

**EXHIBIT H**  
**MODEL RESTRICTIVE COVENANT**

1 **EXHIBIT H**

2 **MODEL RESTRICTIVE COVENANT**

3  
4 After Recording Return to:

5 Department of Ecology  
6 [fill in regional address]

7 **ENVIRONMENTAL COVENANT**

8 **Grantor:** [land owner]  
9 **Grantee:** State of Washington, Department of Ecology  
10 **Legal:** [fill in brief legal description]  
11 **Tax Parcel Nos.:** [fill in]  
12 **Cross Reference:** [if amendment, recording number of original covenant]

13 Grantor, [land owner], hereby binds Grantor, its successors and assigns  
14 to the land use restrictions identified herein and grants such other rights under this  
15 environmental covenant ( hereafter "Covenant") made this \_\_\_ day of \_\_\_\_\_, 200\_\_ in  
16 favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full  
17 right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics  
18 Control Act, RCW 70.105D.030(g), and the Uniform Environmental Covenant Act, 2007  
19 Wash. Laws ch. 104, sec. 12.

20 This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and  
21 WAC 173-340-440 by [NAME OF PROPERTY OWNER], its successors and assigns, and the  
22 State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

23 A remedial action (hereafter "Remedial Action") occurred at the property that is the  
24 subject of this Covenant. The Remedial Action conducted at the property is described in the  
25 following document[s]:

26 [INSERT THE DATE AND TITLE FOR CLEANUP ACTION PLAN and other  
documents as applicable].

1 These documents are on file at Ecology's [Insert Office Location] Office.

2 This Covenant is required because the Remedial Action resulted in residual  
3 concentrations of [SPECIFICALLY LIST SUBSTANCE(S)] which exceed the Model Toxics  
4 Control Act Method B Residential Cleanup Level(s) for [SOIL, GROUNDWATER, ETC.]  
5 established under WAC 173-340-\_\_\_\_\_.

6 The undersigned, [NAME OF PROPERTY OWNER], is the fee owner of real property  
7 (hereafter "Property") in the County of [NAME OF COUNTY], State of Washington, that is  
8 subject to this Covenant. The Property is legally described [AS FOLLOWS: (insert legal  
9 description language)] -or- [IN ATTACHMENT A OF THIS COVENANT AND MADE A  
10 PART HEREOF BY REFERENCE (attach document containing legal description)].

11 [NAME OF PROPERTY OWNER] makes the following declaration as to limitations,  
12 restrictions, and uses to which the Property may be put and specifies that such declarations  
13 shall constitute covenants to run with the land, as provided by law and shall be binding on all  
14 parties and all persons claiming under them, including all current and future owners of any  
15 portion of or interest in the Property (hereafter "Owner").

16 Section 1. (This Section must describe with particularity the restrictions to be placed on the  
17 property.)

18 1. If the groundwater contains hazardous substances above drinking water  
19 standards (and a prohibition on withdrawal of groundwater will not be accomplished by  
20 alternate means under WAC 173-340-440(8)(c)) use the following sentence: "No groundwater  
21 may be taken for domestic use from the Property."

22 2. If contaminated soil remains that is above Method A or B Residential Cleanup  
23 Levels describe prohibited activities as follows:

24 For contaminated soil under a structure use the following sentence: "A portion of the Property  
25 contains [SPECIFICALLY LIST SUBSTANCE(S)] contaminated soil located  
26 [SPECIFICALLY DESCRIBE WHERE THE SOIL IS LOCATED, I.E., UNDER THE

1 SOUTHEAST PORTION OF BUILDING 10]. The Owner shall not alter, modify, or remove  
2 the existing structure[s] in any manner that may result in the release or exposure to the  
3 environment of that contaminated soil or create a new exposure pathway without prior written  
4 approval from Ecology."

5 b. Example language for contaminated soil under a cap: "Any activity on the Property  
6 that may result in the release or exposure to the environment of the contaminated soil that was  
7 contained as part of the Remedial Action, or create a new exposure pathway, is prohibited.  
8 Some examples of activities that are prohibited in the capped areas include: drilling, digging,  
9 placement of any objects or use of any equipment which deforms or stresses the surface  
10 beyond its load bearing capability, piercing the surface with a rod, spike or similar item,  
11 bulldozing or earthwork."

12 Section 2. Any activity on the Property that may interfere with the integrity of the Remedial  
13 Action and continued protection of human health and the environment is prohibited.

14 Section 3. Any activity on the Property that may result in the release or exposure to the  
15 environment of a hazardous substance that remains on the Property as part of the Remedial  
16 Action, or create a new exposure pathway, is prohibited without prior written approval from  
17 Ecology.

18 Section 4. The Owner of the property must give thirty (30) day advance written notice to  
19 Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title,  
20 easement, lease, or other interest in the Property shall be consummated by the Owner without  
21 adequate and complete provision for continued monitoring, operation, and maintenance of the  
22 Remedial Action.

23 Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive  
24 Covenant and notify all lessees of the restrictions on the use of the Property.

1 Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the  
2 Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve  
3 any inconsistent use only after public notice and comment.

4 Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the  
5 Property at reasonable times for the purpose of evaluating the Remedial Action; to take  
6 samples, to inspect remedial actions conducted at the property, and to inspect records that are  
7 related to the Remedial Action.

8 Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an  
9 instrument that provides that this Restrictive Covenant shall no longer limit use of the Property  
10 or be of any further force or effect. However, such an instrument may be recorded only if  
11 Ecology, after public notice and opportunity for comment, concurs.

12 Section 9. Neither Ecology nor the Owner intend to include any third party beneficiaries with  
13 enforcement rights under this Covenant.

14 [Insert the following section into the covenant for the railyard facility property: Section 10. By  
15 signing this Covenant, the Owner does not intend to affect the scope of existing federal  
16 preemption.]

17 **[NAME OF GRANTOR]**

18  
19 \_\_\_\_\_  
20 **[Name of Signatory]**  
21 **[Title]**  
22 Dated: \_\_\_\_\_

23  
24 STATE OF WASHINGTON  
25 DEPARTMENT OF ECOLOGY

26  
27 \_\_\_\_\_  
28 **[Name of Person Acknowledging Receipt]**  
29 **[Title]**  
30 Dated: \_\_\_\_\_

1 [INDIVIDUAL ACKNOWLEDGMENT]

2 STATE OF  
3 COUNTY OF

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

8 \_\_\_\_\_  
9 Notary Public in and for the State of  
10 Washington, residing at \_\_\_\_\_.  
11 My appointment expires \_\_\_\_\_.

12 [CORPORATE ACKNOWLEDGMENT]

13 STATE OF  
14 COUNTY OF

15 On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally  
16 appeared before me, acknowledged that **he/she** is the \_\_\_\_\_ of the corporation  
17 that executed the within and foregoing instrument, and signed said instrument by free and  
18 voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on  
19 oath stated that **he/she** was authorized to execute said instrument for said corporation.

20 \_\_\_\_\_  
21 Notary Public in and for the State of  
22 Washington, residing at \_\_\_\_\_.  
23 My appointment expires \_\_\_\_\_.

24 [REPRESENTATIVE ACKNOWLEDGEMENT]

25 STATE OF  
26 COUNTY OF

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_  
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  
\_\_\_\_\_ [type of authority] of \_\_\_\_\_ [name of party being  
represented] to be the free and voluntary act and deed of such party for the uses and purposes  
mentioned in the instrument.

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