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02/27/2009 01:41P  
Douglas County

## Model Restrictive (Environmental) Covenant

After Recording Return to:  
Jeff Newschwander  
Department of Ecology  
15 West Yakima Avenue, Suite 200  
Yakima, WA 98902

### Environmental Covenant

**Grantor:** MWSH East Wenatchee LLC

**Grantee:** State of Washington, Department of Ecology

**Legal:** 50 20<sup>th</sup> St. NW; East Wenatchee, WA 98802

**Tax Parcel Nos.:** 40600005501 **Cross Reference:** [if amendment, recording number of original covenant]

Grantor, MWSH East Wenatchee LLC, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant ( hereafter "Covenant" ) made this day of February 19, 2009 in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by MWSH East Wenatchee LLC, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

1. *Cleanup Action Plan*, January 8, 2006
2. *Phase One Environmental Site Assessment*, August 24, 2005, V Environmental LLC
3. *Limited Subsurface Soil Investigation Report*, September 26, 2005, V Environmental LLC



4. *Former Zur Hausen Orchards, January 7, 2009, V Environmental LLC*

These documents are on file at Ecology's [Insert Office Location] Office.

This Covenant is required because the Remedial Action resulted in residual concentrations of lead and arsenic which exceed the Model Toxics Control Act Method A Cleanup Level(s) for soil established under WAC 173-340-900.

The undersigned, MWSH East Wenatchee LLC , is the fee owner of real property (hereafter "Property") in the County of Douglas, State of Washington, that is subject to this Covenant. The Property is legally described [AS FOLLOWS: 50 20<sup>th</sup> St. NW; East Wenatchee, WA 98802 ] -or- [IN ATTACHMENT A OF THIS COVENANT AND MADE A PART HEREOF BY REFERENCE (attach document containing legal description)].

MWSH East Wenatchee LLC makes 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. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. 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 Remedial Action.

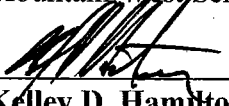
Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.


Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this 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 opportunity for comment, concurs.

MWSH East Wenatchee LLC  
Mountain West Senior Housing LLC, Manager

  
Kelley D. Hamilton  
CEO

Dated: 2/19/09

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

  
Donald Abbott  
Section Manager - CRD TCP

Dated: Feb 25 2009

[INDIVIDUAL ACKNOWLEDGMENT]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

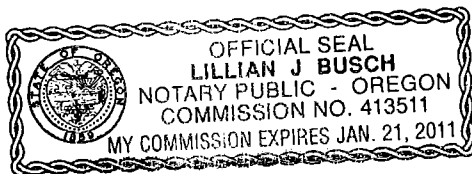
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires \_\_\_\_\_.

[CORPORATE ACKNOWLEDGMENT]

STATE OF Oregon \_\_\_\_\_  
COUNTY OF Marion \_\_\_\_\_

On this 19<sup>th</sup> day of February, 2009, I certify that Kelley D. Hamilton personally appeared before me, acknowledged that he is the CEO 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 was authorized to execute said instrument for said corporation.



*Lillian J. Busch*  
\_\_\_\_\_  
Notary Public in and for the State of  
Oregon, residing at Salem.  
My appointment  
expires Jan 21, 2011

[REPRESENTATIVE ACKNOWLEDGEMENT]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the \_\_\_\_\_ [type of authority] of \_\_\_\_\_ [name of