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Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ  
Northwest Region  
2020 SW 4<sup>th</sup> Ave., Ste 4000  
Portland, OR 97201  
Attention: Jennifer Sutter

Grantor

City of Portland  
Portland Parks & Recreation  
1120 SW Fifth Ave., Suite 1302  
Portland, OR 97204  
Attention: Todd Lofgren

**EASEMENT AND EQUITABLE SERVITUDES**

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on \_\_\_\_\_, 2013 between the City of Portland, acting by and through its Bureau of Environmental Services and Bureau of Parks and Recreation ("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 NE Glass Plant Road, Portland in Multnomah County, Oregon in Multnomah County Tax Map 1N, 2E, 16, Tax Lots 2400, 600, and 400, the location of which is more particularly described in Exhibit A to this EES ("*City Parcels*"). For purposes of this EES, the "*Property*" includes only that portion of the City Parcels located within 25 feet above the line of Ordinary High Water ("OHW") of Johnson Lake.

B. Johnson Lake is part of a site referenced under the name Owens Brockway and Johnson Lake ("Site"), ECSI # 1311 in the files of DEQ's Environmental Cleanup Program at the Northwest Region office located at 2020 SW 4<sup>th</sup> Ave., Suite 4000 in Portland Oregon. Interested parties may contact the Northwest Region Office to review a detailed description of the residual risks present at the Site and found in the Johnson Lake Risk Assessment (Environ International Corp., December 2004) and DEQ Risk Assessment Letter (dated June 28, 2005).

C. On October 26, 2007, 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, *Remedial Action for the Owens Brockway Glass Container Inc. Site including Johnson Lake*. The ROD was subsequently amended by *Record of Decision Amendment for Remedial Action, Owens Brockway Glass Container Inc. Site including Johnson Lake, Portland, Oregon* (July 2009). As amended, the remedial action selected requires, among

880681

other things: institutional controls to maintain the integrity of the thin-layer cap placed over lake sediments to reduce surface contamination levels, restrictions on activities that might breach the cap placed on lake sediments, and warning signs to prevent exposures to contaminants remaining in Johnson Lake via fish ingestion.

D. In August 2009, Owens-Brockway Glass Container Inc. ("Owens") entered into a Stipulation and Consent Judgment ("*Judgment*") with DEQ, under which Owens 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 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 "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 For good and valuable consideration, including Owens' implementation of the remedial action, including cap maintenance and monitoring and placement of signage on the Property, Grantor 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     **Engineering Control Use Restrictions.** Except upon prior written approval from DEQ, which may not be unreasonably withheld, Owner may not conduct or allow operations on the Property or use or maintain the Property in any way that will or likely will (a) jeopardize the sediment cap's protective function as an engineering control that reduces surface sediment concentrations to acceptable levels, including any grading, excavating, drilling, scraping, or construction that might cause or contribute to damage to the sediment cap, or (b) impair implementation of the applicable operations and maintenance plan. The location of the sediment cap is specified in the DEQ-approved Remediation Operations & Maintenance Plan prepared by Dalton, Olmsted & Fuglevand, Inc. (December 20, 2012), which, together with any amendments thereto approved in writing by DEQ, is referred to as the "*applicable operations and maintenance plan.*"

3.2     **Notification of Disturbance.** Owner must provide DEQ a minimum of thirty (30) days' advance written notice of any activity contemplated on the Property that is likely to (a) jeopardize the cap's functional integrity, including any grading, excavating, drilling, scraping, or construction that is likely to cause, contribute to or exacerbate damage to the sediment cap, or (b) impair implementation of the applicable operations and maintenance plan. Owner will provide DEQ with details of the planned work as well as the means by which Owner intends to protect the integrity of the cap and continued implementation of the applicable operations and maintenance plan. Owner may not conduct such work without prior written approval by DEQ.

3.3     **Warning Signs and Inspection.** Owner will allow Owens reasonable access to the Property as necessary for installation and maintenance of warning signs and inspection of the cap as required by the applicable operations and maintenance plan, subject to reasonable substantive requirements of City permit conditions.

3.4     **Use of the Property.** Owner may not occupy or allow other parties to occupy or use the Property for any purpose except in full compliance with all conditions and restrictions in Section 3 of this EES.

### 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 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.

5.3. DEQ will release this EES in its entirety following DEQ's written termination of Owens' (or any successors') obligations under the applicable operations and maintenance plan, upon Owner's request.

## 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 his 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. **Cost Recovery.** Owner will pay DEQ's costs attributable to any failure by Owner to implement or comply with the provisions in this EES. This EES constitutes the binding agreement by the Owner to reimburse DEQ for all such eligible costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. 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.

6.3. **Inspection and Reporting.** Owner will notify DEQ as soon as possible of any condition or occurrence at the Property that does not conform with the provisions of this EES.

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. **Ownership of Lakebed.** In the event that Owner asserts ownership of or is determined by a court of competent jurisdiction to own land below the line of Ordinary High Water on Tax Lots 2400, 600, or 400, Owner will execute a replacement EES that includes that additional land.

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 may enforce this EES as provided in Section 4, 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:** City of Portland

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mike Abbaté, Director, Portland Parks & Recreation,  
or designee

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dean Marriott, Director, Bureau of Environmental Services,  
or designee

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

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_ of the City of Portland, on its behalf.

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

APPROVED AS TO FORM *HV*  
*James H. Van Dyke*  
CITY ATTORNEY

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kevin Parrett, Manager, NWR Cleanup and Leaking USTs

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

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

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

**EXHIBIT A****Legal Description of the Property**

## DESCRIPTION:

## PARCEL I:

Lots 1 and 2, Block 103, PARKROSE, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM those portions thereof described in a Deed to the Oregon Department of Transportation recorded November 14, 1974 in Book 1015, Page 2013, and the Amended Stipulated Final Judgment in Case No. A7705-06755, Oregon Department of Transportation vs. Thoreson, et al., filed February 23, 1978.

EXCEPTING ALSO THEREFROM those portions lying below the high water mark of Johnson Lake and the Columbia Slough.

## PARCEL II:

Commencing at a point in the center line of a 15-foot roadway on the Easterly line of the Geo. M. Long Donation Land Claim in Section 16, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah, and State of Oregon, said point being North 0°06'45" West 525 feet from the Southeast corner of said Geo. M. Long Donation Land Claim, and running thence North 0°06'45" West and following the Easterly line of said Long Donation Land Claim, 7.93 feet to an iron pipe on the Northerly line of said 15-foot roadway, said iron pipe being the Southeast corner and true point of beginning of land herein described, running thence from said true beginning point North 0°06'45" West following the Easterly line of said Donation Land Claim, 13.007 feet, more or less, to the center of the Columbia Slough; thence North 68°30' West along the center line of Columbia Slough, 170 feet; thence North 83°15' West along the center of the Columbia Slough, 151.75 feet; thence South 1,293.66 feet, more or less, to a point on the Northerly line of a 15-foot roadway, said point being North 71°09' West 327.4 feet from the true beginning point; thence South 71°09' East 327.4 feet to the place of beginning.

EXCEPTING THEREFROM those portions lying below the high water mark of Johnson Lake and the Columbia Slough.

## PARCEL III:

A tract of land in Section 16, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon.

Beginning at the Northeast corner of the tract of land conveyed to Guy F. Atkinson Company by deed recorded March 19, 1951, in Book 1465, Page 249, Deed Records, said point being on the

858681

West Line of NE 101<sup>st</sup> Avenue, formerly Rockey Avenue, as shown on the plat of PARKROSE, Blocks 99 to 113, inclusive, 760 feet North of the intersection of said West road line with the Northerly line of the O.W.R. & N. Co. right of way; thence North along said West road line 383.74 feet to the Northeast corner of the tract of land conveyed to H.A. Johnson et ux, by deed recorded September 18, 1931, in Book 144, Page 96, Deed Records; thence West along the North line of said Johnson tract 599 feet to the Northwest corner thereof; thence South along the West line of said Johnson tract, 383.74 feet to the Northwest corner of the above described Guy F. Atkinson Company tract; thence East along the North line of said Atkinson Company tract, 598.22 feet to the place of beginning.

EXCEPTING THEREFROM those portions thereof described in a Deed to the Oregon Department of Transportation recorded November 14, 1974 in Book 1015, Page 2013, and the Amended Stipulated Final Judgment in Case No. A7705-06755, Oregon Department of Transportation vs. Thoreson, et al., filed February 23, 1978.

EXCEPTING ALSO THEREFROM those portions lying below the high water mark of Johnson Lake and the Columbia Slough.