

Record Date: 12/17/2021 4:04 PM

Electronically Recorded King County, WA

After Recording Return
Original Signed Covenant to:

Jing Liu
Toxics Cleanup Program
Department of Ecology
Northwest Regional Office
PO Box 330316
Shoreline, WA 98133-9716

Environmental Covenant

Grantor: 255 South King Street LP

Grantee: State of Washington, Department of Ecology

Brief Legal Description:

SEATTLE TIDE LDS PCL Y SEATTLE LBA #3019432 REC# 20150619900003 SD LBA
BEING - NEW PCL B SEATTLE LBA #3012468 REC#20110919900011 ALL IN BLK 285
TGW POR LOTS 25 THRU 35 SD BLK 285 TGW POR VAC S KING ST & POR VAC 3RD
AVE S & TGW POR ST HWY PER REC #20080507000517 LESS POR FOR ST PER REC
#8805030703 TGW POR PER REC #9712081979

Tax Parcel No.: King County Parcel No. 766620-4878

Cross Reference: King County Superior Court No. 11-2-27892-1
(Consent Decree)

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act (MTCA), Chapter 70A.305 RCW, and Uniform Environmental Covenants Act (UECA), RCW 64.70.
- b. The Property that is the subject of this Covenant is part of a site commonly known as the North Lot Development Site, Facility ID# 5378137, Cleanup Site ID No. 1966. **The Property is legally described in Exhibit A, and illustrated in Exhibit B**, all 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. Specifically, the following principal contaminants remain on the Property:

| Medium | Principal and Potential Contaminants Present |
|-------------|---|
| Soil | Polycyclic aromatic hydrocarbons (PAHs), metals, BTEX (benzene, toluene, ethylbenzene, xylenes), gasoline-range hydrocarbons (TPH-G), diesel-range hydrocarbons (TPH-D), and oil-range hydrocarbons (TPH-O) |
| Groundwater | Benzene, TPH-G, TPH-O, TPH-D, PAHs, and arsenic |
| Soil Vapor | Benzene |

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 Property.

The 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 and accessible at:

<https://apps.ecology.wa.gov/gsp/CleanupSiteDocuments.aspx?csid=1966>

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, Ecology (July 1, 2011)
- Feasibility Study Addendum, North Lot Property, Landau Associates (September 27, 2012)
- Cleanup Action Plan Addendum, North Lot Property, Landau Associates (September 18, 2013)
- Cleanup Action Report, East Parcel, North Lot Property, Rothman & Associates (January 10, 2019)

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a "Holder" of this Covenant as that term is defined 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

255 South King Street LP, as the Grantor and fee simple owner of the Property, hereby grants to the Washington State Department of 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 or has granted to any third party 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 except in the event of an emergency as outlined in Section 4(c), *infra*.

b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten the continued protection of human health or the environment as the same relate to the residual contamination 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.** 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 actions and continued compliance with this Covenant.

d. **Leases.** The Grantor shall restrict any lease for any portion of the Property executed after the recording of the Covenant to uses and activities consistent with this Covenant, and notify all current and future 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 reference monuments and boundary markers, if any, 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. **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 (in accordance with applicable zoning requirements) as that term is defined in the rules promulgated under Chapter 70A.305 RCW.
- b. **Containment of Soil.** 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, and (3) an impermeable concrete cap in areas within the Property boundary that are not landscaped. In the landscaped areas, a geotextile fabric barrier 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 contaminated soil 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 but not limited to drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal; 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 or the concrete cap over 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 the Grantor propose to remove all or a portion of the existing structures or the cap on the Property illustrated in Exhibit C so that access to the underlying contamination is feasible, Ecology may require treatment or removal of the underlying contaminated soil.
- b. **Inspection.** The Grantor covenants and agrees that it shall annually, and after significant seismic events, or at another time as approved in writing by Ecology, inspect the building foundation and 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 could impair its performance. Grantor shall perform this task in accordance with the Operations and Maintenance Plan attached as Exhibit D.
- c. **Groundwater Use.** The groundwater beneath the Property may still be contaminated. As such, groundwater beneath the Property shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring, remediation or as otherwise specified in the cleanup action outlined in or developed pursuant to the existing Consent Decree for the Property.

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-21 and MW-22) are located on the Property, and two groundwater monitoring wells (MW-16D and MW-18D) are located outside the Property as conditional points of compliance, to monitor the performance of the remedial action. The wells are illustrated in Exhibit C. The Grantor shall maintain clear access to these devices 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 device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within 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, to inspect any remedial actions conducted on the Property, and to inspect related records. Ecology agrees to work cooperatively with Grantor to accommodate:

- i.** Grantor's reasonable health and safety requirements;
- ii.** Grantor's option to accompany Ecology while Ecology is present on the Property; and
- iii.** Ecology's reasonable efforts to minimize any disturbance to Grantor's or Grantor's tenants' occupation and operations at the Property.

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 title or ownership interest in any part of the Property, including but not limited to easement, security or other interests, must:

- i.** Provide written notice to Ecology of the intended conveyance at least 30 days in advance of the conveyance.
- ii.** This notice requirement does not apply to the lease of space for commercial uses within the Property or the buildings located on the Property. Waiver of this advance notice to Ecology for lease transactions does not constitute waiver of this notice for the sale of all or a portion of the Property, nor a waiver of the requirement in Section 4.a.iii. to include this notice in any document conveying ownership or leasehold interest in the Property.
- iii.** 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 _____, 2021 AND RECORDED WITH THE KING COUNTY RECORDER UNDER RECORDING NUMBER _____. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iv. Excluding commercial leases, and unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within 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 in writing 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 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, or delivered via e-mail (with copy to follow via 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, first class mail, or e-mail, such as other electronic means, may be used for these communications.

| | |
|---|---|
| 255 South King Street L.P. c/o Stacey Lange American Life Inc. 270 S Hanford Street Seattle, WA 98134 (206) 381-1690 Stacey.lange@americanlifeinc.com | Washington State Department of Ecology Attn: Environmental Covenants Coordinator Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504-7600 360-407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov |
|---|---|

Section 5. Modification or Termination.

- a. The Grantor must provide written notice and obtain approval from Ecology at least 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 the Property:
 - i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
 - ii. If Ecology approves the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the Property 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 Covenant, per RCW 64.70.100, the original signatories to this Covenant, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant. Notwithstanding the foregoing, any amendment to or termination of this Covenant must be signed by the current fee simple owner of the Property and Ecology.

Section 6. Enforcement and Construction.

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

b. Within 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 by Grantor 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 6th day of December, 2021.

255 SOUTH KING STREET L.P., a Washington limited partnership

By: Gregory L. Steinhauer (printed name)

Title: Managing GP - 255 South King St LP

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

This record was acknowledged before me on December 6, 2021, by

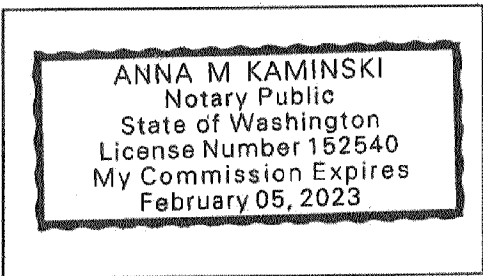
Gregory L. Steinhauer as Managing GP of 255 South King Street LP.

Kaminski

(Signature)

ANNA M KAMINSKI

(Please print name legibly)

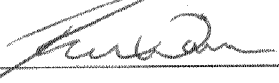


NOTARY PUBLIC for the State of Washington

My commission expires 02-05-2023

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



by: ROBERT W. WARREN (printed name)

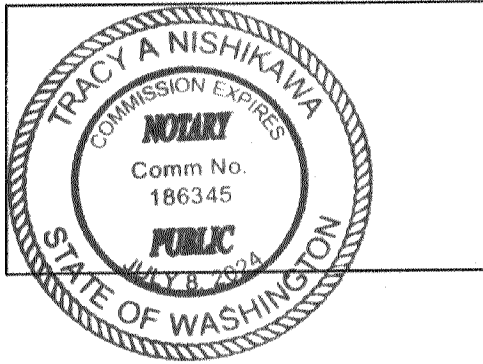
Title: TCP SECTION MANAGER
SECTION MANAGER

Dated: 12-13-21

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

This record was acknowledged before me on December 13, 2021, by
Robert W. Warren as TCP NWRO Section Manager of the Washington State
Department of Ecology.



Tracy A. Nishikawa
(Signature)

Tracy A. Nishikawa
(Please print name legibly)

NOTARY PUBLIC for the State of
Washington
My commission expires 7/8/2024

Exhibit A

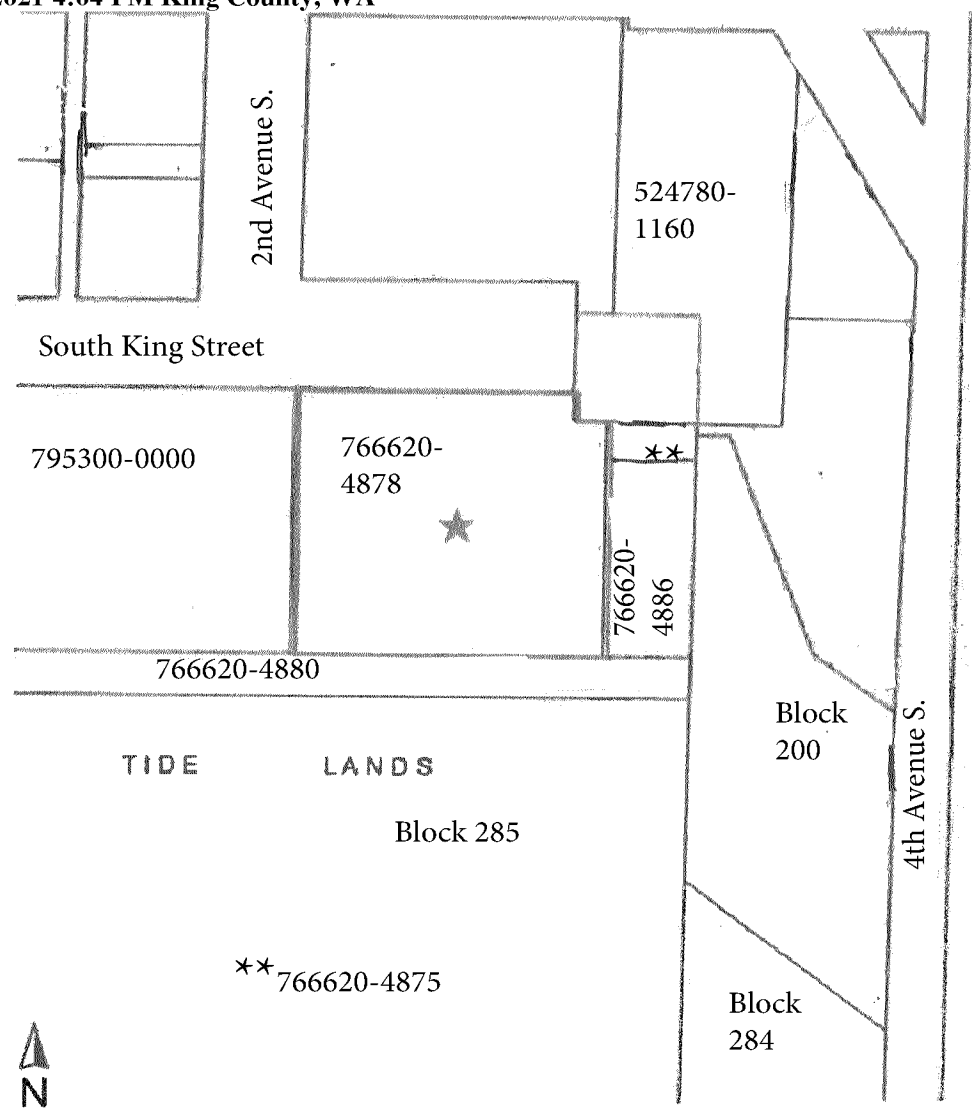
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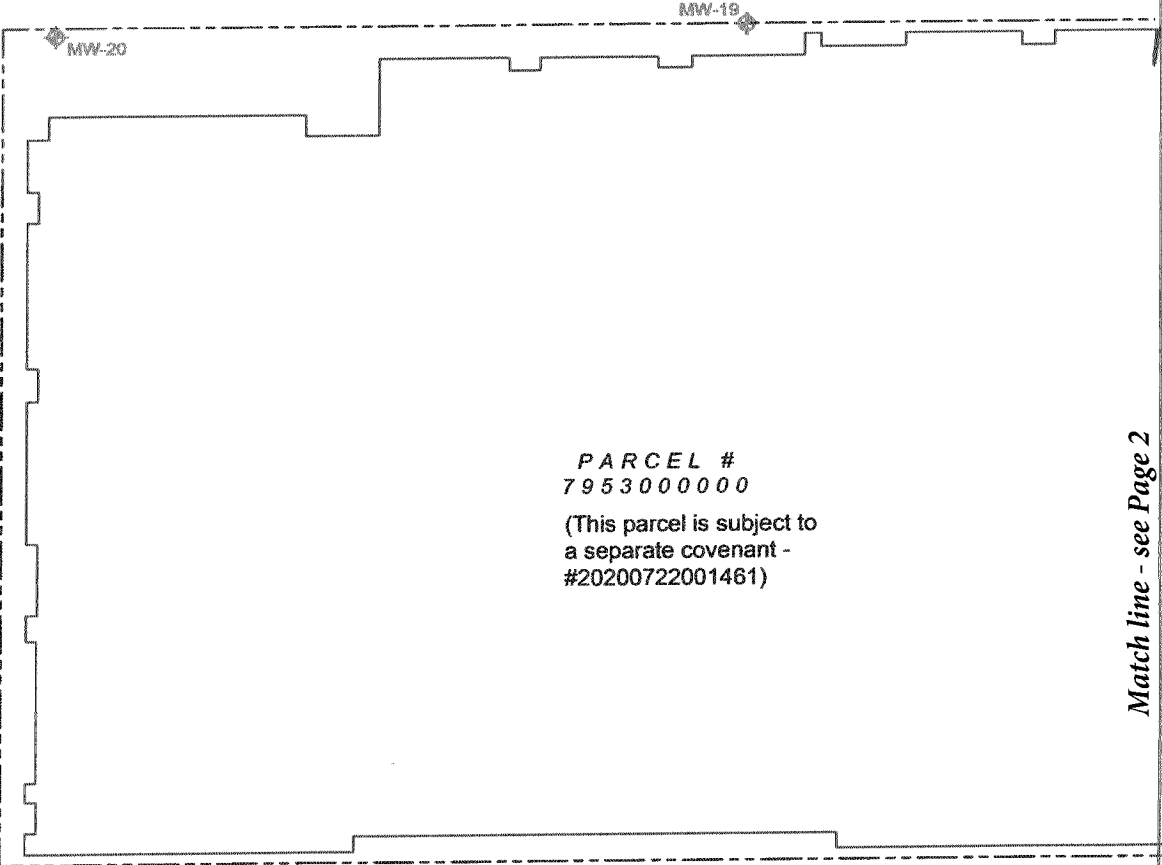
Legal Description:

SEATTLE TIDE LDS PCL Y SEATTLE LBA #3019432 REC# 20150619900003 SD LBA
BEING - NEW PCL B SEATTLE LBA #3012468 REC#20110919900011 ALL IN BLK 285
TGW POR LOTS 25 THRU 35 SD BLK 285 TGW POR VAC S KING ST & POR VAC 3RD
AVE S & TGW POR ST HWY PER REC #20080507000517 LESS POR FOR ST PER REC
#8805030703 TGW POR PER REC #9712081979

Tax Parcel No.: King County Parcel No. 766620-4878

Cross Reference: King County Superior Court No. 11-2-27892-1
(Consent Decree)






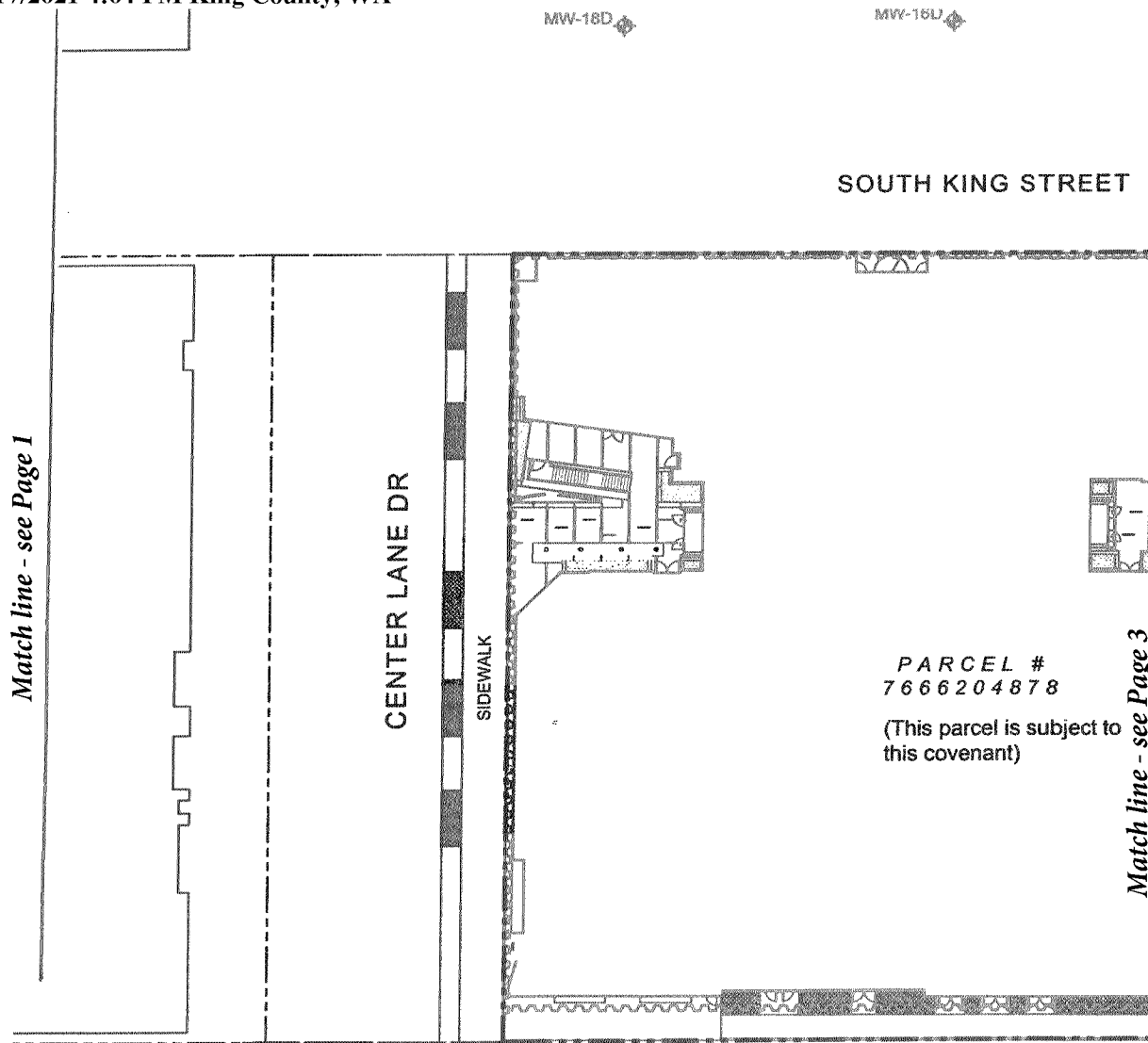


PARCEL #
7953000000
(This parcel is subject to
a separate covenant -
#20200722001461)

Match line - see Page 2

LEGEND:

-  MONITORING WELL
-  PROPERTY BOUNDARY
-  PARCEL BOUNDARY



SOUTH KING STREET

CENTER LANE DR

SIDEWALK

PARCEL #
7666204878

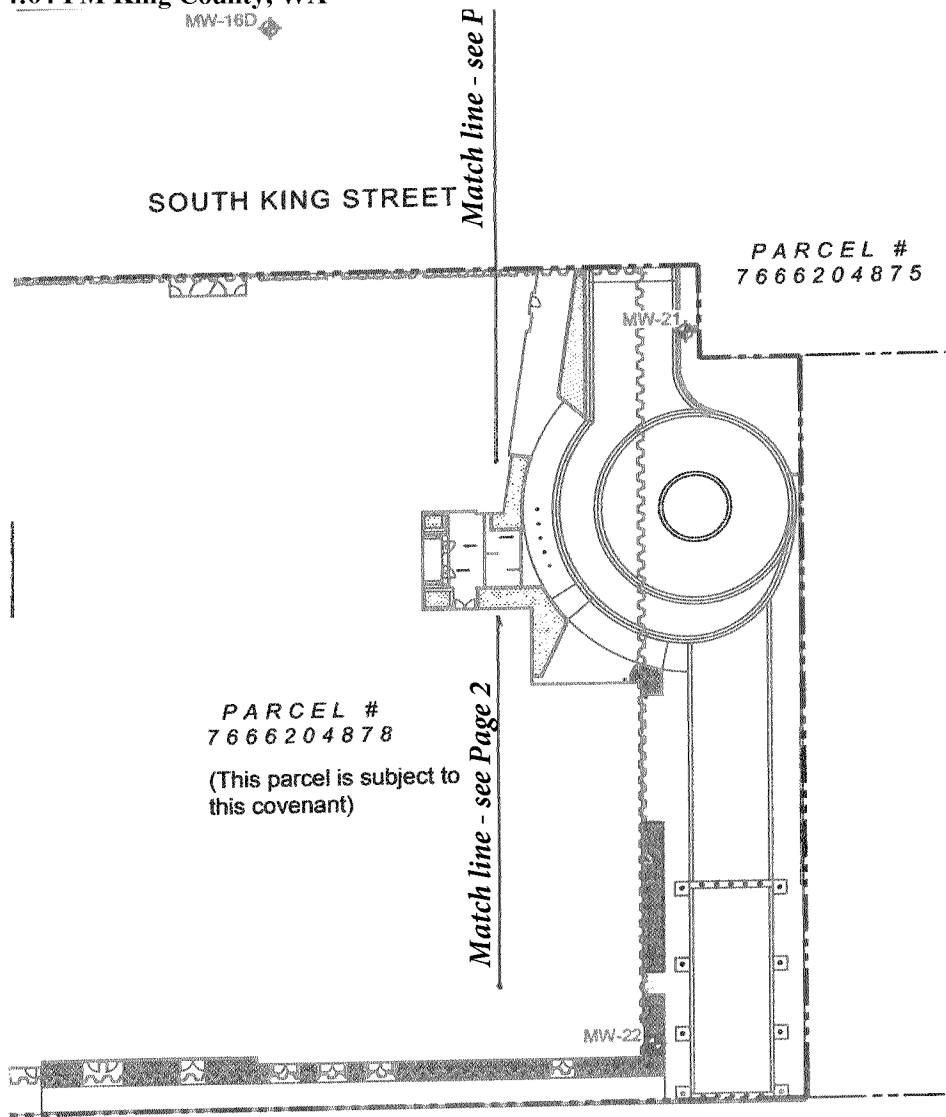
(This parcel is subject to
this covenant)

Match line - see Page 1

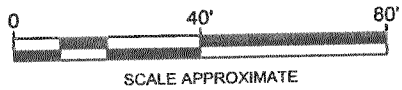
Match line - see Page 3

PARCEL #
7666204880

MW-16D



PARCEL #
7666204878
(This parcel is subject to
this covenant)



PREPARED BY
 ROTHMAN & ASSOCIATES
 505 BROADWAY EAST STE 115
 SEATTLE, WASHINGTON 98102

PREPARED FOR
 SODO BUILDERS, LLC
 270 SOUTH HANFORD STREET, STE 100
 SEATTLE, WASHINGTON 98134

PROJECT
 255 S. KING STREET
 SEATTLE, WASHINGTON

PROJECT NO.
 1008.001

TITLE
 COMPLIANCE
 MONITORING WELL
 NETWORK

EXHIBIT D
OPERATIONS AND MAINTENANCE PLAN

December 17, 2020

Ms. Stacey Lange
American Life, Inc.
270 South Hanford Street, Suite 100
Seattle, Washington 98134

Re: Protective Cap Operation and Maintenance Plan
King Street Property
255 South King Street
Seattle, Washington 98102
EHSI Project No. 11404

Dear Ms. Lange:

EHS-International, Inc. (EHSI) is pleased to present this operations and maintenance (O&M) plan for the protective cap at the King Street Property located at 255 South King Street in Seattle, Washington (subject property).

The purpose of the O&M plan is to outline the necessary steps for conducting annual inspections of the protective cap at the subject property.

Background

The subject property underwent an extensive remedial excavation in 2015 and subsequent monitoring of groundwater and indoor air. The subject property was entered into a Consent Decree with the Washington State Department of Ecology in 2014. The remaining constituents of concern for the subject property include total petroleum hydrocarbons, benzene, carcinogenic polycyclic aromatic hydrocarbons, and metals.

Following excavation, a protective cap was incorporated into the new building and surrounding pavements constructed on the subject property to prevent contact with remaining contaminated soil (if any). To mitigate risks associated with vapor intrusion, the building water barrier was also designed as a vapor barrier and the foundation was constructed with an impermeable seal-slab floor system.

The Consent Decree requires an O&M plan and annual inspections of the cap system. The *Engineering Design Report Addendum, North Lot Development, Seattle, Washington*, dated February 28, 2014, prepared by Landau Associates (EDR Addendum), included a basic description of O&M events but did not present an O&M plan. The EDR Addendum provides the basis for this O&M Plan.

O&M Inspections

EHSI will conduct inspections of the protective cap on an annual basis for a period of 5 years to document the condition and intended function of the protective cap. The O&M inspections will consist of the following actions:

- Visual inspections will be conducted to document the condition of the cap and identify areas of concern. The inspections will consist of a visual survey of the subject property and photographing the cap system. Field observations will be recorded on a Field Report Form and document the integrity of the concrete
- Environmental Consulting
- Hazardous Materials Management
- Industrial Hygiene Services
- Construction Management
- Indoor Air Quality

December 17, 2020
American Life, Inc.
Page 2 of 2

pavement, including visible cracks, erosion, settlement, etc. Items needing maintenance or repairs will also be documented.

- A visual inspection of the stormwater collection, conveyance, and discharge system will be made to identify cracks and damage.
- Conditions that may potentially lead to damage of the cap will be noted, with recommendations for remedial actions.
- Additional cap inspections will be conducted following seismic events or other natural disasters that may affect the integrity of the cap.

Crack Repairs

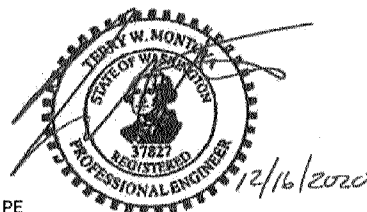
If minor cracks are observed during the inspection process, the cracks will be repaired by sealing with a compatible caulking compound. Photographs will be taken to document the condition of the repairs. If the damage is more extensive than minor repairs can address, a recommendation will be made to the client to engage a contractor to complete the repairs.

Thank you for the opportunity to assist you in this matter. If you have any questions regarding the project, please do not hesitate to contact either of the undersigned.

Respectfully submitted,



Jason Cass, LG
Senior Geologist



Terry Montoya, PE
Vice President - Engineering

LIMITATIONS

The services described in this report were performed consistent with generally accepted professional consulting principles and practices. No other warranty, expressed or implied, is made. These services were performed consistent with our agreement with our client. This report is solely for the use and information of our client unless otherwise noted. Any reliance on this report by a third party is at such party's sole risk.

Opinions and recommendations contained in this report are derived, in part, from data gathered by others, and from conditions evaluated when services were performed, and are intended only for the client, purposes, locations, time frames, and project parameters indicated. We do not warrant and are not responsible for the accuracy or validity of work performed by others, nor from the impacts of changes in environmental standards, practices, or regulations subsequent to performance of services. We do not warrant the use of segregated portions of this report.

