



Recording Instrument #: 201406081  
Recorded By: Clatsop County Clerk  
# of Pages: 7 Fee: 77.00  
Transaction date: 9/24/2014 14:16:12  
Deputy: nstethem

Space above this line for Recorder's use.

**Re: Former Val's Texaco Station**  
*After recording, return to:*

Grantee  
Oregon DEQ  
2020 SW Fourth Avenue, Suite 400  
Portland, Oregon 97201-4987  
Attention: Anna Coates

Grantor  
Mr. Richard Delphia  
10 6<sup>th</sup> Street, Suite 101  
Astoria, Oregon 97103-4253

**EASEMENT AND EQUITABLE SERVITUDES**

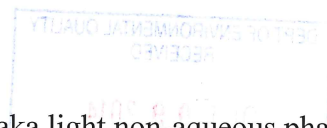
This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on 8/19, 2014 between Mr. Richard Delphia ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "Grantee").

**RECITALS**

A. Grantor is the owner of certain real property located at 452 West Marine Drive, Astoria, Oregon, 97103 in Clatsop County, Oregon. The property is referenced as Clatsop County Tax Map 8.9.7cc, Tax Lot 36 of 3500 (the "**Property**") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name former Val's Texaco, 2277 Area of Concern 2 in the files of DEQ's Environmental Cleanup Program at the Northwest Region office located at 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201-4987. . The office can be reached at (503) 229-5213. 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 *Contaminated Media Management Plan, Former Val's Texaco*, by BB&A Environmental, dated July 5, 2013.

B. On March 5, 2013, 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 titled: *Record of Decision, Final Remedial Action for Astoria Area-Wide Area of Concern 2, Val's Texaco and Delphia Oil Bulk Plant*. The remedial action selected requires, among other things:

1. A prohibition on residential use at the former Val's Texaco property;
2. Implementation of the DEQ-approved *Contaminated Media Management Plan, Former Val's Texaco*, by BB&A Environmental, dated July 5, 2013 to ensure that proper controls are implemented during future site activities where impacted soil or groundwater may be contacted;



3. Annual monitoring and reporting of free petroleum liquids (aka light non-aqueous phase liquids or LNAPL) present in existing monitoring wells for five years;
4. Implementation of the site-specific worker health and safety plan (see Chapter 6.0 of *Contaminated Media Management Plan, Former Val's Texaco*, referenced above) prior to initiation of intrusive activities; and
5. Implementation of contingency measures as necessary based on the results of annual LNAPL monitoring. At the end of the five year period DEQ will review LNAPL conditions and determine if additional monitoring is necessary.

C. On July 26, 2012 DEQ received a letter from BB&A, Environmental on behalf of Grantor in which they agreed to have an EES with deed restrictions and institutional controls as the preferred remedial option. On 8/19/2014 (date) Grantor entered into a RD/RA Consent Order (Order) 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 the March 5, 2013 *Record of Decision, Final Remedial Action for Astoria Area Wide, Area of Concern 2, Val's Texaco and Delphia Oil Bulk Plant* described above, 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 Use Restrictions.** Owner may not extract through wells or by other means or use the shallow 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. Owner may extract groundwater from a deeper aquifer provided: (a) the well is located at least 100 feet from the edge of the contaminated shallow groundwater; (b) the well is located hydraulically upgradient of the contaminated groundwater; and (c) the well is constructed with a deep annulus seal. The location and construction of the well must be approved by DEQ before the well is installed.
- 3.2. **Land Use Restrictions.** The following operations and uses are prohibited on the Property:
- a. Residential use of any type; and
  - b. Agricultural (food-crop) use of any type.
- 3.3 **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. A *Contaminated Media Management Plan (CMMP)* will be developed and implemented to prevent direct contact with LNAPL by excavation workers.

### **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 Clatsop County zoning code or any successor code. As of the date of this EES, the base zone of the Property is C-3, City of Astoria General Commercial Zone.

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. **Monitoring 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 monitoring and reporting as outlined in

Chapter 6.0, Selected Remedial Action Alternatives, of the DEQ approved *Record of Decision, Final Remedial Action for Astoria Area Wide, Area of Concern 2, Val's Texaco and Delphia Oil Bulk Plant Record of Decision* dated March 5, 2013. Owner will monitor groundwater conditions at the Property annually for a period of five years beginning in 2014, and extending through 2018. Owner will submit reports documenting the results of the monitoring events to DEQ within 60 days of receipt of laboratory analytical reports. Reports provided to DEQ must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include contingency plans if needed in response to migration of LNAPL into utility corridors or other environmental conditions requiring follow up in accordance with the ROD.

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 Order or 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.

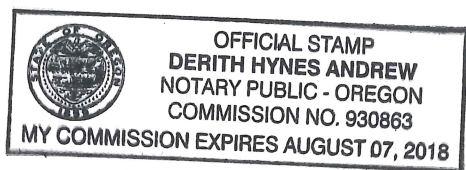
BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: Richard Delphia

By: [Signature] Date: 9/29/14  
Richard Delphia, Delphia Enterprises, Inc.

STATE OF OREGON )  
County of Clatsop ) ss.

The foregoing instrument is acknowledged before me this 19th day of August, 2014, by [Name] of [Company], on its behalf.  
Derith Hynes Andrew Clatsop Community Bank



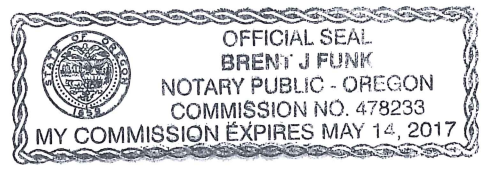
[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: Aug 7 2018

GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature] Date: 2/20/14  
Keith Johnson, Manager, Northwest Region Cleanup

STATE OF OREGON )  
County of Multnomah ) ss.

The foregoing instrument is acknowledged before me this 20th day of February, 2014, by Keith Johnson [Name] of the Oregon Department of Environmental Quality, on its behalf.



[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: 5/14/17

Corrected Exhibit A

Lot 36 Block B Taylor's Astoria, City of Astoria, County of Clatsop, State of Oregon

Also named tax lot 36 Clatsop County Tax map 8.9.7cc

