

AFTER RECORDING MAIL TO:
Graham & Dunn
Pier 70
2801 Alaskan Way, Suite 300
Seattle, Washington 98121-1128
Attention: Stephen H. Goodman

RESTRICTIVE COVENANT

Grantor: LAVON I. PHILIPP

Grantee: LAVON I. PHILIPP

Legal Description:

Abbreviated Legal: GEO E SHAWS ACRE TR ADD TO SUNNYSIDE:
W 60 FT OF E 257.5 FT OF THE PT OF LOT 7
BLK C LY N OF ST R/W, EX N 9.5 FT;

GEO E SHAW'S ACRE TR. ADD. TO SUNNYSIDE
N 935 FT OF E 338.5 FT LOT 7 BLK C ALSO S 50
FT OF E 338.5 FT LOT 8;

GEO E SHAWS ACRE TR. ADD. TO SUNNYSIDE:
E 85 FT OF W 250 FT OF THE PT OF LOT 7 BLK
C LY N OF ST R/W, EX N 9.5 FT

Full Legal: See Schedule A attached hereto

Property Tax

Parcel Number:

22102521432; 22102521440; and 22102521426



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RESTRICTIVE COVENANT

PROPERTY LOCATED WITHIN MANHOLE 34 FACILITY 604 HIGHWAY 12; SUNNYSIDE, WASHINGTON

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

A remedial action (hereinafter "Remedial Action") is planned for the above referenced property, which is located within the Manhole 34 Facility that is the reason for this Restrictive Covenant. The Remedial Action planned for the property is described in the following document:

1. "DRAFT CLEANUP ACTION PLAN Manhole 34 Facility Sunnyside, Washington," Washington State Department of Ecology, June 2001 (made final by Ecology correspondence dated August 6, 2001).

This document is on file at Ecology's Central Regional Office (CRO) located at 15 West Yakima Avenue, Yakima, Washington 98902-3387.

This Restrictive Covenant is required because conditional points of compliance have been established for groundwater and the Remedial Action may result in residual concentrations of total petroleum hydrocarbons as gasoline and diesel (TPH-gasoline and TPH-diesel), benzene, toluene, ethylbenzene, and total xylenes (BTEX) that exceed the Model Toxics Control Act Residential Cleanup Levels for soil and/or groundwater established under WAC ch. 173-340.

The undersigned, LAVON I. PHILIPP, is the fee owner of the real property (hereinafter "Property") in the County of Yakima, State of Washington more specifically described on Schedule A attached hereto, that is located within the Manhole 34 Facility and therefore will be subject to the Restrictive Covenant. The Property is legally described in Schedule A of this Restrictive Covenant and made a part hereof by reference.

LAVON I. PHILIPP makes the following declarations 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 (hereinafter "Owner").

DECLARATIONS:

1. Unless authorized by the Cleanup Action Plan, no groundwater may be taken from the Property for any use.
2. Without prior written consent of Ecology, which consent shall not be unreasonably withheld, any activity on the Property that may result in the release or exposure to the environment of



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contaminated soil, or create a new exposure pathway is prohibited. Such prohibited activities include, but are not limited to, 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.

Notwithstanding the prohibitions contained within this declaration, the Owner may maintain, repair or replace existing underground utilities or perform minor site grading provided that the work is conducted by individuals who are properly trained in appropriate health and safety precautions necessary for working within hydrocarbon affected soil and groundwater and any hydrocarbon affected soil or groundwater encountered during such work is handled and disposed of in accordance with all applicable local, state, and federal regulations and requirements.

3. 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.
4. Unless permitted by the Cleanup Action Plan or this Restrictive Covenant, 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, which approval shall not be unreasonably withheld.
5. The Owner of the Property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey a fee interest in a substantial portion of the Property. No conveyance of a substantial portion of the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation and maintenance of the Remedial Action. Fee interests in less than a substantial portion of the Property may be conveyed without notice to Ecology.
6. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.
7. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.
8. 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, and to inspect records that are related to the Remedial Action. Ecology shall use reasonable efforts to minimize any interference and use reasonable efforts not to interfere with the operations of the Property occupancy.



9. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive 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.

OWNER:

Lavon I. Philipp
LAVON I. PHILIPP

11/20/02
Date

Attachment: A: Legal Property Description



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**SCHEDULE A
TO
RESTRICTIVE COVENTANT**

LEGAL DESCRIPTION

PARCEL A:

The West 60 feet of the East 257.5 feet of Lot 7, Block C, George E. Shaw's Acre Tract Addition to Sunnyside, Washington, recorded in Volume "A" of Plats, page 74, records of Yakima County, Washington, lying North of State Highway; EXCEPT the North 9.5 feet thereof. (Parcel No. 22102521432)

PARCEL B:

The East 338.5 feet of the South 50 feet of Lot 8 and the East 338.5 feet of the North 9.5 feet of Lot 7, Block C, George E. Shaw's Acre Tract Addition to Sunnyside, Washington, as recorded in Volume "A" of Plats, page 74, records of Yakima County, Washington. (Parcel No. 22102521440)

PARCEL C:

That portion of Lot 7, Block C, George E. Shaw's Acre Tract Addition to Sunnyside, Yakima County, Washington, as recorded in Volume "A" of Plats, page 74, described as follows: Beginning at a point on the West line of said Lot 7, a distance of 9.5 feet South of the Northwest corner thereof; thence East parallel with the North line of said lot 165 feet to the true point of beginning; thence East parallel with the North line of said lot 85 feet; thence South 94.1 feet, more or less, to the North right of way line of State Road No. 3; thence North 80° West along said North right of way line, 85 feet, more or less, to a point South of the true point of beginning; thence North 79 feet, more or less, to the true point of beginning. (Parcel No. 22102521426)

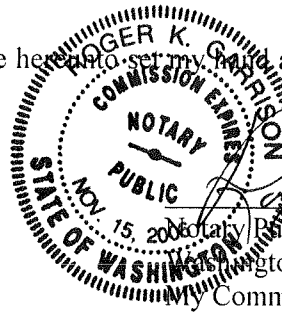


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STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

On this day of November 20, _____, 2002, before me personally appeared _____
LaVon Philipp, to me known to be the _____
~~xxx individual~~ who _____, the ~~xxx corporation~~ that executed the
within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act
and deed of ~~the corporation~~, for the uses and purposes therein mentioned, and on oath stated that he
~~was authorized to execute said instrument and that the seal affixed is the corporate seal of the~~
~~corporation.~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day
and year first above written.



My Commission Expires: _____

