

# THE MARTIN GROUP

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November 4, 1991

Mr. Larry Seto  
Hazardous Materials Specialist  
ALAMEDA COUNTY HEALTH CARE SERVICES  
80 Swan Way, Room 200  
Oakland, CA 94621

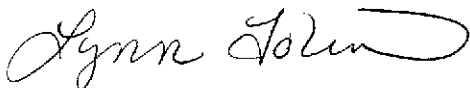
RE: DEED RESTRICTION FOR EMERYBAY MARKETPLACE  
EMERYVILLE, CALIFORNIA

Dear Larry:

We still have not received your approval for the attached deed restriction. Please review it at your earliest convenience as this has been pending for quite some time.

If you have any questions, please feel free to call me at 652-5852.

Sincerely,



Lynn Tolin

THE MARTIN GROUP  
Agent in fee for Christie Avenue Partners-JS  
a California limited partnership

LA1712.23

COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 1990 by \_\_\_\_\_, ("Covenantor") who is the owner of record of certain property situated in the City of Emeryville, Alameda County, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by [Alameda County], with reference to the following facts:

- A. During the course of development of the property Covenantor encountered the presence of certain contaminants (hereinafter "materials") in soil which were associated with prior industrial uses. These materials were investigated by reputable consultants on behalf of Covenantor under the review and supervision of government agencies with jurisdiction over such matters. In certain instances, certain of these materials have been left on the property based upon the conclusion that the type, concentration and locations of such materials do not pose a threat to public health or the environment because of the absence of exposure pathways.
- B. From an abundance of caution, Covenantor desires and intends that in order to protect the public health and safety there be a full disclosure of such materials left on the property,

the locations thereof, and appropriate steps taken to mitigate risk in the event that future activities on or uses of the property could lead to an exposure. A map of the property which identifies the known types and locations of such materials is attached hereto and incorporated by reference as Exhibit B.

- C. Covenantor further intends and desires that before any subsurface excavation is performed at any of the locations reflected on Exhibit B that an appropriate site health and safety plan be prepared to mitigate exposure, if any, to materials located in such areas. Such site health and safety plan shall be submitted to the Alameda County for review and approval at least five (5) days in advance of the subsurface work to be conducted on the property.

## ARTICLE I

### GENERAL PROVISIONS

1.01 Statement Regarding Hazard. This Covenant is not, and shall not be construed as, a statement or declaration that any existing or potential health, environmental, or other hazard exists or will exist on the Property.

1.02 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which certain locations on the Property (as set forth on Exhibit

"B") and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property identified in Exhibit B, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the specific portions of the Property marked on Exhibit B as mutual equitable servitudes in favor of the Property.

1.03 Concurrence of Owners Presumed. All purchasers shall be deemed by their purchase of such Property to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agency, employees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.04 Incorporation Into Deeds. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds of any portion of the Property, pursuant to Section 1468 of the California Civil Code.

ARTICLE II  
DEFINITIONS

2.01 Department. "Department" shall mean Alameda County and shall include its successor agencies, if any.

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

2.03 Owner. "Owner" shall mean the Covenantor or its successor in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of that portion of the Property as described in Exhibit "B" as follows:

Prior to conducting any subsurface excavation in the areas marked on Exhibit B, Covenantor shall prepare or cause to be prepared a site health and safety plan to assure that persons who could be exposed to the materials identified at such locations can undertake appropriate protective measures to mitigate or avoid any exposure which could result during such work. Such site health and safety plan shall be submitted to Alameda County

for review and approval at least five (5) working days prior to commencement of work.

3.02 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in Section 3.01, shall be grounds for the Department, by reason of the Covenant, to compel such site health and safety plan or to order such work to cease and desist until such plan has been approved and adopted.

3.03 Notice in Agreements. All Owners shall execute a written instrument which shall accompany all purchase agreements relating to the Property. The instrument shall contain the following statement: This property is subject to a deed restriction regarding the preparation of a site health and safety plan for the conduct of subsurface work on certain portions of the property. Compliance with this deed restriction is required of the "Owner" and any successor in interest and is a legal requirement.

#### ARTICLE IV

#### VARIANCE AND TERMINATION

4.01 Variance. Any Owner may apply to the Department for a written variance from the provisions of this Covenant.

4.02 Termination. Any Owner may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V

#### MISCELLANEOUS

5.01 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 or for any purposes whatsoever.

5.02 Notices. Whenever any person shall desire to give or serve 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 to an officer of a corporate party 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:

To: "Covenantor"

(Martin Group or Partnership Name and Address)

Copy To:

Alameda County

5.03 Partial Invalidity. If any portion of the Restriction set forth herein or terms are 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.

5.04 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.

5.05 Recordation. This instrument shall be executed by the Covenantor, and by [Alameda County.] This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

5.06 References. All references to code sections include successor provisions.



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

\_\_\_\_\_

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

Title: \_\_\_\_\_

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

[DEPARTMENT OF HEALTH SERVICES]

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

Title: \_\_\_\_\_

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

STATE OF CALIFORNIA )

)

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 1990, before me, the  
undersigned, a Notary Public in and for said state, personally  
appeared \_\_\_\_\_, personally  
known to me or proved to me on the basis of satisfactory evidence  
to be the person who executed the within instrument as \_\_\_\_\_  
\_\_\_\_\_ of Alameda County, the agency that executed the  
within instrument, and acknowledged to me that such agency  
executed the same.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said  
County and State

EXHIBIT A

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

CITY OF EMERYVILLE

PARCELS 2, 3 AND 4, OF PARCEL MAP 5303, FILED FEBRUARY 26, 1988, MAP BOOK 174, PAGES 91 AND 92, ALAMEDA COUNTY RECORDS.

IL0105.022