

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESOLUTION No. R2-2002-0085

AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN AGREEMENT FOR MUTUAL RELEASE AND COVENANT NOT TO SUE FOR PROPERTY AT THE FORMER RYERSON TULL STEEL FACILITY, 1465 65TH STREET, IN THE CITY OF EMERYVILLE, ALAMEDA COUNTY

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Board), finds that:

1. **Jurisdiction:** The former Ryerson-Tull Steel Facility is located at 1465 65th Street in Emeryville, California, on two parcels (Parcel numbers 049-1503-0001 and 049-1500-005 in the Alameda County Book of Records) comprising approximately 4.5 acres (the Property). The Property is more accurately described in the legal description (Attachment 3). While the Board would normally be the regulatory agency overseeing site cleanup, the City of Emeryville ("City") is acting as the lead agency for this site cleanup under Board oversight. The Board, the California Department of Toxic Substances Control and the City have a Memorandum of Understanding on regulatory oversight of contaminated sites such as the Property within the City. However, actions authorized by this Resolution and attachments are not within the scope of the MOU.
2. **Site Closure Requirements:** The City conditionally approved the Closure Plan (dated March 26th, 2002 and as amended May 6th, 2002 and June 18th, 2002) for the Property on June 20, 2002. Board staff, acting for the Board, concurred with the Closure Plan (with addenda) on June 28, 2002. The Closure Plan (with addenda): (1) names Opus West Corporation (subsequently succeeded in interest by 65th & Hollis, L.L.C.), the prospective purchaser and developer of the Property, as the party responsible for implementation of the Closure Plan; (2) finds that no further environmental investigation, cleanup or monitoring is necessary other than as detailed in the Closure Plan approved by the City and Board staff; (3) requires institutional controls controlling land use and other measures before redevelopment; and (4) requires submittal of a Closure Plan Completion Report detailing the cleanup performed during site demolition and redevelopment.
3. **Remediation Accomplished:** The Property has been owned prior to redevelopment by Joseph T. Ryerson & Son, Inc., a Delaware Corporation. Ryerson-Tull has occupied the Property since 1949 and has used the Property for storage, handling, and wholesale distribution of bulk steel and other metal products. In 1993, one 10,000 gallon underground diesel storage tank, associated piping, and fuel dispensing equipment were removed from the Property. From 1993 through part of 2002, extensive soil and groundwater investigations were conducted on the Property. These investigations demonstrated that soil is contaminated with some low concentration levels of heavy end petroleum hydrocarbons that may not require remediation and that shallow groundwater is contaminated with volatile organic chemicals (VOCs) and petroleum hydrocarbons. The groundwater contamination beneath the site is also part of a region-wide groundwater contamination caused by many historic industrial operations in the general area. Groundwater is not currently being used as a drinking water supply and no such use or need is anticipated for the foreseeable future.
4. **Future Actions:** Prior to building demolition, any containers of wastes and/or hazardous materials will be collected and properly disposed of off-site, asbestos abatement will occur, and removal of dried oil stains from the floor inside the building will be completed. After demolition of the existing Property improvements, the Property will be graded. Any contaminated soil found during the Property demolition, grading, or redevelopment at levels exceeding the Regional Board's applicable human health, water quality, or ecological risk-based screening levels will be

disposed of off-site at an appropriate disposal facility. (The Closure Plan includes contingency measures in the event that presently unknown contamination is discovered through demolition of existing facilities or Property redevelopment and also specifies sampling requirements to determine whether the soils or groundwater encountered during Property redevelopment are contaminated.) Any contaminated groundwater encountered in excavations for Property improvements will be handled appropriately as specified in the Closure Plan and in accordance with appropriate laws and regulations. Due to the extent of the investigative work completed at the Property to date, the risk modeling based on the Board's soil and water risk-based screening levels that shows that the site conditions will not create an unacceptable risk to human health or the environment after completion of the Closure Plan and construction of new site improvements, and the likely low levels of pollution remaining after redevelopment, the Board does not expect further remediation will be needed.

5. **Site Redevelopment:** 65th & Hollis, L.L.C., intends to purchase the Property on or about August 30, 2002, perform Property demolition, complete the Closure Plan, and build 5 four-story apartment buildings clustered together with central landscaped courtyards, a swimming pool, and an above-ground multi-story parking garage.
6. **65th & Hollis, L.L.C.'s Request:** 65th & Hollis, L.L.C. seeks a commitment from the Board that 65th & Hollis, L.L.C. and their members, officers, directors, shareholders, employees, partners, partnerships and partners of such partnerships, representatives, agents, affiliates, tenants, lenders, agents, representatives, and their respective assigns and successors ("Buyer Related Parties") in interest will not be named as dischargers (or responsible parties) in a Board enforcement order with regard to existing known conditions of contamination solely by virtue of being involved in the purchase and redevelopment of the Property. Specifically, 65th & Hollis, L.L.C., request that the Board issue a Mutual Release and Covenant Not to Sue ("Mutual Release") to the Buyer Related Parties for the Property. Without this assurance from the Board, 65th & Hollis, L.L.C. states that it will not be able or willing to complete the purchase and redevelopment of the Property.
7. **Deed Restriction:** As a condition of the Mutual Release and as part of the Closure Plan and Property Redevelopment, 65th & Hollis, L.L.C. will submit for the Executive Officer's approval and execution a satisfactory deed restriction referred to as a Covenant and Environmental Restriction on Property (CERP). Upon execution by the Board's Executive Officer, 65th & Hollis, L.L.C. will record the CERP on the Property. In relevant part, the CERP will restrict the land use to controlled multi-family residential uses (i.e., no single family housing) or industrial, commercial or office uses, notify future owners and occupants of sub-surface contamination, restrict the extraction of groundwater, prohibit its use as a source of drinking water, restrict the excavation of soil, and allow for reasonable access by the Board and/or Ryerson-Tull or its successors and assigns for future investigations, monitoring and any necessary remediation.
8. **Board Authority:** Pursuant to Water Code §13304, the Board can enter into agreements whereby the Board covenants not to name prospective purchasers, tenants, lenders, and related parties in enforcement actions for known conditions of contamination. For instance, the Board may enter into such agreements if it sufficiently in the public interest to warrant expending public resources necessary to reach such an agreement.
9. **Benefits of Redevelopment:** The Property is inactive and is located in an area that is redeveloping from industrial uses to residential, commercial and retail uses. Redevelopment of the Property would have economic and social benefits to the local community and to the public at large. The proposed redevelopment will provide approximately 385 new and sorely needed

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housing units, with increased payroll taxes and income taxes accruing to the State and locality. Anticipated annual real estate taxes are estimated at \$800,000.

10. **CEQA:** The purchase of the Property is not an activity that requires Board approval. Furthermore, neither the Property transaction nor the Board's approval of the Mutual Release is a "project" as defined by Public Resources Code Section 21065 and 14 CCR 15378(a) such that the California Environmental Quality Act (CEQA) applies.
11. **Public Notice:** The Board provided notice of its intention to consider this matter at the August 21, 2002 Board meeting and provided an opportunity for interested persons to comment on the draft resolution and its attachments.
12. **Public Hearing:** The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

NOW, THEREFORE BE IT RESOLVED, that the Board authorizes the Executive Officer to negotiate minor amendments to the draft Mutual Release (Attachment 1), and to sign and execute the final Mutual Release.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on August 20, 2002.


Loretta K. Barsamian
Executive Officer

Attachment 1: Mutual Release & Covenant Not to Sue
Attachment 2: Written Instrument and Transfer Document
Attachment 3 Legal Description of Property

**California Regional Water Quality Control Board
San Francisco Bay Region**

**Attachment 1 to Resolution No. R2-2002--0085
Mutual Release and Covenant Not To Sue
Former Ryerson-Tull Steel Facility
1465 65th Street, Emeryville, California**

I. Introduction

This **Mutual Release and Covenant Not to Sue** ("Mutual Release") is provided in response to a request by the prospective purchaser, 65th & Hollis, L.L.C., ("Buyer") a Delaware Limited Liability Company and pursuant to San Francisco Bay Regional Water Quality Control Board ("Regional Board") Resolution No. R2-2002-0085 ("Resolution") authorizing its Executive Officer to finalize negotiations and sign the Mutual Release concerning the former Ryerson-Tull Steel Facility located at 1465 65th Street, Emeryville, California ("Property").

Buyer desires a commitment, to the maximum extent permitted by law, that it, its parents, subsidiaries, partners, partnerships, affiliates, subsequent purchasers, tenants, lenders, and any occupants of the Property, as well as all of their members, shareholders, directors, officers, employees, agents, attorneys, and their respective successors and assigns (individually, "Released Party" and collectively, "Released Parties") will not be subject to liability for, or the subject of any actions, orders, or other liabilities or requirements related to or arising from the "Known Conditions" (defined below).

II. Definitions

For purposes of this Mutual Release, "Known Conditions" or "Known Condition" means all conditions of pollution in, at, under, originating from or migrating onto or off of the Property or any portion thereof, that were known to the Regional Board as of the Effective Date (defined below). The phrase "known to the Regional Board" refers to information regarding pollution in, at, under, originating from or migrating onto or off of the Property, or any portion thereof, that was disclosed to the Regional Board or is reasonably discernible from the reports, investigations, workplans, or any other information submitted to the Regional Board prior to the Effective Date. With respect to any claim, cause of action, investigation, or enforcement action asserted or required by the Regional Board, the Released Parties shall bear the burden of proving to the Regional Board that the condition of pollution at, under, or originating from the Property for which the Regional Board is pursuing a claim, cause of action, investigation or enforcement action is a Known Condition.

III. Findings of Fact

This Mutual Release is based on the following findings by the Regional Board:

1. The Property is within the jurisdiction of the Regional Board due to the Known Conditions. The Regional Board enters into this Agreement pursuant to California Water Code Sections 13000 et seq. The Regional Board may release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against prospective purchasers, and related parties, of environmentally impacted properties, especially where, as here, the agreement is sufficiently in the public interest.

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2. Investigations have shown that the Property is not a significant contributor to the groundwater contamination that exists in this redeveloping former industrial area. Any necessary soil cleanup will be completed as necessary to remove any hotspots encountered to at least Regional Board Risk-Based Screening Levels during demolition and grading activities, pursuant to a Closure Plan approved by the City of Emeryville and concurred with by the Board June 28th, 2002. Separately, the County of Alameda, by letter of June 27, 2002 and also with the concurrence of Board staff, by letter of June 28, 2002 has closed the Fuel Leaking Underground Storage Tank (UST) case (Case No. RO 0000054) for the diesel fuel UST formerly located on the Property. No further soil or groundwater cleanup is required or anticipated with respect to the Known Conditions, based on a risk assessment performed using the Board approved soil and groundwater screening levels. Small amounts of residual contamination will continue to exist at the site in soil and groundwater after the demolition and redevelopment is complete; however, the concentrations are low enough to not present an unacceptable risk to human health, with the new improvements acting as a cap to prevent human contact with the remaining contaminants, and the Regional Board's approval of a deed restriction and implementation of institutional controls.
3. No active unknown discharge of pollutants is believed to be currently occurring on the Property.
4. The Released Parties are not responsible parties or affiliated with a responsible party for the known contamination or pollution, and was not prior to August 30, 2002, an owner of the Property. The sole interest of Buyer in the Property is to purchase and redevelop the Property.
5. Buyer has arranged for the redevelopment of the Property to a productive use that will benefit the public and the community. Benefits include infilling and the use of existing infrastructure, providing housing for about 600 persons, with payroll taxes and income taxes accruing to the State and locality, and anticipated annual real estate taxes estimated at \$800,000.
6. By entering into this Agreement, Buyer certifies that to the best of its knowledge and belief, it has fully and accurately disclosed to the Regional Board any and all information known to its officers, directors, employees, contractors and agents about pollution and/or contamination of the Property.
7. The Property is not the subject of active enforcement actions or agreement(s) with another agency to address the residual pollution at the site.
8. Buyer will pay for all reasonable costs associated with the Regional Board's development and oversight of this Mutual Release pursuant to the California Water Code.
9. This Mutual Release is consistent with the goals and purposes of the Porter-Cologne Act and the federal Clean Water Act.

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10. In order to ensure that no activities at the Property, with the exercise of due care, will aggravate, contribute to or create a condition of pollution or nuisance as a result of the Known Conditions, this Mutual Release requires the application of acceptable institutional controls to the Property as more fully set forth below.

IV. Agreement

1. In accordance with the Resolution, the Regional Board expressly finds that the Released Parties shall not be liable or otherwise responsible for such Known Conditions and hereby covenants and agrees not to initiate, bring, or support any claim, order, demand, enforcement action or other civil or administrative proceeding against the Released Parties or their respective successors and assigns with respect to such Known Conditions under any local, state or federal statute, common law, or equitable doctrine, including but not limited to, in their entirety, the United States Code, the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration to, thorough or from, cleanup, containment or maintenance of the Known Conditions at, on, under or originating from the Property, or any portion thereof. This Mutual Release shall inure to the benefit of, and pass with each and every portion of the Property and shall benefit any respective successors and assignees of the Released Parties, provided such successors and assignees did not cause or contribute to the Known Conditions and provided further each Released Party that is not a signatory to this Mutual Release executes a written instrument in the form of Attachment 2 hereof.
2. To the extent the Release Parties are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2), for matters addressed in this Resolution, the Mutual Release and Covenant Not to Sue and the CERP and various attachments, the parties agree that the Released Parties are entitled to invoke such protection.
3. This Release shall remain effective notwithstanding the revocation or modification of Board Resolution No. R2-2002-0085, and shall be without prejudice to the ability of the Regional Board to take action against any party other than the Released Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of the Known Conditions. Nothing contained in this Mutual Release is intended to waive, limit, preclude, diminish or hinder any right of the Released Parties now or in the future available in law, equity, or by agreement.
4. Notwithstanding any other provisions of this Mutual Release, the Regional Board reserves the right to assert any claims, enforcement actions or other civil or administrative proceeding against the respective Released Parties arising after the Effective Date which are based on the failure of the respective Released Parties, to the extent they have control over the Property, to (i) exercise due care at the Property with respect to the Known Conditions, (ii) comply with the above-described findings, (iii) comply with any deed restrictions or institutional constraints expressed in the Closure Plan, and (iv) cooperate in providing reasonable access to the Property for remediation and monitoring of the Known Conditions required by the Regional Board. If the Regional Board determines that a Released Party has failed to materially comply with any of these four enumerated requirements, after notice and reasonable opportunity for cure, and the Regional Board elects to proceed against that

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Released Party, then this Mutual Release shall be suspended as to that Released Party, and the Regional Board and the Released Party shall then have any rights or defenses they would have had as if this Mutual Release and Covenant Not to Sue had not existed. If, following such proceeding, the Regional Board determines such action to be warranted, it may declare this Mutual Release to be null and void, with respect to that specific Released Party.

5. This reservation by the Regional Board shall be separately and distinctly applied with respect to each of the Released Parties, the intent being that failure by a particular Released Party to comply with any applicable requirement shall not render the Regional Board's covenant inapplicable to any other Released Party. Nothing contained in this Mutual Release shall be deemed a waiver of, or a release by, any Released Party of any defense, cross-claim, counter claim, offer or other rights available to such Released Party in response to any claim, order, demand, enforcement action or other civil or administrative proceeding by the Regional Board.
6. In partial consideration therefore, the Released parties, on behalf of themselves and their respective successors in interest, hereby release and covenant not to sue the Regional Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Known Conditions.
7. The Mutual Release shall not prohibit the Regional Board from asserting any claim, enforcement action, or other civil or administrative proceeding related to any condition of pollution at, under, or originating from the Property that are not Known Conditions.
8. Buyer will submit a deed restriction referred to as a Covenant and Environmental Restriction on Property ("CERP") in a form acceptable to the Executive Officer and in accordance with the provisions of Paragraph 10, below. Upon execution by the Regional Board's Executive Officer, Buyer will record the CERP on the Property. In relevant part, the CERP will restrict land use, restrict the use of groundwater, notify future owners and occupants of subsurface contamination, and restrict the excavation of soil. This CERP shall be recorded with the Alameda County Recorder's Office within the time period set forth in Paragraph 11, below.
9. Each Released Party not represented as a signatory below shall, as a precondition to receiving the benefits conferred by this Mutual Release, execute a written instrument in the form attached to Resolution No. R2-2002-0085 as Attachment 2. Execution and mailing of Attachment 2 to the Regional Board by or on behalf of any corporation, partnership, or other entity, shall be sufficient to confer the benefits of the Mutual Release upon all affiliates, parent or subsidiary corporations, and the respective directors, officers, employees, partners, members, agents, successors, and assigns of each such entity.
10. The Released Parties further agree to exercise due care at the Property with respect to the Known Conditions, to comply with the above-described CERP, to comply with any risk management plans in the Closure Plan and/or CERP, to comply with all applicable local, state, and federal laws and regulations regarding the Property, and to cooperate in providing the Board and Ryerson Tull or its successors or assigns reasonable access to the Property for any necessary monitoring purposes and any necessary operation, maintenance, and repair of wells and remediation facilities.

San Francisco Bay Regional Water Quality Control Board
Attachment 1 to Resolution No. R2-2002-0085

11. This Mutual Release shall be in full force and effect from the Effective Date. The Effective Date shall be August 30, 2002 . Buyer shall have ninety (90) days from adoption of Resolution No. R2-2002-0085 to record the Mutual Release and CERP against the Property, provided that such ninety (90) day period shall be extended by the period of time required by the Executive Officer to fully execute the Mutual Release and CERP. A copy of the recorded Mutual Release and CERP shall be provided to the Regional Board within twenty (20) days of the recording. The Regional Board shall provide acknowledgement of receipt of the recordings as required by this paragraph. Notwithstanding anything to the contrary in the foregoing, if Buyer or its successor(s) fails to record the Mutual Release (in its entirety) and CERP within the time frame set forth above, and the Board or Executive Officer in its discretion does not extend the time, this Mutual Release shall automatically terminate.
12. This Mutual Release may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single instrument.
13. Each of the undersigned parties hereby certifies, and warrants that he or she is authorized to bind his or her agency or entity to the continuing obligations described herein.

**CALIFORNIA REGIONAL WATER QUALITY BOARD
SAN FRANCISCO BAY REGION**

By: Loretta K. Barsamian
Loretta K. Barsamian, Executive Officer

Date: 10.31.02

ATTEST:

65th & Hollis L.L.C.
a Delaware Limited Liability Company

By _____

Date: _____

San Francisco Bay Regional Water Quality Control Board
Attachment 1 to Resolution No. R2-2002-0085

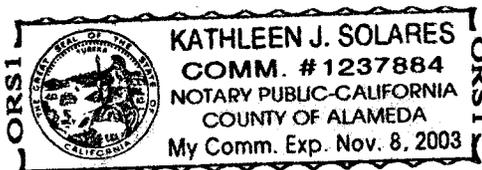
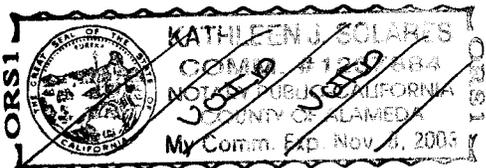
STATE OF California)
) S.S.
COUNTY OF Alameda)

On Oct 31, 2002, before me, Kathleen J. Solares, a notary public in and for such County and State, personally appeared Loretta K. Barsamian and _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kathleen J. Solares

Notary Public



STATE OF _____)
) S.S.
COUNTY OF _____)

On _____, before me, _____, a notary public in and for such County and State, personally appeared _____ and _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

**California Regional Water Quality Control Board
San Francisco Bay Region
Attachment 2 to Resolution No. R2-2002-0085
Written Instrument Of Release And Transfer Document**

_____ [name of new purchaser, lender, lessee, or occupant]
(hereinafter "Released Party"), by signing below verifies and warrants as follows:

1. Released Party has read the Mutual Release and Covenant Not to Sue ("Mutual Release") document, ("Mutual Release") and the related Regional Water Quality Control Board (Regional Board) Resolution No. R2-2002-0085 recorded in Book _____, Page _____ in Alameda County, California for the "Property", formerly the Ryerson-Tull facility, located at 1465 65th Street, Emeryville, CA.

2. Released Party understands and agrees that the Mutual Release contains a release by the Regional Water Quality Control Board ("Regional Board") and a covenant not to bring or support any action or order against subsequent purchasers, tenants, lenders, and occupants of all or a portion of the Property (as defined in the Mutual Release), including their directors, officers, shareholders, managers, employees, partners, affiliates, members, contractors, agents, successors, and assigns, related to the Known Conditions (as defined in the Mutual Release), including contamination at, under, or originating from the Property (as defined in the Mutual Release).

3. Released Party understands and agrees that it may enjoy the benefits of the Mutual Release only if it releases and covenants not to sue the Regional Board as set forth in the Mutual Release, and that by executing this Release, Released Party releases and covenants not to sue the Regional Board in accordance with the terms of the Mutual Release.

4. Released Party understands and agrees that its right to rely on the benefits of the Mutual Release is subject to and conditioned on its own, but only its own, acceptance of all of the provisions of the Mutual Release and its compliance with its obligations under the terms of the Mutual Release.

5. Released Party accepts and agrees to abide by all provisions of the Mutual Release.

This Instrument of Release and Transfer Document shall be effective upon execution by the Released Party. Within three days of execution, Released Party agrees to mail a copy of the executed Release to: Executive Officer, Regional Water Quality Control Board, San Francisco Bay Region (address as of August 21, 2002, is 1515 Clay Street, Suite 1400, Oakland, CA 94612).

Authorized Signature (Released Party)

Date

Name/Title: _____

Company Name/Address: _____

**California Regional Water Quality Control Board
San Francisco Bay Region
Attachment 3 to Resolution No. R2-2002-0085**

Legal Description of the Property in the City of Emeryville

The land referred to in San Francisco Bay Regional Water Quality Board's Resolution R2-2002-0085, this Attachment 3, and in other Attachments consists of two Parcels situated in the State of California, County of Alameda, City of Emeryville, and is more particularly described as follows:

PARCEL ONE:

LOTS 122 TO 131, INCLUSIVE, BLOCK 9, AND THOSE PORTIONS OF LOTS 132, 133 AND 134, BLOCK 9, LYING EASTERLY OF THE EASTERN LINE OF THE 100-FOOT RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY, AS SAID RIGHT OF WAY IS DESCRIBED IN THE DEED FROM CHARLES CROCKER TO THE NORTHERN RAILWAY COMPANY, RECORDED JANUARY 27, 1874, BOOK 175 OF DEEDS, PAGE 115, SERIES NO. 9072, ALAMEDA COUNTY RECORDS, AS SAID LOTS AND BLOCK ARE SHOWN ON THE MAP OF THE MAXWELL TRACK, FILED SEPTEMBER 19, 1872, BOOK 5 OF MAPS, PAGE 21 ALAMEDA COUNTY RECORDS.

PARCEL TWO:

PARCEL 1 OF PARCEL MAP NO. 7506, FILED, OCTOBER 6, 1999, IN BOOK 246 OF PARCEL MAPS, AT PAGES 78 AND 79, ALAMEDA COUNTY RECORDS.

ASSESSOR'S PARCEL NOS. 049-1503-001 (PARCEL ONE)

049-1500-005 (PARCEL TWO)

**California Regional Water Quality Control Board
San Francisco Bay Region**

Recording Requested By:

65th & Hollis, L.L.C.
c/o Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

When Recorded, Mail To:

Loretta K. Barsamian, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

1465 65th Avenue, Emeryville, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the ____ day of _____, 20__ by 65th & Hollis, L.L.C. (a Delaware Limited Liability Company) ("Covenantor") which is the Owner of record of that certain property situated at 1465 65th Street, in the City of Emeryville, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such property hereinafter referred to as the "Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

A. VOCs and Metals at the Property. Portions of the Property's soil and groundwater contain various volatile organic compounds ("VOCs"), polycyclic aromatic hydrocarbons ("PAHs"), petroleum hydrocarbons ("TPH"), polychlorinated biphenyls ("PCBs"), and metals (collectively, "Compounds") as described in Treadwell & Rollo's Closure Plan dated March 26, 2002 (as amended May 6 and June 18, 2002) ("Closure Plan") as filed with the Board, the County of Alameda, the California Department of Toxic Substances Control and the City of Emeryville (collectively, "Agencies").

Covenant and Environmental Restriction on Property
1465 65th Avenue, Emeryville, California

B. Property Investigation and Final Remedial Action Plan. The nature and extent of the Compounds in the soil and groundwater at the Property have been defined and a Closure Plan acceptable to the Agencies has been developed and will be implemented at the Property under the oversight of the City of Emeryville.

C. Exposure Pathways. Compounds are present in soil and groundwater at the Property. Without the mitigation measures that have been and will be performed on the Property, exposure to the Compounds may be possible as a result of soil excavation or groundwater use. However, the risk of exposure to the Compounds has been substantially lessened by the remediation and controls referenced herein.

D. Adjacent Land Uses. The Property is located in a redeveloping area zoned to allow light industrial, office and multifamily residential land uses and is adjacent to properties developed for such uses.

E. Disclosure. To the best of Covenantor's knowledge, extensive sampling of the Property has been conducted and Covenantor is unaware of the presence of hazardous materials on the Property other than the hazardous materials that have been disclosed to the Board in the Closure Plan.

F. Notice. Covenantor desires to provide notice of certain matters respecting the Property and to impose certain covenants, conditions and environmental restrictions on the Property.

ARTICLE I
GENERAL PROVISIONS

1.1. Provisions to Run with the Land. Pursuant to California Civil Code Section 1471, 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. The Board has determined that the restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the Property of hazardous materials. 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, for the benefit of the Board and all Owners and Occupants pursuant to Civil Code Section 1471. 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 enforceable by the Board and the Covenantor.

Covenant and Environmental Restriction on Property
1465 65th Avenue, Emeryville, California

1.2 Concurrence of Owners and Lessees 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 and are bound by the provisions of this Covenant and to agree for and among themselves, and their respective members, shareholders, directors, officers, employees, partners, partnerships, agents, representatives, attorneys, heirs, successors, and assigns, that the provisions as herein established must be adhered to for the benefit of the Board, the Covenantor, and the Owners and Occupants of the Property and that the interest of the Owners and Occupants of the Property shall be subject to the provisions contained herein.

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

1.4 Purpose. It is the purpose of this instrument to protect human health and the environment by reducing the risk of exposure to residual Compounds in soils and groundwater.

ARTICLE II
DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Occupants. "Occupants" shall mean Owners and those persons entitled, by any means, including without limitation, by ownership, leasehold, or other legal right or relationship to the right to occupy any portion of the Property.

2.3 Order. "Order" shall mean any and all orders and resolutions adopted by the Board, including Resolution No. R2-2002-0085, adopted on August 20, 2002.

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

ARTICLE III
DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as follows:

a. Development of the Property for detached single family housing is prohibited. Multi-family housing, office, retail, industrial or any other non-detached single family housing uses are acceptable uses.

Covenant and Environmental Restriction on Property
1465 65th Avenue, Emeryville, California

b. Until the Board, or its successor agency, determines that the withdrawal of groundwater from the Property does not pose a significant existing or potential hazard to present or future public health or safety or to the environment, no Owner or Occupant of the Property or any portion of the Property shall drill or otherwise construct a well at the Property for purposes of extracting water.

c. The excavation of soil below the vapor barrier or extraction of groundwater at any depth for any purpose shall not commence unless and until the Owner or Occupant desiring to make the excavation or extract groundwater has proposed a plan for protecting public health and safety and the health and safety of workers, which plan is acceptable to the City, and implements that plan as proposed and accepted by the City. A Risk Management Plan for the Property will be prepared and approved by the City prior to excavation or groundwater extraction. Soil excavation and groundwater extraction that complies with that Risk Management Plan and shall not require a separate plan or separate Board acceptance pursuant to this subparagraph 3.1(c).

d. The Covenantor agrees that the Board, and/or any persons acting pursuant to the Order, shall have reasonable access to the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the California Water Code.

e. Except as permitted by the Closure Plan or Risk Management Plan or other approval of either the City or the Board, no Owner or Occupant of the Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Property.

f. All uses and development of the Property shall be consistent with the Closure Plan and the Risk Management Plan.

3.2 Enforcement. Failure of the Owner to comply with any of the requirements set forth in paragraph 3.1 shall be grounds for the Board, or the Covenantor by reason of this Covenant, to have the authority to require that the Owner or Occupant modify any use of the Property in material violation of the provisions of subparagraphs 3.1(a) through (e). Material violation by an Owner or Occupant of the Covenant shall be grounds for the Board or Covenantor to file civil actions against the offending Owner or Occupant as provided by law. Nothing in this Section creates the obligation on the part of the Board or the Covenantor to enforce the provisions of the Covenant.

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3.3 Notice in Agreements: All purchase and , lease agreements for the Property executed after the date of recording of this Covenant shall contain the following statement:

The land described herein contains hazardous substances, as defined in Section 25316 of the California Health and Safety Code, and is subject to the requirements of a Covenant and Environmental Restriction on Property dated _____, 2002, and recorded on _____, 2002, in the Official Records of Alameda County, California, as Document No. _____, which Covenant imposes certain covenants, conditions, and environmental restrictions pursuant to California Civil Code Section 1471 on the use of the property described herein. The provisions of the Covenant are incorporated herein and made a part hereof as if set forth in full. This statement is not a declaration that a hazard exists.

ARTICLE IV
VARIANCE AND TERMINATION

4.1 Term. Unless terminated with the written consent of the Board and the original Covenantor, this Covenant shall continue in effect until it can be conclusively demonstrated that there are no Compounds present in, on, under, beneath or migrating onto or off of the Property.

ARTICLE V
MISCELLANEOUS

5.1 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 or for any purpose whatsoever.

5.2 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 certified mail, postage pre-paid, return receipt requested:

Covenant and Environmental Restriction on Property
1465 65th Avenue, Emeryville, California

If To: "Covenantor"

65th & Hollis, L.L.C.
c/o Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

If To: "Board"

California Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, California 94612

[Barring recorded address change by either Board or Covenantor]

5.3 Partial Invalidity. If any portion or term of the Restrictions set forth in this Covenant is determined to be invalid for any reason, the remaining portions and terms shall remain in full force and effect as if such invalid portion had not been included in this Covenant.

5.4 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.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. The Covenantor shall record this instrument in the County of Alameda within thirty (30) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

Covenant and Environmental Restriction on Property
1465 65th Avenue, Emeryville, California

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: 65th & Hollis, L.L.C.

By: 65th Street, Inc. _____

Title: Its Manager _____

Date: _____

Agency: State of California
Regional Water Quality Control Board,
San Francisco Bay Region

By: *Lnette K. Basomsi* _____

Title: Executive Officer _____

Date: 10.31.02 _____

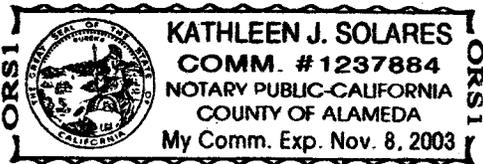
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Alameda } ss.

On Oct 31, 2002 before me, Kathleen J. Solares, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Loretta K. Barsamian
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathleen J. Solares
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant and Environmental Restriction

Document Date: No document date at time Number of Pages: - 8 -

Signer(s) Other Than Named Above: Yes

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): Executive Officer
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

