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November 13, 2009

Julie Sellick, Section Manager
Department of Ecology
Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA 98008-5452

RECEIVED
NOV 16 2009
DEPT. OF ECOLOGY

RE: *City of Auburn v. Safeway, Inc., et al.*
King County No. 09-2-27154-2 KNT

Dear Julie:

Enclosed for your signature are three copies of the Agreement Regarding Restrictive Covenant in the above-referenced case. Please sign all three copies, retain one original for your file, and return two originals to me for processing.

Note that we found a few non-substantive typos in the final version of this document, such as the double periods at the end of the second paragraph on the second page, but did not find them substantive enough to warrant asking the city to re-sign. The city had also left off the fourth page of this agreement containing the site diagram, but with the city attorneys' agreement, we have changed the footer on the agreement to reflect the fourth page and added back in the site diagram.

Thank you for your assistance! *Thanks for helping me turn that around so quickly!*

Sincerely,


MELISSA P. ROURKE
Assistant Attorney General
(360) 586-4637

MPR:dmm
Enclosures

AGREEMENT REGARDING RESTRICTIVE COVENANT

This AGREEMENT REGARDING RESTRICTIVE COVENANT (the "Agreement") is entered into as of the 16th day of November, 2009, by and between the CITY OF AUBURN, a Washington municipal corporation, hereinafter the "CITY," and the STATE OF WASHINGTON DEPARTMENT OF ECOLOGY, hereinafter "Ecology."

RECITALS

WHEREAS, on July 21, 2009, the City filed a Petition in Eminent Domain under King County Superior Court Cause No. 09-2-27154-2KNT seeking to condemn and acquire for public purposes a fee interest in a small portion of King County Tax Parcel No. 2521049096, located at the common address of 3520 Pacific Avenue South, Auburn Washington, which property, including the small portion, is owned by Safeway, Inc., hereinafter referred to as the "Safeway Property," and the small portion sought to be condemned and acquired is hereinafter the "Subject Property," which Subject Property is described and depicted in Exhibit "A" hereto; and

WHEREAS, the City named Ecology as one of the Respondents because the City's title report for Subject Property title report indicated that Ecology held a restrictive (environmental) covenant recorded under King County Recording No. 20020920001611 (the "Covenant") which applied to the Safeway Property, but which did not exclude the Subject Property from the Covenant; and

WHEREAS, a remedial action, which is detailed in documents cited in the Covenant, was undertaken on a larger piece of property originally owned by the Boeing Company and generally used for industrial purposes, and out of which the Safeway Property was carved; and

WHEREAS, the Subject Property, located at the Northern end of the Safeway Property, has not been the focus of remediation efforts thus far, and the full nature and extent of contamination including but not limited to groundwater contamination associated with the Boeing Commercial Airplanes, Fabrication Division, Auburn Plant Site has not been fully defined; and

WHEREAS, Contemporaneous with execution of the Covenant, City of Auburn Boundary Line Adjustment No. LLA02-0015, recorded under King County Recording No. 20020725001632, created the Safeway Property from several smaller tracts; and

WHEREAS, the City and Ecology have reviewed where the monitoring well and affected property are located, and they agree that the Subject Property does not include the monitoring well and the monitoring restrictions in the covenant do not affect the Subject Property.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, ECOLOGY and the CITY hereby agree as follows:

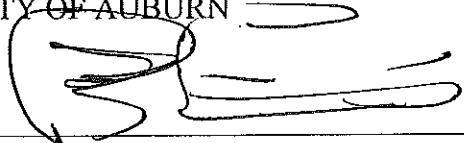
1. The parties agree that based on existing information, if the City acquires a fee interest in the Subject Property, the Covenant could be modified to remove and release the Subject Property from the requirements of the Covenant, subject to Ecology's determination after public notice and comment as described below..

2. The parties agree that, pursuant to Section 8 of the Covenant, before the Subject Property could be released from the requirements of the Covenant, notice would need to be given regarding the Subject Property and its removal from the requirements of the Covenant.

3. The parties also agree that they shall work cooperatively to take appropriate action regarding the requirements of the Covenant and their effects on the Subject Property. The City commits to either obtaining a new and distinct parcel number for the Subject Property or merging the Subject Property with parcel number 2521049114, the adjacent property owned by the City, before Ecology releases the Subject Property from the restrictions of the Covenant.

4. Upon Execution of this Agreement, the City shall dismiss Ecology with prejudice from King County Superior Court Cause No. 09-2-27154-2KNT. The parties agree that this Agreement only settles the issues raised matter No. 09-2-27154-2KNT regarding the Covenant. Other than those matters explicitly addressed in this Agreement, this Agreement is not a compromise of either party's rights and obligations under the law, including but not limited to any and all rights and obligations under the Model Toxics Control Act, Chapter 70.105D RCW, and the Hazardous Waste Management Act, Chapter 70.105 RCW.

CITY OF AUBURN



Peter B. Lewis, Mayor

Attest:



Danielle Daskam, City Clerk

Approved as to form:



Daniel B. Heid, Auburn City Attorney

WASHINGTON STATE
DEPARTMENT OF ECOLOGY

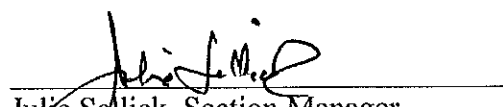

Julie Sellick, Section Manager,
Hazardous Waste & Toxics Reduction
Program, Northwest Regional Office

EXHIBIT "A"

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 430 FEET OF LOT 1 OF THE CITY OF AUBURN LOT LINE ADJUSTMENT NO. LLA02-0015, AS RECORDED UNDER RECORDING NUMBER 20020725001632, RECORDS OF SAID COUNTY, AS MEASURED PERPENDICULAR TO THE MOST NORTHERLY LINE OF SAID LOT 1, SAID MOST NORTHERLY LINE BEARING SOUTH 89° 12' 14" EAST, A DISTANCE OF 57.79 FEET.

