

Government Code Section 27383. No fee shall be charged by the Recorder for services rendered to the State, to any municipality, county in the State or other political subdivision thereof, except for making a copy of a paper or record.

RECORDING REQUESTED BY:

Peralta Street, LLC  
501 2<sup>nd</sup> St., Ste 212  
San Francisco, CA 94107

**COPY** of Document Recorded  
on 12/01/06  
as No. 20060443687  
Has not been compared with Original.  
**ALAMEDA COUNTY RECORDER**

WHEN RECORDED, MAIL TO:  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710  
Attention: Barbara J. Cook, P.E., Chief  
Coastal Cleanup Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: County of Alameda, Parcel Nos. 007-0589-017, 007-0589-018-3, 007-0589-023, 007-0589-018-02 and 007-0589-016; Site Code: 201609)

This Covenant and Agreement ("Covenant") is made by and between Peralta Street, LLC (the "Covenantor"), the current owner of property situated in Oakland, County of Alameda, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (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 the Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471 and Health and Safety Code section 25395.99, that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property, totaling approximately 1.8 acres, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Hannah Street on the west; Peralta Street to the south, and Helen Street to the east. Residential and industrial properties border this Property to the north. This property is more specifically described as Alameda County Assessor's Parcel Nos. 007-0589-017, 007-0589-018-3, 007-0589-023, 007-0589-018-02 and 007-0589-016 and is commonly referred to as 2847 Peralta Street in Oakland, California.

1.02. Circa 1900, the Property was a mix of undeveloped land and residential structures. By 1912, the Property was a combination of residential buildings and

storage areas with a warehouse located at the central part of the Property. By 1939, the Property and surrounding area were developed with residential and commercial buildings. By 1951, the Property was occupied by Morwear Paint Company. Facilities on the Property include a warehouse, varnish kitchen, and paint factory near the southern end and a warehouse, offices, and a storage yard to the northern end. According to files reviewed at the Oakland Fire Department, Foreign Auto Wreckers occupied the Property from at least April 1994 until May 2002. The Giampolini Group occupied the Property from September 2000 until they vacated the Property in February 2006.

1.03. On April 11, 2006, pursuant to the California Land Reuse and Revitalization Act of 2004 (CLRRA), Peralta Street, LLC and the Department entered into an agreement (Docket No. HSA-CLRRA #05/06-78) ("CLRRA Agreement") for the investigation and cleanup of the Property.

1.04. Soil has been remediated and groundwater is being remediated in accordance with the CLRRA Agreement and the associated Cleanup Plan developed pursuant to Health and Safety Code sections 25395.94(b) and (c) under the oversight of the Department. The Department circulated the Response Plan, together with a Notice of Exemption prepared pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The Cleanup Plan and the Notice of Exemption were approved by the Department on May 25, 2006.

1.05. The final remedy contained in the Cleanup Plan includes 1) excavation and offsite disposal of soil containing mineral spirits, benzene, polycyclic aromatic hydrocarbons, PCBs and lead above the Property's residential cleanup goals; 2) application of oxygen-releasing compound to groundwater to enhance the biodegradation of the mineral spirits and benzene; 3) recordation of an environmental restriction restricting groundwater use until drinking water standards are achieved; and 4) execution of an operation and maintenance agreement for ongoing operation and maintenance of the groundwater and soil vapor monitoring systems.

1.06. Residential cleanup levels were established for contaminants found in vadose zone soil on the Property: mineral spirits at 400 mg/kg; benzene at 0.18 mg/kg; polycyclic aromatic hydrocarbons as benzo(a)pyrene equivalents at 0.062 mg/kg; PCBs as Arochlor 1260 at 0.22 mg/kg; and lead at 244 mg/kg. Approximately 7,199 tons of soil was removed in June and July 2006. Confirmation samples indicate that soil remediation work has reduced residual concentrations to meet these cleanup levels. Thus, no further action is required for soils.

1.07. A residential cleanup level was established for benzene in soil gas at 36.2 micrograms per cubic meter. Prior to soil removal activities, soil gas samples collected from Assessor's Parcel Number 007-0589-018-03 within Parcels Four and Seven as described in Exhibit A contained benzene above residential cleanup goals. Following soil removal activities, two soil gas probes were installed within Parcel Four and sampled. In four weekly sampling events in September 2006, benzene was detected at

64, 85, 21 and 55 micrograms per cubic meter, respectively. Therefore, the Department concluded that these concentrations of benzene in soil gas could, without a vapor barrier or similar system, pose a risk to human health.

1.08. Groundwater at the Property was encountered at approximately 4.85 to 7.6 feet below ground surface during sampling conducted in January 2006. Based upon sampling results from January 2006, contaminants in the groundwater exceeding drinking water standards include mineral spirits up to 810 µg/l and benzene up to 100 ppb. These are above the San Francisco Bay Region, Regional Water Quality Control Board's Environmental Screening Levels of 100 ppb for total petroleum hydrocarbons applicable to mineral spirits and 1 ppb for benzene. Therefore, the Department concluded that if it were used for domestic purposes, the groundwater could present an unacceptable threat to human health and safety.

1.09. Approximately 1900 pounds of oxygen-releasing compound was applied to the groundwater to treat the in-situ groundwater contamination. The Department has approved an Operations & Maintenance Plan ("OMP") for monitoring of the residual soil gas and groundwater contamination.

## 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" include, but are 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, its successors in interest, and their 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 25395.99 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; provided however, that Owners/Occupants are not responsible for obligations and/or breaches of those obligations of subsequent Owners/Occupants unless they caused or contributed to such a breach.

3.03. Written Notice of the Presence of Hazardous Substances. 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 of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. The Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. 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, Leases, 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 Code 201609. The notice shall also include the Assessor's Parcel Number(s) (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, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for himself

and for all subsequent Owners that the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV  
RESTRICTIONS

4.01. Prohibited Activities. Extraction of groundwater for purposes other than site remediation or construction dewatering shall not be conducted at the Property.

4.02. Non-Interference with Monitoring System. The "Monitoring System" is composed of groundwater monitoring wells and soil vapor monitoring points located as shown in Exhibit B.

- (a) Activities that may disturb the Monitoring System shall not be permitted on the Property without prior review and approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity and physical accessibility of the Monitoring System.
- (c) The Monitoring System shall not be altered without prior written approval by the Department.
- (d) Owner shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Monitoring System and (ii) the type and date of repair of such damage. 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.

4.03. Unless the Department determines otherwise in accordance with the Cleanup Plan referenced in section 1.04, a vapor management system approved by the Department is required beneath any building used for human habitation on Assessor Parcel Number 007-0589-018-02 within the parcels described as Four and Seven in Exhibit A.

4.04. 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.

4.05. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Activities shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Activities until the Department determines that no further Operation and Maintenance is required.

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 appropriate enforcement actions.

ARTICLE VI  
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner may apply to the Department for a written variance from the provisions of this Covenant as set forth in CLRRRA.

6.02 Termination. Owner may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property as set forth in CLRRRA.

6.03 Term. Unless ended in accordance with the terms of this Covenant, 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. Department References. All references to the Department include successor agencies/departments or other successor entity.

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

7.04. 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: Marc Babsin  
Peralta Street, LLC  
501 2<sup>nd</sup> St., Ste 212  
San Francisco, California 94107

To Department: Barbara J. Cook, P.E., Chief  
Northern California – Coastal Cleanup Operations Branch  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

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.

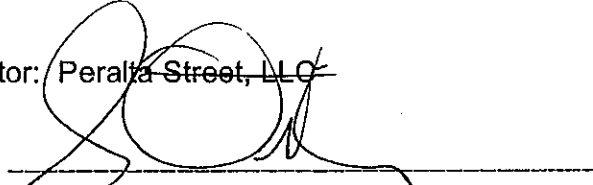
7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Report, to the Department for its approval by January 15th of each year. The Annual Report must include the dates, times, and names of those who conducted the annual inspection and reviewed the Annual Report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the Annual Report (e.g., drive by, fly over, walk in, etc.) If noncompliance is noted, the Annual Report must detail the steps taken to return to compliance. If the Owner identifies any noncompliance with this Covenant during the annual inspections or at any other time, the Owner shall within 10 days of identifying such noncompliance attempt to determine the identity of the non-complying party, and notify them in writing of the noncompliance and demand that the noncompliance be promptly corrected, with a copy of such notice and any correspondence related to the enforcement of this Covenant being sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: ~~Peralta Street, LLC~~

By:  \_\_\_\_\_

Title: S. Osborn Erickson, Chairman of Emerald Fund,  
the Managing Member of Peralta Street, LLC

Date: \_\_\_\_\_

Department of Toxic Substances Control

By:  \_\_\_\_\_

Title: Barbara J. Cook, P.E., Chief  
Northern California – Coastal Cleanup Operations Branch

Date: 12/1/2006



STATE OF CALIFORNIA )

COUNTY OF San Francisco )

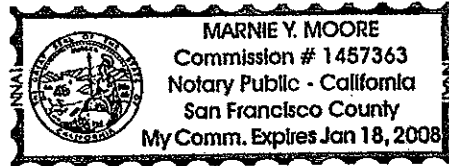
On this 29th day of November, in the year 2004,

before me Marnie Y. Moore, personally appeared

S. Osborn Erickson

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.



Signature Marnie Y. Moore

STATE OF CALIFORNIA )  
 )  
COUNTY OF Alameda )

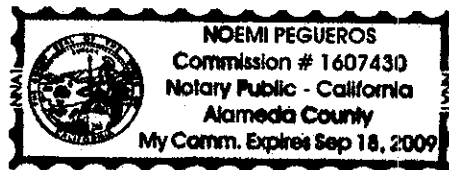
On this December 1<sup>st</sup> day of December, in the year 2006,

before me Noemi Pegueros, Notary Public, personally appeared  
Barbara Jean Cook

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.

Signature Noemi Pegueros



## EXHIBIT A

The land referred to is situated in the County of Alameda, City of Oakland, State of California, and is described as follows:

### PARCEL ONE:

Portion of Lot 11, Block N, Lands of the Peralta Homestead Assn., filed April 17, 1868, Map Book 3, Page 26, Alameda County Records, described as follows:

Beginning at a point on the western line of Helen Street, formerly Hellen Street, distant thereon southerly, 325 feet from the southern line of 32nd, formerly a street; running thence along said line of Helen Street southerly, 25 feet; thence at a right angle westerly, 133 feet; thence at a right angle northerly, 25 feet; and thence at a right angle easterly, 133 feet to the point of beginning.

### PARCEL TWO:

A portion of Lots 11 and 12, in Block N, Map of the Lands of the Peralta Homestead Association, filed April 17, 1868, Map Book 3, Page 26, Alameda County Records, described as follows:

Beginning at a point on the western line of Helen Street, distant thereon southerly, 350.00 feet from the point of intersection thereof with the southern line of 32nd Street, as said streets are shown on said map; running thence southerly along said line of Helen Street, 100.00 feet; thence at a right angle westerly 133.00 feet to a point on the eastern line of parcel of land described in the Deed from Harmon L. Richards, to P.B.R. Properties, Inc., a California corporation, recorded May 6, 1959, in Book 9017 OR, Page 534; thence at a right angle northerly along the last named line, a distance of 100.00 feet; thence at a right angle easterly, 133.00 feet to the point of beginning.

### PARCEL THREE:

Lot 4, and the northwestern 50 feet of Lot 3, in Block N, according to the Map of the Lands of the Peralta Homestead Assn., filed April 17, 1868, in Book 3 of Maps, Page 26, Alameda County Records.

### PARCEL FOUR:

Portion of Lot 1, in Block "N" as said lot and block are shown on the "Map of the Lands of the Peralta Homestead Assn. Oakland, Alameda Co.," filed April 17, 1868, in Book 3 of Maps, at Page 26, in the office of the County Recorder of Alameda County, described as follows:

Beginning at the intersection of the eastern line of Hannah Street as shown on said map with the northwestern line of Peralta Street, as said street now exists 80 feet wide; and running thence along said line of Hannah Street northerly 141.71 feet thence at right angles easterly 133 feet; thence at right angles southerly 16.34 feet to said northwestern line of Peralta Street; and thence along said last named line southwesterly 182.77 feet to the point of beginning.

### PARCEL FIVE:

Portion of Lots 12 and 13, in Block "N", as said lot and block are shown on the "Map of the lands of the Peralta Homestead Assn., Oakland, Alameda Co.," filed April 17, 1868, in Book 3 of Maps, at Page 26, Alameda County Records, described as follows:

Beginning at the intersection of the northwestern line of Peralta Street, 80 feet wide, with the western line of Helen St, formerly Horton Street, as said last named street is shown on said map; running thence along said line of Helen Street northerly 40 feet, more or less, to a point distant thereon southerly 450 feet from the southern line of 32nd Street, as said street is shown on said map; thence at right angles westerly 133 feet; thence at right angles southerly, along the last named line, 50 feet; thence at right angles easterly 61.90 feet to the northwestern corner of the tract of land described in the Deed by Luise Caddy to Joseph De Veere, dated June 21, 1920, recorded June 25, 1920, in Book 2943 of Deeds, at Page 192, Alameda County Records; thence southerly parallel with said line of Helen Street, and the extension thereof, 59.09 feet to the said line of Peralta Street, thence along the last named line northeasterly 97.67 feet to the point of beginning.

**PARCEL SIX:**

Beginning at a point on the northwesterly line of Peralta Street, distant thereon southwesterly ninety-seven (97) feet, eight (8) inches from the point of intersection thereof with the southwesterly line of Helen or Horton Street; running thence southwesterly along said line of Peralta Street; eighty-five and 11/100 (85.11) feet; thence northerly parallel with Hannah Street, one hundred sixteen (116) feet, nine (9) inches; thence at right angles easterly sixty one and 90/100 (61.90) feet; thence southerly fifty-eight and 40/100 (58.40) feet and to the point of beginning.

Being a portion of Lot thirteen (13), in Block "N" as laid down and delineated upon that certain Map entitled, "Map of the Lands of the Peralta Homestead Assn., Oakland, Alameda County," filed April 17, 1868, in the office of the County Recorder of said Alameda County, said Block "N" being identical with Block Numbered 786, as per Boardman's Map of Oakland and Vicinity on file in the said County Recorder's Office.

**PARCEL SEVEN:**

Beginning at a point on the eastern line of Hannah Street, distant thereon southerly, 500 feet from the point of intersection thereof with the southern line of 32nd, formerly "A" Street; running thence southerly along said line of Hannah Street, 100 feet; thence at right angles easterly, 133 feet; thence at right angles northerly, 100 feet, thence at right angles, westerly 133 feet, to the point of beginning.

Being Lot No. 2, in Block Lettered "N", as said lot and block are delineated and so designated upon that certain map entitled, "Map of the Lands of the Peralta Homestead Assn., Oakland, Alameda County, surveyed April 4, 1868", etc., filed April 17, 1868, in the office of the County Recorder of said Alameda County, said Block "N" being identical with Block No. 786 as per Boardman's Map of Oakland and Vicinity, on File in the said County Recorder's Office of Alameda County.

**PARCEL EIGHT:**

Beginning at a point on the eastern line of Hannah Street distant thereon 286 feet, 8 inches, northerly from the northwestern line of Peralta Street (being that recognized prior to the widening of said Peralta Street) running thence northerly along the said eastern line of Hannah Street 50 feet; thence at right angles easterly 133 feet; thence at right angles southerly 50 feet; and thence at right angles westerly 133 feet to the point of beginning.

Being the southern 1/2 of Lot 3, in Block "N" as said lot and block are shown on the "Map of the Lands of Peralta Homestead Assn." filed April 17, 1868, in Book 3 of Maps, at Page 26, Alameda County Records.

**PARCEL NINE:**

A portion of Lot 11, Block N, Map of the Peralta Homestead Association, filed April 17, 1968, Map Book 3, Page 26, Alameda County Records, described as follows:

Beginning at a point on the western line of Helen Street, formerly Horton Street, distant thereon southerly, 300 feet from the intersection thereof with the southern line of 32nd Street, formerly "A" Street, thence southerly along said line of Helen Street, 25 feet, thence westerly, parallel with said line of 32nd Street, 133 feet; thence northerly, parallel with said line of Helen Street, 25 feet, and thence easterly, parallel with said line of 32nd Street, 133 feet to the point of beginning.

Assessor's Parcel No. 007-0589-017

Assessor's Parcel No. 007-0589-018-03

Assessor's Parcel No. 007-0589-023

Assessor's Parcel No. 007-0589-018-02

Assessor's Parcel No. 007-0589-016



EXHIBIT B

