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DEC 03 2013

Department of Ecology  
Eastern Regional Office

December 2, 2013

JAMES S. BLACK  
Admitted In: WA and ID  
jblack@lukins.com  
Direct Fax: (509) 363-2466  
Direct Dial: (509) 623-2031

VIA CERTIFIED MAIL

Ms. Patti Carter  
Mr. Michael N. Hibbler  
Department of Ecology  
4601 North Monroe Street  
Suite 100  
Spokane, WA 99205

Re: Possible Sale of Manito Shopping Center  
Environmental Covenant

Dear Ms. Carter and Mr. Hibbler:

Manito Shopping Center Associates, LLC, a Delaware limited liability company ("Manito") has entered into an Agreement of Purchase and Sale and Joint Escrow Instructions ("PSA") with Tourmaline Capital Fund I, LLC, a Delaware limited liability company ("Tourmaline"), for the sale of the Manito Shopping Center, located at 830 East 29<sup>th</sup> Avenue in Spokane, Washington ("Property"). The targeted closing date for such sale is December 23, 2013. If needed or necessary, a copy of the PSA could be emailed to your attention.

Manito, as Grantor, entered into an Environmental Covenant ("Covenant") with the State of Washington Department of Ecology, as Grantee ("Ecology"), dated May 27, 2009, and recorded with the County of Spokane, under Auditor's Recording No 5797832 (copy enclosed). As indicated the Covenant affects Parcel Nos. 35322.0108 and 35322.0109. Section 4 of the Covenant states that Manito must give thirty (30) days' written notice to Ecology of its intent to convey the Property.

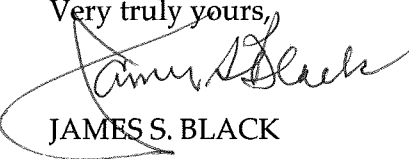
This letter serves as written notice of Manito's intent to sell the Property to Tourmaline. Obviously, Tourmaline is still in its due diligence period and has not, as of the date of this letter, waived any or all of its contingencies. Provided Tourmaline elects to proceed to close pursuant to the PSA, the intended closing date is December 23, 2013.

December 2, 2013

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If this letter meets with your approval and you agree to waive the thirty (30) day advance written notice, please sign below and return to me via email at [jblack@lukins.com](mailto:jblack@lukins.com) or fax at (509) 363-2466.

Very truly yours,



JAMES S. BLACK

JSB:bet

Enclosure

**CONSENT**

I, \_\_\_\_\_, being an authorized representative of the Washington State Department of Ecology, hereby acknowledge this December 2, 2013 letter from Manito satisfies Section 4 of the Covenant as to the sale to Tourmaline and by my signature the Washington State Department of Ecology agrees to waive the thirty (30) day advance written notice by Manito of its intent to convey to Tourmaline its interest in the Property located in the City of Spokane and commonly known as Manito Shopping Center.

Dated this \_\_\_\_\_ day of December, 2013.

WASHINGTON STATE DEPARTMENT  
OF ECOLOGY

By: \_\_\_\_\_

Title: \_\_\_\_\_



After Recording Return to:  
Patti Carter  
Department of Ecology  
4601 North Monroe Street, Suite 100  
Spokane, Washington 99205

### Environmental Covenant

**Grantor:** Manito Shopping Center Associates, LLC,  
a Delaware limited liability company ("MSCA, LLC")  
**Grantee:** State of Washington, Department of Ecology  
**Legal:** Cooks 4<sup>th</sup> Ptn of Tr B, Beg on E Ln of Grand 311.4 ft S of N Ln of NW ¼ Sec 32;  
Cooke's 4<sup>th</sup> Ptn of B, Beg 362 ft S of NE corner of NE ¼ of NW ¼ Sec 32  
**Tax Parcel Nos.:** Spokane County - Parcel Nos. 35322.0108 and 35322.0109

Grantor, MSCA, LLC, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant ("Covenant") made this 27 day of May, 2009 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 MSCA, LLC, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns.

A remedial action ("Remedial Action") has been completed at the Property that is the subject of this Covenant. The Remedial Action conducted at the Property is described in the following document:

"Site Characterization and Cleanup Action Plan – Manito Shopping Center, Parcel Nos. 35322.0108 and 35322.0109, Spokane, Washington", LFR Inc., Project No. 027-30189-00

This document is on file at Ecology's Eastern Regional Office.

This Covenant is required because the Remedial Action resulted in residual concentrations of VOCs and PAHs which exceed MTCA Method A Cleanup Levels for soil established under WAC 173-340-740.

The undersigned, MSCA, LLC, is the fee owner of real property ("Property") in the County of Spokane, State of Washington, that is subject to this Covenant. The Property is legally described as follows:

Parcel A:

That part of the Northwest Quarter of Section 32, Township 25 North, Range 43 E.W.M. in the City of Spokane, Spokane County, Washington, more particularly described as follows:

Beginning at a point on the East line of Grand Street, 311.40 feet South of the North line of the Northwest Quarter of said Section 32, and running thence in an Easterly direction along a straight line to a point on the East line of the said Northwest Quarter, 311.73 feet South of the Northeast corner of said Northwest Quarter; thence south along the East line of said Northwest Quarter, 50 feet South of the point of beginning; thence North along the East line of Grand Street to the point of beginning.

Parcel B:

Part of the Northeast Quarter of the Northwest Quarter of Section 32, Township 25 North, Range 43, E.W.M. in the City of Spokane, Spokane County, Washington more particularly described as follows:

Beginning 362 feet South of the Northeast corner of the Northeast Quarter of the Northwest Quarter of said Section 32; thence South 100 feet; thence West to a point in the East line of Grand Boulevard; thence North along the East line of Grand Boulevard 100 feet; thence east to the place of beginning, being known as the North 100 feet of the South 158 feet of Tract "B" of Cook's 4<sup>th</sup> Addition to Spokane and a tract or ground between said North 100 feet of the South 158 feet and the East line of Grand Boulevard.

MSCA, LLC 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 ("Owner").

Section 1. The Property contains VOCs and PAHs within the West 150 feet of each of Spokane County Tax Parcel Nos. 35322.0108 and 35322.0109, which described area is under

a parking lot, as detailed in the attached Exhibit A. The portion of the Property described above and depicted in Exhibit A are hereinafter referred to as the "Capped Area".

The Owner shall not alter, modify, or remove the existing structure[(s)] immediately above the Capped Area in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology. 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. Some examples of activities that are prohibited in the Capped Area 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 with a rod, spike or similar item, bulldozing or earthwork.

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.

Section 4. 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 except that the Owner need not give advance written notice to Ecology if the Owner leases a subunit of a building located outside of the Capped Area. 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 monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessee 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 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, to determine compliance with this Covenant, 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 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.

GRANTOR:

MANITO SHOPPING CENTER ASSOCIATES, LLC,  
a Delaware limited liability company

By: Triple S. Properties LLC, Managing Member

By: Rossrock 98-01, LLC, Managing Member

By: Rossrock LLC, Managing Member

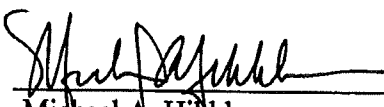
By:

  
James H. Ross, Manager

GRANTEE:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By:

  
Michael A. Hibbler

Section Manager, Toxics Cleanup Program

STATE OF NEW YORK )

: ss

County of New York )

On this 24<sup>th</sup> day of May, 2009, before me personally appeared JAMES H. ROSS, to me known to be the Manager of Triple S Properties LLC, Rossrock 98-01, LLC, and Rossrock, LLC, the Managing Members of MANITO SHOPPING CENTER ASSOCIATES, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said limited liability company.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

*Gina Fay*  
Notary Public

GINA FAY

My commission expires 3-30-2013  
3-30-2013

NOTARY PUBLIC STATE OF NEW YORK  
QUEENS COUNTY  
LIC. #01FA6203027  
MY COMMISSION EXPIRES 3-30-2013

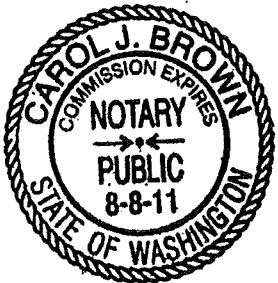
STATE OF WASHINGTON )

: ss

County of Spokane )

On this 27<sup>th</sup> day of May, 2009, before me personally appeared Michael A. Hibbler, to me known to be the Section Manager, Toxics Cleanup Program of STATE OF WASHINGTON DEPARTMENT OF ECOLOGY, the government entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said entity, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said entity.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



*Carol J. Brown*  
Notary Public

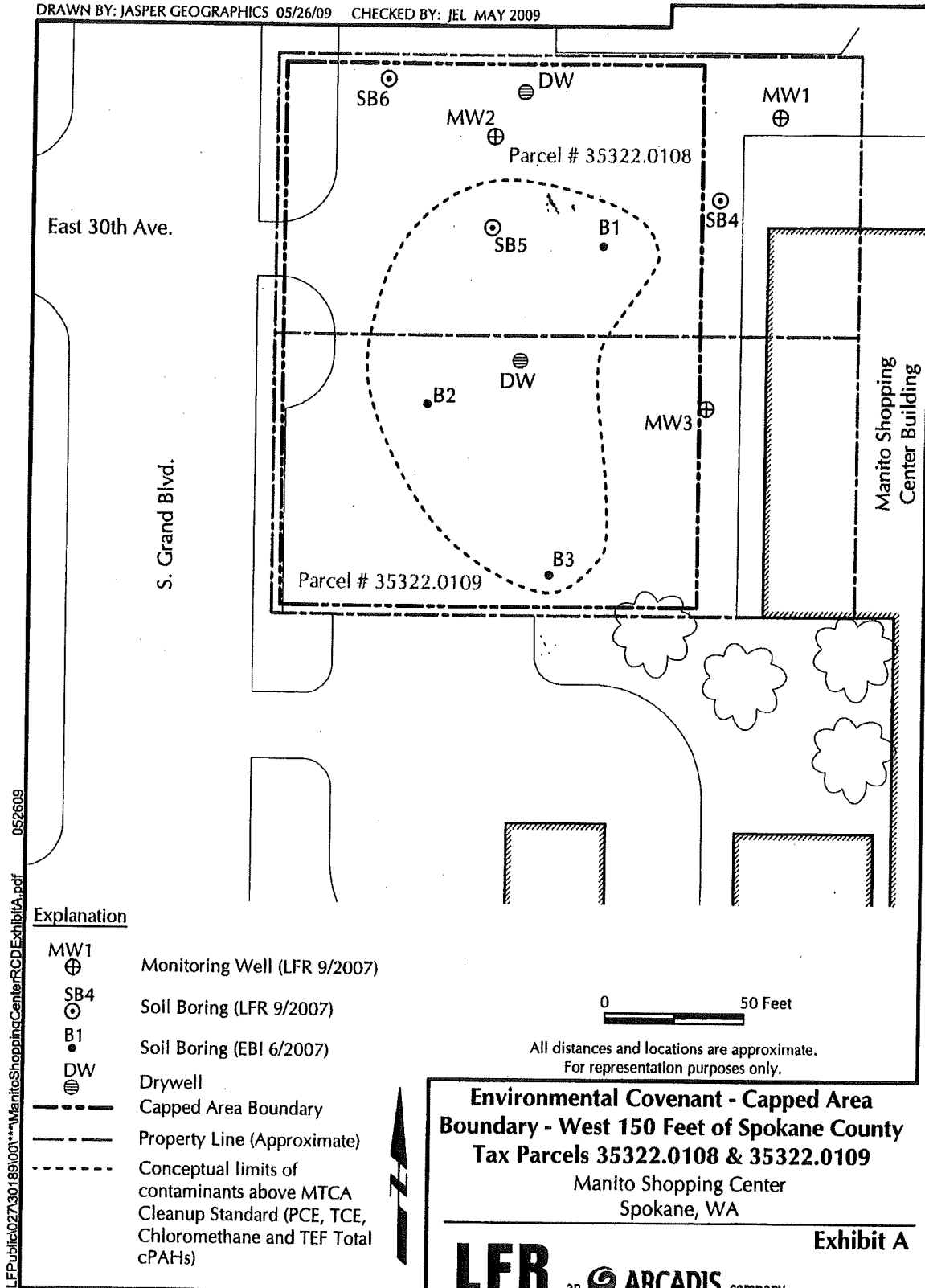
(Signature)

CAROL J. BROWN

(Print Name)

My commission expires: 8/8/11

DRAWN BY: JASPER GEOGRAPHICS 05/26/09 CHECKED BY: JEL MAY 2009



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