



Oregon

Tina Kotek, Governor

Department of Environmental Quality

Western Region Eugene Office

165 East 7th Avenue, Suite 100

Eugene, OR 97401

(541) 686-7838

FAX (541) 686-7551

TTY 711

September 25, 2023

Frank Foti
Carlton Hub LLC
15990 NW Red Shot Ln
Carlton, OR 97111

**Re: Easement and Equitable Servitudes Document (Revised), Request to Record
LUST #36-90-4088 McMinnville Water & Light**

Dear Mr. Frank Foti,

Enclosed is the signed and notarized Easement and Equitable Servitudes (EES) document for Tax Map R4421BD Tax Lots 2400 and 2601, located at 455 NE Irvine Street, McMinnville, Oregon 97128 in Yamhill County, Oregon.

At your earliest convenience, please sign and record the document with Yamhill County. Once the EES is recorded, please make a copy for yourself, and forward the original document to the address below:

Oregon Department of Environmental Quality
Attention: Ellen Woods
165 East 7th Avenue, Ste 100
Eugene, OR 97401-3049

Please contact Ellen Woods by phone at 541-606-0490 or e-mail ellen.woods@deq.oregon.gov if you have questions regarding this or any other matter related to the project.

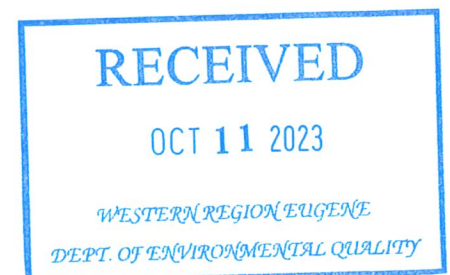
Thank you for your efforts in complying with Oregon's environmental regulations that are structured to achieve our mission to be a leader in restoring, maintaining, and enhancing the quality of Oregon's air, land, and water.

Sincerely,

Peter Donahower, Manager
Petroleum Cleanup Section

Encl: Equitable Easement and Servitudes document

EC: ORMS LUST36-90-4088





Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon Department of Environmental Quality
Attention: Ellen Woods
165 East 7th Avenue, Suite #100
Eugene, OR 97401-3049

Grantor

Carlton Hub LLC
455 NE Irvine Street
McMinnville, OR 97128

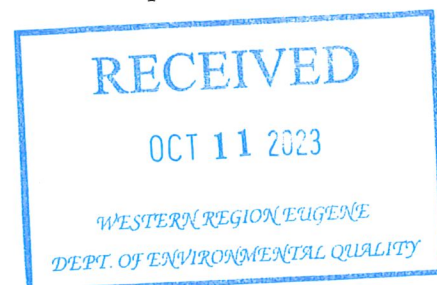
EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on October 3, 2023 between Carlton Hub LLC ("**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 at 455 NE Irvine Street, McMinnville, Oregon 97128 in Yamhill County, Oregon in Yamhill County Tax Map R4421BD, Tax Lots 2400 and 2601 (the "**Property**") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name McMinnville Water & Light, LUST No. 36-90-4088 in the files of DEQ's Leaking Underground Storage Tanks Program at Western Region office located at 4026 Fairview Industrial Dr SE, Salem, Oregon 97302 and telephone 503-378-8240. Interested parties may contact the Western Region office to review a detailed description of the risks from contamination remaining at the Property and described in the *Site Characterization and Risk-Based Closure Report* dated August 26, 2022, prepared by Hahn and Associates, Inc., and the DEQ Staff Memo Report dated May 8, 2023.

B. On May 8, 2023, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Staff Memo Report for the Property. The remedial action selected requires, among other things: restricting residential use of the Property described in Exhibit B to prevent unacceptable exposure to residual contamination; restricting use of the shallow groundwater aquifer for beneficial uses; preparing a Contaminated Media Management Plan (CMMP) for any additional development or redevelopment of the Property.



C. On December 28, 2022, Grantor entered into an Agreement with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

D. This EES 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 Servitude constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitude.

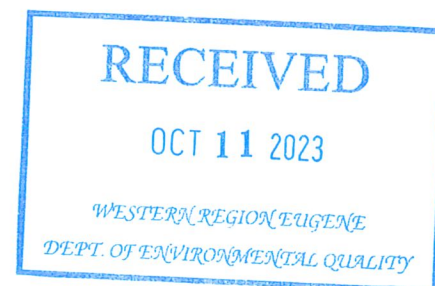
1. DEFINITIONS

- 1.1 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.2 "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.
- 1.3 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.4 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.5 "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, 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.
- 1.6 "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 No Further Action letter with conditions, 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 (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1. **Land Use Restrictions.** Residential use of Tax Lot 2400 is prohibited on the Property. Tax Lot 2400 of the Property must remain zoned commercial.

3.2. **Groundwater Use Restrictions.** Owner may not extract through wells or by other means or use the shallow groundwater at Tax Lot 2400 of the Property for consumption or other beneficial 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 must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage wastewater according to applicable laws.

3.3. **Site Development and Contaminated Media Management Plan (CMMP).** Subsurface activity at the Property is not permitted without the implementation of the *Contaminated Media Management Plan*, dated April 23, 2023. Property Owner must ensure that all designers, developers, construction personnel and excavation personnel are provided a copy of and adhere to the CMMP. The CMMP provides appropriate measures to be taken during subsurface activities that will reduce or eliminate exposure to residual contamination at the property. The CMMP will be followed during any subsurface activities. A copy of the CMMP is available on the DEQ Leaking Underground Storage Tank Database website for LUST No. 36-90-4088, located at the following URL:
<https://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp>

3.4. **Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

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.

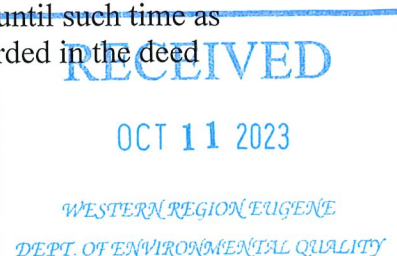
6. GENERAL PROVISIONS

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 EES 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 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 Yamhill County zoning code or any successor code. As of the date of this EES, the base zone of the Property is C-3 General Commercial Zone.

6.3. **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner 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 EES 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.

6.4. **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.

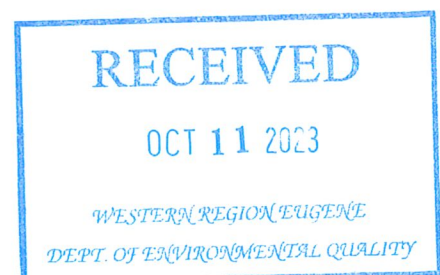


records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.5. **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.

6.6. **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 or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

6.7. 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.

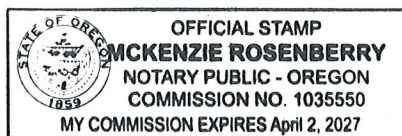
GRANTOR: Carlton Hub LLC

By: [Signature]
Frank Foti, Manager of Carlton Hub LLC

Date: 10/3/23

STATE OF OREGON)
) ss.
County of Yamhill)

The foregoing instrument is acknowledged before me this 3 day of October, 2023, by Frank Foti, Manager of Carlton Hub LLC, on its behalf.



[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: April 2, 2027

GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature]
Peter Donahower, Petroleum Cleanup Section Manager

Date: Sept. 25, 2023

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this 25th day of September, 2023, Peter Donahower of the Oregon Department of Environmental Quality, on its behalf.



[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: Feb 9, 2025

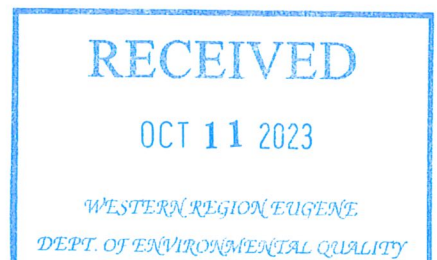
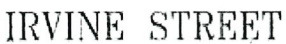


EXHIBIT A

OCT 11 2023

1475 500 TAYLOR BLVD., WILM. MARKET
WILMINGTON, MD. 25302, U.S.A.
TEL. (410) 379-9779, TELEX 1686
RIFORD OF WILM.



4TH STREET

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Record of Survey for :

each

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