COVENANT OF DEED RESTRICTION
91 262494

Recording Requested By:
Richmond Redevelopment Agency

When Recorded, Mail To:

Howard K. Hatahama, Regional Administrator
California Environmental Protection Agency
Department of Toxic Substances Control
Region 2,
700 Heinz Avenue, Suite #300
Berkeley CA 94710
Attn: Site Mitigation Branch

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY

/ Marina Bay Project
Launch Ramp Parking Area
Richmond, California

This Covenant and Agreement ("Covenant") is made as of the 27th day of November, 1991 by the Richmond Redevelopment Agency ("Covenanter"), a public body corporate and politic, which is the Owner of record of certain property situated in the City of Richmond, County of Contra Costa, State of California, as described in Exhibit A attached hereto and incorporated herein by this reference, and as shown on Exhibit B attached hereto and incorporated herein by this reference ("the Property") and by the California Department of Toxic Substances Control ("the Department") with reference to the following facts:

A. The Property contains hazardous substances.

B. Description of Facts.

B.1. Contamination of the Property. The Property is the
repository of approximately 1,500 cubic yards of soils contaminated by lead. The contaminated soils have been covered with two inches to six inches of clean fill compacted to 90% Standard Proctor, seven inches of gravel road base, and two inches of asphalt (hereinafter collectively referred to as the "Cap").

B.2. Exposure Pathways. The contaminant addressed in this Covenant has been buried on the Property. Without mitigation measures, exposures can take place via in-place contact, surface-water runoff, and wind dispersal, resulting in dermal contact, inhalation, or ingestion by humans. The risk of public exposure to the contaminants has been substantially lessened by placing an asphalt cap over the buried soils. The purpose of the mitigation measures which have been used at the Property is to eliminate any significant risks to human health or the environment. If exposure pathways are not mitigated, potential human health effects resulting from exposure to lead include birth defects and fetotoxicity; Central Nervous System (CNS) damage including convulsions and permanent brain damage; kidney damage; lead line in gums; blood dysplasia and anemia; and gastro-intestinal disorders.

B.3. Adjacent Land Uses and Population Potentially Affected. The Property covered by this Covenant is referred to as the Launch Ramp Parking Area, and is located on the northeast corner of Hall Avenue and Marina Way South in the Marina Bay Development on the Richmond Inner Harbor, Richmond, California, and is more specifically described in Exhibit A.
attached hereto. The Property is to be used as a vehicle and trailer parking facility, and is adjacent to the present boat launch area of the Marina Bay Project.

The Marina Bay Development will include a permanent population of approximately 5,000 persons residing in private residences, condominium units, and apartments. The Marina Bay Development also includes a yacht harbor, park, playground and other recreational facilities which are open to the public. Businesses located within a two block radius of the Property include a restaurant, a grocery store and commercial developments for office and retail use.

C. Covenantor has made full and voluntary disclosure to the Department of the presence of hazardous substances on the Property, and Covenantor has conducted extensive sampling of the Property.

D. Covenantor desires and intends that in order to protect the present and future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances which have been deposited on portions of the Property.

ARTICLE I
GENERAL PROVISIONS

1.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Property and every portion thereof
shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Health and Safety Code Section 25355.5 and run with the land pursuant to Health and Safety Code Section 25355.5. Each and all of the Restrictions are for the benefit of and enforceable by the Department.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.03 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Property.
ARTICLE II
DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

ARTICLE III
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as described in said Exhibit A as follows:

a. Development of the Property shall be restricted to commercial or office space;

b. No residence for human habitation shall be permitted on the Property;

c. No hospitals shall be permitted on the Property.
d. No schools for persons under 21 years of age shall be permitted on the Property;

e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Property;

f. Any proposed alteration of the Cap shall require written approval by the Department and the Richmond Redevelopment Agency.

g. The Property shall be posted with a bilingual sign in English and Spanish stating that no grading, excavation, or building activities can occur on the Property without written permission of the Department and the Richmond Redevelopment Agency;

h. 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;

i. All uses and development of the property shall preserve the integrity of the Cap and of the groundwater monitoring system installed on the Property pursuant to the requirements of the San Francisco Bay Regional Water Quality Control Board (RWQCB).

j. The Owner shall notify the Department and the RWQCB of each of the following: 1) The type, cause, location and date of any disturbance to the Cap which could affect the ability of the Cap to contain subsurface hazardous substances on the Property and 2) The type and date of repair of such disturbance. Notification to the Department shall be made by registered mail.
within ten (10) working days of both the discovery of cap disturbance and the completion of repairs;

k. The Covenantor agrees that the Department or the RWQCB shall have access to the Property for the purposes of inspection, surveillance, or monitoring, as provided for in Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code and Chapter 4 of Division 7 of the Water Code.

3.02 Conveyance of Property. The Owner or Owners shall provide a thirty (30) days advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law or by reason of this Covenant.

3.03 Enforcement. Failure of the Owner to comply with any of the restrictions, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of this Covenant, to have the authority to require that the Owner modify or remove any improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:
"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV
VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code Section 25233.

4.02 Termination. Any Owner or, with the Owner's consent, any Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code Section 25234.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.
ARTICLE V
MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein 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.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this covenant, each such notice, demand, or other communication shall be in writing and 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 official of a government agency 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: "Covenantor"
Richmond Redevelopment Agency
Attn: Administrator
2600 Barrett Avenue
Richmond, CA 94804

Copy to: California Environmental Protection Agency
Department of Toxic Substances Control
Attention: Marina Bay Development Project
700 Heinz Street, Suite 200
Berkeley, CA 94710

Copy to: San Francisco Bay
Regional Water Quality Control Board
Attention: Marina Bay Development Project
2101 Webster Street
Oakland, CA 94610

Copy to: City of Richmond
Attention: City Attorney
2600 Barrett Avenue
Richmond, CA 94804
5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Regional Administrator of the Region 2, Department of Toxic Substances Control of the California Environmental Protection Agency. This instrument shall be recorded by the Covenantor in the County of Contra Costa within ten (10) days of the date of execution.

5.06 References. All references to Code sections include successor provisions.
IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Owner: Richmond Redevelopment Agency
        A Public Body Corporate and Politic
By:     Acting Administrator
Title:  David S. Thompson
Attest: By:       Diane Holnes, Deputy
Title:  Clerk
Date:   November 27, 1991

Agency: /State of California,
        Environmental Protection Agency
        Department of Toxic Substances Control
By:     Howard K. Hatayama
Title:  Regional Administrator, Region 2
Date:   Dec 2, 1991
STATE OF CALIFORNIA               
COUNTY OF CONTRA COSTA

On this 27th day of November, 1991, before me, LINDA L. THOMAS, a Notary Public in and for the State of California, personally appeared DAVID S. THOMPSON and DIANE HOLMES, personally known to me to be the persons who executed this instrument as Acting Administrator and Deputy Clerk, respectively, of the Richmond Redevelopment Agency and acknowledged to me that the Richmond Redevelopment Agency executed it.

[Notary Seal]

LINDA L. THOMAS
Notary Public in and for the County of Contra Costa
State of California
STATE OF CALIFORNIA
COUNTY OF ALAMEDA

On December 2, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared Howard K. Hatayama, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Regional Administrator of the Region 2, Department of Toxic Substances Control of the California Environmental Protection Agency, the Agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

Notary Public in and for said County and State

[Signature]

[Seal]

[Notary Public in and for said County and State]
A parcel of land in the City of Richmond, County of Contra Costa, State of California, described as follows:

A portion of Lots 17 and 18, Section 24, Township 1 North, Range 5 West, Mount Diablo Base and Meridian as shown on "Map No. 1 of Salt Marsh and Tidelands" approved July 6, 1872, and filed June 11, 1917, in Map Rack 9 in the County Recorder's Office, Contra Costa County, more particularly described as follows:

Commencing at the southeast corner of the parcel of land described in the deed from Ford Motor Company to the City of Richmond, filed April 4, 1930, in Book 209 of Official Records at page 490 in the Office of the Recorder of Contra Costa County, California, said parcel known as Hall Avenue, said southeast corner being on the eastern line of said Lot 18, Section 24; thence

Along said eastern line of said Lot 18, Section 24, North 01° 08' 16" East to the Point of Beginning, said Point also being on the northern line of said Hall Avenue; thence

Along said northern line of said Hall Avenue, North 88° 53' 41" West 103.37 feet; thence

Along a line parallel to and distant at right angle 9.00 feet easterly from the eastern line of Marina Way South (formerly South 14th Street) North 01° 08' 16" East 389.00 feet; thence

South 88° 51' 44" East 119.00 feet; thence

South 01° 08' 16" West 389.00 feet; thence

Along the eastern extension of the said northern line of said Hall Avenue, North 88° 53' 41" West 15.63 feet to the Point of Beginning.

Containing an area of 1.06 acres, more or less.

Reference: Marina Bay Westshore - Harbormaster's Lot Expansion
Location of Area BB Soil

A-N WEST, INC.
11-1-90