



CASTLE GROUP

SAC 6477A

facsimile
TRANSMITTAL

to: Susan Hugo, 510-337-9335
Mark Johnson, 510-622-2460

Cc: Peter Langtry, 510-267-1972

re: Emeryville Project Risk Management Plan and Deed Restriction

date: 11/15/2000

pages: 12

NOTES/COMMENTS:

Susan and Mark,

Attached are the fact sheet that Mark requested be attached to the Risk Management Plan and the Deed Restriction revised with Susan's comment that it state both agencies are reviewing the Deed Restriction. I understand Susan is waiting on a few minor revisions from Peter Langtry at Lowney. I have spoken with Peter and he will be sending you those revisions shortly. As for the deed restriction, I understand Mark is waiting for the new APN's, which we will obtain when we file the final map in about 10 days. Please let me know if there are any additional comments or revisions necessary on the Risk Management Plan or the Deed Restriction in order to obtain sign-offs. Thank you both again for your help.

Sincerely,

Leilani Barnett
Leilani Barnett
Cell: 650-619-8979

*Deed Restriction by RWDCB or by County
or by both ?
* need to check
close Emeryville fire station 4058
Emeryville fire station
Kentucky Inded check*

From the desk of...

Leilani Barnett
Castle Group
424 Kent Drive
Mountain View, CA 94043
Tel: 650-940-7847
Fax: 650-940-1384
Email: Barnett@TheCastleGroup.com

Recording Requested By:**Park Emery Associates
Limited Partnership****When Recorded, Mail to:**

~~Mark Johnson~~ *Executive Office*
California Regional Water Quality Control Board San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, California 94612

and

Mee Ling Tung, Director
Alameda County Environmental Health Services
1131 Harbor Bay Parkway
Alameda, CA 94502

COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the _____ day of _____, 2000 by Park Emery Associates Limited Partnership, a California limited partnership ("Covenantor"), who is the Owner of record of that certain property situated along the west side of San Pablo Avenue between 45th Street and Park Avenue 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 (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") and the Alameda County Environmental Health Services (the "County"), with reference to the following facts:

1. The Property and groundwater underlying the Property contain hazardous materials. ✓
2. Soil and groundwater at the Property were contaminated by past industrial, commercial and institutional activities conducted on the Property. These activities deposited residual volatile petroleum from several on-site underground storage tanks, as well as residual chlorinated solvents from solvent usage areas and chemical storage facilities. These chemicals constitute hazardous material as that term is defined in Health and Safety Code Section 25260. ✓

Prior to 1950, approximately the northerly one hundred eighty feet (180') of the Property was an oil and gas depot which utilized underground storage tanks and fuel pumps. Thereafter, in the early 1950's, the Oliver Rubber and Tire Company acquired that portion

of the Property, removed the oil and gas depot, and utilized the area for a tire recapping and rubber goods factory. Various chemicals were used in the operation (hydraulic and other oils, solvents, rubber, carbon black) as well as subsurface sumps. Thereafter, in 1985, this area was acquired by Standard Brands and utilized as a retail store: no chemicals were used in this area during this period.

That portion of the Property southeast of the Standard Brands/Oliver Rubber site was previously occupied by the City of Emeryville Fire Department. The Fire Department utilized an underground storage tank to store diesel and gasoline for its vehicles. The City occupied this area from about the 1940's through the early 1990's, when the station was closed and remained vacant thereafter.

That portion of the Property southwest of the former Standard Brands/Oliver Rubber site and extending to the south edge of the Property (ie. Park Avenue) was the location of the former New Century Beverage Co.(Pepsi) canning, bottling and distribution facility from approximately 1958 through 1995. Underground storage tanks to store diesel and gasoline for its delivery trucks were utilized in this area. Prior to 1958, the Pepsi, the Pepsi site comprised a portion of the Oakland Oaks baseball stadium which was constructed in 1913. No known operations occurred on this portion of the Property prior to 1913.

The southeast corner of the Property was last occupied by a Kentucky Fried Chicken restaurant from about 1968 until its recent closure in 1999. Prior thereto, the Atlantic Richfield Company (ARCO) operated a gas station from about 1947 to 1968 which utilized underground storage tanks for the storage of gasoline for sale to customers.

All underground storage tanks on the Property (ie. former Standard Brands/Oliver Rubber, Fire Station, New Century Beverage Company, and KFC/ARCO) have been removed from the ground, impacted soils removed and disposed of at an appropriate facility. Further, quarterly ground water monitoring has been conducted in areas of concern since early 1994, which results indicate that the levels of chlorinated volatile organic compounds are below federal or state Maximum Contaminant Levels, suggesting that the Property has little to no impact on ground water. Furthermore, since local groundwater is shallow and not used as a source of drinking water, there is no anticipated impact from the Property to drinking water aquifers. As noted herein, soils on the Property will need to be handled in accordance with the May 15, 2000 Risk Management Plan/Soil Management Plan approved by the Board on County and as may be amended by the Bd and County

3. The contaminants addressed in this Covenant are present in soil and groundwater on the Property. Without the mitigation measures which have been performed on the Property, exposure to these contaminants could take place via in-place contact, surface-water runoff, and wind dispersal, resulting in dermal contact, inhalation or ingestion by humans, etc. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

4. The City of Emeryville and the Emeryville Redevelopment Agency have granted land use and development entitlements for the benefit of the Property which allow for the construction of approximately 26,000 square feet of ground floor retail space and associated at-grade parking on the easterly half of the property, as well as approximately 112 urban townhouses above parking garages on the westerly half of the Property. Approximately the westerly thirty-four feet (34') of the property will be dedicated to the City of Emeryville to provide for the extension and construction of the Emery Street right-of-way between 45th Street and Park Avenue. *e*

Surrounding land uses include Pixar Animation Studio offices to the west, AC Transit bus maintenance yard and a new Kentucky Fried Chicken restaurant to the north, as well as Emery High School and the Emery Bay Village townhouse development further north, a mix of commercial, retail and residential land uses to the east across San Pablo Avenue, and the Oaks Card Room, various commercial office uses, the East Bay Bridge Shopping Center and the apartments to the south.

5. Full and voluntary disclosure to the Board and County of the presence of hazardous materials on the Property has been made and extensive sampling of the Property has been conducted.
6. Covenantor desire and intends that in order to benefit the Board and County, and to protect the present and future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the 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 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 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, County, and all Owners and Occupants. 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 run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board and County.

- 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 the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and County 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 Restrictions contained herein.

- 1.3 **Apportionment of Burden among Multiple Owners.**
Where ownership of the Property is held by multiple persons, holding by several titles, the burdens imposed by this Covenant shall be apportioned between them according to their respective interests in point of quantity. (Cal. Civ. Code, § 1467.)

- 1.4 **Incorporation into Deeds and Leases.**
Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portions of the Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

**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 successors agencies, if any.

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

- 2.3 **Occupants.** "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 Property.

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

- 2.5 **County.** "County" shall mean the Alameda County Health Care Services Agency.

**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 shall be conducted in accordance with the Preliminary Development Plan for the Property approved by the City of Emeryville on April 20, 1999 pursuant to Ordinance No. 99-003 and the Final Development Plan for the Residential Component approved on April 20, 1999 pursuant to Resolution No. 99-64 and any subsequent amendments as well as a Final Development Plan for the Retail Component, and is otherwise restricted to industrial, commercial or office space uses;
- b. No hospitals shall be permitted on the Property;
- c. No schools for persons under 21 years of age shall be permitted on the property;
- d. No day care centers for children or day care centers for senior citizens shall be permitted on the property;
- e. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation, grading, removal, trenching, filling or other earth movement activities on the Property without the Board's prior written approval of a Risk Management Plan/Soil Development Plan, unless expressly permitted in writing by the Board. Any contaminated soils brought of the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with the Risk Management Plan approved by the Board and all applicable provisions of local, state and federal law;
- f. All uses and development of the Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto;
- g. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial use;
- h. No raising of food (e.g., livestock, food crops, etc.) shall be permitted on the Property;

} RMP

i. The Owner shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to the cap (as described in the Risk Management Plan) or which could affect the ability of such cap to perform its function and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

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

k. 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. All use and development of the Property shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any unauthorized use of the Property or Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the Property. Any such instrument shall contain the following statement:

"The land described herein contains residual hazardous materials in soils and in the groundwater under the Property, and is subject to a deed restriction recorded in the Official Records of Alameda County, which imposes certain covenants, conditions, and restrictions on usage of the Property described herein. This statement is not a declaration that a hazard exists on this Property."

ARTICLE IV VARIANCE AND TERMINATION

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

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the 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 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.
- 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 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 or return receipt requested:

If to: "**Covenantor**"
Christopher J. Kober, Vice-President
Park Emery Associates, L.P.
675 Mariners Island Boulevard, Suite 109
San Mateo, CA 94404

If to: "**Board**"
Regional Water Quality Control Board
San Francisco Bay Region
ATTN.: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

If to: "**County**"
Alameda County Environmental Health Services
ATTN.: Director
1131 Harbor Bay Parkway
Alameda, CA 94502

- 5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if the invalid portion had not been included herein.
- 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. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) 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 provisions 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.

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

**Park Emery Associates Limited Partnership,
a California Limited Partnership**

**By: Park Emery Associated
a California Corporation, its
General Partner**

**By: _____ Date: _____
Christopher J. Kober
Its: Vice-President**

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

**By: _____ Date: _____
Its: Executive Officer**

**Agency: Alameda County
Environmental Health Services**

**By: _____ Date: _____
Its: Executive Officer**

**PUBLIC HEALTH AND HAZARDOUS MATERIALS FACT SHEET FOR
BUYERS OF THE PROMENADE TOWNHOMES**

Emeryville, California

Park Emery Associates L.P.

Contact: Leilani Barnett, Park Emery Associates L.P., (650) 940-7847

General Information

The Promenade is located in the City of Emeryville, County of Alameda, on San Pablo Avenue between 45th Street and Park Avenue. The project brings much needed residential housing and retail space to the City of Emeryville, with 102 townhome residential units and approximately 31,500 square feet of retail space.

Public Health and Hazardous Materials Background

The property on which The Promenade is built was previously used for industrial and commercial purposes. Previous use of The Promenade and surrounding property introduced hazardous materials to the soil and subsurface groundwater. Environmental reports have been developed outlining former uses and chemicals found on the property, analyzing the results of soil and groundwater testing, documenting environmental remediation conducted to remove some of the chemicals from the site, and assessing environmental health risk to future on-site residents of the site. Park Emery Associates L.P., the developer of The Promenade, encourages buyers to thoroughly investigate the environmental reports prepared for the property. By being knowledgeable about the past and present environmental conditions on the site, we hope you will be able to more thoroughly enjoy your new home. Copies of the environmental documents are available for review in the Sales Center. If you have any questions about specific environmental reports, please contact the people listed below at the end of each report's description.

Environmental Impact Report ("EIR")

As part of the approval process for The Promenade, The City of Emeryville conducted and subsequently certified an Environmental Impact Report ("EIR") as prescribed under the California Environmental Quality Act (CEQA). The EIR is dated February 1999, and a Mitigated Negative Declaration was filed by the City of Emeryville on the EIR September 20, 2000.

The purpose of the EIR was to assess the project and any impact it might have on the surrounding environment. The EIR determines the mitigation necessary for any impacts that were identified in the study. The EIR is a comprehensive document that deals with numerous issues, including, but not limited to, air quality, noise, toxic materials, traffic, and schools. The EIR contains information about the project, the surrounding area and the effect on the surrounding area. Buyer should review the EIR to perform the needed due diligence prior to purchasing his/her home. The EIR is available through the City of Emeryville, or you may review a copy that is kept in the Sales Center for public viewing.

- *EIR Contact Name: Lynn Tracy Nerland, Assistant City Attorney, City of Emeryville, (510) 596-4382.*

Soil and Groundwater Condition

An Environmental Review of the property was conducted by Lowney Associates dated April 1, 1999. The Environmental Review outlines former uses on the site and documents the extensive environmental soil and groundwater testing and remediation conducted on the site. A Phase I Environmental Site Assessment was also conducted on the site by Lowney Associates dated May 25, 1999. The Phase I Environmental Site Assessment documents environmental concerns at the site related to current and historic chemical use. It also documents, in greater detail than the Environmental Review, previous environmental reports, testing, and remediation conducted on the site. According to the Environmental Review and Phase I Environmental Site Assessment, The Promenade was previously occupied by a Standard Brands Paint Store, a fire station, a New Century Beverage Company facility, and a Kentucky Fried Chicken restaurant. The Kentucky Fried Chicken parcel was formerly an Arco Service station. The Phase I Environmental Site Assessment states that some of these former uses introduced a variety of hazardous materials to the soil and groundwater under the site. The Phase I also states documents that much of the hazardous materials was removed from the site by remediation by various property owners during different periods of time.

- *Environmental Review and Phase I Environmental Site Assessment Contact:
Peter Langtry, Senior Project Geologist, Lowney Associates,
(510) 267-1970 x203*

Human Health Risk Assessment

A Human Health Risk Assessment was developed for the site by Environ dated November 1, 1999. This study follows protocols and procedures set by the U.S. Environmental Protection Agency (EPA) and the California Environmental Protection Agency's Department of Toxic Substances Control to determine the potential risks to future on-site residents from chemicals detected in soil, ground water, and soil gas on the Promenade site. To determine chemicals in the soil and ground water, the Human Health Risk Assessment relies on the results of multiple environmental site tests conducted across the site between 1993 and 1999. In analyzing the results of these soil and groundwater tests, the Human Health Risk Assessment considers what type of chemicals are involved, their toxicity, concentrations, and type of exposure to be expected under specific scenarios to determine potential risks to future on-site residents, including both children and adults.

The Human Health Risk Assessment states that since the Promenade consists of slab-on-grade construction without private yards, no exposures via dermal contact or ingestion of soil or ground water are anticipated at the site. A deed restriction recorded against the property prohibits development of single family homes with backyards on the site, and prevents the use of ground water for domestic, industrial, or irrigation purposes. The deed restriction was prepared by the City of Emeryville and was recorded _____, 2000. Accordingly, the Human Health Risk Assessment states that inhalation of volatile organic compounds (VOCs) is the only pathway quantified in the assessment.

The Human Health Risk Assessment concludes that none of the chemicals present on The Promenade site would pose a significant risk to future on-site residents. It also includes guidelines to be followed in a Risk Management Plan for the site. The Alameda County Health Care Services Agency and the Regional Water Quality Control Board for the San Francisco Bay Region reviewed the Human Health Risk Assessment for The Promenade and in their letter dated December 9, 1999 the agencies concur with the Human Health Risk Assessment that contaminants in the soil and groundwater at the site do not appear to pose a risk to future on-site residents.

Previous Building Asbestos

In _____ of 2000, several buildings were demolished as a part of the construction process. Prior to the beginning of demolition, these buildings were found to contain asbestos. The asbestos contained in these buildings was removed and disposed of prior to building demolition in accordance with the requirements of the Bay Area Air Quality Management District.

Risk Management Plan

A Risk Management Plan for the site was developed by Lowney Associates dated May 15, 2000. The purpose of the risk management plan is to provide guidelines for the management of contaminants in the soil and ground water detected beneath the site. The Plan includes a map produced by Environ summarizing the chemicals detected in the soil and groundwater on the site. The Risk Management Plan was approved by the Alameda County Health Services Agency on _____, 2000.

- *Environmental Review and Phase I Environmental Site Assessment Contact:*
Peter Langtry, Senior Project Geologist, Lowney Associates,
(510) 267-1970 x203

*Joint letter
of approval*

RWRCP