

Record Date:1/18/2022 5:43 PM

Electronically Recorded King County, WA

After Recording Return
Original Signed Covenant to:
Jerome B. Cruz, Ph.D.
Toxics Cleanup Program
Department of Ecology
15700 Dayton Ave N
Shoreline, WA 98133

ENVIRONMENTAL COVENANT

Grantor: CHS Inc. (Successor to Farmers Union Central Exchange Incorporated)

Grantee: State of Washington, Department of Ecology (hereafter "Ecology")

Brief Legal Description:

Portions of 238 8th Street Southeast, Auburn, Washington 98002: HARTS 1ST ADD TO AUBURN LOT 10 LESS W 8 FT TGW LOTS 11-12-13-14, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Portions of 236 8th Street Southeast Auburn, Washington 98002: POR OF GL 1 BEG ON W LN OF C ST SE AT PT 16.05 FT S OF SE COR OF LOT 14 BLK 7 HARTS 1ST TH S 04-01-42 W 108.36 FT TH S 89-22-10 W 96.01 FT TH N 00-37-50 W 108 FT TH E 104.9 FT TO BEG TGW 30 FT POR M/L LY WLY PER REC #9608011043, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Tax Parcel Nos.: Portions of King County Parcel Nos. 3141600670 and 1921059074, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Cross Reference: Consent Decree No. 18-2-15430-8 dated June 20, 2018

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70A.305 RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part of a site commonly known as CHS Auburn Site, Facility/Site Identification No. 2487. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination exists on the Property at concentrations exceeding

applicable MTCA cleanup levels following completion of remedial actions. Specifically, the following principal contaminants remain on the Property at concentrations exceeding MTCA cleanup levels:

Medium	Principal Contaminants Present
Soil	Total petroleum hydrocarbons as gasoline-range organics and as diesel-range organics
Groundwater	Not applicable
Surface Water/Sediment	Not applicable

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology.

- *Remedial Investigation Report, CHS Auburn Site, Auburn, Washington* dated July 20, 2011.
- *Feasibility Study, CHS Auburn Site, Auburn, Washington* dated August 6, 2014
- *Final Cleanup Action Plan, CHS Auburn Site, 238 8th Street Southeast and Contiguous Areas, Auburn, Washington* dated May 8, 2018

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an “agency” under UECA, other than its’ right as a holder, are not an interest in real property.

COVENANT

CHS Inc., as Grantor and fee simple owner of the Property¹ hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

SECTION 1. GENERAL RESTRICTIONS AND REQUIREMENTS.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any

¹ CHS Inc. is successor to Farmers Union Central Exchange Incorporated.

activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination existing on the Property.

c. Continued Compliance Required. Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

d. Leases. Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. Preservation of Reference Monuments. Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

SECTION 2. SPECIFIC PROHIBITIONS AND REQUIREMENTS.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. Land Use.

Commercial Land Use: The remedial action for the Property is based on a cleanup designed for commercial property. As such, the Property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70A.305 RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.

b. Other.

Prior to conducting any below ground surface work where concentrations of constituents of concern are present above applicable cleanup standards (as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B), Grantor shall provide written notice to and obtain prior written approval by Ecology if soil in these areas will be disturbed and require maintenance of existing asphalt and concrete structures. The procedures will include appropriate worker health and safety training requirements, and follow appropriate contaminated soil management protocols.

SECTION 3. ACCESS.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

SECTION 4. NOTICE REQUIREMENTS.

a. Conveyance of Any Interest. The Grantor, when conveying any interest within the area of the Property described and illustrated in Exhibits B, including but not limited to title, easement, leases, and security or other interests, must:

i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.

ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON _____ AND RECORDED WITH THE KING COUNTY AUDITOR UNDER RECORDING NUMBER _____. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. Reporting Violations. Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Notification procedure. Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

<p>Mary Blel CHS Inc. – Environmental Manager 5500 Cenex Drive Inver Grove Heights, MN 55077 mary.blel@chsinc.com 651-355-6941</p> <p><i>and</i></p> <p>Jerry Eide CHS Inc. – Senior Environmental Specialist 763 Willoughby Lane Stevensville, MT 59870 406-360-8045 Jerry.eide@chsinc.com</p>	<p>Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov</p>
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SECTION 5. MODIFICATION OR TERMINATION.

- a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:
 - i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
 - ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.
- b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

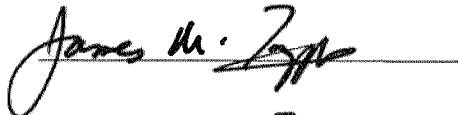
SECTION 6. ENFORCEMENT AND CONSTRUCTION.

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.
- c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

- d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.
- f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 28th day of December, 2021.



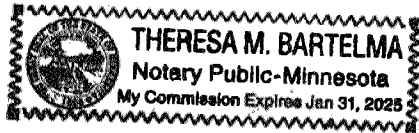
by: James M. ZAPPA

Title: Senior Vice President, Legal & Government Affairs,
Deputy General Counsel

CORPORATE ACKNOWLEDGMENT

STATE OF Minnesota
COUNTY OF DAKOTA

On this 28th day of December, 2021, I certify that James M. Zappa personally appeared before me, acknowledged that he/she is the Senior Vice President of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said corporation.

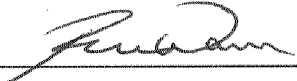


Theresa Bartelma
Notary Public in and for the State of Minnesota ¹⁵

Residing at 5041 16th Avenue S. Minneapolis, MN

My appointment expires January 31, 2025

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Signature: 

by: ROBERT W. WARREN

Title: Section Manager - TCP-NWRO

Dated: 1/18/2022

EXHIBIT A

LEGAL DESCRIPTION

Portions of King County Parcel No. 3141600670, 238 8th Street Southeast, Auburn, Washington 98002: HARTS 1ST ADD TO AUBURN LOT 10 LESS W 8 FT TGW LOTS 11-12-13-14 as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Portions of King County Parcel No. 1921059074, 236 8th Street Southeast Auburn, Washington 98002: POR OF GL 1 BEG ON W LN OF C ST SE AT PT 16.05 FT S OF SE COR OF LOT 14 BLK 7 HARTS 1ST TH S 04-01-42 W 108.36 FT TH S 89-22-10 W 96.01 FT TH N 00-37-50 W 108 FT TH E 104.9 FT TO BEG TGW 30 FT POR M/L LY WLY PER REC #9608011043 as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

EXHIBIT B

PROPERTY MAP ILLUSTRATING LOCATION OF RESTRICTIONS

