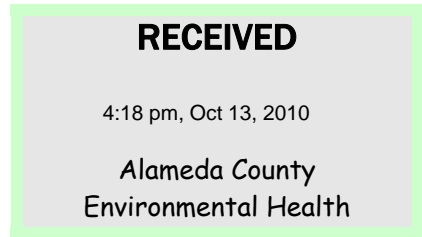


Recording Requested By:

Bay Rock Oaks, LLC
1122 40th Street, Suite 211
Emeryville, CA 94608



When Recorded, Mail To:

Ariu Levi, Director
Alameda County Environmental Health Services
1131 Harbor Bay Parkway
Alameda, California 94502

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

Oak Walk Condominiums
at 1122 40th Street, 1087, 1089, 1091, 1093, 1095, 1097, 1099 41st Street; 4000, 4002, 4008,
4010, 4098 San Pablo Avenue, Emeryville, California

(Re: Assessor Parcel Numbers 49-1555-011 through 49-1555-067)

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the ____ day of _____, 2010 by Bay Rock Oaks, LLC, a California limited liability company ("Covenantor"), who is the Owner of record of that certain property situated at 1122 40th Street, 1087, 1089, 1091, 1093, 1095, 1097, 1099 41st Street; 4000, 4002, 4008, 4010, 4098 San Pablo 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 (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the Alameda County Environmental Health Services (the "County"), with reference to the following facts:

A. The Burdened Property and groundwater underlying the property contains hazardous materials.

B. Contamination of the Burdened Property. Soil and groundwater at the Burdened Property was contaminated by historical paint manufacturing activities conducted at 1007 41st Street Emeryville, California and 1001 42nd Street, Oakland, California; and the operation of a historical automobile service station located at 4000 San Pablo Avenue, Emeryville, California. None of the forgoing sites was the Burdened Property. The operations of the previously mentioned sites resulted in contamination of soil and groundwater with organic chemicals including mineral spirits and other industrial solvents, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. In addition, soil and groundwater at the Burdened Property was contaminated by use of underground storage tanks that were located on a portion of the

property that had the address 4070 San Pablo Avenue, Emeryville, California. Those operations resulted in contamination of soil and groundwater with organic chemicals including mineral spirits and other industrial solvents, gasoline, diesel fuel and motor oil, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. The Burdened Property consists of the Oak Walk Condominiums which is bounded to the north by 41st Street and parcels 049-1555-006 through 049-1555-010, to the south by 40th Street, to the west by San Pablo Avenue and to the east by parcels 049-1555-001, 049-1555-003 and 049-1555-004. The site was previously occupied by a parking lot with an asphalt cap located at 4098 San Pablo Avenue, Emeryville, California, commercial buildings located at 4090 and 4086 San Pablo Ave, Emeryville, California and the San Francisco French Bread Baking Company located at 4070 San Pablo Ave, Emeryville, California, and residential buildings located at 1077, 1079, 1081, 1083, 1085, 1087 1089, 1089 1/2, and 1089B 41st Street Emeryville California. All the previously mentioned buildings and structures have been demolished and the site has been redeveloped with high density residential, commercial and office space.

To mitigate the adverse health risks associated with the potential exposure to contaminated soil, groundwater and soil vapor greater than risk based screening levels, a Corrective Action Plan (CAP) was prepared and implemented to remove and/or manage contaminated soil and groundwater and emission of organic vapors into buildings on the Burdened Property. In accordance with the CAP approved by Alameda County Department of Environmental Health (ACEH) (directive letter dated December 1, 2006) chemicals of potential concern have been remediated to residual levels of up to 5,100 parts per million (ppm) total petroleum hydrocarbon as gasoline, 1,300 ppm total petroleum hydrocarbons as mineral spirits, 940 ppm total petroleum hydrocarbon as diesel, 0.97 ppm benzene, 3.9 ppm toluene, 50 ppm ethylbenzene and 271 ppm total xylenes, which are below approved cleanup levels on the Burdened Property. As a condition of the CAP approval process, ACEH required post-development groundwater monitoring and sampling be completed and a deed restriction be recorded to provide long term maintenance and prevent the disturbance of capped areas.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via dermal contact of contaminated soil or groundwater, ingestion of contaminated soil or groundwater and inhalation of contaminated soil vapor. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for high density residential, commercial and office space and is adjacent to public streets, single family residences and to mixed use residential and commercial development.

E. Full and voluntary disclosure to the County of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. 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 hazardous materials that may have been deposited on 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 hazardous materials. 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 purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened 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 County and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and/or attached to each and all deeds and leases of any portion of the Burdened Property, as further described in Section 3.3. 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.

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. "County" shall mean the Alameda County Environmental Health Services and shall include its successor 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 Burdened 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 Burdened 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 Burdened Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development of the Burdened Property shall be restricted to high density residential, commercial or office space;
- b. No hospitals shall be permitted on the Burdened Property;
- c. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- d. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- e. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work that penetrates more than four feet below the ground surface on the Property, unless expressly permitted in writing by the County. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;
- f. All uses and development of the Burdened Property shall be consistent with a Risk Management Plan, which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the County, unless otherwise expressly permitted in writing by the County;
- 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 uses, unless expressly permitted in writing by the County;

h. The Owner shall notify the County of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the County, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the County shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

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

j. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened 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 County, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the County 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 hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of _____, 2010, and recorded on _____, 2010, in the Official Records of Alameda County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

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 provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the County for a 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 set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened 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, return receipt requested:

If To "Covenantor":
Bay Rock Oaks, LLC
1122 40th Street, Suite 211
Emeryville, CA 94608

If To "County":
Alameda County Environmental Health Services
Attention: Director
1131 Harbor Bay Parkway
Alameda, California 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 such 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 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.

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 Effects on Mortgage. Neither this Covenant, nor any enforcement action taken as a result of a breach of this Covenant, shall affect the status or priority of any lien and/or security interest encumbering the property. In addition, Civil Code Section 1471 and other applicable laws shall apply to any mortgage on the property.

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

Covenantor: Bay Rock Oaks, LLC, a California limited liability company

By: _____
Title: General Partner, Stuart Gruendl
Date: _____

Agency: Alameda County Environmental Health Services

By: _____
Title: Director, Ariu Levi
Date: _____

Exhibit A

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 1 OF TRACT MAP 7945, FILED OCTOBER 16, 2009, IN BOOK 305 OF MAPS, PAGES 23 AND 24, OFFICIAL RECORDS OF ALAMEDA COUNTY RECORDS.

APN's:

49-1555-011 through 49-1555-067

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

On _____ before me, _____ a

Notary Public, personally appeared _____

who proved to me on the basis of satisfactory evidence to be the persons(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 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Name (typed or printed), Notary Public in
And for said County and State

(seal)