Town: Corvalis Zip: 45937

(2) TYPE OF WORK
X New Well [ ] Reopening [ ] Conversion
[ ] Abandonment

(3) DRILL METHOD
X Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger [ ] Cable Mud
[ ] Reverse Rotary [ ] Other

(4) PROPOSED USE
[ ] Domestic [ ] Irrigation [ ] Industrial Commercial [ ] Livestock [ ] Recreational [ ] Tourism [ ] Other

(5) BORE HOLE CONSTRUCTION
Special Standard [ ] Attach copy
Depth of Completed Well: 100 ft.
BoRE HOLE:

<table>
<thead>
<tr>
<th>Dia</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>79</td>
<td>100</td>
</tr>
</tbody>
</table>

Flow was soil placed: Method [ ] A [ ] B [ ] C [ ] D [ ]

(6) CASING/LINER
Casing Size: Dia. From To

<table>
<thead>
<tr>
<th>Dia</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>10</td>
<td>15</td>
</tr>
</tbody>
</table>

Filter pack from [ ] ft. to [ ] ft.
Material: Size

(8) WELL TESTS
Minimum testing time is 1 hour

- Pump [ ] Bailer [ ] All [ ] Flowing Artesian
- Yield: 10 [ ] Number: 100 [ ] Depth: 80 ft.

Temperature: 53°F
Water quality concerns: [ ] Yes [ ] No

(9) LOCATION OF WELL
County: Lane Town: 17 S NS Range: 6 W

(10) STATIC WATER LEVEL
Silty Well/Preexisting [ ] Completed Well [ ]

(10) WATER BEARING ZONES
Silt level: 79 ft. to 94 ft.

GROSS SALES

JONES DRILLING CO., INC.
29400 SANTIAM HWY.
LEBANON, OR 97355
541-367-2560 • 541-451-2686
SALEM, OR
1-800-315-8388

RECEIVED BY: WRS

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IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes 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: Lane County Board of Commissioners

By: ________________ Date: 04.24.14

for and on behalf of Grantor

STATE OF OREGON

County of ____________)

The foregoing instrument is acknowledged before me this 24th day of ___, 2014, by ________________, for and on behalf of Grantor.

GRANTEE: State of Oregon, Department of Environmental Quality

By: ________________ Date: ________________

Paul S. Rosenberg, Manager, Regional Environmental Cleanup Program

STATE OF OREGON

County of ____________)

The foregoing instrument is acknowledged before me this ___ day of ________, 2014, by Paul S. Rosenberg, of Oregon DEQ, for and on its behalf.

NOTARY PUBLIC FOR OREGON

My commission expires: ________________