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10/26/2007 10:16am \$47.00
PIERCE COUNTY, WASHINGTON

Name & Return Address:

City Clerk
City of DuPont
303 Barksdale Avenue
DuPont, WA 98327

Document Title(s)
Declaration of Restrictive Covenant – Commercial Lot B
Grantor -- City of DuPont
Grantee -- State of Washington, Department of Ecology
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section) Lot B of that Record of Survey for Boundary Line Adjustment No. 05-04, recorded under Recording No. 200508245006, Records of Pierce County, Washington Complete Legal Description in Exhibits A and B of the Document
Auditor's Reference Number -200508245006
Assessor's Property Tax Parcel/Account Number - 0119232011
The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein. I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.
Signature of Requesting Party (Required for non-standard recordings only)

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DECLARATION OF RESTRICTIVE COVENANT

COMMERCIAL – LOT B

This Declaration of Restrictive Covenant (“Restrictive Covenant”) is made in accordance with the Washington Uniform Environmental Covenants Act (2007 Wash. Laws ch. 104, sec. 12) and pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 this 9th day of October, 2007, by the City of DuPont (“City”), its successors and assigns, and the State of Washington, Department of Ecology (“Department of Ecology”), and its successors and assigns.

The undersigned, City, covenants that it is the fee owner of real property in Pierce County, Washington, legally described in Exhibit A and depicted in Exhibit B, attached hereto and incorporated herein by this reference (“Property”).

A portion of the Property is within the “Former DuPont Works Site” that was the subject of work to clean up the Property (“Remedial Action”) under the Washington Model Toxics Control Act (“MTCA”), Chapter 70.105D RCW. The Remedial Action is described in the Consent Decree entered in *State of Washington, Department of Ecology v. Weyerhaeuser Company and E.I. DuPont de Nemours and Company* (Thurston County Cause No. 03-2-10484-7), in attachments to the Decree and in documents referenced in the Decree, including without limitation the Cleanup Action Plan attached to the Consent Decree as Exhibit A, and incorporated therein by reference. The Cleanup Action Plan is on file and available for inspection at the Washington State Department of Ecology, Toxics Cleanup Program, P.O. Box 47775, Olympia, WA 98504-7775. The boundary of Parcel One is depicted in Exhibit B, attached hereto. In accordance with the terms of the Consent Decree, a restrictive covenant was recorded on the portion of the Property within the “Former DuPont Works Site” (Pierce County Auditor’s Reference No. 200607251021.)

A portion of the Property is outside the “Former DuPont Works Site.” That portion has also been the subject of remedial actions under MTCA. The cleanup in that portion of the property was performed as an independent remedial action under the MTCA voluntary cleanup program (collectively, the “Remedial Actions”). Pursuant to RCW 70.105D.030(1)(i), in accordance with the conditions required by the Department of Ecology in order to issue an opinion regarding whether the independent remedial actions taken, and under the authority of RCW 70.105D.030(f), this Restrictive Covenant is now necessary for the portion of the Property outside the “Former DuPont Works Site.” The administrative record for the voluntary cleanup is on file and available for inspection at the Washington State Department of Ecology, Toxics Cleanup Program, P.O. Box 47775, Olympia, WA 98504-7775.

This Restrictive Covenant is required because the Remedial Actions resulted in residual concentrations at some portions of the Property of hazardous substances which exceed the soil and groundwater cleanup levels specified in MTCA for unrestricted land uses. The Remedial Actions resulted in removal of all hazardous substances which exceed site specific remediation levels, as established by the Department of Ecology, for commercial land use.

The City makes the following declaration as to limitations, conditions, restrictions, and uses to which the Property may be put and specifies that such declarations shall run with the land as provided by law and shall be binding on the City, its successors and assigns, and any and all parties and persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter, "Owner").

Section 1: Restrictions on Use of Property. The Property may be developed and used only for commercial use as allowed under the City of DuPont zoning regulations and Comprehensive Land Use Plan and under MTCA; provided, however that the Property shall not be developed and used for any of the following: residential uses, schools, daycares, parks, recreational uses (with the exception of transitory uses such as paved and unpaved trails, and tables, benches, signs and waste receptacles incidental to such uses), or any other use in which the likelihood of children having sustained access to soils can be reasonably anticipated.

Section 2: Restrictions on Activities. The Owner may maintain and develop the Property consistent with this Restrictive Covenant. Normal construction and maintenance for permitted development is not restricted by this Section. Maintenance of any impervious surfaces is expressly permitted without prior approval so long as appropriate health and safety protocols are followed. For development activities permitted under this Restrictive Covenant, excavated soils must be managed properly and unless put back in place must be either placed in an area within the boundaries of the Former DuPont Works Site, or disposed off-site in accordance with applicable regulations. Excavated soils shall be managed to minimize exposure to workers and other adults, including but not limited to the use of best management practices to control dust and surface water runoff; and to prevent exposure to children. Any activity on the Property that could interfere with the continued protection of human health and the environment is prohibited without prior written approval from the Department of Ecology.

Section 3: Change of Use. The Owner must notify and obtain approval from the Department of Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. The Department of Ecology may approve any inconsistent use only after public notice and comment; provided, however, in no event may any change in use be approved that would allow for residential uses, schools, daycares, parks, recreational uses (with the exception of transitory uses such as paved and unpaved trails, and tables, benches, signs and waste receptacles incidental to such uses), or any other use in which the likelihood of children having sustained access to soils can be reasonably anticipated.

Section 4: Notice of Conveyance. The Owner must give thirty (30) days' advance written notice to the Department of Ecology of the Owner's intent to convey any interest in the Property. Within thirty (30) days of the date any instrument conveying a fee title interest is executed, grantor must provide the Department of Ecology with a certified true copy of the instrument and, if it has been recorded in the public land records, its recording reference. 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 Remedial Actions.

Section 5: Leasehold Interests. The Owner must restrict leases to uses and activities consistent with this Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6: Recordation. Within thirty (30) days of the date of execution, the Owner shall record this Restrictive Covenant with the Pierce County Assessor's Office, and provide evidence of recordation to the Department of Ecology.

Section 7: Notice Requirement. The Owner shall include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, and mortgages a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF A RESTRICTIVE COVENANT, DATED _____, RECORDED IN THE PUBLIC LAND RECORDS ON _____, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY THE STATE OF WASHINGTON.

Section 8: Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other shall be in writing and shall be served personally or sent by first class mail postage prepaid, addresses as follows:

To the City of DuPont:

Mayor
City of DuPont
303 Barksdale Ave
DuPont, WA 98327

To the Department of Ecology:

Washington State Department of Ecology
Toxics Cleanup Program
P.O. Box 47775
Olympia, WA 98504-7775

Section 9: Groundwater Withdrawal. The Owner of the Property must not permit withdrawal of groundwater from the Property for drinking water purposes, unless authorized by the Department of Ecology. Withdrawal of groundwater from monitoring wells for the purpose of extracting samples for analysis is expressly permitted.

Section 10: Access. The Owner shall allow authorized representatives of the Department of Ecology and the City the right to enter the Property at reasonable times for the purposes of monitoring compliance with the terms of this Restrictive Covenant, evaluating the Remedial Actions, taking samples, inspecting remedial actions conducted at the Property, and inspecting records that are related to the Remedial Actions.

Section 11: No Public Access and Use. No right of access or use by the general public to any portion of the Property is conveyed by this Restrictive Covenant.

Section 12: Enforcement. The City and the Department of Ecology shall each have the right, but not the obligation, to enforce the terms of this Restrictive Covenant by resort to specific performance or any legal process; provided, however, that no provision of this Restrictive Covenant shall be construed or intended to impose any obligations, by law or by contract, on the City or the Department of Ecology to take action to enforce said restrictions. Neither the right nor authority of the City and the Department of Ecology to enforce this Restrictive Covenant nor a decision made to exercise or not to exercise such authority to right shall give rise to any duty or responsibility on the part of the City or the Department of Ecology to exercise or not exercise this right on behalf of any Party or other person or entity. All remedies available hereunder shall be in addition to any and all remedies at law or in equity, including MTCA. Any forbearance, delay or omission to exercise the enforcement rights under this Restrictive Covenant in the event of a breach of any term of this Restrictive Covenant shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any other term, or of any of the rights under this Restrictive Covenant. Should legal counsel be employed to enforce this Restrictive Covenant, all costs incurred in such enforcement, including reasonable attorneys' fees shall be paid by the Owner found to be in violation.

Section 13: No Third Party Beneficiary. This Restrictive Covenant is intended for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns, including all current and future owners of any portion or interest in the property. The Parties to this Restrictive Covenant expressly do not intend to benefit any other person or entity, and expressly do not intend to create any third-party beneficiaries to any provision of this Restrictive Covenant, including but not limited to any enforcement provisions.

Section 14: Run with the Land. To the extent that this Restrictive Covenant is construed as a restrictive covenant, it shall run with the land, and shall be binding on the Owners, their successors and assigns, of all or any portion of the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the property owner without adequate and complete provision for the continued observation of this Restrictive Covenant.

Section 15: Severability. Invalidation of any provision or application of a provision of this Restrictive Covenant by any court shall not affect any other provisions or applications.

Section 16: Easement in Gross. To the extent that this Restrictive Covenant creates a negative easement, it shall be construed as an easement in gross for the sole benefit of the City, without whose consent it cannot be released, modified or amended.

Section 17: Reserved Rights. The City reserves unto itself and its successors and assigns all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, and rights granted herein.

The City of DuPont has caused this Restrictive Covenant to be signed in its name.

EXECUTED this 9th day of October, 2007.

CITY OF DUPONT

By:

Steve Young

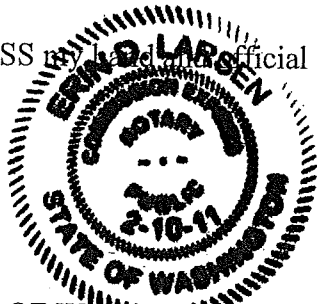
Steve Young
Mayor

STATE OF WASHINGTON)

County of Pierce) ss.

On this 9th day of October, 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steve Young, known to be the Mayor of the City of DuPont, the municipal corporation that executed the foregoing Restrictive Covenant, and acknowledged the said Restrictive Covenant to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said Restrictive Covenant.

WITNESS my hand and official seal hereto affixed the day and year written above.



Erin D. Larsen
Erin D. Larsen

NOTARY PUBLIC in and for the State of Washington. My commission expires: 2-10-11

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

By:

Dated: September 24, 2007

Mike Blum

Mike Blum
Project Coordinator

Attachments: Exhibit A – Legal description of Property
Exhibit B – Depiction of Property & Parcel One Boundary

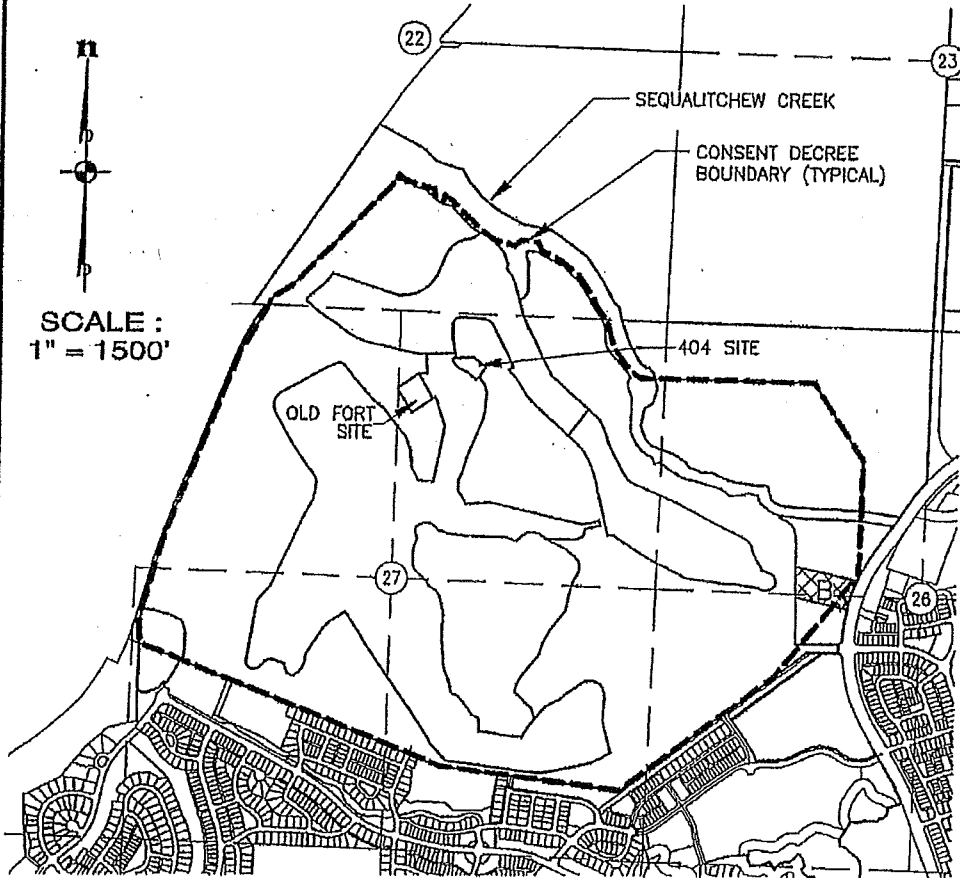
EXHIBIT A
LEGAL DESCRIPTION
FOR
COMMERCIAL PROPERTY
LOT B

Lot B of that Record of Survey for Boundary Line Adjustment No. 05-04,
recorded under Recording No. 200508245006, Records of Pierce County,
Washington.


EXHIBIT "B"

TO ACCOMPANY LEGAL DESCRIPTION FOR
COMMERCIAL PROPERTY - LOT B

A PORTION OF SECTIONS 22, 26, 27, 28 AND 35, TOWNSHIP 19 NORTH,
RANGE 1 EAST, W.M., CITY OF DUPONT, PIERCE COUNTY, WASHINGTON



LEGEND

 SUBJECT AREA



CONSULTING ENGINEERS LLC

720 S. 348th Street
Federal Way, WA 98003

FEDERAL WAY
BOOTHILL (253) 838-8113
(425) 416-8144

www.esmcivil.com

Civil Engineering
Public Works

Land Surveying
Project Management

Land Planning
Landscape Architecture

JOB NO. 129-044-004-0960

DWG: 129\44\004\EXHIBITS\SR-12.DWG

DATE: 06-12-06

DRAWN: MRB/RJW

SHEET 1 OF 1