

**EXHIBIT D
RESTRICTIVE COVENANT
(ELLIOTT AVENUE)**

SEATTLE ART MUSEUM (SAM)

Former UNOCAL Seattle Marketing Terminal
Seattle, Washington

This declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f and g), and WAC 173-340-440, by SAM, its successors and assigns, and the Washington State Department of Ecology, its successors and assigns.

Legal Description:

Seattle Art Museum, King Co. Consent Decree No.:

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This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by SAM, its successors and assigns including future owners (collectively hereafter “Owner”), and the State of Washington Department of Ecology, its successors and assigns (hereafter “Ecology”).

A remedial action occurred at the property that is the subject of this Restrictive Covenant. The remedial action conducted at the property is described in the following documents which are on file at Ecology’s Northwest Regional Office:

1. Final Supplemental RI for Upper Yard, Elliott Ave. and Offsite Area by Geo Engineers, June 28, 1996.
2. Remedy Selection Elliott Avenue, by GeoEngineers January 10, 1997.
3. Supplemental Characterization (Off Property Contamination & C₁₄ Testing) Elliott Avenue and Bay Street North of Seattle Marketing Terminal, Lower Yard, Seattle, WA. by Geo Engineers, January 6, 1997.
4. Health and Safety Information Notice for the City of Seattle, Property near Unocal’s Former Seattle Marketing Terminal, June 27, 1997. ***Revised November 24, 1998, by GeoEngineers.***
5. Site Remediation Progress Reports 1 through 66 (1988 –1999) by GeoEngineers.
6. Focused Supplemental Site Characterization Report, Prepared for The Trust for Public Land, Former Unocal Property, Seattle, WA By HART CROWSER, Project No. J-7018, September 30, 1999.
7. Supplemental Focused Feasibility Study Report, Prepared for The Trust for Public Land, Former Unocal Property, Seattle, WA By HART CROWSER, Project No. J-7018, September 30, 1999.

This Restrictive Covenant is required because the remedial action resulted in residual concentrations of TPH which exceed the Model Toxics Control Act (MTCA) Method A or B Cleanup Levels for soils beneath the Elliott Avenue right of way at depths of about 10 to 30 feet

below ground surface established under WAC Chapter 173-340 (Enclosed Figure 9). Petroleum hydrocarbon contamination in groundwater exceeds Method A cleanup levels established under WAC 173-340-740. There is viscous free product present beneath Elliott Ave. There is ongoing groundwater monitoring and free product removal from wells by hand bailing by Unocal.

The undersigned, SAM, is the fee owner of real property (hereafter “Property”) in the County of King, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described as follows: *(insert legal description)*. SAM, makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property.

Section 1. Any activity on the Property that may interfere with the cleanup or integrity of the remedial action, result in the release or exposure to the environment of the residual TPH contaminated soil that was contained or hazardous substance that remains on the Property as part of the remedial action, or creates a new exposure pathway is prohibited without prior written approval from Ecology, except as provided in the Restrictive Covenant to be filed by the City of Seattle concurrent with this Restrictive Covenant. Some examples of activities that are prohibited in the capped area include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

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

Section 3. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner’s intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation and maintenance of the remedial action. The Owner conveying any interest in the property shall notify Ecology of the name, mailing address and telephone number of the person or persons who acquired the title, easement, lease, or other interest in the Property within fifteen (15) days of the transaction.

acknowledged said instrument to be the free and voluntary act and deed of said non-profit corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and action as said officer of the non-profit corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the non-profit corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

Print Name: _____
Notary Public in and for the State of Washington,
Residing at _____
My commission expires: _____