



CITY OF SPOKANE-ATTN DELGADO
DEPT OF ENGINEERING SERVICES
808 W SPOKANE FALLS BLVD
SPOKANE WA 99201

RESTRICTIVE COVENANT SPOKANE COUNTY PARCEL No. 35174.0009
OPR 2019-0642

Spokane County Parcel No. 35174.0009 is part of the property that is the subject of this Restrictive Covenant is the subject of a remedial action under Chapter 70.105D.RCW. The work will be done to clean up the property and conduct long-term operation and maintenance (hereafter the "Cleanup Action") is described in the Consent Decree ("Decree") entered in State of Washington, Department of Ecology v. Avista Corporation and The Burlington Northern and Santa Fe Railway Company, Spokane County Superior Court Cause No. 02205445-0, and in attachments to the Decree and in documents referenced in the Decree. This Restrictive Covenant is required by the Department of Ecology under WAC 173-340-440 because the Cleanup Action on the Site will result in residual soil and ground water concentrations of Total Petroleum Hydrocarbons (TPH), Polycyclic Aromatic Hydrocarbons (PAH), Carbazole, Cyanide, Arsenic, Barium, Lead, and Selenium which exceed Method A or Method B residential cleanup levels.

Parcel Legal Description: 17 25 43 PTN OF SE1/4 OF NE1/4 DEEDED TO BURLINGTON FOR R RR/W

The undersigned, City of Spokane, is the fee owner of real property (hereafter "the Property") in the County of Spokane, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and incorporated herein by reference.

City of Spokane 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 No groundwater may be taken for domestic, commercial, industrial, or any other purposes from the Property unless the ground water removal is part of monitoring activities associated with an Ecology-approved compliance monitoring plan. No production wells will be installed within the Property.

Section 2

The Site shall not be used for residential purposes.

Section 3

Any activity on the Property that results in the release or exposure to the environment of the contaminated soil or groundwater that was contained as part of the Cleanup Action, or that creates a new exposure pathway, is prohibited without prior written approval by the Department of Ecology.

Excavation of contaminated soil is prohibited, unless approved by Ecology, for the following exceptions:

Excavation performed to repair, maintain, service or remove underground utility components, conduits, installations or channels.

Drilling, driving, or boring to install pilings for allowable and approved construction.

All contaminated soil and/or ground water to be generated from approved excavation activities must be treated or disposed of according to all state, federal and local regulations.

Workers conducting approved excavations must use appropriate personal protective equipment as required by the Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISI-IA).

Section 4

The Owner of the Property shall adhere to the requirements of the Decree and the Cleanup Action Plan (CAP) issued by the Department of Ecology for the Property. Any activity on the Property that may interfere with the integrity of the Cleanup Action and continued protection of human health and the environment is prohibited. Examples of activities that are prohibited include:

Activities that would disturb the cap or cover of the contaminated soils, such as drilling, digging, placing any objects or using any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, or bulldozing or earthwork.

Activities that would disturb or overload the storm water system.

Excessive applications of water for purposes such as irrigation, washing/rinse down pad, etc.

Use or storage of chemicals (e.g., solvents, detergents or other surfactants, etc.) that result in the mobilization of contaminants in soils or ground water contained on Site.

This restriction recognizes that maintenance or construction activities at the Property conducted in accordance with the CAP requirements shall not constitute activities that interfere with the Cleanup Action.

Section 5 No activity is allowed that may change the hydrogeologic conditions and cause the movement of contaminated ground water to areas outside the impacted soil area.

Section 6 Any construction over the Site (i.e., buildings and concrete surfaces, pavement, etc.) must address and mitigate, as necessary, potential vapor build-up due to contamination left on Site.

Section 7 The Owner of the Property must give thirty (30) day advance written notice to the Department of Ecology of any conveyance of 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 Cleanup Action on the Property.

Section 8 The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions herein on the use of the Property.

Section 9 The Owner must notify and obtain approval from the Department of Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. The Department of Ecology may approve an inconsistent use only after public notice and comment.

Section 10 The Owner shall allow authorized representatives of the Department of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Cleanup Action; to take samples, to inspect Cleanup Actions conducted at the Property, and to inspect records that are related to the Cleanup Action.

Section 11 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. However, such an instrument may be recorded only if the Department of Ecology, after public notice and comment, consents in writing.

The undersigned Grantor warrants he/she holds the title to the Parcel No 35174.0009 in the County of Spokane, WA and has authority to execute this Covenant.

Executed this 24th day of July, 2019

by Scott Simmons
Scott Simmons

CITY OF SPOKANE,

its Public Works Director

STATE OF WASHINGTON

COUNTY OF SPOKANE

On this 24th day of July, 2019, I certify that Scott Simmons personally appeared before me, acknowledged that he is the PUBLIC WORKS DIRECTOR of City of Spokane, 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 was authorized to execute said instrument for said corporation.

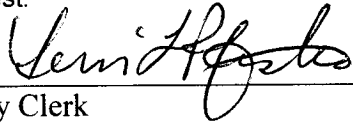
Frances Perkins
Notary Public in and for the State of Washington ¹⁶

Residing at Spokane

My appointment expires 12/3/19



Attest:



City Clerk

Approved as to form:



Assistant City Attorney



ATTACHMENT A

That portion of the Southeast Quarter of Section 17, Township 25 North, Range 43 E.W.M. described as follows:

COMMENCING at the intersection of the Easterly line of Division Street, according to the recorded plat of the Third Addition to the Railroad Addition of Spokane, as per plat thereof recorded in Volume "A" of Plats, page 113, and the Southerly line of Trent Avenue, according to said plat; thence South $03^{\circ}04'31''$ East along said Easterly line of Division Street a distance of 962.93 feet; thence North $57^{\circ}05'20''$ East a distance of 164.69 feet to the point of curve of a 1352.61 foot radius curve to the right; thence along said curve through a central angle of $17^{\circ}27'28''$ an arc length of 412.14 feet; thence North $74^{\circ}32'48''$ East a distance of 1708.23 feet to the point of curve of a 2230.0 foot radius curve to the right; thence along said curve through a central angle of $05^{\circ}54'49''$ an arc length of 230.16 feet to the point of compound curve of a 844.95 foot radius curve to the right, the center of circle of which bears South $09^{\circ}32'23''$ East; thence along the arc of said curve, through a central angle of $25^{\circ}01'29''$ an arc length of 369.04 feet to the point of compound curve of a 2230.0 foot radius curve to the right, the center of circle of which bears South $15^{\circ}29'06''$ West; thence along the arc of said curve through a central angle of $00^{\circ}38'24''$ an arc length of 24.91 feet; thence North $33^{\circ}32'14''$ East a distance of 154.75 feet to a point on the Southerly right of way line of the former Chicago, Milwaukee and Puget Sound Railway Company, said point being distant 15.0 feet Southerly of, as measured radially to, the "Survey" Main Track centerline of said Railroad, as now located and constructed, said point also being the true point of beginning; thence Southeasterly parallel and concentric with said Chicago, Milwaukee and Puget Sound Main Track centerline to the point of intersection with a line drawn parallel and concentric with and distant 200.0 feet Northerly of, as measured radially to, Burlington Northern Railroad Company's (formerly Northern Pacific Railway Company's) Old Main Track centerline, as originally located and constructed; thence Easterly parallel and concentric with said Old Main Track centerline a distance of 295.0 feet, more or less, to the point of intersection with a line drawn at right angles to Burlington Northern Railroad Company's (formerly Northern Pacific Railway Company's) New Main Track centerline, as now located and constructed at the point of compound curvature of said New Main Track centerline; thence Southeasterly at right angles to said New Main Track centerline to the point of intersection with a line drawn parallel and concentric with and distant 50.0 feet Northerly of, as measured radially to, said Railroad Company's Yard Track centerline, as now located and constructed; thence Westerly parallel and concentric with said Yard Track centerline to the point of intersection with a line which bears South $33^{\circ}32'14''$ West from the true point of beginning; thence North $33^{\circ}32'14''$ East to the true point of beginning; Situate in the City of Spokane, County of Spokane, State of Washington.