

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ATTACHMENT 2 TO RESOLUTION R5-2012-XXXX
MUTUAL RELEASE AND COVENANT NOT TO SUE
ROYAL OAKS BUSINESS PARK, LLC

I. Introduction

This Mutual Release and Covenant Not to Sue ("Mutual Release") is provided in response to a request by Royal Oaks Business Park, LLC ("Royal Oaks"), and DowBrands, Inc. ("DowBrands"), an affiliate of The Dow Chemical Company, and pursuant to Central Valley Regional Water Quality Control Board ("Central Valley Water Board") Resolution R5-2012-xxxx (the "Resolution"), which authorized its Executive Officer to finalize negotiations and sign the Mutual Release, concerning the property at 2696 South Maple Avenue, Fresno, Fresno County, California (the "CPR/Autoline Property" referred to as the "Site") and the property at 4787 East Date Avenue, Fresno, Fresno County, California (the former "DowBrands Property") (the CPR/Autoline Property and DowBrands Property shall collectively be referred to as the "Properties"). S.C. Johnson & Son, Inc. currently owns the DowBrands Property.

Royal Oaks and DowBrands desire a commitment, to the maximum extent permitted by law, that they, and their parents, subsidiaries, partners, partnerships, affiliates, subsequent purchasers, tenants, lenders, and any occupants of the Properties, as well as all of their directors, officers, shareholders, managers, employees, partners, affiliates, members, contractors, agents, 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, as described below, related to or arising from the "Existing Conditions" (defined below), except that DowBrands will remain subject to liability for releases from the DowBrands property.

II. Definitions

For purposes of this Mutual Release, "Existing Conditions" or "Existing Condition" means all conditions of pollution in, at, under, originating from, or migrating onto or off of the Properties or any portion thereof as of the Effective Date, as defined below. With respect to any claim, cause of action, investigation, or enforcement action asserted or required by the Central Valley Water Board, the Released Parties shall bear the burden of proving to the Central Valley Water Board that the condition of pollution at, under, or originating from the Properties for which the Central Valley Water Board is pursuing a claim, cause of action, investigation or enforcement action is an Existing Condition.

III. Findings of Fact

The Central Valley Water Board bases this Mutual Release on the following findings:

1. The Properties are within the jurisdiction of the Central Valley Water Board due to the Existing Conditions and are subject to the provisions of the Resolution. The Central

Valley Water Board enters into this Agreement pursuant to Water Code sections 13000 et seq.; specifically section 13304. The 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.

2. Royal Oaks will implement and complete the 12 April 2010 Remedial Action Plan prepared by SLR International Corp and will complete any necessary cleanup of soil contamination at the CPR/Autoline Property encountered during demolition and grading activities in accordance with applicable statutory and regulatory requirements for industrial use property. Royal Oaks shall not be responsible for groundwater contamination at the CPR/Autoline Property. Royal Oaks will allow reasonable access to the CPR/Autoline Property for groundwater assessment and/or remediation, as necessary by DowBrands. Notwithstanding anything to the contrary, Royal Oaks' responsibility to remediate soil shall terminate upon full implementation and completion of the 12 April 2010 Remedial Action Plan.
3. Should the Central Valley Water Board determine that the CPR/Autoline Property is not suitable for unrestricted use after the conclusion of soil remediation, the Board will require Royal Oaks, within 6 months of completing soil remediation at the CPR/Autoline Property, will seek to record a Deed of Restriction for Use of Property (the "Environmental Restriction") pursuant to Water Code section 13307.1. The Environmental Restriction would prohibit the use of upper aquifer groundwater beneath the CPR/Autoline Property as a source of drinking water; limit development of the CPR/Autoline Property to industrial, commercial, or office space uses; prohibit sensitive uses such as residential, hospitals, day care facilities, or schools; provide that no activities that will disturb the soil beneath the CPR/Autoline Property, such as grading, excavation, removal, etc, shall be permitted without a Soil Management Plan and a Health and Safety Plan approved by the Board or other responsible governmental agency; and prohibit extraction of groundwater for purposes other than remediation. Any Environmental Restriction shall be binding upon successors.
4. Commencing within three months of completion of soil remediation by Royal Oaks at the CPR/Autoline Property, DowBrands will undertake a field investigation of VOCs in groundwater downgradient of the CPR/Autoline Property in accordance with the following Groundwater Investigation Work Plan. The Groundwater Investigation Work Plan to be conducted by DowBrands will consist of collecting discrete-depth groundwater samples from multiple depths as outlined in the Groundwater Investigation Work Plan submitted to the Central Valley Water Board on 11 October 2010 (a true and correct copy of the 11 October 2010 Groundwater Work Plan is attached to Resolution R5-2012-xxxx as Exhibit "D"), except that a fourth well will be included east of proposed well "C" in response to comment received from the Central Valley Water Board. Following well installation, DowBrands will conduct four semiannual monitoring events

(two years) consisting of measuring water levels and collecting groundwater samples for the analysis of VOCs, as described in the 11 October 2010 Groundwater Investigation Work Plan. Prior to implementing the Groundwater Investigation Work Plan, DowBrands will prepare a Public Participation Plan for approval by the Central Valley Water Board. The Public Participation Plan shall be consistent with the Department of Toxic Substances Control Public Participation Manual (Revised October 2001). Within six months following completion of the Groundwater Investigation Work Plan, including two years of semiannual groundwater monitoring, DowBrands will submit a Report of Findings to the Central Valley Water Board describing the results of the semiannual groundwater monitoring and an evaluation of the extent, nature, and sources of the VOCs in groundwater within the investigation area.

5. DowBrands' obligations following completion of the field investigation and two years of semiannual groundwater monitoring and submission of the Report of Findings shall not include characterization or remediation of impacted soil at the CPR/Autoline Property, or the delineation and/or remediation of VOCs in groundwater not from the former DowBrands Property.
6. No active discharge of pollutants to soil is believed to be currently occurring on the Properties.
7. Royal Oaks has arranged for the redevelopment of the CPR/Autoline Property to a productive use that will benefit the public and the community. Benefits include economic and social benefits to the local community and to the public at large.
8. By entering into this Agreement, Royal Oaks and, on behalf of DowBrands, Timothy King, Remediation Leader, certify that to the best of their knowledge and belief, they have fully and accurately disclosed to the Central Valley Water Board any and all information known to their officers, directors, employees, contractors and agents about pollution and/or contamination of the Properties.
9. The Properties are not the subject of active enforcement actions or agreement(s) with another agency to address the residual pollution at them.
10. Royal Oaks, and DowBrands will pay for all reasonable costs associated with the Central Valley Water Board's development and oversight of this Mutual Release pursuant to the Water Code.
11. This Mutual Release is consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).
12. In order to ensure that no activities at the Properties, with the exercise of due care, will aggravate, contribute to or create a condition of pollution or nuisance as a result of the

Existing Conditions, this Mutual Release requires the application of acceptable institutional controls to the Properties as more fully set forth below.

IV. Agreement

1. In accordance with the Resolution and this Mutual Release, the Central Valley Water Board expressly finds that Royal Oaks shall not be liable or otherwise responsible for such Existing Conditions with regard to soil and groundwater contamination at the CPR/Autoline Property, except as outlined in the Resolution and this Mutual Release, and DowBrands shall not be liable or otherwise responsible for such Existing Conditions with regard to soil contamination at the CPR/Autoline Property or groundwater contamination that does not originate from the DowBrands Property, and hereby covenants and agrees not to initiate, bring, or support any claim (including without limitation any claim for natural resource damages), order, demand, enforcement action or other civil or administrative proceeding against the Released Parties or their respective successors and assigns, subject to the conditions set forth in the next sentence, with respect to such Existing 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, through or from, cleanup, containment or maintenance of such Existing Conditions at, on, under or originating from or migrating to the Properties, or any portion thereof. This Mutual Release shall inure to the benefit of, and pass with each and every portion of the Properties and shall benefit any respective successors and assignees of the Released Parties, provided such successors and assignees do not cause or contribute to such Existing Conditions, and providing Released Parties meet their obligations in the Resolution and this Mutual Release.
2. This Mutual Release shall remain effective notwithstanding the revocation or modification of the Resolution, and shall without prejudice to the ability of the Central Valley Water Board to take action against any party other than the Released Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of such Existing Conditions. Nothing contained in this Mutual Release is intended to waive, limit, preclude, diminish nor hinder any right of the Released Parties now or in the future available, in law, equity, or by agreement.
3. Notwithstanding any other provisions of this Mutual Release, the Central Valley Water 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 Properties, to comply with the terms of the Resolution or this Mutual Release. If the Board determines that a Released Party has failed to

materially comply with any of these obligations, after notice and reasonable opportunity for cure, and the Board elects to proceed against that Released Party, then this Mutual Release shall be suspended as to that Released Party, and the 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 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.

4. The reservation by the Central Valley Water Board set forth in Paragraph (IV)(3) above 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 Board's covenant inapplicable to any other Released Party.
5. 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 Central Valley Water Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of such Existing Conditions.
6. The Mutual Release shall not prohibit the Central Valley Water 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 Properties that are not Existing Conditions.
7. Each Released Party not represented as a signatory below shall, as a precondition to receiving the full benefits conferred by this Mutual Release, execute a written instrument in the form attached to Resolution R5-2012-xxxx as Exhibit F and incorporated herein by this reference (the "Written Instrument of Release"). Proper and legally authorized execution and mailing of the Written Instrument of Release to the Central Valley Water 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.
8. Royal Oaks and DowBrands agree to exercise due care at the Properties with respect to such Existing Conditions, to comply with the Environmental Restriction, to comply with all applicable local, state, and federal laws and regulations regarding the Properties, and to cooperate in providing the Central Valley Water Board and each other or their successors or assigns reasonable access to the Properties for any necessary monitoring purposes and any necessary operation, maintenance, and repair of wells and remediation facilities.

9. This Mutual Release shall be in full force and effect from the Effective Date. The Effective Date shall be _____ 2012. Released Parties shall have ninety (90) days from the Effective Date to record the Mutual Release, including exhibits, against the Properties, 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. A copy of the recorded Mutual Release shall be provided to the Central Valley Water Board within twenty (20) days of the recording. The Board shall provide acknowledgement of receipt of the recordings as required by this paragraph. Notwithstanding anything to the contrary in the foregoing, if Released Parties or their successor(s) fails to record the Mutual Release (in its entirety) 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.
10. 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.
11. 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.

Royal Oaks Business Park, LLC
A California Corporation

By: _____

Title: _____

Date: _____

DOWBRANDS, INC.,
A California Corporation

By: _____

Title: _____

Date: _____

ATTACHMENT 2
MUTUAL RELEASE AND COVENANT NOT TO SUE
ROYAL OAKS BUSINESS PARK, LLC
2696 SOUTH MAPLE AVENUE, FRESNO
FRESNO COUNTY

California Regional Water Quality Control Board,
Central Valley Region

By: _____

Title: _____

Date: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____) Acknowledgment as to
) Royal Oaks Business Park, LLC

On _____, 20__ before me, _____,
the undersigned personally appeared

_____,
[Representative of Royal Oaks Business Park, LLC]

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 the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)
)
COUNTY OF _____)

Acknowledgment as to
DOWBRANDS, INC.

On _____, 20__ before me, _____,
the undersigned personally appeared

_____,
[Representative of DOWBRANDS, INC.]

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 the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)
)
COUNTY OF _____)

Acknowledgment as to
Central Valley Water Board

On _____, 20__ before me, _____,
the undersigned personally appeared

_____,
[Representative of Central Valley Water Board]

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 the entity upon behalf of which the person(s) acted, executed the instrument.

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