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 PIERCE COUNTY, WASHINGTON

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Washington State  
 Department of Ecology

Name & Return Address:

Graymont Western US Inc

3950 S. 700 E. Suite 301

Salt Lake City, Ut 84107

Please print legibly or type information.

|   |   |
|---|---|
| Document Title(s)   | Graymont Western, Tacoma Plant Restrictive Covenant     |
| Grantor(s)  | Graymont Western US Inc.                                |
|   | <u>0</u> Additional Names on Page <u>1</u> of Document  |
| Grantee(s)  | State of Washington, Department of Ecology              |
|   | <u>0</u> Additional Names on Page <u>1</u> of Document  |
| Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section)  |   |
|   | Complete Legal Description on Page <u>2</u> of Document |
| Auditor's Reference Number(s)   | 200108010772  |
| Assessor's Property Tax Parcel/Account Number(s)  | 0321274000  |
| <p>The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p> <p>I am requesting an emergency nonstandard 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 part of the text of the original document.</p> |   |
| <p>_____<br/>         Signature of Requesting Party (Required for non-standard recordings only)<br/>         Gpeovst.doc rev 4/02</p>   |   |

**Graymont Western US, Inc.**

MAR 06 2009

**Restrictive (Environmental) Covenant**

After Recording Return to:  
Scott Rose  
Department of Ecology  
Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504-7775

**Environmental Covenant**

**Grantor:** Graymont Western US Inc.  
**Grantee:** State of Washington, Department of Ecology  
**Legal:** Latitude 47°16'16" Longitude 122°23'48"  
**Tax Parcel Nos.:** 0321274000  
**Cross Reference:** 200108010772

Grantor, Graymont Western US Inc., 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 29<sup>th</sup> day of October, 2008 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 Graymont Western US, Inc., 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 document[s]:

*Remedial Investigation Report prepared by Bison Engineering, Inc. for Continental Lime Inc.  
Supplemental Groundwater Investigation and Feasibility Study Report by CH2M HILL for  
Graymont Western US, Inc.*

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

This Covenant is required because the Remedial Action resulted in residual concentrations of Total Petroleum Hydrocarbons as gasoline and diesel (TPHG, TPHD) which exceed the Model Toxics Control Act Method A Residential Cleanup Levels for Soil and Groundwater Cleanup Standards established under WAC 173-340-740 and 720.

The undersigned, Graymont Western US, Inc., is the fee owner of real property (hereafter "Property") in the County of Pierce County, State of Washington, that is subject to this Covenant. The Property is legally described as follows:

Commencing at the point of intersection of the extension of the southeasterly line of East 11<sup>th</sup> Street and the southwesterly line of Alexander Avenue;  
Thence southeasterly with said southwesterly line of Alexander Avenue, 120 feet, more or less, to the southeasterly line of Lot 26, Block 9, of State Land Commissioner's Replat of Blocks 13 thru 48, inclusive, Tacoma Tidelands (formerly in King County), commonly known as Ashton's Replat, filed December 23, 1918, situate in the city of Tacoma, County of Pierce, State of Washington, said point being the true point of beginning;  
Thence continuing southeasterly with said southwesterly line 1,423.45 feet to a point;  
Thence southwesterly parallel to the southeasterly line of East 11<sup>th</sup> Street, a distance of 770 feet to the northeasterly pierhead line of the Port Industrial Waterway;  
Thence northwesterly along northeasterly pierhead line of Port Industrial Waterway a distance of 815.70 feet;

Thence northeasterly parallel to the southeasterly line of East 11<sup>th</sup> Street, a distance of 370 feet to a point;  
Thence northwesterly parallel to the southwesterly line of Alexander Avenue a distance of 607.75 feet to a point on the southeasterly line of Lot 13, Block 9, said State Land Commissioner's Replat;

Thence northeasterly with southeasterly lines of Lots 13 thru 26, inclusive, in said Block 9, 400 feet to the true point of beginning.

Situate in the County of Pierce, State of Washington.

Graymont Western US, Inc. 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. The Property contains TPH as gasoline and diesel (TPHG, TPHD) contaminated soil located as outlined in Exhibit A. The area includes subsurface soil from the south-west corner of the coal storage tent through the PCC plant to the east side of the settling pond.

The Owner shall not alter, modify, or remove the existing structures or uncontaminated soil layer on the Property 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. Some examples of activities that require prior approval from Ecology include drilling, digging, bulldozing, earthwork, or grading below the existing structures or clean soil layer.

Monitored natural attenuation (MNA) will be conducted to address contamination. A Long-Term Groundwater Monitoring Plan is included as Exhibit B. As noted in the plan, one monitoring event per year will be sufficient to monitor the progress of MNA at the site. Since the highest concentrations of TPHG in groundwater occurred in the winter, the annual event will take place during the winter (December to February period).

Field, laboratory, and evaluation results will be compiled and incorporated into an annual groundwater monitoring report. This report will include a summary of conditions at the site, field and laboratory data tables, the assessment of MNA progress, and any recommendations for changes to the monitoring program. The report will be submitted approximately 60 days after completion of field sampling activities.

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

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) 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. 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.

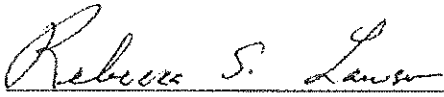
**GRAYMONT WESTERN U.S., INC.**

  
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**Scott Mork**  
**Director, Western US Production**

Dated: Feb 23, 2009

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



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Rebecca S. Lawson, P.E., LHG  
Section Manager  
Toxics Cleanup Program  
Southwest Regional Office


Dated: 3/9/2009

Auditor's notation  
to facilitate  
scanning process

STATE OF Utah  
COUNTY OF Salt Lake

On this 23<sup>rd</sup> day of February, 2009, I certify that Scott Mark personally appeared before me, acknowledged that he/she is the Director of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said corporation.

Janna Llewellyn  
Notary Public in and for the State of Utah  
Utah, residing at Salt Lake County  
My appointment expires 10/15/2012

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|---|--|
|  | JANNA LLEWELLYN<br>Notary Public<br>State of Utah<br>My Commission Expires 10/15/2012<br>COMMISSION # 576294 |
|---|--|