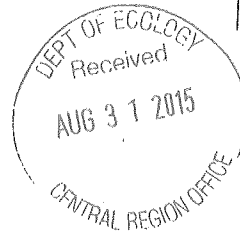


After Recording Return  
 Original Signed Covenant to: Ms. Jennifer Lind  
 Toxics Cleanup Program – Central Regional Office  
 Department of Ecology  
 1250 W. Alder Street  
 Union Gap, WA 98903



FILE# 7881333  
 YAKIMA COUNTY, WA  
 07/29/2015 01:18:49PM  
 COVENANT  
 PAGES: 12  
 VALUED CUSTOMER

Recording Fee: 83.00

### Environmental Covenant

**Grantor:** Washington Properties, LLC  
**Grantee:** State of Washington, Department of Ecology  
**Brief Legal Description:** Boggess Home Sites: Lot 1, Block 4, Except Southerly 125 feet, Also West 20 feet of North ½ of Lot 2, Block 4, Except North Road Right-of-Way  
**Tax Parcel No.:** 19132942431.

### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter “Covenant”) executed pursuant to the Model Toxics Control Act (“MTCA”), chapter 70.105D RCW and Uniform Environmental Covenants Act (“UECA”), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as **Pik a Pop 15, Facility Site No. 506**. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter “Property”). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principle contaminants remain on the Property:

Medium	Principle Contaminants Present
Soil	Total petroleum hydrocarbons as gasoline-range organics, benzene, toluene, ethylbenzene, and xylenes.
Groundwater	Not applicable.
Surface Water/Sediment	Not applicable.

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology. **This includes the following documents:**

- Environmental Science & Engineering, Inc., **Results of A Site Assessment Investigation At Maid O'Clover Facility, 1802 E. Nob Hill Boulevard, Yakima, Washington,** March 25, 1991.
- State of Washington Department of Ecology, **Early Notice Letter, Site Name: Maid O'Clover, #C-39-2039-000,** February 21, 1992.
- State of Washington Department of Ecology, **Hazard Site Ranking and Notification Letter, Maid O'Clover, 1802 East Nob Hill Boulevard, Yakima,** August 19, 1992.
- PLSA Engineering & Surveying, **Site Assessment Engineering Report on Petroleum Release at Maid O'Clover, Inc., Yakima, Washington,** July 1992.
- State of Washington Department of Ecology, **Notice of Potential Liability for the Release of Hazardous Substances under the Model Toxics Control Act,** December 7, 1992.
- Tetra Tech Inc., **Phase I Environmental Site Assessment, Maid O'Clover #202, 1802 East Nob Hill Boulevard, Yakima, Washington,** March 2004.
- EBI Consulting, **Limited Phase II Environmental Site Assessment, Maid O'Clover Service Station, 1802 East Nob Hill Boulevard, Yakima, Washington 98901,** July 23, 2004.
- State of Washington Department of Ecology, **Early Notice Letter Regarding the Release of Hazardous Substances on property located at 1802 East Nob Hill Boulevard, Yakima, Washington, ERTS #C545507,** January 19, 2005.
- State of Washington Department of Ecology, **Voluntary Cleanup Program Review of Phase II Limited Subsurface Investigation Report, Dynamart Yakima Nob Hill/Former Maid O'Clover, 1802 East Nob Hill Boulevard, Yakima, FS #506 (CE0218),** March 22, 2005.
- Tetra Tech, Inc., **Limited File Review of Gasoline Station at 1802 East Nob Hill Boulevard, Yakima, Washington,** May 8, 2006.
- Associated Environmental Group LLC, **Proposed Limited In-Situ Bioremediation Work Plan, Gateway 76 Nob Hill Facility, 1802 East Nob Hill Boulevard, Yakima, Washington 98901,** May 1, 2013.
- Associated Environmental Group LLC, **Proposed Compliance Monitoring Work Plan, Gateway 76 Nob Hill Facility, 1802 East Nob Hill Boulevard, Yakima, Washington 98901,** June 24, 2013.
- State of Washington Department of Ecology, **Proposed Compliance Monitoring Work Plan for the Following Site: Pik-A-Pop 15, 1802 East Nob Hill Boulevard, Yakima, Facility/Site No. 506, VCP Project No. CE0387,** July 23, 2013.
- Associated Environmental Group LLC, **Limited Subsurface Investigation and September 2013 Quarterly Groundwater Monitoring Conducted on: Gateway 76 Nob Hill Pik A Pop 15, 1802 East Nob Hill Blvd., Yakima, WA,** November 19, 2013.
- Associated Environmental Group LLC, **December 2013 and April 2014 Quarterly Groundwater Sampling Results Summary, Gateway 76 Nob Hill Pik-A-Pop 15, 1802 E. Nob Hill Blvd., Yakima, WA,** June 12, 2014.

e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the

Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) 42 USC Chapter 103.

## COVENANT

Washington Properties, LLC, as Grantor and fee simple, easement or other owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter “Ecology”) the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### **Section 1. General Restrictions and Requirements.**

The following general restrictions and requirements shall apply to the Property:

- a. Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. Amendment to the Covenant.** Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

### **Section 2. Specific Prohibitions and Requirements.**

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

**a. Land Use.**

**Commercial Land Use:** The remedial action for the Property is based on a cleanup designed for commercial property. As such, the Property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.

**b. Containment of Soil Materials.<sup>1</sup>**

The remedial action for the Property is based on containing contaminated soil under a cap consisting of concrete, pavement, and asphalt parking area and located as illustrated in **Exhibit B**. The primary purpose of this cap is to restrict access to the residual soil contamination. As such, the following restrictions shall apply within the area illustrated in **Exhibit B**:

The Grantor shall not alter or remove the existing structures on the Property in any manner that would expose contaminated soil, result in a release to the environment of contaminants, or create a new exposure pathway, without prior written approval of Ecology. Should the Grantor propose to remove all or a portion of the existing structures illustrated in Exhibit B so that access to the underlying contamination is feasible, Ecology will require treatment or removal of the underlying contaminated soil.

Any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

**c. Monitoring.**

Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

Because the contamination appears to be contained on the property, and is not affecting adjacent properties, this covenant will require that groundwater monitoring be conducted on 18-month intervals to assure that contamination is not affecting adjacent properties.

Monitoring wells MW-1, MW-2, MW-4, MW-5, and MW-6 will be sampled during each 18-month sampling event until Ecology determines that groundwater monitoring is no longer necessary. All wells will be sampled for the following constituents:

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<sup>1</sup> Waste materials means solid wastes as defined in Chapter 70.95 RCW or hazardous wastes as defined in Chapter 70.105 RCW and the rules promulgated under these statutes.

Analyze groundwater samples for the following constituents of concern on a standard laboratory turn-around-time:

- ❖ Gasoline-range total petroleum hydrocarbons (TPH) by Northwest Method NWTPH-Gx; and
- ❖ Selected volatile organic carbons (VOCs) including benzene, toluene, ethylbenzene, and total xylenes (BTEX) by EPA Method 8021B.

Prior to sampling, depth-to-water measurements will be obtained by using an electronic water level indicator. The static water level at the wells sampled at the Site and off-property locales have ranged from approximately 0.39 feet to 11.76 feet below ground surface (bgs).

Prior to sample collection, all monitoring wells will be purged of a minimum of three well casing volumes of groundwater or until the field parameters, including pH, temperature, specific conductance, dissolved oxygen, and/or total dissolved solids have stabilized. The wells will be sampled with dedicated polyethylene tubing using a peristaltic pump to mitigate cross contamination during groundwater sampling activities.

### **Section 3. Access.**

- a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.
- b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

### **Section 4. Notice Requirements.**

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the Property OR within the area of the Property illustrated in Exhibit C, including but not limited to title, easement, leases, and security or other interests, must:

- i. Notify Ecology at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

**NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON \_\_\_\_\_ AND RECORDED WITH THE YAKIMA COUNTY AUDITOR UNDER RECORDING NUMBER \_\_\_\_\_. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.**

iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Ecology.

c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Any required written notice, approval, or communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

Mr. Gary Silversmith Washington Properties, LLC 1001 Conn. Ave., NW, #405 Washington DC 20036 (202) 400-3618	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

**Section 5. Modification or Termination.**

a. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW and Chapter 70.105D RCW and any rules promulgated under these chapters.

b. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.<sup>2</sup>

**Section 6. Enforcement and Construction.**

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any

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<sup>2</sup> As time passes, the original grantor and other signers of the covenant may no longer exist as viable entities. This is intended to allow future amendments or termination of the covenant without Ecology having to seek court authorization, as provided by RCW 64.70.100.

and all remedies at law or in equity, including Chapter 70.105D RCW and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, chapter 70.105D RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.

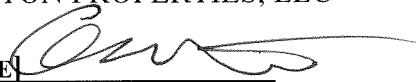
f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 14<sup>th</sup> day of July, 2015.

WASHINGTON PROPERTIES, LLC

[SIGNATURE]   
Mr., Gary Silversmith, [TITLE]

Dated: 7/14/15

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

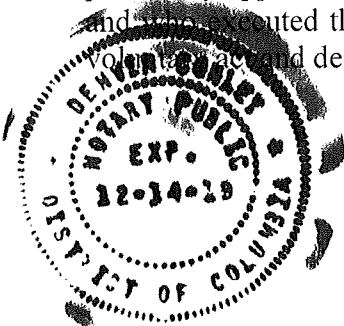
Valerie Bound  
Valerie Bound, TCP Section Manager

Dated: 7/23/15

**GRANTOR INDIVIDUAL ACKNOWLEDGMENT**

~~STATE OF WASHINGTON, DC~~  
~~COUNTY OF YAKIMA~~

On this 14<sup>th</sup> day of July, 2015, I certify that Gary S. Conley personally appeared before me, and acknowledged that **he/she** is the individual described herein and 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.



*Denver Conley*

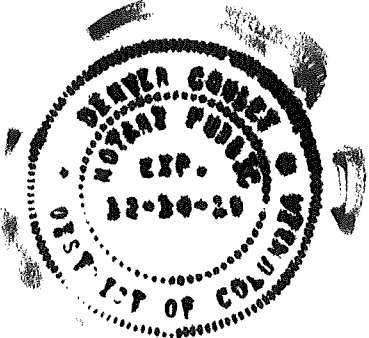
Notary Public in and for the State of Washington, residing at 1667 K ST NW. My appointment expires \_\_\_\_\_

**DENVER CONLEY**  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires December 14, 2019

**GRANTOR CORPORATE ACKNOWLEDGMENT**

~~STATE OF WASHINGTON, DC~~  
~~COUNTY OF YAKIMA~~

On this 14<sup>th</sup> day of July, 2015, I certify that Gary S. Conley personally appeared before me, acknowledged that **he/she** is the President 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/she** was authorized to execute said instrument for said corporation.



*Denver Conley*

Notary Public in and for the State of Washington, residing at 1667 K ST NW. My appointment expires \_\_\_\_\_

**DENVER CONLEY**  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires December 14, 2019



**Exhibit A**

**LEGAL DESCRIPTION**

**Parcel A:**

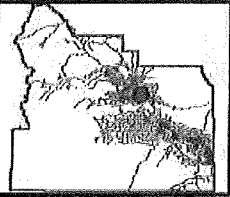
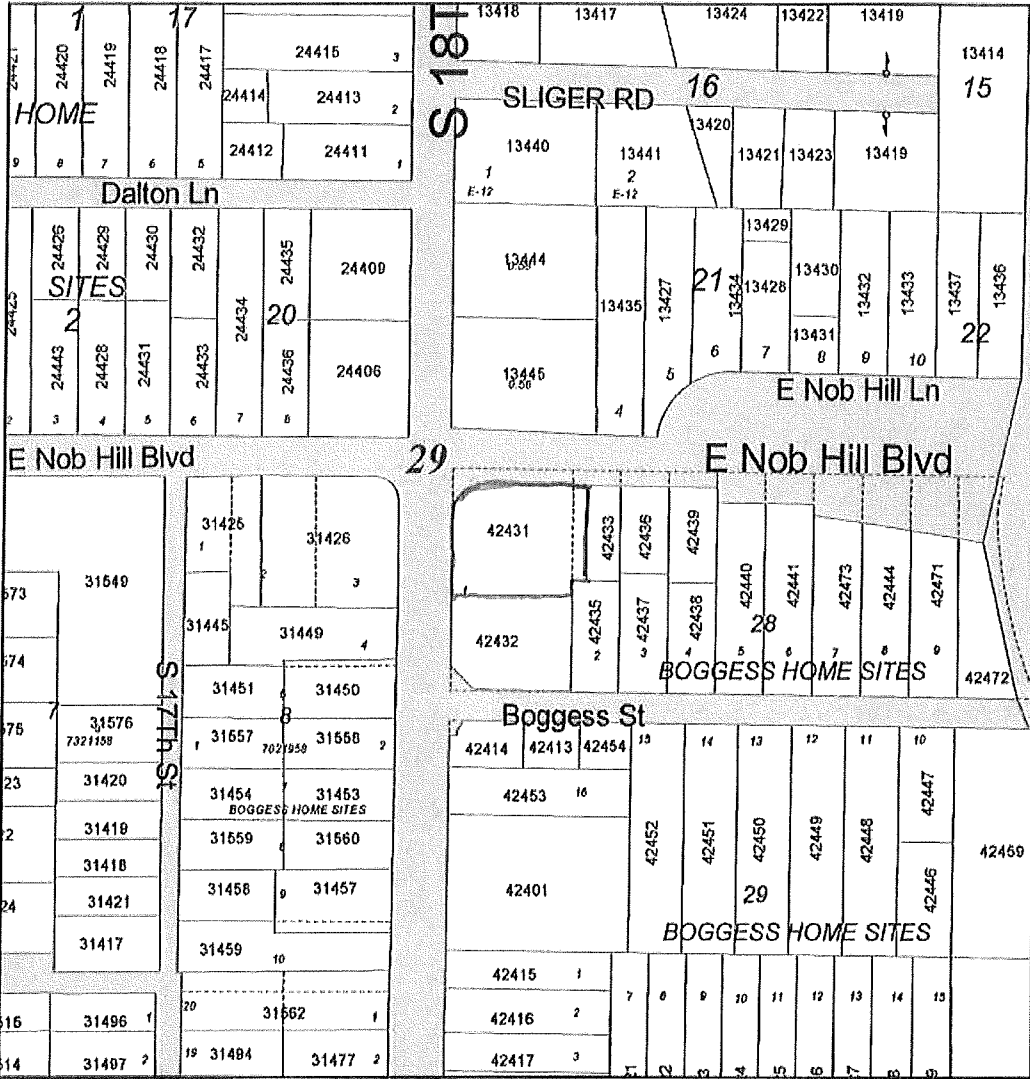
**Lot 1, Block 4, BOGGESS HOME SITES, recorded in Volume "H" of Plats, page 41, records of Yakima County, Washington, Except the South 125 feet thereof, AND EXCEPT those portions conveyed to the State of Washington for highway recorded under Auditor's File Nos. 198586, 1992426, and 1992429, respectively, AND EXCEPT that portion of said Lot 1 conveyed to Yakima County for road purposes by deed recorded under Auditor's File No. 2855332.**

**Parcel B:**

**The West 20 feet of the North half of Lot 2, Block 4, BOGGESS HOME SITES, recorded in Volume "H" of Plats, page 41, records of Yakima County, Washington, EXCEPT that portion conveyed to the State of Washington for highway recorded under Auditor's File No. 1989586.**

**Assessor's Property Tax Parcel/Account Number 191329-42431**

**Exhibit B**  
**PROPERTY FIGURES**



Map Center Range: 19 Township: 13 Section: 29

City Limits  
Sections

WWW.YAKIMAP.COM  
Yakima County GIS  
128 N 2nd Street  
Yakima, WA 98901  
(509)574-2092



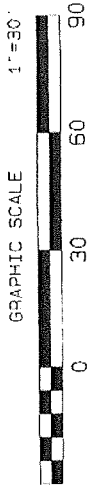
One Inch = 200 Feet

Feet 100 200 300

MAP AND PARCEL DATA ARE BELIEVED TO BE ACCURATE, BUT ACCURACY IS NOT GUARANTEED, THIS IS NOT A LEGAL DOCUMENT AND SHOULD NOT BE SUBSTITUTED FOR A TITLE SEARCH, APPRAISAL, SURVEY, FLOODPLAIN OR ZONING VERIFICATION

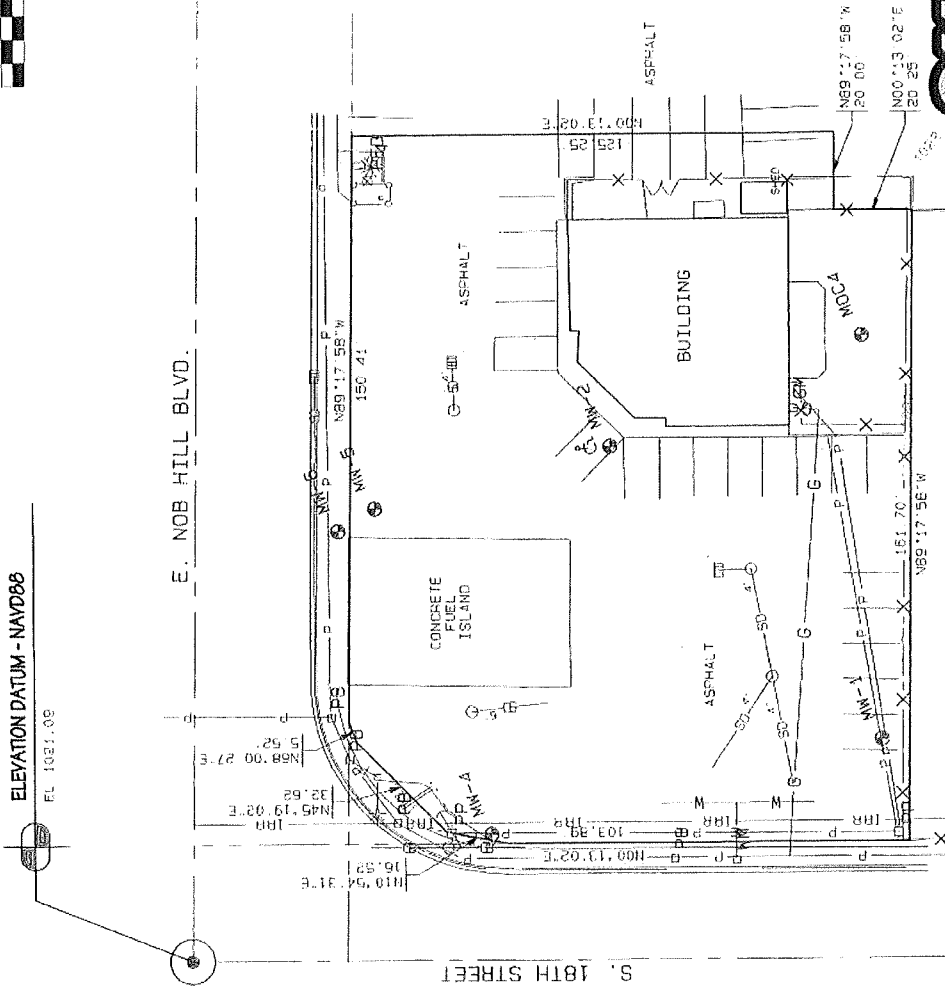
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Printed On 4/14/2015 3:50:47 PM

**AEG - GATEWAY CONOCO  
MONITORING WELLS  
YAKIMA, WA**



MONITORING WELL	NORTHING	EASTING	CITY BLOCK	INVERT ELEVATION
NR-1	455281.113	164613.372	1022.04	1021.66
NR-2	455351.007	164613.372	1022.31	1021.66
NR-3	455362.400	164602.505	1021.54	1021.06
NR-4	455412.325	164517.125	1021.57	1021.43
NR-5	455481.236	164511.650	1021.95	1020.95
NR-6	455530.370	164610.849	1022.55	1021.87

- LEGEND**
- X — DENOTES EXISTING FENCE
  - S — DENOTES EXISTING SEWER
  - CO — DENOTES EXISTING STORM DRAIN
  - G — DENOTES EXISTING GAS
  - W — DENOTES EXISTING WATER
  - P — DENOTES EXISTING POWER
  - PP — DENOTES EXISTING IRRIGATION
  - — DENOTES EXISTING MANHOLE
  - GM — DENOTES EXISTING CATCH BASIN
  - GM — DENOTES EXISTING GAS METER
  - WM — DENOTES EXISTING WATER METER
  - PP — DENOTES EXISTING MONITORING WELL
  - \*— DENOTES EXISTING POWER POLE
  - \*— DENOTES EXISTING ANCHOR
  - PB — DENOTES EXISTING PULL BOX
  - ⊗ PED — DENOTES EXISTING PEDESTAL (AS NOTED)
  - ⊗ — DENOTES EXISTING SIGN



**Know what's below.  
Call before you dig.**

**DON WILTON SURVEYING**  
PO BOX 2275  
YAKIMA, WA 98907  
509-454-8195

9-27-13  
13008