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PAGE 001 OF 007  
02/02/2005 11:42  
KING COUNTY, WA

**REVISED  
RESTRICTIVE COVENANT  
(LOWER YARD)**

**Grantor(s):**

1. Seattle Art Museum

Additional names on page \_\_\_\_\_ of document

**Grantee(s):**

1. The Public

Additional names on page \_\_\_\_\_ of document

**Abbreviated Legal Description (lot, block and plat name, or section-township-range):**

PTN of NE ¼, 36-25N-3E, W.M.; PNT of 31-25N-3E, W.M.; Lots 1-6,  
BLK 168A and Lots 1-4, BLK 168B, Seattle Tidelands and vacated Eagle  
Street adjoining.

Additional legal description is on page 1 of document

**Assessor's Property Tax Parcel Account Number(s):** 766620-2275-00

**Reference Numbers of Documents Assigned or Released (if applicable):**

Additional reference numbers on page \_\_\_\_\_ of document

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**REVISED  
RESTRICTIVE COVENANT  
(LOWER YARD)**

**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 Seattle Art Museum, a Washington nonprofit corporation ("SAM"), as required by the Washington State Department of Ecology.

**Legal Description:**

That portion of the Northeast quarter of Section 36, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington; of Section 31, Township 25 North, Range 4 East, Willamette Meridian, in King County, Washington; of Blocks 168A and 168B, Supplemental Plat of Seattle Tidelands and of vacated Eagle Street, described as follows:

Beginning at the most Northerly corner of Block 5, William N. Bell's Seventh Addition to the City of Seattle, according to the plat thereof, recorded in Volume 2 of Plats, page 82, in King County, Washington;

Thence South 41 degrees 07'49" West along the Northwest line thereof, 27.58 feet to the most Easterly corner of Lot 4 in said Block 168B, Seattle Tidelands;

Thence South 41 degrees 10'09" West along the Southeast line of said Lot 4, a distance of 91.78 feet to the Southwest line of said Block 168B;

Thence North 48 degrees 49'51" West along said Southwest line and its extension 280.55 feet to its intersection with the Southeasterly extension of the Southwest line of said Block 168A, Seattle Tidelands;

Thence North 41 degrees 10'23" West along said extension and Southwest line 389.58 feet to the Southeast margin of Bay Street;

Thence North 41 degrees 10'09" East along said Southeast margin 135.36 feet to the Southwest margin of Elliott Avenue as established by City of Seattle Ordinance Number 12502;

Thence South 43 degrees 00'51" East along said Southwest margin 670.08 feet to the point of beginning.

**Seattle Art Museum, King Co. Consent Decree No.: 99-2-50226-4SEA**

**REVISED  
RESTRICTIVE COVENANT  
(LOWER YARD)**

**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 Seattle Art Museum, a Washington nonprofit corporation ("SAM"), as required by the State of Washington Department of Ecology (hereafter, including any successor agency, "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 Cleanup Report, Remedial Excavation Monitoring, Lower Yard, Unocal Former SMT, Vols. I and II by GeoEngineers, September 23, 1998.
2. Summary of Residual Petroleum in Soil, Lower Yard, December 22, 1998 by GeoEngineers.
3. Site Remediation Progress Reports 1 through 67 (1988 –1999) by GeoEngineers.
4. 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.
5. 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.
6. Order on Consent, State of Washington Department of Ecology No. DE 88-N223, as amended.
7. Interim Cleanup Report. Remedial Excavation Monitoring, Lower Yard, Unocal Former SMT, Volumes I, II and III, by GeoEngineers, January 9, 1998.
8. Technical Memorandum Re: Remedial Measures to Address Lower yard Direct Contact and Leaching Concerns, Former Unocal Seattle Marketing Terminal Property, Aspect Consulting, February 21, 2003.

9. Technical Memorandum Re: Remedial Measures to Address Inhalation Concerns, Former Unocal Seattle Marketing Terminal Property, Aspect Consulting, June 10, 2003.
10. Engineering Design Report for Phase 1 Remediation, Olympic Sculpture Park, Prepared for the Museum Development Authority and Seattle Art Museum by Aspect Consulting, April 14, 2004.

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 inaccessible soil at the northern part of the eastern side of the Lower Yard abutting Elliott Avenue and at the northern side of the Lower Yard abutting Bay Street in the area shown on Figure A. Under the final cleanup action plan contaminated soils are contained under a cap. Groundwater in the northwestern corner of the Lower Yard exceeds Method A cleanup levels for TPH established under WAC 173-340-730. There is ongoing monitoring and free product removal of free product, if any, from monitoring wells.

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 as shown on Figure 1. The Property is legally described as follows:

That portion of the Northeast quarter of Section 36, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington; of Section 31, Township 25 North, Range 4 East, Willamette Meridian, in King County, Washington; of Blocks 168A and 168B, Supplemental Plat of Seattle Tidelands and of vacated Eagle Street, described as follows: Beginning at the most Northerly corner of Block 5, William N. Bell's Seventh Addition to the City of Seattle, according to the plat thereof, recorded in Volume 2 of Plats, page 82, in King County, Washington;

Thence South 41 degrees 07'49" West along the Northwest line thereof, 27.58 feet to the most Easterly corner of Lot 4 in said Block 168B, Seattle Tidelands;

Thence South 41 degrees 10'09" West along the Southeast line of said Lot 4, a distance of 91.78 feet to the Southwest line of said Block 168B;

Thence North 48 degrees 49'51" West along said Southwest line and its extension 280.55 feet to its intersection with the Southeasterly extension of the Southwest line of said Block 168A, Seattle Tidelands;

Thence North 41 degrees 10'23" West along said extension and Southwest line 389.58 feet to the Southeast margin of Bay Street;

Thence North 41 degrees 10'09" East along said Southeast margin 135.36 feet to the Southwest margin of Elliott Avenue as established by City of Seattle Ordinance Number 12502;

Thence South 43 degrees 00'51" East along said Southwest margin 670.08 feet to the point of beginning.

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 (hereafter "Owner").

Section 1. Any activity on the Property that may result in the release or exposure to the environment of the residual TPH contaminated soil that was contained as part of the remedial action, or create a new exposure pathway is prohibited without prior written approval from Ecology. A minimum 3 foot soil cap with surface grading and drainage features will be constructed in the Lower Yard. This soil cap will not be altered without prior notification and approval of Ecology, except that up to 3 feet of soil at the surface of the cap may be regraded to accommodate future sculptures, pathways, and landscaping, as long as no regrading occurs at elevations lower than shown on Figure B.

Section 2. Any activity on the Property that may interfere with the integrity of the remedial action and 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.

Section 4. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 5. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

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

Section 7. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

Section 8. No groundwater may be taken for any use from the Property except as consistent with the remedial action.

**SAM:**

SEATTLE ART MUSEUM, a Washington  
nonprofit corporation

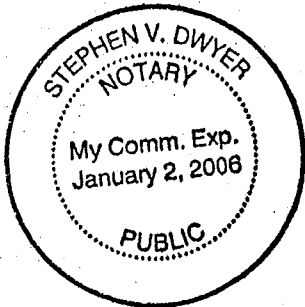
By Susan Brotman  
Susan Brotman  
Its President

1/12/05  
DATE

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

On this 13<sup>th</sup> day of January, 2004<sup>5</sup>, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ~~Brooks G. Ragen~~ Susan Holman, to me known to be the person who signed as President of Seattle Art Museum, a Washington non-profit corporation, that executed the within and foregoing instrument, and 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.



Stephen V. Dwyer  
Print Name: STEPHEN V DWYER  
Notary Public in and for the State of Washington,  
Residing at Kirkland  
My commission expires: January 2, 2006