

ENVIRONMENTAL COVENANT

SITE NAME: MLK Gateway Phase II

OWNER/HOLDER: Mr. Whitney D. W. Smith, VP of Development & Finance
MLK Gateway Phase II Land LLC

PROPERTY ADDRESS: 1901 Martin Luther King Avenue., SE

THIS ENVIRONMENTAL COVENANT is made as of this --- day of September 26, 2024, by Mr. Whitney D. W. Smith, VP of Development & Finance, MLK Gateway Phase II Land LLC, whose address is 1901 Martin Luther King Avenue., SE (hereinafter referred to as the “Grantor” or “Owner”) and has been approved by the District of Columbia Department of Energy and Environment (“Department” or “DOEE”).

This Environmental Covenant is executed under the provisions of Title 8, Subtitle A Chapter 6C of the District of Columbia Code (D.C. Code § 8-671.01 *et seq.*). This Environmental Covenant subjects the Property identified in Paragraph 1 to the activity and/or use limitations in this document.

1. **Property Affected.** The property affected (“Property”) by this Environmental Covenant is in the District of Columbia identified as Square 5770, Lots 0829, and addressed as 1901 Martin Luther King Avenue, SE.

The subject property consists of an assemblage of eight parcels addressed as 1901-1909 Martin Luther King Jr Avenue SE, 1109-1113 Good Hope Road SE, and 1104 U Street SE and encompass approximately 36,783 square feet (0.84 acres) (collectively referred as “the Site”). The buildings were occupied by various residential and commercial facilities including restaurants, construction companies, a police station, a paint store, shops and a dry cleaning facility, which was located on the southeast of the southern portion of the Site.

The subject property currently consists of a multi-story commercial building.

A complete description of the Property is attached to this Environmental Covenant as Exhibit A.

2. **Name and Location of the Administrative Record.** The following regulatory program(s) within the Department have administrative records related to the environmental response project reflected in this Environmental Covenant:

- Voluntary Cleanup Program (VCP)
- Underground Ground Storage Tank Program
- Other Programs within the Department:

Environmental Covenant
[1901 Martin Luther King Avenue., SE]
[5770/ 0829]
[deed reference]

The Department's VCP Identification number is: [VCP2021-073].

3. **Description of Contamination and Remedy.**

Based on the Phase I ESA and Phase II ESA findings, the subject property was impacted by the historical uses of a railroad, construction storage yard, and historical operations of a dry-cleaning facility. As a result, the primary chemicals of concern were VOCs, gasoline and diesel contamination in soil and groundwater. Both the soil and groundwater sampling analysis results indicated that the TPH-DRO at concentrations below the DOEE and EPA screening levels. TPH-GRO and VOCs were also below laboratory reporting limits in all soil samples.

The Cleanup Action Plan ("CAP") was developed to address the environmental impacts in connection with the redevelopment of the Site and was prepared in accordance with the requirements of the DOEE Toxic Substances Division, Voluntary Cleanup Program. The approved CAP consisted of a mass excavation and screening of soil using a photoionization detector (PID). The impacted material was then removed to the desired depth and transported to an approved disposal facility. Following removal, a confirmation soil sampling indicated a trace of VOCs, TPH-GRO, TPH-DRO, and PAHs. However, the laboratory soil results indicated that none were detected above the reporting limit.

The approved CAP is attached to this Environmental Covenant as Exhibit B.

Before the issuance of the COC, the program required the performance of post-construction indoor air sampling in the enclosed commercial building to ensure there is no vapor intrusion associated with the residual contamination that would be left in place. However, none except benzene exceeded the applicable Commercial RBS standards and it has been concluded the observed exceedance was likely due to the ongoing interior construction activities in the vicinity of the sample location.

Accordingly, the Participant's request for installation of a waterproofing/vapor barrier beneath the concrete slab was approved. These measures effectively mitigated the vapor intrusion risk associated with the residual contamination as demonstrated by the post-construction indoor air sampling.

The Site Completion Report ("SCR") is attached to this Environmental Covenant as Exhibit C.

4. **Activity & Use Limitations.** The Property is subject to the following activity and use limitations, which the Owner and each subsequent owner of the Property shall abide by:
- a. The groundwater at and under the Property shall not be used for any purpose other than monitoring.
 - b. The ground floor of the Property shall not be used as a residence or childcare facility.

Environmental Covenant
[1901 Martin Luther King Avenue., SE]
[5770/ 0829]
[deed reference]

- c. The Engineering Control (EC) utilized consisted of a waterproofing/vapor barrier system, beneath the two levels of the below-grade parking structure
 - d. In the event of any future excavations on the Property, all excavated materials must be properly and thoroughly characterized prior to off-site disposal, and the laboratory analytical results shall be the basis for the appropriate disposition of the material at a permitted disposal facility in strict accordance with applicable local, state, and federal laws and regulations.
 - e. In the event of any planned changes in the use of the Property in the future, including without limitation of any planned excavations, the Owner or its agent must provide DOEE with at least 30 days prior notice of the planned changes in use.
 - f. The Owner or its agents must visually inspect the property on an annual basis to verify that no potable wells are being used.
5. **Notice of Limitations in Future Conveyances.** This Environmental Covenant runs with the land and shall be binding on successors in interest. Each instrument hereafter conveying any interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations outlined in this Environmental Covenant and shall provide the recorded location of this Environmental Covenant.
6. **Compliance Reporting:** The current owner shall notify the Department in writing at least 30 days before any transfer of the Property; filing of application for a building permit for the property and any proposal for any site work, if the building or proposed site work will affect the contamination on the subject property to this Environmental Covenant. The then-current Owner shall immediately notify the Department of any noncompliance with the activity of any and use limitation in this Environmental Covenant.
7. **Access by the Department.** In addition to any rights already possessed by the Department, this Environmental Covenant grants the Department a right of access to the Property to implement or enforce this Environmental Covenant.
8. **Recordation and Proof of Publication.** Within 60 days after the date of the Department's approval of this Environmental Covenant, the Owner shall file this Environmental Covenant with the District of Columbia Recorder of Deeds and send a file-stamped copy of this to the Department within 30 days of recordation. Within that period, the Owner shall also send a copy file stamped to each of the following: Any holder identified in this Environmental Covenant; each person holding a recorded interest in the property; the developer of the Property; and the designated representative of each person in possession of the property.
9. **Termination or Modification.** This Environmental Covenant runs with the land unless terminated or modified in accordance with D.C. Code §§ 8-671.08 or 8-671.09. After any assignments or other transfer of the ground lessee's interest under the Ground Lease to a successor ground lessee, the assignor or transferor ground lessee shall be released from all duties, obligations, and abilities under this Environmental Covenant first occurring after the date of such assignment or transfer.

Environmental Covenant
[1901 Martin Luther King Avenue., SE]
[5770/ 0829]
[deed reference]

10. Department's Point of Contact

Associate Director, Toxic Substance Division
Department of Energy and Environment
1200 First Street, N.E Fifth Floor
Washington, DC 20002

- 11. Enforcement.** This Environmental Covenant may be enforced in accordance with D.C. Code § 8-671.10.

IN WITNESS WHERE OF, the parties hereto have caused this Environmental Covenant to be executed as of the day and year first above written.

[SIGNATURES FOLLOW]

Environmental Covenant
[1901 Martin Luther King Avenue., SE]
[5770/ 0829]
[deed reference]

FOR GRANTOR(S) (All owners unless waived by the Department)

[Mr. Whitney D. W. Smith, VP of Development & Finance, MLK Gateway Phase II Land LLC
, Grantor

By: _____
Signature Date

Whitney D. W. Smith
Printed Name

Title

ACKNOWLEDGMENT

____ LIST STATE _____)
____ LIST COUNTY _____) ss:

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that [Mr. Whitney D. W. Smith, VP of Development & Finance MLK Gateway Phase II Land LLC], who is personally well known (or satisfactorily proven) to me, and being authorized to do so, executed the foregoing Environmental Covenant and has acknowledged the same to be the act and deed of [Mr. Whitney D. W. Smith, VP of Development & Finance MLK Gateway Phase II Land LLC], and that s/he delivered the same as such.

GIVEN under my hand and seal this ____ day of _____, 20__.

Notary Public
My commission expires:

[NOTARIAL SEAL]

Environmental Covenant
[1901 Martin Luther King Avenue., SE]
[5770/ 0829]
[deed reference]

FOR HOLDER(S)

[Mr. Whitney D. W. Smith, VP of Development & Finance, MLK Gateway Phase II Land LLC
, Grantee

By: _____
Signature Date

Printed Name

Title

ACKNOWLEDGMENT

LIST STATE _____)

LIST COUNTY _____) ss:

I, _____, a Notary Public in and for the jurisdiction aforesaid,
do hereby certify that [Mr. Whitney D. W. Smith, VP of Development & Finance MLK Gateway
Phase II Land LLC], who is personally well known (or satisfactorily proven) to me, and being
authorized to do so, executed the foregoing Environmental Covenant and has acknowledged the
same to be the act and deed of [Mr. Whitney D. W. Smith, VP of Development & Finance, MLK
Gateway Phase II Land LLC], and that s/he delivered the same as such.


GIVEN under my hand and seal this ____ day of _____, 20__.

Notary Public
My commission expires:

[NOTARIAL SEAL]

Environmental Covenant
[1901 Martin Luther King Avenue., SE]
[5770/ 0829]
[deed reference]

APPROVED by the District of Columbia Department of Energy and Environment:

By: **Dave Tomlinson**  Digitally signed by Dave Tomlinson
DN: cn=Dave Tomlinson,
o=Department of Energy and
Environment, ou=Toxic Substances
Division,
email=dave.tomlinson@dc.gov,
c=US
Date: 2024.12.17 15:48:42 -05'00'

Signature _____ Date 12/17/2024

Dave Tomlinson
Printed Name

Associate Director, Toxic Substances Division
Title