

Record Date: 7/22/2020 2:12 PM

Electronically Recorded King County, WA

After Recording Return
Original Signed Covenant to:
Jing Liu
Toxics Cleanup Program
Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008-5452

Environmental Covenant

Grantor: North Lot Development, L.L.C.

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

Brief Legal Description: BASE UNIT, STADIUM PLACE MASTER CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER RECORDING NO. 20111221001198, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 273 OF CONDOMINIUMS, AS PAGES 97 THROUGH 99, IN KING COUNTY, WASHINGTON, RECORDED UNDER 2011122100197 ("Property").

Tax Parcel Nos.: 795300-0000 (formerly 7666206780 and 7666206790)

Cross Reference: Consent Decree No. 11-2-27892-1

②
1ST AM CM-5531

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 of a site commonly known as **North Lot Development, Facility ID# 5378137**. The Property that this Covenant covers does not include the air space above the Base Unit, known as the "Podium Unit," "West Unit," "South Unit," and "North Unit," and as identified in the property records of King County recorded under 20111221001198 and 20111221001197. 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. Contaminants of concern that remain on the Property include but are not limited to:

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Medium	Principal Contaminants Present
Soil	Polycyclic aromatic hydrocarbons (PAHs; including primarily carcinogenic PAHs), gasoline -range total petroleum hydrocarbons, and benzene.
Groundwater	N/A
Surface Water/Sediment	N/A

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 - Map Illustrating Locations of Restrictions
- Exhibit D - Operation and Maintenance Plan

Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes the following documents:

- Remedial Investigation Report – North Lot Development, Landau Associates (May 23, 2011)
- Feasibility Study Report – North Lot Development, Landau Associates (May 23, 2011)
- North Lot Development Cleanup Action Plan (July 1, 2011)
- Engineering Design Report, Landau Associates (July 5, 2011)
- Cleanup Action Report, West Block – North Lot Development Property, Landau Associates (October 19, 2012)
- Request for Partial Certificate of Completion – West Block (October 19, 2012)
- North Lot Development – Cleanup Action Report Review for the Cleanup at the West Block of the North Lot Development Cleanup Action – Site Status Letter (December 3, 2012)

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

North Lot Development, L.L.C., as Grantor and fee simple owner of the Property hereby grants to 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/waste materials.** The remedial action for the Property is based on containing contaminated soil under a cap consisting of (1) a concrete building foundation within the building footprint, (2) a 5 foot deep layer of backfilled clean soil with landscaping on top in areas outside the building footprint, (3) an impermeable concrete cap in areas within the Property boundary that are not landscaped and (4) asphalt cap in areas that do not contain concrete and/or landscaping. In the landscaped areas, a polypropylene non-woven geotextile fabric with uniform fibers that are resistant to naturally encountered chemicals, alkalis, and acids was placed at the bottom

of the excavation to act as a barrier before it was backfilled with clean soil. The cap is illustrated in Exhibit C. The primary purpose of this cap is to prevent contact with shallow contaminated soil in all areas outside the footprint of the building foundation within the Property's boundary. As such, the following restrictions shall apply within the area illustrated in Exhibit C:

- 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) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved 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.
- The Grantor shall not alter or remove the existing structures on the Property 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.
- The Grantor covenants and agrees that it shall annually, and after significant earthquakes, as well as at any other time as approved in writing by Ecology, visually inspect the cap—including the building foundation, landscaped areas above the geotextile barrier, concrete surface cap, and asphalt cap—and report to Ecology within thirty (30) days of the inspection on the condition of the cap and any changes to the cap that would impair its performance. Grantor shall perform this task in accordance with the Memorandum Regarding North Lot Development West Parcel Surface Cap Operations and Maintenance Plan prepared by GeoEngineers dated August 2, 2019, included as Exhibit D.

c. Groundwater Use. Though results from post remedial groundwater monitoring at the Property boundary have shown compliance with cleanup levels, it is not clear if contaminated groundwater still exists beneath the Property. Thus, groundwater shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring, remediation, or as otherwise specified in the clean-up action outlined in, or developed pursuant to, the Consent Decree. 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. Monitoring. Two groundwater monitoring wells (MW-19 and MW-20) are located on the Property to monitor the performance of the remedial action to ensure that the remaining contamination is contained within the Property. These wells are illustrated in Exhibit C. 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 wells. Unless Ecology approves of an alternative plan in writing, the Grantor shall repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

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 in the Property—which, for purposes of this Covenant, only includes the Base Unit and no units located in the Property’s air space—including but not limited to title, easement, leases, and security or other interests, must do the following:

- 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 July 16, 2020 AND RECORDED WITH THE KING COUNTY AUDITOR UNDER 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.

These requirements apply only to the Base Unit of 795300-0000, identified herein as the Property, and no air space units above the Base Unit.

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, earthquake, 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.

Alan Cornell Daniels Real Estate, LLC 2401 Utah Avenue South, Suite 305 Seattle, WA 98134 (206) 730-6447 AlanC@danielsre.com	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
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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 this 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 26th day of May, 2020.

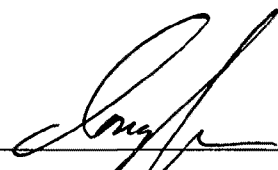
DANIELS REAL ESTATE., LLC,
a Washington limited liability company

By:  _____

Kevin D. Daniels, Manager

RD MERRILL REAL ESTATE HOLDINGS LLC,
a Washington limited liability company

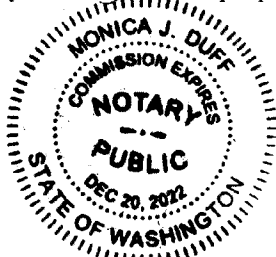
By:  _____
Its: VICE CHAIRMAN

By:  _____
Its: EVP-CFO

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF Washington
COUNTY OF King

On this 26th day of May, 2020 I certify that Kevin Daniels personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the manager of Daniels Real Estate, LLC, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Monica J. Duff
Notary Public in and for the State of Washington
Residing at Seattle, WA
My appointment expires 12/20/2022

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF Washington
COUNTY OF King

On this 28th day of May, 2020 I certify that William D. Pettit, Jr. personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the Vice Chairman of RD Merrill Real Estate Holdings, LLC, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Evelyn S. Berry
Notary Public in and for the State of Washington
Residing at Seattle, WA
My appointment expires 5/29/23

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF Washington
COUNTY OF King

On this 28th day of May, 2020 I certify that Douglas D. Spear personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the EVP-CEO of RD Merrill Real Estate Holdings, LLC, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Evelyn S. Berry
Notary Public in and for the State of Washington
Residing at Seattle, WA
My appointment expires 5/29/23

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Signature: [Handwritten Signature]

Printed Name: ROBERT W WARREN

Title: TCP SECTION MANAGER

Dated: 6/11/2020

STATE ACKNOWLEDGMENT

STATE OF Washington

COUNTY OF King

On this 11 day of June, 2020 I certify that Robert W. Warren personally appeared before me, acknowledged that **he/she** is the Grantee of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said state agency.

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

Residing at King County

My appointment expires 12-20-2020

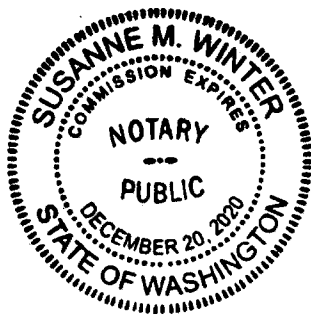


Exhibit A

LEGAL DESCRIPTION

BASE UNIT, STADIUM PLACE MASTER CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER RECORDING NO. 20111221001198, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 273 OF CONDOMINIUMS, AS PAGES 97 THROUGH 99, IN KING COUNTY, WASHINGTON, RECORDED UNDER 2011122100197.

Exhibit B
PROPERTY MAP

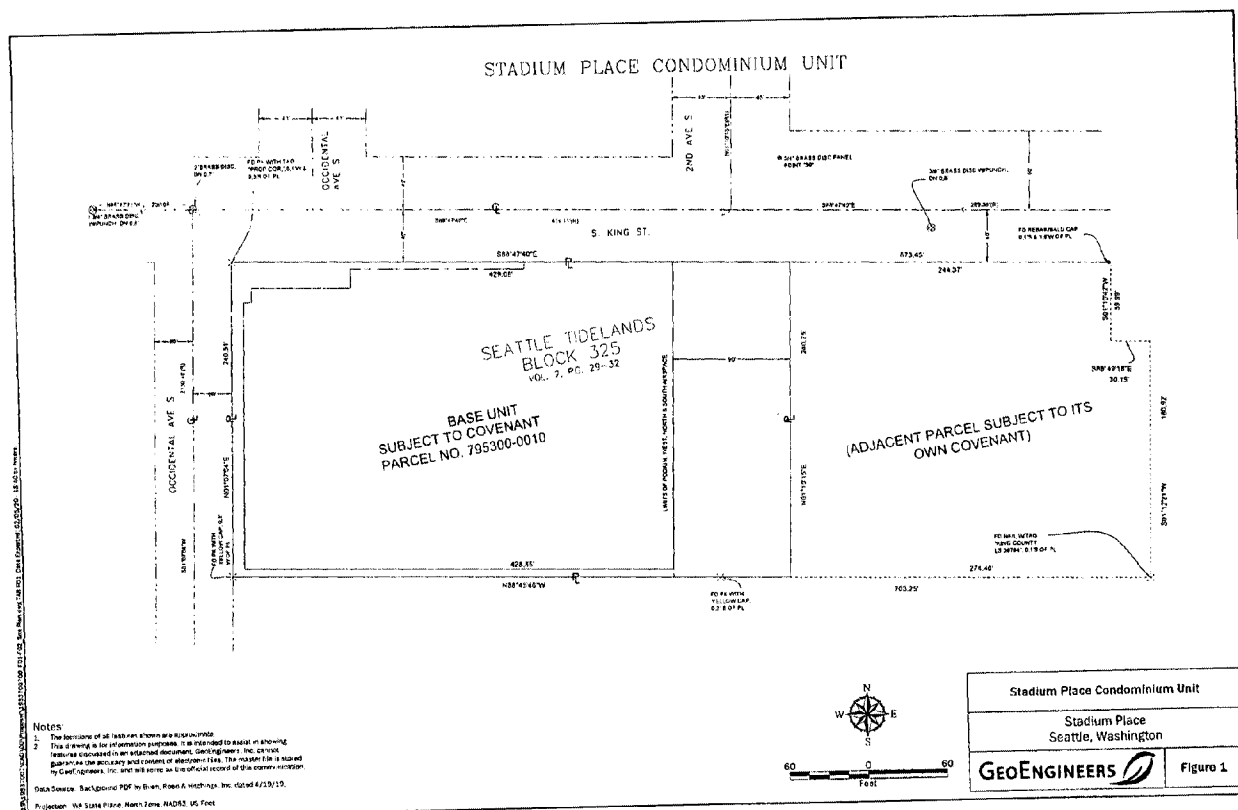


Exhibit C

MAP ILLUSTRATING LOCATION OF RESTRICTIONS

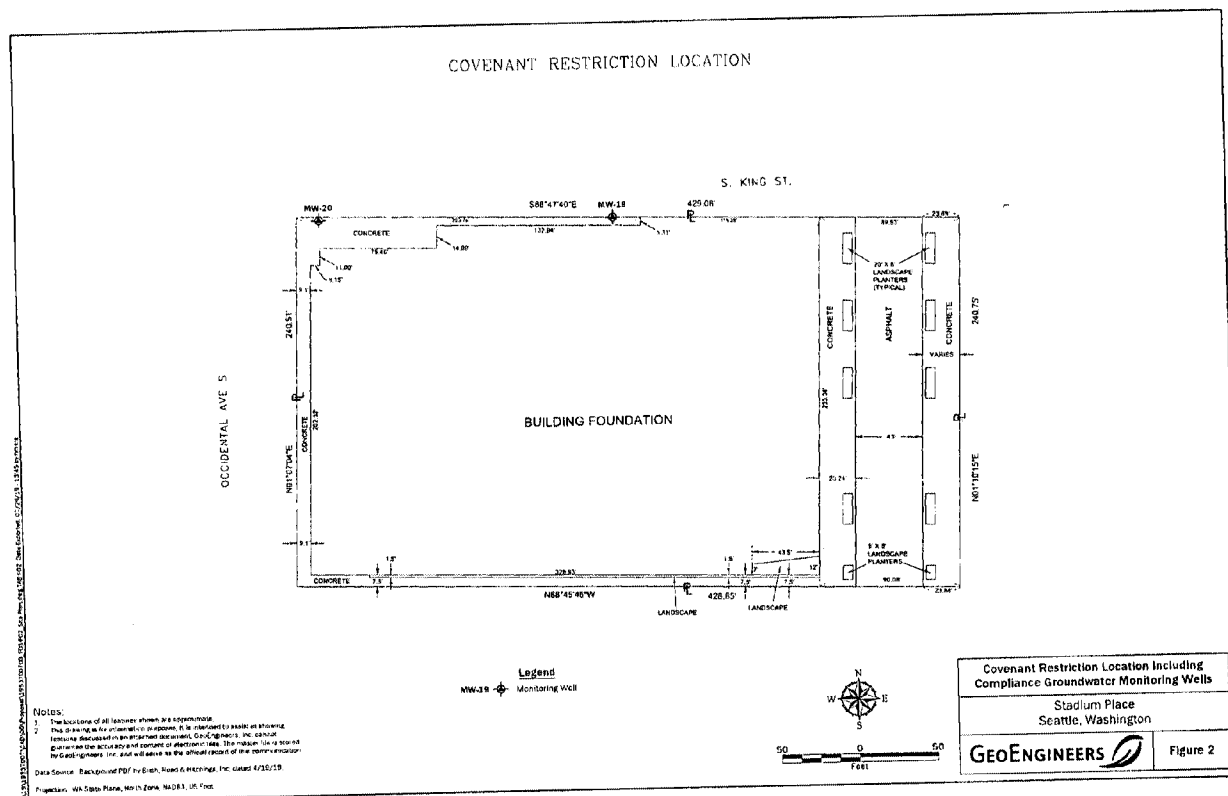


Exhibit D


OPERATION AND MAINTENANCE PLAN



Memorandum

2101 4th Avenue, Suite 950, Seattle, Washington 98121, Telephone: 206.728.2674, Fax: 206.728.2732

www.geoengineers.com

To: Alan Cornell, North Lot Development
From: Tim Syverson, LHO 
Date: August 2, 2019
File: 19837-007-00
Subject: North Lot Development West Parcel Surface Cap Operations and Maintenance Plan

This Surface Cap Operations and Maintenance Plan (O&M Plan) was prepared for the cleanup action at the North Lot Development (NLD) West Parcel (Property; King County Parcel 795300-0000) located at 201 South King Street in the south end Central Business District, southeast of the intersection of South King Street and Occidental Avenue South in Seattle, Washington. Cleanup was conducted as part of development of the Property for commercial and residential uses consistent with the approved Cleanup Action Plan (CAP; Landau Associates July 2011) and in accordance with the Washington State Department of Ecology (Ecology) Model Toxics Control Act (MTCA) Cleanup Regulation (Chapter 173-340 WAC) and the Consent Decree (CD; No. 11-2-27892-1) between NLD and Ecology (Ecology January 2014). The cleanup action included hotspot excavation of contaminated soil from the northwestern portion of the Property (former gasoline station area) to the elevation of the groundwater table, enhanced bioremediation for soil and groundwater impacted by residual gasoline and benzene near the elevation of the water table in the area of the hotspot excavation, a surface cap over the entire Property, added measures to prevent contact with shallow contaminated soil outside the footprints of the building foundations (see below), institutional controls [and the associated Environmental Covenant (EC)], groundwater monitoring, and contingent groundwater treatment.

The Surface Cap O&M Plan for the Property describes the elements of the cap and procedures to ensure that the cap is maintained consistent with the requirement of the CAP and EC.

PROTECTIVE SURFACE CAP

In accordance with the CAP, the cleanup action included the placement of a protective cap to prevent contact with soil remaining in place at the Property following the cleanup and construction activities associated with property development. The cap consists primarily of the building foundations constructed as part of Property development. In areas outside of the footprint of the building foundations, but within the Property boundary, added measures were taken to prevent contact with shallow contaminated soil. In these areas outside the building footprints, the cap consists of either:

- ❑ An impervious concrete cap primarily in drive and parking areas, and walkways.
- ❑ Landscaped areas where soil has been excavated to 5 feet below ground surface, a geotextile fabric barrier was placed at the bottom of the excavation, and the excavated area has been backfilled with clean soil.

Construction was completed consistent with the project design plans. The cleanup action was completed as outlined in the CAP and the Engineering Design Report (EDR; Landau Associates July 2011), and documented in the Cleanup Action Report (CAR). The As-built conditions of the Property surface cap and landscaped areas are provided in Appendix A of the CAR and are included as Attachment 1 of this memorandum.

Memorandum to Alan Cornell, North Lot Development
August 2, 2019
Page 2

OPERATION AND MAINTENANCE PROCEDURES

Scheduled operation and maintenance of the protective surface cap will ensure the ongoing performance of the cap and maintain its intended function. The general approach to long-term maintenance of the protective cap will include:

- Conducting routine, periodic inspection and monitoring to identify any problems or areas of concern in a timely manner.
- Evaluating each identified problem, and, if required, identifying appropriate, cost-effective mitigation measures.
- Implementing repairs or corrective actions, as warranted.

Cap inspections will be conducted at least annually, and after significant earthquakes, to identify the need for any maintenance or repair activities. The cap surface and adjacent areas will be inspected to identify conditions that may indicate potential or actual damage to the cap. Items and conditions that will be noted during the cap inspections will include:

- Integrity of the concrete pavement (including the presence of visible cracking and significant erosion or settlement).
- Presence of differential settlement and ponding of stormwater on top of or directly adjacent to the cap.
- Condition of Property roadways.
- Condition of stormwater collection, conveyance, and discharge structures.

If a significant problem with the cap, roadway, or associated drainage structures (or other pertinent Property features) is identified, NLD will evaluate and correct the problem(s) and notify Ecology and document the actions in the respective monthly Progress Report required by the CD. Substantial cracks or any conditions observed that adversely affect the performance of the cap will be evaluated and repaired as necessary.

Any new construction will be conducted per the requirements of the CAP and EC and the cap will be extended or replaced consistent with the O&M Plan.

REFERENCES

Landau Associates, Cleanup Action Plan, July 20, 2011.

Landau Associates, Engineering Design Report, July 5, 2011

Washington State Department of Ecology, Consent Decree No. 11-2-27892-1, January 14, 2014.

List of Attachments:

Appendix A Figures C3.0, C3.1 and C5.1 from Cleanup Action Report, West Block – North Lot Development Property, Landau Associates

Cleanup Action Report West Block – North Lot Development Property Seattle, Washington

October 19, 2012

Prepared for

**North Lot Development, LLC
Seattle, Washington**

 **LANDAU
ASSOCIATES**
130 2nd Avenue South
Edmonds, WA 98020
(425) 778-0907

APPENDIX A

West Block Surface Cap and Landscaping As-Built Drawings

