

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION R5-2012-XXXX

AUTHORIZING THE EXECUTIVE OFFICER
TO ENTER INTO AN AGREEMENT FOR MUTUAL RELEASE AND
COVENANT NOT TO SUE WITH DOWBRANDS, INC. AND EITHER SAINT ANTHONY'S
BREAD BASKET, INC. AND THE FRESNO COUNTY HOUSING AUTHORITY OR ROYAL
OAKS BUSINESS PARK, LLC
FOR THE PROPERTY AT
2696 SOUTH MAPLE AVENUE, FRESNO
FRESNO COUNTY, CALIFORNIA

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board" or "Board") finds that:

- 1. Properties and Jurisdiction:** Champion Parts Rebuilders, Inc. ("CPR") and Autoline Industries, Inc. ("Autoline") previously owned and operated an auto parts manufacturing/rebuilding facility at 2696 South Maple Avenue, Fresno, Fresno County, California, comprising approximately 14 acres, as more particularly described in Exhibit "A" (the "CPR/Autoline Property"). Operations at the CPR/Autoline Property ceased in 1997. DowBrands, Inc. ("DowBrands") previously operated a plastic bag and plastic film production facility at 4787 East Date Avenue, Fresno, Fresno County, California, as more particularly described in Exhibit "B" (the former "DowBrands Property"). S.C. Johnson & Son, Inc. ("SCJ") currently owns the DowBrands Property. Together, the CPR/Autoline Property and the DowBrands Property are referred to as the "Properties." The Central Valley Water Board has jurisdiction over both the CPR/Autoline Property and the DowBrands Property.
- 2. Cleanup Requirements:** CPR and Autoline were required to investigate the CPR/Autoline Property pursuant to an Order issued on 1 May 2006 pursuant to Water Code section 13267 (the "13267 Order"). DowBrands is not currently under an order requiring investigation or remediation of degradation originating from the DowBrands Property. DowBrands has, on a voluntary basis, conducted investigation and remediation activities for soil and groundwater degradation at the DowBrands Property with oversight by the Board, as described in paragraph 3, below, and DowBrands has investigated groundwater conditions off-site of the DowBrands Property.
- 3. Investigation and Remediation Accomplished:** SCJ and DowBrands, on behalf of SCJ, have investigated and remediated soil and groundwater conditions on-site at the DowBrands Property. Impacted soil at the DowBrands Property was remediated using soil vapor extraction to the satisfaction of the Central Valley Water Board.

Investigations performed by DowBrands indicate that VOCs in groundwater from the

DowBrands Property may extend to the northwest of the DowBrands Property. Constituents of concern in soil and groundwater associated with the DowBrands Property are chlorinated volatile organic chemicals ("VOCs"), their transformation byproducts, and associated chemicals. The primary VOCs are tetrachloroethene ("PCE") and 1,1-dichloroethylene ("1,1-DCE") with lesser amounts of dichloroethane ("DCA") and trichloroethylene ("TCE"). Constituents of concern in groundwater associated with the CPR/Autoline Property are dominated by 1,1-DCE, and include PCE. Groundwater beneath and in the vicinity of the DowBrands Property and CPR/Autoline Property has also been impacted by contaminants not associated with or originating from the DowBrands Property or the CPR/Autoline Property. These contaminants include 1,2-dibromo-3-chloropropane ("DBCP") and nitrate; both of which occur in groundwater at concentrations above their respective maximum contaminant levels as promulgated in Title 22, California Code of Regulations, Division 4, Chapter 15. There may be other sources of VOCs in groundwater downgradient of the DowBrands Property and/or the CPR/Autoline Property.

4. **Redevelopment Plans:** Saint Anthony's Bread Basket, Inc. ("St. Anthony's") and Royal Oaks Business Park, LLC ("Royal Oaks") (collectively referred to as the "Prospective Purchasers") are both exploring the purchase and redevelopment of the CPR/Autoline Property. As prospective purchasers, St. Anthony's and Royal Oaks have both indicated a willingness to remediate impacted soil at the CPR/Autoline Property as specified in this Resolution and attached versions of the Mutual Release and Covenant Not to Sue document. Should either of the Prospective Purchasers acquire the CPR/Autoline property, the purchasing entity will prepare a Soil Management Plan to be approved by the Board before any demolition of buildings located at the CPR/Autoline Property takes place. Both Prospective Purchasers have offered to complete site remediation of impacted soil at the CPR/Autoline Property, as defined below, in consideration of a Mutual Release and Covenant Not to Sue with the Central Valley Water Board that would limit the Prospective Purchasers' environmental obligations.
5. **Agreement will be entered into with Prospective Purchaser that Acquires Title to the CPR/Autoline Property First:** Both Prospective Purchasers have stated that their negotiations for the purchase of the CPR/Autoline Property (which include resolving outstanding property taxes with Fresno County) cannot be completed unless and until the Board defines their prospective environmental obligations through the adoption of a resolution that would authorize the Executive Officer to enter into a Mutual Release and Covenant Not to Sue with the Prospective Purchaser that acquires title to the CPR/Autoline Property. This resolution authorizes the Executive Officer to enter into a Mutual Release and Covenant Not to Sue with the first of the Prospective Purchasers that acquires title to the CPR/Autoline Property.
6. **Involvement of the Fresno County Housing Authority:** St. Anthony's plans for purchasing the CPR/Autoline Property involve purchasing the property from the Fresno

County Tax Collector in partnership with the Fresno County Housing Authority. The Fresno County Housing Authority seeks the same protection from potential liability as St. Anthony's. This resolution authorizes the Executive Officer to enter into a Mutual Release and Covenant Not to Sue with the Fresno County Housing Authority should it participate in the purchase and redevelopment of the CPR/Autoline Property with St. Anthony's.

7. **Remediation Plans Proposed by Prospective Purchasers:** Both Prospective Purchasers have proposed remediation plans that are acceptable to the Central Valley Water Board.
 - a. **St. Anthony's Proposal:** St. Anthony's proposes to remediate VOCs in on-site soils at the CPR/Autoline Property as proposed in a 18 April 2012 soil remediation workplan ("St. Anthony's Workplan") prepared by Technicon Engineering Services, Inc. ("Technicon") attached hereto as Exhibit "C." The St. Anthony's Workplan proposes eleven soil vapor extraction ("SVE") wells installed to a depth of 55 feet below ground surface ("bgs"). The boreholes for the SVE wells will be sampled at 10-foot intervals and select soil samples analyzed for VOCs using EPA Method 8260. The SVE wells will be constructed using 2-inch diameter PVC and screened from 10 to 55 feet bgs. A 20-hp blower connected to two 2,000-pound activated carbon units is proposed as part of the SVE system. The St. Anthony's Workplan estimates that the system will operate for approximately 18 months. The SVE system will be monitored at start-up and then quarterly. When SVE monitoring and sampling suggests that clean-closure attainment levels have been achieved, a confirmation investigation will be proposed and conducted. At the completion of the confirmation investigation, a report will be prepared which will include findings and evaluations. St. Anthony's will, at a minimum, implement and complete the St. Anthony's Workplan as proposed. St. Anthony's obligations shall not include remediation of impacted groundwater.
 - b. **Royal Oaks Proposal:** Royal Oaks proposes to remediate VOCs in on-site soils at the CPR/Autoline Property as proposed in a 12 April 2010 remedial action plan ("Royal Oaks RAP") prepared by SLR International Corp attached hereto as Exhibit "D." The RAP proposes nine SVE wells installed to a depth of 70 feet bgs. The boreholes for the SVE wells will be sampled at 5-foot intervals and select soil samples analyzed for VOCs using EPA Method 8260. The SVE wells will be constructed using 4-inch diameter PVC and screened from 10 to 70 feet bgs. Prior to installation of all the SVE wells, a one-day pilot test will be completed to verify design assumptions. The pilot test will use one SVE well and two temporary well points to monitor the pilot test. A 5-hp blower connected to two 2,000-pound activated carbon units is proposed as part of the SVE system. The RAP estimates that the system will operate for one year and eight carbon unit change-outs will be required during that year. The SVE system will be monitored on a monthly basis.

Quarterly reports will be submitted that outline field activities completed, measured data, discussion of progress, and recommendations. A closure report will be submitted when SLR International Corp. believes soil remediation is complete. The cost estimate to complete the RAP is \$415,000. Royal Oaks will, at a minimum, implement and complete the RAP as proposed. Royal Oaks' obligations shall not include remediation of impacted groundwater.

8. **Investigation to be Conducted by DowBrands:** Commencing within three months of completion of soil remediation 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 hereto as Exhibit "E"), 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.

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 originating from the former DowBrands Property.

9. **Deed Restriction:** Pursuant to this Resolution and either of the attached Mutual Release and Covenant Not to Sue documents attached hereto, 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 that the CPR/Autoline Property be subject to a Deed of Restriction for Use of Property (the "Environmental Restriction") pursuant to Water Code section 13307.1. Within 6 months of completing soil remediation at the CPR/Autoline Property, the Prospective Purchaser that acquires title to the property would be required to record an Environmental Restriction that 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.

10. Request of the Parties:

- a. The Prospective Purchasers seek a commitment from the Central Valley Water Board that it will not name whichever of the Prospective Purchasers that acquires the CPR/Autoline Property, its affiliates, or any of its officers, directors, shareholders, employees, partners, partnerships, representatives, agents, tenants, lenders and their respective successors and assigns as dischargers or responsible parties in any Central Valley Water Board enforcement order with regard to the investigation, characterization or remediation of existing conditions of soil and groundwater contamination concerning the CPR/Autoline Property, solely by virtue of being involved in the purchase and redevelopment of the CPR/Autoline Property. Specifically, the Prospective Purchasers request that the Central Valley Water Board enter into a Mutual Release and Covenant Not to Sue ("Mutual Release") with whichever of the Prospective Purchasers that acquires title to the CPR/Autoline Property, as set forth in Attachments 1 or 2 hereto.
- b. DowBrands seeks a commitment from the Central Valley Water Board that it will not name DowBrands, its parent, its affiliates, or any of their officers, directors, shareholders, employees, partners, partnerships, representatives, agents, tenants, lenders and their respective successors (including but not limited to SCJ) and assigns as dischargers or responsible parties in any Central Valley Water Board Enforcement Order with regard to the investigation, characterization or remediation of existing conditions of soil contamination at the CPR/Autoline Property, or for the remediation of groundwater contamination which does not originate from the DowBrands Property. Specifically, DowBrands requests that the Central Valley Water Board enter into a Mutual Release with DowBrands for the Property, as set forth in Attachments 1 or 2 hereto.

- c. The Fresno County Housing Authority seeks a commitment from the Central Valley Water Board that it will not name the Fresno County Housing Authority, its affiliates, or any of its officers, directors, shareholders, employees, partners, partnerships, representatives, agents, tenants, lenders and its respective successor agencies and assigns as dischargers or responsible parties in any Central Valley Water Board enforcement order with regard to the investigation, characterization or remediation of existing conditions of soil and groundwater contamination concerning the CPR/Autoline Property, solely by virtue of being involved in the purchase and redevelopment of the CPR/Autoline Property. Specifically, the Fresno County Housing Authority requests that the Central Valley Water Board enter into a Mutual Release and Covenant Not to Sue ("Mutual Release"), as set forth in Attachment 1.
 - d. The Parties intend to apply to the Site Designation Committee to designate the Central Valley Water Board as the "Administering Agency" for the Properties pursuant to Health & Safety Code section 25262. The Parties seek a commitment from the Central Valley Water Board that it will support such designation.
11. **Board Authority:** Pursuant to Water Code section 13304, the Central Valley Water Board has authority to enter into agreements whereby the Central Valley Water Board covenants not to name prospective purchasers, tenants, lenders, and related parties in enforcement actions to address conditions of pollution. The Central Valley Water Board may enter into such agreements if it is sufficiently in the public interest to warrant expending public resources necessary to reach such an agreement.
12. **Benefits of Redevelopment:** From approximately 1981 to 2001, CPR and/or Autoline operated an automotive parts manufacturer or rebuilder at the CPR/Autoline Property. The CPR/Autoline Property is currently underutilized. The current owner of the CPR/Autoline Property is in bankruptcy and cannot, as a practical matter, rehabilitate or redevelop the site. Redevelopment of the CPR/Autoline Property would have economic and social benefits to the local community and to the public at large. Potential liability for existing groundwater contamination beneath and associated with the CPR/Autoline Property has decreased the marketability of the site. Should St. Anthony's acquire title to the CPR/Autoline Property, then provided the 18 April 2012 St. Anthony's Workplan is fully implemented and completed, St. Anthony's' costs, including regulatory oversight fees, will be limited to a maximum of \$500,000 for Central Valley Water Board approved activities, contingent on receipt of the Mutual Release. Should Royal Oaks acquire title to the CPR/Autoline Property, then provided the 12 April 2010 Royal Oaks RAP is fully implemented and completed, Royal Oaks' costs, including regulatory oversight fees, will be limited to a maximum of \$500,000 for Central Valley Water Board approved activities, contingent on receipt of the Mutual Release.
13. **CEQA:** The purchase of the CPR/Autoline Property is not an activity that requires Board approval. Furthermore, neither the CPR/Autoline Property transaction nor the Central

Valley Water Board's approval of the Mutual Release is a "project" as defined by Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378(a), such that the California Environmental Quality Act applies.

14. **Public Notice:** The Central Valley Water Board provided notice of its intention to consider this matter at a public meeting and provided an opportunity for interested persons to comment on the tentative resolution and its attachments. The draft resolution and its attachments were mailed to the interested parties and regulatory agencies, and posted on the Board's website.
15. **Public Hearing:** The Central Valley Water Board, at a public meeting, heard and considered all comments pertaining to this matter.

THEREFORE, BE IT RESOLVED THAT the California Regional Water Quality Control Board, Central Valley Region, having considered the facts regarding the water quality concerns at the CPR/Autoline Property, and having considered the terms of the proposed settlement, after notice to and full opportunity to be heard for all affected parties, finds that the proposed agreement, release and covenant not to sue are in the public interest, and authorizes the Executive Officer to negotiate minor amendments to the draft Mutual Release and Covenant Not To Sue (Attachment 1 or 2) should it be necessary to do so, and to sign and execute the Mutual Release and Covenant Not to Sue (Attachment 1 or 2 as amended) with either St. Anthony's Bread Basket and the Fresno County Housing Authority or Royal Oaks Business Park, depending on which entity first acquires title to the CPR/Autoline Property.

I, Pamela C. Creedon, 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, Central Valley Region, on _____ 2012.

PAMELA C. CREEDON, Executive Officer

Attachment 1: Mutual Release and Covenant Not to Sue: Saint Anthony's Bread Basket, Inc.
and the Fresno County Housing Authority

Attachment 2: Mutual Release and Covenant Not to Sue: Royal Oaks Business Park, LLC

Exhibit A: CPR/Autoline Property

Exhibit B: DowBrands Property

Exhibit C: St. Anthony's Workplan, dated 18 April 2012

Exhibit D: Royal Oaks Remedial Action Plan, dated 12 April 2010

RESOLUTION #R5-2012-XXXX
MUTUAL RELEASE AND COVENANT NOT TO SUE
DOWBRANDS, INC., et.al
2696 SOUTH MAPLE AVENUE, FRESNO
FRESNO COUNTY

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Exhibit E: Dow Work Plan dated 11 October 2010
Exhibit F: Written Instrument of Release and Transfer Document