20081202001138
LAURA B FANDIN COV $1.00
PAGE001 OF 020
12/02/2008 14:38
KING COUNTY, WA

After Recording Return to:

State of Washington
Department of Ecology
Northwest Regional Office
Toxics Cleanup Program
3190 160th Ave. SE
Bellevue, WA 98008-5452
Attention: Mark Adams

CR# 43697 DATE 12-09 LOC 09-039

Environmental Covenant

Grantors: Advanta I, LLC
City of Bellevue
The Boeing Company

Grantee: State of Washington, Department of Ecology

Legal: Parcels 3, 4, 5, 6, 15 and 16 and Tract A of City of Bellevue BLA No. 03-114869LW, Recording No. 20040713900001; and Parcel 5 of Bellevue BLA No. 02-149004LW, Recording No. 20030305900019

Tax Parcel Nos.: 112405-9127, 112405-9128, 112405-9122, 112405-9129, 112405-9121, 112405-9120, 112405-9137, 112405-9123

Cross Reference: 20021223001529

Advanta I, LLC ("Advanta"), the City of Bellevue ("City"), and The Boeing Company ("Boeing") (hereafter, collectively, "Grantors") hereby bind themselves, their successors and assigns to the land use restrictions identified herein and grant such other rights under this environmental covenant (hereafter "Covenant") made this 12 day of ~~September~~ November RW, 2008 in favor of the State of Washington Department of Ecology ("Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Grantors and their successors and assigns; and Ecology and its successors and assigns.

This Covenant supersedes and replaces the November 27, 2002 Restrictive Covenant, recorded December 23, 2002 in the office of Records and Elections of King County, Washington, under Recording No. 20021223001529.

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The real property subject to this Covenant (the "Property") is legally described on **Appendix A** attached hereto, and depicted on **Figure 1**, attached hereto. The Remedial Action conducted on the Property is described in the following documents:

1. As-Built Plans titled "Boeing-Eastgate LFG Migration Control System," prepared by CH2M HILL for Boeing and dated May 1, 1987;

2. Report titled "Former Eastgate Landfill, Bellevue, Washington," prepared by Landau Associates, Inc. ("LAI"), Edmonds, WA for Boeing, Seattle, WA, and dated April 4, 2000;

3. Report titled "Draft Work Plan Groundwater Monitoring, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated June 12, 2000;

4. Report titled "Groundwater Investigation, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated September 26, 2000;

5. Report titled "Engineered Systems, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated September 26, 2000;

6. Report titled "Scope of Work, Continued Eastgate Landfill LFG Repair Work and Site Grading," prepared by The IT Group, Bothell, WA for Boeing, and dated May 8, 2001;

7. Report titled "Voluntary Cleanup Program for Former Eastgate Landfill – 2nd [Groundwater] Data Transmittal," prepared by LAI for Boeing, and dated May 14, 2001;

8. Report titled "Work Plan: Soil Investigation, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated June 6, 2001;

9. Report titled "Draft Work Plan: Groundwater Monitoring, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated June 6, 2001;

10. Report titled "Surficial Soil Investigation, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated August 13, 2001;

11. Report titled "Work Plan: Confirmational Groundwater Monitoring, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated September 6, 2001;

12. Report titled "Annual Groundwater Monitoring, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated September 6, 2001;

13. Work Plan titled "Confirmational Groundwater Monitoring, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing and dated March 13, 2002;

14. Technical Memorandum titled "Surficial Soil Sampling at Eastgate Landfill," prepared by LAI for Boeing, and dated May 31, 2002;

15. Report titled "Supplemental Surficial Soil Investigation, Eastgate Landfill Property/I-90 Business Park, Bellevue, Washington," prepared by LAI for Boeing, and dated July 17, 2002;

16. Technical Memorandum titled "Eastgate Landfill Terrestrial Ecological Evaluation," prepared by LAI for Boeing, and dated August 8, 2002;

17. Permit review plans titled "Building C, ADVANTA Office Commons @ I-90", prepared by Magnusson Klemencic Associates for Schnitzer Northwest, LLC, and dated May 26, 2006;

18. The "Landfill Gas System Modification Eastgate Landfill, Drawings and Project Manual (Final – Issued for Agency Review)," prepared by SCS Engineers for Boeing, and dated June 5, 2006;

19. Utility review plans titled "Shared Entrance Road, ADVANTA Office Commons @ I-90," prepared by Magnusson Klemencic Associates for Schnitzer Northwest, LLC, and dated June 16, 2006;

20. Report titled "Annual Ground Water Monitoring Report, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated June 27, 2006;

21. The "Final Methane Vapor Barrier Design for the Three Planned Office Buildings, ADVANTA Project – 3005 160th Avenue Southeast, Bellevue, Washington," prepared by GeoEngineers, Inc. for Schnitzer Northwest, LLC, and dated August 9, 2006;

22. The "Further Action Determination under WAC 173-340-515(5)," prepared by Ecology, and dated August 16, 2006;

23. The "Environmental Protection Plan, Former Eastgate Landfill," letter from SCS Engineers to Seattle & King County Public Health, dated October 2, 2006, and Approved by King County Public Health in a Letter to SCS Engineers, dated October 13, 2006;

24. The "Revised Final Methane Vapor Barrier Design for Three Planned Office Buildings," prepared by GeoEngineers, Inc. for Schnitzer West, LLC, and dated December 13, 2006;

25. The "Further Action Groundwater Monitoring Work Plan, Former Eastgate Landfill, Bellevue, Washington," prepared by LAI for Boeing, and dated December 14, 2006;

26. The "Response to Department of Ecology Further Action Letter Dated 08-16-06/email Dated 12-11-06 'Further Action Determination Under WAC 173-340-515(5) for the Following Hazardous Waste Site: Eastgate Landfill,'" prepared by the City with the assistance of Shaw Environmental and addressed to Ecology, dated January 2, 2007; and

27. The "Opinion Pursuant to WAC 173-340-515(5) on Proposed Remedial Action of the Following Hazardous Waste Site: Eastgate Landfill," Letter from Mark Adams, Ecology, to Carl Bach, Boeing, approving the workplan for the proposed modifications to the landfill management system, dated January 29, 2007;

28. Record documents titled "Shared Entrance Road, ADVANTA Office Commons @ I-90," prepared by Magnusson Klemencic Associates for Schnitzer Northwest, LLC, and dated April 15, 2008;

29. Record documents titled "Building A, B, and C, ADVANTA Office Commons @ I-90," prepared by Magnusson Klemencic Associates for Schnitzer Northwest, LLC, and dated April 15, 2008.

These documents are on file at Ecology's Northwest Regional Office.

Certain landfill management systems, as described in **Appendix B** attached hereto (the "Landfill Management Systems"), have been constructed and exist on the Property, including a Soil Cap Layer and Hardscape Areas, Infiltration Controls, a Leachate Collection System, a Ground Water Monitoring Well Network, and a Landfill Gas Migration Control System. These features are depicted in **Figure 1**, attached hereto, and described in **Appendix B.** This Covenant is required because the Remedial Action determined that there are residual concentrations at the Property of methane in soil and air; benzene, 1,2-dichlorobenze, 1,4-dichlorobenzene, and dieldrin in landfill refuse; and arsenic, iron, manganese, benzene, 1,2-dichlorobenze, 1,4-dichlorobenzene, and dieldrin in soil and groundwater which exceed the Model Toxics Control Act Method B Cleanup Levels for soil, groundwater, and air established under WAC 173-340-720, -740 and -750.

Advanta is the fee owner of a portion of the Property, and has improved its portion of the Property with a commercial office development. Advanta's property is legally described as Parcels 3, 4, 5, 6, 15 and 16 and Tract A of Bellevue Boundary Line Adjustment No. 03-114869LW, recorded under Recording No. 20040713900001.

The City is the fee owner of a portion of the Property. The City's property is legally described as Parcel 5 of Bellevue Boundary Line Adjustment No. 02-149004LW, recorded under Recording No. 20030305900019, Records of King County Washington.

Boeing is the former fee owner of the Property and retains, along with Advanta and the City, certain contractual rights and responsibilities for maintenance of certain Landfill Management Systems existing on the Property.

Grantors make the following declaration as to limitations, restrictions, and uses to which the Property may be put and specify 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 "Owners").

Section 1.

1. A portion of the Property contains 1,2-dichlorobenze, 1,4-dichlorobenzene, and dieldrin in Landfill refuse; and arsenic, iron, manganese, benzene, 1,2-dichlorobenze, 1,4-dichlorobenzene, and dieldrin in groundwater. These constituents are likely a result of contaminants originating from refuse beneath the Soil Cap Layer, located within the area identified as the "Landfill" in the center of **Figure 1**. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil or refuse that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: 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 more than a few inches with a rod, spike or similar item, bulldozing or earthwork.

2. No groundwater may be taken for any use from the Property. Withdrawals for Ecology-required monitoring or remedial action and infiltration control systems are expressly authorized and permitted.

3. Grantors shall maintain the Soil Cap Layer on the Property and prevent the penetration, removal, erosion or degradation of the Soil Cap Layer and exposure of landfill debris.

4. Grantors shall maintain the Hardscape Areas on the Property. The Hardscape Areas are described in **Appendix B**.

5. Grantors shall maintain and monitor the Landfill Gas Migration Control System on the Property. The Landfill Gas Migration Control System is described in **Appendix B.**

6. Grantors shall maintain the Infiltration Controls on the Property. The Infiltration Controls are described in **Appendix B**.

7. Grantors shall maintain and monitor the Leachate Collection System on the Property. The Leachate Collection System is described in **Appendix B**.

8. Grantors shall maintain the Ground Water Monitoring Well Network and shall conduct all groundwater compliance monitoring in accordance with the Confirmational Groundwater Monitoring Work Plan, Former Eastgate Landfill, dated March 13, 2002 referenced as item 13 on page 3 of this Covenant and the Further Action Groundwater Monitoring Work Plan, Former Eastgate Landfill, dated December 14, 2006 referenced as item

25 on page 4 of this Covenant. The Ground Water Monitoring Well Network is described in **Appendix B.**

9. Nothing in this Covenant is intended to supersede, amend or otherwise modify or affect in any way, the rights and responsibilities of Grantors and their successors and assigns for maintenance and monitoring of the Landfill Management Systems under any other agreements between and among Grantors, which remain in full force and effect.

10. Nothing in Section 1 of this Covenant is intended to preclude Ecology from authorizing, as appropriate, specific uses and activities under Sections 3 and 6 below.

Section 2. 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.

Section 3. 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.

Section 4. Each Owner must give thirty (30) days advance written notice to Ecology of such Owner's intent to convey any interest in its respective property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by any Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. Owners must restrict leases to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. Owners must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. Each 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, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. Each Owner reserves the right under WAC 173-340-440 to record an instrument that provides that this 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.

Advanta I, LLC, a Washington limited liability company
By Its Managing Member:
SI Eastgate, LLC, a Washington limited liability company

Michael C. Nelson
Senior Investment Director

Dated: OCTOBER 20, 2008

The City of Bellevue, a municipal corporation

[Name of Signatory] Brad Miyake
[Title] Deputy City Attorney
Dated: October 28, 2008

The Boeing Company, a Delaware Corporation

S. Shestag

[Name of Signatory] Steven L. Shestag, Director
[Title] Environmental Remediation

Dated: October 15, 2008

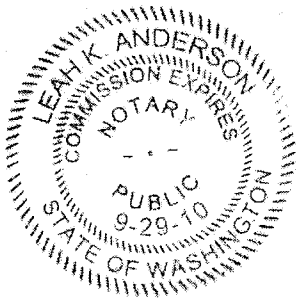
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Bob Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office

Dated: 11-12-08

STATE OF WASHINGTON
COUNTY OF KING

On this 20th day of October, 2008, I certify that Michael C. Nelson personally appeared before me, acknowledged that he/she is the Sr. Investment Director of **Advanta I, LLC** that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said limited liability company.



Leah K. Anderson
Notary Public in and for the State of Washington, residing at Seattle 98103.
My appointment expires 9-29-10.
Leah K. Anderson

STATE OF WASHINGTON
COUNTY OF KING

On this 28 day of October, 2008, I certify that Brad Miyake personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the Deputy City Manager of the **City of Bellevue**, a municipal corporation to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

JANNA DEE STEEDMAN
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
12-20-08

Janna Dee Steedman
Notary Public in and for the State of Washington, residing at Issaquah
My appointment expires 12/20/08.

STATE OF Washington
COUNTY OF King

On this 15th day of October, 2008, I certify that Steven L. Sheesley personally appeared before me, acknowledged that he/she is the Director Corporate Remediation of **The Boeing Company, the corporation** that executed the within and foregoing instrument, and acknowledged said instrument to be the 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.

Susan L. Arnsperger
Notary Public in and for the State of Washington residing at Seattle
My appointment expires 1-19-2009

Notary Public
State of Washington
SUSAN L ARNSPERGER
My Appointment Expires Jan 19, 2009

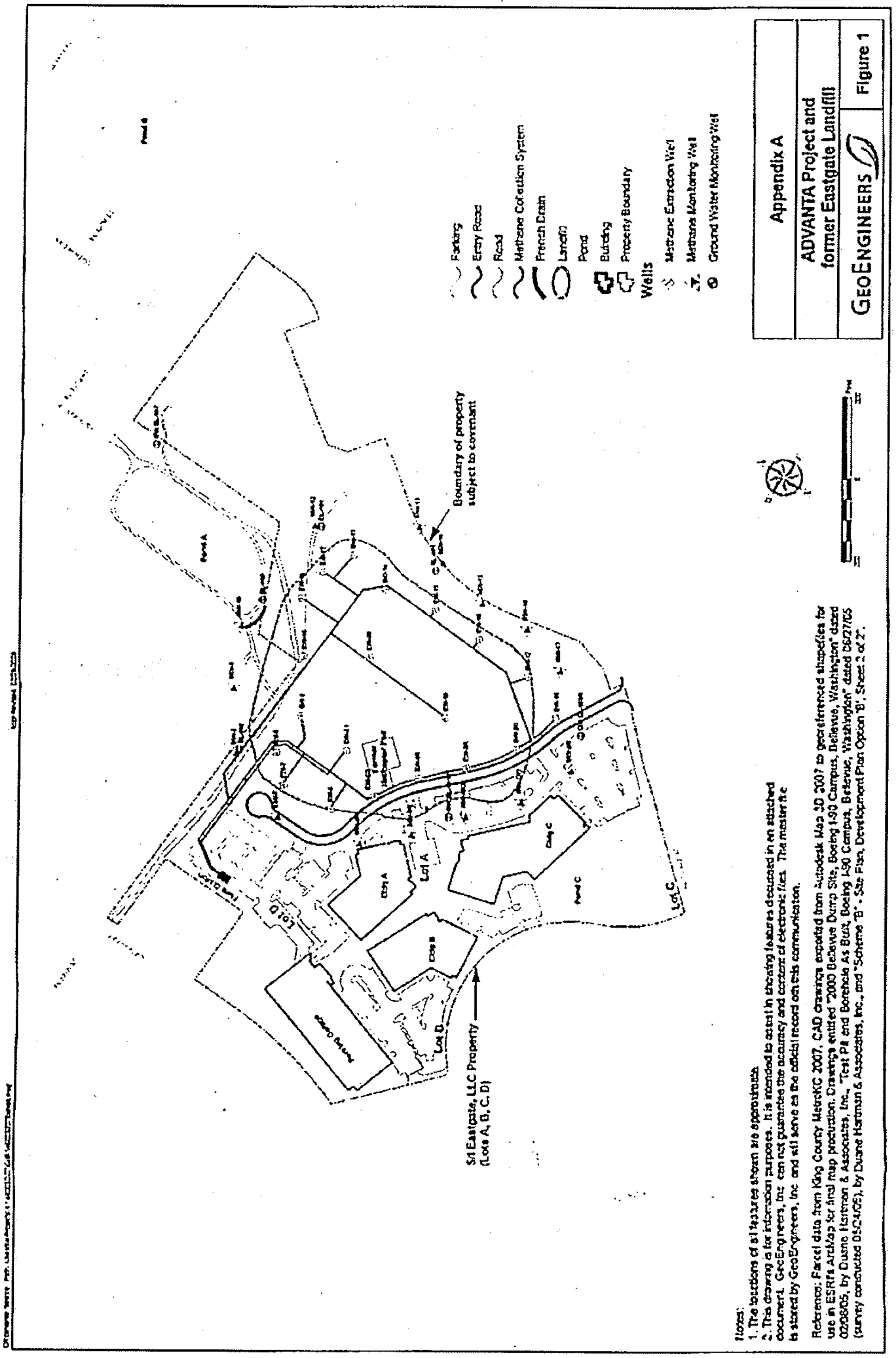
Appendix A

LEGAL DESCRIPTION OF THE PROPERTY

Parcels 3, 4, 5, 6, 15 and 16 and Tract A of Bellevue Boundary Line Adjustment No. 03-114869LW, recorded under Recording No. 20040713900001; and Parcel 5 of Bellevue Boundary Line Adjustment No. 02-149004LW, recorded under Recording No. 20030305900019.

Situate in the City of Bellevue, County of King, State of Washington.

Figure 1


Appendix A
ADVANTA Project and
former Eastgate Landfill
GeoEngineers
Figure 1
Parking
Entry Road
Road
Methane Collection System
French Drain
Landfill
Pond
Building
Property Boundary
Wells
Methane Extraction Well
Methane Monitoring Well
Ground Water Monitoring Well
Boundary of property subject to covenant
SH Eastgate, LLC Property (Lots A, B, C, D)
Lot A
Lot B
Lot C
Lot D
Pond A
Pond C
Bldg A
Bldg B
Bldg C
Parking Garage

Appendix B

DESCRIPTION OF LANDFILL MANAGEMENT SYSTEMS

SOIL CAP LAYER AND HARDSCAPE AREAS

A soil cap over the landfill prevents direct contact with landfill material and limits infiltration of stormwater into the area identified as the "Landfill" in the center of **Figure 1**. The cap material consists of silty, fine to medium sand. It appears that the thickness of fill overlying landfill refuse ranges from 1 to 19 ft. The cover was regraded, stormwater catch basins installed, and erosion control measures implemented in 1986 to minimize stormwater runoff from directly contacting landfill debris and to minimize stormwater infiltration into the Landfill. In addition to the soil cap, gravel surfaced paths cross the Landfill, and the asphalt-paved parking lot east of the Landfill extends slightly onto the Landfill.

In 2007, an asphalt-paved road with concrete sidewalks on both sides (the "Shared Entrance Road") was constructed over a portion of the Landfill. An asphalt-paved parking lot was also constructed adjacent to the road over a portion of the Landfill. These areas are shown in **Figure 1** and described in the record documents referenced as items 28 and 29 on page 5 of this Covenant.

INFILTRATION CONTROLS

An infiltration control system collects stormwater at the Landfill, reducing infiltration and associated generation of leachate. The infiltration control system at the Landfill and adjacent property consists of a network of catch basins, manholes, and conveyance pipes and two stormwater ponds, Ponds A and C, as shown on Figure 2.

The infiltration control system over the Landfill consists of six catch basins and associated manholes and piping that collect and convey stormwater runoff through a swale to Pond C, limiting infiltration into the Landfill.

Two catch basins collect runoff from the Shared Entrance Road and convey it to a detention vault located under the Shared Entrance Road. The catch basins and detention vault are located outside the Landfill. Stormwater from the Shared Entrance Road detention vault is conveyed directly to Pond A.

Pond A detains stormwater from nearby property, including Pond C, prior to discharge to Phantom Lake, which discharges to Lake Sammamish via Phantom Creek. The total basin area from which Pond A collects stormwater is approximately 91 acres.

Pond C is located within and treats a portion of the stormwater from Pond A's drainage basin before it enters detention Pond A. The Pond C drainage area includes the Landfill as well as several Boeing buildings. The infiltration control system collects runoff from the Pond C drainage area through a network of swales, storm drains, and catch basins. Pond C is a water quality treatment facility with an impermeable liner that prevents infiltration from occurring. Outflow from Pond C discharges into Pond A.

LEACHATE COLLECTION SYSTEM

A French drain was constructed north of the Landfill in the late 1970s or early 1980s to intercept landfill leachate into Pond A. The French drain is located between the north edge of the Landfill and the south edge of Pond A as shown on **Figure 1**. Based on the results of an investigation conducted in July 2001, the French drain is 196 ft long and, for at least the eastern 105 ft, is constructed of 6-inch perforated PVC pipe. It is likely that the remainder of the French

drain is constructed of similar material. Leachate collected in the French drain discharges to the King County sanitary sewer.

LANDFILL GAS MIGRATION CONTROL SYSTEM

The landfill gas ("LFG") migration control system was completed in December 1986, and modified in 2007. The LFG migration control system was designed to prevent outward migration of LFG by creating an engineered subsurface air gradient toward the perimeter of the Landfill. The desired gradient is achieved by applying a vacuum to extraction wells constructed near the perimeter of the fill material. Use of these extraction wells induces a subsurface pressure gradient that causes air to migrate toward the extraction wells, controlling the flow of gas away from the site. Spacing of the extraction wells and applied vacuum to each well are specified so that the pressure gradient for each well overlaps the pressure gradients of adjacent wells. Overlapping the pressure gradients of perimeter extraction wells in this manner prevents migration of LFG away from the fill material and results in the capture of LFG for treatment by the LFG migration control system. Three additional LFG extraction wells were installed in the interior area of the Landfill to capture higher concentrations of LFG. LFG collected by the interior extraction wells supplements the fuel content of LFG collected by the perimeter wells to facilitate more efficient operation of the LFG combustion system.

Each LFG extraction well is connected to an underground header-pipe system. Cleanout wyes are arranged at eight locations on the header lines to allow location of damaged pipes. Thirteen condensate traps prevent accumulation of condensate in the header lines, which could otherwise block gas flow in the header lines. Surface vaults provide access to all of the well

heads, cleanout wyes, and condensate traps. Locations of LFG extraction wells, cleanout wyes, condensate traps, and header lines are shown on **Figure 1**.

A blower in the LFG migration control system moves air from the header lines to the LFG combustion system (flare station). The combustion system is equipped with automatic ignition and blower-shutoff controls to prevent uncontrolled release of LFG if the flame goes out. Propane is used to fire the pilot light and to provide additional combustion gas, when necessary. The propane gas is controlled by a hand-operated valve and equipped with an automatic shutoff valve in case the LFG flare shuts down. The location of the LFG combustion system is shown on **Figure 1**.

Additional gas monitoring wells were installed beyond the perimeter of the fill material to monitor gas concentrations and vacuum pressure resulting from operation of the LFG migration control system. Locations of the monitoring wells are shown on **Figure 1**. Well-head valves are periodically adjusted to maintain an even distribution of vacuum to perimeter extraction wells. In areas where high vacuum pressures are identified in monitoring wells, the well-head valves in nearby extraction wells are throttled back. In areas where vacuum pressures are low or not present in monitoring wells, the well-head valves in nearby extraction wells are opened up to balance the system. These periodic adjustments help maintain appropriate levels of vacuum around the entire perimeter of the landfill, thereby inhibiting migration of LFG away from the fill material.

The LFG migration control system was modified in 2007. Modifications included relocating five (5) gas monitoring wells and four (4) LFG extraction wells to better monitor and capture methane gas.

GROUNDWATER MONITORING WELL NETWORK

Seven groundwater monitoring wells (EL-101 through EL-107) are used to evaluate groundwater elevations around the Landfill site. Four of these monitoring wells (EL-102, EL-103, EL-105, and EL-106) are used for evaluation of residual groundwater contamination including volatile organic compounds, dieldrin and metals. Locations of monitoring wells are shown on **Figure 1**. Groundwater monitoring activities are described in the Confirmational Groundwater Monitoring Work Plan, Former Eastgate Landfill, dated March 13, 2002 referenced as item 13 on page 3 of this Covenant and the Further Action Groundwater Monitoring Work Plan, Former Eastgate Landfill, dated December 14, 2006 referenced as item 25 on page 4 of this Covenant.