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February 25, 2013

Alameda County
FEB 27 2013
Environmental Health

Ms. Donna Drogos, P.E.
Director
Alameda County Environmental Health
Services
1131 Harbor Bay Parkway
Alameda, CA 94502

Re: Julia Kim v. City of Oakland, et al.
Our File No. 15839.9

Dear Ms. Drogos:

I am writing as outside counsel for the City of Oakland in the above-referenced matter. We received Mr. Paganelli's February 20, 2013 letter to you concerning his client's request for termination of a portion of a Covenant and Environmental Restriction ("Covenant"), which purports to restrict property commonly known as 569 High Street/Howard in Oakland. We are writing separately to encourage that Alameda County Environmental Health Services terminate voluntarily the Covenant in accordance with Mr. Paganelli's request.

At the time the Covenant was recorded, the City of Oakland was the fee owner of 569 High Street. The City had acquired the property in 1992 in connection with its construction of Howard Street, a small connector between High Street and Alameda Avenue. In November 2005, The City sold the property at auction to Julia Kim, who purchased the property "as is." In January 2007, RIF-1 -Alameda, LLC, your Covenantor, sent Ms. Kim a letter claiming an easement right over the property. Kim initiated legal action against the City of Oakland and her real estate broker, seeking rescission of sale, or alternatively, damages arising out of her purchase of the property.

Ms. Kim's allegations resulted in a close examination of the title documents for the 569 High Street/Howard parcel. This investigation revealed that the easement RIF-1-Alameda, LLC claimed was actually extinguished by the doctrine of merger upon the City of Oakland's taking fee title to the property. The City demonstrated this fact to the satisfaction of Ms. Kim, who then revised her complaint to seek recovery from RIF-1-Alameda, LLC for slander of title. RIF-1-Alameda, LLC's successor in interest, 3925 Alameda Property, LLC, filed a cross-complaint against Ms. Kim and the City of Oakland, seeking to reform the easement document on the basis of a "mistake."

We provide you with this factual background to make this rather simple point: At the time Alameda County Environmental Health Services entered into the Covenant and Environmental Restriction with RIF-1-Alameda, LLC on or about June 8, 2005, RIF-1-Alameda, LLC did not

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have an easement interest in the property described as Parcel Two in the Covenant. Consequently, the Covenant was an improper restriction on the City of Oakland's property.

The 569 High Street Howard property has been the subject of contentious litigation for over five years. However, the validity of the Covenant over Parcel Two presents the rare occasion on which all parties agree. Whether you accept the legal position of the City of Oakland that it owned the property free and clear, or whether you accept RIF-1-Alameda, LLC's position that it held an easement in accordance with the 1992 Grant of Easement, under no circumstances would RIF-1-Alameda, LLC be authorized in June 2005 to agree to environmental restrictions over the 569 High Street Howard property. Therefore, under no circumstances was the Covenant valid as to Parcel Two at the time the Covenant was recorded in favor of Alameda County Environmental Health Services.

The parties have worked out amongst themselves a settlement of all issues pertaining to 569 High Street Howard. The final detail in that settlement is for 3925 Alameda Property, LLC to clear up with Alameda County Environmental Health Services that the Covenant only applies to Parcel One, the only property that RIF-1-Alameda, LLC owned and was authorized to encumber at the time it agreed to the Covenant.

We understand that Mr. Paganelli, as legal counsel for both RIF-1-Alameda, LLC and 3925 Alameda Property, LLC, has attempted, without success, to resolve this issue with your office at various times over the last six months. I wish to stress that this delay is costing all parties to the litigation additional legal fees and costs, and is imperiling the settlement itself. We will be back before the court in this matter on March 21, 2013. We are hopeful that this matter can be resolved without the need of bringing Alameda County Environmental Health Services into the case as a party to fully and finally resolve the rights and interests in the 569 High Street Howard property.

Please feel free to contact the undersigned should you wish to discuss this matter.

We await your response.

Very truly yours,



William E. Adams

WEA:jm

cc: Carl Paganelli, Esq.
Donna Ziegler, Esq.
Richard Wallace, Esq.
Mitchell Stein, Esq.
Duncan MacDonald, Esq.
James Hodgkins, Esq.