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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

STATE OF OREGON, ex rel.  
RICHARD WHITMAN, DIRECTOR  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY,

Plaintiff,

v.

JOHN PITFIDO; JOANNE PITFIDO;  
JAP INC. and YAMHILL STATION, INC.

Defendants.

Case No. 17CV30011

CONSENT JUDGMENT  
(General Judgment By Consent)

<u>Contents</u>	<u>Page</u>
1. Purpose.....	2
2. Stipulations and Findings.....	2
3. Payment of Remedial Action Costs.....	5
4. Reimbursement of DEQ Costs.....	6
5. Effect of Consent Judgment.....	7
6. Contribution Actions.....	8
7. Covenant Not to Sue by State of Oregon.....	8
8. Liability Release by DEQ.....	9
9. Continuing Jurisdiction.....	10

Exhibit A: Facility Map

Exhibit B: Legal description of Yamhill Station property

1 1. Purpose

2 This Consent Judgment is filed simultaneously with and for the purpose of resolving the  
3 underlying complaint by the State of Oregon. Plaintiff State of Oregon *ex rel.* the Director of the  
4 Department of Environmental Quality (“DEQ”) and Defendants John Pitfido, Joanne Pitfido,  
5 Yamhill Station, Inc. and JAP Inc. (collectively, the “Defendants”) (Plaintiff and Defendants are  
6 collectively the “Parties”) desire to resolve this action without litigation and have agreed to entry  
7 of the Consent Judgment without admission or adjudication of any issue of fact or law.

8 2. Stipulations and Findings

9 A. Defendants stipulate:

- 10 (1) To entry of this Consent Judgment;
- 11 (2) To perform and comply with all provisions of this Consent Judgment;
- 12 (3) To not litigate, in any proceeding brought by DEQ to enforce this Consent  
13 Judgment any issue other than Defendants’ compliance with this Consent Judgment; and
- 14 (4) To waive any right Defendants might have under ORS 465.260(7) to seek  
15 reimbursement from the Hazardous Substances Remedial Action Fund for costs incurred under  
16 this Consent Judgment.

17 B. DEQ and Defendants stipulate:

- 18 (1) For the purposes of this Consent Judgment, the “Facility,” as defined in  
19 ORS 465.200(13), means: (a) the Yamhill Station (Formerly Senz Automotive Service) (the  
20 “Site” or “Property”) at 210 South Maple Street, Yamhill, Oregon (as also shown on Exhibits A  
21 & B); and (b) the full extent of existing known or unknown contamination by hazardous  
22 substances of any media on, above, or below the Site, or that has migrated, might have migrated,  
23 or hereafter migrates to anywhere from the Site.
- 24 (2) For the purposes of this Consent Judgment, “Matters Addressed” means  
25 all investigation, removal, and remedial actions taken or to be taken and all remedial action costs  
26

1 incurred or to be incurred at or in connection with releases of hazardous substances at the  
2 Facility.

3 C. DEQ finds, and Defendants admit:

4 (1) The Site was located at 210 South Maple Street, Yamhill, Oregon. The  
5 general location of the Site is shown on Exhibit A to this Consent Judgment, and the legal  
6 description is found on Exhibit B.

7 (2) Defendants John and Joanne Pitfido entered into a land sale contract to  
8 purchase the Site in December 1995 and are the current owners. Between January 1, 1996  
9 through June 30, 2006, one or more of the Defendants operated the Yamhill Station.

10 (3) The Site has historically been used a gas station facility. Glen Nelson Oil  
11 owned and operated the station between approximately 1947 and 1982. Frances and Wanda  
12 Senz operated the station from approximately 1982 to 1995. Accu-Tech, LLC, leased the station  
13 from one or more of the Defendants from approximately July 1, 2006 to December 2006, and  
14 subleased the station to James and Rebecca Ward during the same period.

15 (4) The Site historically used underground storage tanks for fueling  
16 operations. A release of petroleum products was reported to DEQ in 1988. It was determined  
17 that the release was caused by a system leak, which was stopped. Due to limited funding,  
18 investigation of the full nature and extent of any gasoline releases stalled. In 1995, underground  
19 storage tanks were removed, and an above ground tank (“AST”) system was installed. In 2006, a  
20 significant release from the AST system was reported. Defendants responded to the 2006 release  
21 and incurred more than \$160,000 in emergency and remedial action costs. Defendants collected  
22 gasoline and free product on the property, prevented gasoline from entering the storm drain  
23 system, installed groundwater monitoring wells, and began investigating the nature and extent of  
24 the contamination at the Site. Defendants also installed a groundwater treatment system for  
25 petroleum impacted groundwater. Due to limited resources, Defendants were unable to complete  
26 investigation and remediation activities.

1           (5)     In 2009, DEQ applied for and received funds from the American Recovery  
2 and Reinvestment Act of 2009 to address leaking UST contamination. Those funds allowed the  
3 DEQ to direct additional investigation of historical releases and take further remedial actions. In  
4 addition to funds expended under American Recovery and Reinvestment Act of 2009, DEQ has  
5 also incurred additional expenses in addressing environmental concerns related to the Facility,  
6 and has recorded a lien on the Property to secure recovery of such costs.

7           (6)     In December 2009, the AST and all buildings on the Site were removed to  
8 assist with cleanup activities and the implementation of an Interim Remedial Action Measure  
9 (“IRAM”). Investigation of the nature and extent of hazardous substances released at and from  
10 the Site indicated that petroleum hydrocarbons had migrated offsite onto neighboring properties.  
11 The IRAM approved by DEQ included removal of approximately 3,258 tons of Petroleum  
12 Contaminated Soil beneath and in the vicinity of the former service station building to minimize  
13 or eliminate the migration or threat of migration of hazardous substances to groundwater and  
14 offsite properties.

15           (7)     Historical releases of gasoline-range hydrocarbons and VOC’s have been  
16 identified in the soil and groundwater at, under and adjacent to the Site. Soil contamination was  
17 identified as shallow as one foot below ground surface (bgs) and as deep as 14 feet bgs.  
18 Gasoline-range hydrocarbons in groundwater ranged between 1900 micrograms per liter (ug/l)  
19 and 27,000ug/l. Groundwater also was impacted by the following VOC’s: benzene,  
20 ethylbenzene, toluene, xylenes, iso-propylbenzene, naphthalene, methyl tert-butyl ether (MTBE),  
21 1,2,4-trimethylbenzene, 1,2-dichloroethane, and 1,2,5-trimethylbenzene.

22           (8)     In December 2011, DEQ determined that the cleanup of the Site was  
23 completed. DEQ approved a Conceptual Site Model that included Easement and Equitable  
24 Servitudes agreements with Defendants and several neighboring property owners. These  
25 Easement and Equitable Servitudes contain institutional controls to manage future use of  
26 properties due to residual contamination remaining in the groundwater and soil gas, including

1 restrictions on groundwater use, residential occupancy on first/ground floor spaces, and  
2 assurances that future development and occupancy will account for any residual contamination.

3 (9) On September 30, 2013, DEQ published notice of this proposed Consent  
4 Judgment and provided opportunity for public comment in accordance with ORS 465.320(1) and  
5 465.325(4)(d). The comment period ended October 30, 2013. Comments were received and  
6 considered by DEQ, as documented in the administrative record.

7 (10) Defendants are “persons” within the meaning of ORS 465.200(21), and  
8 are potentially liable persons under ORS 465.255.

9 (11) Contaminants described in Paragraph 2.C.(7) are “hazardous substances”  
10 within the meaning of ORS 465.200(16). The presence of these hazardous substances in soil and  
11 groundwater at the Site constitutes a “release” or “threat of release” to the environment within  
12 the meaning of ORS 465.200(22).

13 (12) Based on the administrative record, the Director determines, in accordance  
14 with ORS 465.325(1) and (7), that this Consent Judgment and Defendants’ commitments under  
15 the Consent Judgment will expedite removal or remedial action, minimize litigation, be  
16 consistent with rules adopted under ORS 465.400, and be in the public interest.

17 3. Payment of Remedial Action Costs

18 A. Defendants will pay DEQ a maximum of \$95,000 under this Consent Judgment,  
19 as follows:

20 (1) Defendants will consent to a first priority lien on the Property in favor of  
21 DEQ for seventy-five thousand dollars (\$75,000), due and payable upon sale or transfer of the  
22 Property for the net post-closing proceeds up to \$75,000. “Net post-closing proceeds” means the  
23 proceeds from any sale or transfer of the property after deduction of all commissions and/or costs  
24 directly incurred from the sale or transfer, but do not include legal expenses or other liens  
25 attached to the property.

26

1 (2) Defendants will also consent to another first priority lien on the Property  
2 in favor of DEQ for fifty-percent of the net post-closing proceeds from any sale for more than  
3 \$75,000 up to a maximum additional amount of \$20,000, which shall also be due and payable  
4 upon sale or transfer of the Property. In no event shall Defendants be obligated to pay more than  
5 a total of \$95,000 under the terms of this Consent Judgment.

6 B. Defendants shall use commercially reasonable efforts to sell the Property within  
7 two (2) years of the entry of this Consent Judgment for fair market value, subject to reasonable  
8 extensions if DEQ determines that Defendants are making reasonable efforts to sell the Property.

9 C. Defendants agree to pay the reasonable expenses incurred by the State of Oregon  
10 to process and finalize this Consent Judgment.

11 D. Defendants and DEQ agree to cooperate with any additional documentation or  
12 acts reasonably necessary to effectuate the obligations set forth in this Consent Judgment.

13 E. Payments made in full under the terms of this Consent Judgment shall constitute  
14 payment for all Defendants and shall discharge such obligation or obligations hereunder for all  
15 Defendants.

16 4. Reimbursement of DEQ Costs

17 (1) DEQ will submit to Defendant a monthly invoice of costs on or after  
18 August 3, 2016 in connection with development and approval of this Consent Judgment and any  
19 activities related to the oversight and periodic review of Defendant's implementation of this  
20 Consent Judgment. Each invoice must include a summary of costs billed to date. Defendants'  
21 obligation for such expenses under this Section shall be limited to \$5000.

22 (2) DEQ oversight costs payable by Defendants include direct and indirect costs.  
23 Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually  
24 and reasonably incurred by DEQ under ORS 465.200 *et seq.* DEQ's direct cost summary must  
25 include a Land Quality share direct labor summary showing the persons charging time, the  
26 number of hours, and the nature of work performed. Indirect costs include those general

1 management and support costs of DEQ and of the Land Quality share allocable to DEQ  
2 oversight under this Consent Judgment and not charged as direct, site-specific costs. ndirect  
3 charges are based on actual costs and applied as a percentage of direct personal services costs.  
4 DEQ will maintain work logs, payroll records, receipts, and other documents to document work  
5 performed and expenses incurred under this Consent Judgment and, upon request, will provide  
6 copies of such records to Defendants.

7 (3) Within 30 days of receipt of DEQ's invoice, Defendants will pay the amount  
8 of costs billed by check payable to the "State of Oregon, Hazardous Substance Remedial Action  
9 Fund." After 30 days, any unpaid amounts that are not the subject of pending dispute resolution,  
10 or that have been determined owing after dispute resolution, become a liquidated debt collectible  
11 under ORS 293.250 or other applicable law.

12 (4) Defendants will pay simple interest of 9% per annum on the unpaid balance of  
13 any DEQ oversight costs, which interest will begin to accrue at the end of the 30-day payment  
14 period.

15 5. Effect of Consent Judgment

16 A. Except as expressly stated herein, Defendants do not admit any liability, violation  
17 of law, factual or legal findings, conclusions, or determinations asserted in this Consent  
18 Judgment.

19 B. Nothing in this Consent Judgment is intended to create any cause of action in  
20 favor of any person not a party to this Consent Judgment.

21 C. Nothing in this Consent Judgment prevents DEQ, the State of Oregon, or  
22 Defendants from exercising any rights each might have against any person not a party to this  
23 Consent Judgment.

24 D. If for any reason the Court declines to approve this Consent Judgment in the form  
25 presented, this settlement is voidable at the sole discretion of any Party and the terms of the  
26 settlement may not be used in evidence in any litigation among or against the Parties.

1 E. DEQ and Defendants intend for this Consent Judgment to be construed as a  
2 judicially-approved settlement, by which Defendants have resolved its liability to the State of  
3 Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental  
4 Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9613(f)(2), regarding  
5 Matters Addressed, and for Defendants not to be liable for claims for contribution regarding  
6 Matters Addressed to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§  
7 9613(f)(2).

8 F. Unless specified otherwise, the use of the term “days” in this Consent Judgment  
9 means calendar days.

10 G. This Consent Judgment is binding on the Parties and their respective successors,  
11 heirs, devisees, agents, and assigns. The undersigned representative of each party certifies that  
12 he or she is fully authorized to execute and bind such party to this Consent Judgment. No  
13 change in ownership, corporate, or partnership status in any way alters Defendants’ obligations  
14 under this Consent Judgment, unless otherwise approved in writing by DEQ.

15 6. Contribution Actions

16 A. Pursuant to ORS 465.325(6)(b), Defendants are not liable for claims for  
17 contribution regarding Matters Addressed.

18 B. Nothing in this Consent Judgment prevents Defendants from exercising any rights  
19 of contribution or indemnification Defendants might have against any person regarding activities  
20 under this Consent Judgment.

21 7. Covenant Not to Sue by State of Oregon

22 A. Subject to Subsection 6.B., the State of Oregon covenants not to sue or take any  
23 other judicial or administrative action against Defendants concerning any liability to the State of  
24 Oregon under ORS 465.200 to 465.455 and 465.900 regarding Matters Addressed.

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1 B. The State of Oregon reserves all rights against Defendants with respect to any  
2 matter not expressly included in the covenant not to sue set forth in Subsection 6.A., including  
3 but not limited to:

4 (1) Failure by a Defendant to comply with this Consent Judgment; and

5 (2) A Defendant's act or omission causing, contributing to, or exacerbating a  
6 release of hazardous substances at the Site after the date of entry of this Consent Judgment.

7 8. Liability Release by DEQ

8 A. Subject to Subsection 7.B., DEQ releases Defendants from liability to DEQ under  
9 any federal or state statute, regulation, or common law, including but not limited to the  
10 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42  
11 U.S.C. § 9601 et seq., regarding the release or threatened release of hazardous substances at the  
12 Facility.

13 B. DEQ reserves all rights against Defendants with respect to any matter not  
14 expressly included in the release from liability set forth in Subsection 7.A., including but not  
15 limited to:

16 (1) Failure by a Defendant to comply with this Consent Judgment; and

17 (2) A Defendant's act or omission causing, contributing to, or exacerbating a  
18 release of hazardous substances at the Site after the date of entry of this Consent Judgment.

19 9. Continuing Jurisdiction

20 This Court retains jurisdiction over the Parties and the subject matter of this Consent  
21 Judgment regarding obligations under this Consent Judgment.

22 Signed: 7/19/2017 04:05 PM


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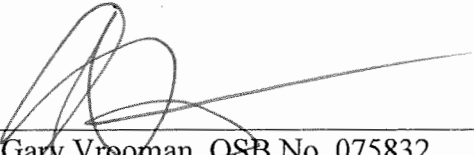
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Circuit Court Judge Ronald W. Stone

1 STATE OF OREGON, DEPARTMENT OF ENVIRONMENTAL QUALITY

2  
3 By:  Date: 6-29-17  
4 Lydia Emer  
5 Administrator, Operations Division

6  
7 By:  Date: 7/18/17  
8 Gary Vrooman, OSB No. 075832  
9 Assistant Attorney General  
10 Oregon Department of Justice  
11 100 SW Market Street  
12 Portland, OR 97201  
13 Attorney for DEQ  
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1 JOHN PITFIDO, JOANNE PITFIDO and JAP, INC.

2

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By:  \_\_\_\_\_

Date: 6/9/17

4

Carson D. Bowler, OSB No. 951830  
Schwabe, Williamson & Wyatt, P.C.  
1211 SW Fifth Avenue, Suite 1900  
Portland, OR 97204  
Attorney for Defendants John Pitfido,  
Joanne Pitfido, JAP, Inc. and Yamhill Station, Inc.

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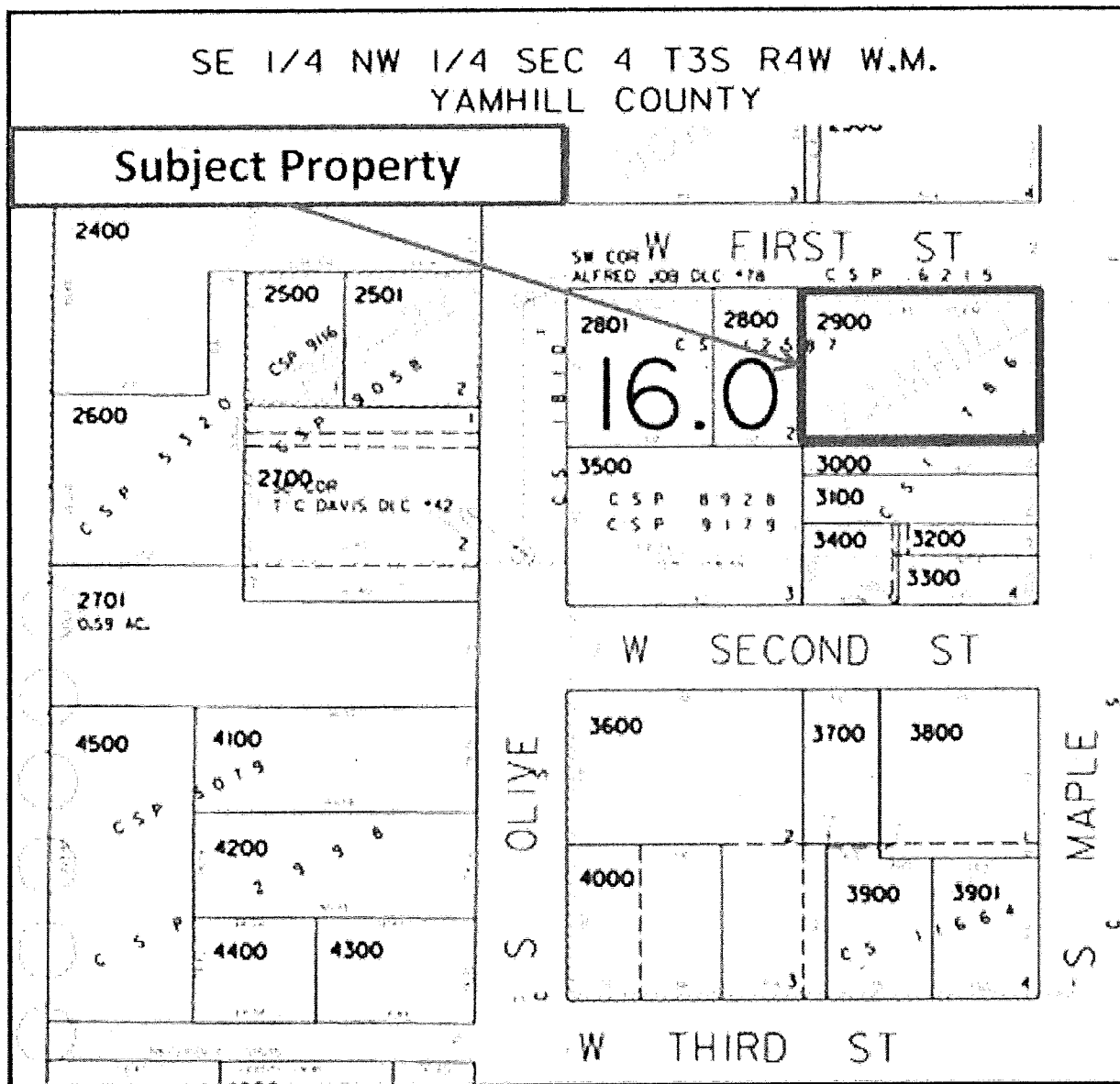
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EXHIBIT A  
VICINITY MAP

a. Affected Subject Property Tax Lot Map



1 EXHIBIT B  
2 PROPERTY LEGAL DESCRIPTION

3 b. Affected Subject Property Description

4 **Address:** 210 S. Maple in Yamhill, Oregon, Yamhill County Map Tax Lot Number 03-04-04-  
5 BD-2900

6 **Parcel Number:** Yamhill County Map Tax Lot Number R3404BD-2900

7 **Public Land Survey:** Map places the site NW ¼ of the SE ¼ Section 4, Township 3 South,  
8 Range 4 West.

9 **Legal Property Description:**

10 Lot 1 Block 3 of the original town of North Yamhill, according to the plat thereof in Yamhill  
11 County, Oregon (210 S. Maple)

## EXHIBIT C – SCOPE OF WORK

### Scope of Work

Under this Scope of Work (“SOW”), Defendant agrees to perform the following in accordance with Section 3 “Work to be Performed” of the Consent Judgment<sup>1</sup>:

1. **Productive Reuse of Property** - Defendant agrees to:
  - a. pave and landscape property per minimum city codes;
  - b. connect landscape features that may allow or permit drainage directly to Property soils (if any) to the stormwater system to ensure no infiltration; and
  - c. return site to productive use, including food carts, parking, or other uses allowed by zoning, within one year of acquisition.
  
2. **Contaminated Media Management Plan** – Prior to any redevelopment of the Property that will disturb subsurface soils, Defendant shall prepare a Contaminated Media Management Plan (“CMMP”) for review and approval by DEQ. This requirement may be met through a CMMP for the site on file with DEQ at the time of this agreement, if approved by DEQ. The CMMP will establish procedures for managing, characterizing and disposing of contaminated media uncovered during future intrusive work at the Property.
  
3. **Additional Soil Gas Assessment and Potential Engineering Controls** – Should redevelopment include the development of occupiable structures that will be in direct contact with the ground (i.e., commercial or residential structures with foundations in direct contact with the ground), additional soil gas assessment or an engineered control would be required and incorporated, as necessary, in the design of the new structure(s). Prior to redevelopment with any occupiable structures constructed on foundations with direct ground contact, Defendant shall develop a workplan with proposed soil gas assessment or engineered controls for DEQ for review and approval.
  
4. **Easement and Equitable Servitude** - In the event the Defendant implements a remedy consisting of an engineered vapor barrier or other engineered control, Defendant will execute an Easement and Equitable Servitude in a form acceptable to DEQ identifying, as appropriate:
  - a. A description of the engineered control.
  - b. Any monitoring, maintenance or reporting obligations associated with the engineered control.

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<sup>1</sup> Capitalized terms used in this SOW shall be as defined in the Consent Judgment.

**Exhibit D – Service List**

For Plaintiff:

Gary Vrooman  
Assistant Attorney General  
Oregon Department of Justice  
100 SW Market Street  
Portland, OR 97201

For Defendant:

Carson Bowler  
Schwabe Williamson & Wyatt, PC  
1211 SW 5<sup>th</sup> Avenue, Suite 1900  
Portland, OR 97204

Jessica A. Schuh  
Schwabe Williamson & Wyatt, PC  
1211 SW 5<sup>th</sup> Avenue, Suite 1900  
Portland, OR 97204

1  
2 CERTIFICATE OF COMPLIANCE with UTCR 5.100  
3

4 The Parties to this to this action have stipulated to and approved of the Consent Judgment  
5 pursuant to ORS 465.325 and ORS 465.327.

6 This proposed order or judgment is ready for judicial signature because:

7 1.  Each opposing party affected by this order or judgment has stipulated to the order  
8 or judgment, as shown by each opposing party's signature on the document being submitted.

9 2.  Each opposing party affected by this order or judgment has approved the order or  
10 judgment, as shown by signature on the document being submitted or by written confirmation of  
11 approval sent to me.

12 3.  I have served a copy of this order or judgment on all parties entitled to service and:

13 a.  No objection has been served on me.

14 b.  I received objections that I could not resolve with the opposing party despite  
15 reasonable efforts to do so. I have filed a copy of the objections I received and indicated which  
16 objections remain unresolved.

17 c.  After conferring about objections, [role and name of opposing party] agreed to  
18 independently file any remaining objection.

19 4.  The relief sought is against an opposing party who has been found in default.

20 5.  An order of default is being requested with this proposed judgment.

21 6.  Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or  
22 otherwise.

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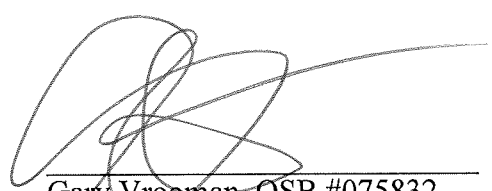
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CERTIFICATE OF SERVICE

I certify that on July 18, 2017, I served a true copy of the foregoing of COMPLAINT and CONSENT JUDGMENT and, in JOHN PITFIDO; JOANNE PITFIDO; JAP INC. and YAMHILL STATION INC., upon the party hereto by the method indicated below, and addressed to the following:

Carson Bowler  
Schwabe Williamson & Wyatt PC  
1211 SW 5th Ave, Ste. 1900  
Portland, OR 97204

- Hand Delivery
- Mail Delivery
- Overnight Mail
- Telecopy (fax)
- E-Mail



Gary Vrooman, OSB #075832  
Assistant Attorney General  
Of Attorneys for Plaintiff  
Department of Justice  
100 SW Market Street  
Portland, OR 97201  
Phone: 971-673-1878  
Fax: 971-673-1886  
gary.l.vrooman@doj.state.or.us