



After Recording Return  
Original Signed Covenant to:  
Steve Teel  
Toxics Cleanup Program  
Department of Ecology  
Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504-7775

### Environmental Covenant

**Grantor:** Jefferson County  
**Grantee:** State of Washington, Department of Ecology (hereafter "Ecology")  
**Brief Legal Description:** S35 T30 R1W TAX #1 (IRONDALE BEACH PARK)  
**Tax Parcel Nos.:** 001353001

#### 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 the Irondale Iron and Steel Plant, Facility/Site ID No. 95275518, Cleanup Site ID No. 4484. 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 conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

| Medium | Principal Contaminants Present                 |
|--------|--|
| Soil   | Arsenic, copper, iron, lead, nickel, and zinc. |

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 Ecology. This includes the following documents prepared by GeoEngineers for Ecology:

- Cleanup Action and Site Restoration Completion Report, dated November 4, 2015.
- Year-One Post-Construction Monitoring Report, dated November 20, 2014.

- As-Built Report, dated November 17, 2014.
  - Final Engineering Design Report, dated May 1, 2012.
  - Revised Draft Cleanup Action Plan, dated August 2009.
  - Revised Draft Remedial Investigation/Feasibility Study, dated August 2009.
- e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an “agency” under UECA, other than its’ right as a holder, are not an interest in real property.

#### COVENANT

**Jefferson County**, as Grantor and Fee Simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and 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. Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

## **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. Park Land Use:** The remedial action for the Property areas illustrated in **Exhibit B** is based on a cleanup designed for a public park. As such, the portions of the Property illustrated in **Exhibit B** shall be used in perpetuity only for a public park. Prohibited uses in these areas on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, grazing of animals, and growing of food crops.

**b. Containment of Contaminated Soil.** The remedial action for the Property is based on containing contaminated soil under a cap. Upland soil caps are placed in three areas:

1. The Former Power House Complex.
2. The Former Steel Production Building.
3. The Metals Excavation Area.

These cap areas are located as illustrated in **Exhibit B**. The caps for areas #1 (Former Powerhouse Complex) and #2 (Former Steel Production Building) are 3-foot-thick and are comprised of the following:

- A geotextile base layer consistent with Washington State Department of Transportation Standard Specifications 9-33.2 on top of a sand leveling course.
- Approximately two feet of beach sand and imported gravel borrow.
- An upper layer of approximately one foot of imported top soil.

The cap for area #3 (Metals Excavation Area) is comprised of:

- A 6- to 11-foot thick soil cap with a partially vegetated surface. The soil cap is primarily clean overburden and shoreline sandy soil, which was excess material generated during grading on the shoreline north of the remedial excavations. Imported fill was used to supplement the material obtained during grading activities.
- Most of this cap area also includes approximately 12 inches of topsoil with shoreline tree and shrub plantings.

The primary purpose of these three cap areas is to create a physical barrier between the contaminated soil and Property users and terrestrial ecological receptors. As such, the following restrictions shall apply within the areas illustrated in Exhibit B:

- i. 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.

- ii. The Grantor covenants and agrees that it shall annually, or at another time as approved in writing by Ecology, inspect the **cap** and report within thirty (30) days of the inspection the condition of the **cap** and any changes to the **cap** that would impair its performance.

**d. Stormwater facilities.** To minimize the potential for mobilization of contaminants remaining in the contaminated soil on the Property, no stormwater infiltration facilities or ponds shall be constructed within the areas of the Property illustrated in Exhibit B. All stormwater catch basins, conveyance systems, and other appurtenances located within these areas shall be of water-tight construction.

### **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 within the area of the property described and illustrated in Exhibit B, including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance 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 JEFFERSON 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 in writing to Ecology.
- c. Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or 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 in writing 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. Notification procedure.** Any required written notice, approval, reporting or other 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. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

|   |   |
|---|---|
| <b>Monte Reinders</b><br><b>Jefferson County Public Works Director</b><br><b>623 Sheridan St.</b><br><b>Port Townsend, WA 98368</b><br><b>360-385-9160</b><br><b><a href="mailto:mreinders@co.jefferson.wa.us">mreinders@co.jefferson.wa.us</a></b> | Environmental Covenants Coordinator<br>Washington State Department of Ecology<br>Toxics Cleanup Program<br>P.O. Box 47600<br>Olympia, WA 98504 – 7600<br>(360) 407-6000<br><a href="mailto:ToxicsCleanupProgramHQ@ecy.wa.gov">ToxicsCleanupProgramHQ@ecy.wa.gov</a> |
|---|---|

**Section 5. Modification or Termination.**

- a.** Grantor must provide written notice 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. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:
  - i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
  - ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.
- b.** 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 MTCA and UECA and any rules promulgated under these chapters.
- c.** 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.

**Section 6. Enforcement and Construction.**

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

- b.** Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.
- 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 and all remedies at law or in equity, including MTCA and UECA. 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 shall be responsible for all costs associated with implementation of this Covenant. Furthermore, 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 MTCA and UECA.
- 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 10<sup>th</sup> day of June, 2016  
If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

COUNTY OF JEFFERSON  
BOARD OF COMMISSIONERS

Kathleen Kler  
Kathleen Kler, Chair

Phil Johnson  
Phil Johnson, Member

David W. Sullivan  
David W. Sullivan, Member

Approved as to form only this 17<sup>th</sup>  
day of MAY, 2016

David W. Alvarez  
David Alvarez  
Deputy Prosecuting Attorney

Monte Reinders, P.E. 5/18/16 Date  
Public Works Director/County Engineer

STATE OF: WASHINGTON

COUNTY OF: JEFFERSON

On this 10<sup>th</sup> day of June, 2016 I certify that Kathleen Kler personally appeared before me, acknowledged that he/she is the Chair of the Jefferson County Board of Commissioners that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said state agency.



Carolyn Avery Carolyn Avery  
Notary Public in and for the State of Washington <sup>15</sup>  
Residing at Jefferson County  
My appointment expires 3/29/18

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Rebecca S. Lawson

by: Rebecca S. Lawson, P.E., L.G., L.HG.

Title: Section Manager, Toxics Cleanup Program, Southwest Regional Office

Dated: 6/14/16

**STATE ACKNOWLEDGMENT**

STATE OF Washington

COUNTY OF Thurston

On this 14th day of June, 2016, I certify that Rebecca S. Lawson personally appeared before me, acknowledged that he/she is the Section Mgr., TCP of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said state agency.

Lorna Gadwa  
Notary Public in and for the State of Washington

Residing at Olympia

My appointment expires 9-17-19

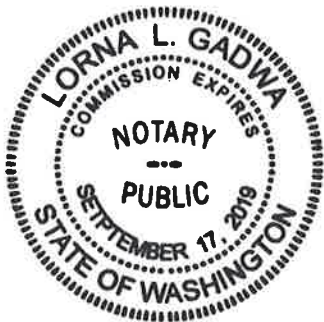




Exhibit A

LEGAL DESCRIPTION



EXHIBIT A

PARCEL LEGAL DESCRIPTION:

- (A) That certain tract marked "Irondale Steel Furnace and Mills" upon the plat of Irondale, filed in the office of the Auditor of Jefferson County, Washington, June 3, 1909, said tract being bounded on the south by the north line of the easterly portion of Market Street and by said line continued easterly to the line of ordinary high tide on Port Townsend Bay; on the west and southwest by the easterly and northeasterly line of Hadlock Avenue; on the north by the southeasterly line of James Street and its easterly extension thereof; and on the east, northeast and southeast by said line of ordinary high tide; (being otherwise known and described as Tax No. 4, in Section 2, Township 29 North, Range 1 West, W.M., and Tax No. 1, in Section 35, Township 30 North, Range 1 West, W.M.;
- (B) All tidelands in front of the "Irondale Steel Furnace and Mills Reserve" in said plat of Irondale which are bounded on the north by a line extending easterly from the most northerly corner of said reserve being the easterly extension of the southerly margin of James Street; on the south by the north line of the easterly portion of Market Street, produced easterly; and on the east by the line of extreme low tide; (being otherwise designated as Tideland Tax No. "F" in said Section 35).

TOGETHER WITH that non-exclusive easement as shown on deed recorded under Auditor's File Number 448479, Records of Jefferson County, Washington, for ingress, egress and utilities over, under and across 30 feet on each side of the following described centerline:

Beginning at the intersection of the centerline of Moore Street with the line between the intersection of a line from the intersection of the east line of Roy Way and the south right of way line of Moore Street extending northwesterly to the southeast corner of Lot 55, Block 46 of said plat; thence south 87° 33' 08" east on the extension of the centerline of said Moore Street, a distance of 70.63 feet; thence on a 100-foot radius curve right through a central angle of 52° 33' 08", an arc length of 91.72 feet; thence south 35° east to the southerly right of way line of vacated James Street extended northeasterly to the line of extreme low tide.

All situate in Jefferson County, State of Washington:  
Assessors Parcel Numbers: 001353001, 901021002.

The lands herein described contain an area of 12.58 acres upland and 4.84 acres tidelands, more or less, more accurately depicted by survey recorded under Auditor File No. 453267, dated March 7, 2002, Volume 24 of Surveys, Pages 60, 61, Records of Jefferson County, Washington.

Grantors:  
COTTON FAMILY LIMITED PARTNERSHIP

Collette B. Miller & [Signature]



Jefferson County, WA  
Jefferson County Auditor  
1820 Jefferson St.  
Port Townsend, WA 98368

Receipt: 16-03090

| Product                                | Name                          | Extended       |
|--|-------------------------------|----------------|
| COV                                    | Covenant                      | \$82.00        |
|  | Document #                    | 600593         |
|  | # Pages                       | 10             |
|  | \$40 surcharge                | true           |
| <b>Total</b>                           |                               | <b>\$82.00</b> |
| Tender (On Account (Charge or Prepay)) |                               | \$82.00        |
| Account#                               | JCPW                          |                |
| Account Name                           | JEFFERSON COUNTY PUBLIC WORKS |                |
| Comments                               | BY NANCY FOR PARKS & REC      |                |

Thank You!

7/5/16 12:17 PM jessie