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09/04/2020 12:30 PM Pages: 1 of 17 Fees: \$119.50
Skagit County Auditor

After Recording Return
Original Signed Covenant to:
Jing Song
Toxics Cleanup Program
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008

Environmental Covenant

Grantor: DL Skagit Property, LLC

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

Brief Legal Description: TRACTS 4, 4A, and 4B, SHORT PLAT NO. 1977, AUDITOR'S
FILE NOS. 856677 AND 856678, RECORDS OF SKAGIT COUNTY, WASHINGTON.

Tax Parcel No.: Skagit County P24084

RECITALS

- 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 **Skagit Subaru, Ecology Facility Site ID 53958836, Cleanup Site ID 13201, Voluntary Cleanup Program # NW3118**. 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:

| Medium | Principal Contaminants Present |
|--------|--|
| Soil | diesel- and heavy oil-range petroleum hydrocarbons |

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 site. This Covenant includes the following Exhibits:

Exhibit A – Legal Description

Exhibit B – Property Map

Exhibit C – Maps Illustrating Locations of Restrictions

Exhibit D – Confirmational Groundwater Monitoring Plan

Exhibit E – Operation, Maintenance, and Contingency Plan

Records describing the extent of residual contamination, remedial actions conducted, and details of post-remediation activities required by this Covenant are available through Ecology. This includes the following documents:

Zipper Geo Associates, LLC, *Revised Remedial Investigation and Model Remedy Remedial Action Report, Hydraulic Hoist Removals, Dwayne Lane's Skagit Subaru, 640 Auto Boulevard, Burlington, Skagit County, Washington, VCP Project No. NW3118*, November 14, 2017.

Department of Ecology, *Re: Further Action at the following Site: Skagit Subaru, 640 Auto Blvd, Burlington, Washington 98233, VCP Project No. NW3118*, March 12, 2018.

Zipper Geo Associates, LLC, *Supplemental Subsurface Investigation and Groundwater Monitoring, 640 Auto Blvd, Burlington, WA 98233, VCP Project No. NW3118*, February 5, 2019.

Zipper Geo Associates, LLC, *Re: Request for No Further Action (NFA) Determination with Environmental Covenant, Skagit Subaru, 640 Auto Boulevard, Burlington, Washington 98233, VCP No. NW3118*, June 24, 2019.

e. 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' right as a holder, are not an interest in real property.

COVENANT

DL Skagit Property, LLC, as Grantor and owner of the Property 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.
- 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. **Land use.** The remedial action for the Property is based on a cleanup designed for commercial property. As such, the Property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.
- b. **Containment of soil.** The remedial action for the Property is based on containing contaminated soil under the existing service garage building with a concrete floor and located as illustrated in Exhibit C. The primary purpose of the existing service garage building and concrete floor is to minimize the potential for human direct contact with contaminated soil, minimize leaching of contaminants to groundwater, and minimize the potential for plants or wildlife exposure to the contaminated soil. As such, the following restrictions shall apply within the area illustrated in Exhibit C:

The Grantor shall not alter or remove the existing service garage building and concrete floor in any manner that would expose contaminated soil, result in a release to the environment of contaminants, or create a new exposure pathway, without prior written approval of Ecology. Should the Grantor propose to remove all or a portion of the existing structures illustrated in Exhibit C so that access to the underlying contamination is feasible, Ecology may require treatment or removal of the underlying contaminated soil.

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. Confirmational Groundwater Monitoring Plan. Monitoring of groundwater for the Property shall be performed in accordance with the Confirmational Groundwater Monitoring Plan that is attached as Exhibit D to this Covenant.

f. Operation, Maintenance, and Contingency Plan. The integrity of Site cleanup shall be protected in accordance with the Operation, Maintenance, and Contingency Plan that is attached as Exhibit E to this Covenant. Any activity on the Property that compromises the integrity of the Site cleanup (including drilling; digging; piercing with a sampling device, post, stake or similar device; grading; excavation; or installation of underground utilities) is prohibited without prior written approval by Ecology.

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, 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 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 [DATE] AND RECORDED WITH THE SKAGIT 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 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.

Mr. Thomas Lane
DL Skagit Property, LLC
3410 Mission Beach Road
Marysville, WA 98271

Environmental Covenants Coordinator
Washington State Department of Ecology
Toxics Cleanup Program
P.O. Box 47600
Olympia, WA 98504 – 7600
(360) 407-6000
ToxicsCleanupProgramHQ@ecy.wa.gov

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.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, 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 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 he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 14 day of August, 2020.

by: [Signature]

Title: Tom Lane owner/member

CORPORATE ACKNOWLEDGMENT

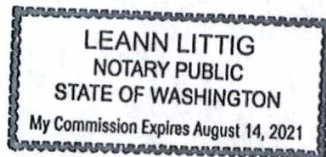
STATE OF WA
COUNTY OF Snohomish

On this 14 day of August, 2020, I certify that TOM LANE personally appeared before me, acknowledged that he/she is the owner/member 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.

[Signature]
Notary Public in and for the State of Washington

Residing at Bothell, WA

My appointment expires 8/14/2021



The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant pertaining to the Skagit Subaru, Ecology Facility Site ID 53958836, Cleanup Site ID 13201, Voluntary Cleanup Program #NW3118.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



by: Robert W. Warren

Title: Section Manager, Toxics Cleanup Program, NWRO

Dated: September 2, 2020

Exhibit A**LEGAL DESCRIPTION**

For Parcel ID: P24084

Tract 4, SHORT PLAT NO. 19-77, approved May 12, 1977 and recorded May 18, 1977 in Volume 2 of Short Plats, page 60 under Auditor's File No. 856677, records of Skagit County, Washington.

ALSO Tract 4-A, SHORT PLAT NO. 20-77, approved May 12, 1977 and recorded May 18, 1977 in Volume 2 of Short Plats, page 61 under Auditor's File No. 856678, records of Skagit County, Washington.

AND ALSO Tract 4-B of Survey recorded May 13, 1977 in Volume 2 of Surveys, page 29 under Auditor's File No. 856448, records of Skagit County, Washington.

EXCEPT from all of the above that portion thereof lying within the boundaries of that certain private road and utility easement as delineated on the face of said Short Plat No. 19-77, Short Plat No. 20-77 and Survey recorded under Auditor's File No. 856448 commonly known as Auto Blvd.

Situated in Skagit County, Washington.

Exhibit B

PROPERTY MAP



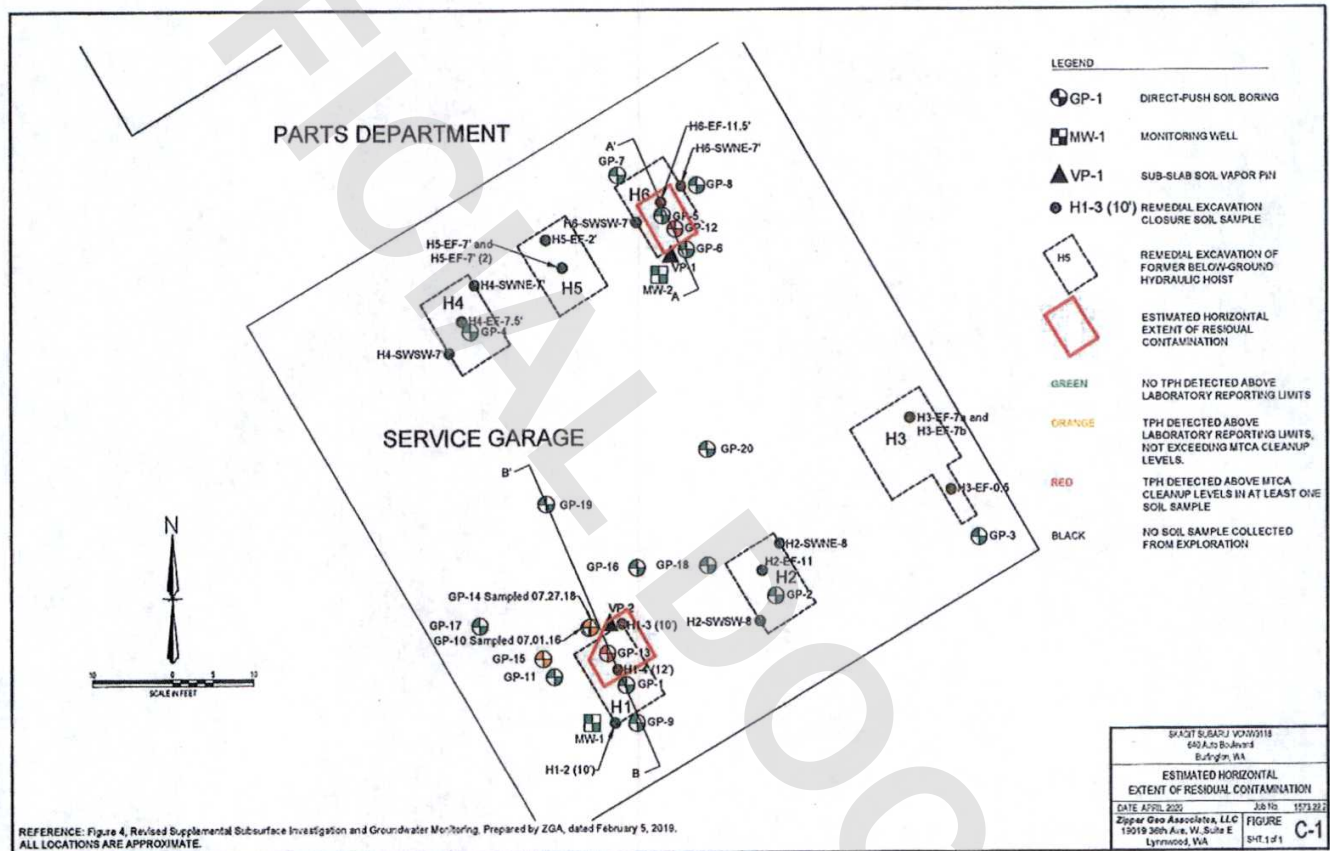
REFERENCE: GOOGLE EARTH SATELLITE IMAGE, DATED 2018.



| | |
|---|---------------------------|
| SKAGIT SUBARU: VCNW3118 640 Auto Blvd. Burlington, WA | |
| PROPERTY MAP | |
| DATE: APRIL 2020 | Job No. 1573.22.2 |
| Zipper Geo Associates, LLC 19019 36th Ave. W., Suite E Lynnwood, WA | FIGURE B-1 SHT. 1 of 1 |

Exhibit C

MAPS ILLUSTRATING LOCATION OF RESTRICTIONS



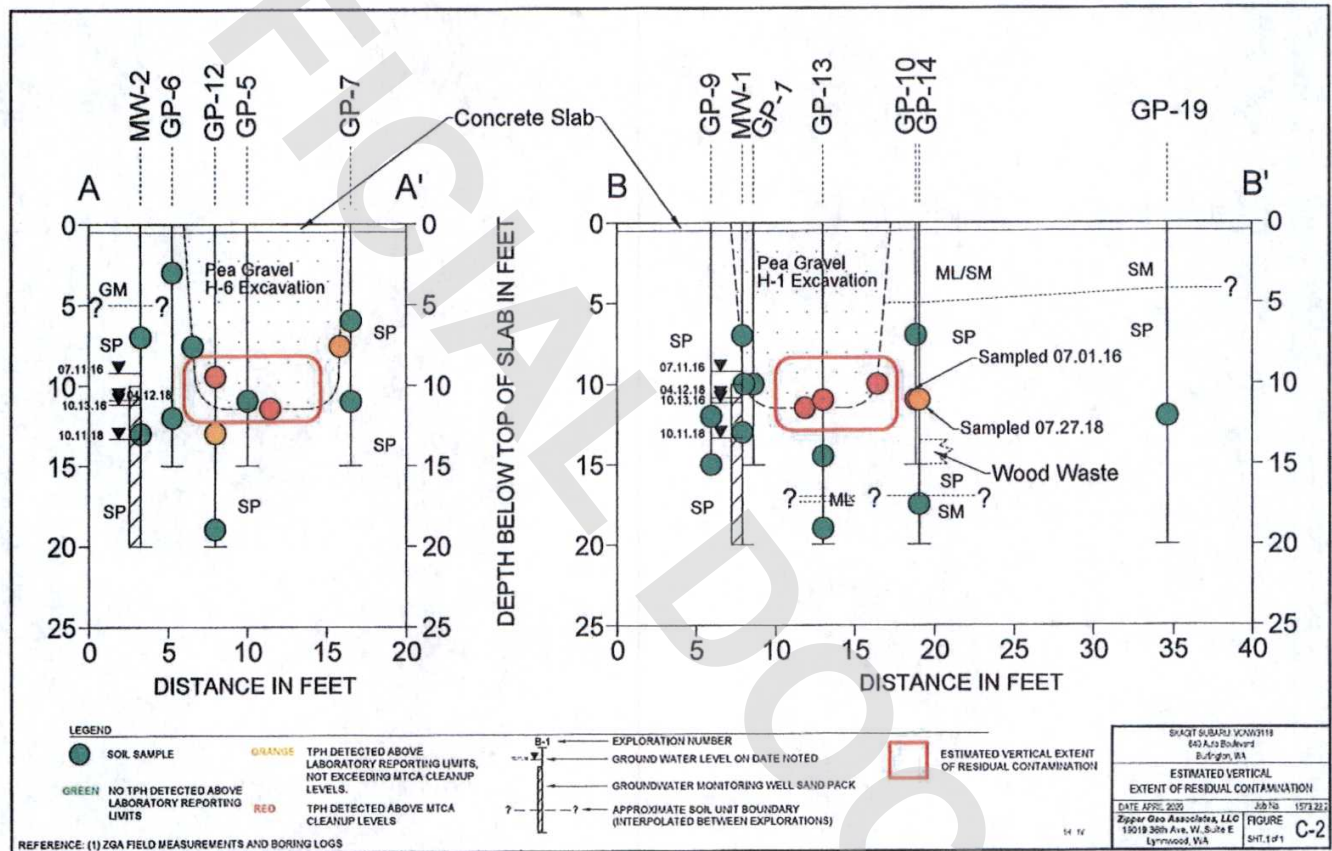


Exhibit D

Confirmational Groundwater Monitoring Plan

Compliance groundwater monitoring shall be conducted as part of the selected cleanup action. The results of the groundwater monitoring events will be used to assess groundwater flow and gradient, and groundwater quality to ensure that the MTCA Method A groundwater cleanup levels are met at the Site. The Confirmation Groundwater Monitoring Plan (CGMP) includes the following elements:

- Monitoring Locations:
 - Monitoring wells MW-1, MW-2, and MW-3. Please see Figure B-1 in Exhibit B of this Covenant.
- Monitoring Data to be collected:
 - Water levels
 - Samples to be tested for diesel- and heavy oil-petroleum hydrocarbons by Method NWTPH-Dx. The sum of the diesel and oil fractions must be added together and compared to the MTCA Method A cleanup level of 500 micrograms per liter ($\mu\text{g/L}$). Therefore, the sum of the detection limits for the diesel and oil fractions must be less than 500 $\mu\text{g/L}$.
- Monitoring Frequency:
 - Annually for a period of 5 years, until the time of the first periodic review by Ecology in 2025.
 - Subsequent monitoring will depend upon the results of the first periodic review.
- Sampling Procedures:
 - Groundwater samples will be collected in accordance with the *Low Stress (Low Flow) Purging and Sampling Procedure for the Collection of Groundwater Samples from Monitoring Wells*, revised September 19, 2017, prepared by EPA (2017). Groundwater samples will be collected directly from the pump outlet following stabilization of the geochemical parameters in accordance with the EPA (2017) guidance for low-flow purging and sampling. Laboratory analytical results will be uploaded to Ecology's Environmental Information Management (EIM) database.

- Reporting:
 - Submit annual reports of water level measurements, sample analysis results and comparison to the MTCA Method A ground water cleanup levels, and a map showing groundwater elevation contours to the Ecology Northwest Regional Office (Voluntary Cleanup Program).
- The Grantor shall maintain clear access to the on-Property monitoring wells 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 well. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage to any monitoring wells and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.
- When resource protection wells associated with the Site are no longer to be used for their intended purposes, these wells must be decommissioned in accordance with WAC 173-160-460 (<http://apps.leg.wa.gov/wac/default.aspx?cite=173-160-460>). Per WAC 173-160-410 (<http://apps.leg.wa.gov/wac/default.aspx?cite=173-160-410>), resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

Exhibit E**Operation, Maintenance, and Contingency Plan**

Three groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these monitoring wells 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 well. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage to any monitoring wells and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

The remedial action for the Property is based on containing contaminated soil under the existing service garage building and concrete floor (building and floor). The Grantor covenants and agrees that it shall annually, or at another time as approved in writing by Ecology, inspect the existing building and floor and report within thirty (30) days of the inspection the condition of the building and floor and any changes to the building and floor that would impair its performance.

Any activity on the Property that will compromise the integrity of the building and floor (including drilling; digging; piercing with a sampling device, post, stake or similar device; grading; excavation; installation of underground utilities) is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damages to the building and floor. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair any damage to the integrity of the building and floor and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.