



**ORDINANCE No. 2015-10-04**

**An Ordinance Annexing Approximately 6.6 acres to the City  
(Banks Lumber Mill & Gen Becker Trust)**

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The City Council for the City of Banks adopts the following findings:

**WHEREAS**, the Banks Lumber Company and the Gen Becker Trust collectively own approximately 6.6 acres of land contiguous with the City's current boundary and within the City's Urban Growth Area (the "Annexation Territory" – more specifically described in Exhibit A, attached hereto and incorporated herein by this reference), and have requested annexation of the Annexation Territory; and

**WHEREAS**, to warrant annexation approval, the Annexation Territory must be within the City's Urban Growth Area and contiguous to the city boundary. The annexation applicant must also demonstrate compliance with each of the applicable approval standards set forth in Section 30.02 of the Banks Code of Ordinances ("BCO"), and, pursuant to Charter Section 3, the annexation request must be approved by a simple majority of the electorate voting in an election on the question of annexation; and

**WHEREAS**, on May 11, 2015, the Banks Planning Commission convened a duly noticed public hearing, took public testimony on the annexation request and recommended approval of the annexation as proposed; and

**WHEREAS**, on June 9, 2015, the City Council convened a duly noticed public hearing on to take public testimony and evaluate the Planning Commission's recommendation, and at the conclusion voted to recommend approval of the annexation subject to the requirement that the annexation requestors and owners enter into the Annexation Agreement set forth in Exhibit B, attached hereto and by this reference incorporated herein; and

**WHEREAS**, on September 15, 2015 a majority of registered voters in the City of Banks voted to approve the annexation of the 6.6 acre Annexation Territory owned by Banks Lumber Company and the Gen Becker Trust, and the Washington County Elections Official certified those election results on September 30, 2015.

**NOW THEREFORE**, based on the foregoing, the Banks City Council ordains as follows:

**Section 1 - Annexation.** The real property described in Exhibit A, attached hereto and by this reference incorporated herein, comprising approximately 6.6 acres (collectively the "Annexation Territory") is hereby annexed and incorporated into the City of Banks, subject to the terms and conditions of the Annexation Agreement executed between the City and the annexation requestors/owners set forth in Exhibit B, attached hereto and by this reference incorporated herein.

**Section 2 – Annexation of public rights-of-way.** All federal, state, and local public rights-of-way within or abutting the Annexation Territory are hereby annexed and incorporated into the City of Banks.

**Section 3 - Land Use Designations and Zoning.** Land within the Annexation Territory is hereby subject to land use planning, regulation and permitting by the City of Banks under its duly adopted Comprehensive Plan and land use regulations, pursuant to which the Annexation Territory (TL 400 on Washington County map 2N33100) shall be zoned Industrial (I).

**Section 4 – Assessment and Taxation.** Land within the Annexation Territory shall be assessed and taxed by the City in the same manner as other similarly situated property within the City as of the effective date of this Ordinance.

**Section 5 – Severability.** If any portion of this ordinance is found to be invalid or unenforceable for any reason, that finding shall not affect the validity or enforceability of any other provision of this ordinance.

**Section 6 – Transmittal.** Pursuant to ORS 222.177 and Section 30.06 of the Banks Code of Ordinances, the City Recorder shall:

1. File a certified true copy of this Ordinance with the Oregon Secretary of State and the Washington County Assessor.
2. File with the Oregon Secretary of State an abstract of the September 30, 2015 election results within the City on the Banks Lumber Mill Annexation measure.
3. File with the Oregon Secretary of State a copy of the statement of landowner consent to this annexation.

**Section 7 – Effective Date:** This ordinance and the annexation it declares shall be effective upon filing with the Secretary of State’s Office in accordance with ORS 222.180.

Brought before Banks City Council and read for the first time October 13, 2015.

Read for the second time and adopted November 10, 2015.

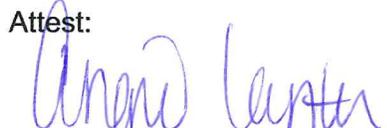
This Ordinance becomes effective December 10, 2015.

  
Peter C. Edison, Mayor

Summary of Votes

Teri Branstitre	Yes/No
Mark Gregg	Yes/No
Brian Biehl	Yes/No
Dan Keller	Yes/No Absent
Mark Walsh	Yes/No
Michael Nelson	Yes/No

Attest:

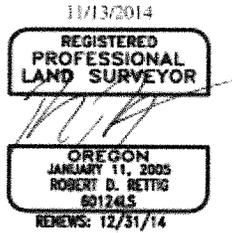
  
Angie Lanter, City Recorder

**EXHIBIT A**

A tract of land located in the Northwest One-Quarter of Section 31, Township 2 North, Range 3 West, Willamette Meridian, Washington County, Oregon and being more particularly described as follows:

Beginning at the North One-Quarter corner of Section 31, Township 2 North, Range 3 West of the Willamette Meridian, in the County of Washington and State of Oregon; thence along the North line of said Section 31 North 87°53'47" West 1279.50 feet to a point; thence South 02°06'13" West 20.00 feet to the South right-of-way line of NW Banks Road and the **True Point of Beginning**; thence along said South line South 87°53'47" East 200.01 feet to a point; thence leaving said South line South 01°01'42" East 1,042.79 feet to a point; thence South 29°33'46" West 133.47 feet to a point; thence South 14°48'09" West 111.02 feet to a point; thence South 19°23'37" West 31.69 feet to a point on the South line of the north one-half of the Northwest one-quarter of said Section 31 and the City of Banks city limits; thence along said South line and said city limits North 88°23'17" West 192.67 feet to a point; thence North 07°05'00" East 1.77 feet to a point; thence North 28°51'00" East 124.00 feet to a point; thence North 01°01'42" West 895.70 feet to a point on the South line of Document Number 2012-088500; thence leaving said city limits and along said South line South 87°53'42" East 40.06 feet to a point to the Southeast corner thereof; thence along the East line of said Document North 01°01'42" West 293.47 feet to the **True Point of Beginning**.

The above described tract of land contains 6.60 acres, more or less.



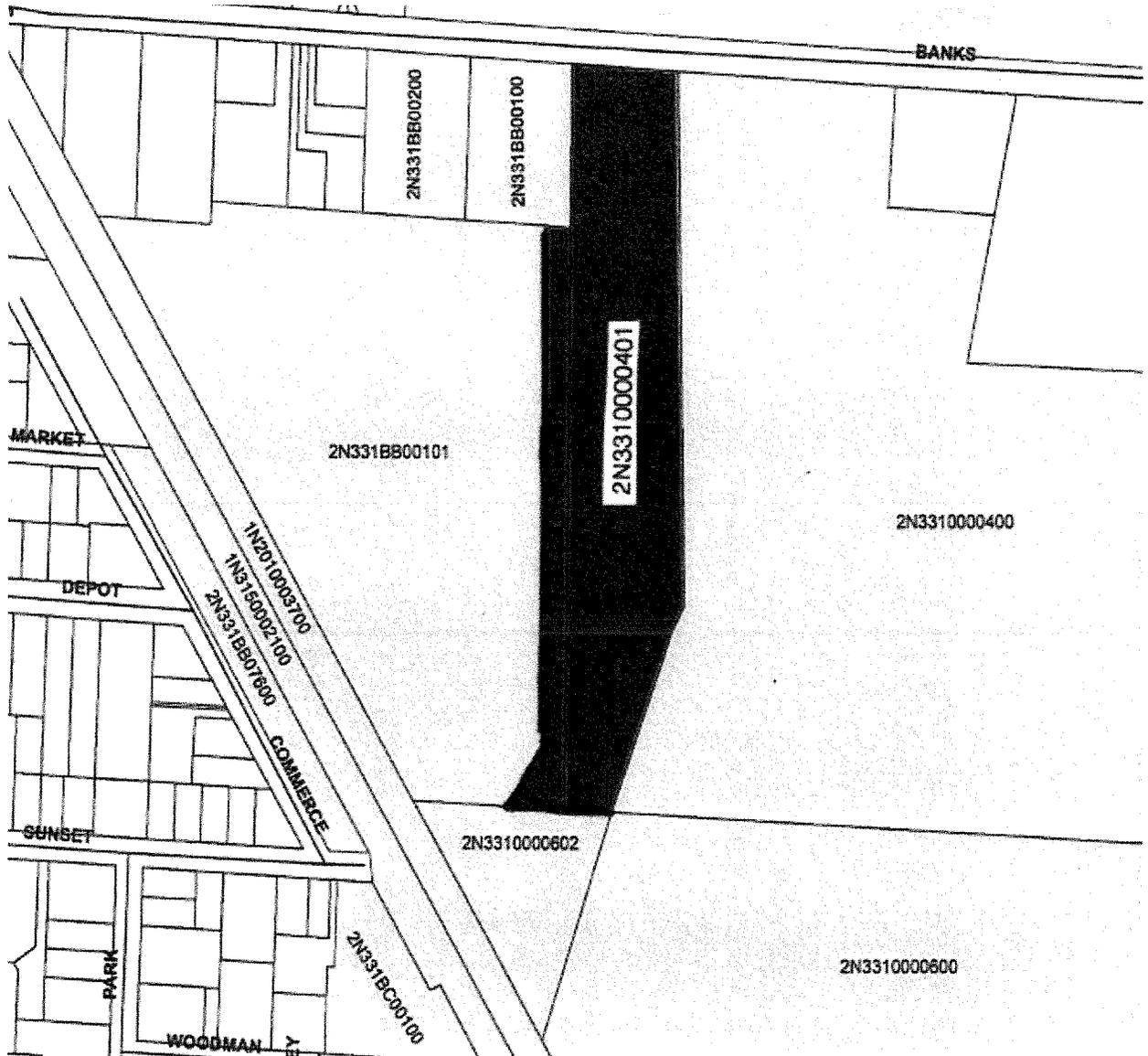
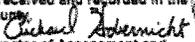


EXHIBIT B

Washington County, Oregon      **2015-055351**  
07/09/2015 01:45:14 PM  
D-IPPS      Cnt=1    Stn=29    RECORDS1  
\$30.00 \$5.00 \$11.00 \$20.00 - Total = \$66.00

After Recording, Return to:  
Banks City Manager  
13680 NE Main St.  
Banks, OR 97106

  
02062884201500553510060067  
I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.  
  
Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



**ANNEXATION AGREEMENT**

This AGREEMENT is made by and between the CITY OF BANKS, an Oregon municipal corporation, (the "City") and BANKS LUMBER COMPANY and GEN BECKER LIVING TRUST, (jointly "Banks Lumber") this 6<sup>th</sup> day of July, 2015.

**WHEREAS**, Banks Lumber is the applicant for the annexation and re-zoning of approximately 6.6 acres adjacent to the City of Banks (the "Property"), which is wholly owned by the Gen Becker Living Trust, and those applications are known as City files ANX1-15 and ZC1-15; and

**WHEREAS**, the City has reviewed the application submitted by Banks Lumber and concluded that the materials in the record demonstrate that an adequate level of urban services and infrastructure is available, or will be made available in a timely manner to serve the Property; and

**WHEREAS**, there are several potential sources for water to serve the eventual development of the Property, including the existing City water system or the well currently located on the Property; and

**WHEREAS**, the annexation approved by the City must be submitted to the voters of the City as required by the Banks City Charter; and

**WHEREAS**, the City and Banks Lumber wish to enter into this Agreement to limit the potential development of the Property until the ultimate source of the water to serve that development is determined and adequate and safe levels of transportation connectivity and circulation infrastructure are established to serve the development of the Property;

**NOW, THEREFORE**, based on the foregoing recitals, the CITY OF BANKS, BANKS LUMBER and the GEN BECKER LIVING TRUST hereby agree to the following:

1. **Development Limitation.** Should the voters of the City of Banks approve the annexation of the Property, development of the Property shall be prohibited until the applicant provides evidence satisfactory to the City Manager that there are adequate levels of urban services and infrastructure, as defined in BCO Section 30.02(B), available

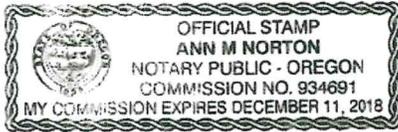
to serve the specific development type, size and density proposed for the Property, including as needed evidence of the sources of public potable water, sanitary sewer, transportation system infrastructure and storm drainage facilities.

2. **Effective Date, Term and Modification.** This Agreement shall be effective upon signature by both parties and shall have a perpetual duration, unless modified by the parties as described below, or until satisfaction of the condition identified in paragraph 1 above. This Agreement may be modified or terminated sooner than described above only upon the written agreement signed by the authorized representatives of all parties.
3. **Assignment and Transfer.** This Agreement shall be fully assignable and transferable.
4. **Remedies for Breach.** Should either party breach this Agreement, remedies available under Oregon law for breach of contract are available to the parties, including damages and injunctive relief.
5. **Controlling Law and Venue for Disputes.** This Agreement shall be deemed to have been entered into in the State of Oregon and shall be construed and interpreted in accordance with the laws of Oregon. Any litigation or proceedings arising out of or connected with this Agreement shall be heard and decided in Oregon Circuit Court for Washington County.
6. **Entire Agreement.** The City and Banks Lumber acknowledge and agree that no promises or representations have been made which do not appear written herein and that this Agreement contains the entire agreement of the parties as to this Agreement.
7. **Severability Clause.** The parties to this Agreement agree that if any term, provision, covenant, condition or portion of this Agreement is held to be illegal, invalid, void, voidable or unenforceable, the remainder of the provisions shall remain in full force and effect as a separate contract and shall in no way be affected, impaired or invalidated.
8. **Attorney's Fees.** If legal action by either party is brought against the other because of an alleged default under this Agreement, or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs at trial and on appeal.
9. **Waiver.** No waiver of any provision of this Agreement shall be effective unless it is in a writing signed by party waiving the provision.
10. **No Third-Party Beneficiaries.** All the provisions of this Agreement are intended to bind and benefit only Banks Lumber and City, and their respective permitted successors and assigns. It is not intended that any such provisions benefit, and it shall not be construed that these provisions benefit or are enforceable by, any creditors, contractors or other third parties.



STATE OF OREGON       )  
  ) ss.  
COUNTY OF Washington )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2015 by Daniel Zeamer, as CEO/Gen Mgr. of Banks Lumber Company, an Oregon Corporation, on behalf of said company.



Ann M. Norton  
Notary Public for the State of Oregon  
My commission expires: 12-11-2018

STATE OF OREGON       )  
  ) ss.  
COUNTY OF Washington )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of July, 2015 by Gen Becker, as \_\_\_\_\_ of the Gen Becker Living Trust, an Oregon living trust, on behalf of said living trust.



Angela G Lanter  
Notary Public for the State of Oregon  
My commission expires: March 6, 2018