

PIU 5-2405  
Michael Mirabito

After recording, return certified copies to:

Grantor

Port City Development Center  
2124 N. Williams Avenue  
Portland, OR 97227

Attn: Michael Mirabito GABRIELLE BOLIVAR

Grantee

Oregon DEQ  
2020 SW Fourth Avenue, Suite 400  
Portland, OR 97201  
Attn: Tom Roick

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk  
A49 7 ATTDS  
Total : 51.00

2005-093250 05/24/2005 02:01:20pm

**EASEMENT AND EQUITABLE SERVITUDE**

This Easement and Equitable Servitude is made April 26, 2005  
between Port City Development Center (Grantor) and the Oregon Department of  
Environmental Quality (DEQ or Grantee).

**RECITALS**

A. Grantor is the owner of certain real property located at 2124 N. Williams Avenue in Portland, Oregon (Multnomah County Tax Map 2830; Tax Lots 13200, 10400, and 10500) (hereinafter the "Property"), the location of which is more particularly described in Attachment A to this Easement and Equitable Servitude. The Property is referenced under the name Port City Development Center (former Wagstaff Battery), ECSI # 1243 in the files of DEQ's Environmental Cleanup Program at the Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland OR 97201. Please contact DEQ's Northwest Region Office at 503-229-5263 to make an appointment for reviewing reports regarding the investigation and cleanup of contaminated soil present at the Property.

B. Upon completion of cleanup activities by former owners of the Property, DEQ required recordation of an Environmental Notice to identify pockets of lead and petroleum hydrocarbon contaminated soil remaining in the vicinity of a former dry well beneath Building #1 (also known as Building B) and Sump #1 at the Property. The Environmental Notice was recorded with Multnomah County on January 14, 1998. On February 24, 1998, DEQ issued a cleanup approval and No Further Action (NFA) determination for the Property.

C. On September 1, 1998, Grantor entered into a Prospective Purchaser Agreement (PPA) with DEQ, under which Grantor agreed to work under the oversight of DEQ's Voluntary Cleanup Program to perform site investigation and remedial actions for surface and subsurface soil contamination at the Property as part of site redevelopment. The PPA requires that Grantor to, among other things, ensure that pockets of lead and petroleum contaminated soil in the former dry well and Sump #1 areas remain isolated

Easement and Equitable Servitude  
Port City Development Center

from human contact, investigate and remediate any contaminated soils exposed or discovered during renovation of Building B, and submit development plans for review by DEQ to ensure actions will not exacerbate existing contamination. A copy of the PPA is available from DEQ's Environmental Cleanup Program, Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland OR 97201.

D. Grantor completed additional site investigation including soil sampling and analysis at the site as part of redevelopment in 2003. On March 4, 2004, DEQ withdrew its earlier No Further Action determination based on new information that lead contamination was present at concentrations exceeding 400 mg/kg in exposed soil east and north of Building B. In August 2004, Grantor completed soil removal work to address the exposed lead contaminated soil. In addition to those areas of petroleum hydrocarbon and lead contamination identified underneath Building B in the 1998 Environmental Notice, other areas of lead contamination were discovered beneath or near Building B and still remain after completion of the 2003 soil removal and site redevelopment. The additional site investigation documented two general areas where lead contamination is known to be or could be present: 1) beneath the existing Building B concrete foundation, and 2) beneath the asphalt parking area northeast of Building B (see site diagram attached hereto as Attachment B). This Easement and Equitable Servitude is intended to supplement the 1998 Environmental Notice and 1998 PPA, both of which are incorporated herein by reference.

E. The provisions of this Easement and Equitable Servitude are intended to protect human health and the environment.

## 1. GENERAL DECLARATION

Grantor declares that all real property located in Multnomah County, State of Oregon, and described in the legal description, Attachments A to this Easement and Equitable Servitude, is and shall be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitude. Each condition and restriction set forth in this Easement and Equitable Servitude touches and concerns the Property. The Equitable Servitude granted in paragraph 3 and the easement granted in paragraph 4 below shall run with the land for all purposes, shall be binding upon all Owners as set forth in this Easement and Equitable Servitude, 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 Servitude.

## 2. DEFINITIONS

2.1 "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.

2.2 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in 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.

### **3. EQUITABLE SERVITUDE (RESTRICTIONS ON USE)**

3.1 **Site Maintenance.** The Owner shall maintain the Building B concrete foundation and adjacent asphalt parking surface (identified on Attachment B) in a condition that prevents direct human contact with underlying contaminated soil. No operations or uses shall be made on or of the Property that will or likely will penetrate the Building B concrete foundation or adjacent asphalt parking surface including without limitation any excavation, drilling, scraping, or erosion without a plan for managing potentially contaminated soil and prior written approval from DEQ.

3.2 **Hazard Notification.** The Owner shall not expose potentially contaminated soil beneath the Building B concrete foundation or the adjacent asphalt parking surface without hazard notification for site workers in accordance with applicable state and federal Occupational Safety and Health Administration (OSHA) regulations to address the presence of soil contamination.

3.3 **Soil Management.** If soil excavated from beneath Building B or the adjacent asphalt parking area contains lead or petroleum hydrocarbons, it must be evaluated to determine if it is a solid waste in accordance with Oregon Administrative Rules 340-093-040 or a hazardous waste in accordance with the Resource Conservation and Recovery Act (RCRA) and appropriately managed and disposed of at a permitted facility.

### **4. EASEMENT (RIGHT OF ENTRY)**

During reasonable hours and subject to reasonable security requirements, DEQ as Grantee shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitude and the PPA have been or are being complied with. Violation of any condition or restriction contained in this Easement and Equitable Servitude shall give to DEQ the right, privilege, and license to enter upon the Property where such violation exists and to abate, mitigate, or cure such violation at the expense of the Owner, provided written notice of the violation is given to the Owner describing what is necessary to correct the violation and the 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 the Owner of the Property for such entry and any action taken to abate, mitigate, or cure a violation.

## 5. GENERAL PROVISIONS

5.1 Within 15 days of its execution, Grantor shall record this Easement and Equitable Servitude in the records of deeds of real property in Multnomah County, such recordation being expressly authorized by statute including, without limitation, ORS 93.710. Grantor shall provide DEQ with a file stamped copy of the Easement and Equitable Servitude within five (5) days of recordation.

5.2 All conditions and restrictions contained in this Easement and Equitable Servitude shall run with the land until such time as any condition or restriction is removed by written certification from DEQ that the condition or restriction is no longer required in order to protect human health or the environment.

5.3 Owner, as defined in Paragraph 2.2 above, is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitude, whether or not any reference to this Easement and Equitable Servitude is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

5.4 The Owner shall not occupy or allow other persons to occupy the Property unless the controls listed in Paragraph 3 above are maintained and are intact and continue to protect public health and the environment.

5.5 The 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 the Owner's interest in or occupancy of the Property, or the start of development activities or change in use of the Property that might expose human or environmental receptors to contaminants at the Property. Notwithstanding the foregoing, Owner shall not commence any development inconsistent with the conditions or restrictions in Paragraph 3 above without prior written approval from DEQ or removal of the condition or restriction as provided in Paragraph 5.2 above.

5.6 The 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 Multnomah County zoning code or any successor code. As of the date of this Easement and Equitable Servitude, the base zone for the Property is mixed commercial/residential.

5.7 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitude, DEQ, in addition to the remedies described in Paragraph 4 above, may enforce this Easement and Equitable Servitude as provided in the PPA, which is incorporated herein by reference, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitude.

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

GRANTOR: Port City Development Center

By: [Signature] Date: 4/26/05  
Michael Mirabito, Executive Director  
GABRIELLE BOLNAR

STATE OF OREGON )  
 ) ss.  
County of Multnomah

The foregoing instrument is acknowledged before me this 26 day of April, 2005 by Gabrielle Bolnar Port City Development in its behalf.



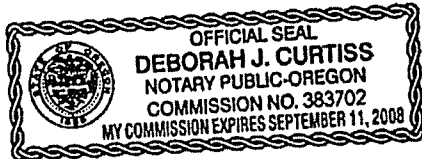
[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: 9/11/08

GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature] Date: 4/7/05  
Dick Pedersen, Administrator, Northwest Region

STATE OF OREGON )  
 ) ss.  
County of Multnomah

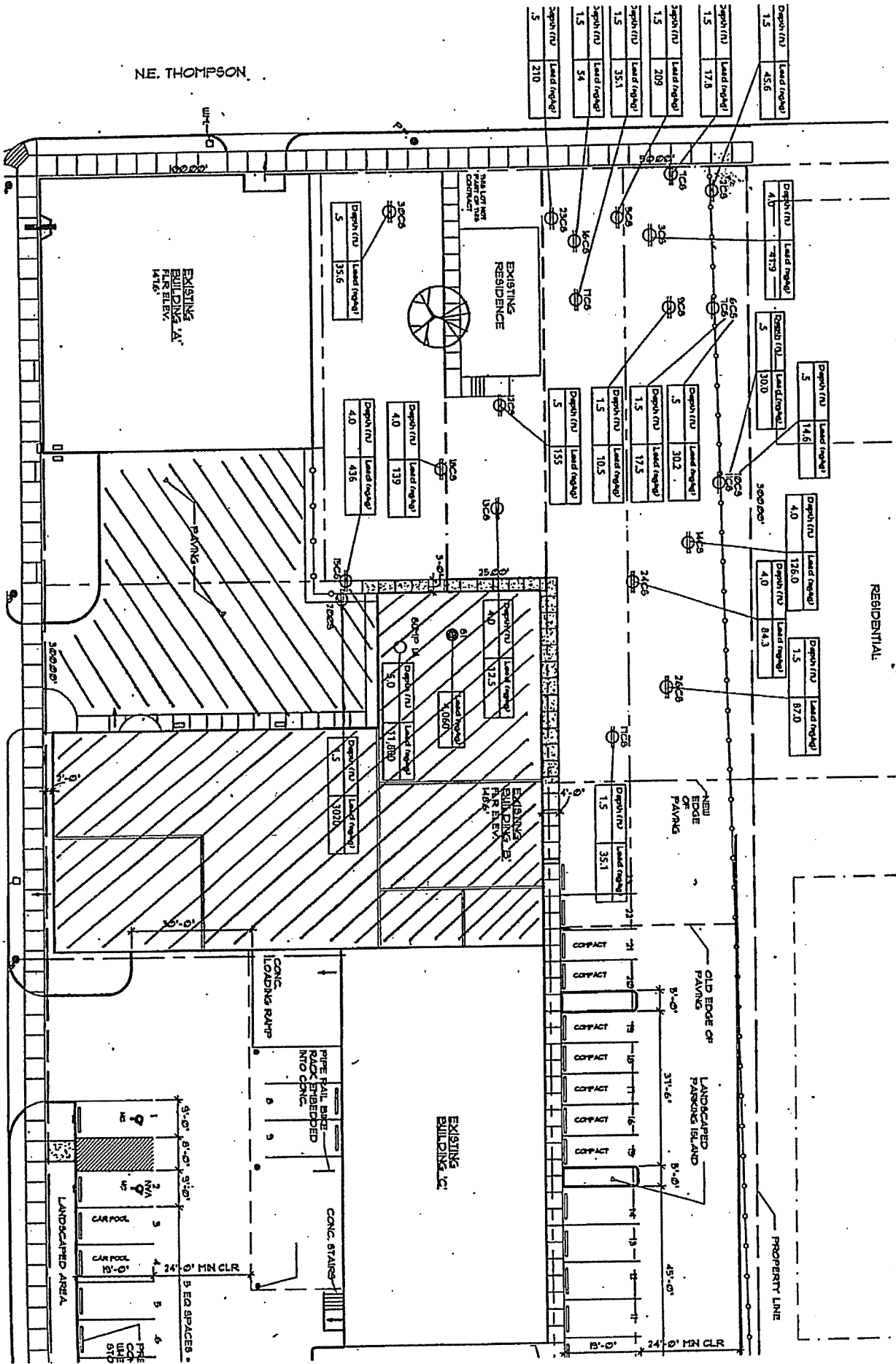
The foregoing instrument is acknowledged before me this 7 day of April, 2005 by Dick Pedersen of the Oregon Department of Environmental Quality, on its behalf.



[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: Sept 11, 2008

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NE. THOMPSON



ATTACHMENT B  
SITE DIAGRAM

PORT CITY DEVELOPMENT CENTER

LEGEND FOR RESTRICTED AREAS  
 BURIED 106 & FOUNDATION  
 ASPHALT PAVING



**ATTACHMENT A  
LEGAL DESCRIPTION**

FORM NO. 100 - OREGON DEED - STATUTORY FORM  
 THIS DEED IS BEING RECORDED

**QUITCLAIM DEED - STATUTORY FORM**  
 OFFICIAL GRANTEE  
 Alice A. Hindman

Grantee,  
 and quitclaim to Alice A. Hindman, CAROL ANN COFFMAN and BRUCE E. HINDMAN,  
Co-Trustees of the Alice A. Hindman Revocable Trust.  
 Grantor, all rights, title and interest in and to the following described  
 real property situated in Multnomah County, Oregon, to-wit:

The West 85 feet of Lots 25 and 26, and the South 10 feet of the  
 West 85 feet of Lot 24, Block 23, ALBINA, City of Portland, and  
 That part of Lots 24, 25, and 26, Block 23, ALBINA, in the City of  
 Portland, County of Multnomah and State of Oregon, described as  
 follows, to-wit:

Beginning at the southeast corner of said Lot 26, and thence running  
 northerly along the east lines of said lots, 110 feet, thence westerly  
 and parallel with the south line of said Lot 24, 40 feet; thence  
 southerly and parallel with the east lines of said lots, 110 feet to  
 the south line of said Lot 26, and thence easterly 40 feet to the place  
 of beginning.

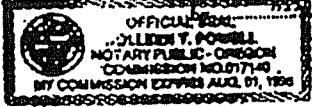
Also known as 2110 N. Williams, Portland, Oregon Parcel No R00960 8230

The true consideration for this conveyance is \$ 0 (Here comply with the requirements of ORS 93.030).  
 Transfer to Revocable Trust

Dated this 17 day of February, 1996  
 Alice A. Hindman

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THE INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND TAX REQUIREMENTS. BEFORE EXECUTING OR ACCEPTING THIS INSTRUMENT, THE PERSONS TO WHOM TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPLICABLE ZONING AND DETAILING ANY VIOLATIONS OR VIOLATIONS AGAINST FEDERAL OR STATE PRACTICES AS DERIVED IN ORS 30.020.

STATE OF OREGON, County of Multnomah  
 This instrument was acknowledged before me on 17 day of February, 1996  
 by Alice A. Hindman



Allen V. Powell  
 Notary Public for Oregon  
 My commission expires Aug. 1, 1998

**QUITCLAIM DEED**

Alice A. Hindman  
 Alice A. Hindman  
 Revocable Trust

After recording send to:  
 George J. Gregoren  
 222 SW Columbia, Suite 1800  
 Portland, OR 97201

2124 N. Williams Ave.  
 Portland, OR 97227

STATE OF OREGON

96 FEB 12 AM 2:00  
 RECORDING SECTION  
 MULTNOMAH COUNTY, OREGON

96 21714

C. SWICK

2 96 21714