

**Amendment**  
**Administrative Order On Consent For Removal Activities Embankment and Area 5106**  
**EPA Docket No. 10-97-0011-CERCLA**

Occidental Chemical Corporation ("Occidental"), the United States Environmental Protection Agency ("EPA"), and the Washington Department of Ecology ("Ecology") agree to amend the Administrative Order on Consent for Removal Activities Embankment and Area 5106, EPA Docket No. 10-97-0011-CERCLA ("AOC") pursuant to Paragraph 98 of the AOC as follows.

This amendment reflects agreement amongst EPA, Ecology, and Occidental that A) additional site characterization needs to be conducted, both in upland areas and beneath the Hylebos Waterway, to adequately determine the nature and extent of soil, ground water, surface water, and sediment contamination; B) feasible alternatives to address remaining contamination of all media need to be developed and evaluated; and C) an integrated remedy or set of remedies needs to be selected and designed which will satisfy EPA and Ecology requirements under CERCLA, MTCA, and RCRA. Accordingly, the attached SOW includes the CERCLA remedial process elements of RI/FS, RD, and interim response actions.

- 1 Pursuant to Paragraph 40 of the AOC, Occidental shall implement the attached Statement of Work ("SOW"). The SOW is attached to this Amendment as Attachment A and provides for environmental investigation, alternatives analyses, interim response actions to address pH contaminated groundwater, response action selection, and remedial design. All work plans, schedules and other tasks required by the SOW shall be performed pursuant to the terms and conditions of the AOC and subject to approval by EPA and/or Ecology. In addition, all work plans, schedules and other tasks required by the SOW shall be conducted consistent with the Model Toxics Control Act ("MTCA"), Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").
- 2 EPA and Ecology have entered into a Memorandum of Understanding ("MOU") that provides a framework for coordination and cooperation between the two agencies. The MOU designates the "lead agency" for particular activities that will be performed pursuant to this Amendment, and explains how decision-making responsibilities will be allocated. EPA and Ecology expect that implementation and oversight of this Amendment will be consistent with the MOU. Nothing in this Amendment is intended to provide Occidental or any other third-party with any rights or obligations regarding the MOU.
- 3 Until the AOC, as amended, is superseded by another legal mechanism (e.g., a consent decree) requiring implementation of recommended alternatives to be developed under the SOW, Occidental shall continue to maintain and operate the Groundwater Treatment System according to the current Corrective Action Plan and current Corrective Action Monitoring Plan which has been developed under

the expired RCRA permit No. WAD00924314. Occidental shall continue to monitor and report hydraulic responses of injection and extraction wells according to the procedures and schedule specified in the Corrective Action Monitoring Plan. Occidental shall continue to redevelop or replace injection and extraction wells with new wells as necessary according to the criteria specified in the Corrective Action Monitoring Plan.

- 4 The definition of the Site contained in Paragraph 1 of the AOC shall be changed to the following:

The Site shall mean that portion of segment 5 of the Mouth of the Hylebos Waterway Problem Area and those portions of the upland properties described in the next sentence where Waste Materials have or may come to be located as a result of releases or threatened releases of Waste Materials from operations related to the production, processing, formulation or disposal of chemical materials or products. Accordingly, the Occidental Site shall include, but not be limited to the following: Area 5106; the Occidental Embankment Area; the Pioneer Property located at 605 Alexander Avenue; locations of groundwater contaminant plumes and contaminated sediments on the Port of Tacoma property located at 401 Alexander Avenue to the north of the Pioneer Property; locations of contaminated sediments and groundwater contaminant plumes on the Mariana Properties property located at 709 Alexander Avenue and the Port of Tacoma property located at 721 Alexander Avenue to the south of the Pioneer Property; and other areas of Segment 5 of the Mouth of the Hylebos Waterway Problem Area where releases of Waste Materials from such properties have come to be located and those areas necessary to stage or implement related work. The Occidental Site does not include the release of total petroleum hydrocarbon, BTEX or other constituents of concern from petroleum product storage operations currently or historically located on the 709 Alexander Avenue property or 721 Alexander property which has been identified in shallow groundwater underlying the 709 Alexander Avenue property or the 721 Alexander property and determined to be moving towards the Blair Waterway. Attachment B to this Amendment is a map that generally depicts the Site.

- 5 Ecology shall be added as a party to the AOC. Ecology shall have the authority to enforce the terms and conditions of the AOC as appropriate as such relate to the work performed pursuant to this Amendment. The terms and condition of the AOC applicable to EPA shall be applicable to Ecology.
- 6 Consistent with Section XVIII of the AOC ("Stipulated Penalties"), Ecology shall also have the authority to assess and collect stipulated penalties. However, in no event will Occidental be required to pay duplicative stipulated penalties to EPA and Ecology. Payments of stipulated penalties owed, if any, to the State shall be mailed to the Department of Ecology, Cashiering Section, P.O. Box 5128, Lacey,

7. Consistent with Section XX of the AOC ("Reimbursement of and Oversight Response Costs"), Occidental shall also reimburse the State for all response costs paid or incurred by the State in connection with this Amendment. Occidental shall pay the required amount of such response costs within thirty (30) days of receiving from Ecology an itemized statement of such costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of the work pertinent to such costs will be provided if requested by Occidental. Ecology will prepare and provide Occidental with itemized statements on a quarterly basis. In addition, within ninety (90) days of the effective date of this Amendment, Occidental shall pay the State \$458,259.17 in reimbursement of response costs that the State has incurred in connection with the Occidental Site prior to June 30, 2004. Failure to pay response costs within thirty (30) days of receipt of the itemized statement will result in interest charges in accordance with WAC 173-340-550. All payments owed to the State pursuant to this Amendment will be sent to the Department of Ecology, Cashiering Section, P.O. Box 5128, Lacey, WA 98509-5128
8. Consistent with Section XVII of the AOC ("Dispute Resolution"), in the event that Occidental objects to notification provided by or action undertaken by Ecology, the Section Supervisor for Hazardous Waste and Toxic Reduction for the Southwest Regional Office shall resolve the initial dispute related to such objection. Any subsequent and timely written appeal of such initial dispute decision shall be resolved by the Program Manager of Ecology's Hazardous Waste and Toxics Reduction Program
9. The Unilateral Administrative Order (Area 5106), EPA Docket No. CERCLA 10-2002-0066 (the "UAO") is hereby terminated. Remaining additional response actions, required by EPA on March 25, 2003 under authority of the UAO, have been incorporated into the attached Occidental Site SOW. Occidental reserves any defenses it may have to any subsequent action brought by EPA, except for those based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claims-splitting, or other defenses based upon any contention that the claims raised by EPA in the subsequent proceeding are barred by the termination of the UAO
10. Ecology Enforcement Order DE 95TC-S242, issued to PRI Northwest, Inc. and Occidental Chemical Corporation, effective September 5, 1995, is held in abeyance until a consent decree or administrative order implementing the selected remedies for the Mariana property takes effect.
11. Unless expressly modified by this Amendment, the terms and conditions of the AOC shall apply to all work or other activities required by the Amendment

12. The AOC as modified by this Amendment contains the entire agreement between EPA, Ecology and Occidental. No statements, promises or inducements made by any party or its representatives that are not contained in this Amendment shall be valid or binding

Occidental, EPA and Ecology have executed this document to signify their agreement to the foregoing effective as of the date of EPA's execution as set forth below. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one the same instrument

AGREED for Occidental Chemical Corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED for Washington Department of Ecology

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED for United States Environmental Protection Agency

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

12. The AOC as modified by this Amendment contains the entire agreement between EPA, Ecology and Occidental. No statements, promises or inducements made by any party or its representatives that are not contained in this Amendment shall be valid or binding.

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AGREED for Occidental Chemical Corporation

By: 

Name: JO ELLEN DRISKO

Title: VICE-PRESIDENT

Date: 19 JANUARY 2005

AGREED for Washington Department of Ecology

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED for United States Environmental Protection Agency

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

11. Unless expressly modified by this Amendment, the terms and conditions of the AOC shall apply to all work or other activities required by the Amendment.
12. The AOC as modified by this Amendment contains the entire agreement between EPA, Ecology and Occidental. No statements, promises or inducements made by any party or its representatives that are not contained in this Amendment shall be valid or binding.

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AGREED for Occidental Chemical Corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED for Washington Department of Ecology

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED for United States Environmental Protection Agency

By: *Sherla M. Eckman*

Name: *Sherla M. Eckman*

Title: *Unit Manager, Environmental Cleanup Office*

Date: *2/1/05*

11. Unless expressly modified by this Amendment, the terms and conditions of the AOC shall apply to all work or other activities required by the Amendment.
12. The AOC as modified by this Amendment contains the entire agreement between EPA, Ecology and Occidental. No statements, promises or inducements made by any party or its representatives that are not contained in this Amendment shall be valid or binding.

Occidental, EPA and Ecology have executed this document to signify their agreement to the foregoing effective as of the date of EPA's execution as set forth below. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one the same instrument.

AGREED for Occidental Chemical Corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED for Washington Department of Ecology

By: K Seiler

Name: K SEILER

Title: SWRO HWTR Section Manager

Date: 1/28/05

AGREED for United States Environmental Protection Agency

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





BK 1333PG3954

9704280734

97 APR 28 PM 3:51

RECORDED  
CATHY PEARSON-SUPPER  
PACIFIC COUNTY CLERK

WHEN RECORDED MAIL TO:

Timothy R. Osborn  
Bogle & Gates P.L.L.C  
Two Union Square - 601 Union Street  
Seattle, Washington 98101-2346

(COVER SHEET)

TITLE:

TRANS  
9614028  
APR 20 1997

QUIT CLAIM DEED (CORRECTED)

GRANTOR:

OCCIDENTAL CHEMICAL CORPORATION  
a New York corporation

GRANTEE:

OCC TACOMA, INC.  
a Delaware corporation

ABBREVIATED  
LEGAL DESCRIPTION:

Block 1 of Plat entitled "State Land  
Commissioner's replat of blocks 13  
through 48 both inclusive, Tacoma  
Tidelands, formerly in King County,  
sometimes know as Ashton Replat."

FULL LEGAL  
DESCRIPTION  
ON PAGE:

6

EXCISE TAX PAID \$ 0  
Re. No. 930470 Date 4-28-97  
Pierce County

ASSESSOR'S TAX  
PARCEL NUMBERS:

227520-004-0  
227520-005-0  
227520-056-0

By E. Osborn Auth sig

REFERENCE NUMBERS OF  
RELATED DOCUMENTS:

9702070422

9704280734

BK 1333PG3955

## AFTER RECORDING MAIL TO:

Timothy R. Osborn  
Bogle & Gates P.L.L.C.  
Two Union Square - 601 Union Street  
Seattle, Washington 98101-2346

## QUIT CLAIM DEED (CORRECTED)

The Grantor, OCCIDENTAL CHEMICAL CORPORATION, a New York corporation, for good and valuable consideration, conveys and quit claims to the Grantee, OCC TACOMA, INC., a Delaware corporation, all of its right, title and interest in and to the following described real estate, together with all buildings and other improvements located thereon or appurtenant thereto, situated in the County of Pierce, State of Washington (the "Property"):

as per legal description attached hereto as Exhibit A, which is incorporated herein by this reference.

The Property has been occupied, operated and used for shipyard operations and the manufacture of industrial chemicals.

This conveyance is subject to the following restrictive covenants which Grantee hereby agrees to observe and which shall run with the land and bind the Grantee, its successors and assigns and all persons claiming any right, title or interest in the Property under them, including, without limitation, all future owners of any portion of, or interest in, the Property:

1. The Property shall be occupied, operated or used for industrial use only. As used herein, the term "industrial use" shall mean those uses which are permitted to be conducted under applicable law on industrial properties (as such term is defined in RCW 70.105D.020(22)), including those heavy industrial uses permitted in M-2 or M-3 Heavy Industrial Districts referred to in Sections 13.06.330 and 13.06.340 of the Tacoma City Code as of February 6, 1997 (the date on which Grantor executed the Quit Claim Deed described in the closing paragraph of this instrument). The Property shall not be occupied, operated or used for any purpose prohibited by such Sections including, without limitation, residential uses.
2. Groundwater, surface water and subsurface water on the Property shall not be extracted, supplied or used for drinking or other human consumption or domestic use of any kind.

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- 3. Grantor, its successors and assigns, may enforce the provisions of Sections 1 and 2 above by all remedies available at law or in equity, including, without limitation, injunctive relief.

This Quit Claim Deed is being executed and delivered by Grantor and Grantee to correct the legal description set forth in the Quit Claim Deed dated February 6, 1997 and recorded in the records of the Pierce County Auditor on February 7, 1997 (Recording No. 9702070422). The corrected legal description is attached hereto and incorporated herein by this reference.

Dated as of this 23rd day of April, 1997

OCCIDENTAL CHEMICAL CORPORATION  
a New York corporation

By: *David S. Peter*  
Its: Vice President and  
Assistant Secretary

OCC TACOMA, INC.  
a Delaware corporation

By: *Ch. D. May*  
Its: Vice President

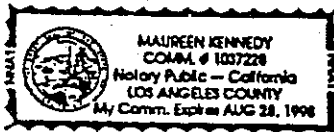
BK 1333PG3957

ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On April 23, 1997, before me, Maureen Kennedy, the undersigned notary public, personally appeared Linda S. Peterson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



*Maureen Kennedy*  
Notary Public in and for said State

Re: Quit Claim Deed (Corrected)  
Grantor: Occidental Chemical Corporation  
Grantee: OCC Tacoma, Inc.

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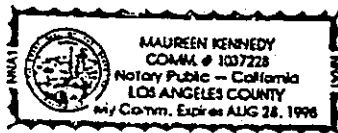
ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On April 23, 1997, before me, Maureen Kennedy, the undersigned notary public, personally appeared John W. Morgan, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



*Maureen Kennedy*  
Notary Public in and for said State

Re: Quit Claim Deed (Corrected)  
Grantor: Occidental Chemical Corporation  
Grantee: OCC Tacoma, Inc.

9704260734

BK 1333PG3959

## EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

## PARCEL A:

BEGINNING ON THE SOUTHEASTERLY LINE OF BLOCK 1 OF PLAT ENTITLED "STATE LAND COMMISSIONER'S REPLAT OF BLOCKS 13 THROUGH 48 BOTH INCLUSIVE, TACOMA TIDELANDS, FORMERLY IN KING COUNTY, SOMETIMES KNOWN AS ASHTON REPLAT", AS PER PLAT RECORDED DECEMBER 23, 1918, RECORDS OF PIERCE COUNTY AUDITOR, AT A POINT ON SAID LINE 890 FEET NORTHEASTERLY FROM THE SOUTHERLY CORNER OF SAID BLOCK AND BEING AT THE INTERSECTION OF SAID BLOCK LINE WITH THE NORTHEASTERLY LINE OF ALEXANDER AVENUE, AS NOW LAID OUT BY THE CITY OF TACOMA;  
THENCE ON SAID SOUTHEASTERLY LINE OF BLOCK 1, NORTH 42°44'24" EAST 910 FEET TO THE EASTERLY CORNER OF SAID BLOCK 1;  
THENCE ON NORTHEASTERLY OR NORTHERLY LINE OF SAID BLOCK 1, NORTH 47°15'36" WEST FOR A DISTANCE OF 500.00 FEET TO A POINT;  
THENCE PARALLEL WITH SAID SOUTHEASTERLY LINE OF BLOCK 1, SOUTH 42°44'24" WEST FOR A DISTANCE OF 910 FEET TO A POINT IN LINE WITH THE EXTENSION OF THE NORTHEASTERLY LINE OF ALEXANDER AVENUE;  
THENCE ON SAID EXTENDED LINE, SOUTH 47°15'36" EAST FOR A DISTANCE OF 500.00 FEET TO THE POINT OF BEGINNING;

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

## PARCEL B:

BLOCK 12 OF PLAT ENTITLED "STATE LAND COMMISSIONER'S REPLAT OF BLOCKS 13 THROUGH 48 BOTH INCLUSIVE, TACOMA TIDELANDS, FORMERLY IN KING COUNTY, SOMETIMES KNOWN AS ASHTON REPLAT", AS PER PLAT RECORDED DECEMBER 23, 1918, RECORDS OF PIERCE COUNTY AUDITOR;

EXCEPT THAT PORTION THEREOF CONVEYED TO PIERCE COUNTY FOR ROAD PURPOSES BY DEED RECORDED JANUARY 20, 1926 UNDER RECORDING NO. 787084, RECORDS OF PIERCE COUNTY AUDITOR;

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

## PARCEL C:

THOSE CERTAIN EASEMENT RIGHTS SET FORTH IN WARRANTY DEED RECORDED MAY 6, 1937, UNDER RECORDING NO. 1216185, RECORDS OF PIERCE COUNTY AUDITOR;

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

9704280734

ROBERT F. BAKEMEIER  
BAKEMEIER, P.C.

---

A Professional Corporation

LAW OFFICE

7525 S.E. 24<sup>TH</sup> STREET, SUITE 610  
MERCER ISLAND, WASHINGTON 98040

FACSIMILE  
COVER PAGE

TELEPHONE: 206-230-0600  
FACSIMILE: 206-230-0602  
E-MAIL: rfb@rflaw.com

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ATTENTION: THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL(S) OR ENTITY(IES) NAMED BELOW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU ARE NOT AUTHORIZED TO REVIEW THE FOLLOWING PAGES AND THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE COLLECT AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. WE WILL REIMBURSE YOU FOR POSTAGE. THANK YOU.

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SENDER: ROBERT F. BAKEMEIER

SECRETARY: CHARLENE FINNELLY

JUNE 16, 2004

Total Pages (Including Cover Sheet): 5

Client/Matter: 33221-0001

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To: Ted Yackulic

FAX: 206-553-0163

Conf: 206-553-1218

To: Jonathan Williams

FAX: 206-553-0163

Conf: 206-553-1369

To: Elliott Furst

FAX: 360-586-6760

Conf: 360-586-3513

To: Leon Wilhelm

FAX: 360-407-6305

Conf: 360-407-6362

MESSAGE:

**ROBERT F. BAKEMEIER  
BAKEMEIER, P.C.**

TELEPHONE: 206-230-0600  
FACSIMILE: 206-230-0602  
EMAIL: rfb@rfblaw.com

LAW OFFICE  
A PROFESSIONAL CORPORATION

ISLAND CORPORATE CENTER  
7525 S.E. 24TH STREET, SUITE 610  
MERCER ISLAND WASHINGTON 98040

June 16, 2004

VIA FACSIMILE

Ted Yackulic  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10 (ORC-158)  
1200 Sixth Avenue  
Seattle, WA 98101

Jonathan Williams  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10 (ORC-158)  
1200 Sixth Avenue  
Seattle, WA 98101

Elliott Furst  
Assistant Attorney General  
Washington Attorney General's Office  
2425 Bristol Court SW, 2<sup>nd</sup> Floor  
P.O. Box 40117  
Olympia, WA 98504-0117

Leon Wilhelm, P.E.  
Environmental Engineer  
Hazardous Waste Technical Unit, DOE  
Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504-7775

Re: Port of Tacoma Restrictive Covenant

Dear Gentlemen:

In our recent consent decree discussions, we have indicated that the Port of Tacoma has already imposed a Restrictive Covenant upon its properties adjacent to the former Occidental facility. The Restrictive Covenant was reviewed and approved by Ecology (Elliott's predecessor, Ken Lederman) prior to its execution and recording by the Port. That occurred in the context of framing the draft MTCA order for the Occidental groundwater activities. A copy of the document is transmitted with this letter.

Very truly yours,

  
Robert F. Bakemeier

Enclosures

cc: Kim Seely  
Suzanne Dudziak  
Brian Knox  
Maury Wassmann  
(all via fax, w/o enc.)



PIA/IB E2  
362

200305050452 3 PGS  
05-05-2003 12:06pm \$21.00  
PIERCE COUNTY, WASHINGTON

AFTER RECORDING MAIL TO:

Port of Tacoma  
Attn: Real Estate Services  
P O Box 1837  
Tacoma, WA 98401-1837

**RESTRICTIVE COVENANT**

The undersigned, Port of Tacoma, is the fee owner of the real property in Tacoma, in the County of Pierce, State of Washington, for which a legal description is attached as Exhibit 1 and incorporated by reference into this Restrictive Covenant (hereinafter referred to as the "Property"). The Port of Tacoma makes the following declaration as to limitations, restrictions, and uses to which the groundwater on the Property may be put, and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property.

Section 1. Groundwater on the Property shall not be extracted, supplied or used for drinking or other human consumption or domestic use of any kind.

Section 2. The owner of the Property must notify and obtain approval from the Washington Department of Ecology, or from a successor agency, prior to any use of the groundwater on the Property that may be inconsistent with the terms of this Restrictive Covenant.

Section 3. The owner of the Property, and owner's assigns and successors in interest, reserve the right under WAC 173-340-730 and WAC 173-340-440 to record an instrument which provides that this Restrictive Covenant shall no longer limit the use of the groundwater on the Property or be of any further force or effect. However, such an instrument may be recorded only with the consent of the Washington Department of Ecology or of a successor agency.

The Port of Tacoma agrees that this Restrictive Covenant shall be filed with the Pierce County Auditor.

PORT OF TACOMA

By: Richard Marzano  
Name: Richard Marzano  
Its: President of Board of Commissioners  
Date: 04-17-2003

By: R. Ted Bottiger  
Name: R. Ted Bottiger  
Its: Secretary of Board of Commissioners  
Date: 04/17/03

H:\Misses\Restrictive Covenant - EBC.DOC; 05/12/2002

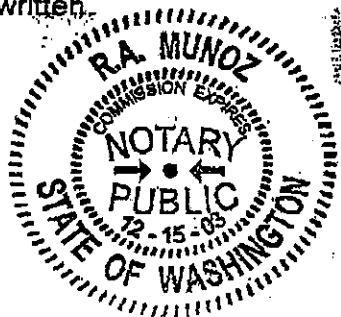
**AUDITOR'S NOTE**

LEGIBILITY FOR RECORDING AND COPYING UNSATISFACTORY IN A PORTION OF THIS INSTRUMENT WHEN RECEIVED

STATE OF WASHINGTON )  
County of Pierce ) ss.

On this 17<sup>th</sup> day of APRIL, 2003, personally appeared before me the undersigned, a Notary Public, in and for the State of Washington, duly commissioned and sworn, RICHARD MARZANO and R. TED BOTTIGER, to me known to be the President and Secretary of the PORT OF TACOMA, a municipal corporation, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said municipal corporation.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.



R.A. Munoz  
NOTARY PUBLIC in and for the State of Washington, residing at Tacoma

APPROVED AS TO FORM:

Robert D. Scott  
Counsel for Port of Tacoma

PORT OF TACOMA P.O. BOX 1857  
 TACOMA, WA 98401 206-383-3800

**LEGAL DESCRIPTION**

**PARCEL A**  
 PARCEL A IS A PORTION OF THE PORT OF TACOMA...  
 (Detailed legal description text follows)

**PARCEL B**  
 PARCEL B IS A PORTION OF THE PORT OF TACOMA...  
 (Detailed legal description text follows)

