

RECORDING REQUESTED BY:

Richmond Redevelopment Agency
1401 Marina Way South
Richmond, California 94804



CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2005-0094887-00

Monday, MAR 21, 2005 10:03:47
FRE \$0.00

WHEN RECORDED, MAIL TO

Ttl Pd \$0.00

Nbr-0002607864
lrc/R9/1-12

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION
PARCEL FM
MARINA BAY REDEVELOPMENT
RICHMOND, CALIFORNIA

This Covenant and Agreement ("Covenant") is made by and between the Richmond Redevelopment Agency (the "Covenantor"), the current owner of Parcel FM situated within the Marina Bay Redevelopment project in Richmond, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of "hazardous materials" as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximate 4.4 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located within the North Shore Areas of the Marina Bay Project. This Property is bound by Village Drive to the north, Salute Restaurant and an associated parking lot to the east, Marina Bay to the south, and the boat launch parking lot for the marina to the west, County of Contra Costa, State of California. This property is more specifically described in Exhibit A.

1.02. The Property is being remediated pursuant to a Remedial Action Plan pursuant to Chapter 6.8 of Division 20 of the H&SC. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including total petroleum hydrocarbons ("TPH"), polynuclear aromatic hydrocarbons ("PAHs"), and lead remain in the soil under portions of the Property, the Remedial Action Plan provides that a deed restriction be required as part of the site remediation. The Department circulated the RAP, which contains a Final Health Risk Assessment, together with a draft Negative Declaration prepared pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The Remedial Action Plan and the negative declaration were approved by the Department on May 24, 1993. Remediation includes installing and maintaining a temporary one foot dirt Cap over the entire Property. The final Cap will be installed at the time the site is developed, currently scheduled for 2006-07. The final Cap will consist of hardscape including commercial buildings, roadways and parking areas. Operation and maintenance of the Cap will be required pursuant to an Operation and Maintenance Plan incorporated into an Operation and Maintenance Agreement between the Richmond Redevelopment Agency and the Department.

1.03. As detailed in the Final Health Risk Assessment as approved by the Department in 1988, all or a portion of the surface and subsurface soils within 10 feet of the surface on the Property contain hazardous substances, as defined in H&SC

section 25316, and hazardous materials as defined in H&SC section 25260, which include lead TPHs, and PAHs at significant concentrations. Based on the Final Health Risk Assessment, the Department has determined that the use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department has further determined that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable risk to human health or the environment, if limited to commercial and industrial, parks, open space use.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), to which the Property and every portion thereof is subject notwithstanding how the Property is improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is

enforceable by, the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Civil Code section 1471(b), this Covenant expressly binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.03. Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessees, or sublessee a copy of this Covenant.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing,

constructed or installed for use as residential human habitation.

- (b) A hospital or hospice for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating on the Property, whether or not such activities are under the control or direction of the Owner or the Owner's Occupant.

4.03. Non-Interference with the Cap. Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted without prior review and approval by the Department, as required under 4.02(c).
- (b) All uses and development of the Capped Property shall preserve the integrity of the Cap.
- (c) The Cap shall not be altered without prior written approval of the Department, as required under 4.02(c).
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any other disturbance to the Cap that

could affect the Cap's ability to contain subsurface hazardous wastes or hazardous materials in the parking lot, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Access for Implementing O&M. The entity or person responsible for implementing Operation and Maintenance activities shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance activities until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any Improvements. [Improvements] herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice (["Notice"] as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be deemed effective: (1) When delivered, if personally delivered to the person being served or to an officer of a corporate party

being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Richmond Redevelopment Agency
1401 Marina Way South
Richmond, California 94804

City Attorney's Office
City of Richmond
1401 Marina Way South
Richmond, California 94804

To Department: Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Richmond Redevelopment Agency

Signatory's Name: Anna F. Gullerud
Title: Chairperson
Date: 8/25/04

Department of Toxic Substances Control

Signatory's Name: Barbara J. Cor
Title: BRANCH CHIEF
Date: 8/25/2004

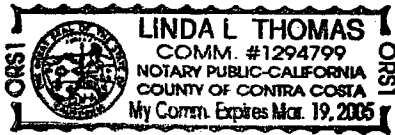
Reviewed By: Rebecca Dr. [Signature]
Agency Attorney

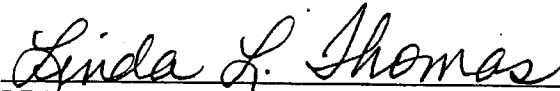
Attest By: [Signature]
Deputy Agency Secretary

STATE OF CALIFORNIA)
)ss
COUNTY OF CONTRA COSTA)

On August 18, 2004, before me, LINDA L. THOMAS, a Notary Public in and for the State, personally appeared IRMA L. ANDERSON and SANDRA L. THOMPSON, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that their signatures on the instrument the persons, or the entity upon behalf of which the person acted, executed the same.

Witness my hand and official seal.



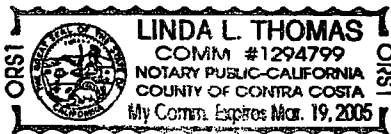

LINDA L. THOMAS
Notary Public

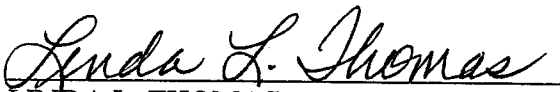
[attached to Covenant to Restrict Use of Property Environmental Restriction, Parcel FM, Marina Bay Redevelopment, Richmond, California. Ms. Anderson signed in her capacity as Chair of the Richmond Redevelopment Agency and Ms. Thompson signed in her capacity as Assistant Secretary of the Richmond Redevelopment Agency.]

STATE OF CALIFORNIA)
)ss
COUNTY OF CONTRA COSTA)

On August 25, 2004, before me, LINDA L. THOMAS, a Notary Public in and for the State, personally appeared BARBARA J. COOK, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacities, and that her signature on the instrument the persons, or the entity upon behalf of which the person acted, executed the same.

Witness my hand and official seal.




LINDA L. THOMAS
Notary Public

[attached to Covenant to Restrict Use of Property Environmental Restriction, Parcel FM , Marina Bay Redevelopment, Richmond, California. Ms. Cook signed in her capacity as Branch Manager of the Department of Toxic Substances Control, State of California.]

LEGAL DESCRIPTION

Southern Portion of Richmond Marina Northshore Area

Parcel of land in the County of Contra Costa, City of Richmond, State of California, described as follows:

Portion of Lot 17, Section 24, Township 1 North, Range 5 West, and portion of Lot 24, Section 19, Township 1 North, Range 4 West, Mt. Diablo Base and Meridian, as shown on the Map entitled "Map No. 1 of Salt Marsh and Tidelands" filed June 11, 1917, Rack Map No. 9, in the Office of the Recorder of Contra Costa County, California; also all of Lots 3, 4, and 5 and a portion of Regatta Square as shown on the Map of Subdivision 6041, Marina Bay – Unit No. 1, in the City of Richmond, recorded April 2, 1982, in Book 263 of Maps, at Pages 40 through 46, and all Parcels G and I and a portion of Parcel H as included in Exhibit A of Memorandum of Marina Lease between the City of Richmond and Richmond Redevelopment Agency and Richmond Bay Marina, LLC, recorded December 14, 2000, in DOC-2000-0280926-00, Contra Costa County records; more particularly described as follows:

Beginning at the southern terminus of the most western line of Parcel Map – MS 759-85, recorded February 3, 1986, in Book 120 of Parcel Maps, at Pages 46 and 47, Contra Costa County Records; thence

Easterly and southerly along the boundary of said Parcel Map (120PM46) the following three (3) courses:

South 88° 51' 44" East 118.97 feet, South 01° 08' 16" West 34.00 feet, South 88° 51' 44" East 20.00 feet; thence

Continuing southerly along said boundary and the extension thereof South 01° 08' 16" West 57.28 feet to a point on a boundary of Parcel D as included in said Memorandum of Marina Lease (DOC-2000-0280926-00); thence

Westerly along the northern boundary of said Parcel D the following 17 courses: North 88° 51' 44" West 129.55 feet, South 46° 08' 16" West 55.59 feet, South 01° 08' 16" West 38.08 feet, North 88° 51' 44" West 75.00 feet, along the arc of a non-tangent 27.00 foot radius curve to the right, of which the radius point lies North 73° 50' 10" West, through a central angle of 74° 58' 26", a distance of 35.33 feet, North 88° 51' 44" West 6.00 feet, South 46° 08' 16" West 76.00 feet, South 01° 08' 16" West 44.00 feet, along the arc of a tangent curve a tangent 27.00 foot radius curve to the right, through a central angle of 77° 41' 17", a distance of 36.61 feet, along a non-tangent line South 01° 08' 16" West 15.62 feet, North 88° 51' 44" West 20.00 feet, South 01° 08' 16" West, 97.24 feet, along the arc of a tangent 27.00 foot radius curve to the right, through a central angle of 90°, a distance of 42.41 feet, along a tangent line North 88° 51' 44" West, 100.00 feet, along the arc of a tangent 27.00 foot radius curve to the right through

a central angle of 90° , a distance of 42.41 feet, along a tangent line North $01^\circ 08' 16''$ East, 88.00 feet, North $43^\circ 51' 44''$ West 65.50 feet; thence

Continuing along said boundary of said Parcel D, North $88^\circ 51' 44''$ West, 93.51 feet; thence

Leaving said boundary of said Parcel D, North $01^\circ 08' 16''$ East 407.15 feet; thence

South $88^\circ 51' 44''$ East 525.77 feet to the western boundary of said Parcel Map (120PM46); thence

Southerly along the said western boundary South $01^\circ 08' 16''$ West 115.82 feet to the Point of Beginning.

Containing an area of 5.30 acres, more or less.