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STUART I. BLOCK
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August 1, 2001

OUR FILE NO:
35770

BY HAND DELIVERY

Krisida J. Nishioka, Esq.
County Counsel
County of Alameda
333 Hegenburger Road, Suite 400
Oakland, California 94621

Re: Proposed Deed Restriction; 720 Second Street and 229 Castro Street, Oakland

Dear Ms. Nishioka:

Enclosed pursuant to our discussions is a revised version of the above deed restriction, including reference to the detection of petroleum contaminants in groundwater at the property.

I understand that the groundwater issue was the County's sole remaining concern with the document and therefore hope we will be able to obtain an executed document from the County this week. As I have mentioned, commitments to tenants and lenders make it imperative that we complete this process as soon as possible.

Please contact me when you have had a chance to review the document so that we can finalize the schedule for execution and recording of the document. Thank you again for your assistance and attention on this matter.

Sincerely,



Stuart I. Block

Enclosure

35770\19403v1

cc: (By Facsimile)
Tom Lander
James Fey
Michael S. Margulies, Esq.

RECORDING REQUESTED BY:
Mortenson Development Company
700 Meadow Lane North
Minneapolis, MN 55422

WHEN RECORDED MAIL TO:
Mee Ling Tung, Director
Alameda County Environmental Health Services
1131 Harbor Bay Parkway
Alameda, CA 94502

AND TO:

Mortenson Development Company
700 Meadow Lane North
Minneapolis, MN 55422
Attention: Tom Lander

(Above Space for Recorder's Use Only)

Covenant and Environmental Restriction on Property
720 Second Street and 229 Castro Street, Oakland

This Covenant and Environmental Restriction on Property ("Covenant") is made as of the date last set forth below by Mortenson Development Company ("Covenantor"), who is the owner of record of that certain real property situated at 720 Second Street and 229 Castro Street, Oakland, California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Burdened Property"), for the benefit of the Alameda County Health Care Services ("County"), with reference to the following facts:

A. Hazardous Materials have been detected in soil and groundwater at the Burdened Property, as further described below.

B. Conditions at the Burdened Property: Soil in certain locations at the Burdened Property contain detectable levels of contaminants, including lead and/or petroleum hydrocarbons, which constitute hazardous materials as that term is defined in California Health & Safety Code Section 25260. Such materials are present due to the historic import and use of fill material at the Burdened Property, and/or the historical operation of a former underground petroleum storage tank ("UST") at the Burdened Property. Low levels of petroleum-related compounds were detected in one location (MW-8) adjacent to the former UST at the Burdened Property. The UST was removed in September 2000. Groundwater samples taken immediately downgradient of the former UST following removal, as well as all other groundwater samples collected during site

characterization activities, did not contain detectable levels of petroleum-related compounds, including BTEX and fuel oxygenates.

C. Remediation Activities: Remediation has been conducted at the Burdened Property under the oversight of the County. Based on the information provided to County, the County has determined that investigation and remediation activities at the Burdened Property comprehensively address the human health and environmental issues associated with the planned industrial, commercial, and/or office use.

D. Exposure Pathways: The Conceptual Site Model and Risk Assessment, Proposed Commercial Development, 720 Second Street & 229 Castro Street, Oakland California, July 31, 2000 prepared by Krazan & Associates, Inc. ("Krazan") and reviewed by the County (the "Site Model"), concludes that all potential exposure pathways to chemicals of concern at the Burdened Property (dermal contact, inhalation, and ingestion) are mitigated by the remediation and/or institutional controls described in the Site Model and herein.

E. Adjacent Land Use: The Burdened Property is currently used as a telecommunications switching and access facility. Adjacent land uses are industrial and commercial.

F. Disclosure: Full and voluntary disclosure has been made to the County regarding the presence of contaminants on the Burdened Property and extensive sampling of the Burdened Property has been conducted.

G. Benefit: Covenantor desires and intends that in order to benefit the County, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from residual concentrations of contaminants that may have been deposited on certain portions of the Burdened Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land: This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. 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 land of known contaminants. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the County and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the County.

1.2 Concurrence of Owners and Lessees Presumed: All Owners and Occupants of the Burdened Property, or any portion thereof, shall be deemed by their purchase, lease, or possession, to be in accord with the terms of this Covenant and to agree for themselves, their successors, heirs, and assigns, including their agents and employees, that the Restrictions set forth herein must be adhered to for the benefit of the County and the present and future Owners and Occupants of the Burdened Property, and that the interests of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases: A copy of this Covenant shall be attached to future deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall make its terms binding on all Owners and Occupants regardless of whether a copy of the Covenant has been attached to a given deed or lease.

1.4 Purpose: It is the purpose of this instrument to convey to the County real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

2.1 "County" shall mean the Alameda County Health Care Services and shall include its successor agencies, if any.

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

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

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

2.5 The "Burdened Property" shall mean the real property located at and commonly known as 720 Second Street and 229 Castro Street, Oakland, California, which is more particularly described in Exhibit A.

ARTICLE III DEVELOPMENT AND USE OF THE PROPERTY

3.1 Restrictions on Development and Use ("Restrictions"): The Covenantor, and each successive Owner and Occupant, hereby covenants as follows:

a. all uses and/or development of the Burdened Property shall be consistent with the Long Term Risk Management Plan, Oakland Telecom Access Center, Second & Brush Street, Oakland, California, Krazan & Associates, Inc., July 10, 2000 ("LTRMP");

b. no Owner or Occupant of the Burdened Property shall develop, occupy, or make use of the Burdened Property for any purpose other than industrial, commercial, or office space without first demonstrating to the satisfaction of the County, or other appropriate regulatory agency, that the proposed use is consistent with environmental conditions at and beneath the Burdened Property;

c. no Owner or Occupant of the Burdened Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water from the Burdened Property for any use, including but not limited to, domestic, potable, or industrial use, unless expressly approved by the County;

d. no Owner or Occupant of the Burdened Property shall develop, occupy, or make use of the Burdened Property as a hospital, school for person under the age of 21, or child or senior day care center, or use the Burdened Property for human habitation, without first demonstrating to the satisfaction of the County, or other appropriate regulatory agency, that the proposed use is consistent with environmental conditions at and beneath the Burdened Property;

e. except as set forth herein, no Owner or Occupant of the Burdened Property shall conduct any excavation work at the Burdened Property in excess of two feet below ground surface without first receiving approval from the County. however, excavation work at the Burdened Property of the type and/or in the locations contemplated by the Site Model, the Short Term Risk Management Plan (Krazan, July, 2000), or the LTRMP may be commenced without such express approval so long as the Owner or Occupant provides the County with three days prior written notice of the intent to undertake such work. All such work, and any soil excavated from the Burdened Property, shall be managed in accordance with applicable laws and the terms of this Covenant; and

f. Owners shall notify the County of each of the following: (1) the type, cause, location, and date of any disturbance to any cap and/or any remedial measures taken at the Burdened Property likely to affect the effectiveness of such cap or remedial measures; and (2) the type and date of repair of such disturbance. Notice shall be provided to the County, in writing, within ten working day of the discovery of the disturbance and completion of the repairs.

3.2 Enforcement: Upon written request to the Owner, the County, or any person acting pursuant to County orders, shall be granted reasonable access to the Burdened Property for the purpose of inspecting, maintaining, or monitoring any remedial measures at the Burdened Property. Violation of this Covenant shall be grounds for filing of a civil action as provided by law.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance: Any Owner, or with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the County for a written variance from the terms of this Covenant.

4.2. Termination: Any Owner, or with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the County for termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term: Unless terminated in accordance with paragraph 4.2 above, by law, or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended: Nothing in this Covenant is intended or shall be construed as a gift, dedication, easement or interest in the Burdened Property or any portion thereof, of any kind or type, to or for the benefit of the general public.

5.2 Notice: 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 official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested: if to County: Alameda County Health Care Services Agency, 1131 Harbor Parkway, Suite 250, Alameda, CA 94502, Attention: Agency Director; if to Covenantor: Mortenson Development Company, 700 Meadow Lane North, Minneapolis, MN 55422, Attention Tom Lander.

5.3 Partial Invalidity: If any portion of this Covenant is determined to be invalid for any reason, the remaining portions shall remain in full force and effect to the full extent permitted by law.

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 Director of Environmental Health Services. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution by all parties.

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.

5.8 Governing Law: This Covenant is and shall be governed by the laws of the State of California.

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

MORTENSON DEVELOPMENT COMPANY

By: _____

Its: _____

Date: _____

ALAMEDA COUNTY HEALTH CARE
SERVICES AGENCY

By: _____

Its: _____

Date: _____

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, _____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____

_____ ,
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

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, _____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____

_____ ,
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

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