

OFFICIAL YAMHILL COUNTY RECORDS
REBEKAH STERN DOLL, COUNTY CLERK

2012-00916



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After recording, return to:

Grantee

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

GRANTOR

YAMHILL FIRE PROTECTION DISTRICT
PO BOX 249
YAMHILL, OR 97148

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made November 17, 2011, between the Yamhill Fire Protection District ("Grantor") and the Oregon Department of Environmental Quality ("DEQ" or "Grantee"). *

RECITALS

A. The Grantor is the owner of certain real property located at 195 W. 1st Street in Yamhill, Oregon, Yamhill County Map Number R3404BD and lot number 2800, (the "Property"). The legal descriptions of the Property are 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. Environmental investigations were performed at the Property. Those investigations revealed groundwater contamination at the Property that exceeds levels considered safe for human consumption. DEQ has concluded that it is likely the petroleum contamination at the Property originated from releases of petroleum from the former storage and dispensing of motor fuels at the former Senz Automotive Service and former Yamhill Station.

C. On November 17, 2011, DEQ entered into this agreement under which the Grantor has agreed to implement the institutional controls set forth within this Easement.

D. The provisions of this Easement and Equitable Servitudes are intended to further the implementation of the purpose of the selected action by recording the institutional controls required by DEQ to insure that current and future use of the Property protects human health and the environment from the contaminated soil and the groundwater that remains beneath the Property.

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

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 "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.

1.3 "Property" means the real property located at 185 W 1st Street in Yamhill, Oregon, Yamhill County Map Number R3404BD and lot number 2801 as described in Exhibit A to this Easement and Equitable Servitudes.

1.4 "Residential" means single family housing and urban residential housing, including condominiums and apartments. 'Residential' does not include overnight stays for any purpose of less than seven (7) consecutive nights.

2. GENERAL DECLARATION

Grantor 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 through wells or by other means or use the groundwater in either the shallow or deep aquifers at the Property for any purpose. This prohibition shall not apply to extraction of groundwater associated with temporary de-watering activities related to construction or development of the Property, or to the installation of sewer or utilities at the Property.

3.2 **Use of the Property.** Owner shall not occupy or allow other parties to occupy the Property for residential purposes. The Owner shall conduct any additional development or re-development of the Property that might encounter contaminated soil or groundwater, in accordance with the project contaminated media management plan (CMMP).

3.3 **Notice of Transfer.** In order to provide DEQ an opportunity to update its records, 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. This provision does not apply to the grant or conveyance of a security interest in the Subject Property

3.4 **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 the City of Yamhill, Yamhill County zoning code or any successor code to a zone allowing any residential use. As of the date of this Easement and Equitable Servitudes, the base zone of the property is General Commercial (C-3).

4. EASEMENT (RIGHT OF ENTRY)

4.1 During reasonable hours and subject to reasonable security requirements, upon reasonable notice 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.

4.2 DEQ's rights and obligations under Section 4.1, above, are further defined by and subject to all limitations and obligations as established in the Access Agreement between DEQ and Grantor, executed on November 3, 2011, attached hereto and incorporated herein by this reference, as Exhibit C. If the Access Agreement, itself, is terminated, its terms, as applied to DEQ's right of entry established in Section 4.1, above, continue in full force and effect for the term of this Easement and Equitable Servitudes.

5. RELEASE OF RESTRICTIONS

5.1 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.

5.2 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.

5.3 Any release of this Easement and Equitable Servitudes may be made either with respect to the entire Property, or at Owner's option, with respect to any portion of the Property that is designated as a separate legal/tax lot.

6. GENERAL PROVISIONS

6.1 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 any 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.

6.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined in Paragraph 1.2 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 acquired an interest in the Property.

6.3 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 seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

By the notarized signature below, the State of Oregon accepts the conveyance of this Easement and Equitable Servitudes pursuant to ORS 93.808.

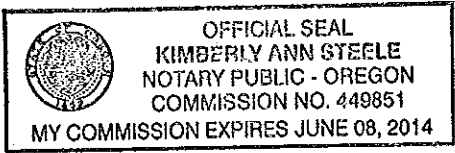
IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

GRANTOR:
Yamhill Fire Protection District

By: James K. Phillips Date: 12-15-11
James Phillips, President
Board of Directors

STATE OF OREGON)
County of Yamhill) ss.

The foregoing instrument is acknowledged before me this 15th day of December, 2011, by James Phillips, President of the Board of Directors for Yamhill Fire Protection District.



Kimberly Ann Steele
NOTARY PUBLIC FOR OREGON
My commission expires: June 8, 2014

GRANTEE:
Oregon Department of Environmental Quality

By: Paul S. Rosenberg Date: 1-3-12
Paul S. Rosenberg, State of Oregon, Department of
Environmental Quality, Western Region Environmental
Cleanup Program, Manager

STATE OF OREGON)
County of Marion) ss.

The foregoing instrument is acknowledged before me this 3rd day of January, 2011, 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

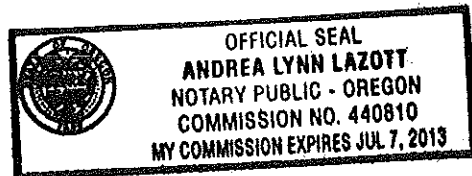


EXHIBIT A

AFFECTED SUBJECT PROPERTY DESCRIPTION

Address: 195 W. 1st Street in Yamhill, Oregon, Yamhill County Map Number R3404BD and lot number 2800.

Parcel Number: Yamhill County Map Tax Lot Number 03-04-04-BD-2800

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

Legal Property Description

Lot 2, Block 3, NORTH YAMHILL, in the City of Yamhill, County of Yamhill, State of Oregon. SAVING AND EXCEPTING therefrom the West 100 feet thereof. TOGETHER WITH an easement for sewer line and waterline as created by instrument recorded June 8, 1992 in Film Volume 287, Page 2313, Deed and Mortgage Records of Yamhill County.

EXHIBIT B

AFFECTED SUBJECT PROPERTY TAX LOT MAP

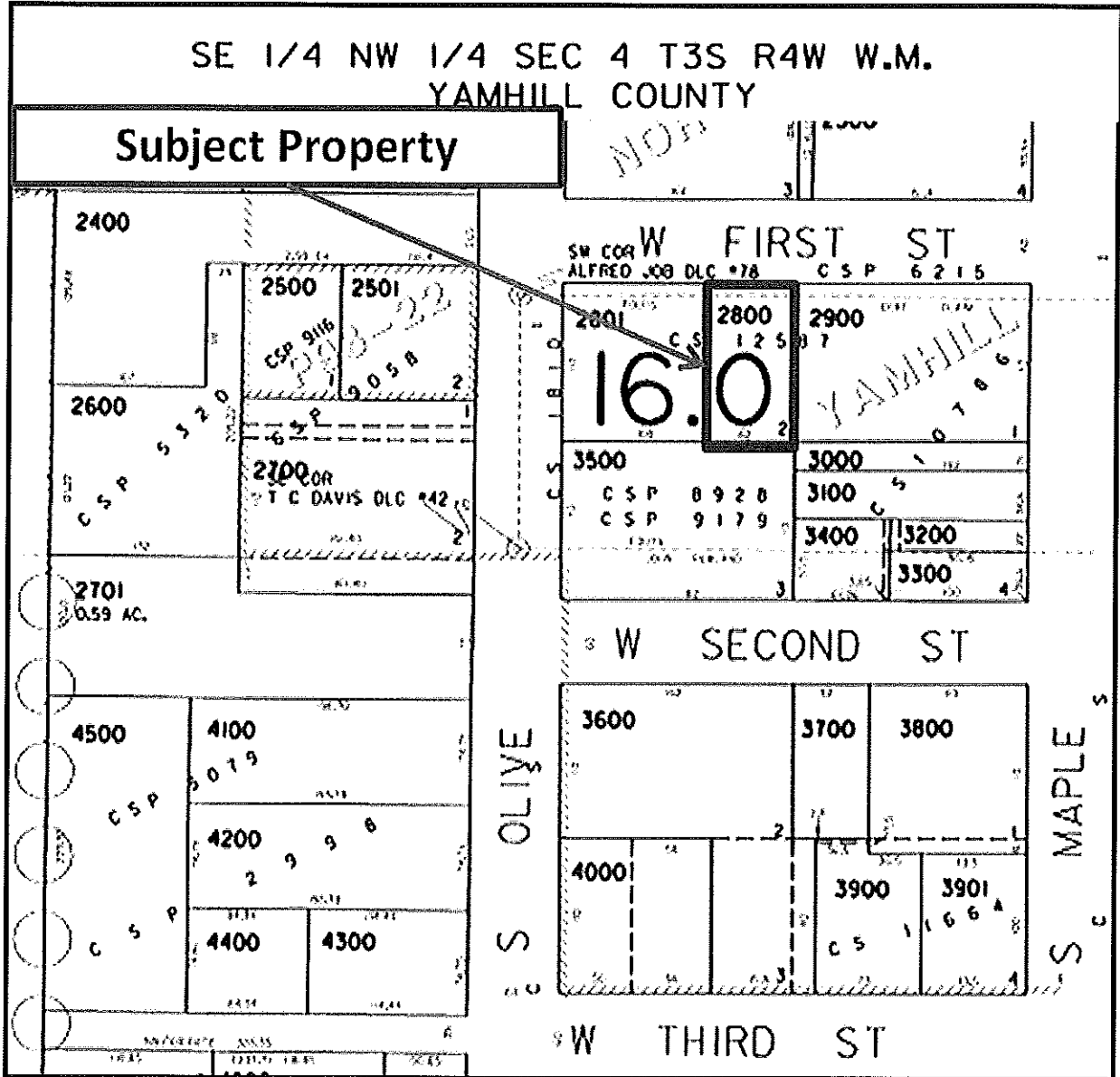


EXHIBIT C

ACCESS AGREEMENT

BETWEEN THE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

YAMHILL FIRE PROTECTION DISTRICT

1. (Property Owner or Owner/Operator), (herein after referred to as Owner) hereby gives consent to the Department of Environmental Quality (DEQ) and its employees, officers, agents, contractors, and authorized representatives to enter the property located at 195 W. 1st Street in Yamhill, Oregon, Yamhill County Map Number R3404BD and lot number 2800, ("the Property") to conduct actions authorized by ORS 465.200 to 465.455, in accordance with the terms of this Agreement.
2. This access and right-of-way is granted to enable DEQ to undertake remedial action or removal activities as those terms are defined in ORS 465.200. Specifically, these actions may include inspecting the Property to determine the location, number and type of UST systems, accessing the UST system to determine the amount of any product remaining in the UST system, emptying and rinsing the UST system, decommissioning the UST system in place or by removal, constructing soil borings and temporary groundwater monitoring wells on the Property, sampling and inspecting soils and groundwater on or under the Property, and photographing or otherwise documenting activities and site conditions, herein after referred to as the "Work".
3. All tools, equipment, improvements and other property taken upon or placed upon the Property by or at the direction of DEQ shall remain the property of DEQ, its employees, agents, authorized representative(s) or contractors.
4. DEQ shall properly abandon any soil borings immediately after collecting soil and/or groundwater samples. When DEQ determines that continued access to the Property is not necessary, or upon expiration or termination of this Agreement, DEQ, or its employees, agents, authorized representative(s) or contractors, shall properly abandon any well(s) in accordance with applicable regulations, shall remove all tools and equipment, soil, groundwater and other waste of any kind generated on, at or under the Property and shall restore the surface condition of areas disturbed by DEQ's activities, to the maximum extent reasonably possible, to a condition

equivalent to the condition existing prior to commencement of the Work (collectively, the "Restoration").

5. DEQ shall take all steps reasonably necessary (including, but not limited to performance of Work and Restoration during non-peak business hours with respect to business activities on the Property) to prevent injury resulting from the Work and Restoration to persons or property and to allow the full utilization of the Property by the Permittee during the performance of the Work and Restoration.

6. The license granted herein shall be non-exclusive, and Owner retains for itself and its successors, assigns, lessees, franchisees, licensees, and invitees the right to continue to use the Property for all lawful purposes so long as such use does not unreasonably interfere with the use of the Property by DEQ for the purposes set forth herein.

7. Owner reserves the right, at its own expense, to have its consultant, agents, authorized representative(s) or contractors (herein referred to as "consultant") observe the Work, Restoration, or other activities performed by DEQ on the Property, provided that in no event shall such observation be deemed an approval by Owner or its consultant of (or waiver of any such rights of Owner in connection with) any such activities conducted by DEQ. Any consultant on the site must have health and safety training consistent with the requirements of the health and safety plan for this site. Before any consultant will be allowed access during the Work, Restoration, or other activities performed by DEQ on the Property, written notification, Owner approval, and acknowledgment that DEQ is in no way liable or responsible for the consultant's health and safety must be provided to the DEQ at least 48 hours before commencement of any Work activities on the Property and in accordance with Section 12 of the agreement.

8. The Owner may, at the Owner's own expense and in accordance with section 7, obtain "split samples" of any samples taken on the Property.

9. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon shall hold harmless and indemnify Owner from and against any and all claims arising from acts or omissions related to the Work or Restoration of the State of Oregon or its commissions, agencies, officers, employees, contractors, agents or authorized representatives. This indemnity does not extend to liability for any claim to the extent caused by negligent acts or omissions of Owner, or its officers, employees, agents, contractors, successors or assigns, any third party, or attributable to contamination already existing at or under the Property. Owner shall not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Agreement.

10. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns.

11. At least 48 hours before commencement of any Work activities on the Property, DEQ shall notify Owner in writing, or verbally (with written confirmation within five business days after a verbal notification) of the intended activities.

12. All notices requests, and other communications hereunder shall be in writing (except in emergency situations, which may be telephoned to the Representative as designated herein and then followed in writing) and shall be deemed to have been duly given if delivered by hand, or sent by telex or telecopy (fax), or sent by United States mail, first class, registered or certified, return receipt requested with proper postage prepaid, in each case addressed as follows:

IF TO THE OWNER:

Yamhill Fire Protection District
PO Box 249
Yamhill, Oregon 97148

District Representative
Brian Jensen
Fire Chief
Cell: (503)
Station: (503) 662-4653
Fax: (503) 662-3749
E-Mail brian@yamhillfire.org


IF TO DEQ:

Jim Glass
Oregon Department of Environmental Quality
750 Front St NE, Suite 120
Salem, OR 97301
Fax No. (503) 373-7944
Office: 503.378.5044

13. The term of this Agreement is three (3) years from the date of the last signature below.

Signatures:

YAMHILL FIRE PROTECTION DISTRICT


James K. Phillips, President of Board of Directors

Date: 12-15-11

DEPARTMENT OF ENVIRONMENTAL QUALITY


Paul S. Rosenberg, Manager, Western Region Environmental Cleanup, DEQ

Date: 1-3-12