

7/5/01

Meeting w/ Krishna

Keep A

B = refer to soil & gw (not acceptable)

C = accept C; not use limitators

D = keep ours; provides notice (commercial)

E = their D of w/ burdened

B.1 a ok

b ok

c ok

d ok

need to put back

e is own w/ burdened additivity

have our j, k, write 3.2

- need to put back 3.2 & 3.3

Stuart block =

→ Miss use residential =

# COX, CASTLE & NICHOLSON LLP

A Limited Liability Partnership Including Professional Corporations

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### STUART I. BLOCK

DIRECT DIAL

(415) 273-7043

E-MAIL

sblock@ccnlaw.com

June 1, 2001

OUR FILE NO:

35770

### VIA MESSENGER

CO#

Susan Hugo  
Hazardous Materials Specialist  
Alameda County Health Care Services Agency  
1131 Harbor Bay Parkway, Suite 230  
Alameda, CA 94502

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

Dear Susan:

Following our conversation Wednesday, enclosed is a slightly revised version of the deed restriction we submitted to your office on January 8, 2001 regarding the property at 720 Second Street and 229 Castro Street, Oakland, California (the "Property"). The proposed deed restriction follows the form of deed restriction you provided on behalf of the County, modified to address the specific requirements of your letter dated July 31, 2000 and the unique conditions of the Property.

If the proposed deed restriction is acceptable to the County, please arrange for execution of the document by the County *prior to June 11, 2001*, and return the document to me in the enclosed Federal Express envelope. I will arrange for execution and recording of the document by Mortenson Development Company. If you have any questions or comments concerning the proposed deed restriction, please contact me immediately (415) 273-7043. As we discussed, we expect the Property to be suitable for occupancy by mid-June and, per County instructions, require a completed deed restriction prior to that time.

Susan Hugo  
June 1, 2001  
Page 2

We appreciate your cooperation and prompt response in this matter.

Sincerely,

A handwritten signature in black ink that reads "Stuart I. Block". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

Stuart I. Block

SIB/pdh

Enclosures (2)

SIBLOCK/35770/18855v1

cc: (By Facsimile)

Tom Lander

James Fey

Michael S. Margulies, Esq.

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

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

AND TO:

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

-----  
(Above Space for Recorder's Use Only)

**Covenant and Environmental Restriction on Property**

**720 Second Street and 229 Castro Street, Oakland**

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

A. Soil Conditions at the Property: Soil in certain locations at the Property contain <sup>word</sup> ~~detectable~~ levels of contaminants, including lead and/or petroleum hydrocarbons, which constitute hazardous materials as that term is defined in California Health & Safety Code Section 25260. Such materials are present due to the historic import and use of fill material at the Property, and/or the historical operation of an underground petroleum storage tank at the Property. *(Redlined Deleted)*

B. Remediation Activities: Remediation has been conducted at the Property under the oversight of the County. Based on all available information, the County has determined that the Site presents no significant risk to human health or the environment based on its continued commercial, industrial, and or office use. *Signature provided the Short Term & Long Term Management plans are followed.*

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

*Original language → D. omitted*

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

E. Benefit: Covenantor desires and intends that in order to benefit the 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 residual concentrations of contaminants that may have been deposited on certain portions of the Property. ✓

**ARTICLE I  
GENERAL PROVISIONS**

1.1 Provisions to Run with the Land: This Covenant is an enforceable agreement pursuant to Civil Code Section 1471. All restrictions described herein are for the mutual benefit of the Property and shall run with the land pursuant to Civil Code Section 1471. Such restrictions shall 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 to the Property for the benefit of the County and all Owners and Occupants. Each of the Restrictions are enforceable by the County. } *change*

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

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

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

**ARTICLE II  
DEFINITIONS**

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

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

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

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

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

**ARTICLE III  
DEVELOPMENT AND USE OF THE PROPERTY**

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

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

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

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

d. no Owner or Occupant of the Property shall conduct any excavation work at the Property in excess of two feet below ground surface without first providing three days prior written notice to the County. All such work, and any soil excavated from the Property, shall be managed in accordance with applicable laws and the terms of this Covenant; and

*need to put back g.*

*changed ?*

→ need to add h i K

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

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

missing - 3.3 notice in agreement - ~~part of~~

#### 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 County for a written variance from the terms of this Covenant.

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

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

#### ARTICLE V MISCELLANEOUS

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

5.2 **Notice:** Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested: if to County: Alameda County Health Care Services Agency, 1131 Harbor Parkway, Suite 250, Alameda, CA 94502, Attention: Agency Director; if to Covenantor: Mortenson Development Company, 700 Meadow Lane North, Minneapolis, MN 55422, Attention Tom Lander.

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

5.4 Article Headings: Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

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

5.6 References: All references to Code sections include successor provisions.

5.7 Construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

MORTENSON DEVELOPMENT COMPANY

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

Its: \_\_\_\_\_

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

ALAMEDA COUNTY HEALTH CARE  
SERVICES AGENCY

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

Its: \_\_\_\_\_

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



STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

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

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

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

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public