Instrument Number: 201709130000099 Document:COV Rec: $84.00 Page-1 of 11
Record Date:9/13/2017 9:51 AM
King County, WA

Return Address:
CHRISTOPHER MAURER, P.E.
DEPARTMENT OF ECOLOGY
P.O. BOX 47600
OLYMPIA, WA 98504-7500

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) (Last name, first name, initials)

1. City of Seattle 2. _____
3. _____ 4. _____
Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials)

1. Washington Department of Ecology 2. _____
3. _____ 4. _____
Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)
A rectangle shaped portion of City-controlled ROW starting 218 feet East of the property boundary corner of Parcel 257040000 at 5th Ave. N and Harrison Street; proceeding South 8 feet; East 34 feet; North 8 feet; then proceeding West 34 feet to starting point; Situate in the City of Seattle, King County, Washington State.
Additional legal is on page 1 and Exhibit B of document.

Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned
2570400000

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

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After Recording Return
Original Signed Covenant to:

Christopher Maurer, P.E.
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7500

Environmental Covenant

Grantor: City of Seattle

Grantee: State of Washington, Department of Ecology

Brief Legal Description: A rectangle shaped portion of the City-controlled right of way; the start point is the northwest corner of the rectangle, located 218 feet east from the IRIS property boundary at the corner of 5th Ave N and Harrison Street, on the property boundary between the Seattle Center Fifth Avenue North parking garage and Harrison Street; then proceeding South 8 feet; then proceeding East 34 feet; then proceeding North 8 feet; then proceeding West 34 feet back to the Starting Point (See map at Exhibit B).

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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 Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.

b. The Property that is the subject of this Covenant is part or all of a site commonly known as Mercer Right of Way adjacent to the Gates Foundation Campus North Building. 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 is the subject of remedial action under MTCA. The restrictions on use described in this document are required because residual contamination remains on the Property after completion of remedial actions. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology ("Ecology"). These include the following documents:

- Final Feasibility Study for 500 Fifth Avenue North Property, Seattle, Washington, prepared for the Washington State Department of Ecology on behalf of IRIS dated September 7, 2011
- Cleanup Action Plan for the 500 Fifth Avenue Property, Seattle, Washington, prepared for IRIS, dated February 20, 2012
- Property-Wide Cleanup Action Report for the 500 Fifth Avenue North Property, prepared for Washington State Department of Ecology on behalf of IRIS.

Specifically, the following principal contaminants remain on the Property:

Medium	Principle Contaminants Present
Soil	Total Petroleum Hydrocarbons as gasoline and benzene, toluene, ethylbenzene and xylenes (BTEX) in native soil at depths between approximately 25 and 30 feet bgs

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 site. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology

e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 USC Chapter 103.

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COVENANT

City of Seattle, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter "Ecology") the following covenants. Furthermore, it is the intent of the Grantor 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, except as authorized by Section 2.b of this Covenant. 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. 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 remedial actions and continued compliance with this Covenant.

d. Leases. 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. Amendment to the Covenant. Grantor must notify 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.[1] Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

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 or industrial property. As such, the Property shall be used in perpetuity only for right-of-way purposes and for commercial or industrial land uses as those terms are defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.

b. Containment of Soil/Waste Materials. The remedial action for the Property is based on containing contaminated soil under a cap consisting of the concrete or asphalt road pavement and/or concrete sidewalk located as illustrated in Exhibit B. The primary purpose of this cap is to minimize the potential for contact with contaminated soil and to minimize the leaching of contaminants to groundwater. As such, the following restrictions shall apply within the area of gasoline contamination in the ROW area as illustrated in Exhibit B.

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[1] Examples of inconsistent uses are: using the Property for a use not allowed under the covenant (for example, mixed residential and commercial use on a property that is restricted to industrial uses); OR, drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

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Any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; removal of the cap; or, application of loads in excess of the cap load bearing capacity is prohibited, except as follows:

i. When the City is (a) conducting normal Operations and Maintenance ("O&M") of the ROW, utilities, utility vaults or remedial elements located in the ROW, or (b) responding to an emergent situation where public health and safety or the environment is at immediate and substantial risk, then any work, including, but not limited to drilling; digging; piercing the cap; grading; excavation; work on underground utilities; or removal of the cap that is required to conduct normal O&M or to respond to the emergent situation is pre-approved and authorized under this Document, **PROVIDED** that the City shall promptly repair any damage to the cap by replacing the damaged area with similar materials upon completion of the O&M work.

c. Stormwater facilities. To minimize the potential for mobilization of contaminants remaining in the soil and groundwater on the Property, no stormwater infiltration facilities or ponds shall be constructed on the property without approval of Ecology.

d. Vapor/gas controls. The residual contamination on the Property includes volatile chemicals that may generate harmful vapors. As such, all applicable federal, state and local laws regarding vapor control and vapor mitigation shall be applied on the Property to minimize the potential for exposure to these vapors when any work is being conducted in or under the ROW.

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, inspect any remedial actions conducted on the Property, and to 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.

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Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest including but not limited to title, easement, leases, and security or other interests, must:

i. Notify Ecology 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 [DATE] AND RECORDED WITH THE [COUNTY] COUNTY AUDITOR UNDER RECORDING NUMBER [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, 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, 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 of the event and response actions planned or taken as soon as practical after discovery of the event.

d. Any required written notice, approval, or 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.

City of Seattle Maya Hunnewell Real Property and Environmental Mgr. Seattle Department of Transportation PO Box 94709 Seattle, WA 98124-4709 (206) 684-5001 Email: maya.hunnewell@seattle.gov	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000

As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

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Section 5. Modification or Termination.

a. 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 Chapter 64.70 RCW and Chapter 70.105D RCW and any rules promulgated under these chapters.

Section 6. Enforcement and Construction.

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

b. Grantor shall direct the County to provide Ecology with the original signed Covenant upon recording of this Covenant.

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 Chapter 70.105D RCW and Chapter 64.70 RCW. 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, 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 the Model Toxics Control Act, chapter 70.105D RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.

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.

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The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 18 day of July, 2017.

City of Seattle

Scott Kubly
Director, SDOT

GRANTOR INDIVIDUAL ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF King

On this 18th day of July, 2017, I certify that Scott Kubly personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Michelle Talbot
Notary Public in and for the State of Washington, residing at Anacortes.

My appointment expires 2/15/20.

MICHELLE TALBOT NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 02-15-20

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Barry Rogowski
Section Manager, Toxics Cleanup Program

Dated: 8/4/17

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this 4th day of August, 2017, I certify that Barry Ragowski personally appeared before me, acknowledged that he is the Section Manager, Toxics Cleanup Program, of the Washington Department of Ecology, the public agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said agency.

VALERIE L. PEARSON NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 3-28-20

Valerie L Pearson

Notary Public in and for the State of
Washington, residing at
Lacey, WA.
My appointment
expires 03-28-2020.

Unofficial Copy

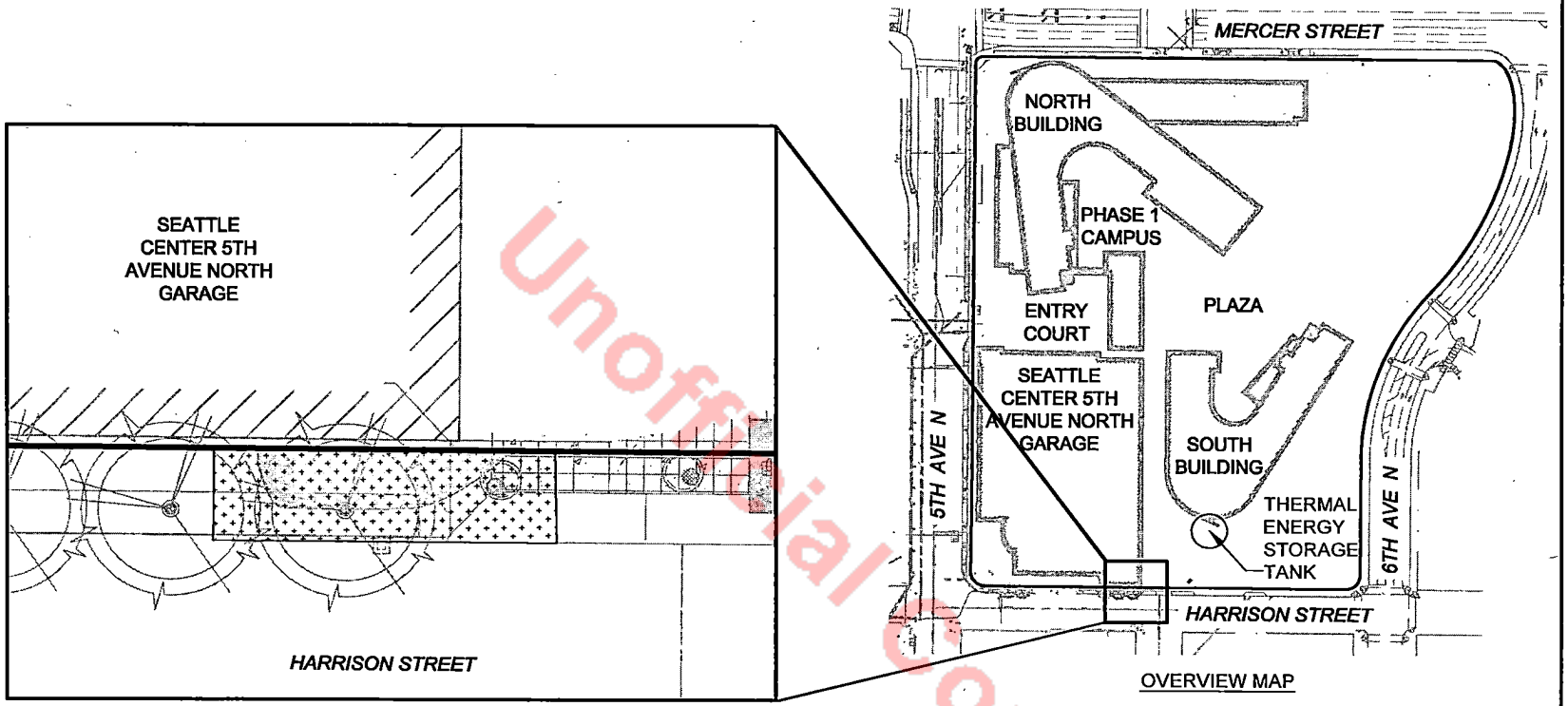
Exhibit A

LEGAL DESCRIPTION

A rectangle shaped portion of the City-controlled right of way; the start point is the northwest corner of the rectangle, located 218 feet east from the IRIS property boundary at the corner of 5th Ave N and Harrison Street, on the property boundary between the Seattle Center Fifth Avenue North parking garage and Harrison Street; then proceeding South 8 feet; then proceeding East 34 feet; then proceeding North 8 feet; then proceeding West 34 feet back to the Starting Point (See map at Exhibit B).

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Instrument Number: 201709130000099 Document:COV Rec: $84.00 Page-11 of 11
Record Date:9/13/2017 9:51 AM King County, WA



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NOTES:

1. The locations of all features shown are approximate.
2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. can not guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.

Reference: CAD file entitled "SV1KPFF0001.dwg" dated 01/06/06, provided by KPFF Consulting Engineers.

LEGEND:

- 500 Fifth Avenue North Property Boundary
- Restrictive Covenant Area
- TES — Thermal Energy Storage
- Gasoline UST Contamination Site No. 1

Harrison Street Right-of-Way Restrictive Area

500 Fifth Avenue North Property
Seattle, Washington

GeoEngineers | Exhibit B