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***After recording, return to:***

Kathryn M. Silva  
General Counsel  
ZRZ Realty Company  
3121 SW Moody Avenue  
Portland, OR 97201-4599

## EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made \_\_\_\_\_, 2006, between ZRZ Realty Company (“***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 in Section 10, Township 1 South, Range 1 East of the Willamette Meridian within Multnomah County, Oregon in Multnomah County Tax Map, Tax Lots 200 and 300 (the “***Property***”) the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name Zidell Waterfront, ECSI # 689 in the files of DEQ’s Environmental Cleanup Program at the Northwest Region office located at 2020 SW 4<sup>th</sup> Avenue, Suite 400 Portland, Oregon 97201. Interested parties may contact the DEQ Northwest Region Office to review a detailed description of the residual risks present at the Property and found in the *Final Remedial Investigation and Risk Assessment Report* dated July 11, 2003 and the *Supplemental Remedial investigation Report: Riverbank Characterization* dated October 8, 2004.

B. On June 31, 2005, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property and the adjacent in-water area as set forth in the Record of Decision (ROD) for the Property. Attachment B hereto reflects the approximate boundaries of the Property and adjacent in-water area. The remedial action selected requires, among other things: 1) source control measures to protect the Willamette River from further releases of hazardous substances; 2) excavation and off-site disposal of human health hot spot soils and hazardous materials; 3) excavation and on-site consolidation of ecological-based hot spot soils on the non-greenway portion of the site; 4) on-site or off-site treatment of soils as necessary to remove hazardous waste leaching characteristics prior to off-site disposal of soil

Easement and Equitable Servitudes

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exceeding hot spot concentrations; 5) consolidation of soil removed from the greenway area to the non-greenway area prior to capping; 6) engineering controls involving the installation of an engineered cap; 7) selective dredging of hot spot sediments in the barge launch area; 8) placement of a sediment cap over the impacted sediments in the Sediment Management Area (SMA); 9) performing periodic monitoring of the sediment conditions outside the capping area; and, 10) placement of institutional controls to ensure long-term effectiveness of engineering controls.

C. On \_\_\_\_\_, 2006, Grantor entered into a General Judgment on Stipulation and Consent (*Judgment*) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls. [Include Caption and Civil number –assigned by court.] The Judgment includes several additional obligations related to the implementation of the remedy not fully set forth herein, including obligations related to the in-water area adjacent to the Property.

D. 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.

## 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 “Ecological receptor” has the meaning set forth in OAR 340-122-0115.
- 1.5 “Engineering control” has the meaning set forth in OAR 340-122-0115.
- 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, 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 Exhibit A to this Easement and Equitable Servitudes.

## 2. GENERAL DECLARATION

Grantor, in consideration of Grantee's approval of the Judgment described above, 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 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:** Owner shall not extract groundwater through wells or by other means, or use the groundwater at the Property for consumption or other beneficial use, if the hazardous substance concentrations exceed the acceptable risk level for such use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner shall, however, 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 **Soil Cap Engineering Control Use Restrictions:** Owner shall not conduct operations on the Property or use the Property in any way that will or likely will penetrate the soil cap or jeopardize the soil cap's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or erosion without prior written approval from DEQ. Owner shall maintain the soil cap in accordance with the Post-Construction Cap Inspection and Maintenance Plan and the Soil Management Plan (SMP) as specified in the ROD and approved in writing by DEQ, as well as any amendments to those plans approved in writing by DEQ.

3.3 **Land Use Restrictions:** The following operations and uses are prohibited on the Property: Growing food crops of any type.

3.4 **Use of the Property.** Owner shall not occupy or allow other parties to occupy the Property unless the controls listed in this Paragraph 3 are maintained and reports, including photo-documentation, as applicable, are submitted to DEQ

documenting that the restrictions and prohibitions of this Easement and Equitable Servitudes are intact and continue to protect public health and the environment. The reports shall be submitted annually for the first 10 years after remediation completion, and every five years thereafter.

**3.5 Notice of Transfer.** Owner shall notify DEQ on or before the effective date (generally the closing date) of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Owner may, but is not required to, provide such notice before the effective date of any conveyance, grant, gift, or other transfer. If Owner elects to do so, Owner may assert a claim of confidentiality under the Oregon Public Records Law with respect to documents submitted with its notice. Upon written request by Owner, DEQ will treat documents for which a claim of confidentiality had been made in accordance with ORS 192.410 through 192.505 until the effective date of the conveyance, grant, gift, or other transfer. Owner shall also notify DEQ at least 10 days 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 shall not commence any development inconsistent with the conditions or restrictions in this Paragraph 3 without prior written approval from DEQ as provided in Paragraph 3.2 or removal of the condition or restriction as provided in Paragraph 5.1 below.

**3.6 Zoning Changes.** Owner shall notify DEQ no less than thirty (30) days before petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Multnomah County zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the Property is Central Commercial Use (CXdg). The CX zone is intended to provide for commercial development within Portland's most urban and intensely developed areas.

#### **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, 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. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes shall be recited in any deed conveying the Property or any portion of the Property, and shall run 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 in order to protect human health or the environment.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined above, shall be 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.

5.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitudes, DEQ, in addition to the remedies described above, may enforce this Easement and Equitable Servitudes as provided in the Consent Judgment, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

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



**GRANTEE:** State of Oregon, Department of Environmental Quality

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dick Pedersen, Administrator, Northwest Region

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument is acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006, by Dick Pedersen, Administrator of the Oregon Department of Environmental Quality, Northwest Region, on its behalf.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My commission expires:\_\_\_\_\_

## **ATTACHMENT A**

### **Legal Description of the Property**

Section 10, Township 1 South, Range 1 East of the Willamette Meridian within Multnomah County, Oregon in Multnomah County Tax Map, Tax Lots 200 and 300.

ATTACHMENT B

Site Boundary Figure