

## Restrictive Covenant

**When Recorded Return To:**

Avista Corporation  
1411 E Mission Ave  
Spokane, Washington 99201

**Document Title:**

Second Amended and Restated Restrictive Covenant and Limited Indemnity

**Reference Number of Documents assigned or released:**

7273674

**Grantor:**

Courtyard Office Center, LLC, a Washington limited liability company

**Grantee:**

Avista Corporation, a Washington corporation

**Abbreviated Legal Description:**

L 1, 2, 3 & ptn 4 B 16 Railroad Addition

Full legal description on Exhibit 1

**Assessor's Property Tax Parcel Numbers:**

35192.0901, 35192.0902, and 35192.0903

**SECOND AMENDED AND RESTATED RESTRICTIVE COVENANT  
AND LIMITED INDEMNITY**

**RECITALS**

- A. Courtyard Office Center, LLC, a Washington limited liability company, as successor in merger to Courtyard Office Center, LP and SPS Inn, L.P. (Grantor), is the fee owner of real estate situated in Spokane County, Washington, and legally described on Exhibit 1, attached hereto and by this reference incorporated herein (the Property).
- B. Hazardous substances have been released into soil and groundwater beneath the Property. The Property is part of a site that is being remediated under Washington's Model Toxics Control Act, RCW 70A.305, known as the Washington Water Power Central Steam Plant Site (Site).
- C. Avista Corporation, a Washington corporation (Grantee), is a party to the Amended Consent Decree filed December 2, 1996 in *State of Washington, Department of Ecology v. The Washington Water Power Company*, Spokane County Superior Court Cause No. 94-2-05788-4 (Consent Decree). Pursuant to its obligations under the Consent Decree, Grantee has installed, and must operate, monitor, and maintain, various remediation and monitoring equipment, including, without limitation, groundwater monitoring wells, oil recovery well vaults, bioventing injection wells, bioventing extraction wells, piping, and stormwater catch basins (collectively, the Remediation System). Portions of the Remediation System are located on the Property.
- D. Grantee also has installed in an enclosed space in the parking garage at the Property, and must operate, monitor, and maintain, electronic controls over the Remediation System (Control Room). The Control Room is used to control the Remediation System throughout the Site.
- E. This Second Amended and Restated Restrictive Covenant and Limited Indemnity (Agreement) supersedes and replaces the Amended and Restated Restrictive Covenant and Limited Indemnity recorded March 20, 2023 under Spokane County Auditor File No. 7273674.

**AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees and covenants with Grantee, said covenants to run with the land for the benefit of Grantee, its successors and assigns, and to be binding on all parties and all parties claiming under them, as follows:

1. Remediation System and Control Room. Grantor shall not disturb or allow disturbance of the Control Room, or any equipment therein, or of the Remediation System at the Property without the approval of the Washington Department of Ecology (Ecology) and of Grantee.

2. Redevelopment. Before undertaking any Redevelopment of the Property, Grantor shall present its proposed Redevelopment to Ecology and Grantee. Grantor shall not proceed with the Redevelopment without Grantee's approval, which may be (a) conditioned to reduce the risk of damage to the Remedy or the risk that the proposed Redevelopment will result in additional remedial action obligations for which Grantee would be responsible, or (b) withheld if Grantee determines there is a reasonable likelihood the Grantor will not successfully complete the Redevelopment; provided, however, that Grantor may proceed with the Redevelopment in an emergency without Grantee's approval if waiting for Grantee's approval would increase risk to life or property. Grantee may require the posting of a completion bond or equivalent before the start of construction. Except as provided otherwise in §3, Grantor shall be solely responsible for all costs and liabilities arising out of such Redevelopment, including, without limitation, costs of design, engineering, permitting, demolition, excavation, management, treatment, and disposal of contaminated or potentially contaminated soil, groundwater, stormwater, or other environmental media; removal, repair, and, if applicable, the replacement of the Remediation System, Control Room, or any component thereof; operation and maintenance of any component of the Remediation System or Control Room repaired or replaced as a result of Grantor's Redevelopment, including any new compliance costs; any measures required by Ecology to limit or monitor exposure to contamination; and Ecology's oversight of the Redevelopment (together, Redevelopment Environmental Costs).

3. Remediation and Limited Indemnity Following Redevelopment. Grantee related entities, including but not limited to Avista Capital Inc., a Washington corporation, and Avista Development, Inc., a Washington corporation, shall (a) ensure that Grantee, at its sole expense, continues to fulfill its obligations under the Consent Decree, as the Consent Decree may be amended, with respect to hazardous substances on or under the Property that were released into the environment before the close of escrow (Remediation Obligation) under that certain Purchase Agreement and Escrow Instructions by and between Urbin Investments, LLC and Grantor dated May 23, 2023 for the Property (as amended, the Purchase Agreement), and (b) indemnify and defend Grantor against any and all claims, liability, damages, demands, costs, expenses, and causes of action of any kind (Claims) to the extent arising out of the presence of hazardous substances released on or under the Property before the close of escrow under the Purchase Agreement, including without limitation Claims under the Model Toxics Control Act, RCW 70A.305, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq., or similar state, federal, or local laws, or for death, bodily injury, illness, or property damage, trespass or nuisance (Grantee's Indemnity); provided, however, that Grantee's responsibility for the Remediation Obligation and Grantee's Indemnity shall cease under the following circumstances and to the extent indicated below:

- a. If Grantor commences Redevelopment and such Redevelopment is not completed pursuant to Grantor's proposal for the same, as approved by Grantee, then (i) Grantee's responsibility for the Remediation Obligation shall cease with respect to

- any additional remedial action obligations resulting from Grantor's failure to complete the Redevelopment, as approved by Grantee, that are either imposed by Ecology or necessary, because of such additional remedial action obligations imposed by Ecology, to maintain the integrity of the Remedy, and (ii) Grantee's Indemnity shall cease with respect to any Claims to the extent arising out of Grantor's failure to complete the Redevelopment as approved by Grantee;
- b. If Grantor commences Routine Maintenance, then (i) Grantee's responsibility for the Remediation Obligation shall cease with respect to any additional remedial action obligations that are directly related to Grantor's proposal for such Routine Maintenance, and that are either imposed by Ecology or necessary, because of such additional remedial action obligations imposed by Ecology, to maintain the integrity of the Remedy as a result of such Routine Maintenance, and (ii) Grantee's Indemnity shall cease with respect to any Claims to the extent arising out of the negligent performance of such Routine Maintenance; provided, however, that Grantor shall, at its own cost, defend any Claims asserted against it alleging such negligence, and Grantee shall reimburse Grantor's defense costs only if Grantor's performance of such Routine Maintenance is determined not to be negligent;
  - c. If Grantor commences Redevelopment other than Routine Maintenance, then (i) Grantee's responsibility for the Remediation Obligation shall cease with respect to any additional remedial action obligations resulting from such Redevelopment that are either imposed by Ecology or necessary, because of such additional remedial action obligations imposed by Ecology, to maintain the integrity of the Remedy, and (ii) Grantee's Indemnity shall cease with respect to any Claims to the extent arising out of such Redevelopment; and
  - d. If Grantor does any of the following that is not contemplated by Grantor's proposal for Redevelopment, as approved by Grantee: (i) disturbs any hazardous substances contained beneath the Property, (ii) releases hazardous substances onto or beneath the Property, or (iii) commits an act or omission as a result of which Ecology requires additional remedial action beyond that required before such act or omission (collectively, Disturbance), then Grantee's responsibility for the Remediation Obligation shall cease with respect to any additional remedial action obligations resulting from such Disturbance that are either imposed by Ecology or necessary, because of such additional remedial action obligations imposed by Ecology, to maintain the integrity of the Remedy, and (ii) Grantee's Indemnity shall cease with respect to any Claims to the extent arising out of such Disturbance.

If Grantee's responsibility for all or any portion of the Remediation Obligation ceases, thereafter Grantor shall fulfill the Remediation Obligation to the extent Grantee's responsibility has ceased. In no event shall Grantee be responsible for any Redevelopment Environmental Costs or for any damages caused or incurred by Grantor arising out of any Redevelopment or Disturbance.

4. Release. Except to enforce this Restrictive Covenant, Grantor releases Grantee, Avista Development, Inc., SPS Inn, LP, Courtyard Office Center, LP, Center Place Suites, LLC, Center Place Office Center, LP, and their respective officers, directors, employees, agents, and affiliates, from any and all claims, liability, damages, demands, costs, expenses, and causes of

action of any kind (Claims) arising out of the presence of hazardous substances released on or under the Property before the date on which Grantor acquired fee title to the Property, including without limitation Claims under the Model Toxics Control Act, RCW 70A.305, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, or similar state, federal, or local laws, or for death, bodily injury, illness, or property damage, trespass or nuisance.

5. Good Faith. The parties agree to work in good faith to review any proposals for Redevelopment, with the goal of protecting the integrity of the Remedy and minimizing additional remedial action obligations for which Grantee would be responsible while also allowing the Grantor to make lawful use of the Property. If a dispute arises regarding any proposed Redevelopment or responsibility for the Remediation Obligation, the parties shall try to resolve the dispute informally. They shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable resolution satisfactory to both parties. If they do not reach such resolution within 15 days after the dispute arises, the parties shall attempt to resolve the dispute through non-binding mediation before resorting to any other dispute resolution procedure. Any demand for mediation shall be made in writing and delivered to the other party. Within five business days after delivery of the demand for mediation, the parties shall select a mutually-agreeable mediator. If they are unable to agree on a mediator within five business days, each party shall, no more than ten business days after delivery of the demand for mediation, designate a mediator acceptable to that party. The sole role of these two designated mediators shall be to select a third mediator. The third mediator alone shall mediate the dispute. The mediation shall be held within 30 calendar days after the mediator is selected, or as soon thereafter as reasonably possible. The mediation shall be conducted in accordance with the American Arbitration Association's Commercial Rules and Mediation Procedures; provided, however, that with respect to initiation of mediation and appointment of a mediator, the parties shall follow the procedures in this Section 5 instead of the AAA's Commercial Rules and Mediation Procedures. The costs of the mediator's services will be shared equally by the parties. If the mediation does not result in a resolution of the dispute, either party may pursue a resolution of the dispute in a court of competent jurisdiction. Any such mediation, suit, or action shall be conducted in Spokane County, Washington.

6. Enforcement. Grantee may bring an action in the Superior Court of Spokane County to enforce this Agreement, to temporarily restrain any violation of the terms of this Agreement, including by seeking relief *ex parte*; to enjoin the violation; to seek declaratory relief; and to recover any damages to which it may be entitled for such violation. Grantor agrees that its failure to comply with the terms of this Agreement would cause Grantee irreparable harm. The prevailing party in any action related to the enforcement of the terms of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs.

7. Definitions. For purposes of this Agreement, the following definitions apply:

The term "remedial action" shall have the meaning given in Washington's Model Toxics Control Act.

The term “Redevelopment” shall mean any activity that disturbs soil below the ground surface; exposes soil that is contained beneath pavement, a building, or other impervious surface; or has the potential to interfere with the operation, maintenance, or monitoring of, or access to, any component of the Remediation System or the Control Room, or with Grantee’s ability to implement remedial action required by Ecology.

The term “Routine Maintenance” shall mean ordinary maintenance, repair, or replacement of existing improvements on the Property undertaken to keep such improvements in good working order, provided that no changes are made to the original design of such improvements. Routine Maintenance excludes any Enhancement.

The term “Enhancement” means any activity that enhances, upgrades, expands, modifies, or changes the use of the Property or any improvement on the Property as such uses exist as of the close of escrow under the Purchase Agreement, unless undertaken to meet a requirement imposed by law regardless of such enhancement, upgrade, expansion, modification, or change in use.

The term “Remedy” means the cleanup action selected for the Site, as described in Ecology’s Final Cleanup Action Plan for the WWP Central Steam Plant Site dated November 22, 1996.

8. Commission Approval Contingency. This Agreement is subject to the approval of the Washington Utilities and Transportation Commission (the “Commission”). This Agreement will not be effective until such time as the Commission chooses to either approve the Agreement or otherwise chooses not to act. Should the Commission disapprove, this Agreement will be null and void.

DATED THIS 12<sup>th</sup> DAY OF JULY, 2023.

GRANTOR:

GRANTEE:

COURTYARD OFFICE CENTER, LLC

AVISTA CORPORATION

By   
Name Latisha Hill

By   
Name Jason Thackston

Title Senior Vice President of Avista Development, Inc., sole Member of Courtyard Officer Center, LLC

Title Senior Vice President

STATE OF WASHINGTON

} ss.

COUNTY OF SPOKANE

I certify that I know or have satisfactory evidence that **Latisha Hill** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Senior Vice President of Avista Development, sole member of Courtyard Office Center, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 12<sup>th</sup> day of July, 2023.



Debbie Deubel

Printed Name Debbie Deubel

NOTARY PUBLIC in and for the State of Washington, residing at Spokane County

My Commission Expires 05-09-25

STATE OF WASHINGTON

} ss.

COUNTY OF SPOKANE

I certify that I know or have satisfactory evidence that **Jason Thackston** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Senior Vice President of Avista Corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 12<sup>th</sup> day of July, 2023.



Debbie Deubel

Printed Name Debbie Deubel

NOTARY PUBLIC in and for the State of Washington, residing at Spokane County

My Commission Expires 05-09-25

**EXHIBIT 1**  
**Legal Description of Property**

Parcel 1:

Lots 1 and 2, Block 16, Railroad Addition, according to plat recorded in Volume "D" of Plats, page 82;

Situate in the City of Spokane, County of Spokane, State of Washington

(35192.0901 and 35192.0902)

Parcel 2:

All of Lot 3 and the South 77.5 feet of the West half of Lot 4, Block 16, Railroad Addition, according to plat recorded in Volume "D" of Plats, page 82;

Situate in the City of Spokane, County of Spokane, State of Washington

(35192.0903)