

MR. BOB G. DAVIS'
DECLARATION

1 LOREN HARLOW (SB #105772)
2 STOEL RIVES LLP
3 500 Capitol Mall, Suite 1600
4 Sacramento, CA 95814
5 Telephone: (916) 447-0700
6 Facsimile: (916) 447-4781

7 Attorneys for Mr. BOB DAVIS

8
9 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY
10 CONTROL BOARD FOR THE CENTRAL VALLEY REGION
11

12 In the Matter of:

13 Reconsideration of Cleanup and Abatement Order R5-
14 2011-0173,

15 TBS Petroleum, LLC, A California Limited Company

16 Antler's Shell/Subway, 20884 Antlers Road, Lakehead,
17 Shasta County

DECLARATION
OF Mr. BOB G. DAVIS

18
19 I, Bob G. Davis, declare the following:

20 1. I am the former owner of Antler's Shell/Subway (Antler's Shell) located at 20884
21 Antlers Road, Lakehead, Shasta County, California. I make this declaration regarding the
22 Reconsideration of Cleanup and Abatement Order R5-2011-0173, TBS Petroleum, LLC, (TBS),
23 A California Limited Company. This declaration is based upon my personal knowledge and
24 information and belief. If called upon to testify, I could and would competently testify to the
25 matters contained herein.

26 2. I purchased Antler's Shell from Mr. Olan F. Bailey and Mrs. Beverly A. Bailey on
27 January 30, 1990. I personally managed the operation of Antler's Shell until its purchase by TBS
28 in January 2005.

1 3. In order to comply with new state underground storage tank regulations, I removed
2 the existing single walled tanks and associated piping on October 9, 1997.

3 4. On October 10 and 21, pursuant to a Shasta County Environmental Health
4 Department (SCEHD) directive, soil samples from the tank cavity were collected for laboratory
5 analysis. The laboratory results reported minor quantities of MTBE and other petroleum
6 hydrocarbons. (Davis Exhibit A.)

7 5. On October 22, 1997, I installed two double walled gasoline underground storage
8 tanks, pressurized double walled flex hose connections, dispenser pans and vapor return lines.
9 New concrete aprons surrounding the tank farm and asphalt surrounding the site were also
10 constructed.

11 6. All tank integrity and leak testing both prior to and after the installation of the new
12 doubled walled tanks and piping confirmed system integrity.

13 7. On December 16, 1997, SCEHD based upon the laboratory soil sample results, no
14 odor or soil staining upon tank removal and the lack of observed water in the tank cavity issued a
15 letter indicating no further action was required. (Davis Exhibits B and C.)

16 8. A transient non-community supply well, regulated by the SCEHD, and operated
17 and maintained by Mr. Chuck Goff of CR Water Treatment, Certified Operator #16818, services
18 the mini-mart, Subway restaurant and gasoline station. On July 14, 2003, SCEHD conducted an
19 inspection of the water supply well. The SCEHD required that I chlorinate the water supply and
20 monitor for volatile organic compounds (VOC's) as a part of a state wide mandate.

21 9. On January 30, 2004, laboratory results on a water sample from the supply well
22 collected by Mr. Goff were provided to SCEHD. The laboratory results detected disinfection by
23 products and no detectable quantities of VOC's including MTBE. (Davis Exhibit D.)

24 10. TBS supplied fuel to Antler's Shell from 1996 until it purchased the property in
25 2005. During that time period, TBS delivered an average of 700,000 gallons per year of fuel to
26 Antler's Shell. I understand that Antler's Shell received the most fuel of any TBS customer for
27 six months a year due to the site's proximity to the lake.
28

1 11. In August 2004, TBS approached me on multiple occasions regarding the sale of
2 Antler Shell. TBS was not only my fuel supplier but my understanding was it had at least two
3 other gas stations that it owned and operated. Mr. Jim Siler, an owner of TBS and Humboldt
4 Petroleum, I believe had at least twelve other gas stations and at least 6 or 7 of these facilities
5 were in various stages of clean up and remediation through the State Board underground tank
6 fund.

7 12. Prior to TBS's inquiry, I had no intention of selling Antler's Shell as it was my
8 sole source of income. After consultation with my accountant, I determined that a sale could
9 provide sufficient funds to provide a modest retirement

10 13. I expressed my reservations to TBS regarding potential future liability from my
11 operation and ownership of Antler's Shell since the sale proceeds would fund my retirement
12 account. During negotiations, the issue of liability, indemnity and price were among my primary
13 concerns.

14 14. On December 20, 2004, I entered into a Real Estate Purchase Contract including
15 addendum for the sale of Antler's Shell to TBS. The Contract addendum provided TBS the
16 opportunity to perform a Phase I environmental study and cancel the sale if the results were
17 unsatisfactory. The addendum also states that TBS was to purchase the property on an as-is basis
18 and provides a broad indemnity agreement to me. (Davis Exhibits E and F.)

19 15. The negotiated sales price was predicated upon the assumption by TBS of any and
20 all liabilities. I would not have agreed to the sale of Antler's Shell without a substantially
21 increased price if I were to retain liability.

22 16. On April 20, 2005, I transferred my interest in Antler's Shell to TBS.

23 17. In the spring of 2007, I noticed a sheet flow of water running down the street
24 emanating from the north east corner of the Antler's Shell site. The source of the water was from
25 an expansion joint between the concrete apron covering the underground storage tanks and the
26 adjacent asphalt paving. (Davis Exhibit G.)

27 18. Approximately 2 weeks later, I observed that water was still exiting the Antler's
28 Shell property. I informed Kim, a store employee that a water line crossing the tank farm had

1 ruptured and needed to be shut off and the line repaired. I, also, called Mr. Goff of CR Water
2 Treatment, TBS's water system operator, informing him of the water leak.

3 19. After another two or three weeks and the water approaching the post office, I again
4 notified Kim and Mr. Goff of the water leak and the need to shut off the water line. Kim
5 indicated that TBS was aware of the water leak.

6 20. After my second notification and over a month and half later, I received a call, on
7 behalf of Mr. Tony Ackernecht, from Kathy, the store manager, regarding the water leak and
8 location of the shut off valve. Subsequent to the telephone call, I showed Kathy the location of
9 the shut off valve and the water flow was stopped. Within hours of the closing the valve, off site
10 water flows had ceased and the site began to dry. The water leak continued unabated for an
11 approximately 3 months.

12 21. Prior to receipt of the June 25, 2008 Regional Board request for a Preliminary Site
13 Assessment Work Plan, I was informed by TBS that an analysis from a sample of the water
14 supply well detected MTBE.

15 22. In an attempt to comply with the Regional Board requests, I contacted TBS on
16 three separate occasions, July 29, 2008, November 12, 2008, and March 16, 2009, to reach an
17 agreement regarding the work required, respective party responsibilities and possible coverage
18 from the underground tank fund.

19 23. In January 2009, TBS filed suit against me seeking damages and declaratory relief
20 for breach of contract, private nuisance, trespass, and breach of implied covenant of good faith
21 and fair dealing and contribution. After hearing and TBS's failure to file an amended complaint,
22 the Superior Court granted an order of dismissal with prejudice in my favor on July 1, 2009.

23 (Davis Exhibits H and I.)

24 24. TBS subsequently appealed the Superior Court decision to the Third Appellate.
25 On November 23, 2010, the Appellate order confirmed the Superior Court decision finding that
26 the "as-is" clause of the sales contract bared its claims for contractual and equitable indemnity.

27 (Davis Exhibit J.)
28

1 25. In January 2011, TBS without my knowledge, requested the SCEHD to complete
2 an Underground Storage Tank Release (LEAK)/Contamination Site Report for Antler's Shell
3 naming me as the responsible party. (Exhibit K.)

4 26. I have retained SHN Consulting Engineers & Geologists, Inc. (SHN) to evaluate
5 site conditions, geology, groundwater and contaminant transport to determine the cause of
6 groundwater pollution at Antler's Shell. SHN prepared reports dated April 14, 2009, November
7 17, 2009, April 20, 2011, and May 8, 2012.

8 27. Subsequent to the Court decisions, I have sought TBS's compliance with the terms
9 of the sales agreement, the Court decisions and compliance with Board orders. I have expended
10 a considerable portion of my retirement funds in doing so; and I have had to secure employment
11 in Redding to cover my living expenses.

12 28. Attached hereto as **Exhibit A** is a true and correct copy of laboratory results
13 performed by Basic Laboratory on soil samples collected on October 10, 1997 during tank
14 replacement.

15 29. Attached hereto as **Exhibit B** is a true and correct copy of laboratory results
16 performed by American Scientific Laboratories LLC on soil samples collected on October
17 21, 1997 during tank replacement.

18 30. Attached hereto as **Exhibit C** is a true and correct copy of SCEHD's No Further
19 Action Letter issued to Antler's Shell on December 16, 1997.

20 31. Attached hereto as **Exhibit D** is a true and correct copy of water sample results
21 performed by Sequoia Analytical for the water supply and submitted to SCEHD on January 30,
22 2004.

23 32. Attached hereto as **Exhibit E** is a true and correct copy of the Real Estate Purchase
24 and Sale Agreement for Antler Shell dated December 20, 2004.

25 33. Attached hereto as **Exhibit F** is a true and correct copy of the Addendum to the
26 Real Estate Purchase Contract and Receipt for Deposit dated December 20, 2004.

27 34. Attached hereto as **Exhibit G** is a true and correct copy of a map illustration
28 depicting the location of the burst pipeline in relation to the tank farm and direction of water flow.

1 35. Attached hereto as **Exhibit H** is a true and correct copy of the Notice of Entry
2 and Amended Order after Hearing on Demurrer and Granting Defendants Leave to Amend.

3 36. Attached hereto as **Exhibit I** is a true and correct copy of the Order Granting
4 Motion to Dismiss with Prejudice and Entry of Judgment of Dismissal.

5 37. Attached hereto as **Exhibit J is** a true and correct copy of an order by the Third
6 Appellate District barring TBS's claims for contractual and equitable indemnity as a result of the
7 "as is" provision in the sales agreement.

8 38. Attached hereto as **Exhibit K is** a true and correct copy of an Underground
9 Storage Tank Unauthorized Release (leak)/Contamination Site report prepared the SCEHD and
10 requested by TBS in January 2011 naming me as the responsible party.

11 39. Attached hereto as **Exhibit L** is a true and correct copy of the State Board Order,
12 WQ 99-02-UST, *In the Matter of Hollis Rodgers*.

13 40. Attached hereto as **Exhibit M** is a true and correct copy of the State Board Order,
14 WQ 2000-6-UST, *In the Matter of Lake Publishing Company*.

15 41. Attached hereto as **Exhibit N** is a true and correct copy of the SHN report dated
16 May 8, 2012 prepared by Mr. Mike Foget, PE.

17 42. Attached hereto as **Exhibit O** is a true and correct copy of the SHN report dated
18 April 14, 2009 prepared by Mr. John Aveggio, PE.

19 43. Attached hereto as **Exhibit P** is a true and correct copy of the SHN report dated
20 November 17, 2009 prepared by Mr. John Aveggio, PE.

21 44. Attached hereto as **Exhibit Q** is a true and correct copy of the SHN report dated
22 April 20, 2011 without attachments prepared by Mr. John Aveggio, PE.

23 45. Attached hereto as **Exhibit R** is a true and correct copy of SCEHD laboratory
24 records for Antler's Shell onsite well.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 9 day of May, 2012 in Lakehead, California


BOB G. DAVIS, Declarant

MR. BOB G. DAVIS' EXHIBITS

EXHIBIT A



Report To: I.M.E. STATION MAINTENANCE, INC.
 P.O. BOX 285
 GAZELLE, CA 96034

Lab Number: 8710228
Date: 11/03/97
Phone: 435-2434
Date Sampled: 10/10/97
Date Received: 10/10/97

Attention: TOM SHERIDAN

Project Name: ANTLERS

Sample Description: SOIL TESTING

Test:	TPH - Gas	Benzene	Toluene	Ethyl Benzene	Total Xylenes	Methyl-t-butylether	TPH - Diesel
Method:	EPA 8015M	EPA 8020	EPA 8020	EPA 8020	EPA 8020	EPA 8020	EPA 8015M
Units:	mg/kgW	mg/kgW	mg/kgW	mg/kgW	mg/kgW	mg/kgW	mg/kgW
Reporting Limit:	1	0.005	0.005	0.005	0.01	0.02	10
Date Analyzed:	10/22/97	10/22/97	10/22/97	10/22/97	10/22/97	10/22/97	10/23/97

Sample ID

Stock Pile #1	n	n	n	n	0.018	n	n
Stock Pile #2	n	n	n	n	n	n	n
Tank Hole, S.E.	n	n	n	n	n	0.033	n
Tank Hole, Middle South	n	n	n	n	n	n	n
Tank Hole 3, S.W.	n	n	n	n	n	n	n
Tank Hole 4, N.E.	n	n	n	n	n	n	n
Tank Hole 5, Middle North	n	n	n	n	n	0.085	n
Tank Hole 6, N.W.	n	n	n	n	n	n	n

Comments: Testing Subcontracted to Lab Cert. #1188.
 n - Not detected at the reporting limit.

Reported by: 



Purgeable Aromatics
and
Total Petroleum Hydrocarbons

BASIC LABORATORY
2218 RAILROAD AVE.
REDDING, CA 96001
Attn: JAMES E. HAWLEY 916-243-7234

Date Reported: 10/28/97
Date Received: 10/16/97
Laboratory No.: 97-11176-1

Sample Description: 9710226-1 (STOCK PILE #1)

Sample Matrix: Soil

Date Collected: 10/10/97 @ 12:00PM
Date Extracted-8020: 10/22/97
Date Analyzed-8020: 10/22/97
Date Extracted-8015M(d): 10/20/97
Date Analyzed-8015M(d): 10/23/97
Dilution Used-8015M(d): 1

Constituents	Analysis Results	Reporting Units	Practical Quantitation Limit
Benzene	None Detected	mg/kg	0.005
Toluene	None Detected	mg/kg	0.005
Ethyl Benzene	None Detected	mg/kg	0.005
Methyl-t-butylether	None Detected	mg/kg	0.02
Total Xylenes	0.018	mg/kg	0.01
Total Petroleum Hydrocarbons (gas)	None Detected	mg/kg	1.
Surrogate & Recovery	89.	%	70-130
Total Petroleum Hydrocarbons (diesel)	None Detected	mg/kg	10.
Surrogate & Recovery	98.	%	64-128

TEST METHOD: TPH by D.O.H.S. / L.U.F.T. Manual Method - Modified EPA 8015
Individual constituents by EPA Method 5030/8020.

California D.O.H.S. Cert. #1186

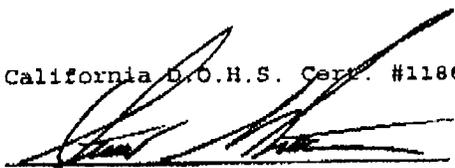
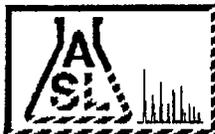

Stuart G. Buttram
Department Supervisor

EXHIBIT B



AMERICAN SCIENTIFIC LABORATORIES, LLC
Environmental Testing Services

ANALYTICAL RESULTS

ASL Job No: 2142
 Project ID: 9711271
 Project Name: Antlers Shell (I.M.E.)

Page: 2

Report for: (BASIC)
 Basic Laboratory
 2218 Railroad Ave.
 Redding, CA 96001

Attn: James E. Hawley Phone: 916/243-7224

Method: [8015MOD/8020]
 TPH as Gasoline/BETX & MTBE
 Matrix: Soil
 Units: ug/kg

Lab ID:	16203	16204	16205	16206	
Sample No:	9711271-1	9711271-2	9711271-3	9711271-4	
Date Sampled:	10/21/97	10/21/97	10/21/97	10/21/97	
Date Extracted:	11/19/97	11/19/97	11/19/97	11/19/97	Detection
Date Analyzed:	11/19/97	11/19/97	11/19/97	11/19/97	Limit

Benzene	ND	ND	ND	ND	5
Ethylbenzene	ND	ND	ND	ND	5
Toluene	9	9	13	ND	5
Xylenes (Total)	ND	ND	10	ND	10
MTBE	ND	ND	30	ND	20
TPH as Gasoline	ND	ND	ND	ND	1.0 (mg/kg)

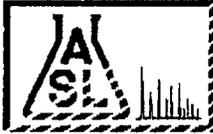
Quality Control Report

Lab ID: 16203 16204 16205 16206

Surrogate %REC:
 Bromofluorobenzene 84 81 79 87

	Spike %REC.	Spike DUP. %REC.	AVG. RPD.
Benzene	84	95	8.7
Toluene	83	95	9.5

ND - Not Detected at The Detection Limit



AMERICAN SCIENTIFIC LABORATORIES, LLC
Environmental Testing Services

ANALYTICAL RESULTS

ASL Job No: 2142
 Project ID: 9711271
 Project Name: Antlers Shell (I.M.E.)

Page: 3

Report To: (BASIC)
 Basic Laboratory
 2218 Railroad Ave.
 Redding, CA 96001

Attn: James E. Hawley Phone: 916/243-7234

Method:	/8015M/DHSLUFT/ TPH as Diesel and Heavier HCs (Extended Run)				
Matrix:	Soil				
Units:	mg/kg				
Lab ID:	16203	16204	16205	16206	
Sample No:	9711271-1	9711271-2	9711271-3	9711271-4	
Date Sampled:	10/21/97	10/21/97	10/21/97	10/21/97	
Date Extracted:	11/20/97	11/20/97	11/20/97	11/20/97	Detection Limit
Date Analyzed:	11/21/97	11/21/97	11/21/97	11/21/97	
TPH as Diesel	ND	ND	ND	ND	10
Heavy Oils	ND	20	10	ND	10

Quality Control Report

Lab ID:	16203	16204	16205	16206
<u>Surrogate %REC.</u>				
Chlorobenzene	119	107	96	100
	Spike %REC.	Spike DUP. %REC.	AVG. RPD	
TPH as Diesel	104	107	2	

ND - Not Detected at The Detection Limit

EXHIBIT C



SHASTA COUNTY

DEPARTMENT OF RESOURCE MANAGEMENT
1855 Placer Street, Redding, CA 96001

Russ Mull, R.E.H.
Director

Suite 101
AIR QUALITY MANAGEMENT DISTRICT
R. Michael Kussow, P.E.
Air Pollution Control Officer
(916) 225-5874
FAX: (916) 225-5237

Suite 102
BUILDING DIVISION
Ralph S. Overbay
Division Manager
(916) 225-5781
FAX: (916) 245-8468

Suite 103
PLANNING DIVISION
James Cook
Division Manager
(916) 225-5532
FAX: (916) 245-8468

Suite 201
ENVIRONMENTAL HEALTH DIVISION
James Smith, R.E.H.S.
Division Manager
(916) 225-5787
FAX: (916) 225-5413

Suite 200
ADMINISTRATION &
COMMUNITY EDUCATION
(916) 225-5789
FAX: (916) 225-5807

December 16, 1997

Bob Davis
Antlers Shell
P. O. Box 410
Lakehead, CA 96051

UNDERGROUND STORAGE TANK REMOVAL, 20291 LAKEVIEW DRIVE, LAKEHEAD, CALIFORNIA

On October 9, 1997, three underground fuel tanks were removed from the above mentioned site. We are in receipt of the laboratory report dated 11/12/97 and 10/10/97. Based on the results of the soil analysis submitted and field observations, no further action will be required.

This file is closed, effective this date.

Nothing in this determination shall construe or be construed as a satisfaction or release from liability from any conditions or claims arising as a result of past, current, or future operations at the site. Nothing in this determination is intended or shall be construed to limit the rights of any parties, with respect to claims arising out of or relating to, deposit or disposal at any other location of substances removed from the site. Nothing in this determination is intended or shall be construed to preclude the Shasta County Department of Resource Management, Environmental Health Division or any other agency from taking any other enforcement actions. This letter does not relieve the tank owner and property owner of any responsibilities mandated under the California Health and Safety Code, California Water Code, and Shasta County ordinances if existing, additional, or previously unidentified contamination at the site causes or threatens to cause pollution or nuisance, or is found to pose a threat to public health or water quality. Changes in the present land use may require further assessment and mitigation.

If you have any questions regarding this matter, please contact me Monday through Friday from 8:00 to 8:30 a.m.

Sincerely,

Mark Cramer, R.E.H.S.
Senior Environmental Health Specialist

/pw

TOLL FREE ACCESS WITHIN SHASTA COUNTY 1-800-528-2850

EXHIBIT D

EXHIBIT E



REAL ESTATE PURCHASE CONTRACT AND RECEIPT FOR DEPOSIT

(LONG FORM - WITH FINANCING CLAUSES)

THIS IS MORE THAN A RECEIPT FOR MONEY. IT IS INTENDED TO BE A LEGALLY BINDING CONTRACT. READ IT CAREFULLY.

CALIFORNIA ASSOCIATION OF REALTORS' STANDARD FORM

Redding

California, T.A. DECEMBER 20TH, NOVEMBER 20TH, 2004

Received from TBS Petroleum, L.L.C. here in called Buyer, the sum of Fifteen Thousand Dollars Dollars \$ 15,000.00 evidenced by cash, cashier's check, personal check, or Company, payable to Alliance Title Company, to be held uncashed until acceptance of this offer as deposit on account of purchase price of One Million Six Hundred Thousand Dollars Dollars \$ 1,600,000.00 for the purchase of property, situated in Lakehead, County of Shasta, California, described as follows: Antlers Shell & Subway, 20884 Antlers Road, Lakehead, CA

1. FINANCING:

The obtaining of Buyer's financing is a contingency of this agreement.

- A. DEPOSIT submitted with this offer \$ 15,000.00
B. INCREASED DEPOSIT within days of Seller's acceptance to be deposited into \$
C. BALANCE OF DOWN PAYMENT to be deposited into on or before \$
D. Buyer to apply, qualify for and obtain a NEW FIRST LOAN in the amount of \$ payable monthly at approximately \$ or more, including interest at origination not to exceed % fixed rate, other all due years from date of origination. Loan fee not to exceed Seller agrees to pay a maximum of for FHA/VA discount points. Additional terms
E. Buyer to assume, or to take title subject to an EXISTING FIRST LOAN with an approximate balance of \$ in favor of payable monthly at \$ including interest at % fixed rate, other Fees not to exceed Disposition of impound account
F. Buyer to execute a NOTE SECURED BY a first, second, third DEED OF TRUST in the amount of \$ IN FAVOR OF SELLER payable monthly at \$ or more, including interest at % all due years from date of origination, or upon sale or transfer of subject property. A late charge of shall be due on any installment not paid within days of the due date. Deed of Trust to contain a request for notice of default or sale for the benefit of Seller. Additional terms
G. Buyer to assume, or to take title subject to an EXISTING SECOND LOAN with an approximate balance of \$ in favor of payable monthly at \$ including interest at % fixed rate, other Buyer fees not to exceed Additional terms
H. Buyer to apply, qualify for and obtain a NEW SECOND LOAN in the amount of \$ payable monthly at \$ or more, including interest at origination not to exceed % fixed rate, other all due years from date of origination. Buyer's loan fee not to exceed Additional terms
I. In the event Buyer assumes or takes title subject to an existing loan, Seller shall provide Buyer with copies of applicable notes and Deeds of Trust. A loan may contain a number of features which affect the loan, such as interest rate changes, monthly payment changes, balloon payments, etc. Buyer shall be allowed calendar days after receipt of such copies to notify Seller in writing of disapproval. FAILURE TO SO NOTIFY SELLER SHALL CONCLUSIVELY BE CONSIDERED BUYER'S APPROVAL. Buyer's approval shall not be unreasonably withheld. Difference in existing loan balances shall be adjusted in Cash, Other
J. ADDITIONAL FINANCING TERMS: Buyer to obtain own financing for purchase price and deposit into escrow. \$ 1,585,000.00
K. Buyer agrees to act diligently and in good faith to obtain all applicable financing. If Buyer fails to notify Seller in writing that Buyer has obtained the above financing within calendar days after Seller's acceptance of this offer, or Buyer and Seller waive this contingency in writing, either party may terminate this agreement.
L. TOTAL PURCHASE PRICE \$ 1,600,000.00

2. OCCUPANCY: Buyer does, does not intend to occupy subject property as his residence.

3. SUPPLEMENTS: The following ATTACHED California Association of Realtors' supplements are incorporated as part of this agreement:

- Contingency Release Clause (CRC-11) VA and FHA Amendments (VA/FHA-11)
Interim Occupancy Agreement (IOA-11) Other
Residential Lease Agreement After Sale (RLAS-11) Other Addendum attached

4. ESCROW: Buyer and Seller shall deliver signed instructions to Alliance Title Co., the escrow holder within 30 calendar days from Seller's acceptance which shall provide for closing within 45 days from Seller's acceptance. Escrow fees to be paid as follows: Split equally between Buyer and Sellers

Buyer and Seller acknowledge receipt of copy of this page, which constitutes Page 1 of Pages.

Buyer's Initials

Seller's Initials

A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE CONSULT YOUR ATTORNEY.

THIS STANDARDIZED DOCUMENT FOR USE IN SIMPLE TRANSACTIONS HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS' IN FORM ONLY. NO REPRESENTATION IS MADE AS TO THE APPROVAL OF THE FORM OF SUPPLEMENTS, THE LEGAL VALIDITY OF ANY PROVISION, OR THE ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. IT SHOULD NOT BE USED IN COMPLEX TRANSACTIONS OR WITH EXTENSIVE RIDERS OR ADDITIONS.



5. **TITLE:** Title is to be free of liens, encumbrances, easements, restrictions, rights and conditions of record or known to Seller, other than the following: (a) Current property taxes, (b) covenants, conditions, restrictions, and public utility easements of record, if any, provided the same do not adversely affect the continued use of the property for the purposes for which it is presently being used, unless reasonably disapproved by Buyer in writing within 10 calendar days of receipt of a current preliminary title report furnished at 1/2 each expense, and (c) _____
 Seller shall furnish Buyer at 1/2 Buyer & Sellers expense a standard California Land Title Association policy issued by Insurance Co. chosen by Alliance Title Company, showing title vested in Buyer subject only to the above. If Seller is unwilling or unable to eliminate any title matter disapproved by Buyer as above, Seller may terminate this agreement. If Seller fails to deliver title as above, Buyer may terminate this agreement ~~or the deposit shall be returned to Buyer.~~
6. **PRORATIONS:** Property taxes, premiums on insurance acceptable to Buyer, rents, interest, homeowner's dues, and none shall be pro-rated as of (a) the date of recordation of deed; or (b) _____. Any bond or assessment which is a lien shall be ~~paid~~ ^{assumed} by Buyer. Transfer taxes, if any, shall be paid by 1/2 by Buyer & Seller (Real property taxes will be affected upon transfer of title.)
7. **POSSESSION:** Possession and occupancy shall be delivered to Buyer, on close of escrow, or not later than _____ days after close of escrow, or _____
8. **VESTING:** Unless otherwise designated in the escrow instructions of Buyer, title shall vest as follows: As directed by Buyer
 (The manner of taking title may have significant legal and tax consequences. Therefore, give this matter serious consideration.)
9. **MULTIPLE LISTING SERVICE:** If Broker is a participant of a Board multiple listing service ("MLS"), the Broker is authorized to report the sale, its price, terms, and financing for the information, publication, dissemination, and use of the authorized Board members.
10. **LIQUIDATED DAMAGES:** Buyer's sole and complete remedy for breach of this agreement shall be the deposit provided by Buyer at the time of purchase. Seller shall be released of all obligations to sell the property to Buyer and may resell the property to Buyer or to any other person without restriction. Buyer shall have no claim against Seller for breach of this agreement. Buyer (XXXXXXX) Seller (XXXXXXX) agree that Seller shall retain the deposit as liquidated damages. If the deposit is not sufficient to cover the Seller's actual and reasonable costs of sale, the Buyer shall be liable for the difference. If the deposit is in excess of the Seller's actual and reasonable costs of sale, the Buyer shall be liable for the difference. The deposit shall be held in escrow by the Broker and shall be returned to the Buyer upon completion of the sale. The deposit shall not be used for any other purpose. The deposit shall be held in escrow by the Broker and shall be returned to the Buyer upon completion of the sale. The deposit shall not be used for any other purpose.
11. **ARBITRATION:** Any dispute arising out of this agreement shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The arbitration shall be held in the County of _____, State of California. The arbitration shall be confidential and shall not be subject to discovery. The arbitration shall be final and binding on the parties. The arbitration shall be held in the County of _____, State of California. The arbitration shall be confidential and shall not be subject to discovery. The arbitration shall be final and binding on the parties.
12. **ATTORNEY'S FEES:** In any action or proceeding arising out of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.
13. **KEYS:** Seller shall, when possession is available to Buyer, provide keys to all property locks, and alarms if any.
14. **PERSONAL PROPERTY:** The following items of personal property, free of liens and without warranty of condition, are included: Equipment per schedule; Stock inventory, cigarettes & fuel are included, but paid for under Addendum in addition to basic price, as well as supplies
15. **FIXTURES:** All permanently installed fixtures and fittings that are attached to the property or for which special openings have been made are included in the purchase price, including electrical, light, plumbing and heating fixtures, built-in appliances, screens, awnings, shutters, all window coverings, attached floor coverings, T.V. antennas, air cooler or conditioner, garage door openers and controls, attached fireplace equipment, mailbox, trees and shrubs, and equipment per schedule.
16. **STRUCTURAL MODIFICATIONS:** Seller shall comply with Civil Code Section 1134.5 by disclosing to Buyer in writing any known structural additions or alterations, or the installation, alteration, repair, or replacement of significant components of the structures upon the property made with or without appropriate permit(s).
17. **TAX WITHHOLDING.** Under the Foreign Investment In Real Property Tax Act (FIRPTA), IRC 1445, every Buyer of U.S. real property must, unless an exemption applies, deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price. The primary exemptions are: No withholding is required if (a) Seller provides Buyer with an affidavit under penalty of perjury, that Seller is not a "foreign person," or (b) provides Buyer with a "qualifying statement" issued by the Internal Revenue Service, or (c) if Buyer purchases real property for use as a residence and the purchase price is \$300,000.00 or less and if Buyer or a member of Buyer's family has definite plans to reside at the property for at least 50% of the number of days it is in use during each of the first two twelve-months periods after transfer.
 Seller and Buyer agree to execute and deliver as directed any instrument, affidavit and statement, or to perform any act reasonably necessary to carry out the provisions of FIRPTA and regulations promulgated thereunder.
18. **ENTIRE CONTRACT:** Time is of the essence. All prior agreements between the parties are incorporated in this agreement which constitutes the entire contract. Its terms are intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this agreement.
19. **CAPTIONS:** The Captions in this agreement are for convenience of reference only and are not intended as part of this agreement.

Buyer and Seller acknowledge receipt of copy of this page, which constitutes Page 2 of _____ Pages.

Buyer's Initials T.A. Seller's Initials B. J. ...

FORM DLF-14-2

ADDITIONAL TERMS AND CONDITIONS:

ONLY THE FOLLOWING PARAGRAPHS A THROUGH L WHEN INITIALED BY BOTH BUYER AND SELLER ARE INCORPORATED IN THIS AGREEMENT.

Buyers
Initials

Sellers
Initials

T.A.

IRB

A. PHYSICAL INSPECTION: Within 21 calendar days after Seller's acceptance, Buyer shall have the right, at Buyer's expense to select a licensed contractor(s) or other qualified professional(s), to inspect and investigate the subject property, including but not limited to structural, plumbing, heating, electrical, built-in appliances, roof, soils, foundation, mechanical systems, pool, pool heater, pool filter, and air conditioner, if any. All claimed defects concerning the condition of the property that adversely affect the continued use of the property for the purposes for which it is presently being used shall be in writing, supported by written reports, if any, and delivered to Seller within 30 calendar days after Seller's acceptance. Buyer shall furnish Seller copies, at no cost, of all reports concerning the property obtained by Buyer. When such reports disclose conditions or information unsatisfactory to the Buyer, Buyer may cancel this agreement. Seller shall make the premises available for all inspections. BUYER'S FAILURE TO NOTIFY SELLER AS HEREIN PROVIDED SHALL CONCLUSIVELY BE CONSIDERED APPROVAL.

Buyers
Initials

Sellers
Initials

T.A.

IRB

Within 21 calendar days after Seller's acceptance, Buyer shall have the right at Buyer's expense to select a licensed geologist or other qualified professional to make tests, surveys, or other studies of the subject property. Buyer shall keep the subject property free and clear of any liens, indemnify and hold Seller harmless from all liability, claims, demands, damages or costs, and repair all damages to the property arising from the tests, surveys, or studies. All claimed defects concerning the condition of the property that adversely affect the continued use of the property for the purposes for which it is presently being used shall be in writing, supported by written reports if any, and delivered to Seller within 30 calendar days after Seller's acceptance. Buyer shall furnish Seller copies, at no cost, of all reports concerning the property obtained by Buyer. When such reports disclose conditions or information unsatisfactory to the Buyer, Buyer may cancel this agreement. Seller shall make the premises available for all inspections. BUYER'S FAILURE TO NOTIFY SELLER AS HEREIN PROVIDED SHALL CONCLUSIVELY BE CONSIDERED APPROVAL.

Buyers
Initials

Sellers
Initials

T.A.

IRB

C. CONDITION OF PROPERTY: Seller warrants, through the date possession is made available to Buyer: (1) property and improvements thereon, including landscaping, grounds and pool, if any, shall be maintained in the same condition as upon the date of Seller's acceptance; (2) the roof, exterior walls, and the water, sewer, plumbing, heating and air conditioning systems shall be in good working order.

Buyers
Initials

Sellers
Initials

T.A.

IRB

D. SELLER REPRESENTATION: Seller warrants that he or she has no knowledge of any notice of violations of City, County, State, Federal, Building, Zoning, Fire, Health Codes or ordinances, or other governmental regulation filed or issued against the property. This warranty shall be effective until date of close of escrow.

Buyers
Initials

Sellers
Initials

T.A.

IRB

E. PEST CONTROL: Within 30 calendar days from date of Seller's acceptance Seller shall furnish Buyer at the expense of Buyer, Seller with a current written report of an inspection by a licensed Structural Pest Control Operator of the main building and all structures on the property, except (one-half each).

If no infestation or infection by wood destroying pests or organisms is found, the report shall include a written "Certification" as provided in Business and Professions Code 8519(a) that on the date of inspection "no evidence of active infestation or infection was found."

All work recommended in said report to repair damage caused by infestation or infection by wood-destroying pests or organisms found, including leaking shower stalls and replacing of tiles removed for repairs, and all work to correct conditions that causes such infestation or infection shall be done at the expense of Seller.

Funds for work to be performed shall be held in escrow and disbursed upon receipt of written Certification as provided in Business and Professions Code 8579(b) that the property "is now free of evidence of active infestation or infection".

Buyer agrees that any work to correct conditions usually deemed likely to lead to infestation or infection by wood-destroying pests or organisms, but where no evidence of existing infestation or infection is found with respect to such conditions, is NOT the responsibility of the Seller, and that such work shall be done only if requested by Buyer and then at the expense of Buyer.

If inspection of inaccessible areas is recommended by the report, Buyer has the option of accepting and approving the report or requesting further inspection be made at the Buyer's expense. If further inspection is made and infestation, infection, or damage is found, repair of such damage and all work to correct conditions that caused such infestation or infection and the cost of entry and closing of the inaccessible areas shall be at the expense of Seller. If no infestation, infection, or damage is found, the cost of entry and closing of the inaccessible areas shall be at the expense of Buyer. Other _____

Buyers
Initials

Sellers
Initials

T.A.

IRB

F. SMOKE DETECTOR: As required by law, smoke detector(s) shall be installed at the expense of Buyer, Seller prior to close of escrow, and a compliance report obtained if required by local ordinance.

Buyers
Initials

Sellers
Initials

T.A.

IRB

G. FLOOD HAZARD ZONE DISCLOSURE: The subject property is situated in a "Flood Zone" as set forth on H.U.D. "Special Flood Zone Area Map". The law requires that as a condition of obtaining financing on most properties located in a "Flood Zone", lenders will require that H.U.D. flood insurance be carried where the property or its attachments are security for the loan.

The extent of coverage and the cost may vary. For further information you should consult your lender or insurance carrier. No representation or recommendation is made by the Seller and the Brokers in this transaction as to the legal effect or economic consequences of the National Flood Insurance Program and related legislation.

Buyer and Seller acknowledge receipt of copy of this page, which constitutes Page 3 of _____ Pages.

Buyer's Initials T.A. Seller's Initials IRB

EXHIBIT F

Bob CD T.A.

ADDENDUM TO REAL ESTATE PURCHASE CONTRACT AND RECEIPT FOR DEPOSIT

This addendum is part of that certain Real Estate Purchase Contract and Receipt for Deposit by and between Bob Davis and Cheryl Davis as Sellers, and TBS Petroleum, L.L.C., as Buyer, for the business and real estate commonly known as the Antlers Shell and Subway.

1. Addendum to Paragraph 1A:

(a) Deposit: The deposit of Fifteen Thousand Dollars (\$15,000.00) deposited into Alliance Title by Buyer shall be released from escrow to Sellers within five (5) days of opening escrow. Such deposit is a non-refundable deposit, unless (i) escrow does not close through failure of the Sellers to close escrow and convey marketable title; or (ii) Buyer does not receive approval from Subway to be a franchisee; or (iii) the property does not pass a Phase I environmental study; or (iv) the bank appraisal on the property finds a market value of less than One Million Four Hundred and Fifty Thousand Dollars (\$1,450,000.00). If one of these exceptions occurs, Buyer may cancel and receive back the full deposit.

(b) Arbitration: If the only controversy or claim between the parties arises out of or relates to the disposition of the Buyer's deposit, such controversy or claim shall at the election of the parties be decided by arbitration. Such arbitration shall be determined in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction

Buyer - call T.A.

thereof. The provisions of Code of Civil Procedure Section 1283.05 shall be applicable to such arbitration.

2. Addendum to Paragraph 1L: Allocation of the Purchase Price: The purchase price of One Million Six Hundred Thousand Dollars (\$1,600,000.00) is allocated by Buyer and Sellers as follows and both Buyer and Sellers will use this allocation on any tax returns filed:

- a) Land: Two Hundred Thousand Dollars (\$200,000.00);
- b) Building: Four Hundred Fifty Thousand Dollars (\$450,000.00);
- c) Improvements (other than building): Four Hundred Thousand Dollars (\$400,000.00);
- d) Equipment: Three Hundred Thousand Dollars (\$300,000.00);
- e) Goodwill: Two Hundred Thousand Dollars (\$200,000.00);
- f) Covenant Not to Compete: Fifty Thousand Dollars (\$50,000.00).

3. Addendum to Paragraph 14: Personal Property, Sale of Inventory: The stock inventory, cigarettes and tobacco products, supplies and fuel are being purchased but are not included in the One Million Six Hundred Thousand Dollar (\$1,600,000.00) purchase price of the other assets.

Prior to close of escrow, all funds (in good funds) to close escrow will be deposited into escrow, plus a deposit of One Hundred Thousand Dollars (\$100,000.00) towards the cost of purchase of the stock inventory, cigarettes and tobacco products, supplies, fuel and Subway inventory.

Buyer CD T.A.

Escrow shall close on the main sale, and escrow shall then hold the One Hundred Thousand Dollar (\$100,000.00) Deposit. The evening after close of escrow, Buyer and Sellers shall take inventory of all stock inventory, grocery inventory, Subway inventory, cigarettes, tobacco products, supplies and fuel, and agree on the total to be paid for such inventory under the following basis for calculations:

- a. Cigarettes and Tobacco products are valued at cost.
- b. Lottery inventory is valued at cost.
- c. Supplies are valued at cost.
- d. Fuel is valued at cost.
- e. All other inventory items for stock inventory and grocery inventory are valued at their retail price less thirty percent (30%).
- f. Subway inventory is valued at cost.

The total figure to be paid for these inventories shall be given to escrow as soon as the figures are agreed upon by Buyer and Sellers in a joint escrow instruction. If the total cost of the inventories of stock inventory, cigarettes and tobacco products, supplies, Subway inventory and fuel is above One Hundred Thousand Dollars (\$100,000.00), Buyer shall deposit the missing amount into escrow and it will be paid to Sellers within fifteen (15) days. If the total figure for the inventories covered above is less than One Hundred Thousand Dollars (\$100,000.00), then the escrow instructions will instruct escrow to pay that amount to Sellers and refund the balance to Buyer within fifteen (15) days after the initial close of escrow.

AND CD T.A.

Once inventory is taken and possession has transferred, all cash receipts belong to Buyer, all business expenses are the responsibility of Buyer and Buyer shall take over physical operation of the station.

4. Addendum to Paragraph 15: All furnishings, fixtures and equipment are included in the purchase price and are free and clear of all liens, except:

a. The Pepsi machine is provided by Pepsi under a contract. Buyer may renew the contract or cancel the contract within thirty (30) days after close of escrow. Sellers will be responsible for any charges from Pepsi if Buyer cancels the Pepsi machine contract within thirty (30) days after close of escrow.

Both Buyer and Sellers use E-Funds Corporation to process their ATM transactions. Sellers own the ATM machine and will cooperate with Buyer to transfer the E-Funds contract on the ATM machine to Buyer's contract or to Buyer.

5. Addendum to Paragraph 20L: Additional Terms/Covenant Not to Compete: Sellers, or either of them, shall not operate a service station or other motor vehicle fueling facility within twenty (20) air miles of Antlers Shell and Subway for a period of fifteen (15) years from the date of close of escrow herein.

6. Addendum to Paragraph 20L: "As Is" Sale:

Buyer and Sellers agree that:

(a) Except as specified in this Agreement or as specified in writing and delivered to Buyer by Sellers, neither Sellers nor any other representative of Sellers has made any representations or

And CD T.A.

warranties regarding the Property, including, without limitation, any representations or warranties concerning the Property's physical condition, access, zoning laws, environmental matters, utilities, or any other matter affecting the Property or the use of the Property; and

(b) Except for the representations and warranties in this Agreement or otherwise delivered to Buyer by Seller in writing, Purchaser has not relied and will not rely on any implied warranties, guaranties, statements, representations, or information about the Property, whether made by Sellers or any other individual representing or purporting to represent Seller.

(c) If Buyer purchases the Property, Buyer purchases the Property "As Is", and Buyer is relying and will rely solely on Buyer's inspection of the Property and Buyer's experts' inspection of the Property.

7. Addendum to Paragraph 20L: Additional Terms: Both Buyer and Sellers agree this is a commercial sale and Civil Code Section 1102 does not apply.

8. Addendum to Paragraph 20L: Additional Terms/RVI Contract: The RVI Contract (Retailer RVI Step-Out Incentive Agreement) between Bob Davis and Cheryl Davis dba Antlers Shell and Subway and TBS Petroleum, L.L.C. is hereby revised and liquidated as follows:

a) TBS Petroleum, L.L.C. shall pay to Bob Davis the sum of Nine Hundred Dollars (\$900.00) per month, due on the 20th of each month, commencing the twentieth (20th) day of the month after close of escrow, and continuing through August 20, 2007. No other

Bob CD T.A.
payments will be made or due Bob Davis from TBS Petroleum, L.L.C. for any period after close of escrow for the RVI Contract.

b) These RVI Contract payments are separate and in addition to the purchase price for Antlers Shell and Subway covered elsewhere in this contract.

c) Sellers Bob Davis and Cheryl Davis are released by TBS Petroleum, L.L.C. from any liability and duties under the RVI contract and TBS Petroleum, L.L.C. will indemnify, and defend, and hold harmless Sellers Bob Davis and Cheryl Davis from any liability under the RVI Contract arising due to close of escrow or after close of escrow.

9. Addendum to Paragraph 20L: Additional Terms/Cancellation and Indemnity and Release from Amortization and Supply Agreement:

a) TBS Petroleum, L.L.C. (TBS) and Bob Davis and Cheryl Davis (Antlers Shell and Subway) entered into an Amortization and supply Agreement dated on or about October 1, 1997 providing for funding assistance for modernization of the Antlers Shell Station and providing for repayment of such assistance if Bob Davis and Cheryl Davis for any reason cease to operate the station for sale of petroleum products or sell the station to another without TBS's approval. TBS is now buying the station and expressly gives approval for such sale. TBS and Bob Davis hereby mutually cancel and terminate the Amortization and Supply Agreement referred to above and declare that no sums at all are due TBS from Bob Davis and Cheryl Davis under such agreement. TBS expressly releases Bob Davis and Cheryl Davis from any obligation under such contract.

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Buyer CO T.A.

b) TBS Petroleum, L.L.C. (TBS) shall indemnify, defend, and hold harmless Sellers Bob Davis and Cheryl Davis from any claims or liability from the Amortization and Supply Agreement between TBS and Bob Davis dated on or about October 1, 1997.

10. Addendum to Paragraph 20L: Additional Terms/Risk of Loss: Until the closing, Sellers shall bear all risk of loss, injury, damage, or destruction of the business and the assets of the business. If any loss, injury, damage, or destruction substantially impairs the value of the business prior to closing, Buyer may either terminate this contract or proceed to closing and receive an assignment of applicable insurance proceeds. If any such loss, injury, damage, or destruction interrupts conduct of the business prior to the closing, Buyer may terminate this contract. Buyer shall bear all risk of loss after the closing.

11. Addendum to Paragraph 20L: Additional Terms/Indemnity Agreements:

a) Sellers' Indemnity Agreement: Except as otherwise expressly provided in this Contract or any attachment to this Contract, Sellers shall indemnify and hold Buyer and the property of Buyer, including said assets, free and harmless from and tender a defense against any and all claims, liability, loss, damage, or expense resulting from Seller's ownership of said assets or Sellers' operation of said assets prior to close of escrow, including any claim, liability, loss, or damage arising by reason of the injury to or death of any person or persons, or the damage of any property, caused by Sellers' use of said assets, the condition of said assets when owned by Sellers, or the sale or

Buyer - CD
T.A.

manufacture by Sellers of any product or products. Sellers shall also indemnify Buyer against any and all claims, demands, losses and liabilities, including interest, penalties, and reasonable attorney's fees that Buyer shall incur by reason of any other claims of third parties for periods prior to close of escrow.

b) Buyer's Indemnity Agreement: Except as otherwise expressly provided in this Contract or from Sellers' use of the assets herein, Buyer shall indemnify, hold Sellers and the property of Sellers free and harmless from and tender a defense against any and all claims, liability, loss, damage, or expense resulting from Buyer's ownership of said assets or Buyer's operation of said assets, including any claim, liability, loss, or damage arising by reason of the injury to or death of any person or persons, or the damage of any property, caused by the Buyer's use of said assets, the condition of said assets while owned by Buyer, or the sale or manufacture by Buyer of any product or products. Buyer shall also indemnify Sellers against any and all claims, demands, losses, and liabilities, including attorney's fees that Sellers shall incur by reason of any other claims of third parties for any periods after close of escrow.

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12. Addendum to 20L: Subway:

Buyer acknowledges that Subway is a franchise and whoever is named as franchisee for Buyer will have to go to "Subway Training" for two (2) weeks to be approved as the new franchisee. This sale is contingent upon Buyer, or a designee of Buyer, being approved as the franchisee of the Subway franchise, and there being no new Subway franchise fee. Buyer understands there will be a Five Thousand Dollar (\$5,000.00) transfer fee, but no new franchise fee.

Executed this 20TH day of December, 2004 at Redding, California.

SELLERS



BOB DAVIS



CHERYL DAVIS

BUYER

TBS PETROLEUM, L.L.C.

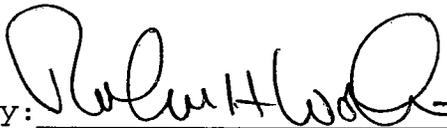
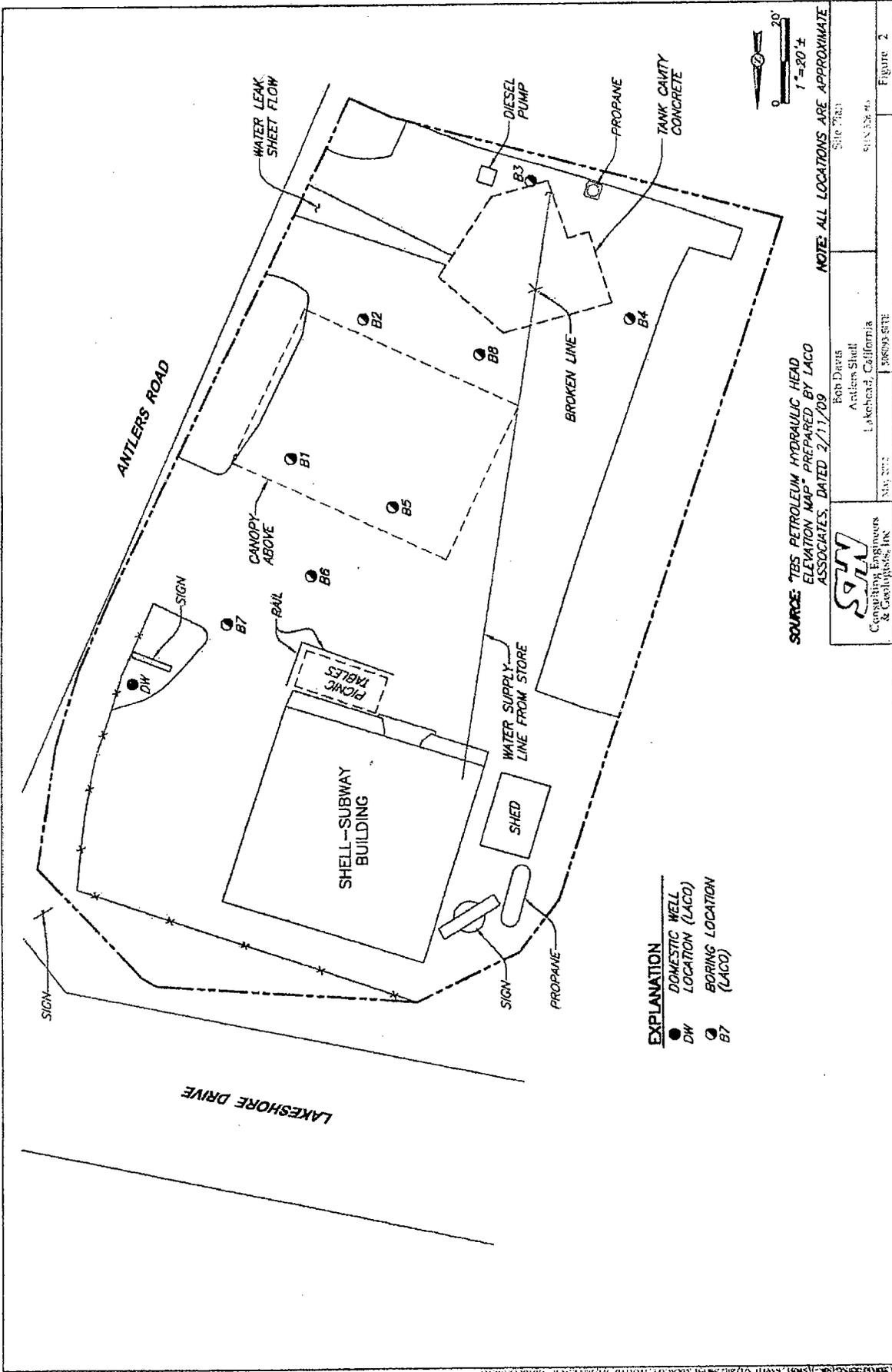
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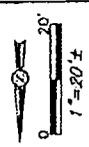




EXHIBIT G



- EXPLANATION**
- DOMESTIC WELL LOCATION (LACO)
 - BORING LOCATION (LACO)
 - B7



SOURCE: TBS PETROLEUM HYDRAULIC HEAD ELEVATION MAP* PREPARED BY LACO ASSOCIATES, DATED 2/11/09

NOTE: ALL LOCATIONS ARE APPROXIMATE



Bob Davis
Antlers Shell
Lakeshore, California

EXHIBIT H

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COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP
Rupert P. Hansen (SBN 82302)
190 The Embarcadero
San Francisco, CA. 94105
Telephone No.: 415-438-4600
Facsimile No.: 415-438-4601

Attorneys for Defendants
BOB DAVIS and CHERYL DAVIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SHASTA

TBS PETROLEUM, L.L.C.,
Plaintiff,
v.
BOB DAVIS, CHERYL DAVIS AND
DOES 1-20,
Defendants.

Case No.: 165285

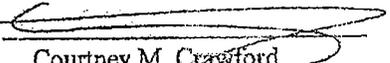
NOTICE OF ENTRY OF
AMENDED ORDER AFTER
HEARING ON DEMURRER
GRANTING DEFENDANT'S
DEMURRER WITH LEAVE TO
AMMEND

TO PLAINTIFF AND ITS COUNSEL:

PLEASE TAKE NOTICE THAT AMENDED ORDER AFTER HEARING ON
DEMURRER was entered herein on April 30, 2009. A true and correct copy of which is
"Exhibit A" hereto.

Dated: May 22, 2009

COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP
Attorneys for Defendants BOB DAVIS and
CHERYL DAVIS

By: 
Courtney M. Crawford

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP
190 THE EMBARCADERO
SAN FRANCISCO,
CA 94105
TEL: 415-438-4600
FAX: 415-438-4601

Davis:TBS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SIESTA

HON. BRADLEY L. BOECKMAN

Dept 3
lav

#165285

TBS PETROLEUM, LLC,
Plaintiffs,

vs.

BOB DAVIS, et. al.,
Defendants

NATURE OF PROCEEDINGS:

AMENDED ORDER AFTER HEARING
ON DEMURRER

This matter was taken under submission by the Court to consider oral argument. Upon consideration of the oral argument presented at the hearing on the demurrer, the Court determines that the tentative shall become the ruling of this Court as is set forth more particularly below:

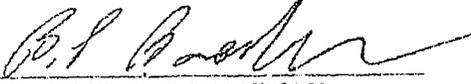
Defendants contend that the complaint, and all of the causes of action asserted therein, are barred by the "As-Is" clause of the underlying purchase agreement contained in paragraph 6 of the addendum. Defendants contend that this "as is" clause precludes any claim against them for damages as a result of conditions that existed on the property at the time of the sale, citing Shapiro v. Hu (1986) 188 Cal.App.3d 324. That case holds that "any sale of property 'as is' is a sale of the property in its 'present or existing condition'; the use of the phrase 'as is' relieves a seller of real property from liability for defects in that condition. The only exception to this principle is when a seller, through fraud or misrepresentation, intentionally conceals material defects not otherwise visible or observable to the buyer. (Lingsch v. Savage, supra, 213 Cal.App.2d at pp. 740-742.) Appellants have cited no cases, nor have we found any, in which a person selling real property "as is" was liable for defects in the quality or condition of the real property, where the property was not new construction, and the sale was made in good faith and without some form of fraudulent misrepresentation or concealment." Id. at 333-334.

Plaintiff contends that the causes of action contained in the complaint are not barred by the "as is" provision of the agreement, arguing that, since there are no allegations of misrepresentation or nondisclosure, the "as is" clause has no applicability. In support of its position, plaintiff cites to a case from New York. The Court finds that this case has no precedential value, because it's determination is based on a violation of a New York statute, and is expressly contradicted by the above statement of California law. Plaintiff has failed to establish that the "as is" clause is inapplicable.

Plaintiff contends that the indemnity clause of the purchase agreement (paragraph 11 of the addendum) permits the action against defendants. Defendants correctly point out that, in relying on this provision, plaintiff has omitted the first clause of the paragraph, which states "except as otherwise expressly provided in this contract." Any interpretation of the contract must look at the agreement as a whole, and attempt to harmonize these provisions. Accepting plaintiff's interpretation of the contract, which would allow plaintiff to assert claims against defendants to reimburse plaintiff for expenses associated with correcting conditions that existed on the property at the time of the sale, would eviscerate the "as is" clause. Based on the allegations of the complaint, the contamination existed at the time the property was sold. There are no allegations in the complaint that the plaintiffs were not aware of the contamination or that defendants failed to disclose or misrepresented any facts regarding the existence of contamination on the property. The "as is" clause functions to transfer certain liabilities to the new owner. The claims raised in the present complaint are precisely the type of liabilities that were sold along with the property. A finding that the "as is" clause does not apply would render such clauses meaningless. All of the causes of action (breach of contract, nuisance, trespass, breach of the implied covenant of good faith and fair dealing, declaratory relief and indemnity, and contribution) are based on and arise out of the condition of the property. As such, they are all barred by the "as-is" provision of the contract. The demurrer is sustained.

To the extent that plaintiff can possibly plead facts demonstrating lack of knowledge on the part of plaintiff or fraud, misrepresentation or failure to disclose on the part of defendants with respect to the condition of the property, then plaintiff's claims may not be precluded by the "as is" clause. Leave to amend is granted. The June 1, 2009 case management conference is advanced and continued to Monday, June 22, 2009 at 10:30 a.m. in Department 3.

April 30, 2009

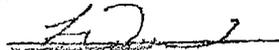

BRADLEY L. BOECKMAN
Judge of the Superior Court

CERTIFICATE OF MAILING

STATE OF CALIFORNIA, COUNTY OF SHASTA

I, THE UNDERSIGNED, CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT I AM A DEPUTY COURT CLERK OF THE ABOVE-ENTITLED COURT AND NOT A PARTY TO THE WITHIN ACTION; THAT I MAILED A TRUE AND CORRECT COPY OF THE ABOVE TO EACH PERSON LISTED BELOW BY DEPOSITING SAME IN THE UNITED STATES POST OFFICE IN REDDING, CALIFORNIA, ENCLOSED SEALED ENVELOPES WITH POSTAGE PREPAID.

DATED: April 30, 2009


DEPUTY CLERK

CC:

Joshua Bloom, Esq.
350 California Street, 22nd Floor
San Francisco, CA 94104

Robert Hansen, Esq.
190 The Embarcadero
San Francisco, CA 94105

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PROOF OF SERVICE
(California Code of Civil Procedure §1013)

Case: *TBS Petroleum LLC v. Bob Davis, Cheryl Davis and Does 1-20*
Case No.: Shasta County Superior Court, Case No. 165285

I am employed in the City and County of San Francisco by the law firm of Cox, Wootton, Griffin, Hansen & Poulos, LLP, 190 The Embarcadero, San Francisco, California 94105. I am over the age of 18 years and not a party to the within action.

On May 22, 2009, I served the attached document:
NOTICE OF ENTRY OF AMENDED ORDER AFTER HEARING ON DEMURRER GRANTING DEFENDANT'S DEMURRER WITH LEAVE TO AMEND
on the parties, through their attorneys of record, by placing copies thereof in sealed envelopes (except for facsimile transmission), addressed as shown below, for service as designated below:

(A) By First Class Mail: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for the collection and processing of correspondence for mailing with the U.S. Postal Service, and that correspondence would be deposited with the U.S. Postal Service the same day in the ordinary course of business. I caused each such envelope, with first-class postage thereon fully prepaid, to be sealed and placed in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the addressee(s) on the date indicated.

(B) By Personal Service: I caused each such envelope to be personally delivered to the addressee(s) by a member of the staff of this law firm on the date indicated.

(C) By Messenger Service: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for messenger delivery, and I caused each such envelope indicated below, to be delivered to a courier employed by Worldwide Attorney Services, with both of whom we have a direct billing account, who personally delivered each such envelope to the addressee(s) on the date indicated.

(D) By Federal Express: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for the collection of overnight courier deliveries, and such overnight courier deliveries would be deposited with the courier the same day in the

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP
190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-434-4000
FAX 415-432-4001

NTS:Pls/whr

1 ordinary course of business. I caused each such envelope/package to be delivered to Federal
2 Express Corporation, with whom we have a direct billing account, at San Francisco,
3 California, to be delivered to the addressee(s) on the next business day.

4 (E) By Facsimile: I caused each such document(s) to be served via facsimile electronic
5 equipment transmission (fax) on the party(ies) indicated below by transmitting a true copy
6 to the following fax number(s):

7

<i>SERVICÉ</i>	<i>ADDRESSEE</i>	<i>PARTY</i>
C	Joshua A. Bloom, Esq. BARG COFFIN LEWIS & TRAPP LLP 350 California Street, 22 nd floor San Francisco, CA 94104 Tel: 415-228-5400 Fax: 415-228-5450	Attorney for Plaintiff

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14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed on May 22, 2009, at San Francisco, California.

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17 MYRIAM CADER SARGENT

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26 COX, WOOTTON,
ORIFFEN, HANSEN
& COULUS, LLP
27 150 7102 EASBURN PARKWAY
SAN FRANCISCO, CA
94133
TEL 415-398-4222
FAX 415-398-4251

28 BTB, Fkch

EXHIBIT I

FILED

JUL 24 2009

CLERK OF THE SUPERIOR COURT
BY: K. BESANA, DEPUTY CLERK

1 COX, WOOTTON, GRIFFIN,
2 HANSEN & POULOS, LLP
3 Rupert P. Hansen (SBN 082302)
4 Marc A. Centor (SBN 252011)
5 190 The Embarcadero
6 San Francisco, California 94105
7 Telephone No.: (415) 438-4600
8 Facsimile No.: (415) 438-4601
9
10 Attorneys for Defendants
11 BOB DAVIS and CHERYL DAVIS

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SHASTA

14 TBS PETROLEUM, LLC,)
15)
16 Plaintiff,)
17 v.)
18)
19 BOB DAVIS, CHERYL DAVIS, and)
20 DOES 1-20,)
21)
22 Defendants.)
23)
24)
25)
26)
27)

Case No.: 165285

BAB
~~(PROPOSED)~~ ORDER GRANTING
MOTION TO DISMISS ACTION
WITH PREJUDICE AND FOR
ENTRY OF JUDGMENT OF
DISMISSAL

BY FAX

18 The motion of defendants BOB DAVIS and CHERYL DAVIS ("Defendants"), for
19 an order to dismiss with prejudice the above action and to enter judgment in favor of
20 Defendants and against Plaintiff TBS PETROLEUM, LLC came on regularly for hearing in
21 Department 3 of this Court on July 27, 2009. Having read the motion, the memoranda and
22 the declarations filed by the parties, having heard argument of counsel, and having
23 considered the relevant law:

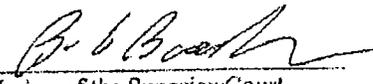
24 IT IS THEREFORE ORDERED that Defendant's Motion for Dismissal with
25 Prejudice and for Entry of Judgment is granted, this action is dismissed with prejudice and
26 judgment will forthwith be entered in favor of Defendants BOB DAVIS and CHERYL
27

RECEIVED
JUL 01 2009
CLERK OF THE
SUPERIOR COURT
ENTERED IN COURT

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DAVIS. Defendants have leave to seek their recoverable costs in the manner provided by
law and to file a noticed motion stating their attorney's fees claimed and the basis for that
claim.

Date: 7-24-09


Judge of the Superior Court

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PROOF OF SERVICE
(California Code of Civil Procedure §1013)

Case: **TBS Petroleum LLC v. Bob Davis, Cheryl Davis and Does 1-20**
Case No.: **Shasta County Superior Court, Case No. 165285**

I am employed in the City and County of San Francisco by the law firm of Cox, Wootton, Griffin, Hansen & Poulos, LLP, 190 The Embarcadero, San Francisco, California 94105. I am over the age of 18 years and not a party to the within action.

On July 1, 2009, I served the attached document:

PROPOSED ORDER GRANTING MOTION TO DISMISS

on the parties, through their attorneys of record, by placing copies thereof in sealed envelopes (except for facsimile transmission), addressed as shown below, for service as designated below:

(A) By First Class Mail: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for the collection and processing of correspondence for mailing with the U.S. Postal Service, and that correspondence would be deposited with the U.S. Postal Service the same day in the ordinary course of business. I caused each such envelope, with first-class postage thereon fully prepaid, to be sealed and placed in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the addressee(s) on the date indicated.

(B) By Personal Service: I caused each such envelope to be personally delivered to the addressee(s) by a member of the staff of this law firm on the date indicated.

(C) By Messenger Service: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for messenger delivery, and I caused each such envelope indicated below, to be delivered to a courier employed by Worldwide Attorney Services, with both of whom we have a direct billing account, who personally delivered each such envelope to the addressee(s) on the date indicated.

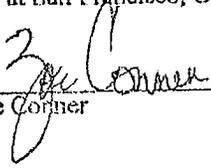
(D) By Federal Express: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for the collection of overnight courier deliveries, and such

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP
190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4554
FAX 415-438-4664

1 overnight courier deliveries would be deposited with the courier the same day in the
 2 ordinary course of business. I caused each such envelope/package to be delivered to Federal
 3 Express Corporation, with whom we have a direct billing account, at San Francisco,
 4 California, to be delivered to the address(es) on the next business day.
 5 (E) By Facsimile: I caused each such document(s) to be served via facsimile electronic
 6 equipment transmission (fax) on the party(ies) indicated below by transmitting a true copy
 7 to the following fax number(s):

SERVICE	ADDRESSEE	PARTY
C	Joshua A. Bloom, Esq. Christopher D. Jensen, Esq. BARG COFFIN LEWIS & TRAPP LLP 350 California Street, 22 nd floor San Francisco, CA 94104 Tel: 415-228-5400 Fax: 415-228-5450	Attorney for Plaintiff

15 I declare under penalty of perjury under the laws of the State of California that the
 16 foregoing is true and correct. Executed on July 1, 2009, at San Francisco, California.

17
 18 
 19 _____
 20 Zoe Corner

26 COX, WOOTTON,
 27 O'NEILL, JENSEN
 & FOLEY, LLP
 110 TIERCE SQUARE
 SAN FRANCISCO, CA
 94102
 TEL: 415-438-4500
 FAX: 415-438-4501

28 BTD:Flid:et

Case No. CCC-07-467200

THIS INSTRUMENT IS
A CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE

ATTEST: JUL 30 2009

Melissa Bradley, Clerk of the Superior Court of the
State of California In and for the County of Shasta
By: [Signature] Deputy

4pgs



EXHIBIT J

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

FILED

NOV 23 2010

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

TBS PETROLEUM, LLC,

Plaintiff and Appellant,

v.

BOB DAVIS et al.,

Defendants and Respondents.

C062818

(Super. Ct. No.
165285)

Defendants Bob and Cheryl Davis (Davis) operated a gas station on their property, which became contaminated with the banned additive MTBE. Plaintiff TBS Petroleum, LLC (TBS) purchased the property from Davis after the discovery of the contamination. When both were named as jointly responsible parties liable for the cost of cleaning up the contamination, TBS sued Davis for indemnity for the cleanup costs.

Davis demurred, arguing the claims were barred due to TBS's prior knowledge and the language of the sales contract. The trial court sustained the demurrer with leave to amend. After TBS declined to amend, the court entered a judgment of dismissal. TBS appeals, contending that the "as is" clause of the sales contract does not bar its claims for contractual and equitable indemnity. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

From 1989 through April 20, 2005, Davis owned and operated a gas station on his property. In 1997 two underground gasoline storage tanks were removed, leaving a third which stored diesel fuel. Soil samples taken from the property revealed the presence of methyl tertiary butyl ether (MTBE).

In December 1997 the Shasta County Department of Resource Management (County) informed Davis no further action was required in connection with the removal of the underground storage tanks. The letter from the County noted nothing precluded the County or any other agency from taking enforcement actions, or exempted the property owner from responsibilities under state law or county ordinances, if existing, additional, or previously unidentified contaminants posed a threat to public health or water quality. In 2002 the California Air Resources Board outlawed the formulation of gasoline with MTBE for use in California.

On December 20, 2004, TBS purchased the property from Davis. Escrow on the property closed on April 20, 2005. Two years later, groundwater samples from the property were tested and MTBE was detected. The California Regional Water Quality Control Board ordered a preliminary site assessment work plan for the property.

In January 2009 TBS filed suit against Davis, seeking damages and declaratory relief for breach of contract, private nuisance, trespass, breach of implied covenant of good faith and fair dealing, and contribution. Davis demurred to the

complaint, asserting the "as is" and "risk of loss" clauses in the purchase contract precluded TBS's causes of action.

The trial court sustained Davis's demurrer with leave to amend. The court, citing *Shapiro v. Hu* (1986) 188 Cal.App.3d 324 (*Shapiro*), noted the use of the phrase "as is" means a sale of the property in its "present or existing condition." The use of the phrase relieves a seller of real property from liability for defects in the condition of the property. The only exception to this rule is when a seller, through fraud or misrepresentation, intentionally conceals material defects not otherwise visible to the buyer.

The court observed: "'Appellants have cited no cases, nor have we found any, in which a person selling real property 'as is' was liable for defects in the quality or condition of the real property, where the property was not new construction, and the sale was made in good faith and without some form of fraudulent misrepresentation or concealment.' [*Shapiro, supra*, 188 Cal.App.3d] at [pp.] 333-334." The court rejected TBS's contention that since there were no allegations of misrepresentation or nondisclosure, the "as is" clause was inapplicable.

The court also rejected TBS's argument that the purchase contract's indemnity clause permitted its action against Davis. The court concluded: "Accepting plaintiff's interpretation of the contract, which would allow plaintiff to assert claims against defendants to reimburse plaintiff for expenses associated with correcting conditions that existed on the

property at the time of the sale, would eviscerate the 'as is' clause. Based on the allegations of the complaint, the contamination existed at the time the property was sold. There are no allegations in the complaint that the plaintiffs were not aware of the contamination or that defendants failed to disclose or misrepresented any facts regarding the existence of contamination on the property. The 'as is' clause functions to transfer certain liabilities to the new owner. The claims raised in the present complaint are precisely the type of liabilities that were sold along with the property. A finding that the 'as is' clause does not apply would render such clauses meaningless."

Accordingly, the court sustained the demurrer with leave to amend "[t]o the extent that plaintiff can possibly plead facts demonstrating lack of knowledge on the part of plaintiff or fraud, misrepresentation or failure to disclose on the part of defendants with respect to the condition of the property." TBS declined to amend its complaint. The trial court entered a judgment of dismissal with prejudice. TBS filed a timely notice of appeal.

DISCUSSION

I

In determining whether TBS properly stated a claim for relief, we treat the demurrer as admitting all material facts properly pled, but not contentions, deductions, or conclusions of fact or law. We also consider matters that may be judicially noticed. In addition, we give the complaint a reasonable

interpretation, reading it as a whole and its parts in their context. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

II

The parties' contentions revolve around two provisions of the purchase contract between TBS and Davis: the "as is" clause and the indemnity clause.

The "as is" clause states: "'As Is' Sale: [¶] Buyer and Sellers agree that: [¶] (a) Except as specified in this Agreement or as specified in writing and delivered to Buyer by Sellers, neither Sellers nor any other representative of Sellers has made any representations or warranties regarding the Property, including, without limitation, any representations or warranties concerning the Property's physical condition, access, zoning laws, environmental matters, utilities, or any other matter affecting the Property or the use of the Property; and [¶] (b) Except for the representations and warranties in this Agreement or otherwise delivered to Buyer by Seller in writing, Purchaser has not relied and will not rely on any implied warranties, guaranties, statements, representations, or information about the Property, whether made by Sellers or any other individual representing or purporting to represent Seller. [¶] (c) If Buyer purchases the Property, Buyer purchases the Property 'As Is', and Buyer is relying and will rely solely on Buyer's inspection of the Property and Buyer's experts' inspection of the Property."

The indemnity clause states: "Additional Terms/Indemnity Agreements: [¶] (a) Sellers' Indemnity Agreement: Except as otherwise expressly provided in this Contract or any attachment to this Contract, Sellers shall indemnify and hold Buyer and the property of Buyer, including said assets, free and harmless from and tender a defense against any and all claims, liability, loss, damage, or expense resulting from Seller's ownership of said assets or Sellers' operation of said assets prior to close of escrow, including any claim, liability, loss, or damage arising by reason of the injury to or death of any person or persons, or the damage of any property, caused by Sellers' use of said assets, the condition of said assets when owned by Sellers, or the sale or manufacture by Sellers of any product or products. Sellers shall also indemnify Buyer against any and all claims, demands, losses and liabilities, including interest, penalties, and reasonable attorney's fees that Buyer shall incur by reason of any other claims of third parties for periods prior to close of escrow."

.III

On appeal, TBS argues the "as is" clause operates only to bar breach of warranty claims by a buyer arising from allegations that the property is other than represented. According to TBS, since its claims are not based on a breach of warranty, the "as is" clause does not apply and the indemnity clause provides relief. We decline to read the "as is" clause so narrowly.

The purchase contract between the parties states: "If Buyer purchases the Property, Buyer purchases the Property 'As Is', and Buyer is relying and will rely solely on Buyer's inspection of the Property and Buyer's experts' inspection of the Property." The indemnity clause of the purchase contract begins, "Except as otherwise expressly provided in this Contract . . . Sellers shall indemnify"

Any sale of real property "as is" is a sale of the property in its present or existing condition. Use of the phrase relieves the seller of real property from liability for defects in that condition. In contrast to the sale of personal property, the sale of real property has long been that of caveat emptor, wherein the buyer assumes the risk on quality or condition of the property, absent express warranty, fraud, or misrepresentation. (*Shapiro, supra*, 188 Cal.App.3d at pp. 332-333.)

The purchase contract in the present case contained an explicit "as is" clause and an indemnity clause requiring indemnification except as otherwise provided in the contract. TBS's complaint does not state that it was not aware of the MTBE contamination prior to the close of escrow or that the property had previously been found to contain contaminants. Nor does the complaint allege any fraud or misrepresentation on the part of Davis in regard to the contamination. Accordingly, the trial court was correct in sustaining Davis's demurrer with leave to amend to state it had no knowledge of the contamination or to allege fraud or misrepresentation on the part of Davis.

TBS argues the "as is" clause does not apply to "unmentioned environmental liabilities." In support, TBS relies on *Wiegmann & Rose Intern. Corp. v. NL Industries* (N.D.Cal. 1990) 735 F.Supp. 957. In *Wiegmann*, the seller argued the "as is" clause barred indemnity claims under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.; CERCLA) brought by Department of Health Services. The seller contended the clause released it from liability for all defects, including liability under CERCLA. The court found the "as is" clause was "standard, boiler-plate language routinely included in every contract It is not even clear from the record that the 'as is' clause was a negotiated term of the land sale contract." (*Wiegmann*, at p. 961.) The court concluded the clause could not have been intended to release the seller from statutory causes of action arising out of its contamination of the property. (*Ibid.*)

Here, however, TBS's complaint does not state a cause of action for contribution under CERCLA or allege TBS incurred any costs for remediation under CERCLA. TBS provides no authority that the "as is" clause found in its purchase contract does not apply to its causes of action for breach of contract, private nuisance, trespass, breach of implied covenant of good faith and fair dealing, contribution, and declaratory relief.¹

¹ We agree with the trial court that TBS's reliance on *Umbra U.S.A., Inc. v. Niagara Frontier Transp. Auth.* (N.Y.App.Div.

TBS also asserts that its knowledge of the contamination is "in the absence of an express assumption of liability, irrelevant to the determination of indemnity for pollution occurring during the Seller's ownership of the property. The Seller is held strictly liable for the act of polluting the property; the Buyer's knowledge of the pollution at the time of sale does not relieve the Seller of that liability. In fact, the Buyer is also strictly liable for the cost of remediating the contamination based purely on the ownership of the property, even if the Buyer/Owner did not pollute and had no prior knowledge of the pollution." Strikingly, TBS provides no authority for these assertions, but simply states them as fact. To entertain this interpretation of the contract would be to eviscerate the "as is" clause.

DISPOSITION

The judgment is affirmed. Defendants shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

RAYE, Acting P. J.

We concur:

ROBIE, J.

BUTZ, J.

1999) 693 N.Y.S.2d 371 is unavailing because it is based on a New York statute and conflicts with California law.

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: TBS Petroleum, LLC v. Davis et al.
C062818
Shasta County
No. 165285

Copies of the attached document have been sent to the individuals checked below:

✓ Joshua Bloom
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104-1435

✓ Larry B. Moss
Attorney at Law
1901 Park Marina Drive
Redding, CA 96001

✓ Mark D. Norcross
Attorney at Law
3691 Traverse Street
Redding, CA 96002

○ Rupert P. Hansen
Cox, Wootton, Griffin, Hansen & Poulos, LLP
190 The Embarcadero
San Francisco, CA 94105

✓ Honorable Bradley L. Boeckman
Judge of the Shasta County Superior Court - Main
1500 Court Street, Room 319
Redding, CA 96001