

Recording Requested By:

Croley and Herring Investment Co.

When Recorded, Mail To:

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

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

**5800 Christie Avenue
Emeryville, CA**

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 23rd day of February 2001, by Croley and Herring Investment Co. ("Covenantor") who is the Owner of record of that certain property situated at 5800 Christie 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 at the Burdened Property was contaminated by historic industrial activities conducted by previous occupants. These operations resulted in contamination of soil and groundwater with inorganic and organic chemicals including polynuclear aromatic hydrocarbons and petroleum hydrocarbons and their constituents, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Covenantor excavated contaminated soil at the Burdened Property and conducted groundwater remediation, significantly reducing the levels of contaminants in the groundwater. The remediation was performed under the direction and supervision of the County. An environmental site and risk assessment has been performed with regard to the contamination on the Burdened Property. The site is capped and there are no significant risks to human health or the environment.

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: in-place contact and surface-water runoff, resulting in dermal contact, inhalation, or ingestion by humans. 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 commercial land uses and is adjacent to, commercial land uses.

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 attached to each and all deeds and leases of any portion of the Burdened 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.

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 industrial, commercial or office space;
- (b) No residence for human habitation shall be permitted on the Burdened Property;
- (c) No hospitals shall be permitted on the Burdened Property;
- (d) No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- (e) No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- (f) No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work 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;
- (g) All uses and development of the Burdened Property shall be consistent with any applicable County Cleanup Order or Risk Management Plan, each of 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.

(h) 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.

(i) 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;

(j) 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.

(k) 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 February __, 2001, and recorded on _____, 2001, 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" Croley and Herring Investment Co.
353 Beacon Ridge Lane
Walnut Creek, California 94596
Attn: Mr. R. D. Herring

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.

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

Covenantor: Croley and Herring Investment Co.

By: Richard D. Herring
Title: Richard D. Herring, General Partner
Date: February 23, 2001

Agency: Alameda County
Environmental Health Services

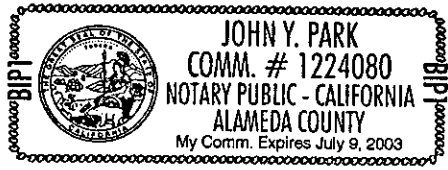
By: Lee J. Tury
Title: Director
Date: 2/23/01

STATE OF CALIFORNIA)
COUNTY OF Alameda)

On Feb. 23, 2001 before me, Richard D. Herring, the undersigned a Notary Public in and for said state, personally appeared [~~Covenantor~~], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

John Y. Park
Notary Public in and for said
County and State



STATE OF CALIFORNIA)

COUNTY OF Alameda)

On Feb. 23, 2001, before me, the undersigned a Notary Public in and for said state, personally appeared [~~Coventry~~], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

MEE LING TUNG, Director

John Y. Park
Notary Public in and for said
County and State

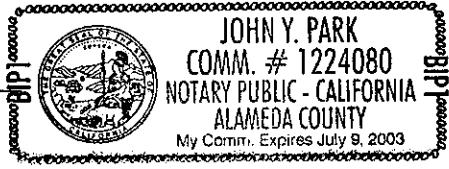


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real Property described in Exhibit A-1, APN. 049-1493-007-02, less
393 square feet of land, more or less, described in Exhibit A-2 and
attached Plat conveyed to the City of Emeryville.

Page 1
Order No. 910812

DESCRIPTION

CITY OF EMERYVILLE

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF SHELLMOUND STREET AND THE SOUTHWESTERLY BOUNDARY OF A 20 FOOT WIDE RAILROAD EASEMENT MORE PARTICULARLY DESCRIBED IN BOOK 2523 OF DEEDS AT PAGE 206, SAID INTERSECTION BEING 420 FEET, MORE OR LESS, NORTH OF THE CENTERLINE OF POWELL STREET, ALL AS SHOWN ON THE RECORD OF SURVEY FILED IN THE RECORDS OF THE COUNTY OF ALAMEDA, CALIFORNIA, ON NOVEMBER 4, 1964 IN RECORD OF SURVEY BOOK 5, PAGE 43; THENCE ALONG A CURVE CONCAVE TO THE NORTH OF RADIUS 272.21 FEET SOUTHEASTERLY AND EASTERLY ALONG SAID SOUTHWESTERLY BOUNDARY, A DISTANCE OF 216.23 FEET TO ITS INTERSECTION WITH THE MOST WESTERLY BOUNDARY OF A PARCEL OF LAND LABELED "FIBREBOARD PAPER PRODUCTS CORP.", AS SHOWN ON SAID RECORDS OF SURVEY; THENCE ALONG SAID WESTERLY BOUNDARY SOUTH $13^{\circ} 56' 16''$ EAST, 62.30 FEET TO THE ACTUAL POINT OF BEGINNING; THENCE SOUTH $83^{\circ} 09' 10''$ WEST, 3.73 FEET TO A POINT OF CURVATURE; THENCE ALONG A TANGENTIAL CURVE TO THE RIGHT OF RADIUS 430 FEET AND CENTRAL ANGLE OF $17^{\circ} 30' 07''$, WESTERLY AND NORTHWESTERLY, A DISTANCE OF 131.35 FEET, TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT OF RADIUS 45 FEET AND CENTRAL ANGLE OF $114^{\circ} 41' 17''$ WESTERLY, SOUTHWESTERLY AND SOUTHERLY, A DISTANCE OF 90.08 FEET TO A POINT OF TANGENCY WITH A LINE 33.00 FEET FROM AND PARALLEL TO THE CENTERLINE OF THE AFOREMENTIONED SHELLMOUND STREET, THENCE SOUTHERLY ALONG SAID LAST MENTIONED PARALLEL LINE, SOUTH $14^{\circ} 02' 00''$ EAST, 122.84 FEET; THENCE LEAVING SAID PARALLEL LINE, NORTH $75^{\circ} 58' 00''$ EAST 3.00 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY AND SOUTHEASTERLY ALONG A CURVE OF A RADIUS 42 FEET, NORMAL, AT THE POINT OF CURVATURE TO THE LAST DESCRIBED COURSE, THROUGH A CENTRAL ANGLE OF $90^{\circ} 13' 15''$, A DISTANCE OF 66.14 FEET TO A POINT OF TANGENCY; THENCE NORTH $75^{\circ} 44' 45''$ EAST, 9.97 FEET TO A POINT OF CURVATURE; THENCE ALONG A TANGENTIAL CURVE TO THE RIGHT OF RADIUS 1208 FEET AND CENTRAL ANGLE OF $5^{\circ} 13' 56''$, EASTERLY A DISTANCE OF 110.31 FEET TO A POINT OF TANGENCY; THENCE NORTH $80^{\circ} 58' 41''$ EAST 27.81 FEET TO THE AFOREMENTIONED MOST WESTERLY BOUNDARY OF PARCEL LABELED "FIBREBOARD PAPER PRODUCTS CORP."; THENCE ALONG SAID MOST WESTERLY BOUNDARY OF PARCEL LABELED "FIBREBOARD PAPER PRODUCTS CORP.", NORTH $13^{\circ} 56' 16''$ WEST 176.34 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 049-1493-007-02

EXHIBIT A-2

EXHIBIT " _____ "

LAND DESCRIPTION OF 393 SQUARE FEET OF LAND, MORE OR LESS, SITUATE IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THOSE QUIT CLAIM DEED(S) TO CROLEY & HERRING INVESTMENT COMPANY RECORDED NOVEMBER 8, 1985 AND DECEMBER 27, 1989, SERIES NO.'s 85-240717 & 89-347319 RESPECTIVELY, OFFICIAL RECORDS OF ALAMEDA COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NORTHWEST CORNER OF THE SAID LANDS OF CROLEY & HERRING INVESTMENT COMPANY, SAME CORNER BEING ON THE EAST RIGHT-OF-WAY LINE OF CHRISTIE AVENUE AND THE SOUTH CURVING RIGHT-OF-WAY LINE OF SHELLMOUND WAY, BEING A CURVE TO THE RIGHT FROM WHICH THE CENTER BEARS NORTH 77° 07' 01" EAST;

THENCE, ALONG THE NORTH LINE OF THE LANDS OF CROLEY & HERRING INVESTMENT COMPANY AND THE SOUTH CURVING RIGHT-OF-WAY LINE OF SHELLMOUND WAY, AN ARC DISTANCE OF 21.41 FEET, HAVING A RADIUS OF 45.00 FEET AND THROUGH A CENTRAL ANGLE OF 27° 15' 58";

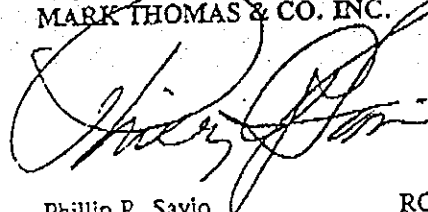
THENCE, LEAVING THE AFORESAID LINE AND CROSSING THROUGH THE SAID LANDS OF CROLEY & HERRING INVESTMENT COMPANY FOR THE FOLLOWING THREE (3) COURSES:

1. SOUTH 12° 52' 59" EAST, 67.05 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;
2. 21.63 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 76.00 FEET AND THROUGH A CENTRAL ANGLE OF 16° 18' 30" TO A POINT OF TANGENCY;
3. SOUTH 03° 25' 31" WEST, 6.92 FEET TO THE POINT OF INTERSECTION WITH THE WEST LINE OF SAID LANDS OF CROLEY & HERRING INVESTMENT COMPANY, SAME POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF CHRISTIE AVENUE;

THENCE, ALONG THE WEST LINE OF THE LANDS OF CROLEY & HERRING INVESTMENT COMPANY AND THE EAST RIGHT-OF-WAY LINE OF CHRISTIE AVENUE, NORTH 12° 52' 59" WEST, 74.41 FEET TO THE POINT OF BEGINNING AND CONTAINING 393 SQUARE FEET OF LAND AREA MORE OR LESS.

APN 049-1493-007-02

Prepared March 26, 1999 by
MARK THOMAS & CO. INC.



Phillip R. Savio
Expiration Date

RCE No 28231
03/31/2002



Signed on

4/12/99
DATE