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*After recording, return to:*

**Grantee**

Oregon DEQ  
400 E. Scenic Dr., Suite 307  
The Dalles, OR 97058  
Attention: Bob Schwarz

**Grantor**

Curt Baney, Inc.  
475 NE Bellevue Drive, Suite 5210  
Bend, Oregon 97702  
Attention: Curt Baney

**EASEMENT AND EQUITABLE SERVITUDES**

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on this 21<sup>st</sup> day of January 2016 between Curt Baney, Inc. ("**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 2922 South Sixth Street, Klamath Falls, Oregon in Klamath County, Oregon in Klamath County Tax Map 39-09-3BC, tax lots 1000 and 1002 (the "**Property**"), the location of which is more particularly described in **Exhibit A** to this EES. The Property, a 1940s gas station located at 2996 South 6<sup>th</sup> Street, is referenced under the name Former Old City Gas & Oil, LUST File No. 18-15-0497 in the files of DEQ's Environmental Cleanup Program at DEQ's Eastern Region office located at 475 NE Bellevue, Suite 110, Bend, Oregon, and telephone 541-388-6146. Interested parties may contact the Eastern Region office to review a detailed description of the risks from contamination remaining at the Property and described in the Corrective Action Plan for the Former Old City Gas and Oil Site, prepared by R & D Environmental Solutions, and dated September 21, 2015.

B. On January 21, 2016, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Staff Report for the Property, dated September 28, 2015. The remedial action selected requires, among other things: preparation of and conformance with a Contaminated Media Management Plan, a prohibition on use of groundwater at the site, vapor mitigation measures on tax lots 901 and 1001 if these properties are used for residential purposes, a prohibition on residential use of tax lots 1000 and 1002.

C. On May 29, 2015, Grantor entered into an agreement with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

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 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 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.2 "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.
- 1.3 "Ecological receptor" 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. Any disturbance of soil or groundwater on the site will be done in accordance with Exhibit B, Contaminated Media Management Plan.

3.2. Owner may not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of

groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

3.3. In the event that tax lot 901 or 1001 is developed for residential use, proper vapor intrusion mitigation measures will be incorporated into buildings occupied by residents. These measures are subject to review and approval by DEQ. Grantor maintains financial responsibility for these vapor intrusion mitigation measures.

3.4 Residential use is prohibited on tax lots 1000 and 1002.

#### **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 Klamath County zoning code or any successor code. As of the date of this EES, the base zone of the Property is General Commercial (CG).

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 done to assess conformance with provisions of this EES. 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 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.

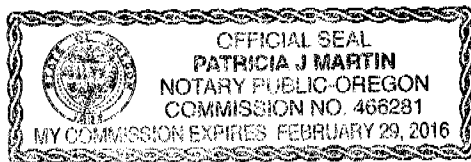
**GRANTOR:** Curt Baney, Inc.

By: Curt Baney  
Curt Baney, President

Date: 1-25-16

STATE OF OREGON           )  
County of Deschutes    ) ss.

The foregoing instrument is acknowledged before me this 25<sup>th</sup> day of January, 2016, by Curt Baney of Curt Baney, Inc., on its behalf.



Patricia J. Martin  
NOTARY PUBLIC FOR OREGON  
My commission expires: 2-29-16

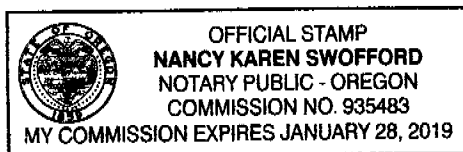
**GRANTEE:** State of Oregon, Department of Environmental Quality

By: David Anderson  
David Anderson, Cleanup Manager, Eastern Region

Date: 1/21/2016

STATE OF OREGON           )  
County of Deschutes    ) ss.

The foregoing instrument is acknowledged before me this 21<sup>st</sup> day of January, 2016, by David Anderson of the Oregon Department of Environmental Quality, on its behalf.



Nancy Karen Swofford  
NOTARY PUBLIC FOR OREGON  
My commission expires: 1/28/2019

## **EXHIBIT A**

### **Legal Description of the Property**

That certain tract of land situated in the County of Klamath, State of Oregon and more particularly described as follow: Parcel 1 of Land Partition 29-14 located in the S1/2 NW ¼ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, replat of Parcel 1 of I.P 19-12 recorded February 17, 2015 in Volume 2015-001353, Records of Klamath County, Oregon.