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08/24/2016 10:45:33 AM \$81.00
AUDITOR, Pierce County, WASHINGTON

Recorded at Request of, and
After recording return to:
Environmental Covenants Coordinator
Washington State Dept of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia WA 98504-7600

AUDITOR'S NOTE

LEGIBILITY FOR RECORDING AND COPYING UN-
SATISFACTORY IN A PORTION OF THIS INSTRU-
MENT WHEN RECEIVED

Environmental (Restrictive) Covenant

Grantor: Port of Tacoma

Grantee: State of Washington, Department of Ecology (hereafter "Ecology")

Legal Description: Section 35 Township 21 Range 03E Quarter 11 BEG AT INTER OF NLY R/W LI OF TAYLOR WAY & E LI OF W 800 FT OF NE OF SW OF SEC 36-21-03E TH N 47 DEG 57 MIN 51 SEC W 1030.60 FT TH N 02 DEG 56 MIN 47 SEC E 212.43 FT TH N 87 DEG 44 MIN 20 SEC W 257.72 FT TO NLY R/W LI OF TAYLOR WAY TH N 47 DEG 57 MIN 51 SEC W 2237.89 FT TH N 43 DEG 04 MIN 59 SEC E 907.78 FT TH S 46 DEG 55 MIN 01 SEC E 2888.32 FT TH S 02 DEG 37 MIN 17 SEC W 228.81 FT TH S 02 DEG 56 MIN 47 SEC TO POB OUT OF 1-041 SEG 2005-0842 11/29/04JK

Tax Parcel No.: 0321351053

Reference: Environmental (Restrictive) Covenant filed under Pierce County #9302020332 under Consent Decree No. 92-2-11351-7 is superseded by this document

A. 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 FORMER ARKEMA 3009 TAYLOR WAY, TACOMA, WASHINGTON, FACILITY ID #1219. 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 the soil at the site was cleaned up to MTCA Method C industrial soil clean up level of 88 mg/kg for Arsenic. Groundwater is contaminated with Arsenic, Copper and Zinc above groundwater clean-up levels established in clean-up action plan (CAP). The groundwater clean-up levels established in the CAP for Arsenic, Copper and Zinc are 5 µg/l, 3.1 µg/l, and 81 µg/l, respectively.

Medium	Principal Contaminants Present
Soil	Arsenic Below Method C Soil Clean-up Level of 88 mg/kg
Groundwater	Arsenic, Copper 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:

Remedial Investigation, Dalton, Olmsted & Fuglevand, Inc., September 2015

Draft Cleanup Action Plan, Dalton, Olmsted & Fuglevand, Inc., November 2015

As-Built Report, Port of Tacoma, April 2015

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.

f. This Covenant supersedes and replaces the existing Environmental (Restrictive) Covenant (#9302020332), which is recorded with Pierce County.

B. COVENANT

Port of Tacoma, as Grantor and 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.

C. 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.

D. 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.

Industrial Land Use: The remedial action for the Property is based on a clean-up designed for industrial property. As such, the Property shall be used in perpetuity only for industrial 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. Groundwater Use.

The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

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.

E. 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.

F. Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest IN ANY PART OF THE PROPERTY, 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 [DATE] AND RECORDED WITH THE [COUNTY] COUNTY AUDITOR UNDER RECORDING NUMBER [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.

Scott Hooton Port of Tacoma PO Box 47775 Tacoma, WA 98401-1837 (253) 383-9428 Shooton@PortofTacoma.com	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 –7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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G. 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. ¹ For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site: ²

¹ Example of inconsistent uses are using the Property for a use not allowed under the covenant (i.e. mixed residential and commercial use on a property restricted to industrial uses), OR drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

² An example of an activity that is unlikely to be considered a permanent modification is a proposal to disturb a cap to repair an existing underground utility that passes through the site. However, installing a new underground utility within a capped area would be a permanent change.

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.

H. 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.

SIGNATURES ARE ON FOLLOWING PAGES

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

PORT OF TACOMA

By: [Signature]
John Wolfe
Chief Executive Officer
(253) 383-9410

Date: 4/28/16

STATE OF WASHINGTON

COUNTY OF PIERCE

On this 25th day of April, 2016, I certify that John Wolfe personally appeared before me, acknowledged that **he/she** 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/she** was authorized to execute said instrument for said corporation.

[Signature]
Notary Public in and for the State of Washington
Residing at Pierce County
My appointment expires 1/22/20

JUDITH L DOREMUS
NOTARY PUBLIC
STATE OF WASHINGTON
MY COMMISSION EXPIRES
JANUARY 22, 2020

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

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

By: Rebecca S. Lawson
Rebecca S. Lawson, P.E., L.H.G.
Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

Date: 8/4/2016

STATE OF WASHINGTON

COUNTY OF THURSTON

On this 4th day of August, 2016, I certify that Rebecca S. Lawson personally appeared before me, acknowledged that he/she is the Toxics Cleanup, Section Mgr. 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 L. Gadwa
Notary Public in and for the State of Washington
Residing at Olympia WA
My appointment expires Sept. 17, 2019



I. Exhibit A

LEGAL DESCRIPTION

Section 35 Township 21 Range 03E Quarter 11 BEG AT INTER OF NLY R/W LI OF TAYLOR WAY & E LI OF W 800 FT OF NE OF SW OF SEC 36-21-03E TH N 47 DEG 57 MIN 51 SEC W 1030.60 FT TH N 02 DEG 56 MIN 47 SEC E 212.43 FT TH N 87 DEG 44 MIN 20 SEC W 257.72 FT TO NLY R/W LI OF TAYLOR WAY TH N 47 DEG 57 MIN 51 SEC W 2237.89 FT TH N 43 DEG 04 MIN 59 SEC E 907.78 FT TH S 46 DEG 55 MIN 01 SEC E 2888.32 FT TH S 02 DEG 37 MIN 17 SEC W 228.81 FT TH S 02 DEG 56 MIN 47 SEC TO POB OUT OF 1-041 SEG 2005-0842 11/29/04JK



J. Exhibit B
PROPERTY MAP



