

RECORDING REQUESTED BY:
The Housing Authority of the County of
San Mateo
47 Midway Drive
Daly City, California 94014-3327

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Brownfields and Environmental
Restoration Program
700 Heinz Avenue
Berkeley, California 94710
Attention: Karen Toth

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: County of San Mateo APN(s) 005-330-280, 005-330-290, 005-330-300, and 005-330-310," Midway Village, Daly City California – Site Code 200212)

This Covenant and Agreement ("Covenant") is made by and between the Housing Authority of the County of San Mateo (the "Covenantor"), the current owner of property situated in Daly City, County of San Mateo State of California, described in Exhibit "A" and depicted in Exhibit "B," attached, and more specifically described in section 1.01, below (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant

shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately one half acre, is more particularly described and depicted in the attached Exhibits "A" and "B". The Property is located in the area now generally bounded by Midway Court on the west, Midway Drive on the south, Bayshore Park on the east and Cypress Lane. The Property is specifically described as San Mateo County Assessor's Parcel APN(s) 005-330-280, 005-330-290, 005-330-300, and 005-330-310.

1.02. The Property is a portion of a larger property (the Midway Village Complex) that has been remediated under the supervision and authority of the Department. The Property has been remediated pursuant to a Remedial Action Plan, including a Health Risk Assessment and an Explanation of Significant Differences developed in accordance with Health and Safety Code, division 20, chapter 6.8 under the oversight of the Department. The Explanation of Significant Differences and a Notice of Exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., were released for public review and comment and subsequently approved by the Department on July 13, 2001. Because hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, including polycyclic aromatic hydrocarbons (PAHs), remain in soil above unrestricted cleanup goals under portions of the Property, the Remedial Action Plan provides that a Covenant be required as part of the site remediation. Remediation includes installing and maintaining patios, sidewalks and landscaped areas of clean fill ("Cap") over the Property. The operation and maintenance of the Cap is pursuant to an Operation and Maintenance Manual (or Plan) incorporated into the Operation and Maintenance Agreement between the Covenantor

and the Department dated November 9, 1995.

1.03. As detailed in the Final Public Health and Environmental Evaluation approved by the Department on July 20, 1993 and the Explanation of Significant Differences approved by the Department on July 13, 2001 all or a portion of the surface and subsurface soils within 10 feet of the surface of the Property contain hazardous substances, as defined in Health and Safety Code section 25316. The Department concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment, if used in a manner as to avoid potential harm from hazardous substances which have been encapsulated on the Property.

ARTICLE II DEFINITIONS

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

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

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

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

ARTICLE III
GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located beneath the Property, as required by H&SC section 25359.7.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

ARTICLE IV
RESTRICTIONS AND REQUIREMENTS

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

- (a) Development other than multiple family residential use in conformance with the local zoning code of R3 Multiple Family Residential.

4.02. Soil Management. Covenantor agrees:

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department in advance.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) A sign shall be posted in the Midway Village Office in English

and Spanish stating that no grading, excavation or construction activities, excluding routine operation and maintenance, can occur on the property without written permission of the Department.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops) other than in above-ground planter boxes.
- (b) Drilling for water, oil, or gas without prior written approval by the Department.

4.04. Non-Interference with Cap.

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior written approval by the Department.
- (b) All uses and development of the Capped Property shall preserve the integrity or effectiveness of the Cap.
- (c) The Cap shall not be altered without prior written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any other disturbance to the cap that could affect the ability of the cap to contain subsurface hazardous wastes or hazardous materials underneath the Property, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

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

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant 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.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

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

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

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be 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 (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: The Housing Authority of the County of San Mateo
264 Harbor Boulevard
Belmont, California 94002-4017
Attention: Director

and To Department:

Department of Toxic Substances Control
Brownfields and Environmental Restoration Program
700 Heinz Avenue
Berkeley, California 94710
Attention: Karen Toth

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

7.04. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Housing Authority of the County of San Mateo

By: _____
Title: William Lowell, Executive Director
Date: _____

Department of Toxic Substances Control:

By: _____
Title: Karen M. Toth, Unit Chief
Date: _____