

6.4 Restrictive Covenants

Attachment A
JFJ Company Site, Bellingham, WA
September 17, 2001



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D/RC \$11.00
Whatcom County, WA

Request of: CHMELIK SITKIN & DAVIS PS

JFJ COMPANY
Post Office Box 917
Bellingham, WA 98227

DOCUMENT TITLE(S):

RESTRICTIVE COVENANT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

2010901347

Additional reference numbers found on page N/A of document.

GRANTOR(S) (Last name, First name and MI):

JFJ COMPANY

Additional grantors found on page N/A of document.

GRANTEE(S) (Last name, First name, and MI):

CITY OF BELLINGHAM

Additional grantees found on page N/A of document.

ABBREVIATED LEGAL DESCRIPTION (Lot, block, plat or section, township, range):

LOT BB OF THE HASKELL BUSINESS PARK SPECIFIC AND BINDING SITE PLAN #01,
RECORDED UNDER AUDITOR'S FILE NUMBER 2010901347.

Additional legal is on page N/A of document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER(S):

380329 181321; 380329 209260; and 380329 242260

CLIENTS/JFJ COMPANY'S SETTLEMENT/NO COVER SHEET

**RESTRICTIVE COVENANT
LOT BB
HASKELL BUSINESS PARK SPECIFIC AND BINDING SITE PLAN #01**

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

This Restrictive Covenant concerns the following-described real property (the "Property"):

LOT BB OF THE HASKELL BUSINESS PARK SPECIFIC AND BINDING SITE PLAN
#01, RECORDED UNDER AUDITOR'S FILE NUMBER 2010901347.

SITUATE IN THE COUNTY OF WHATCOM, STATE OF WASHINGTON.

The undersigned, JFJ Company, is the fee owner of the Property in the County of Whatcom, State of Washington, that is subject to this Restrictive Covenant.

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

1. (draft) Former Haskell Disposal Site, Focused Site Investigation, Work Plan/Sampling and Analysis Plan - Anchor Environmental and BEK Engineering & Environmental (dated and received: October 20, 2000);
2. Revised Report, Site Conditions and Proposed Remedial Action, WTA MOAB Site, Bellingham, WA - GeoEngineers (dated December 5, 1997);
3. Haskell Business Center, Focused Site Investigation Report - Anchor Environmental and BEK Engineering & Environmental (dated December 7, 2000 and received December 8, 2000);
4. (revised) Haskell Business Center, Focused Site Investigation Report - Anchor Environmental and BEK Engineering & Environmental (dated December 19, 2000 and received December 26, 2000); and,
5. (revised) Haskell Business Center Focused Site Investigation Report - Anchor Environmental and BEK Engineering & Environmental (dated May 17, 2001 and received May 21, 2001).

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

The Remedial Action showed that residual concentrations of low levels of mercury and chromium, which do not exceed the Model Toxics Control Act Method B residential cleanup levels for soil or groundwater established under WAC 173-340-720 and WAC 173-340-740, exist on the Property. This Restrictive Covenant is required because the possibility exists that

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Request of: CHELIK SITKIN & DAVIS PS

favorable circumstances at the site (such as the existing buffer of soils between the dredge spoils and the creek) might be altered by future activities and thus alter the conditions under which the No Further Action ("NFA") determination was awarded.

JFJ Company 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.

Section 1. Any activity on the Property that may result in the release or exposure of the dredge spoils or components thereof to the aquatic environment or create a new spoils-to-surface water exposure pathway is prohibited unless prior written approval from Ecology is obtained. Some examples of activities in the spoils area or between the spoils area and nearby creeks that must receive prior written approval from Ecology include activities which would disturb the fill lying above the spoils or on nearby ground, such as excavating or trenching within 200 feet of the creeks, and activities that could re-route, divert or otherwise modify the contours of the stream beds or banks of either Whatcom Creek or Lincoln Creek. This restriction is not intended to prevent normal excavation, trenching or other earth-moving activities typically associated with construction of storm-water facilities, including detention facilities, buildings or roadways as long as those activities do not result in the release or exposure of the dredge spoils or components thereof to the aquatic environment or create a new spoils-to-surface water exposure pathway.

Section 2. Any activity on the Property that may interfere with the 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, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. Except for a conveyance to the City of Bellingham, 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 continued protection as described herein.

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; however, any use which is carried out pursuant to and consistent with the final "Restoration Plan and Environmental Assessment for the June 10, 1999 Olympic Pipeline Gasoline Spill into Whatcom Creek, Bellingham, Washington" shall not be considered inconsistent with the terms of this Restrictive Covenant.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the

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Attachment B
JFJ Company Site, Bellingham, WA
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D/RC \$13.00
Whatcom County, WA

Request of: CHMELIK SITKIN & DAVIS PS

FREDERICK M. HASKELL
JOEEN DAUGHTERS
JFJ COMPANY
HASKELL CORPORATION
Post Office Box 917
Bellingham, WA 98227

DOCUMENT TITLE(S):

RESTRICTIVE COVENANT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

2010901347

GRANTOR(S) (Last name, First name and MI):

FREDERICK M. HASKELL
JOEEN DAUGHTERS
JFJ COMPANY
HASKELL CORPORATION

GRANTEE(S) (Last name, First name, and MI):

CITY OF BELLINGHAM

ABBREVIATED LEGAL DESCRIPTION (Lot, block, plat or section, township, range):

LOT K OF THE HASKELL BUSINESS PARK SPECIFIC AND BINDING SITE PLAN #01,
RECORDED UNDER AUDITOR'S FILE NUMBER 2010901347.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER(S):

380329 124333; 380329 139337; and 380329 149337

CLIENTS/JFJ COMPANY/SETTLEMENT/PD COVER SHEET

**RESTRICTIVE COVENANT
LOT K
HASKELL BUSINESS PARK SPECIFIC AND BINDING SITE PLAN #01**

This Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Frederick M. Haskell, Joeen Daughters, JFJ Company, and Haskell Corporation, their successors and assigns (collectively the "Owner"), and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

This Restrictive Covenant concerns the following-described real property (the "Property"):

LOT K OF THE HASKELL BUSINESS PARK SPECIFIC AND BINDING SITE PLAN
#01, RECORDED UNDER AUDITOR'S FILE NUMBER 2010901347.

SITUATE IN THE COUNTY OF WHATCOM, STATE OF WASHINGTON.

The undersigned, Frederick M. Haskell, Joeen Daughters, JFJ Company, and Haskell Corporation, are the fee owners of the Property in the County of Whatcom, State of Washington, that is subject to this Restrictive Covenant.

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

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

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Request of: CHELIK SITKIN & DAVIS PS

The Remedial Action showed that residual concentrations of low levels of mercury and chromium, which do not exceed the Model Toxics Control Act Method B residential cleanup levels for soil or groundwater established under WAC 173-340-720 and WAC 173-340-740, exist on the Property. This Restrictive Covenant is required because the possibility exists that favorable circumstances at the site (such as the existing buffer of soils between the dredge spoils and the creek) might be altered by future activities and thus alter the conditions under which the No Further Action ("NFA") determination was awarded.

Frederick M. Haskell, Joen Daughters, JFJ Company, and Haskell Corporation make 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.

Section 1. Any activity on the Property that may result in the release or exposure of the dredge spoils or components thereof to the aquatic environment or create a new spoils-to-surface water exposure pathway is prohibited unless prior written approval from Ecology is obtained. Some examples of activities in the spoils area or between the spoils area and nearby creeks that must receive prior written approval from Ecology include activities which would disturb the fill lying above the spoils or on nearby ground, such as excavating or trenching within 200 feet of the creeks and activities that could re-route, divert or otherwise modify the contours of the stream beds or banks of either Whatcom Creek or Lincoln Creek. This restriction is not intended to prevent normal excavation, trenching or other earth-moving activities typically associated with construction of storm-water facilities, including detention facilities, buildings or roadways, as long as those activities do not result in the release or exposure of the dredge spoils or components thereof to the aquatic environment or create a new spoils-to-surface water exposure pathway.

Section 2. Any activity on the Property that may interfere with the 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, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. Except for a conveyance to the City of Bellingham, 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 continued protection as described herein.

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

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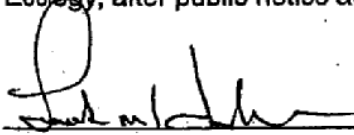
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Request of: CHMELIK SITKIN & DAVIS PS

Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment; however, any use which is carried out pursuant to and consistent with the final "Restoration Plan and Environmental Assessment for the June 10, 1999 Olympic Pipeline Gasoline Spill into Whatcom Creek, Bellingham, Washington" shall not be considered inconsistent with the terms of this Restrictive Covenant.

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 conditions of the Property, taking samples, inspecting remedial actions conducted at the property and inspecting records that are related to remedial actions.

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. Such an instrument may be recorded, however, only if Ecology, after public notice and opportunity for comment, concurs.

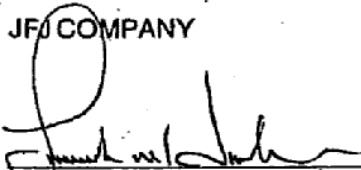


Frederick M. Haskell



Joeen Daughters

JFJ COMPANY

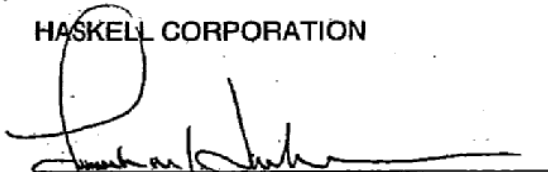


Frederick M. Haskell,
General Partner



Joeen Daughters,
General Partner

HASKELL CORPORATION



Frederick M. Haskell,
President

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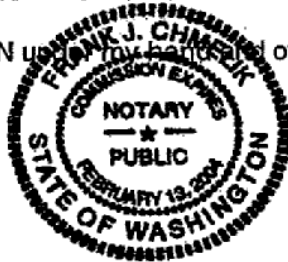
Whatcom County, WA

Request of: CHMELIK SITKIN & DAVIS PS

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day personally appeared before me **FREDERICK M. HASKELL** to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN upon my hand and official seal this 13th day of September, 2001.



Frank J. Chmelik

Print Name: FRANK J. CHMELIK
NOTARY PUBLIC in and for the
State of Washington, residing at BELLINGHAM

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day personally appeared before me **JOEEN DAUGHTERS** to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN upon my hand and official seal this 13th day of September, 2001.



Frank J. Chmelik

Print Name: FRANK J. CHMELIK
NOTARY PUBLIC in and for the
State of Washington, residing at Bellingham

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Request of: CHMELIK SITKIN & DAVIS PS

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 13 day of September, 2001, before me, a Notary Public of the State of Washington, duly commissioned and sworn, appeared **FREDERICK M. HASKELL** and **JOEEN DAUGHTERS**, known to me to be General Partners of **JFJ COMPANY**, who executed the foregoing document and acknowledged the same to be the free and voluntary act and deed of said partnership for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the document.

Given under my hand and official seal this 13th day of September, 2001.



Frank J. Chmelik
Print name: FRANK J. CHMELIK
NOTARY PUBLIC in and for the State of
Washington, residing in Bellingham
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 13 day of September, 2001, before me, a Notary Public of the State of Washington, duly commissioned and sworn, appeared **FREDERICK M. HASKELL**, known to me to be the President of **HASKELL CORPORATION**, who executed the foregoing document and acknowledged the same 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 was authorized to execute the document.

Given under my hand and official seal this 13th day of September, 2001.



Frank J. Chmelik
Print name: FRANK J. CHMELIK
NOTARY PUBLIC in and for the State of
Washington, residing in Bellingham
My commission expires: _____

CLIENTS: JFJ COMPANY/OLYMPIC SETTLEMENT/RESTRICTIVE COVENANT LOT K 00-07-01 (REV)

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