

After Recording Return  
Original Signed Covenant to:  
Jerome Cruz, Ph.D.  
Toxics Cleanup Program  
Department of Ecology  
Northwest Regional Office  
3190 - 160th Ave. SE  
Bellevue, WA 98008

### Environmental Covenant

**Grantor:** City of Bothell

**Grantee:** State of Washington, Department of Ecology (hereafter "Ecology")

**Brief Legal Description:** King County Tax Parcel 9457200050 [Parcel #7 of City of Bothell Boundary Line Adjustment No. 2015-07556 recorded under King County Recording No. 20150819900001] and tax parcel 2374200065;

**Tax Parcel Nos.:** 9457200050, 2374200065

**Cross Reference:** Bothell Former Hertz Site Agreed Order No. DE 15747 (May 31, 2018); Bothell Service Center Simon and Sons Site First Amended Consent Decree, No. 18-2-02852-3 SEA.

**RECITALS**

#981111  
⑨

THIS DOCUMENT IS RECORDED  
AS A COURTESY ONLY.  
FIRST AMERICAN TITLE INSURANCE CO.  
ASSUMES NO LIABILITY FOR  
SUFFICIENCY, VALIDITY OR ACCURACY

- 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 of the Bothell Hertz Site (Facility Site ID No. 11687976), the Bothell Service Center Simon and Sons Site (BSCSS) (Facility Site ID No. 33215922), and the Al's Auto Bothell Wexler Property Site (Wexler) (Facility Site ID No. 63618231). The Wexler contamination is being addressed along with the BSCSS contamination under the Bothell Service Center Amended Consent Decree. The Hertz contamination is being addressed under Agreed Order No. DE 15747.
- c. The Property consists of King County Tax parcels 9457200050 and 2374200065 and is depicted on Exhibit A (hereafter "Property"). If there are differences between the legal descriptions and illustrations in the Exhibit, the legal description shall prevail.
- d. The Bothell Former Hertz Site also includes portions of Bothell Way NE, and King County Tax parcel No. 9457200015, which are addressed separately. The Bothell Service Center Site also extends to parcel number 2374200091, the Right-of-Way west of parcel 2374200091, and portions of 98<sup>th</sup> Avenue NE, which are addressed separately.

e. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on portions of the Property. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Groundwater	Petroleum hydrocarbons, Arsenic, Tetrachloroethene (PCE), Trichloroethene (TCE), Cis-1,2 Dichloroethene (DCE), Vinyl Chloride (VC), benzene
Soil	Tetrachloroethene (PCE), Trichloroethene (TCE), Cis-1,2 Dichloroethene (DCE), and Vinyl Chloride (VC), gasoline, ethylbenzene, xylenes, naphthalene

f. 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 site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology, including Cleanup Action Plans for the above-described sites.

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

### COVENANT

The City of Bothell, as Grantor and fee simple owner of the Property and easement holder, hereby grants to the Washington State Department of Ecology, 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 Ecology.

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 Ecology. 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. Any lease shall provide reasonable access for the purposes stated in Section 3 (Access).

**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.** The remedial action for the Hertz Site is not based on containing contaminated soil under a cap, but the northern portion of the Property is impacted by BSCSS and Wexler contamination. Any activity the Property that may disturb contaminated soil is prohibited without prior written approval by Ecology. Examples of such activity include: drilling; digging; excavation; or installation of underground utilities.

**b. Groundwater use.** The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. This covenant allows investigation, monitoring or remediation necessary to implement remedial action or monitoring for the above-listed sites. Drilling of a well for any water supply purpose is strictly prohibited on the Property. 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.

**c. Equipment & Ongoing Remediation.** Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial actions. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

A bioremediation/ recirculation system (consisting of injection wells, extraction and monitoring wells, piping, pumps, tanks, and other treatment system components) is located on the Property. The system's purpose is to extract and treat contaminated groundwater, add bioremediation agent, and reinject it to remediate the solvent plume. The Grantor shall maintain clear access to system components and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the system.

The Grantor may not decommission, modify, or relocate wells or other components of the remediation system without Ecology's approval. Substantial changes from the Cleanup Action Plan(s) must receive public notice and comment.

**d. Vapor Controls.** The Property is impacted by volatile compounds which may generate harmful vapors. Unless and until data from the remedial actions show achievement of cleanup

levels sufficient to protect indoor air from vapor intrusion, a developer must mitigate for potential vapor intrusion. As such, the following restrictions shall apply to the Property to minimize the potential for exposure to these vapors:

1. No building or other enclosed structure shall be constructed unless vapor mitigation measures have been approved by Ecology.
2. Buildings or other enclosed structures shall be constructed with vapor barriers and venting systems that are operated and maintained to prevent the migration of vapors into the building or structure, unless an alternative approach is approved by Ecology.
3. Indoor air may be sampled in accordance with the Cleanup Action Plans for BSCSS and/or Wexler, as applicable. Grantor will provide access to parties under order, or their authorized representatives, to perform sampling as provided below.

**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 Ecology and its authorized representatives, and parties under a cleanup order and their 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.

**Section 4. Notice Requirements.**

- a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, and security or other interests, must:
  - i. Provide written notice to Ecology 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 DEPARTMENT OF ECOLOGY ON \_\_\_\_\_, 2020 AND RECORDED WITH THE KING COUNTY AUDITOR UNDER 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 Ecology, provide Ecology 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 Ecology.

**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 Ecology 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.

Jennifer Phillips City Manager City of Bothell 18415 101st Avenue NE Bothell, WA 98011 (425) 806-6100 <a href="mailto:jennifer.phillips@bothellwa.gov">jennifer.phillips@bothellwa.gov</a>	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 <a href="mailto:ToxicsCleanupProgramHQ@ecy.wa.gov">ToxicsCleanupProgramHQ@ecy.wa.gov</a>
--	---

**Section 5. Modification or Termination.**

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

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

ii. If Ecology 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 Ecology 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.

**Section 6. Enforcement and Construction.**

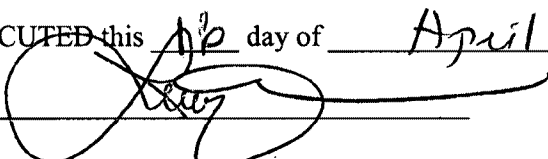
**a.** This Covenant is being freely and voluntarily granted by the Grantor.

**b.** Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology 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. Ecology 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 Ecology, 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 Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology'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 that the City of Bothell holds the title to the Property and the authority to execute this Covenant.

EXECUTED this 16 day of April, 2020.

  
\_\_\_\_\_

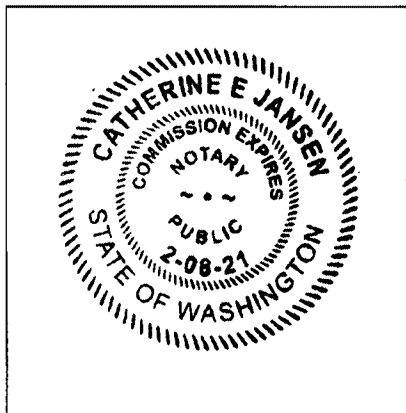
By: Jennifer Phillips

Title: City Manager

STATE OF WASHINGTON

COUNTY OF KING

This record was acknowledged before me on April 16, 2020 by Jennifer Phillips as the City Manager of the City of Bothell.



(Stamp)

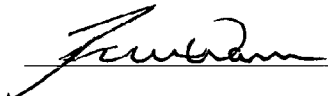
Catherine E. Jansen  
(Signature of notary public)

Notary Public  
(Title of office)

My Commission Expires: 2-8-21  
(Date)

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



By: ROBERT W. WARREN

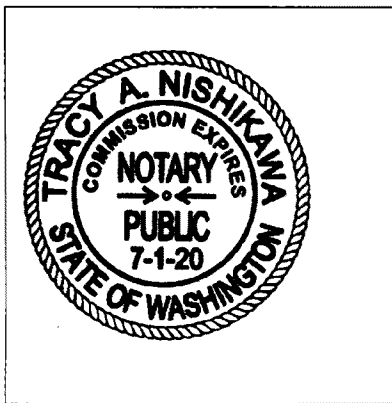
Title: SECTION MANAGER

Dated: 5/1/2020

STATE OF Washington

COUNTY OF King

This record was acknowledged before me on May 1st, 2020 by Robert W. Warren  
as the TCD Section Manager of the Dept. of Ecology



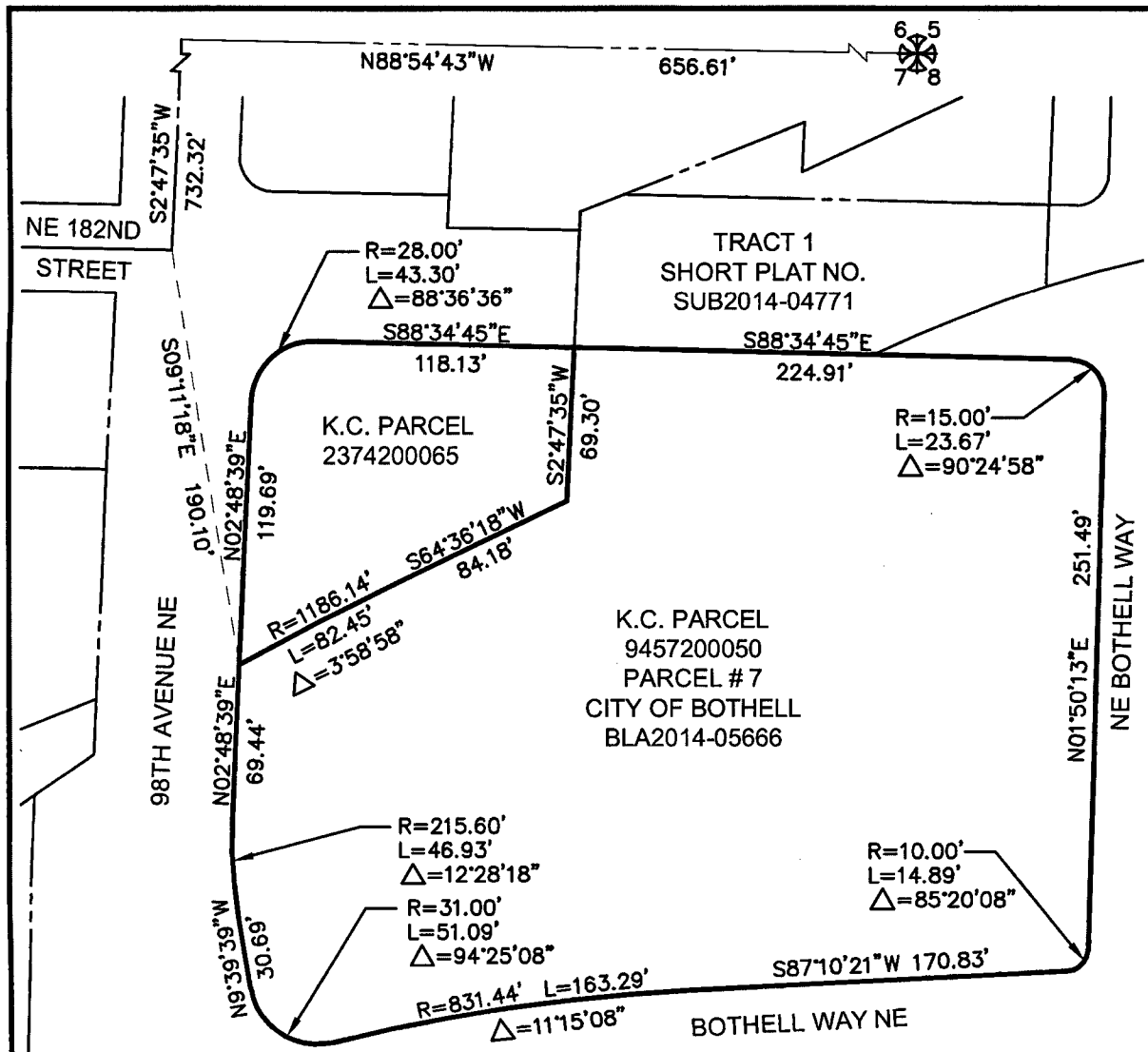
(Stamp)

Tracy A. Nishikawa  
(Signature of notary public)

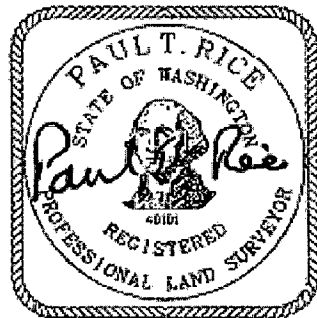
Notary Public  
(Title of office)

My Commission Expires: 7/1/2020  
(Date)





2020-04-08



8420 154th Avenue NE  
Redmond, Washington 98052  
425-869-2670

ENVIRONMENTAL  
COVENANT AREA  
BOTHELL, WA

PROJECT	13836-08
DATE	04/08/2020
SCALE	1"=80'

EXHIBIT A