



RETURN NAME and ADDRESS

Ted Uecker
Toxics Cleanup Program
Department of Ecology
4601 N. Monroe
Spokane, WA 99205

Please Type or Print Neatly and Clearly All Information

Document Title(s)

Environmental Covenant

Reference Number(s) of Related Documents

Grantor(s) (Last Name, First Name, Middle Initial)

Geschke, Gary W.

Grantee(s) (Last Name, First Name, Middle Initial)

State of Washington, Department of Ecology

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

Second add to Town of Cheney Lots 1,2,3,8,9,10,11 and 12 block 141; 106 w/ ptn of vac alley adj to
scl lots 1,2,3,10,11, and 12; top w/ 5Ely 1/2 of vac alley 1/2 Nwly of c-d adj to scl Lots 8 and 9; enc any
ptn in row.

Assessor's Tax Parcel ID Number 13133.2211

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

Signature of Requesting Party

After Recording Return
Original Signed Covenant to:
Ted Uecker
Toxics Cleanup Program
Department of Ecology
4601 N. Monroe
Spokane, WA 99205

RECEIVED
MAY 06 2019
Department of Ecology
Eastern Washington Office

Environmental Covenant

Grantor: Gary W. Geschke

Grantee: State of Washington, Department of Ecology (hereafter "Ecology")

Brief Legal Description: Cheney Super Stop Lots 8 & 9

Tax Parcel No.: 13133.2211

RECITALS

a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.

b. The Property that is the subject of this Covenant is part or all of a site commonly known as Cheney Super Stop Lots 8 & 9, FSID# 63162186. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.

c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Petroleum Hydrocarbons, Metals

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes the following documents:

1. Results of Subsurface Exploration and Chemical Analysis Cheney Superstop: Budinger & Associates, April 29, 1999.
2. Results of Subsurface Exploration and Chemical Analysis Cheney Superstop: Budinger & Associates, November 4, 1999.

3. Groundwater monitoring results: Budinger & Associates, January 6, 2015.
4. Quarterly Groundwater Sampling- Cheney Super Stop Lots 8 & 9: Budinger and Associates, January 4, 2016.

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an “agency” under UECA, other than its’ right as a holder, are not an interest in real property.

COVENANT

Gary W. Geschke, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. Containment of Soil/Waste Materials.

The remedial action for the Property is based on containing contaminated soil under a cap consisting of asphalt and landscaping located in the Area of Concern as illustrated in Exhibit B. The primary purpose of this cap is to prevent exposure to contaminated soil and limit stormwater infiltration. As such, the following restrictions shall apply within the Area of Concern illustrated in Exhibit B:

Any activity on the Property except those approved by Ecology in Exhibit C that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. As specified in the attached Maintenance and Repair Plan (Exhibit D), the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

The Grantor covenants and agrees that it shall annually, or at another time as approved in writing by Ecology, inspect the cap and report within thirty (30) days of the inspection the condition of the cap and any changes to the cap that would impair its performance.

b. Stormwater facilities.

To minimize the potential for mobilization of contaminants remaining in the soil on the Property, no stormwater infiltration facilities or ponds shall be constructed within the area of the Property except those illustrated in Exhibit C. All stormwater catch basins, conveyance systems, and other appurtenances located within this area shall be of water-tight construction.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest WITHIN THE AREA OF THE PROPERTY DESCRIBED AND ILLUSTRATED IN EXHIBITS B, including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON _____ AND RECORDED WITH THE SPOKANE COUNTY AUDITOR UNDER RECORDING NUMBER _____. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. Reporting Violations. Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Notification procedure. Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Geoffrey Ryan Geschke 1827 1 st Street Cheney, WA 99004 (509) 235-5000 ryan@cheneyhousing.com	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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Section 5. Modification or Termination.

a. Grantor must provide written notice and obtain 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 this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 6th day of May, 2019.

[Signature]

by: Geoffrey Ryan Geschke

Title: Attorney In Fact for Gary W. Geschke

INDIVIDUAL ACKNOWLEDGMENT

STATE OF WASHINGTON
COUNTY OF SPOKANE

On this 6 day of MAY, 2019, I certify that Geoffrey Ryan Geschke personally appeared before me, acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.



Connie S Lattin
Notary Public in and for the State of Washington
Residing at CHENAY, WA
My appointment expires 9/9/2020

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Kathy Falconer
by: Kathy Falconer

Title: SECTION MANAGER, TCP

Dated: May 6, 2019

STATE ACKNOWLEDGMENT

STATE OF Washington

COUNTY OF Spokane

On this 6th day of May, 2019, I certify that Kathy Falconer personally appeared before me, acknowledged that ~~he~~ she is the Section Manager-TCP of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said state agency.

Cynthia K Anderson
Notary Public in and for the State of Washington

Residing at Spokane

My appointment expires Sept 14, 2019



Exhibit A

LEGAL DESCRIPTION

The Site is located at the corner of K Street and West 1st Street in Cheney in the southern half of Section 13, Township 23N, Range 41. The Site consists of Spokane County Tax Parcel 13133.2211, with Lots 8 and 9 residing in the eastern section of the parcel. The provisions in this Covenant apply to Lots 9 and 9 (referred to as the Area of Concern in Exhibit B), and all approved engineered structures (including the asphalt and landscape cap, as well as drainage basins) are illustrated in Exhibit C.

The Site and surrounding property was used as a service station from about 1940 until 1951 when it was purchased by the City. It was used as a shop and maintenance facility until the 1970s. The above ground tanks (ASTs) and one underground storage tank (UST) were removed in 1974. The building was also demolished. The Site has remained vacant and has been used for parking since 1974. The area north of the Site is residential. A supermarket and paved lot are located across K Street to the east. Adjacent properties to the west and south are commercial.

Exhibit B

PROPERTY MAPS

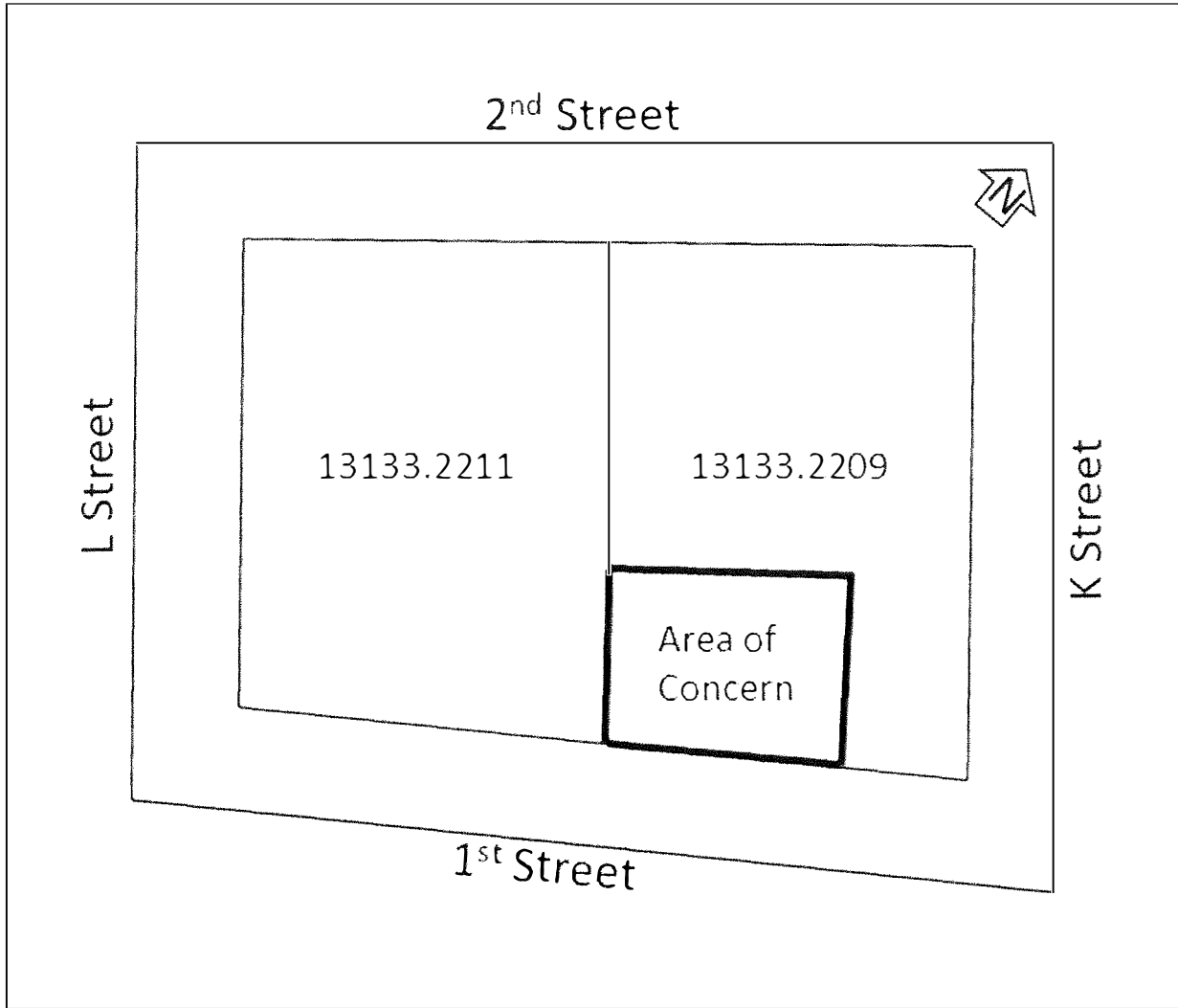


Exhibit C
Site Grading Plan

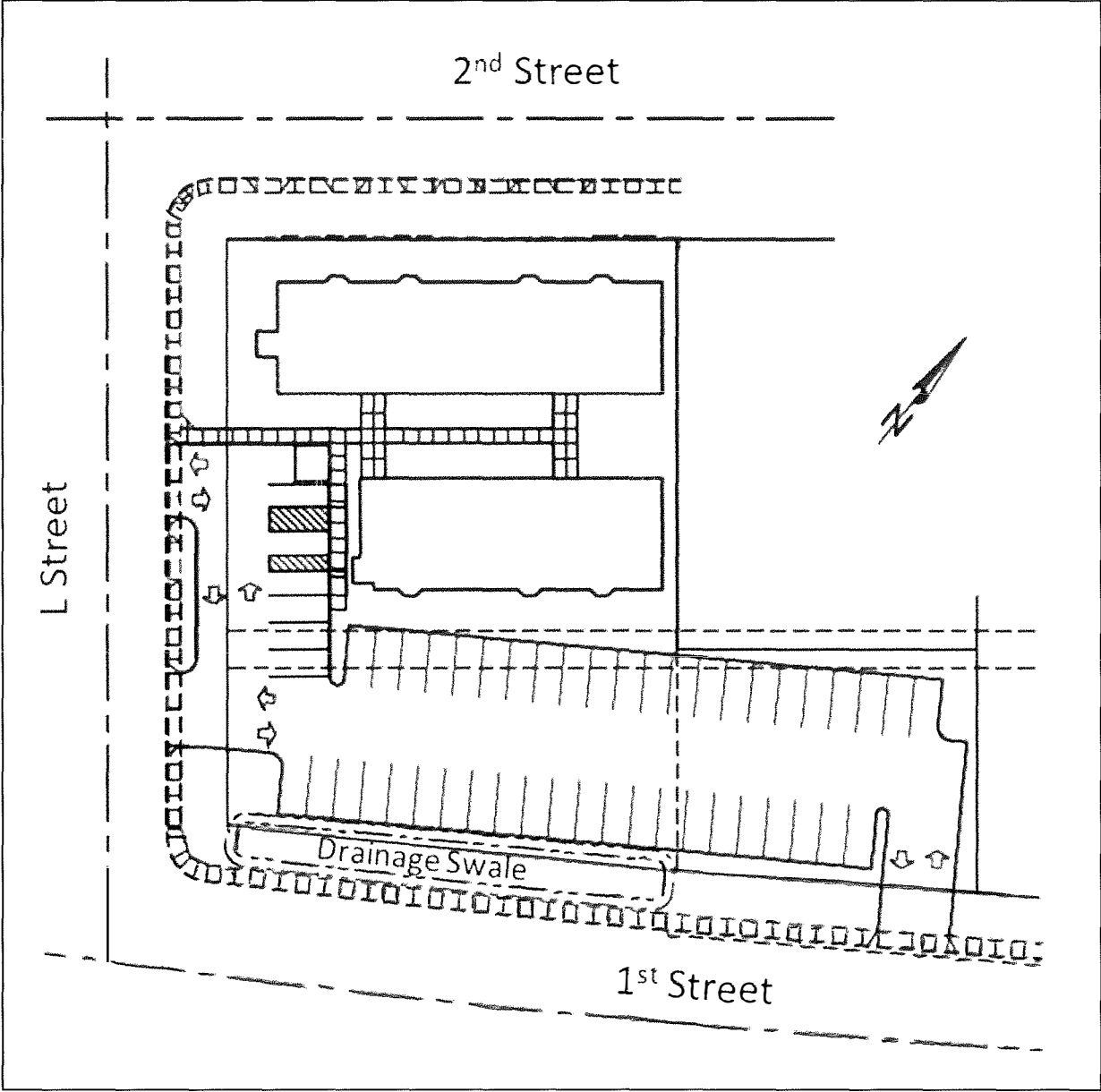


Exhibit D

Maintenance and Repair Plan



Proudly serving the Inland Northwest for since 1976

Geotechnical Engineering
Environmental Engineering
Construction Material Testing
Subsurface Exploration
Special Inspection

Gary Geshke
1827 1st Street
Cheney, WA 99004

December 13, 2017

Project Number X14463

PROJECT: 223 W. 2nd Street
Cheney, WA

SUBJECT: Maintenance and Repair Plan

INTRODUCTION

This letter presents a Maintenance & Repair Plan for engineering controls and cap of the 223 W. 2nd Street site. The site is located between W. 1st Street & W. 2nd Street in Cheney, WA. The site is listed by the Washington State Department of Ecology as:

Facility Site ID: 63162186
Cleanup Site ID: 674
Voluntary Cleanup Program ID: EA0281

The subject property and eastern half of the block was previously occupied by a shop facility with underground storage tanks which had a release of gasoline, diesel, and oil range petroleum hydrocarbons, benzene, arsenic, and lead into soil and groundwater. The adjacent lots to the north were remediated in 1999 and redeveloped into an STA Park and Ride Facility. Petroleum and metals exceeding Model Toxics Control Act (MTCA) Method A cleanup levels remain in the soil at the subject property.

The property will be capped with a paved parking lot to limit infiltration. Monitoring wells were installed to permit long term testing. The monitoring wells were decommissioned in December 2017. Restrictive covenants are in place restricting use of the property. The area is planned to serve as a paved parking area for a new apartment complex to be constructed adjacent to the west as illustrated on the attached development plan.

1101 North Fancher Rd.
Spokane Valley, WA 99212
Tel: 509.535.8841
Fax: 509.535.9589
www.budingerinc.com

This plan is intended to maintain engineering controls in accordance with the Restrictive Covenant. Specifically, this plan provides procedures to: (1) inspect and maintain the installed cap; (2) notify and protect potential utility workers that may encounter contaminated soil beneath the protective cap; and (3) repair the cap if damaged.

AREAS OF POTENTIAL CONCERN

If future maintenance or repair activities at the site occur in areas known to contain contaminated soils, exposure to potentially contaminated soil or groundwater is possible which may exceed MTCA cleanup levels. Such areas include, but are not limited to, utility trenches, drainage trenches and overflow systems, sprinkler systems, and paved areas. The following provides guidelines for general maintenance of the cap, as well as recommendations, if the protective cap is compromised:

1. Inspect and maintain the asphalt pavement – The owner, or their designated representative, should periodically inspect the asphalt on the site. If cracking or significant deterioration of the asphalt is identified, repairs should be completed as soon as possible to prevent water infiltration. The site should be inspected, at a minimum, during each spring and fall.
2. If significant cracking or deterioration of the asphalt cap requires repair, or if any future construction on the site included disturbance or demolition of the cap, it is critical to notify the workers who will be potentially exposed workers for their protection. The involved workers should be informed and familiar with the Cleanup Action Report.
3. Notify the Washington State Department of Ecology of any proposed repair or construction that will require excavation.

Toxics Cleanup Program
Washington State Department of Ecology
4601 N Monroe Street
Spokane, WA 99205
(509) 329-3410

CONTAMINANTS OF POTENTIAL CONCERN AND CLEANUP STANDARDS

Based on previous assessment and analytical testing of the site, the potential contaminants of concern include heavy metals, petroleum hydrocarbons, Volatile Organic Compounds, and Polycyclic Aromatic Hydrocarbons.

HANDLING AND DISPOSITION PLAN FOR SOIL

This plan is intended to provide guidance to the owner's contractors and consultants regarding (1) identification, (2) characterization, (3) handling, and (4) disposal of contaminated soil and that may be encountered during future construction activities at the site.

IDENTIFICATION OF POTENTIALLY CONTAMINATED SOIL

1. Contractor personnel will review this Plan to familiarize themselves with the potentially contaminated soil at the site.
2. An environmental consultant will be present on site when the contractor is excavating in identified areas of interest and/or if contamination is otherwise encountered to assist in the identification of potentially contaminated soil.
3. An environmental consultant will observe and document excavation activities and advise the contractor regarding segregation of potentially contaminated media.
4. If the contractor observes excavated soil that exhibits one or more of the following field screening characteristics
 - staining,
 - chemical or petroleum odors, and/or
 - a sheen when placed in contact with water, then the soil shall be identified as potentially contaminated and will be handled and characterized as described below. Note that the absence of these physical characteristics does not necessarily imply that the soil does not contain contaminants.
5. The owner should notify an environmental consultant to assist the contractor in segregating the potentially contaminated soil. An environmental consultant will use field screening techniques, including visual, sheen and headspace vapor methods (using a photoionization detector), to classify or segregate the soil and/or to select samples for chemical analyses.
6. Chemical testing of representative samples of potentially contaminated soil will be performed as described below.

HANDLING AND CHARACTERIZATION OF POTENTIALLY CONTAMINATED SOIL

1. As appropriate, the contractors shall use trained and certified personnel for excavation activities per OSHA and Washington Department of Labor and Industries standards (HAZWOPER) and shall be responsible for monitoring the health and safety of their employees. The contractors shall work closely with an environmental consultant in identifying potentially impacted materials as they are encountered during work at the

site, and shall be responsible for appropriately handling potentially impacted material pursuant to the methods and procedures outlined in this document.

2. The extent of excavation of contaminated soil will be determined in the field based on field screening. Once the decision is made to terminate excavation, confirmation soil samples will be collected consistent with MTCA requirements to document soil concentrations remaining in the excavation.
3. Potentially contaminated soil will be segregated and secured on-site pending chemical analyses for waste characterization. The contractor will secure potentially contaminated soil by placing it either in (1) a designated stockpile area that is lined and covered by durable plastic sheeting and bermed to control runoff, or (2) in labeled drums, roll-off containers, or other covered containers. Access to the secured soil will be restricted by fencing or other physical barriers to prevent unauthorized personnel from contacting the soil. The contractor will comply with Best Management Practices for erosion and sediment control.
4. Potentially contaminated soil should be sampled by a representative of an environmental consultant. Soil samples will be submitted for chemical analyses to identify reuse or disposal options. The frequency of sampling and selected chemical analyses will be in accordance with Ecology regulations and guidance.

DISPOSAL OPTIONS FOR SOIL

1. Transport and disposal of soil will be in accordance with local, state, and federal regulations.
2. The owner will be responsible for off-site disposal of contaminated soil or dangerous waste originating from the 223 W. 2nd Street site.

Thank you for the opportunity to be of service. Please do not hesitate to call if you have any questions.

Respectfully Submitted:
BUDINGER & ASSOCIATES

Derry D. Callender
Environmental Geologist

Stephen D. Burchett, PE
Environmental Services Manager