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COUNTY AUDITOR  
SPOKANE COUNTY WA

4845743

*FILED FOR RECORD AT REQUEST OF:*

Jerry K. Boyd  
Paine, Hamblen, Coffin, Brooke & Miller LLP  
1200 Washington Trust Financial Center  
717 West Sprague Avenue  
Spokane, WA 99201-3505

**COVER SHEET - INDEXING FORM**

**LAW OFFICES OF  
PAINE, HAMBLEN, COFFIN, BROOKE & MILLER LLP**

<b>Document Title:</b>	<b>Settlement Agreement</b>
<b>Owner:</b>	<b>Earl H. Schmidt and Joyce M. Schmidt, Trustees Schmidt Living Trust</b>
<b>Grantee:</b>	<b>ConocoPhillips Company</b>
<b>Abbreviated Legal Description:</b>	<b>Tracts "A" and "B" of SP87-520, being a portion of SW¼NW¼ 22-26-43</b>
<b>Additional Legal On:</b>	<b>Exhibit "B"</b>
<b>Assessor's Parcel Numbers:</b>	<b>36223.9143 and 36223.9142</b>

Sent By: PAINE HAMBLIN 14;

509 838 0007;

Feb-12-03 2:43PM;

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**EXHIBIT A**

**RESTRICTIVE COVENANT**

**Settlement Agreement**

**By and Between**

**ConocoPhillips, Schmidt Living Trust and Mr. & Mrs. Earl Schmidt**

## RESTRICTIVE COVENANT

For

8520 N. Freya Avenue; Spokane, Washington

[Parcel: 22-26-43 TR "B" of SP87-520 Being A PTN of SW 1/4 of NW 1/4]

[Parcel: 22-26-43 TR "A" of SP87-520 Being A PTN of SW 1/4 of NW 1/4]

Pursuant to the Model Toxics Control Act, Chapter 70.1 05D RCW, a remedial action was conducted at or in the vicinity of the property that is the subject of this Restrictive Covenant. The work that will be done to remediate the property and conduct long-term operation and maintenance (hereafter the "Cleanup Action") is described in the Consent Decree entered in State of Washington Department of Ecology v. Phillips Petroleum Company & Tosco Refining Corporation, Spokane County Superior Court and in attachments to the Consent Decree and in documents referenced in the Consent Decree.

The Cleanup Action is described in the following documents:

North Market Street Site - Cleanup Action Plan, Washington State Department of Ecology, Eastern Regional Office, September 1999.

Ecology and Environment, Inc., 1989, Technical Assistance Team Site Assessment, Final Report for: Tosco Corporation Spokane Terminal, Spokane, Washington.

Golder Associates, 1985, Phase I Remedial Investigation of the North Market Street Site. Volumes I, II, and III.

1988, Data Compilation Report for the North Market Street Site Phases I, II, and

### III Remedial Investigations.

U. S. Environmental Protection Agency, 1990, Aerial Photographic Analysis of Tosco, Incorporated, Spokane, Washington, Prepared by: Environmental Systems Laboratory, TS-PIC-90752.

Washington State Department of Ecology, 1990, October 1990 ground water sample results data report.

1990, Environmental Report Tracking System, Spill Report - Tosco Refining Company, E. 3225 Lincoln Road, Spokane, Washington.

These documents are on file at Ecology's Eastern Regional Office.

This Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Phillips Petroleum Company & Tosco Refining Corporation, (hereafter the "Defendants"), their successors and assigns, and the Washington State Department of Ecology (hereafter "Ecology"), its successors and assigns. See Ecology letter dated December 18, 2002 from Mr. William J. Fees to Mr. Earl H. Schmidt. Said letter is attached hereto as Attachment A and is hereby incorporated herein by reference.

This Restrictive Covenant is required by Ecology under WAC 173-340-440 because the Cleanup Action resulted in hazardous substances remaining on the Site, and because groundwater concentrations of hazardous substances exceed statutory cleanup levels established under WAC 173-340-720.

The undersigned, Earl H. Schmidt and Joyce M. Schmidt are the sole trustees of the Schmidt Living Trust, a revocable trust dated December 8, 1998 (the "Trust"); said Trust is the fee owner of real property (hereafter "the Property") in the County of Spokane, State of Washington, which is subject to this Restrictive Covenant. The property is legally described in Attachment B of this Restrictive Covenant and is hereby incorporated by reference.

The undersigned, Earl H. Schmidt and Joyce M. Schmidt on behalf of themselves and the Trust, make the following declaration as to limitations, restrictions, and uses to which 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 (hereafter "Owner").

Section 1. No groundwater wells may be drilled nor groundwater extracted for any use, except Ecology-approved compliance groundwater monitoring pursuant to the Cleanup Action within the Property, without prior written notice to and written approval from Ecology.

Section 2. Any activity on the Property that may interfere with the integrity of the Cleanup Action and continued protection of human health and the environment is prohibited without prior written approval from Ecology.

Section 3. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Cleanup Action on the Property.

Section 4. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions herein on the use of the Property.

Section 5. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve an inconsistent use only after an opportunity for public notice and comment is provided.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Cleanup Action; to take samples, to inspect remedial actions conducted at the Property, and to inspect records that are related to the Cleanup Action.

Section 7. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and comment, concurs.

[SIGNATURE PAGE FOLLOWS]

**SCHMIDT LIVING TRUST, a revocable trust dated December 8, 1998**

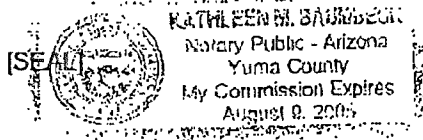
Earl H. Schmidt  
Earl H. Schmidt, as Trustee and Individually  
H

Joyce M. Schmidt  
Joyce M. Schmidt, as Trustee and Individually

THE STATE OF Arizona §  
§  
COUNTY OF Yuma §

BEFORE ME, the undersigned authority, on this day personally appeared Earl H. Schmidt and Joyce M. Schmidt, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they had executed the same in the capacity and for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16<sup>th</sup> day of Jan, 2003.



Kathleen M. Baumbeck  
Notary Public in and for the STATE OF Arizona  
My Commission Expires: Aug 9, 2005

Sent By: PAINE HAMBLIN 14;

509 838 0007;

Feb-12-03 2:44PM;

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**EXHIBIT A**

**WASHINGTON DEPARTMENT OF ECOLOGY LETTER, DECEMBER 18, 2002**



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

4601 N. Monroe Street - Spokane, Washington 99205-1295 - (509) 456-2926

RECEIVED

DEC 23 2002

PCO HAS-PRM

December 18, 2002

Mr. Earl H. Schmidt  
2323 E. Illinois Ave.  
Spokane, WA 99207

Dear Mr. Schmidt:

As you may know, the cleanup activities at the North Market Street Site are nearing completion. The Washington Department of Ecology (Ecology) has provided oversight for these cleanup activities. The remaining tasks to be completed for the Site include the bioventing system installation and deed recordation of restrictive covenants on affected properties. Since your property at 8520 N. Freya Ave. in Spokane, Washington overlies the North Market Street Site groundwater contaminant plume, a restrictive covenant that prohibits groundwater withdrawal from the property will be required.

As part of the remedial investigation of the North Market Street Site, a limited investigation of the property at 8520 N. Freya Ave. indicated the property's shallow soil did not appear to be affected by practices associated with the former refinery at the North Market Street Site. However, the property has been affected by the North Market Street groundwater contaminant plume. Under the Model Toxics Control Act (MTCA-Chapter 173-340 WAC), the plume clause (70.105D.040 (3)(a)(iii)) provides an affected landowner liability protection. In order for this provision to give liability protection, a restrictive covenant must be recorded. The deed recordation will provide the necessary notification regarding the groundwater contaminant plume. The restrictive covenant can be recorded at the Spokane County Assessors Office.

Ecology appreciates your cooperation on this project. If you have any questions or require additional information, please contact me at (509) 329-3589.

Sincerely,

*ng for William J. Fees*

William J. Fees, P.E.  
Environmental Engineer  
Toxics Cleanup Program

CC: Ms. Cindy Smith - Phillips



Sent By: PAINE HAMBLEN 14;

509 838 0007;

Feb-12-03 2:44PM;

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**EXHIBIT B**  
**LEGAL DESCRIPTION**

Sent By: PAINE HAMBLEN 14;

509 838 000/;

Feb-17-03 2:44PM;

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### Legal Description

Tracts "A" and "B" of Short Plat 87-520, being a portion of the Southwest Quarter of the Northwest Quarter of Section 22, Township 26 North, Range 43 East, W.M., in the County of Spokane, State of Washington.