

(9)

Return Address:

Raman Iyer Section Manager
Hazardous Waste & Toxics Reduction Program
Northwest Regional Office
Washington Department of Ecology
3190 160 Avenue SE
Bellevue, Washington 98008-5452



20171227001452

COVENANT Rec: \$82.00
12/27/2017 3:53 PM
KING COUNTY, WA

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Document Title(s) (or transactions contained therein):

Environmental Restrictive Covenant

Reference Number(s) of Documents assigned or released:

20151006000868 , 20171215000165

Grantor(s) Exactly as name(s) appear on document:

Western Blower Associates, LLC, a Washington limited liability company

Grantee(s) Exactly as name(s) appear on document:

Washington State Department of Ecology and its successors and assigns

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Parcel A, City of Seattle LBA No. 3024821, Recording No. 20161110900001, King County, Washington.

Additional legal is on Exhibit A of document.

Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned

766620-2855-08

******THIS IS A RE-RECORDING OF INSTRUMENT NUMBER 20171215000165 WHICH WAS INADVERTENTLY RECORDED USING THE WRONG COVERSHEET AND DOCUMENT AND SHOULD HAVE BEEN RECORDED WITH THIS COVERSHEET AND THE FOLLOWING DOCUMENT FOR WESTERN BLOWER ASSOCIATES, LLC.******

Instrument Number: 20171215000165 Document:COV Rec: \$83.00 Page-1 of 10

Record Date:12/15/2017 9:02 AM

Electronically Recorded King County, WA

Return Address:

Raman Iyer Section Manager
Hazardous Waste & Toxics Reduction Program
Northwest Regional Office
Washington Department of Ecology
3190 160 Avenue SE
Bellevue, Washington 98008-5452
Stewart Title Guaranty Co.

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Document Title(s) (or transactions contained therein):
Environmental Restrictive Covenant
Reference Number(s) of Documents assigned or released:
20151006000860, 20151006000864, 20151006000867
Grantor(s) Exactly as name(s) appear on document:
Western Tank Properties, Inc., a Washington corporation
Grantee(s) Exactly as name(s) appear on document:
Washington State Department of Ecology and its successors and assigns
Legal description (abbreviated: i.e. lot, block, plat or section, township, range)
Parcel B, City of Seattle LBA No. 3024821, Recording No. 20161110900001, King County, Washington. Additional legal is on <u>Exhibit A</u> of document.
Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned
766620-2860-01, 766620-2861-00, 377030-0160-02

After Recording Return to:

Raman Iyer
Section Manager
Hazardous Waste & Toxics Reduction Program
Northwest Regional Office
Washington Department of Ecology
3190 160 Avenue SE
Bellevue, Washington 98008-5452

Environmental Restrictive Covenant

THIS INSTRUMENT SUPERSEDES AND REPLACES THE ENVIRONMENTAL RESTRICTIVE COVENANT RECORDED AS INSTRUMENT NO. 20151006000868, IN THE OFFICIAL RECORDS OF KING COUNTY, WASHINGTON.

Grantor: Western Blower Associates, LLC
Grantee: State of Washington, Department of Ecology
Legal: See Exhibit A
Tax Parcel No.: 766620-2855-08

Grantor, **Western Blower Associates, LLC**, a Washington limited liability company, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants and conveys such other rights under this environmental restrictive covenant (hereafter "Environmental Covenant") as of the 7th day of December, 2016. This instrument grants a valid and enforceable Environmental Covenant pursuant to the Washington State Uniform Environmental Covenants Act ("UECA"), Revised Code of Washington ("RCW") Chapter 64.70, to the Washington State Department of Ecology and its successors and assigns (hereafter "Ecology" or "Holder").

Grantor covenants to and with the Holder and its successors and assigns that Grantor owns the Property (as hereinafter defined) in fee simple and has the exclusive right to convey the Property or any interest therein, and that the Property is free and clear of encumbrances. Grantor will warrant and defend the title and quiet possession of the Property. The Environmental Protection Agency (hereafter "EPA") on behalf of Ecology, as the Agency, has consulted pursuant to RCW 64.70.040(5) with local land use planning authorities in the development of the land use or activity restrictions in this Environmental Covenant.

Northwest EnviroService Inc. ("NWES") operated a commercial hazardous waste management facility between 1979 and 1995 at 1500 Airport Way South in Seattle, Washington (the "NWES Facility"). NWES provided storage and treatment services to companies that generated hazardous waste. Since 1995, Emerald Recycling, Inc. has been recycling non-hazardous waste and used oil and treating industrial wastewater at the NWES Facility. A variety of contaminants remain in the soil and groundwater at the north end of the 1.25 acre site. In February 1994, NWES and the EPA entered into an Order pursuant to Section 3008(h) of RCRA. The Order requires NWES to:

- Complete a RCRA Facility Investigation ("RFI") to identify and characterize any releases of hazardous constituents from Solid Waste Management Units ("SWMUs") and Areas of Concern ("AOCs") at the NWES Facility, characterize the concentration and extent of contamination released at and from the NWES Facility, support the development of alternatives from which a corrective measure will be selected, and identify any additional SWMUs or AOCs. The April 2004 Revised Final RFI Report was approved with modifications by the EPA on June 16, 2004.
- Complete a Corrective Measures Study ("CMS") to develop and evaluate potential corrective measures to remedy any contamination at and or released from the NWES Facility which exceeds the media-specific target cleanup standards established by the EPA. The Order required NWES to identify the potential corrective measures for the containment, treatment, and/or disposal of contamination and include in the CMS the corrective measure recommended by NWES. The revised CMS is dated April 2011.
- Implement the corrective measure selected by the EPA, or exercise its right to withdraw its consent to implement the corrective measure selected by the EPA. Exercising this option would require the EPA to negotiate a new Order for remedy implementation.

As documented in the EPA's June 17, 2011, Statement of Basis for Remedy Selection, the southern portion of the NWES Facility (Western Blower parcel) contains several buildings including an administration building. In 1996, NWES requested that Ecology accept closure certification for the Western Blower parcel. In January 1997, Ecology determined that closure was not required as there were no hazardous waste management units located on the Western Blower parcel. Ecology also determined that no further action would be required so long as certain requirements were met, including a restrictive covenant. The EPA agrees that no further action is required and did not require further investigation of the southern portion of the NWES Facility during the RFI.

The EPA Remedial Action for NWES did not include the Western Blower parcel. This Environmental Covenant is a requirement of Ecology's no further action determination for the Western Blower parcel. As documented in a report of soil and concrete sample results for the Western Blower parcel, there are concentrations of arsenic, lead, benzo(a)pyrene, and total petroleum hydrocarbons ("TPH") in soil which exceed current Model Toxics Control Act ("MTCA") Method B Cleanup Level (Method A for TPH) established under WAC 173-340-705. There are also concentrations of arsenic, cadmium and TPH in concrete which exceed current MTCA Method B soil Cleanup Levels (Method A for TPH). This contamination was found in the area used to load/unload containerized hazardous waste. The two monitoring wells located on the Western Blower parcel were sampled and analyzed for 40 C.F.R. Part 260 Appendix IX groundwater monitoring constituents. Manganese was the only constituent detected above the MTCA Method B unrestricted use cleanup level for groundwater. For this reason, this Environmental Covenant also includes prohibition of groundwater use. As manganese is not a volatile contaminant, this Environmental Covenant does not include restrictions on enclosed buildings that is applicable to the other NWES parcels.

A copy of the records supporting the Western Blower parcel is on file with EPA Region 10 or its successor agency and is available for public review. In order to make arrangements for such review, a person may contact the EPA Superfund Records Center by calling telephone number (206) 553-4494. The EPA Region 10 office is located at 1200 Sixth Avenue, Seattle, Washington.

The undersigned, Western Blower Associates, LLC is the fee owner of real property (the "Property") in the County of King, State of Washington, that is subject to this Environmental Covenant. The Property is legally described in Exhibit A of this Environmental Covenant and made a part hereof by reference.

With this Environmental Covenant, Western Blower Associates, LLC as Grantor 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. Specific Restrictions and Requirements.

1. The Property shall be used in compliance with General Industrial 2 zoning classification, consistent with City of Seattle ordinances governing nonconforming uses, with the exception of the following uses: agricultural use, outdoor recreation, outdoor sports, lodging, child care centers, community centers, family support centers, elementary or secondary schools, parks, artists dwellings, caretakers quarters.

2. No groundwater may be taken for domestic, agricultural, industrial or any other use from the Property without prior written approval from Ecology.

3. a. As discussed above, the Property contains soil and concrete with contaminants including but not limited to total arsenic and TPH that are above unrestricted use cleanup levels. The Owner shall not alter, modify, or remove the existing structures in any manner that may result in the release or exposure to the environment of that contaminated soil or concrete or create a new exposure pathway without prior written approval from Ecology.

b. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil or concrete or create a new exposure pathway, is prohibited without prior written approval from Ecology, including but 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.

Section 2. General Restrictions and Requirements. Any activity on the Property that may interfere with the continued protection of human health and the environment is prohibited. 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 or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 3. Conveyance of interest. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. Such notice shall include the name and address of the proposed transferee. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued compliance with this Environmental Covenant.

Section 4. Lease restrictions and notification. The Owner must restrict leases to uses and activities consistent with this Environmental Covenant. Further, the Owner must notify all purchasers, lessees and easement holders of the restrictions set forth in this Environmental Covenant, and make compliance with this Environmental Covenant a condition of any conveyance of title, easement, lease or other interest in the Property.

Section 5. Notification to Ecology. Owner shall notify and obtain written 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 the terms of this Environmental 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, this Environmental Covenant will be amended to reflect the change.

Section 6. Access. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times to determine compliance with this Environmental Covenant, to take samples, and to inspect records that are related to the Environmental Covenant. When practicable, Ecology or EPA will endeavor to provide Owner at least forty-eight (48) hours' notice prior to entering the Property.

Section 7. Agency's Interest. Pursuant to RCW 64.70.030, the rights granted to Ecology by this Environmental Covenant are not interests in real property.

Section 8. Liberal Construction. This Environmental Covenant shall be construed in favor of effectuating the purpose of this Environmental Covenant. If any provision is found to be ambiguous, an interpretation consistent with the purposes of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

Section 9. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 10. Recordation. Grantor shall record this instrument in the official records of King County, Washington and shall pay the costs associated with recording.

Section 11. Costs. Owner, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Environmental Covenant and any approval required by this Environmental Covenant.

Section 12. Termination and Modification. This Environmental Covenant may only be amended or terminated in accordance with the procedures and process contained in the amendment and termination provisions of UECA, RCW 64.70.090 and 64.70.100, and with the provisions of WAC 173-340-440. Ecology may approve inconsistent uses (as described in Section 6), and/or termination only after public notice and opportunity for comment. The Grantor reserves the right under WAC 173-340-440, if conditions at the Property requiring an institutional control no longer exist, to record an instrument that provides that this Environmental 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.

By signing this Environmental Covenant, as per UECA, RCW 64.70.100, Grantor agrees to waive all rights to sign amendments to, and termination of, this Environmental Covenant.

Section 13. Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to all applicable laws, including but not limited to CERCLA, UECA, and MTCA. Ecology shall have full enforcement rights. An action for equitable or injunctive relief for violation of this Environmental Covenant may also be maintained by the other persons and entities set forth in RCW 64.70.110. Failure by any party or person to enforce compliance with this Environmental Covenant in a timely manner shall not be deemed a waiver of the right to take subsequent enforcement actions.

Section 14. Signature and Acknowledgements. Grantor covenants that it is authorized to grant this Environmental Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties represent and certify that they are authorized to execute this Environmental Covenant.

[Signature page to follow]

Grantor:

WESTERN BLOWER ASSOCIATES, LLC,
a Washington limited liability company

By: [Signature]

Name: John Stephen Banchero Jr

Title: MANAGER

Dated: 11/17/17

STATE OF WASHINGTON
COUNTY OF KING

On this 17th day of November, 2017, I certify that J Stephen Banchero Jr personally appeared before me, acknowledged that he/she is the MANAGER of the company that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said company.

[Signature]

Notary Public in and for the State of
Washington, residing at

Everett, WA

My appointment expires 10-03-18

Approved as to form:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Signature]

Raman Iyer
Section Manager

Dated: 11/08/17

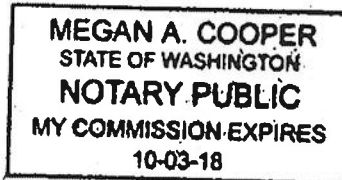


Exhibit A

LEGAL DESCRIPTION

PARCEL A, CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NUMBER 3024821,
RECORDED UNDER KING COUNTY RECORDING NUMBER 20161110900001,
RECORDS OF KING COUNTY, WASHINGTON.