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AUDITOR, Pierce County, WASHINGTON

RECEIVED

DEC 24 2018

After Recording Return
Original Signed Covenant to: ¹
Nnamdi Madakor
Technical Programs Manager

POLLUTION LIABILITY
INSURANCE AGENCY

PLIA
P.O. Box 40930
Olympia, WA 98504-0930

AUDITOR'S NOTE

LEGIBILITY FOR RECORDING AND COPYING UN-
SATISFACTORY IN A PORTION OF THIS INSTRU-
MENT WHEN RECEIVED

Environmental Covenant

Grantor: Graham Real Ventures, LLC, C/O Robert R. Graham
Grantee: State of Washington, Pollution Liability Insurance Agency (hereafter "PLIA")
Brief Legal Description: Section 05 Township 20 Range 04 Quarter 32
Tax Parcel Nos.: 0420057009 and 0420057010

RECITALS ²

- 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 **H&H Diesel (former) Facility ID# 89863773**. 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: ³

Medium	Principal Contaminants Present
Soil	Gasoline-, Diesel-, and Oil-Range Petroleum Hydrocarbons (TPH), and Benzene, Toluene, Ethylbenzene, and Xylenes (BTEX)
Groundwater	Gasoline-, Diesel-, and Oil-Range TPH

- 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

¹ Some counties keep the original Covenant, others don't. If the signed original is available, it must be sent to PLIA. If the signed original is not available, send a legible copy to PLIA.

² This section is primarily used to describe this document and its purpose. It should not be used for substantive binding provisions.

³ List the contaminants for the associated media. If more than a few are present, list the top three to five for each medium.

site. Records describing the extent of residual contamination and remedial actions conducted are available through PLIA.

e. This Covenant grants PLIA certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, PLIA 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 PLIA as an “agency” under UECA, other than its’ right as a holder, are not an interest in real property.

COVENANT

Graham Real Ventures, LLC, C/O Robert R. Graham, as Grantor and owner of the Property hereby grants to the Washington State Pollution Liability Insurance Agency (PLIA), 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 PLIA.
- 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 PLIA. 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 on grade north of the excavation and located around the underground vault as illustrated in **Exhibit B**. The primary purpose of this cap is to create a barrier between receptors and the contaminants left under the asphalt. As such, the following restrictions shall apply within the area illustrated in **Exhibit C**:

Any activity on the Property 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 PLIA. The Grantor shall report to PLIA within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by PLIA in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to PLIA within thirty (30) days of completing the repairs.

b. Storm water facilities.

To minimize the potential for mobilization of contaminants remaining in the soil/groundwater on the northern part of the Property, no stormwater infiltration facilities or ponds shall be constructed within the area of the Property illustrated in **Exhibit C**. All stormwater catch-basins, conveyance systems, and other appurtenances located within this area shall be of water-tight construction. The Grantor must ensure that the design and management of the stormwater facilities at this Property does not exacerbate and create a renewed plume movement of the contained petroleum contaminated groundwater at this site.

c. Groundwater use. The groundwater beneath the property shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

d. Monitoring. Several groundwater monitoring wells as identified in the no further action (NFA) determination are located on the Property to monitor the performance of the remedial action. Monitoring shall be conducted and reported as outlined in the NFA and a *Groundwater Monitoring and Contingency Plan approved by PLIA*. The Grantor shall maintain clear access to these devices and protect them from damage as long as the contamination remains. The Grantor shall report to PLIA within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless PLIA approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to PLIA within thirty (30) days of completing the repairs.

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 PLIA 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 AND C, including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to PLIA 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 POLLUTION LIABILITY INSURANCE ON [DATE] AND RECORDED WITH THE [COUNTY] COUNTY AUDITOR UNDER RECORDING NUMBER [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 PLIA, provide PLIA 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 PLIA.

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 PLIA 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.

Mr. Robert Graham 18811 16th Avenue South Seattle, Washington 98188 (206) 763-9734 <u>rob@grahamtrucking.com</u>	Nnamdi Madakor P.Hg, P.G. Technical Programs Manager Washington State Pollution Liability Insurance Agency P.O. Box 40930 Olympia, WA 98504-0930 (800) 822-3905 www.plia.wa.gov
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Section 5. Modification or Termination.

a. Grantor must provide written notice and obtain approval from PLIA 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. ⁴ For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site: ⁵

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

ii. If PLIA 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 PLIA 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 PLIA, 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 PLIA 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. PLIA 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 PLIA, 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 PLIA of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of PLA under this Covenant.

⁴ Example of inconsistent uses are using the Property for a use not allowed under the covenant (i.e. mixed residential and commercial use on a property restricted to industrial uses), OR drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

⁵ An example of an activity that is unlikely to be considered a permanent modification is a proposal to disturb a cap to repair an existing underground utility that passes through the site. However, installing a new underground utility within a capped area would be a permanent change.

d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by PLIA, shall be obligated to pay for PLIA'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.

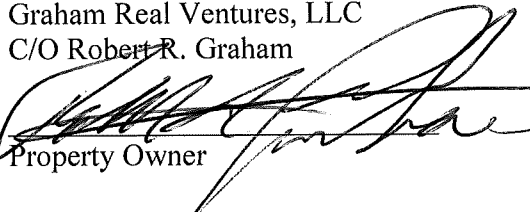
f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though 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 7th day of December, 2018.

Graham Real Ventures, LLC
C/O Robert R. Graham



Property Owner

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF King

On this 7th day of December, 2018, I certify that Robert Graham 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.

JAMES HENTON
Notary Public
State of Washington
My Commission Expires
February 09, 2022


Notary Public in and for the State of Washington ⁶
Residing at 4541 NE 55th Pl, Seattle, 98105
My appointment expires 9 Feb 2022

⁶ Where landowner is located out of state, replace with appropriate out-of-state title and location.

The Pollution Liability Insurance Agency, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON
POLLUTION LIABILITY INSURANCE AGENCY


Nnamdi Madakor

Technical Programs Manager
PLIA

Dated: DECEMBER 13, 2018


STATE ACKNOWLEDGMENT

STATE OF WASHINGTON

COUNTY OF THURSTON

On this 13TH day of DECEMBER, 2018, I certify that NNAMDI MADAKOR personally appeared before me, acknowledged that **he/she** is the REPRESENTATIVE 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.

AMANDA WHITE
Notary Public
State of Washington
My Commission Expires
April 01, 2022


Notary Public in and for the State of Washington

Residing at YELM, WA 98597

My appointment expires APRIL 01, 2022

Exhibit A

LEGAL DESCRIPTION

PARCEL #0420057009

**SECTION 05 TOWNSHIP 20 RANGE 04 QUARTER 32 L 1 OF DBLR 96-08-29-0629 DESC AS L 1
OF S P 93-01-22-0833 EXC E 2.26 FT TOG/W EASE & RESTRICTIONS OF RECORD
OUT OF 3-031 SEG E-1203 SG 03-18-93CL DC11/25/96JU**

AND

PARCEL #0420057010

**SECTION 05 TOWNSHIP 20 RANGE 04 QUARTER 31 : L 2 OF DBLR 96-08-29-0629 DESC AS L
2 OF S P 93-01-22-0833 TOG/W E 2.26 FT OF L 1 OF SD S P TOG/W EASE &
RESTRICTIONS OF REC OUT OF 3-031 SEG E-1203 SG 03-18-93CL DC11/25/96JU**

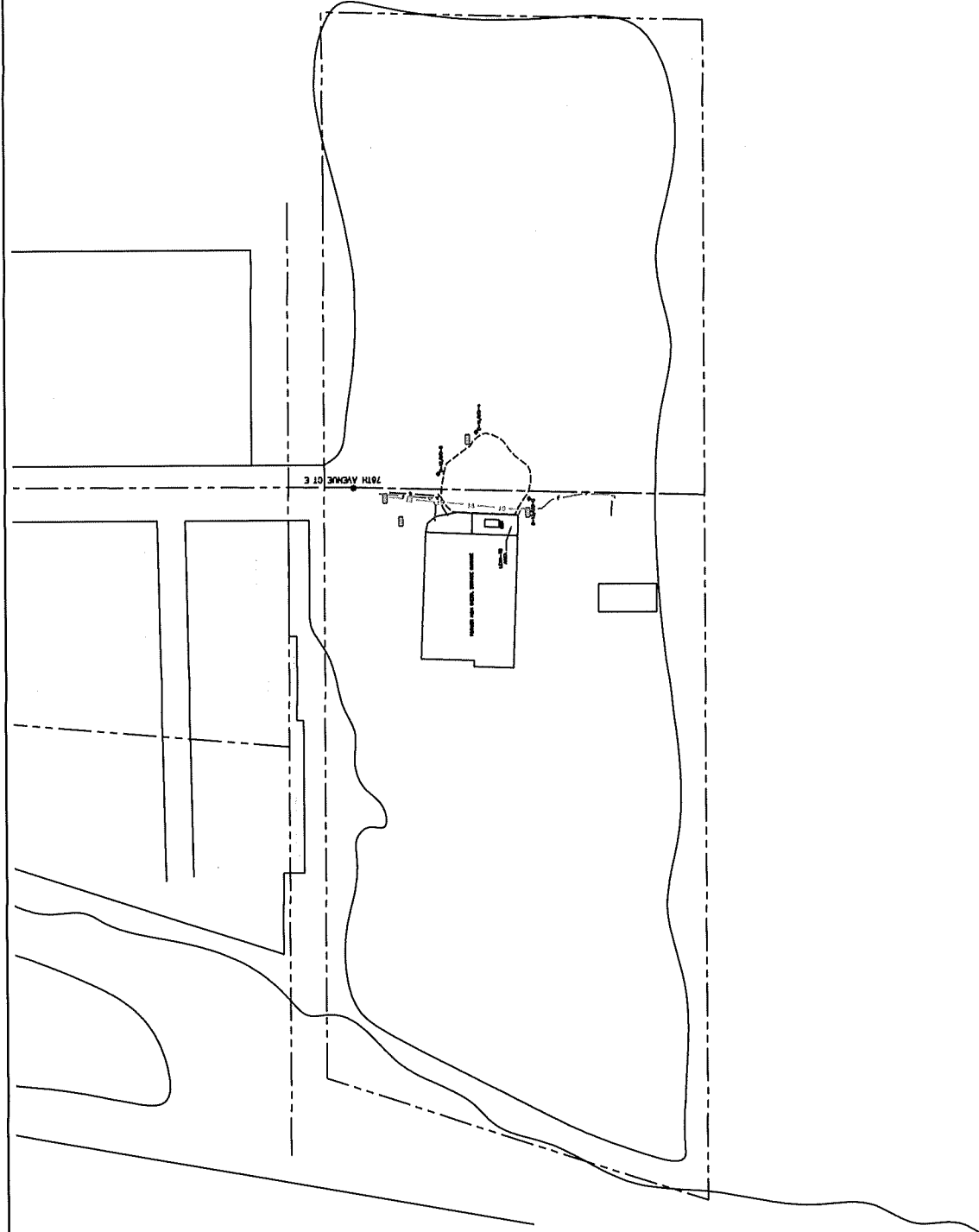
Exhibit B

PROPERTY MAP

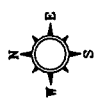
**Auditor's notation
to facilitate
scanning process**

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to facilitate
scanning process**

FILENAME	DRAWN BY	CHECKED BY	APPROVED BY	PROJECT NUMBER
15-112 COMBINED OLD AND NEW CON.DWG	DB	DB	DB	15-112
	10/30/2018	10/30/2018	10/30/2018	



- LEGEND**
- PROPERTY LINE
 - GROUNDWATER MONITORING
 - WELL LOCATION (AEG)
 - STORM DRAIN/CATCH BASIN
 - STORM WATER LINE
 - ELECTRIC LINE
 - STORM WATER LINE

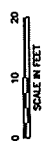


NOTES

1. THE LOCATIONS OF ALL FEATURES SHOWN ARE APPROXIMATE
2. THIS DRAWING IS FOR INFORMATION PURPOSES. IT IS INTENDED TO ASSIST IN SHOWING FEATURES DISCUSSED IN AN ATTACHED DOCUMENT.

REFERENCE

DRAWING CREATED FROM AERIAL PHOTOGRAPH AND NOTES PROVIDED BY AEG, LLC.



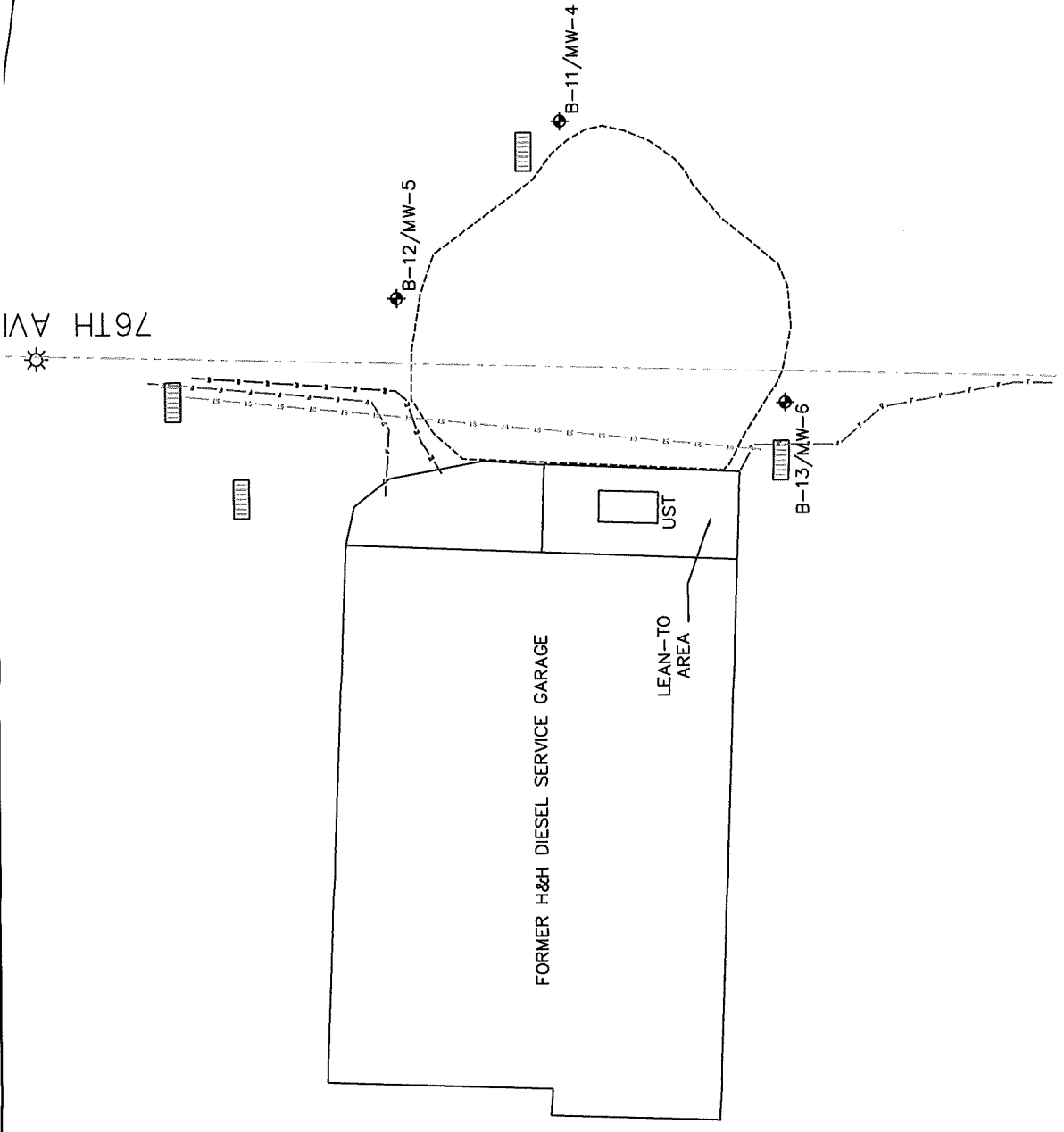
Associated Environmental Group, LLC


FIGURE 1

EXTENDED SITE MAP

H & H PROPERTY
407 PORTER WAY
MILTON, WASHINGTON

FILENAME	15-112_COMBINED OLD AND NEW Dwg	DRAWN BY	10/30/2018	CHECKED BY	10/30/2018	APPROVED BY	10/30/2018	PROJECT NUMBER	15-112
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Associated Environmental Group, LLC

FIGURE 2

SITE MAP

H & H PROPERTY
407 PORTER WAY
MILTON, WASHINGTON

Exhibit C

MAP ILLUSTRATING LOCATION OF RESTRICTIONS

**Auditor's notation
to facilitate
scanning process**

**Auditor's notation
to facilitate
scanning process**

FILENAME	DRAWN BY	CHECKED BY	APPROVED BY	PROJECT NUMBER
15-112_COMBINED OLD AND NEW EIR.DWG	10/30/2018	08	10/30/2018	08

