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*Space above this line for Recorder's use.*

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

**Grantee**

Oregon DEQ  
Northwest Region  
700 NE Multnomah St., Suite 600  
Portland, OR 97232  
Attention: Kevin Dana

**Grantor**

St. Helens Assets, LLC  
c/o Brooks M. Foster  
Chenoweth Law Group, PC  
510 SW 5<sup>th</sup> Ave., 4<sup>th</sup> Floor  
Portland, OR 97204

**EASEMENT AND EQUITABLE SERVITUDES**

This grant of Easement and acceptance of Equitable Servitudes (“EES”) is made on [Date], 2024 between St. Helens Assets, 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 whose legal description is "Tract F, Elk Ridge Estates, Phase 6," located north of the intersection of Hankey Road and Barrick Lane in the City of St. Helens, Columbia County, Oregon, and shown on Columbia County Tax Map 50132DB (the “**Property**”). The location of the Property is more particularly described in Exhibit A to this EES and depicted in Exhibit B to this EES. A surveyed, engineered cap is present atop a solid waste disposal cell within the Property. The location of the cap is more particularly described in Exhibit C to this EES and depicted in Exhibit D to this EES.

B. Information on the Property is referenced under the name Elk Ridge Estates Development, ECSI #4857 in the files of DEQ’s Northwest Region office located at 700 NE Multnomah Street, Suite 600, Portland, Oregon, and telephone 503-229-5696. Interested parties may contact the Northwest Region office to review a detailed description of the remedial action conducted at the Property and described in the Remedial Design/Remedial Action Implementation Report prepared by EVREN Northwest on April 3, 2023.

C. On June 29, 2020, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Record of Decision (ROD) for the Property. The remedial action selected required, among other things, capping the disposal cell with three feet of clean soils and recording institutional controls requiring long-term monitoring and maintenance of the disposal cell cap.

D. On November 24, 2021, EVREN Northwest submitted a “Remedial Design/ Remedial Action Work Plan” to DEQ on behalf of Grantor, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

E. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

F. Nothing in this EES constitutes an admission by Grantor of any liability for the contamination described in the EES.

## 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 “Ecological receptor” has the meaning set forth in OAR 340-122-0115.

1.3 “Engineering control” 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. **Soil Cap Engineering Control.** Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate the soil cap at the Property 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 uncontrolled erosion. Owner will maintain the soil cap in accordance with the "Soil Cap Management Plan" prepared by EVREN Northwest on April 6, 2023 and approved in writing by DEQ on May 18, 2023.

3.2 **Land Use Restrictions.** The following operations and uses are prohibited on the Property: Enclosed structures of any type.

3.3 **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 City of St. Helens zoning code or any successor code. As of the date of this EES, the base zone of the Property is Moderate Residential (R7).

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. **Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES. In addition, Owner will maintain records documenting inspection and reporting as outlined in the DEQ approved "Soil Cap Management Plan" prepared by EVREN Northwest on April 6, 2023. Owner will submit inspector records to DEQ within 30 days of receipt of a notice letter from DEQ of its periodic review of compliance with this EES. Reports provided to DEQ in response to this notification must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include a photographic log that supports the report's narrative.

6.5. **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.

6.6. **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.

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

6.8. 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:** St. Helens Assets, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Zoller, Member

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

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Mark Zoller of St. Helens Assets, LLC, on its behalf.

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

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kevin Parrett, Cleanup Program Manager, Northwest Region

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

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ Kevin Parrett of the Oregon Department of Environmental Quality, on its behalf.

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

**EXHIBIT A**

**Legal Description of the Property**

**Tract F (aka Revised Tract F), Elk Ridge Estates, Phase 6**

A TRACT OF LAND LOCATED IN SECTION 32, TOWNSHIP 5 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, COLUMBIA COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF TRACT "F", "ELK RIDGE ESTATES, PHASE 6", PLAT BOOK 8, PAGE 1; THENCE N.09°14'32"E., 294.16 FEET; THENCE N.42°38'53"E., 17.11 FEET; THENCE N.09°14'32"E., 171.16 FEET; THENCE N.80°45'28"W., 109.42 FEET; THENCE S.09°14'32"W., 409.80 FEET TO THE NORTHWEST CORNER OF SAID TRACT "F"; THENCE ALONG THE WESTERLY LINE OF SAID TRACT "F", S.09°14'32"W., 136.93 FEET TO THE NORTHEASTERLY RIGHT-OF-WAY LINE OF VALLEY VIEW DRIVE (50.00 FEET WIDE); THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES, 68.67 FEET ALONG THE ARC OF A 200.00 FOOT RADIUS, NON-TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 19°40'17" (THE CHORD OF WHICH BEARS S.34°21'26"E., 68.33 FEET); THENCE 76.72 FEET ALONG THE ARC OF A 225.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 19°32'07" (THE CHORD OF WHICH BEARS S.34°27'19"E., 76.34 FEET) TO THE SOUTHEAST CORNER OF SAID TRACT "F"; THENCE ALONG THE EAST LINE OF SAID TRACT "F", N.09°14'32"E., 171.67 FEET TO THE POINT-OF-BEGINNING, CONTAINING 61,609 SQUARE FEET (1.41 ACRES) MORE OR LESS.

SAID TRACT ALSO BEING SUBJECT TO A 40' WIDE TEMPORARY ACCESS EASEMENT FROM THE NORTH END OF KESTREL VIEW DRIVE RUNNING NORTHERLY TO THE SOUTHEASTERLY CORNER OF LOT 61 (REVISED) OF "ELK RIDGE ESTATES, PHASE 3", THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF KESTREL VIEW DRIVE, SAID POINT BEING N.32°20'50"E., 30.68 FEET FROM THE MOST NORTHERLY NORTHEAST CORNER OF LOT 60, "ELK RIDGE ESTATES, PHASE 2", PLAT BOOK 7, PAGE 59; THENCE N.33°32'25"W., 125.04 FEET; THENCE 152.48 FEET ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 29°07'18" (THE LONG CHORD BEARS N.48°06'04"W., 150.84 FEET); THENCE N.62°39'43"W., 433.91 FEET; THENCE 274.85 FEET ALONG THE ARC OF A 150.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 104°59'03" (THE LONG CHORD BEARS N.10°10'11"W., 237.98 FEET); THENCE N.42°19'20"E., 445.38 FEET; THENCE N.47°40'40"W., 176.65 FEET TO THE CENTER OF THE CURVE AT THE SOUTHEAST CORNER OF LOT 61, "ELK RIDGE ESTATES, PHASE 3", PLAT BOOK 7, PAGE 59, (REVISED) COLUMBIA COUNTY PLAT RECORDS, AND THE TERMINUS OF SAID 40.00 FOOT WIDE TEMPORARY EASEMENT.

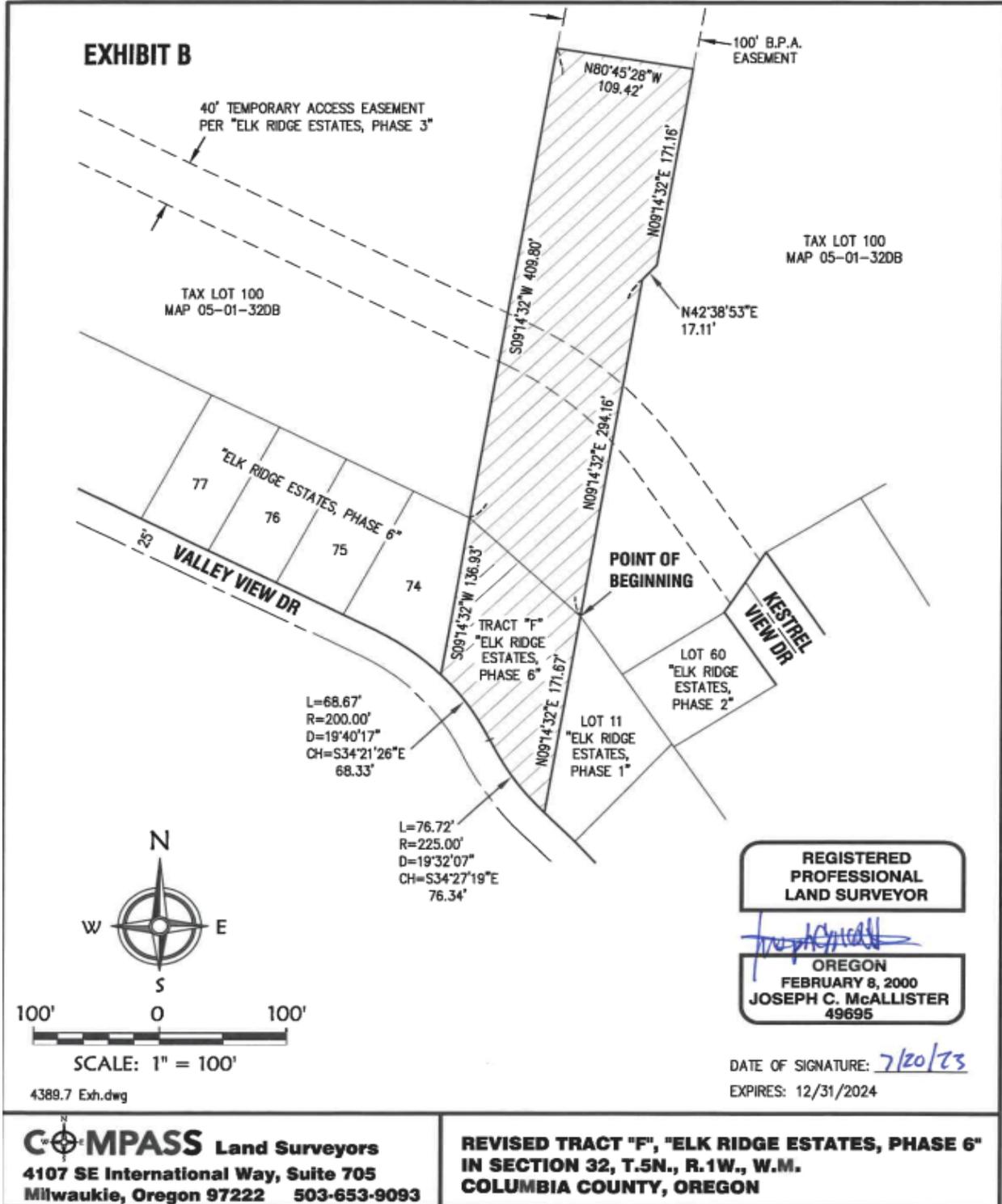
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

  
OREGON  
FEBRUARY 8, 2000  
JOSEPH C. McALLISTER  
49695

DATE OF SIGNATURE: 7/20/23  
EXPIRES: 12/31/2024

# EXHIBIT B

Figure Depicting the Property



**EXHIBIT C**

**Legal Description of Capped Disposal Cell Area**

A TRACT OF LAND LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 32, TOWNSHIP 5 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, COLUMBIA COUNTY OREGON, BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED DOCUMENT NO. 2012-001028, COLUMBIA COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS LAND SURVEYORS" AT THE NORTHEAST CORNER OF TRACT "F", "ELK RIDGE ESTATES, PHASE 6", A PLAT OF RECORD; THENCE ALONG THE NORTH LINE OF SAID TRACT "F" NORTH 43°09'44" WEST, 61.02 FEET TO THE CENTERLINE OF A 100.00 FOOT WIDE TRANSMISSION LINE EASEMENT, DESCRIBED IN DEED BOOK 67, PAGE 161, COLUMBIA COUNTY DEED RECORDS; THENCE ALONG SAID CENTERLINE NORTH 11°55'30" EAST, 195.09 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE NORTH 45°06'55" WEST, 32.37 FEET; THENCE NORTH 17°10'58" WEST, 37.84 FEET; THENCE NORTH 23°58'32" EAST, 39.81 FEET; THENCE NORTH 40°10'43" EAST, 43.35 FEET; THENCE NORTH 34°53'17" EAST, 31.94 FEET; THENCE NORTH 30°45'17" WEST, 50.32 FEET; THENCE NORTH 01°23'47" WEST, 28.29 FEET; THENCE NORTH 59°14'05" EAST, 33.69 FEET; THENCE SOUTH 76°06'56" EAST, 20.16 FEET TO THE AFOREMENTIONED EASEMENT CENTERLINE; THENCE CONTINUING SOUTH 76°06'56" EAST, 18.95 FEET; THENCE SOUTH 67°28'42" EAST, 36.09 FEET; THENCE SOUTH 12°54'53" WEST, 51.49 FEET; THENCE SOUTH 13°01'46" WEST, 54.95 FEET; THENCE SOUTH 12°37'09" WEST, 54.25 FEET; THENCE SOUTH 46°14'14" WEST; 91.92 FEET TO THE TRUE POINT OF BEGINNING.

BASIS OF BEARINGS: OREGON STATE PLANE, NORTH ZONE, NAD 83, EPOCH 2010.00.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
FEBRUARY 8, 2000  
JOSEPH C. McALLISTER  
49695

DATE OF SIGNATURE: 8/4/23  
EXPIRES: 12/31/2024



4107 SE International Way, Suite 705, Milwaukie, Oregon 97222  
Phone: 503.653.9093 Fax: 503.653.9095 Email: compass@compass-landsurveyors.com

# EXHIBIT D

## Figure Depicting Capped Disposal Cell Area

