BOOK PAGE

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OFFICIAL RECORDS
SACRAMENTO COUNTY, CALIF.

91 APR 18 AM 8:27

COUNTY CLERK-RECORDER

Recording Requested By:

Sacramento Savings Bank
1651 Response Road
Sacramento, California 95815

When Recorded, Mail To:

Department of Health Services
Toxic Substances Control Program
Region 1
10151 Croyden Way
Sacramento, California 95827
Attention: Elaine S. Stewart

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COVENANT AND AGREEMENT

TO RESTRICT USE OF PROPERTY
Lot 10 of Sunrise River Industrial Park
in Rancho Cordova, California

This Covenant and Agreement ("Covenant") is made on the 17th day of April, 1991 by SACRAMENTO SAVINGS BANK (the "Bank" or "Covenantor"), who is the owner of record of certain property situated in Rancho Cordova, County of Sacramento, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the CALIFORNIA DEPARTMENT OF HEALTH SERVICES ("Department" or "Covenantee"), with reference to the following facts:

A. In years preceding the Bank's ownership, portions of the Property received waste materials associated with the operation of a landfill. In the late 1980s, the Property was investigated by the Bank. It was determined that the Property contains hazardous substances.

B. The Bank, acting under supervision of the Department, remediated the Property by removing certain soils contaminated with hazardous substances, particularly lead, to an offsite permitted Class-III landfill. The Department approved the response action by letter from Anthony J. Landis to Robert N. Riolo dated April 17, 1991, which is attached as Exhibit "B" hereto and which identifies the reports and Department oversight that formed the information as to site conditions on which the Department based its decision. Portions of the Property contain residual levels of lead above background.

C. The Property is currently zoned MP Industrial Office Park which currently limits the Property to uses within that designation.

D. The Department has determined that, with the Recordation of this Covenant, all appropriate response actions have been completed, that all acceptable engineering practices were implemented, that the Property is suitable for commercial, industrial, and adult residential uses, and that no further removal or remedial action is necessary.

E. The Department's determination was based on an evaluation of adult residential, commercial or industrial uses of the property. Accordingly, the Department did not determine that the property was or was not suitable for certain restricted uses specified in 3.01 below; the purpose of the 3.01 restriction is to allow the Department the opportunity to evaluate the appropriateness of the restricted uses under such circumstances and conditions (e.g. development of buildings and landscaping) as may exist at the time such use is proposed.

F. The restrictions contained in this Covenant, as more fully described below, apply to portions of the property described herein as Affected Property, as defined in Section 2.01 below. This Covenant is intended to encumber only Affected Property, and does not encumber other portions of the Property.

G. Covenantor and Covenantee desire and intend that in order to protect the present or future public health and safety, the Affected Property shall be subject to the provisions of this Covenant in accordance with the provisions described below.

ARTICLE I

GENERAL PROVISIONS

1.01 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 the Affected Property 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 Affected Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Affected Property unless the Restriction is expressly stated to be applicable only to a specific portion of the Affected Property. Each and all of the Restrictions are mutually agreed upon by the Covenantor and the Department pursuant to Section 25222.1(a) of the Health and Safety Code and run with the land; however, the reference to that section is not intended signify nor has there been any designation of the property as defined in Section 25220 et seq. Each and all of the Restrictions are enforceable by the Department.

1.02 Incorporation Into Deeds and Leases. Owner desires and covenants that the Restrictions set out herein shall be

incorporated by references in each and all deeds and leases of any portion of the Affected Property as provided in 3.03 and 304.

1.03 Concurrence of Occupants Presumed. All occupants of any portion of the Affected Property shall be deemed by their purchase, leasing, or possession of such Affected 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 future Owners and Occupants and that their interest in the Affected Property shall be subject to the Restrictions contained herein.

1.04 Adjustment of Lot Lines and Removal from Deeds. This Covenant shall not restrict or otherwise impair the right of the Owner to seek and obtain approval from local governmental agencies to have lot lines adjusted so that resulting lots or parcels consist solely of unaffected property, so long as the Affected Property remains subject to a Covenant to Restrict Use of Property. Upon receiving approval for the lot lines adjustment, the Owner of the unaffected portion of the Property may record a Release of Covenant in the form attached hereto as Exhibit "C", which upon recordation abandons this Covenant as to the new unaffected lots or parcels. The Department shall be notified of this adjustment of lot lines. Such notification shall be conclusively established by the recording of the Release of Covenant, which includes a proof of service on Department.

ARTICLE II

DEFINITIONS

2.01 Affected Property. That portion of the Property described in Exhibit "D-1" to this Covenant and shown on that map attached as Exhibit "D-2".

2.02 Department. "Department" shall mean the California State Department of Health Services, Toxic Substances Control Program, and shall include its successor agencies, if any.

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

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

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

2.06 Unexcavated Affected Property. That portion of the Affected Property depicted in Exhibit "E" to this Covenant.

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use of Affected Property: Owner promises to restrict the use of the Affected Property as follows:

a. Owner shall not use or allow the use of any Affected Property for any of the following restricted uses in the absence of a writing from the Department approving the use or a variance pursuant to 4.01 or a termination pursuant to 4.02:

(1) A daycare center,

(2) A school for persons under 18,

(3) A residence,

(4) A garden in which produce is grown for human consumption, or

(5) A community park (though use for commercial landscaping is not restricted).

The Department, in determining that there was no need for further action on the site, based its determination on the possibility of adult residential, commercial or industrial uses of the site. Accordingly, it has not determined that the Affected Property is or is not suitable for the above-restricted uses. The purpose of this restriction 3.01 is to allow the Department the opportunity to evaluate the appropriateness of the above-restricted uses under such circumstances and conditions as may exist at the time such use is proposed.

3.02 Enforcement. Failure of the Owner to comply with paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to seek that the objectionable use cease. Violation of this Covenant may be grounds for the Department to file civil or criminal actions against the Owner as provided by law.

3.03 Notice in Agreements. All purchase, lease, sublease, or rental agreements for the Affected Property, or any portion thereof, shall identify the existence of this Covenant and that it contains certain restrictions limiting use as follows:

> The land described herein includes property subject to a Covenant between the Owner and the Department of Health Services recorded on April 17, 1991 in the Sacramento County Recorder's Office in Book [enter Book number] at Page [enter Page number]. The property subject to the

Covenant is referred to therein as the Affected Property, and the Covenant restricts the Affected Property by prohibiting use in the absence of written approval by the Department or a variance from or termination of the restriction for (1) a child care center, (2) a school for children under 18 years of age, (3) a residence, (4) a garden in which produce is grown for human consumption, or (5) a community park (though use for commercial landscaping is not restricted). The terms of these provisions are more fully described in the Covenant, which is incorporated by reference into this agreement.

3.04 Notice Requirement as to Unexcavated Affected Property. This provision applies only to the Unexcavated Affected Property. As of the date of this Covenant, soils underlying a portion of Pyrites Way and a narrow strip on either side, depicted more fully as the Unexcavated Affected Property in Exhibit "E" hereto, contained or were believed to contain waste materials with lead concentrations in excess of 1000 mg/kg (with an estimated average of approximately 1300 mg/kg or less), but were not excavated due to the proximity to the roadway which restricts exposure to soil beneath it, and due to a utility easement for which this notice provision applies. An Owner shall provide to any Occupant of the Unexcavated Affected Property the following notice, unless such notice has already been provided by another or prior Owner or Occupant:

> NOTICE: As of April 17, 1991, soils underlying a portion of Pyrites Way and a narrow strip on either side of no greater than 18 feet from the sidewalk, more fully depicted as the Unexcavated Affected Property in Exhibit "E" of the Covenant, contained or were believed to contain waste materials with lead concentrations in excess of 1000 mg/kg (with an estimated average of approximately 1300 mg/kg or less), but were not excavated due to the proximity to the roadway and utilities already in place. Excavation and maintenance operations should be undertaken in accordance with all applicable health and safety and environmental requirements and persons seeking your permission to undertake such activities should be advised of these facts.

This Notice may be provided by incorporation of the foregoing language in agreements as specified in Section 3.03.

3.05 Recordation of Releases from the Covenant. Recordation of a final written instrument issued pursuant to the variance provision in 4.01 or the termination provision in 4.02 or recordation of a writing from the Department approving a use pursuant to 3.01 shall conclusively establish that the Property is free of restrictions under this Covenant to the extent it was released by said final written instrument or writing.

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this covenant. Such application shall be made in accordance with Section 25233, H&SC, which Section applies solely as a result of this Covenant as provided in Section 25222.1(a), H&SC, and not as a result of any designation of the property as defined in Section 25220(a)(2) thereof.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234, H&SC, which Section applies solely as a result of this Covenant as provided in Section 25222.1(a), H&SC, and not as a result of any designation of the property as defined in Section 25220(a)(2) thereof.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, or by operation of 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 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 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.

Communications to the Department shall be addressed to:

Department of Health Services
Toxic Substances Control Program
Region 1
10151 Croyden Way
Sacramento, California 95827
Attention: Regional Administrator

or to its successor agency.

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

5.04 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 the Director, California Department of Health Services. This instrument shall be recorded by the covenantor in the County of Sacramento 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.

SACRAMENTO SAVINGS BANK
COVENANTOR

Robert N. Riolo

By: Mr. Robert N. Riolo

Title: Vice President

Date: 4-17-91

DEPARTMENT OF HEALTH SERVICES
COVENANTEE

Val F. Siebal

By: Mr. Val F. Siebal

Title: Regional Administrator

Date: 4-17-91

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

On April 17, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared Robert N. Riolo, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Vice President of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

Kathleen E Finnerty
Notary Public in and for said County and State

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

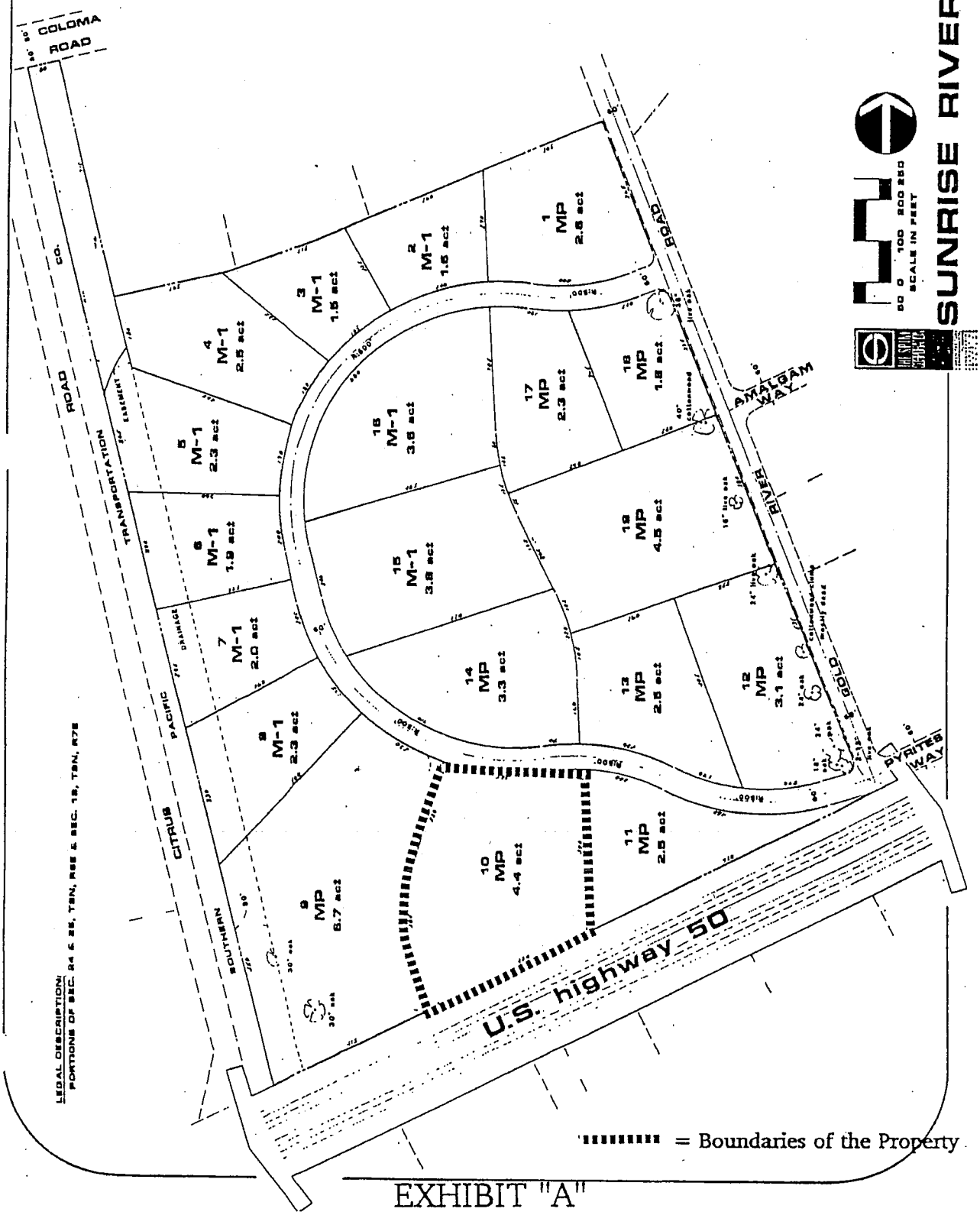
On April 17, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared Val F. Siebal, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Regional Administrator of the Department of Health Services, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

Kathleen E Finnerty
Notary Public in and for said County and State

Lot 10, of Lots as shown on that parcel map entitled "Sunrise River Industrial Park" filed in the office of the County Recorder of Sacramento County, California, on June 19, 1985, in Book 87 of Parcel Maps, Page 20.

A pictorial representation of said lot is as follows:



= Boundaries of the Property

EXHIBIT "A"