

JAMES M. SIMS
Director



STATE OF WASHINGTON

POLLUTION LIABILITY INSURANCE AGENCY

1015 10th Ave SE • PO Box 40930 • Olympia, Washington 98504-0930 • (206) 586-5997 • FAX 586-7187

DEED OF TRUST

Registered *p*
Index *p*
Filed *p*
Mailed

116189

BOOK 135 PAGE 157

THIS DEED OF TRUST, made this 20th day of April, 1993, between Theo Fuller, dba Riverside Grocery & Cafe, Inc., as Grantor, whose address is M.P. 9.89 L. Highway 140, Washougal, WA 98671; and First American Title Company, as Trustee, whose address is 510 Plum Street, S.E. Olympia, WA 98501; and State of Washington Pollution Liability Insurance Agency, as Beneficiary, whose address is 1015 10th Ave. S.E., P.O. Box 40930, Olympia, WA 98504-0930;

WITNESSETH: Grantor hereby bargains, sells and conveys to Trustee in trust, with power of sale, the following described real property in Skamania County, Washington:

A Tract of land located in Section 6, Township 1 North, Page 5 East Willamette Meridian, and in Section 31, Township 2 North, Range 5 East of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Beginning at a point which is an iron pipe in the center line of a 30 foot road, said pipe being 198.4 feet South and 159 feet West of the Section corner common to Sections 31 and 32, Township 2 North, Range 5 East of the Willamette Meridian, and Sections 5 and 6, Township 1 North, Range 5 East of the Willamette Meridian; thence South 02° East 351.9 feet to an iron pipe on the river bank; thence following the meanderings of the Washougal River North 31° 22' West 344 feet to a point; thence North 42° 05' West 192 feet to a point; thence North 51° 25' West 106.1 feet to a point; thence North 64° 59' West 174 feet to a point; thence South 67° 54' West 160.1 feet to a point in the center line of the bridge over the Washougal River; thence following the center line of the highway North 08° 31' East 137.8 feet to a point in the road intersection; thence following the center line of the county road North 48° 05' East 389.2 feet to an iron pipe at the intersection of a 30 foot road; thence following the center line of said 30 foot road South 66° 24' East 132.1 feet to a point; thence South 40° 41' East 171.1 feet to a point; thence South 05° 17' East 200.2 feet to a point; thence South 34° 42' East 216.4 feet to the point of beginning;

EXCEPT that portion thereof described as follows: Beginning at a point marker by an iron pipe which was formerly the center line of a 30 foot road, said pipe being 198.4 feet South and 159 feet West of the Section corner common to Section 31 and 32, Township 2 North, Range 5 East of the Willamette Meridian; and Sections 5 and 6, Township 1 North, Range 5 East of the Willamette Meridian; thence South 02° 00' East 351.9 feet to an iron pipe on the river bank; thence following the meanderings of the Washougal River downstream North 31° 22' West 344.0 feet, to a point; thence North 42° 05' West 192.0 feet to a point; thence North 51° 25' West 106.1 feet to a point; thence North 64° 59' West 174.0 feet to a point; thence South 67° 54' West 59.7 feet to an iron pipe; thence departing from meanderings of said river North 48° 54' East 260.2 feet to an iron pipe; thence North 36° 45' East 185.0 feet to an iron pipe in the center of a 30 foot used roadway thence following the center line of said road South 66° 24' East 34.1 feet to an iron pipe; thence South

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BOOK 135 PAGE 158

40°41' East 171.1 feet to an iron pipe; thence departing from said roadway South 05°17' East 200.2 feet to an iron pipe; thence South 34°42' East 216.4 feet to the point of beginning.

ALSO EXCEPT that portion conveyed to State of Washington by instrument recorded June 1, 1981, in Book 79, Page 752, Skamania County Deed Records.

Skamania County, State of Washington which real property is not used principally for agricultural or farming purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any way appertaining, and the rents, issues and profits thereof.

This deed is for the purpose of securing performance of the agreement herein contained, and payment of the sum of Sixty Four Thousand, One Hundred Forty Five Dollars and Seventy Four Cents (\$64,145.74) in accordance with the terms of the attached agreement, payable to Beneficiary or order, and made by Grantor, and all renewals, modifications and extensions thereof, and also such further sums as may be advanced by Beneficiary under the agreement.

To protect the security of this Deed of Trust, Grantor covenants and agrees:

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.
2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.
3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary as its interest may appear and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.
4. To defend any action of proceedings purporting to affect the security hereof or the rights or powers of Beneficiary of Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and any suit brought by Beneficiary to foreclose this Deed of Trust.
5. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.
6. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid shall be added to and become a part of the debt secured in this Deed of Trust.

IT IS MUTUALLY AGREED THAT:

BOOK 135 PAGE 159

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion thereof as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.
2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.
3. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.
4. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at the public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be deposited with the clerk of the court of the county of sale.
5. Trustee shall deliver to the purchaser at the sale, its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.
6. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.
7. In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary may appoint, in writing, a successor Trustee, and upon the recording of such appointment in the mortgage record of the county in which this Deed of Trust is recorded, the successor Trustee shall be vested with all powers of the original Trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.
8. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors, successors and assigns. The term Beneficiary shall mean the holder and owner of the contingent debt set forth in the attached agreement and secured hereby, whether or not named as Beneficiary herein.

Witness the hand(s) of the Grantor(s) on the day and year first above written.

Theo. K. Miller 41-26-B
GRANTOR

BOOK 135 PAGE 160

STATE OF WASHINGTON)
COUNTY OF)ss.
)

On this day personally appeared before me THEO FULLER to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that HE signed the same as His free and voluntary act and deed, for the uses and purposes therein mentioned.

Signed and sworn to before me this 20 day of APRIL, 1993.

Notary Public in and for the State of Washington
residing at Wichouago

My appointment expires: May 1, 1976

FILED FOR RECORD
SKAMANIA CO. WASH
BY SKAMANIA CO. TITLE

MAY 7 3 33 PM '93
P. Lowry
GARY M. OLSON

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RECEIVED

JAN 13 1993

POLLUTION LIABILITY
INSURANCE AGENCY

BOOK 135 PAGE 161

UNDERGROUND STORAGE TANK COMMUNITY ASSISTANCE PROGRAM

GRANT AGREEMENT

CONTRACT NUMBER: USTCAP-PVT-017-92

PROJECT SITE: M.P. 9.89 L. Highway 140, Washougal, WA 98671

This Agreement, and the incorporated attachment, contains all terms and conditions agreed to by the Pollution Liability Insurance Agency and Theo R. Fuller, dba Riverside Grocery & Cafe, Inc. Attachment A (Work Order) to this Agreement, is hereby incorporated into this Agreement.

The Agency and Theo R. Fuller, dba Riverside Grocery & Cafe, Inc. have executed this Agreement as of the date and year written below.

POLLUTION LIABILITY INSURANCE
AGENCY

GRANTEE

Name

Jim Simon
Director

Title

1-27-93

Date

Name

Theo. R. Fuller

Date

1/8/93

Taxpayer Identification Number

91-0783982

APPROVED AS TO FORM BY THE
ATTORNEY GENERAL

Sperry Ackerman
Assistant Attorney General

Date

2/1/93

COPY

BOOK 135 PAGE 162

GRANT AGREEMENT

Contract Number: USTCAP-PVT-017-92

THIS AGREEMENT is entered into between the Washington State Pollution Liability Insurance Agency (PLIA) and Theo R. Fuller, dba Riverside Grocery & Cafe, Inc. (Grantee), in order to help bring the Underground Storage Tank (UST) site located at M.P. 9.89 L. Highway 140, Washougal, WA 98671 into compliance with appropriate environmental regulations and, if necessary, to help take corrective action for existing contamination at that site.

BACKGROUND

Financial assistance in the form of a grant provided under this Agreement is made possible by the UST Community Assistance Program (Program) authorized by the Washington State Legislature under RCW 70.148, by Chapter 374-60 of the Washington Administrative Code, and administered by PLIA. The purpose of the Program is to assist small communities in the state of Washington by ensuring continued access to petroleum to see that vital local government, public health, education and safety needs are met.

DEFINITIONS

"Agreement" - Grant Agreement as set forth here and pursuant to the legislative intent of the Program.

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BOOK 135 PAGE 163

"Contractor's Agreement" - Contract entered into between the Grantee and the Contractor that the Grantee selects to undertake a construction project at the UST site pursuant to accomplishing the goals of the Program.

"Corrective Action" - Those actions reasonably required to be undertaken to remove, treat, neutralize, contain, or clean up an accidental release of petroleum in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement of the United States, the state of Washington, or any political subdivision of the United States or the state of Washington applicable to such an accidental release. Corrective action includes action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the Grantee for corrective action, bodily injury or property damage. Corrective action also includes actions reasonably necessary to monitor, assess and evaluate an accidental release. Corrective action does not include: (a) replacement or repair of storage tanks or other receptacles; (b) replacement or repair of piping, connections and valves of storage tanks or other receptacles; (c) excavation or backfilling done in conjunction with (a) or (b) of this paragraph; or (d) testing for a suspected accidental release if the results of the testing indicate that there had been no accidental release.

"Change Order" - A document signed by the Contractor and the Grantee stating their agreement upon all of the following:

- (a) A change in the Work Order;
- (b) The amount of adjustment in the Project cost, if any; and
- (c) The extent of adjustment in the time required to complete the Project.

"Cost-Plus Basis" - Cost of Petroleum to the Grantee plus a specified percentage or amount of profit as agreed between Grantee and Local Government Entities.

"Full Time" - A minimum of 5 days per week, 8 hours per day.

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"EPA" - U.S. Environmental Protection Agency

BOOK 135 PAGE 164

"Ecology" - Washington State Department of Ecology.

"Local Government Entity" - A unit of local government, either general purpose or special purpose, including but not limited to, counties, cities, towns, school districts, fire districts and other governmental and political subdivisions. The local government unit must perform a public purpose and either:

- (a) receive an annual appropriation;
- (b) have taxing power; and
- (c) derive authority from state or local government law enforcement power.

"PLIA" - Washington State Pollution Liability Insurance Agency and its agents and employees or successor(s) in interest.

"Petroleum" - Crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute) and includes gasoline, kerosene, heating oils and diesel fuels.

"Underground Storage Tank (UST)" - Any one or combination of tanks including underground pipes connected thereto that is used to contain an accumulation of petroleum the volume of which (including the volume of underground pipes connected to the tank) is ten percent or more beneath the surface of the ground.

"UST Site" - The location at which underground storage tanks are in place or will be placed. The UST Site encompasses all of the property with a contiguous ownership that is associated with the use of the tanks.

"Work Order" - The document(s) setting forth construction, services and other Project parameters, including any Change Order(s), and is attached to and made part of this Agreement as Attachment A.

ASSIGNMENT

COPY

BOOK 134 PAGE 165

The right to receive financial assistance under this Agreement cannot be assigned.

TRANSFER/DELEGATION

If Grantee or any other person or entity with any interest in the UST Site transfers his or her interest in the UST Site while this Agreement is in force, the new owner must agree to be legally bound by the Agreement, otherwise the financial assistance provided under this Agreement shall be immediately repaid to the state by the grantee who received the assistance.

GRANT AMOUNT

The amount payable under this Agreement is \$64,145.74 (Sixty four thousand, one hundred forty five dollars and seventy four cents) and consists of the total Project cost as approved in advance by PLIA and does not exceed Program limits as determined by applicable governing law or PLIA. Whenever practicable, PLIA will provide assistance to Grantee through joint payment to Grantee and to Contractors and other professionals for labor, materials and other services. The amount and allocation of the grant funds are at the sole discretion of PLIA, subject to limitations under applicable governing law.

Grantee assumes the risk that costs incurred in corrective action or in bringing his or her UST site into compliance with environmental regulations may exceed the amount of grant funds authorized under this Agreement. In the event final costs exceed the approved maximum, the balance is solely the responsibility of the Grantee.

CONDITIONS

1. Grantee shall continue to operate his or her existing business at the UST site selling petroleum full time to the public. Grantee shall continue to maintain such full time retail sale of petroleum products to the public for at least 15 years after project closure as defined in

COPY

BOOK 135 PAGE 166

the Contractor's Agreement. Failure to do so is a material breach of this Agreement.

2. Grantee shall sell petroleum to local governmental entities on a cost-plus basis periodically negotiated between Grantee and the government entities.

3. Grantee shall, on request, provide full service to the elderly and the physically disabled at no increased cost for the service.

4. Grantee shall allow PLIA access to the UST site and all records of the work being performed under the Contractor's Agreement.

5. Grantee shall cooperate with PLIA as necessary to comply with applicable statutes and the legislative intent of the Program.

6. Grantee shall comply with all applicable technical requirements and financial responsibility regulations of the EPA, Ecology and local government(s).

7. Grantee shall comply with the financial responsibility requirements of EPA and Ecology through the purchase of insurance or any other authorized mechanism. If insurance is the chosen vehicle, PLIA shall be named as a loss payee. If another method is selected, there must exist a provision for PLIA to place an appropriate encumbrance on that document.

8. The Contractor's Agreement, including the Work Order and any Change Order(s) must be submitted to and acknowledged as grant eligible by PLIA before Grantee authorizes the performance of any work. Any changes Grantee makes to the Contractor's Agreement without an additional acknowledgement by PLIA shall not be considered payable under the Program and shall subject Grantee to any liability forthcoming from such unauthorized changes.

WARRANTY

Grantee warrants that Grantee made no misrepresentations to PLIA in order to receive the benefits of this grant.

Grantee further warrants that Grantee conducted a reasonable credit check on all contractors authorized to perform work under the Contractor's Agreement so as to ensure Contractor's ability to use its credit to acquire the supplies and machinery necessary to perform under the Contractor's Agreement.

SECURITY

The grant funds paid under this Agreement shall be secured by a real property lien properly recorded in the state of Washington upon the UST site. Grantee warrants that Theo R. Fuller is the legal owner(s) of the site and has authorized placement of such lien and will sign the necessary documents for recording the lien. At the expiration of the fifteen (15) year term, PLIA will sign a release of any claim on the real property at the request of the current property owner of record. Actual removal of the recorded lien shall be Grantee's responsibility.

TERM

This Agreement shall expire fifteen (15) years from the Project closure as defined in the Contractor's Agreement.

DEFAULT

As determined by PLIA, if Grantee materially breaches this Agreement, the amount of the grant shall immediately become due and payable to the state of Washington.

INSURANCE PROCEEDS

If insurance proceeds are available or become available to Grantee for all or a part of the costs paid by grant funds, Grantee shall assign those proceeds to PLIA.

REPORTING

Grantee shall submit a quarterly report, on a form provided by PLIA, of Petroleum business volume and identifying what government contracts are currently in effect.

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EFFECTIVE DATE

BOOK 135 PAGE 168

This Agreement becomes effective only with the signing of both it and the Contractor's Agreement. The day of the signing establishes the effective date of this Agreement. No costs incurred prior to that date are eligible for payment under the grant unless specific provision is made by amendment to this Agreement for such costs.

HOLD HARMLESS

Grantee shall indemnify and hold PLIA harmless from claims, damages, losses and expenses including, but not limited to, attorney's fees arising out of or resulting from the work performed under the Contractor's Agreement.

Each party executing this Agreement on behalf of a corporation personally represents that he or she is authorized to execute this Agreement on behalf of such corporation and that this Agreement is binding on that corporation.

UST Community Assistance Program

COPY
BOOK 135 PAGE 169

Project Site: M.P. 9.89 L. Highway 140, Washougal, WA 98671
Contract Number: USTCAP-PVT-017-92

ATTACHMENT A: WORK ORDER

12/22/92

A-1

WORK ORDER

COPY

BOOK 135 PAGE 170

1.1 GENERAL

1.1.1 The project consists of: (a) removing and disposing of 2 existing UST(s) (Capacity: 2 (2k) gal, piping and miscellaneous other equipment, and (b) installing 3 new UST(s) (Capacity: 3 (2k) gal; Material: Composite; Type: Double Wall), pumps, leak monitoring system, pipes, fittings, paving, and all other equipment for a complete and fully operational UST and petroleum fuel dispensing system that will meet current EPA, Washington State Department of Ecology, local jurisdiction, and all other applicable rules and regulations at project site M.P. 9.89 L. Highway 140, Washougal, WA 98671.

1.1.2 The project requires performance in accordance with "Guidance for Site Checks and Site Assessments for USTs" (Washington State Department of Ecology, February 1991) during the removal of existing UST(s). The Contractor is to allow ample time for delays due to soil sampling, inspection and laboratory analysis.

1.1.3 The work included in this contract is defined with this WORK ORDER and the attached drawings.

1.2 PERMITS

1.2.1 The Contractor is responsible for complying with any Federal, state and municipal laws, codes and regulations applicable to the performance of the work. Permits or approval for construction activities may be required by the local jurisdiction(s). These may include, but are not limited to, requirements to obtain grading, building or demolition permits, and requirements for compliance with local ordinances pertaining to environmental review under the state Environmental Policy Act (Chapter 43.21C RCW).

1.2.2 Prior to commencement of work, the Contractor shall, without additional expense to the Operator, be responsible for obtaining all necessary licenses and permits required by all authorities having jurisdiction for the removal of the existing UST system and for installation of the new UST system. The Contractor must notify all affected utility companies or providers.

COPY

BOOK 135 PAGE 171

- 1.2.3 The Contractor must obtain approval of authorities having jurisdiction for any work which affects existing exit ways, exit stairs, means of egress, or access to or exit from such area. The Contractor must also review with and obtain approval of authorities for any temporary construction which affects such area. Particular attention is directed to approval by fire authorities.

1.3 SITE SAFETY

- 1.3.1 The Contractor must provide protection for all persons and property in accordance with:
- a. WAC Chapter 296-155, Safety Standards for Construction Work.
 - b. WAC Chapter 296-62, Occupational Health Standards.
 - c. 29 CFR; 1910.120, Federal Register.
 - d. All other applicable Rules and Regulations.

1.4 INSURANCE

- 1.4.1 The Contractor shall not commence work under this contract until the Contractor has obtained all insurance required and such insurance has been approved by the Owner/Operator. Approval of the insurance by the Owner/Operator shall not relieve or decrease the liability of the Contractor. Companies writing insurance under this article shall be licensed to do business under Title 48 RCW, or comply with the Surplus Lines Laws of the state of Washington.
- 1.4.2 The insurance coverage shall include claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations under this Contract whether such operations are by the Contractor or any Subcontractors. The amounts of the required insurance shall not be less than one million dollars per occurrence, two million dollars aggregate.

COPY

BOOK 135 PAGE 172

1.4.3 The Contractor shall comply with the Washington State Industrial Insurance Act and, if the work is over water, the Federal Longshoremen's and Harbor Worker's Act, and the Jones Act.

1.4.4 The Contractor shall purchase and maintain "stop-gap" insurance for all of the Contractor's employees to be engaged in work on this project under this Contract, and shall require the same of all Subcontractors. In case any class of employees, engaged in hazardous work under this Contract at the site of the project, are not protected by the above coverage, the Contractor shall provide and shall require each Subcontractor to provide compensation insurance and employers' liability insurance with a private insurance company.

END OF ATTACHMENT A