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After recording, return to:

Grantee

Oregon DEQ, Salem Office
750 Front Street, Suite 120
Salem, Oregon 97301
Attn: Jim Glass

Grantor

Brad Shaver & Marilyn Kosel
PO Box 1243
McMinnville, OR 97128

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made May 30, 2012, between the Bradley D. Shaver and Marilyn F. Kosel (“Grantor”) and the Oregon Department of Environmental Quality (“DEQ” or “Grantee”).

RECITALS

A. The Grantor is the owner of certain real properties located at 130 W. Second Street in Yamhill, Oregon, Yamhill County Map Number R3404BD and lot number 3400 (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 in association with the file names Senz Automotive Service, USTC #36-88-4062 and Yamhill Station USTC #36-06-2111, 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 the May 30, 2012, 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 Servitude 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 the May 30, 2012, 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. 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.

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

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 Exhibits A and B to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's issuance of a 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 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: Owner shall not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use with the exception of temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner shall handle, store and manage any groundwater that is extracted according to applicable laws.

3.2 Land Use Restrictions: The following operations and uses are prohibited on the Property: Ground floor urban residential/residential uses of any type.

3.3 Use of the Property. Owner shall not occupy or allow other parties to occupy the Property for *urban residential/residential* purposes unless the controls listed in this Paragraph 3 are maintained. Prior to any additional development or re-development of the Property that might encounter soil or groundwater, Owner must submit professionally prepared plans for the proposed development to DEQ for review (UST/WREC¹ or its successor). Any such plans must consider the May 30, 2012, Conceptual Site Model and the site-specific Contaminated Media Management Plan for any contaminated soil or groundwater that may be encountered.

3.4 Engineering Control Use Restrictions: Except upon prior written approval from DEQ, Owner shall not conduct operations on the Property or use the Property in any way that will or likely will damage or reduce the functionality of the passive vapor extraction system or jeopardize the passive vapor extraction system's protective function as an engineering control that prevents exposure to petroleum vapors.

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

3.5 **Maintenance of cap.** Except upon prior written approval from DEQ, no operations or uses shall be made on or of the Property that will or likely will penetrate the surface cover or jeopardize the cover's functional integrity, including without limitation any excavation, drilling, scraping, or erosion. The Owner of the Property shall maintain the surface cover and any other permanent feature of the remedy.

3.6 **Notice of Transfer.** Owner shall notify DEQ at least ten (10) days before 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, or 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 3.3 or removal of the condition or restriction as provided in Paragraph 5.1 below.

3.7 **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 Yamhill, Yamhill County zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the property is General Commercial (C-3).

3.8 **Cost Recovery.** Owner shall pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this Easement and Equitable Servitudes. This Easement and Equitable Servitudes shall constitute the binding agreement by the Owner and DEQ 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 Easement and Equitable Servitudes 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.

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 in Paragraph 1.7 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 in Paragraph 4 above, may enforce this Easement and Equitable Servitudes and may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

6. RELEASE OF RESTRICTIONS

6.1 Owner may petition the DEQ for release of any or all of the conditions or restrictions contained in this Easement and Equitable Servitudes by submitting such petition to the DEQ in writing with evidence that the circumstances on the Property intended to be addressed in such condition or restriction no longer exists, or has been remediated to a condition no longer subject to the DEQ's regulations or jurisdiction, or that no unacceptable risk to human health or the environment continues to exist on the Property. The decision to release any or all of the conditions or restrictions in this Easement and Equitable Servitudes shall be within the sole discretion of DEQ.

6.2 Upon a determination pursuant to paragraph 5.1 above, DEQ shall, as appropriate, execute and deliver to Owner of the Property a release of specific conditions or restrictions, or a release of this Easement and Equitable Servitudes in its entirety.

EXHIBIT A
AFFECTED SUBJECT PROPERTY DESCRIPTION

Address: 130 W. Second Street in Yamhill, Oregon,

Parcel Number: Yamhill County Map Number R3404BD and lot number 3400

Public Land Survey: Map places the site NW ¼ of the SE ¼ Section 4, Township 3 South, Range 4 West.

Legal Property Description

PARCEL 1:

COMMENCING 35½ feet North of the Southeast corner of Lot 4, Block 3, according to the Original Town survey of the TOWN OF NORTH YAMHILL, in Yamhill County, Oregon, running thence West 100 feet; thence South 35½ feet; thence West 62 feet, thence North 57½ feet; thence East 162 feet; thence South 22 feet to the point of beginning.

EXCEPTING THEREFROM the following described tract of land:

COMMENCING 35½ feet North of the Southeast corner of Lot 4, Block 3, according to the Original Town survey of the TOWN OF NORTH YAMHILL, in Yamhill County, Oregon; thence running West 90 feet; thence North 22 feet; thence East 90 feet; thence South 22 feet to the point of beginning.

ALSO EXCEPTING THEREFROM the following described tract of land:

A tract of land in Block 3, TOWN OF NORTH YAMHILL, being more particularly described as follows:

Beginning at the Southwest corner of that tract of land described in deed from Smith to Montgomery and recorded November 4, 1993, in Film Volume 297, Page 378, Yamhill County Deed and Mortgage Records, said Southwest corner being on the North margin of 2nd street and 100.00 feet West of the Southeast corner of said Block 3; thence North 00°00'08" West 35.50 feet to the Northwest corner of said Montgomery tract; thence South 89°59'58" East 3.85 feet along the North line of said tract to the TRUE POINT OF BEGINNING; thence North 00°00'08" West 22.00 feet to the North line of that tract of land described in deed to Fern Temple No. 46, Pythian Sisters and recorded in Volume 12, Page 354, Deed Records; thence South 89°59'58" East 6.15 feet to the Northeast corner of said tract; thence South 00°00'08" East 22.00 feet along the East line of said tract to the North line of said Montgomery tract; thence North 89°59'58" West 6.15 feet to the point of beginning.

PARCEL 2:

A tract of land in Block 3, TOWN OF NORTH YAMHILL, being more particularly described as follows:

Beginning at the Southwest corner of that tract of land described in deed from Smith to Montgomery and recorded November 4, 1993, in Film Volume 297, Page 378, Yamhill County Deed and Mortgage Records, said Southwest corner being on the North margin of 2nd Street and 100.00 feet West of the Southeast corner of said Block 3; thence North 00°00'08" West 35.50 feet to the Northwest corner of said Montgomery tract; thence South 89°59'58" East 3.85 feet along the North line of said tract; thence South 00°00'08" East 35.50 feet to the North margin of 2nd Street; thence North 89°59'58" West 3.85 feet to the point of beginning.

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

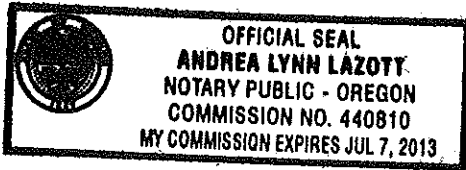
IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

GRANTOR: Bradley D. Shaver and Marilyn F. Kosel

By: *Bradley D. Shaver* Date: 9/14/12
Bradley D. Shaver, Property Owner

STATE OF OREGON)
County of Marion)

The foregoing instrument is acknowledged before me this 14th day of September, 2012, by Bradley D. Shaver, Property Owner

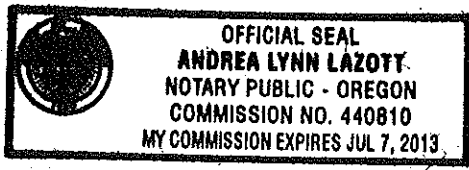


Andrea Lynn Lazott
NOTARY PUBLIC FOR OREGON
My commission expires: July 7, 2013

By: *Marilyn F. Kosel* Date: 9.14.12
Marilyn F. Kosel, Property Owner

STATE OF OREGON)
County of Marion)

The foregoing instrument is acknowledged before me this 14th day of September, 2012, by Marilyn F. Kosel.



Andrea Lynn Lazott
NOTARY PUBLIC FOR OREGON
My commission expires: July 7, 2013

GRANTEE: State of Oregon, Department of Environmental Quality

By: Paul S. Rosenberg Date: 9/13/12
Paul S. Rosenberg, State of Oregon, Department of Environmental Quality,
Western Region Environmental Cleanup Program, Manager

STATE OF OREGON)
County of Marion)

The foregoing instrument is acknowledged before me this 13 day of September, 2012,
by Paul S. Rosenberg, of Oregon DEQ, for and on its behalf.

Andrea Lynn Lazott
NOTARY PUBLIC FOR OREGON
My commission expires: July 7, 2013

