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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Washington County, Oregon                                                                                                                                                                                                              | <b>2024-037195</b>            |
| D-E                                                                                                                                                                                                                                    |                               |
| Stn=8 J CHOATE                                                                                                                                                                                                                         | <b>08/28/2024 11:15:31 AM</b> |
| \$45.00 \$5.00 \$11.00 \$5.00 \$60.00                                                                                                                                                                                                  | <b>\$126.00</b>               |
| I, Joe Nelson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county. |                               |
| Joe Nelson, Director of Assessment and Taxation, Ex-Officio County Clerk                                                                                                                                                               |                               |

Space above this line for Recorder's use.

**After recording, return to:**

**Grantee**

Oregon DEQ  
700 NE Multnomah St.  
Portland, OR 97232  
Attention: Kevin Dana

**Grantor**

THNC Oregon, LLC  
15231 Laguna Canyon Rd.  
Irvine, CA 92618  
Attention: Fred Gast

**EASEMENT AND EQUITABLE SERVITUDES**

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on August 14, 2024 between THNC Oregon, 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 "Lot 2, plat of River Terrace Town Center", located north of SW Jean Louise Road in the City of Tigard, Washington County, Oregon, and shown on Washington County Tax Map 2S106DD (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 soil 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 River Terrace Town Center Development, ECSI #6283 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 risks from contamination remaining at the Property and described in the *Staff Closure Memorandum* completed by DEQ on March 11, 2024.

C. On September 10, 2018, Polygon WLH, LLC entered into a Letter Agreement ("Agreement") with DEQ as the then-owner of the Property, under which Polygon WLH, LLC agreed to implement the selected remedial action, including the required institutional controls. Polygon WLH, LLC conveyed the Property to Grantor on July 25, 2022.

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 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.

## **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 the 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 Property 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 *Cap Maintenance Plan* prepared by NV5 on May 31, 2024 and approved in writing by DEQ on June 5, 2024.

3.2 **Use of the Property.** Owner may occupy or allow other parties to occupy the Property as long as 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 business 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 business 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 Tigard zoning code or any successor code. As of the date of this EES, the base zone of the Property is Community Commercial (C-C).

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 *Cap Maintenance Plan*. 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 Property 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 Agreement or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

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

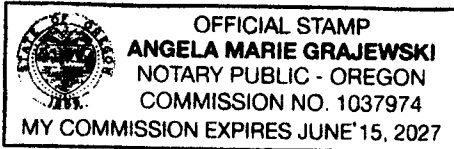
BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

**GRANTOR:** THNC Oregon, LLC

By: [Signature] Date: 08/14/2024  
Fred Gast, President

STATE OF OREGON )  
County of Washington ) ss.

The foregoing instrument is acknowledged before me this 14<sup>th</sup> day of August, 20 24, by Fred Gast, President of THNC Oregon, LLC, on its behalf.



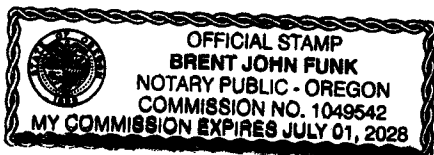
[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: 06/15/2027

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

By: For Kevin Parrett - Peter Donahew Date: 8/14/2024  
Kevin Parrett, Cleanup Program Manager, Northwest Region

STATE OF OREGON )  
County of Multnomah ) ss.

The foregoing instrument is acknowledged before me this 14<sup>th</sup> day of August, 20 24, by Peter Donahew Kevin Parrett of the Oregon Department of Environmental Quality, on its behalf.



[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: 7/1/2028



**EXHIBIT A**

April 26, 2024

**LEGAL DESCRIPTION**  
Property

Job No. 148-005

Lot 2, plat of "River Terrace Town Center", Washington County Plat Records, in the Southeast Quarter of Section 6, Township 2 South, Range 1 West, Willamette Meridian, City of Tigard, Washington County, State of Oregon.

Containing 5.30 acres, more or less.



RENEWS: 6/30/2025

TRACT C

RIVER TERRACE  
TOWN CENTER

TRACT B

LOT 2  
5.30 ACRES

SW ROY ROGERS ROAD  
(COUNTY ROAD NO. 3150)

SW RIVER TERRACE BOULEVARD

SW JEAN LOUISE ROAD



EXHIBIT B  
PROPERTY

DRAWN BY: FAM DATE: 4/26/24  
 REVIEWED BY: TCJ DATE: 4/26/24  
 PROJECT NO.: 148-005  
 SCALE: 1"=100'

PAGE 1 OF 1



12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485



**EXHIBIT C**

April 26, 2024

**LEGAL DESCRIPTION**

Job No. 148-005

Capped Disposal Cell Area

An area within Lot 2, plat of "River Terrace Town Center", Washington County Plat Records, in the Southeast Quarter of Section 6, Township 2 South, Range 1 West, Willamette Meridian, City of Tigard, Washington County, State of Oregon, more particularly described as follows:

COMMENCING at the Northeast corner of said Lot 2;

thence South 40° 23' 23" West, a distance of 136.99 feet to the POINT OF BEGINNING;

thence South 00° 06' 00" West, a distance of 263.46 feet;

thence South 89° 20' 24" West, a distance of 114.05 feet;

thence North 00° 39' 36" West, a distance of 263.44 feet;

thence North 89° 20' 24" East, a distance of 117.54 feet to the POINT OF BEGINNING.

Containing 30,506 square feet, more or less.

Basis of bearings being plat of "River Terrace Town Center", Washington County Plat Records.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

DocuSigned by:

Travis Jansen

33055EFA07B841B...

OREGON

JULY 9, 2002

TRAVIS C. JANSEN  
57751

RENEWS: 6/30/2025



N:\proj\148-005\09 Drawings\06 Survey\Legal\148005.legal\Disposal Cells.dwg - SHEET: Legal Desc (4) Apr. 26, 24 - 12:33 PM fam

SW ROY ROGERS ROAD  
(COUNTY ROAD NO. 3150)

TRACT B

TRACT C

RIVER TERRACE  
TOWN CENTER

LOT 2

POINT OF  
COMMENCEMENT

POINT OF  
BEGINNING

N89°20'24"E  
117.54'

S40°23'23"W  
136.99'

N00°39'36"W 263.44'

S00°06'00"W 263.46'

S89°20'24"W  
114.05'

SW RIVER TERRACE BOULEVARD

SW JEAN LOUISE ROAD



EXHIBIT D  
CAPPED DISPOSAL CELL AREA

DRAWN BY: FAM DATE: 4/26/24  
 REVIEWED BY: TCJ DATE: 4/26/24  
 PROJECT NO.: 148-005  
 SCALE: 1"=100'  
 PAGE 1 OF 1



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