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ORIGINAL

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF TACOMA; and FOSS
WATERWAY DEVELOPMENT
AUTHORITY

Defendants.

NO. 94-2-10917-6

FIFTEENTH AMENDMENT TO
CONSENT DECREE TO INCLUDE
THE SITE-SPECIFIC CLEANUP
ACTION PLAN FOR THE ATLAS
FOUNDRY, COAST IRON WORKS,
STEAM PLANT SITES AND PUBLIC
ESPLANADE

1. Pursuant to Sections 7 and 17 of the Consent Decree - First Comprehensive Amendment, in this case, the undersigned hereby agree to entry by the Court of this Amendment to the Consent Decree.

2. This amendment is for the purpose of including as part of the Consent Decree a Site-specific Cleanup Action Plan (SCAP) for the property denominated in the Consent Decree as the ATLAS FOUNDRY, COAST IRON WORKS, and STEAM PLANT sites. These sites are now comprised of three separate parcels, Parcel "A" (Combined Development Site 8/9), Parcel "B" (Public Esplanade) and Parcel "C" (Public Esplanade) which parcels are legally described in Appendix "A" attached to this Amendment.¹

¹ After completion of the SCAP, a Boundary Line Adjustment was approved by the City and recorded on September 10, 2015, modifying the boundaries of former Parcels A, B, C and D. The majority of the former steam plant site located at lot 11 of Block 62 (the most southern lot, See figure 2 of SCAP) has been combined within Esplanade Parcel "B". Additionally, the two upland parcels (formerly Parcels "A" and "B") were combined into

1 3. The SCAP, attached as Appendix "C" to this Amendment has been the subject of
2 public notice and comment under RCW 70.105D.040(4)(a). As a result of this process, Ecology
3 has found that the SCAP will lead to a more expeditious cleanup of hazardous substances at the
4 site.

5 4. In accordance with Section 8 of the Consent Decree and WAC 173-340-440, the
6 City shall implement effective Institutional Controls with respect to Parcel "A", Parcel "B" and
7 Parcel "C". Such Institutional Controls shall take the form of Restrictive Covenants for each
8 such parcel, the form of which is attached hereto as Appendix "B" together with exhibits "A" –
9 'D' and Appendix 1 attached thereto, or of an alternative system to a Restrictive Covenant, if
10 such an alternative system is approved by Ecology. The Restrictive Covenants shall be recorded,
11 or alternative system if approved by Ecology shall be implemented, within ten days of
12 completion of remediation, unless Ecology determines, in its sole discretion, that additional time
13 shall be granted. Should the City, as to its ownership interests, wish to propose an alternative
14 system to a traditional Restrictive Covenant, it shall do so within thirty days of completion of
15 remediation. As to each Parcel, Section 29 of the Decree - the covenant not to sue - shall not
16 apply until the Restrictive Covenant is recorded, or until Ecology has received confirmation that
17 an approved alternative system has been established by the City. Further, Ecology's decisions
18 about the form, content and/or timing of implementation of these Institutional Controls are final
19 and are not subject to dispute resolution under the Consent Decree.

20 Being fully advised of the reasons for entry of this Amendment to the Consent Decree
21 and good cause having been shown,

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24
25 one Parcel now referred to as Parcel "A" and also referred to as "Combined Development Site 8/9". Accordingly,
26 figures 2 through 9 of the SCAP reflect the boundaries of new Parcels "A", "B" and "C" prior to the Boundary Line
Adjustment. The boundary line adjustment did not alter the total area of the combined Parcels (117,325 SF).

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APPENDIX A

(LEGAL DESCRIPTION OF
PARCELS A, B & C)

PARCEL A:

THE WEST 90 FEET OF LOTS 1 THROUGH 5, INCLUSIVE, AND THE WEST 105 FEET OF LOTS 6 THROUGH 10, INCLUSIVE, ALL IN BLOCK 62, ACCORDING TO THE OFFICIAL MAP OF THE TACOMA TIDE LANDS, FILED IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, 3 SEPTEMBER 1895.

PARCEL B:

THE WEST 160 FEET OF THE NORTH ONE HALF OF LOT 12 AND THE WEST 160 FEET OF LOT 11 TOGETHER WITH THE WEST 55 FEET OF THE EAST 65 FEET OF LOTS 6 THROUGH 10, INCLUSIVE, BLOCK 62, ACCORDING TO THE OFFICIAL MAP OF THE TACOMA TIDE LANDS, FILED IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, 3 SEPTEMBER 1895.

PARCEL C:

THE EAST 10 FEET OF THE NORTH ONE HALF OF LOT 12 AND THE EAST 10 FEET OF LOTS 6 THROUGH 11, INCLUSIVE, TOGETHER WITH EAST 80 FEET OF LOTS 1 THROUGH 5, INCLUSIVE, ALL IN BLOCK 62, ACCORDING TO THE OFFICIAL MAP OF THE TACOMA TIDE LANDS, FILED IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, 3 SEPTEMBER 1895.

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APPENDIX B

(FORM OF RESTRICTIVE COVENANT)

[Text highlighted by yellow are instructions/comments and options]
Questions about specific provisions should be directed to the Ecology Site Manager assigned to the site. If no Site Manager has been assigned, contact Ecology's Toxics Cleanup Program at (360) 407-7170 for advice.

After Recording Return
Original Signed Covenant to:²
[Ecology Site Manager]
Toxics Cleanup Program
Department of Ecology
[Ecology Office address]

NOTE: This Covenant should not be recorded without Ecology's approval and signature.
Grantors must have a title search conducted within the last 6 months to identify all recorded interests in the Property including title holders, holders of other interests (such as easements, right of ways, water & mineral rights), and encumbrances (such as lien and mortgage holders). The results of this search, typically called a title report or plat certificate, must be included with any request asking Ecology to sign a Covenant. A update to the title search should be provided to Ecology along with the request to sign the final covenant.

Environmental Covenant
(5/7/14 version)

Grantor: [Insert name of the land owner or other grantor]³
Grantee: State of Washington, Department of Ecology
Brief Legal Description: [Insert brief legal description]
Tax Parcel Nos.: [Insert tax parcel numbers]
Cross Reference:

- If superseding or amending an existing Covenant, insert one of the following: "Original Covenant # ____ (superseding)" OR "Original Covenant # ____ (amending)"
- Insert a reference to any subordination agreements, if separately recorded
- Insert a list of other related documents such as consent decree, order, or NFA opinion
- Otherwise, delete

RECITALS⁴

² Some counties keep the original covenant, others don't. If the signed original is available, it must be sent to Ecology. If the signed original is not available, send a legible copy to Ecology.

³ The Grantor of a covenant typically is the fee simple land owner of the property. The Grantor may also include holders of other property interests such as a holder of an easement, right of way, mineral right, lien, or mortgage.

⁴ This section is primarily used to describe this document and its purpose. It should not be used for substantive binding provisions.

1 a. This document is an environmental (restrictive) covenant (hereafter "Covenant")
2 executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW and
Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.

3 b. The Property that is the subject of this Covenant is part or all of a site commonly known
4 as **Insert Ecology site name and facility ID**. The Property is legally described in Exhibit A,
and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are
5 differences between these two Exhibits, the legal description in Exhibit A shall prevail.⁵

6 c. The Property is the subject of remedial action under MTCA. This Covenant is required
because residual contamination remains on the Property after completion of remedial actions.
Specifically, the following principle contaminants remain on the Property:⁶

7

Medium	Principle Contaminants Present
Soil	
Groundwater	
Surface Water/Sediment	

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11 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
12 site. Records describing the extent of residual contamination and remedial actions conducted are
available through the Washington State Department of Ecology. **Optional--This includes the**
13 **following documents: (list key documents such as RI/FS, Cleanup Action Plan, Voluntary**
Cleanup Report(s), As-built report)].

14 e. This Covenant grants the Washington State Department of Ecology, as holder of this
15 Covenant, certain rights specified in this Covenant. The right of the Washington State
Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D
16 RCW or the Comprehensive Environmental Response, Compensation, and Liability Act
("CERCLA") 42 USC Chapter 103.

17 f. **Optional--Include the following statement if this Covenant is superseding another**
18 **environmental covenant.]** This Covenant supersedes and replaces the existing Environmental
(Restrictive) Covenant, which is recorded with [] County as **# of original covenant**.
19

20 **I. COVENANT**

21

22 ⁵ Note that an environmental covenant applies to a specific Property, not the site (which may comprise several
properties or "parcels"). A precise legal description of the Property (or Property interest such as an easement) is
23 essential to know where the covenant applies. If there is any uncertainty, the Grantor must have the Property (or
Property interest) surveyed and a legal description prepared by a licensed surveyor. If the contaminated area
24 includes multiple parcels, each parcel must have the covenant recorded on the title. If contamination remains on
only part of a larger Property, the restrictions may apply to just the smaller area, but the covenant must still be
25 recorded on the title for all parcels encompassing the contaminated area.

26 ⁶ List the contaminants for the associated media. If more than a few are present, list the top three to five for each
medium.

1 **[Name of Land Owner or other Grantor]**, as Grantor ⁷ and **[fee simple, easement or**
2 **other]** owner of the Property hereby grants to the Washington State Department of Ecology, and
3 its successors and assignees, (hereafter "Ecology") the following covenants. Furthermore, it is
4 the intent of the Grantor that such covenants shall run with the land and be binding on all current
5 and future owners of any portion of, or interest in, the Property.

6 **A. General Restrictions and Requirements.**

7 The following general restrictions and requirements shall apply to the Property:

8 **a. Interference with Remedial Action.** The Grantor shall not engage in any activity on the
9 Property that may impact or interfere with the remedial action and any operation, maintenance,
10 inspection or monitoring of that remedial action without prior written approval from Ecology.

11 **b. Protection of Human Health and the Environment.** The Grantor shall not engage in
12 any activity on the Property that may threaten continued protection of human health or the
13 environment without prior written approval from Ecology. This includes, but is not limited to,
14 any activity that results in the release of residual contamination that was contained as a part of
15 the remedial action or that exacerbates or creates a new exposure to residual contamination
16 remaining on the Property.

17 **c. Continued Compliance Required.** Grantor shall not convey any interest in any portion
18 of the Property without providing for the continued adequate and complete operation,
19 maintenance and monitoring of remedial actions and continued compliance with this Covenant.

20 **d. Leases.** Grantor shall restrict any lease for any portion of the Property to uses and
21 activities consistent with this Covenant and notify all lessees of the restrictions on the use of the
22 Property.

23 **e. Amendment to the Covenant.** Grantor must notify and obtain approval from Ecology at
24 least sixty (60) days in advance of any proposed activity or use of the Property in a manner that
25 is inconsistent with this Covenant.⁸ Before approving any proposal, Ecology must issue a public
26 notice and provide an opportunity for the public to comment on the proposal. If Ecology
approves the proposal, the Covenant will be amended to reflect the change.

B. 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.

[See Appendix 1 for example restrictions.]

⁷ If there is more than one Grantor, use the term "Grantors" here and throughout this document.

⁸ Examples of inconsistent uses are: using the Property for a use not allowed under the covenant (for example, mixed residential and commercial use on a property that is restricted to industrial uses); OR, drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

1 **Select from the restrictions in Appendix I as appropriate, based on site-specific circumstances.**
2 **Most sites will have only some of these restrictions. Options are provided to illustrate the range**
3 **of potential restrictions. In some cases, the options are mutually exclusive (pick one or the**
4 **other, but not both). In other cases several options may need to be combined to cover the range**
5 **of conditions at the site. This is not intended to be an all-inclusive list. In circumstances where**
6 **none of the categories or suggested options fit the site conditions, adjust the language as**
7 **appropriate to fit the situation.**

- 5 a. **Land use.**
6 b. **Containment of soil/waste materials.**
7 c. **Stormwater facilities.**
8 d. **Vapor/gas controls.**
9 e. **Groundwater use.**
10 f. **Sediments.**
11 g. **Monitoring**
12 h. **Other.**

10 C. **Access.**

- 11 a. The Grantor shall maintain clear access to all remedial action components necessary to
12 construct, operate, inspect, monitor and maintain the remedial action.
13 b. The Grantor freely and voluntarily grants Ecology and its authorized representatives,
14 upon reasonable notice, the right to enter the Property at reasonable times to evaluate the
15 effectiveness of this Covenant and associated remedial actions, and enforce compliance with this
16 Covenant and those actions, including the right to take samples, inspect any remedial actions
17 conducted on the Property, and to inspect related records.
18 c. No right of access or use by a third party to any portion of the Property is conveyed by
19 this instrument.

18 D. **Notice Requirements.**

- 19 a. **Conveyance of Any Interest.** The Grantor, when conveying any interest **[in any part of**
20 **the Property] OR [within the area of the Property described/illustrated in Exhibit B/C],**
21 including but not limited to title, easement, leases, and security or other interests, must:
22 i. Notify Ecology at least thirty (30) days in advance of the conveyance.⁹

23 ⁹ Ecology may waive this notice provision for some units at a Property where the anticipated use is a multi-
24 tenant/owner building where some owners or tenants are unlikely to be exposed to residual contamination. For
25 example: upper story apartments or condominiums, or commercial tenants in a strip mall, with limited rights to use
26 the grounds under and around the building (such as for parking).

If Ecology agrees to such a waiver, the circumstances of the waiver will be detailed in paragraph 4.a.i. In addition
to the specific circumstances, this provision must include the following statement: "Waiver of this advance notice

1 ii. Include in the conveying document a notice in substantially the following form, as
2 well as a complete copy of this Covenant:

3 **NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT**
4 **GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY**
5 **ON [DATE] AND RECORDED WITH THE [COUNTY] COUNTY AUDITOR**
6 **UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND**
7 **ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT**
8 **COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS**
9 **DOCUMENT.**

10 iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete
11 copy of the executed document within thirty (30) days of the date of execution of
12 such document.

13 **b. Reporting Violations.** Should the Grantor become aware of any violation of this
14 Covenant, Grantor shall promptly report such violation to Ecology.

15 **c. Emergencies.** For any emergency or significant change in site conditions due to Acts of
16 Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is
17 authorized to respond to such an event in accordance with state and federal law. The Grantor
18 must notify Ecology of the event and response actions planned or taken as soon as practical but
19 no later than within 24 hours of the discovery of the event.

20 **d.** Any required written notice, approval, or communication shall be personally delivered or
21 sent by first class mail to the following persons. Any change in this contact information shall be
22 submitted in writing to all parties to this Covenant.

[insert contact for Grantor] Phone contact	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000
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23 As an alternative to providing written notice and change in contact information by mail, these
24 documents may be provided electronically in an agreed upon format at the time of submittal.

25 **E. Modification or Termination.**

26 **a.** 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 Chapter 64.70 RCW
and Chapter 70.105D RCW and any rules promulgated under these chapters.

to Ecology for these transactions does not constitute waiver of this notice for the entire Property nor a waiver of the
requirement in Section 4.a.ii. to include this notice in any document conveying interest in the Property.”

1 b. **[Optional]** By signing this agreement, per RCW 64.70.100, the original signatories to
2 this agreement, other than Ecology, agree to waive all rights to sign amendments to and
3 termination of this Covenant.¹⁰

4 **F. Enforcement and Construction.**

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

6 b. Grantor shall provide Ecology with an original signed Covenant and proof of recording
7 within ten (10) days of execution of this Covenant.

8 c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific
9 performance or legal process. All remedies available in this Covenant shall be in addition to any
10 and all remedies at law or in equity, including Chapter 70.105D RCW and Chapter 64.70 RCW.
11 Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any
12 forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach
13 of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach
14 of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

15 d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to
16 process a request for any modification or termination of this Covenant and any approval required
17 by this Covenant.

18 e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control
19 Act, chapter 70.105D RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.

20 f. The provisions of this Covenant shall be severable. If any provision in this Covenant or
21 its application to any person or circumstance is held invalid, the remainder of this Covenant or
22 its application to any person or circumstance is not affected and shall continue in full force and
23 effect as though such void provision had not been contained herein.

24 g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant
25 may be used to aid in the interpretation of that section or paragraph or exhibit but does not
26 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 _____ day of _____, 20____.

[NAME OF GRANTOR]

[SIGNATURE]

[TITLE]

¹⁰ As time passes, the original grantor and other signers of the covenant may no longer exist as viable entities. This is intended to allow future amendments or termination of the covenant without Ecology having to seek court authorization, as provided by RCW 64.70.100.

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Dated: _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[SECTION MANAGER SIGNATURE - if VCP or Order.]
[PROGRAM MANAGER SIGNATURE - if Consent Decree.]
[TITLE]

Dated: _____

[Unless waived under Section 5b above, add the following provision where a covenant is being amended or superseded.]

The undersigned acknowledge Environmental (Restrictive) Covenant **[# of the original covenant]** filed in **[]** County is hereby terminated and replaced with the above Environmental Covenant.

[NAME OF GRANTOR OF ORIGINAL COVENANT]

[SIGNATURE]
[TITLE]

Dated: _____

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GRANTOR INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____
_____ personally appeared before me, and acknowledged that **he/she** is the individual
described herein and who executed the within and foregoing instrument and signed the same at
his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires_____.

GRANTOR CORPORATE ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____
_____ personally appeared before me, acknowledged that **he/she** is the _____
_____ 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.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires_____.

Exhibit A to Restrictive Covenant

LEGAL DESCRIPTION

(Required)

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Exhibit B to Restrictive Covenant

PROPERTY MAP

(Required)

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Exhibit D to Restrictive Covenant
SUBORDINATION AGREEMENT

KNOW ALL PERSONS, That _____, the owner and holder of that certain _____ (Instrument) bearing the date the _____ day of _____, 20____, executed by _____, _____, and recorded in the office of the County Auditor of _____ County, State of Washington, on the _____, 20____, under Auditor's File Number _____, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated _____, 20____, executed by _____, and recorded in _____ County, Washington under Auditor's File Number _____.

Dated _____, 20____.

NAME

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20____, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of Washington, residing at _____.
My appointment expires _____.

1 **APPENDIX 1 to Restrictive Covenant**

2 **EXAMPLE SITE-SPECIFIC COVENANT PROVISIONS**

3 **a. Land Use.**¹¹

4 **Option 1 Industrial Land Use:** The remedial action for the Property is based on a cleanup
5 designed for industrial property. As such, the Property shall be used in perpetuity only for
6 industrial uses, as that term is defined in the rules promulgated under Chapter 70.105D RCW.
7 Prohibited uses on the Property include but are not limited to residential uses, childcare facilities,
8 K-12 public or private schools, parks, grazing of animals, growing of food crops, and non-
9 industrial commercial uses.

10 **Option 2 Commercial Land Use:** The remedial action for the Property is based on a cleanup
11 designed for commercial property. As such, the Property shall be used in perpetuity only for
12 commercial land uses as that term is defined in the rules promulgated under Chapter 70.105D
13 RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare
14 facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.

15 **Option 3 Park:** The remedial action for the Property is based on a cleanup designed for a public
16 park. As such, the Property shall be used in perpetuity only for a public park. Prohibited uses on
17 the Property include but are not limited to residential uses, childcare facilities, K-12 public or
18 private schools, grazing of animals, and growing of food crops.

19 **Option 4 [Specify other land use limitations as appropriate.]**

20 **b. Containment of Soil/Waste Materials.**¹²

21 **[Use where contaminated soil or solid or hazardous waste remains on the property.]**

22 The remedial action for the Property is based on containing contaminated soil **[and waste**
23 **materials]** under a cap consisting of **[Insert a description of the cap]**¹³ and located as
24 illustrated in **[Exhibit B/C]**¹⁴. The primary purpose of this cap is to **[Insert purpose of cap]**.¹⁵
25 As such, the following restrictions shall apply within the area illustrated in **[Exhibit B/C]**¹⁶:

26 **Option 1 [Use where a cap is required.]** Any activity on the Property that will compromise the
integrity of the cap including: drilling; digging; piercing the cap with sampling device, post,
stake or similar device; grading; excavation; installation of underground utilities; removal of the
cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without
prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48)

¹¹ Use one of these restrictions only if the underlying zoning allows the use.

¹² Waste materials means solid wastes as defined in Chapter 70.95 RCW or hazardous wastes as defined in Chapter 70.105 RCW and the rules promulgated under these statutes.

¹³ Such as: an X foot thick layer of clean soil; an engineered cap consisting of X inches of clean soil overlying a X mil thick geomembrane and/or clay layer; asphalt pavement; an X square foot building, etc.]

¹⁴ Be very clear in describing or diagramming where the contamination is located relative to a legally defined benchmark such as a property line or survey monument; or use a legal description.

¹⁵ Such as: minimize the potential for contact with contaminated soil; minimize leaching of contaminants to groundwater and surface water; prevent runoff from contacting contaminated soil; minimize airborne contaminants.

A cap may have multiple purposes.

¹⁶ NOTE: More than one exhibit may be necessary to illustrate the area restricted by this and other limitations.

1 hours of the discovery of any damage to the cap. Unless an alternative plan has been approved
2 by Ecology 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.

3 **Option 2 [Use when contamination is left behind under a building.]**

4 The Grantor shall not alter or remove the existing structures on the Property in any manner that
5 would expose contaminated soil [and waste materials], result in a release to the environment of
6 contaminants, or create a new exposure pathway, without prior written approval of Ecology.
7 Should the Grantor propose to remove all or a portion of the existing structures illustrated in
[Exhibit B/C] so that access to the underlying contamination is feasible, Ecology may require
treatment or removal of the underlying contaminated soil [and waste materials].

8 **Option 3: [Use when periodic inspections of a cap/building are included.]**

9 The Grantor covenants and agrees that it shall annually, or at another time as approved in writing
10 by Ecology, inspect the [cap/building] and report within thirty (30) days of the inspection the
condition of the [cap/building] and any changes to the [cap/building] that would impair its
performance.

11 **c. Stormwater facilities. [Use when infiltration needs to be controlled to minimize
12 leaching from soil or waste materials, or spreading of groundwater contamination.]**

13 To minimize the potential for mobilization of contaminants remaining in the [soil/waste
14 materials/groundwater] on the Property, no stormwater infiltration facilities or ponds shall be
constructed [on the Property] OR [within the area of the Property illustrated in Exhibit
15 B/C]. All stormwater catch basins, conveyance systems, and other appurtenances located within
this area shall be of water-tight construction.¹⁷

16 **d. Vapor/gas controls. [Use when vapors or methane gas are a concern.]**

17 The residual contamination on the Property includes [volatile chemicals that may generate
18 harmful vapors] AND/OR [biodegradable wastes/chemicals that may generate methane, a
combustible gas]. As such, the following restrictions shall apply [on the Property] OR [within
19 the area of the Property illustrated in Exhibit B/C] to minimize the potential for exposure to
these vapors:

20 **Option 1** No building or other enclosed structure shall be constructed [on the Property/within
this area].

21 **Option 2** Any building or other enclosed structure constructed [on the Property/within this
22 area] shall be constructed with a sealed foundation and with a [vapor/gas] control system
installed and maintained to prevent the migration of [vapors/gas] into the building or structure.

23 **e. Groundwater Use. [Use when groundwater use restrictions are required.]**

24 _____
25 ¹⁷ NOTE: Most local ordinances require on-site infiltration of runoff. If redevelopment of the Property is
26 anticipated, the cleanup plan should reserve an area for this infiltration to occur without exacerbating leaching of
residual soil contamination or enhancing movement of contaminants within the groundwater.

1 The groundwater beneath [the Property] OR [within the area of the Property illustrated in
2 Exhibit B/C] remains contaminated and shall not be extracted for any purpose other than
3 temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well
4 for any water supply purpose is strictly prohibited. Groundwater extracted [from the
Property/within this area] for any purpose shall be considered potentially contaminated and
any discharge of this water shall be done in accordance with state and federal law.

5
6 **f. Sediments. [Use for sediment cleanup sites.]¹⁸**

7 The residual contamination on the Property includes contaminated sediments. As such, the
8 following restrictions shall apply to minimize potential disturbance of these sediments [on the
Property] OR [within the area of the Property illustrated in Exhibit B/C]:

9 **Option 1 [Use where a cap is required.]** Any activity [on the Property/within this area] that
10 will compromise the integrity of the cap including: drilling; digging; piercing the cap with
11 sampling device, post, stake or similar device; excavation; installation of buried utilities;
12 removal of the cap; or, application of loads in excess of the cap load bearing capacity, is
13 prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within
14 forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has
15 been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a
16 report documenting this work to Ecology within thirty (30) days of completing the repairs.

17 **Option 2** No docks or other structures shall be constructed [on the Property/within this area]
18 without prior written approval of Ecology.

19 **Option 3** No dredging shall be allowed [on the Property/within this area] without prior written
20 approval of Ecology.

21 **Option 4** No ships or boats shall be allowed to anchor or use side thrusters [on the
22 Property/within this area]. A no wake zone shall be enforced and ships and boats shall be
23 limited to a draft depth of [XX] feet [on the Property/within this area].

24 **Option 5** No digging for clams, setting of crab pots or fishing nets, anchoring of mooring buoys
25 or channel markers, or similar activities that could disturb the surface of the sediment shall be
26 allowed [on the Property/within this area] without prior written approval of Ecology.

27 **g. Monitoring. [Use for long-term protection of monitoring devices.]**

28 Several [groundwater monitoring wells, vapor probes, etc.] are located on the Property to
29 monitor the performance of the remedial action. The Grantor shall maintain clear access to these
30 devices and protect them from damage. The Grantor shall report to Ecology within forty-eight
31 (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves

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¹⁸ NOTE: Sediment restrictions are currently evolving. Additional guidance can be found in Ecology's Sediment
Cleanup Users Manual II (SCUM II), Publication No. 12-09-057.

1 of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a
2 report documenting this work to Ecology within thirty (30) days of completing the repairs.

3 **h. Other.**

4 [Add other property-specific use or activity restrictions and affirmative obligations that
5 are necessary but not identified above. Examples include special remedy-specific
6 requirements such as restrictions on structures over leachate/groundwater collection
7 systems, or protection requirements for cut-off walls or sheet piling.]
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APPENDIX C
(SCAP)

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