

### 6.3 Restrictive Covenant

**Return Address**

Brian Reynolds  
Cornell & Associates, Inc.  
2633 Eastlake Avenue East #307  
Seattle, WA 98102

**Declaration of Restrictive Covenants**

**Legal: Blk 31 Lot 1 Mount Baker Park Add**  
**Full legal is on page (1) one of document**

**Assessor's Property Tax Account Number:**  
**570000 2385 03**

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980204-0370 09:34:00 AM KING COUNTY RECORDS OPS THS 12.00

**Declaration of Restrictive Covenants**

This Declaration of Restrictive Covenant is made by Renbrad L.L.C. ("Declarant") as of February 3, 1998.

**Recitals**

A. Declarant is the owner of the real property and retail, office and apartment improvements commonly known as Mt. Baker Court, Seattle, Washington and legally described as follows ("Property"):

Lot 1, Block 31, Mt. Baker Park, According to the Plat thereof, recorded in Volume 16 of plats, page 3, in King County, Washington;

Except the following described portion:

Beginning at the southwest corner of Lot 1;  
Thence North along the West side of said Lot, 8.75 Feet;  
Thence East to a point on the Easterly line on said Lot, 9.00 Feet Northerly of the Southeast corner thereof;  
Thence South along said Easterly line of said Lot to the Southeast corner thereof;  
Thence West along the Southerly line of said Lot to the point of beginning.

B. During June and July 1996, Declarant caused certain underground storage tanks to be removed from property and was successful in removing contaminated petroleum hydrocarbons in excess of the Model Toxic Control Act ("MTCA") cleanup levels. A voluntary Independent Remedial Action Program ("IRAP") was undertaken by Declarant, which resulted in successful remediation of the contaminants in the accessible soils of the Property around the underground storage tanks.

C. Previous tests also revealed a portion of the Property contains diesel and heavy oil contaminated soil located under the western edge of the building and under the adjacent sidewalk at a depth of approximately 10 to 13 feet (See Exhibit A). However, remediation of the soil was not feasible at the time due to the existence of the potential undermining of the building and the contaminated soil possess no current threat to public health and safety.

D. If Declarant sells the Property to a third party the property will continue to be used as a retail, office and apartment building.

E. Based on the forgoing, Declarant desires to postpone remediation of soils at the west portion of the Property unless owner decides to redevelop the site. The City of Seattle Transportation Department ("City") and the State of Washington Department of Ecology ("DOE") have stated that they are willing to allow remediation of the soils under the western portion of building / sidewalk subject to the following terms, conditions and restrictions.

**Declaration**

Declarant hereby subjects the Property to the following terms, conditions and restrictions ("Restrictive Covenant"):

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1. Except as provided in Section 2. or 3. below, any contaminated soils in the Property or the sidewalk may remain in place until such time as Declarant (or its grantees, successors or assigns) redevelops the Property or substantial new improvements are otherwise made on the Property, at which time the soils remaining in the Property or Sidewalk with contaminants in excess of MTCA clean-up standard as caused by the Property shall be remediated. For purposes of this Section, demolition and surface grading of the Property or Sidewalk will not be considered to constitute a substantial improvement that requires remediation of subsurface contaminated soils.
2. If prior remediation of the contaminated soils pursuant to Section 1. above, any utility or other work is required to be performed in the Sidewalk (such as underground cable, wire, conduit, manholes, handholes, place utility poles) by the City of Seattle or other public entity or private utility company, Declarant (or its grantees, successor or assigns) shall remediate any contaminated soils caused by the Property that are disturbed by the work otherwise as necessary for the protection of the health or safety of the persons performing the work or for protection of human health or the environment.
3. If at any time Declarant (or its grantees, successors or assigns) learns of other contamination in the Property or the Sidewalk caused by the Property which presents an imminent risk to human health or the environment, Declarant (or its grantees, successors or assigns) shall take immediate action to remediate such contamination.
4. At least 30 days prior to conveyance of any real property interest in any portion of the Property Declarant (or its grantees, successors or assigns) shall give written notice to the City and DOE of the contemplated conveyance identifying the prospective grantee and the anticipated date of the conveyance. As part of any such conveyance, the grantee shall provide the City with a letter accepting the terms and conditions of this Declaration of Restrictive Covenants.
5. The City and DOE, and their designated representatives, are hereby granted the right to enter upon and inspect the Property, at reasonable times, upon 48 hours prior notice to the owner and any occupant, and may take samples, inspect the operation of cleanup action measures, and inspect clean-up records.
6. This Declaration of Restrictive Covenants may be amended or terminated by the mutual written agreement of the City of Seattle Transportation and DOE and Declarant (or its grantees, successors or assigns).
7. Notices and other communications to the City and/or DOE pursuant to this Declaration of Restrictive Covenants shall be deemed effectively given if delivered by hand or mailed certified mail, return receipt requested, to:

Seattle Transportation  
Attention: Street Use Section  
600 Fourth Avenue  
Seattle, WA 98104

Washington Department of Ecology  
Northwest Regional Office  
Attention: Section Head, Toxic Cleanup Program  
3190 160th Avenue SE  
Bellevue, WA 98008-5452

8. The foregoing Restrictive Covenants shall henceforth burden an run with the Property and bind Declarant, its grantees, successors and assigns, and shall inure to the benefit of, and be enforceable by, the City and DOE, and their respective successors and assigns. Except only as limited by the express provisions of the foregoing Restrictive Covenants, Declarant expressly reserves all right of ownership, use and enjoyment of the Property.
9. The foregoing Restrictive Covenants shall no longer limit uses of the Property, or be of any further force or effect upon recordation by Declarant (or its grantees, successors or assigns) of an instrument terminating this Declaration pursuant to the provisions hereof.

Executed as of this date first written above.

By: Brian P. Reynolds

Its: Manager

By:  manager

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