



Oregon

Tina Kotek, Governor

Department of Environmental Quality

Western Region Salem Office
4026 Fairview Industrial Dr SE
Salem, OR 97302
(503) 378-8240
FAX (503) 373-7944
TTY 711

November 14, 2024

James Parr
Chief Financial Officer
Salem Health
890 Oak Street SE
Salem, OR 97309

Re: **Easement and Equitable Servitudes, Request to Sign and Record**
Mid-Valley Motors, LUST #24-11-1116

Dear James Parr:

Enclosed is the Easement and Equitable Servitudes (EES), signed and notarized by DEQ, pertaining to the conditional No Further Action for the Mid-Valley Motors LUST site #24-11-1116. The site is located at 795 12th Street SE, Salem, Oregon 97302, Marion County Tax Map 073W27DA, Tax Lot 05200.

At your earliest convenience, please add your notary signature to page 5 of the EES and have it recorded with the Marion County Clerk's Office. Please make sure to include the Contaminated Media Management Plan, Exhibit B of the EES, when recording the document. Once the entire EES has been recorded, please make a copy for yourself and *forward the entire original public record* to Nancy Sawka at the address below for our file and reference in the pending conditional No Further Action letter:

Attention: Nancy Sawka, Project Manager
Oregon Department of Environmental Quality
4026 Fairview Industrial Dr. SE
Salem, OR 97302

Thank you for your efforts on this project and in complying with Oregon's environmental regulations. Please contact Nancy Sawka by phone at 503-378-5075 or e-mail at nancy.sawka@deq.oregon.gov if you have any questions.

Sincerely,

Brad Shultz, Manager
Western Region Cleanup and Emergency Response

Encl: Equitable Easement and Servitudes with Contaminated Media Management Plan

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
4026 Fairview Industrial Dr. So.
Salem, OR 97302
Attention: Nancy Sawka

Grantor

Salem Health
890 Oak St. SE
Salem, OR 97309
Attention: James Parr

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes (“EES”) is made on November 14th, 2024 between Salem Health (“***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 795 12th Street SE, Salem, Oregon 97302, Marion County Tax Map 073W27DA, Tax Lot 05200 (the “***Property***”) the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name Mid-Valley Motors, USTC File No. 24-11-1116 in the files of DEQ’s Underground Storage Tank Cleanup Program at the Western Region office located at 4026 Fairview Industrial Drive SE, Salem, Oregon and telephone 503-378-8240. Records received after May 2023 are kept electronically at <https://ordeq.org/LUST24-11-1116>, Your DEQ Online (YDO). Interested parties may contact the Western Region Salem office or link to the YDO URL address above to review a detailed description of the risks from contamination remaining at the Property and described in the April 2022, *Independent Cleanup Pathway Final Report* and the October 24, 2023, *Soil Gas Sampling Assessment* prepared by PBS Engineering and Environmental for Salem Health.

B. On August 28, 2024, the Director of the Oregon Department of Environmental Quality or delegate approved a conditional No Further Action as recommended in the August 2024 DEQ *Staff Memorandum in Support of a Conditional No Further Action Determination*. Contamination remaining at the site exceeds DEQ’s acceptable risk levels for residential uses. The conditions of the No Further Action require implementation of the restrictions in Section 3 of this EES on property use, groundwater use and compliance with the November 2023 Contaminated Media Management Plan prepared by PBS.

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

D. 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 "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 "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 conditional 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 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. **Groundwater Restrictions.** Groundwater extraction and use for consumption or other beneficial uses is prohibited on the Property. Groundwater extracted for temporary dewatering activities related to construction, development or utility installation is allowed, but groundwater extracted in this way must be handled, stored, characterized and managed in accordance with applicable laws.

3.2. **Land Use Restrictions.** Residential use including single and multi-family dwellings, daycares, schools, nursing homes, assisted living facilities and similar uses are prohibited on the Property without vapor mitigation controls or further investigation of vapor intrusion and prior written approval from DEQ.

3.3 **Contaminated Media Management Plan.** The CMMP in Exhibit B prepared by PBS must be followed during any subsurface work or development of the property. Characterization, storage, handling and disposal of any contaminated media must be done in accordance with the CMMP and all applicable local, state and federal regulations.

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 Marion County zoning code or any successor code. As of the date of this EES, the base zone of the Property is Commercial Office (CO).

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.

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 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.

EXHIBIT A

Legal Description of the Property

LEGAL DESCRIPTION: PER PRELIMINARY REPORT BY FIDELITY NATIONAL TITLE COMPANY OF OREGON, ORDER NO. 60221802436, EFFECTIVE DATE APRIL 25, 2018.

NOTES IN BRACKETS [] BELOW ARE SURVEYOR'S NOTES. ALL OTHER TEXT IS FROM TITLE REPORT.

PARCEL 1:

LOTS 5 AND 6, BLOCK 4, UNIVERSITY ADDITION TO SALEM, IN THE CITY OF SALEM, MARION COUNTY, OREGON.

SAVE AND EXCEPT THAT PORTION ACQUIRED BY THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR PUBLIC PURPOSES IN MARION COUNTY CIRCUIT COURT CASE NO. 86C1149B, ENTERED JUNE 24, 1991.

PARCEL 2:

LOT 3, BLOCK 4, UNIVERSITY ADDITION TO SALEM, IN THE CITY OF SALEM, MARION COUNTY, OREGON.

ALSO: BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, BLOCK 4, UNIVERSITY ADDITION OF SALEM IN MARION COUNTY, OREGON; AND RUNNING THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, A DISTANCE OF 72 FEET 6 INCHES, MORE OR LESS TO THE SOUTHEAST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, A DISTANCE OF 73 FEET TO A POINT WHICH IS 77.37 FEET SOUTHERLY FROM THE NORTHEAST CORNER OF SAID LOT; THENCE WESTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT, A DISTANCE OF 72 FEET AND 6 INCHES TO THE WESTERLY LINE OF SAID LOT; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT, A DISTANCE OF 73 FEET TO THE PLACE OF BEGINNING.

PARCEL 3:

A PORTION OF A TRACT OF LAND DESCRIBED AS LOT 1, AND LOT 2, BLOCK 4, 'UNIVERSITY ADDITION TO SALEM', A SUBDIVISION RECORDED IN VOLUME 01, PAGE 032, MARION COUNTY, OREGON BOOK OF TOWN PLATS, AND ALSO DESCRIBED IN REEL 1170, PAGE 165, MARION COUNTY, OREGON DEED RECORDS, SAID TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 2, BLOCK 4, 'UNIVERSITY ADDITION TO THE CITY OF SALEM', THENCE SOUTH, ALONG THE WEST LINE OF SAID LOT, A DISTANCE OF 156.75 FEET, TO THE SOUTHWEST CORNER OF LOT 2; THENCE EAST, ALONG THE SOUTH LOT LINE OF LOT 1 AND LOT 2, OF SAID BLOCK 4, A DISTANCE OF 145.90 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID LOT 1, BLOCK 4; THENCE NORTH, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 102.00 FEET; THENCE WEST, LEAVING SAID EAST LOT LINE, AND PARALLEL WITH THE SOUTH LINE OF LOTS 1 & 2, BLOCK 4, A DISTANCE OF 72.75 FEET, TO THE EAST LINE OF SAID LOT 2; THENCE NORTH, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 54.75 FEET, TO THE NORTHEAST CORNER OF SAID LOT 2; THENCE WEST, ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 73.00 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL 4:

LOT 4, BLOCK 4, UNIVERSITY ADDITION TO SALEM, IN THE CITY OF SALEM, MARION COUNTY, OREGON.

SAVE AND EXCEPT THE SOUTHERLY 73.0 FEET OF SAID LOT. (THE NORTHERLY LINE OF SAID SOUTHERLY 73.00 FEET BEING PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT.)

PARCEL 5:

A PORTION OF A TRACT OF LAND DESCRIBED AS LOT 1, BLOCK 4, 'UNIVERSITY ADDITION TO THE CITY OF SALEM', A SUBDIVISION RECORDED IN VOLUME 01, PAGE 032, MARION COUNTY, OREGON BOOK OF TOWN PLATS, AND ALSO DESCRIBED IN REEL 1831, PAGE 465, MARION COUNTY, OREGON DEED RECORDS, SAID TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 4, 'UNIVERSITY ADDITION TO THE CITY OF SALEM', THENCE SOUTH, ALONG THE WEST LINE OF SAID LOT, A DISTANCE OF 50.00 FEET; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 72.75 FEET, TO THE EAST LINE OF SAID LOT 1; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 50.00 FEET, TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE WEST, ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 72.75 FEET, TO THE POINT OF BEGINNING.

ALSO:

A PORTION OF A TRACT OF LAND DESCRIBED AS LOT 1, BLOCK 4, 'UNIVERSITY ADDITION TO THE CITY OF SALEM', A SUBDIVISION RECORDED IN VOLUME 01, PAGE 032, MARION COUNTY, OREGON BOOK OF TOWN PLATS, AND ALSO DESCRIBED IN REEL 1831, PAGE 465, MARION COUNTY, OREGON DEED RECORDS, SAID TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF LOT 1, BLOCK 4, WHICH POINT IS SOUTH, AND 50.00 FEET, FROM THE NORTHWEST CORNER OF LOT 1, BLOCK 4, 'UNIVERSITY ADDITION TO THE CITY OF SALEM', THENCE SOUTH, ALONG THE WEST LINE OF SAID LOT, A DISTANCE OF 4.75 FEET; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 72.75 FEET, TO THE EAST LINE OF SAID LOT 1; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 4.75 FEET; THENCE WEST, PARALLEL WITH THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 72.75 FEET, TO THE POINT OF BEGINNING.

[SEE REEL 3225 PAGE 314, REEL 3225 PAGE 315, REEL 3225 PAGE 316, REEL 3225 PAGE 317, AND REEL 3225 PAGE 318, MARION COUNTY DEED RECORDS]

PER PRELIMINARY REPORT BY FIDELITY NATIONAL TITLE COMPANY OF OREGON,
ORDER NO. 60221802436 SUPPLEMENT 1, EFFECTIVE DATE APRIL 25, 2018.

PARCEL 6:

LOTS 7 AND 8, BLOCK 4, UNIVERSITY ADDITION TO SALEM, IN THE CITY OF SALEM, MARION COUNTY, OREGON.

SAVE AND EXCEPT THAT PORTION CONVEYED TO THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION, BY DEEDS RECORDED APRIL 8, 1986, REEL 453, PAGES 428 AND 429, MARION COUNTY DEED RECORDS.

[SEE REEL 3430 PAGE 310, MARION COUNTY DEED RECORDS]

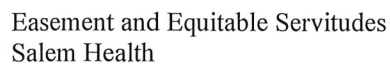


EXHIBIT B

Contaminated Media Management Plan