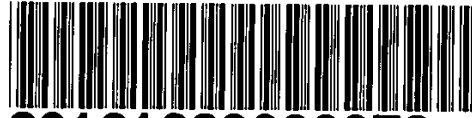


Return Address:

Ken Lederman
Foster Pepper PLLC
1111 Third Ave, Suite 3000
Seattle, WA 98101



20161229000978

WASHINGTON LEG COV 132.00
PAGE-001 OF 010
12/29/2016 13:19
KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. Environmental Covenant 2. _____
3. _____ 4. _____

Reference Number(s) of Documents assigned or released:
Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document

1. NorthEdge Developers LLC
2. _____
Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document

1. State of Washington, Department of Ecology
2. _____
Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Lots 1-12, Inclusive, Block 74, Lake Union Addition to City of Seattle,
According to Plat Thereof,
Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number assigned Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

[Signature] Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

After Recording Return
Original Signed Covenant to:

Jerome Cruz
Toxics Cleanup Program
Department of Ecology
Northwest Regional Office
3190 - 160th Avenue SE
Bellevue, WA 98008-5452

Environmental Covenant

****Document (20161213001114) being re-recorded to add footnotes****

Grantor:	NorthEdge Developers LLC
Grantee:	State of Washington, Department of Ecology (hereafter "Ecology")
Brief Legal Description:	Lots 1-12, Inclusive, Block 74, Lake Union Addition to City of Seattle, According to the Plat Thereof, Recorded in Volume 1 of the Plats, Page 238, In King County, Washington
Tax Parcel No.:	4083306985
Cross Reference:	Original Covenant # 20021126001566 (superseding only Parcel A) Environmental Covenant # 20151228000327 (amending)

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 the 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 the **Metro Lake Union Site, Facility Site ID: 2217**. 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 was the subject of remedial action under MTCA. The work performed in the remedial action is described in a Consent Decree filed with and approved by the Superior Court of the State of Washington in and for King County, in King County Cause No. 99-2-08651-1SEA (hereafter "the Consent Decree"); and a Prospective Purchaser Consent Decree filed with and approved by the Superior Court of the State of Washington in and for King County, in King County Cause No. 07-2-23870-1SEA (hereafter "the Prospective Purchaser Consent Decree").
- d. This Covenant is required because residual contamination remains in groundwater beneath the Property after completion of the remedial action. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present ¹
Groundwater	Benzene, carcinogenic PAHs (cPAHs), and arsenic

e. 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. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology, including without limitation the Remedial Action Report, dated March 20, 2015 and prepared by AESI.

f. This Covenant grants certain rights to Ecology 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 (CERCLA), 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.

g. This Covenant supersedes and replaces a portion of an existing Environmental (Restrictive) Covenant, which is recorded with King County as # 20021126001566, to the extent that covenant relates to Parcel A. The portions of Covenant # 20021126001566 that relate to Parcels B and C are unaffected.

h. This Covenant amends an existing Environmental (Restrictive) Covenant, which is recorded with King County as # 20151228000327.

COVENANT

NorthEdge Developers LLC, as the 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 to the extent they conflict, and that such covenants shall 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.

¹ For a full list of the contaminants of concern at the Metro Lake Union Site, see Exhibit A to the Consent Decree (King County Cause No. 99-2-08651-1SEA), *Draft Cleanup Action Plan*, at Table 1 (Nov. 24, 1998).

c. **Continued Compliance Required.** The 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 the remedial action and continued compliance with this Covenant.

d. **Leases.** The 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.** The 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, the 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. **No Groundwater Extraction.** The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring, or remediation. 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.

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 to enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and 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 any part of the Property, including but not limited to title, easement, leases, and security or other interests, must:

- 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 _____, 2016 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.

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

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood 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 any response actions planned or taken as soon as practical but no later than within twenty-four (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.

<p>NorthEdge Developers LLC c/o A-P Hurd 2025 First Avenue, Suite 1212 Seattle, WA 98121 (206) 357-2304 aphurd@touchstonenw.com</p>	<p>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</p>
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Section 5. Modification or Termination.

- a. The 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.² For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:³

- 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, the 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.

² Examples of inconsistent uses are using the Property for a use not allowed under the covenant (i.e. mixed residential and commercial use on a property restricted to industrial uses), OR drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

³ An example of an activity that is unlikely to be considered a permanent modification is a proposal to disturb a cap to repair an existing underground utility that passes through the site. However, installing a new underground utility within a capped area would be a permanent change.

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. The undersigned further acknowledges Environmental Covenant # 20151228000327, filed in King County, is hereby amended by the above Environmental Covenant.

EXECUTED this 10th day of November, 2016.

**NORTHEDGE DEVELOPERS LLC,
a Delaware limited liability company**

**By: Touchstone-URG NorthEdge LLC,
a Washington limited liability company
Its: Administrative Member**

By: 
Name: James D. O'Hanlon
Its: **Authorized Representative**

Dated: 11/10/16

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



**JIM PENDOWSKI
PROGRAM MANAGER,
TOXICS CLEANUP PROGRAM**

Dated: 11/17/16

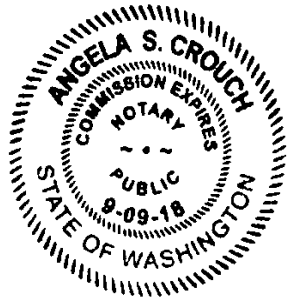
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GRANTOR CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON

COUNTY OF KING

On this 10th day of November, 2016, I certify that James D. O'Hanlon personally appeared before me, acknowledged that he/she is the Authorized Representative 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.



Unofficial Copy

Angela S. Crouch
Notary Public in and for the State of
Washington, residing at 9-9-18
My appointment expires Seattle, King Co.

Exhibit A

LEGAL DESCRIPTION

Lots 1-12, Inclusive, Block 74, Lake Union Addition to City of Seattle, According to the Plat Thereof, Recorded in Volume 1 of the Plats, Page 238, In King County, Washington

Unofficial Copy

Exhibit B
PROPERTY MAP

