

FILED FOR RECORD AT REQUEST OF:

VELIKANJE, MOORE & SHORE, P.S.  
ATTN: MARK E. FICKES  
P. O. Box 22550  
Yakima, WA 98902

## DECLARATION OF RESTRICTIVE COVENANT

Reference number(s) of related document: \_\_\_\_\_

Grantor(s): Mercy Development Co., L.L.C.

Grantee(s): State of Washington Department of Ecology

Abbreviated Legal Description: NW ¼, NW ¼, SE¼, S 26, T 13 N, R 18 EWM Complete legal description is on Exhibit A of this document.

Assessor's Tax Parcel ID No.: Portion of 181326-42054

DATE: March 3, 2004

GRANTOR: MERCY DEVELOPMENT CO., L.L.C.,  
a Washington limited liability company

GRANTEE: STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

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

Pursuant to a Consent Decree entered in State of Washington v. Tiger Oil Corporation, Thurston County Superior Court, Cause No. 02-2-00956-2, a remedial action involving the installation and operation of a soil vapor extraction system (the "Remedial Action") will be implemented on Mercy's property within the Tiger Oil Site ("Site") that is described in the Consent Decree. Exhibit A to the Consent Decree describes

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the Remedial Action being conducted. The Consent Decree and other documents to which it refers or otherwise relating to the Tiger Oil Site are on file at Ecology's Central Regional Office, 15 West Yakima Avenue, Yakima, WA 98902.

This Restrictive Covenant is required because the Remedial Action will address only a portion of the contamination at the Tiger Oil Site. Thus the residual concentrations of total petroleum hydrocarbons, benzene, toluene, ethylbenzene and xylenes (the "Identified Substances") within the Site may, despite the Remedial Action, still exceed the Model Toxics Control Act (MTCA) Method A Cleanup Levels for soil and groundwater established under WAC 173-340-720 and 740. The persistence of this condition will depend on the cleanup efforts by other parties at the Site.

The undersigned, Mercy Development Co., LLC, is the fee owner of real property in the County of Yakima, State of Washington, the legal description of which is set forth in Attachment A hereto (Parcel 181326-42054). The Remedial Action is to be conducted within the northern portion of Parcel 181326-42054, which portion is generally contained within an area bounded on the north by West Nob Hill Blvd., on the east by the Yakima County Drainage Irrigation District (DID) line, on the west by the property line for the Skipper's Restaurant parcel and on the south by the middle of the parking lot at monitoring well KMW-11 in front of the Rite-Aid and Safeway stores. This Restrictive Covenant pertains to the area that is shown as the cross-hatched area on Attachment B and is defined as the "Property".

Mercy 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. No groundwater may be taken for domestic or industrial uses from the Property unless the MTCA Method A Cleanup Levels for groundwater for the Identified Substances and for any other hazardous substances that have been released at the Site have been met at the Property.

Section 2. Any activity on the Property that may interfere with the integrity of either the Remedial Action or existing monitoring wells on the Property that are part of the investigation of the Site or with continued protection of human health and the environment is prohibited without the prior written approval of Ecology.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of contaminated soil or create a new exposure pathway is prohibited without the prior written approval of Ecology, which shall not be unreasonably withheld or delayed. Some activities that are prohibited on the Property where contaminated soil is known to be located or may be located 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. Activities involving the routine repair and maintenance of the Property or existing improvements on it can be conducted without any prior written approval of Ecology to the extent that such activities otherwise comply with this Restrictive Covenant.

Section 4. At least thirty (30) days prior to transfer of any interest in the all or any portion of the Property on which the Mercy Property SVE System is located, the Owner of the Property must give advance written notice to Ecology of such transfer. The Owner shall not consummate any voluntary or involuntary conveyance or relinquishment of title, easement or other interest in the Property without provision, as necessary, for continued operation, maintenance and monitoring of the Remedial Action on the Property.

Section 5. The Owner shall allow Ecology and its authorized representatives the right to enter the Property as specified in the Consent Decree.

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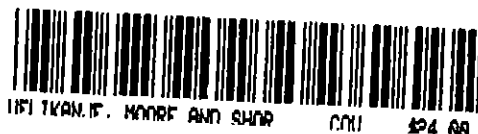


**ATTACHMENT A**

**Parcel No. 181326-42054**

The Northwest ¼ of the Northwest ¼ of the Southeast ¼ of Section 26, Township 13 North, Range 18, E.W.M.,  
EXCEPT the North 242.8 feet of the West 280.5 feet thereof;  
EXCEPT the North 103 feet of the East 103 feet thereof;  
EXCEPT beginning 96.94 feet West and 24.99 feet North of the Southeast corner of said Subdivision;  
thence North 191.07 feet;  
thence West 55.65 feet;  
thence North 45°02'06" West 19.74 feet;  
thence West 23.89 feet;  
thence North 2.07 feet;  
thence West 80.01 feet;  
thence North 4.31 feet;  
thence North 89°54'26" West 42.04 feet;  
thence South 45°09'40" West 28.76 feet;  
thence West 25.93 feet;  
thence North 18.55 feet;  
thence West 23.75 feet;  
thence North 44°56'42" West 8.54 feet;  
thence West 74.5 feet;  
thence South 44°50'44" West 8.52 feet;  
thence West 23.92 feet;  
thence South 10.54 feet;  
thence West 56.05 feet;  
thence South 156.51 feet;  
thence East 42.51 feet;  
thence South 25°25'33" East 26.04 feet;  
thence North 65°01'28" East 55.6 feet;  
thence East 85.47 feet;  
thence South 8.87 feet;  
thence West 32.92 feet;  
thence South 04°48'45" East 34.92 feet;  
thence East 292.1 feet to the point of beginning; and  
EXCEPT right-of-way for streets.

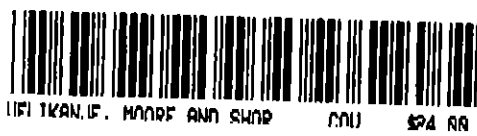
**ATTACHMENT A**



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**ATTACHMENT B**

**ATTACHMENT B**



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