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PIERCE COUNTY, WASHINGTON

After Recording Return to:

Marv Coleman, Site Manager/Inspector
Department of Ecology
Southwest Regional Office, Toxics Cleanup Program
P.O. Box 47775
Olympia, WA 98504-7775

ENVIRONMENTAL COVENANT

Grantor: City of Tacoma
747 Market. Street
Tacoma, WA 98402

ORIGINAL

Grantee: State of Washington, Department of Ecology
PO Box 47775
Olympia, WA 98504-7775

Abbreviated Legal Description:

A portion of the NW ¼ and SW ¼ of Section 04, Township 20 North, Range 03 East, W.M.

(See Attachment A for full Legal Description.)

Tax Parcel Number(s): N/A

Grantor, **City of Tacoma** hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this 12TH day of JULY, 2010 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, RCW 67.70.005 *et seq.*

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

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following documents:

- Consent Decree entered in *State of Washington, Department of Ecology v. BNSF Railway Company, City of Tacoma, Home Electric Company, 1815 East D. Street LLC, Washington Department of Transportation*, Pierce County Superior Court Cause No.08-2-11105-4.
- “Final Remedial Investigation/Feasibility Study (RI/FS), BNSF Oil Pipeline Site, Tacoma, Washington” (GeoEngineers 2007).
- “Final Cleanup Action Plan (CAP), BNSF Oil Pipeline Site, Tacoma, Washington” (GeoEngineers 2008).
- “Remedial Action Report, BNSF Oil Pipeline Site, Tacoma, Washington” (GeoEngineers 2010).

These documents are on file at Ecology’s Southwest Regional Office.

In accordance with the CAP, the Remedial Action focused on control and recovery of bunker-range petroleum hydrocarbons (BRPHs) believed to be associated with a former pipeline, underground storage tanks and other potential sources in the area. BRPH in soil is the primary contaminant at the site, but other contaminants associated with BRPH in soil, including carcinogenic polycyclic aromatic hydrocarbons (cPAHs), were also present and removed as part of the Remedial Action. Fill materials throughout the Thea Foss waterway area, including those on the property, are also known to have concentrations of cPAHs unrelated to BRPH. BRPH contaminated soils and wood waste were excavated to the maximum extent practicable on the property, pursuant to the CAP and Consent Decree. As provided in the CAP, complete removal was not possible due to accessibility.

This Covenant is required because the Remedial Action resulted in residual soil concentrations of BRPHs and associated cPAHs in certain limited areas, which exceed the Model Toxics Control Act Method A Cleanup Level(s) established under WAC 173-340-740. This covenant is also required because a conditional point of compliance has been established for groundwater.

The undersigned, **City of Tacoma**, enjoys an easement interest in real property (hereafter “Property”) in the County of Pierce, State of Washington, that is subject to this Covenant. The Property is legally described in Attachment A of this covenant, which is made part hereof by reference.

City of Tacoma 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.

- a. No groundwater may be taken for any use from the Property.

b. A portion of the Property contains residual bunker-range petroleum hydrocarbon (BRPH) contaminated soil. The locations of this soil are depicted in Attachment B, made part hereof by reference. Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) are also present in fill materials on the property, in some areas largely unrelated to BRPH. The known locations of cPAH contaminated soil are also depicted in Attachment B. 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, subject to paragraph 1.c., below. 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 with a rod, spike or similar item, bulldozing or earthwork.

c. The Owner shall not be prohibited from undertaking the activities in paragraph 1.b., above, and other similar activities which may damage the Remedial Action, if necessary to maintain, replace and repair public infrastructure on the Property. Prior to commencing any maintenance, replacement or repair work that may damage the Remedial Action, the Owner shall provide Ecology written notice of such work, and a written plan for Ecology's approval describing how the Owner will minimize damage to the Remedial Action during its maintenance, replacement or repair work, and how the Owner will repair, at the Owner's cost, any damage to the Remedial Action caused by such work. In the event the Owner undertakes maintenance, replacement or repair work in response to an emergency, and such work damages the Remedial Action, the Owner shall notify Ecology as soon as is practicable after commencing such work, and provide Ecology with a written plan for Ecology's approval no later than twenty (20) calendar days from the date of the emergency event describing how the Owner will repair damage to the Remedial Action.

Section 2. Subject to paragraph 1.c., above, 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. Subject to paragraph 1.c., above, 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) day 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 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 lessees of the restrictions on the use of the Property.

Section 6. Except for the Owner's operation and maintenance of public infrastructure on the Property, which shall be governed by paragraph 1.c., above, 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 the 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.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: Rebecca S. Lawson

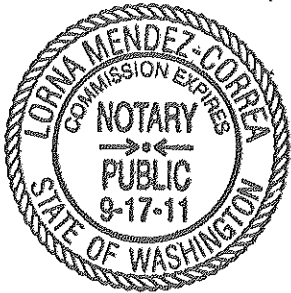
Dated: 7/2/2010

Name: REBECCA S. LAWSON

Title: SWRO SECTION MANAGER

STATE OF WASHINGTON)
) ss.
COUNTY OF Thurston)

On this 8th day of July, 2010, I certify that Rebecca Lawson is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned therein.



Lorna Mendez-Correa
Notary Public in and for the State of Washington,
Print Name Lorna Mendez-Correa
My commission expires 9-17-11

ATTACHMENT A

Auditor's notatic
to facilitate
scanning process

Property Description-BNSF Pipeline Area "A"

That portion of the Southwest and Northwest quarters of the Southeast quarter of Section 04, Township 20 North, Range 03 East, W.M. described as follows:

Commencing at the surface brass monument at the intersection of East 18th and East "D" Streets, City of Tacoma reference number 215;

Thence South 01°13'27"East along the center line of East "D" Street a distance of 30.17 feet;

Thence North 82°38'52"East a distance of 92.16 feet;

Thence South 07°21'08" East a distance of 242.21 feet;

Thence South 82°38'52"West a distance of 15.00 feet;

Thence South 07°21'08"East a distance of 162.71 feet to a point lying 3.33 feet northerly of the North right of way margin of East 19th Street, hereinafter known as Point "A";

Thence continuing South 07°21'08"East a distance of 296.92 feet to the True Point of Beginning for Area "A";

Thence North 82°38'06"East 59.33 feet;

Thence South 07°21'54"East a distance of 300.58 feet;

Thence South 82°38'06"West a distance of 175.00 feet;

Thence North 07°21'54"West a distance of 300.58 feet;

Thence North 82°38'06"East a distance of 115.68 feet to the Point of Beginning.

Also, Area "B" lying in the Southwest quarter of the Southeast quarter of Section 04, Township 20 North, Range 03 East, W.M. described as follows:

Beginning at aforementioned Point "A";

Thence North 82°38'52"East parallel with and 3.33 feet North of the North right of way margin of East 19th Street, a distance of 137.00 feet;

Thence South 07°21'08"East a distance of 83.33 feet to the South right of way margin of said Street;

Thence South $82^{\circ}38'52''$ West along said south margin and its westerly extension a distance of 165.00 feet;

Thence North $07^{\circ}21'08''$ West a distance of 24.92 feet;

Thence North $39^{\circ}08'10''$ East a distance of 38.61 feet;

Thence North $07^{\circ}21'08''$ West a distance of 31.83 feet to the Point of Beginning.

Also, Area "C" lying in the Southwest and Northwest quarters of the Southeast quarter of Section 04, Township 20 North, Range 03 East, W.M. described as follows:

Beginning at aforementioned Point "A";

Thence South $07^{\circ}21'08''$ East a distance of 31.83;

Thence South $82^{\circ}38'52''$ West a distance of 137.00 feet;

Thence North $02^{\circ}38'25''$ West a distance of 438.23 feet to the westerly extension of the South right of way margin of East 18th Street;

Thence North $82^{\circ}38'52''$ East along said South Margin a distance of 92.16 feet;

Thence South $07^{\circ}21'08''$ East a distance of 242.21;

Thence South $82^{\circ}38'52''$ West a distance of 15.00 feet;

Thence South $07^{\circ}21'08''$ East a distance of 162.71 feet to the Point of Beginning.

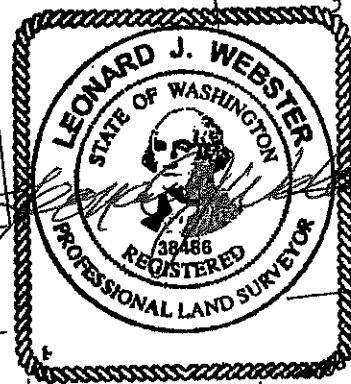
ATTACHMENT B

EAST "D" STREET

NOT TO SCALE

EAST 18TH STREET

Area C



POINT "A"

Area B

N82° 38' 51.59"E
23.843

S1° 13' 27.41"E
30.172

S82° 08' 51.59"W
92.157

S7° 21' 08.41"E
242.210

117.11'

121.92'

N82° 38' 51.59"E
15.000

S7° 21' 08.41"E
162.710

N82° 38' 51.59"E
137.500

S7° 21' 08.41"E
31.835

N82° 38' 51.59"E
137.000

N39° 08' 09.56"E
38.608

S82° 08' 51.59"W
137.500

S7° 21' 08.41"E
24.918

STREET

52

60'

60'

60°

8'

1

6/2/10

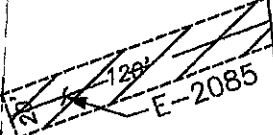
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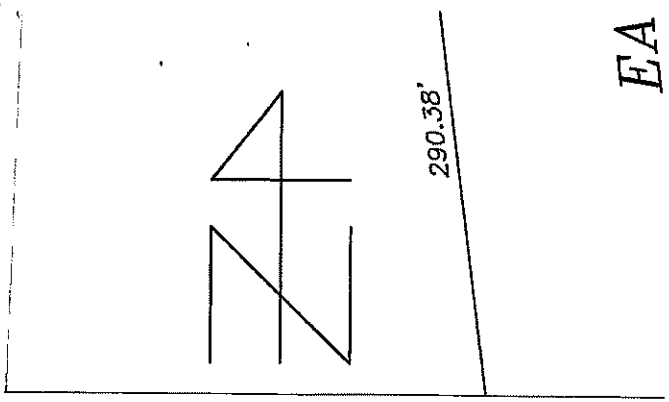
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1

2

3

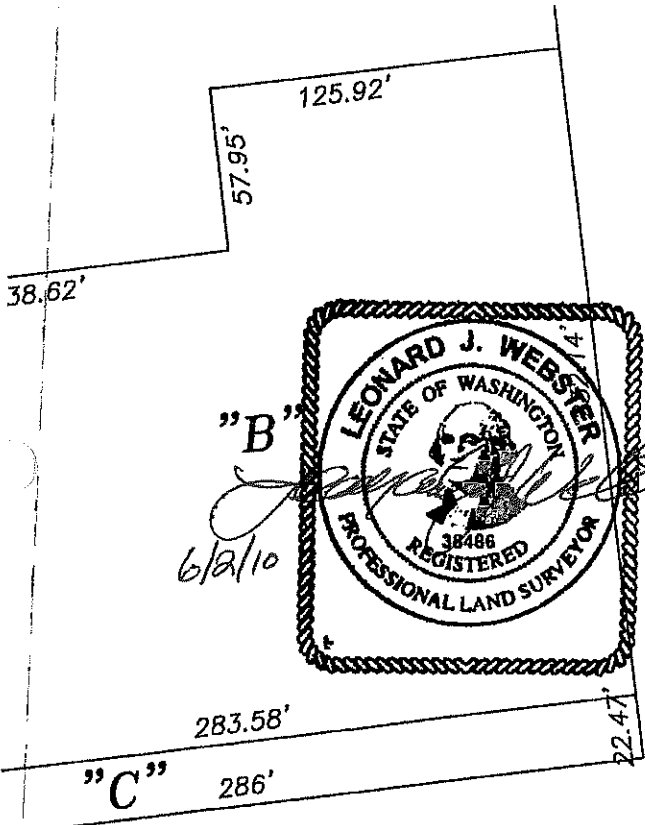




290.38'

EA

NOT TO SCALE



EAST "D" STREET

