



WHEN RECORDED RETURN TO:

City of Yakima Clerks Office
129 North Second Street
Yakima, WA 98901

RESTRICTIVE COVENANT

Grantor: CITY OF YAKIMA

Grantee: WASHINGTON DEPARTMENT OF ECOLOGY

Legal Description: Parcel A: NW $\frac{1}{4}$, NW $\frac{1}{4}$, NW $\frac{1}{4}$, Sec 35, Twp 13N, R 18, E.W.M.
Parcel B: Portion of SW $\frac{1}{4}$, NW $\frac{1}{4}$, NW $\frac{1}{4}$, Sec 35, Twp 13N, R 18,
E.W.M.

Full legal shown in Exhibit A.

Assessor's Property Tax Parcel Account Number(s):

Parcel A: 18-13-35-22014

Parcel B: 18-13-35-22007



LYNN QUESENBURY

COV

\$25.00

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Page: 1 of 7
01/08/2003 03:18P
Yakima Co, WA

RESTRICTIVE COVENANT

City of Yakima, Kissel Park

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

Remedial action occurred at the property that is the subject of this Restrictive Covenant (hereinafter the "Remedial Action"). The Remedial Action conducted at the property is described in a final Cleanup Action Report, dated December, 2002, the Agreed Order between the City and Ecology, DE 01TCPCR-2093, dated March 21, 2001, and in the attachments to the Order and in the documents referenced in the Order (hereinafter "Remedial Action Documents"). These documents are on file at Ecology's Central Regional Office in Yakima, Washington.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of lead and arsenic which exceed the Model Toxics Control Act Method A Residential Cleanup Levels for soil established under WAC 173-340-740(2). The contaminated soil is contained on-site within a multimedia cover system.

The undersigned, City of Yakima, is the fee owner of real property (hereafter "Property") in the County of Yakima, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Exhibit A (legal description) and shown on Exhibit B (site plan) of this Restrictive Covenant, both of which exhibits are made a part hereof by this reference. The Property is located at 32nd Avenue and Mead Avenue, Yakima, WA 98902.

The City 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 (hereinafter the "Owner").

Section 1. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. The Owner will maintain the Property consistent with a Park Management Plan, as may be updated from time to time, that contains the following institutional controls to prevent recontamination from occurring:



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Page: 2 of 7
01/08/2003 03:18P
Yakima Co, WA

a) A marker fabric placed between the contaminated soil left in place within Areas 2 and 4 as shown on Exhibit B, and the overlying non-contaminated soil cover or asphalt paving. The marker material is a black-colored netting that is non-biodegradable. It indicates when contaminated soils have been reached while intentionally digging at the Property (e.g., when making repairs to the irrigation system or when digging for a new light standard) as well as provides a barrier to penetration by inadvertent digging, and provides a prominent visible indication of any unintentional breaches in the soil or asphalt cover during regular inspection.

b) A sign at the Property informing the public of the Remedial Action and prohibiting digging activities without City permission.

c) An irrigation system capable of maintaining the turf in Areas 2 and 4, the location of which is shown on Exhibit B and described in more detail in the Remedial Action Documents. The irrigation system was installed prior to the placement of the soil cover and marker fabric. The irrigation schedule for the site must be designed to maintain turf in Areas 2 and 4, while delivering the water at a rate and schedule that minimizes ponding and does not exceed the evapotranspiration rate.

d) A Landscaping Plan implemented by the Owner to ensure the turf cover and plantings are constantly maintained. This plan must include a minimum fertilization, mowing, and weed control schedule during the growing season to keep the turf maintained.

e) An Inspection Plan for inspection and maintenance of paved areas and turf. The inspection must look for cracks, potholes and other damage to the paved areas. In landscaped areas, patches of dead vegetation or sod must be noted and maintained as necessary. The Owner must implement and follow this plan which must include quarterly inspections by Park and Recreation Personnel. Should the Property be conveyed to a third party, Ecology may designate another party to make quarterly inspections.

f) A Soil Management Plan implemented by the Owner for properly managing soil brought up by digging activities in Areas 2 and 4, the locations of which are shown on Exhibit B and described in more detail in the Remedial Action Documents. Such planned digging activities may include trenching for additional utilities, adding light standards, drilling and other activities. To the degree possible, excavated contaminated soil from below the marker fabric must be placed back in the hole and the six inches of import soil cover/sod replaced. Any soil not able to be placed back in its original location must be disposed of at an appropriate off-site location, such as the Yakima County municipal solid waste landfill.



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

Section 5. 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.

Section 6. 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.

Section 7. 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.

Section 8. 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.

CITY OF YAKIMA

By: 
Its City Manager, R.A. Zais, Jr.

Dated: January 8, 2003



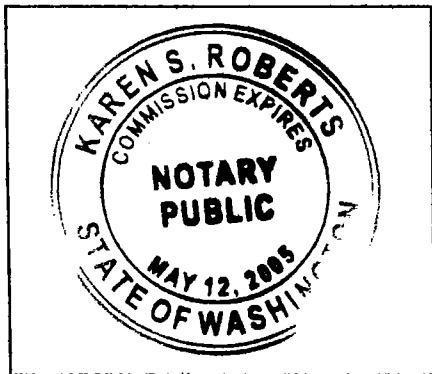
STATE OF WASHINGTON)

) ss.

COUNTY OF YAKIMA)

I certify that I know or have satisfactory evidence that R.A. Zais, Jr. is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it to as the City Manager of the CITY OF YAKIMA to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: January 8, 2003



(Use this space for notarial stamp/seal)

Karen S Roberts

Notary Public

Print Name Karen S. Roberts

My commission expires 5-12-2005

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**EXHIBIT A
LEGAL DESCRIPTION**

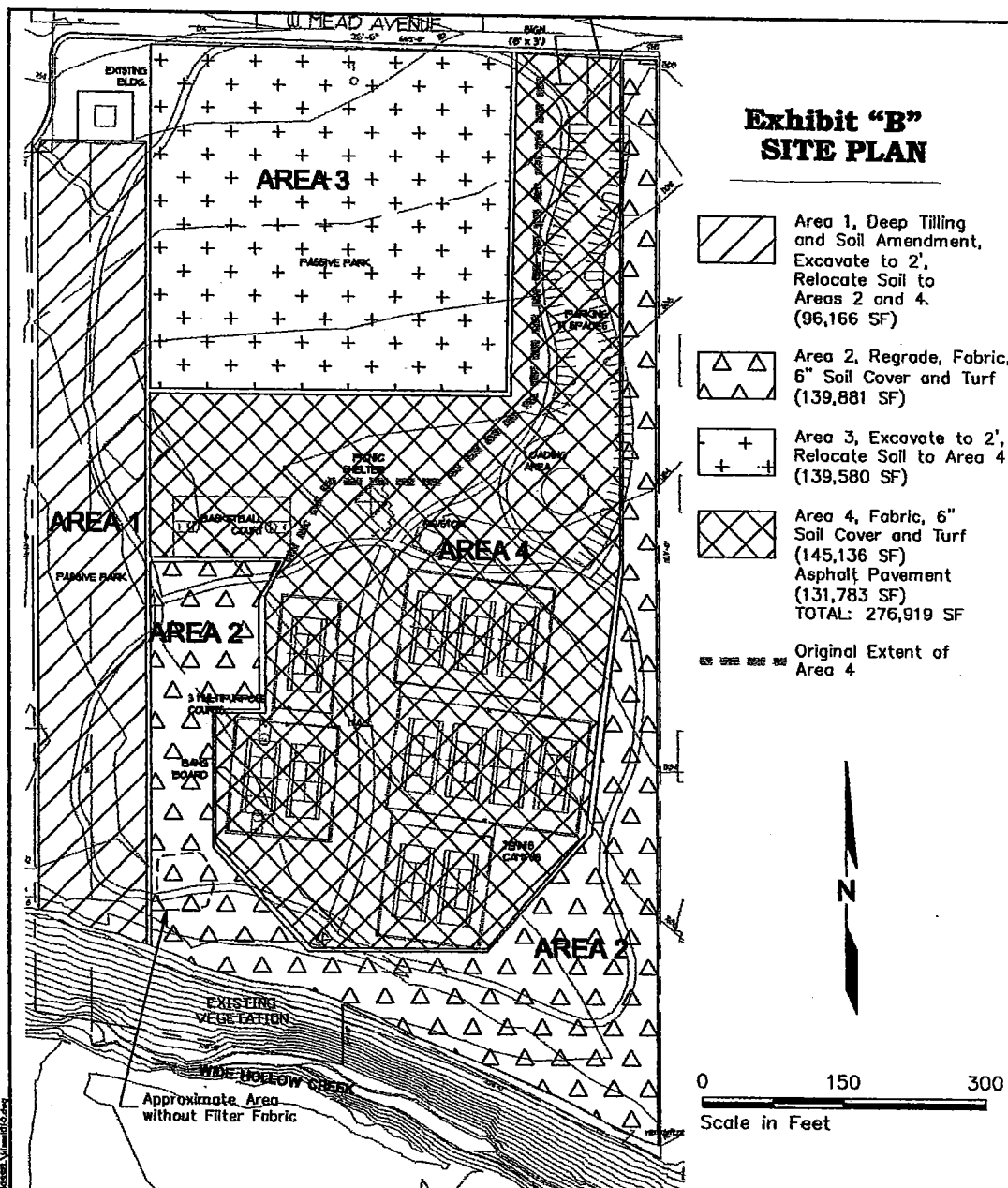
The following premises situated in the City of Yakima, County of Yakima, State of Washington, described as follows:

PARCEL A: The Northwest Quarter of the Northwest quarter of the Northwest quarter of Section 35, Township 13 North, Range 18, E.W.M.

PARCEL B: That part of the Southwest quarter of the Northwest quarter of the northwest quarter of Section 35, Township 13 North, Range 18 E.W.M., lying North of a line beginning at the intersection of Wide Hollow Creek with the West line of said subdivision; thence Southeasterly along said creek 330 feet, more or less, to a point 20 rods from the west line of subdivision; thence North 66 feet; thence Southeasterly to a point on the East line of said subdivision 115.5 feet North of the Southeast corner of said subdivision.

Except one-half interest in the West 1 rod of said Parcels A and B, said West one (1) rod to be used for irrigation purposes.





Note: The boundaries of each area are approximate. More accurate as-builts are on file with the City of Yakima.

* Source: Base Map Drawing provided by KDF Architecture

DATE: 12/09/03 BY: JLM
DRAWN BY: JLM
CHECKED BY: JLM
APPROVED BY: JLM
PROJECT: Kissel Park and Wide Hollow Creek Remediation

**Floyd
Snider
McCarthy, Inc.**
Strategy & Technical Solutions for Environmental Problems

**City of Yakima
Kissel Park
Yakima, Washington**

**Figure 5
Extent of Cleanup Areas
Following Construction**



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Page: 7 of 7
01/09/2003 03:18P
Yakima Co, WA