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Taxes..
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RECORDING REQUESTED BY:

City of San Jose
801 North 1st Street
San Jose, California 95110

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
State Agency

RDE # 004
5/23/2003
10:08 AM

Redevelopment Agency of the City of San Jose
50 West Fernando Street, Suite 1100
San Jose, California 95113

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara Cook, Chief Northern
California Coastal Cleanup Operations Branch



Space above this line reserved for Recorder's use

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: 259-37-058, 259-37-059, 259-37-043, 259-37-044, 259-37-004, 259-28-031/032,
259-28-041, 259-28-043, 259-28-044, 259-28-060.

This Covenant and Agreement ("Covenant") is made by and between the City of San Jose Redevelopment Agency and the City of San Jose (the "Covenantor"), the current owners of property situated in San Jose, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c) and Health and Safety Code section 25355.5, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property was located in a former industrial area in downtown San Jose where a former Pacific Gas & Electric coal gasification plant, various automobile repair and service businesses, underground storage tanks, oil/water clarifiers, and drums had been located.

The Property is located in the area now generally bounded by Julian Street, North Montgomery Street, and West St. John Street on the north, West Santa Clara Street on the south, Southern Pacific Railroad tracks on the west, and Guadalupe River to the east in the City of San Jose, County of Santa Clara, State of California. This Property is more specifically described as County Assessor's Parcel No.'s 259-37-058, 259-37-059, 259-37-043, 259-37-044, 259-37-004, 259-28-031/032, 259-28-041, 259-28-043, 259-28-044, 259-28-060.

1.02. The Property, totaling approximately twenty-two (22) acres is more particularly described and depicted in Exhibit "A".

1.02.1 The San Jose Sports Arena (Arena on Exhibit A) and slurry wall directly below and surrounding the Arena is located in the area now generally bounded by North Montgomery Street, and West St. John Street on the north, West Santa Clara Street on the south, Encapsulated Area (see 1.02.2) and Southern Pacific Railroad tracks on the west, and Autumn Street on the east. The area under the Arena was excavated to a depth of seventeen feet below ground surface (bgs) surrounded by an impermeable cutoff (slurry) wall that was excavated to a depth of 35 ft bgs to prevent lateral migration into or out of the Arena area. The soil underneath the Arena and contained within the slurry wall is contaminated with traces of polynuclear aromatic hydrocarbons (PAHs), total petroleum hydrocarbons (TPH) as gasoline (TPHg) up to 1100 milligrams per kilogram (mg/kg), as diesel (TPHd) <100 mg/kg, and oil and grease <100 mg/kg.

1.02.2 The "Encapsulated Area" (see Exhibit A) is located in the area now generally bounded by Julian Street, North Montgomery Street, and West St. John Street on the north, West Santa Clara Street on the south, Southern Pacific Railroad tracks on the west, and Autumn Street on the east. The Encapsulated Area contains the highest concentrations of contaminated soil, which is located under a clay layer, a clean backfill layer, and an asphalt cap for the parking lot. Contaminants are PAHs greater than 3000 mg/kg, lead up to 4000 mg/kg, TPHg at 390 mg/kg, TPHd at 1500 mg/kg, and oil and grease up to 13,000 mg/kg.

1.02.3 "Guadalupe River Park Confluence West" (Guadalupe RPCW on Exhibit A), now known as Arena Green, is located in the area now generally bounded by West St. John Street on the north, West Santa Clara Street on the south, Autumn Street on the west, and Guadalupe River on the east. Contaminants are PAHs, lead, TPHg, TPHd, and oil and grease. This area is capped with fifteen feet of clean backfill and is part of the City of San Jose's park system. There is currently a carousel, playground equipment, bathrooms, and sidewalks on site.

1.02.4 The remaining Property is located in the area now generally bounded by Julian Street on the north, the Encapsulated Area and West Santa Clara Street on the south, Southern Pacific Railroad tracks on the west, and North Montgomery Street on the east. Contaminants are PAHs, lead, TPHg, TPHd, and oil and grease. This area is a continuation of the parking lot for the Arena and is capped with asphalt.

1.02.5 Groundwater at the Property is found 12 to 25 feet bgs and is also affected. Contaminants in the groundwater include benzene (up to 2700 micrograms per liter (ug/l)), PAHs as benzo(a)pyrene (up to 680 ug/l), and toluene (up to 170ug/l). California drinking water standards are benzene at 1.0 ug/l, benzo(a)pyrene at 0.2 ug/l, and toluene at 150 ug/l. In May 1993, groundwater results were TPHg up to 6300 ug/l, TPHd up to 9200 ug/l, and trace amounts of chlorinated hydrocarbons. The Department has concluded that the groundwater presents an unacceptable threat to human health and safety.

1.03 Site History: The Preliminary Endangerment Assessment (PEA) was completed in June of 1991 under Department of Health Services, predecessor to the Department.

Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including PAHs, TPH, chlorinated solvents, benzene, toluene, xylenes, and lead, remain in the soil and groundwater in and under portions of the Property, the PEA provided that a deed restriction, such as this Covenant, be required as part of the site remediation. A screening procedure was used for the placement of the PAH contaminated soil. If the soil tested above 100 parts per million (ppm) PAH, it was placed in the Encapsulated Area. Soil showing less than 100 ppm PAH was further tested with a photo ionization detector. If the result was greater than 5 ppm, this soil was aerated and then used as "clean engineered fill". If less than a five ppm reading, the soil was designated as clean fill. Both clean fill and engineered clean fill were used either for the compacted bottom liner or as the two feet of fill over the Encapsulation Area. Then the areas were paved as part of the parking lot system for the San Jose Sports Arena Complex.

Groundwater treatment was performed under the San Francisco Regional Water Quality Control Board's requirements. Gasoline contaminated soil (concentrations ranging from non-detect to 9,000 ppm in localized areas) was excavated and stockpiled for vapor extraction treatment. Using 100 ppm of TPH-g for the cleanup level, soil above 100 ppm after treatment was added to the Encapsulation Area. The soil testing less than 100 ppm after treatment was used as clean fill. The excavated areas were back filled with clean fill.

Remediation included installing and maintaining a clay cover over-laid with asphalt for use as a parking lot over the Encapsulated Area, a slurry wall around and below the Arena area to prevent lateral migration, an Arena subdrain that is connected to a granular activated carbon treatment system before discharge to the storm drains, and a soil cap of fifteen feet on the Guadalupe River Park Confluence West Area.

1.04. As detailed in the PEA, approved by the Department on June 20, 1991, all or a portion of the surface and subsurface soils of the Property contain hazardous

substances, as defined in H&SC sections 25316 and 25260, which include the following contaminants of concern in the ranges set forth below. In the confirmation soil testing results, benzene (1.2 to 1.74 mg/kg), xylenes (non-detect to 300 mg/kg), lead (270-4000 mg/kg), and PAHs (traces to >3000 mg/kg) were above the United States Environmental Protection Agency Region 9 Primary Remediation Goals (PRGs) for residual and industrial soil. There are no PRGs for TPHg, TPHd, and oil and grease.

A deed restriction on the encapsulated hazardous substances is required in Revised Disposition Workplan, Soils with Elevated Lead Content, San Jose Arena, California, November 19, 1992, and Phase I Construction Documentation, Volumes 1-9, May 1991. The health effects for the chemicals encapsulated are as follows: benzene and PAHs are known carcinogens and highly toxic; xylene and lead are toxic by ingestion or inhalation of dust; in addition, lead is a cumulative poison affecting children more severely.

Based on the PEA, the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21, or day care center would entail an unacceptable health risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to commercial and industrial, parks, and/or open space use.

ARTICLE II DEFINITIONS

- 2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.
- 2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.
- 2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.
- 2.04. Cap. "Cap" means the material covering the contaminated soils. The components of the Cap are different for each parcel and are described in sections 1.02.1 through 1.02.4.
- 2.05. Covenantor. "Covenantor" means the City of San Jose Redevelopment Agency (for parcels: 259-37-058, 259-37-059, 259-37-043, 259-37-044, 259-37-004) and the City of San Jose (for parcels: 259-28-031/032, 259-28-041, 259-28-043, 259-28-044, 259-28-060).

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ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved prior to the beginning of the activities by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (for example: cattle, food crops).
- (b) Drilling for water, oil, or gas (without prior written approval by the Department).

4.04. Non-Interference with Cap. Covenantor agrees:

Activities that may disturb the Cap, including but not limited to excavation, grading, removal, trenching, filling, earth movement, or mining, shall not be permitted on the Property without prior review and written approval by the Department.

All uses and development of the Property shall preserve the integrity of the Cap. The Cap shall not be altered without prior written approval by the Department.

Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. So long as the Covenantor and the Owner are the City off San Jose Redevelopment Agency or the City of San Jose, prior to any enforcement which would require the modification or removal of any improvements on the property, the

Department shall give a reasonable opportunity to cure any non-compliance with the terms of these restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant 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 anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice 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 (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owners: Redevelopment Agency of the City of San Jose
 50 West Fernando Street, Suite 1100
 San Jose, California 95113

 City of San Jose
 801 North 1st Street
 San Jose, California 95110

To Department: Barbara Cook,
Chief Northern California Coastal Cleanup Operations Branch
Department of Toxic Substances Control Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710

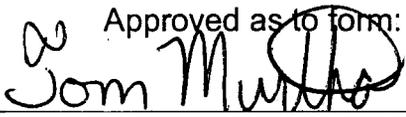
Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

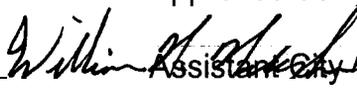
7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

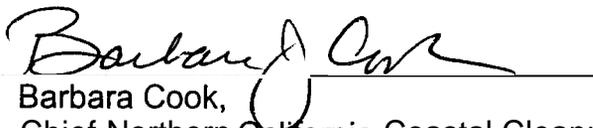
Covenantor: REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

By:  Approved as to form: 
Susan F. Shick Senior Associate Counsel
Title: Executive Director
Date: April 9, 2003

Covenantor: CITY OF SAN JOSE

By:  Approved as to form: 
PETER JENSEN Assistant City Attorney
Title: ASSISTANT TO THE CITY MANAGER
Date: 4-21-03

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: 
Barbara Cook,
Title: Chief Northern California Coastal Cleanup Operations Branch
Date: May 22, 2003

STATE OF CALIFORNIA)

COUNTY OF Alameda)

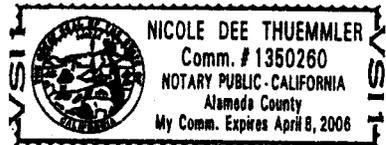
On this 22nd day of May, in the year 2003,

before me Nicole Dee Thuemmler, Notary, personally appeared BARBARA J. COOK

~~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 _____ uthorized 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.

Signature Nicole Dee Thuemmler



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Santa Clara } ss.

On April 28, 03, before me, Consuelo Chaidez Avitia, Notary.
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Peter Jensen Name(s) of Signer(s)

- [X] personally known to me
[] 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.

Consuelo Chaidez Avitia
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant to Restrict Environmental Restrictions

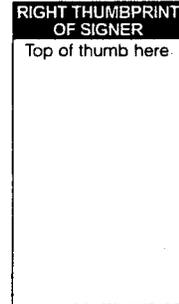
Document Date: April 4, 2003 Number of Pages:

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer

- Signer's Name:
[] Individual
[] Corporate Officer, Title(s):
[] Partner - [] Limited [] General
[] Attorney in Fact
[] Trustee
[] Guardian or Conservator
[] Other:

Signer is Representing: City of San Jose



STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

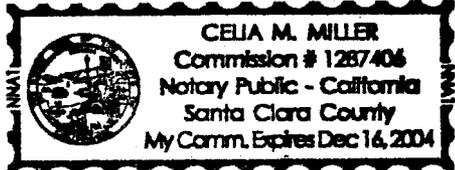
On this 10th day of APRIL, in the year
2003,

before me CELIA M. MILLER, personally appeared
SUSAN F. SHICK,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person@ whose name(s) is /are subscribed to the withir 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, executec the instrument.

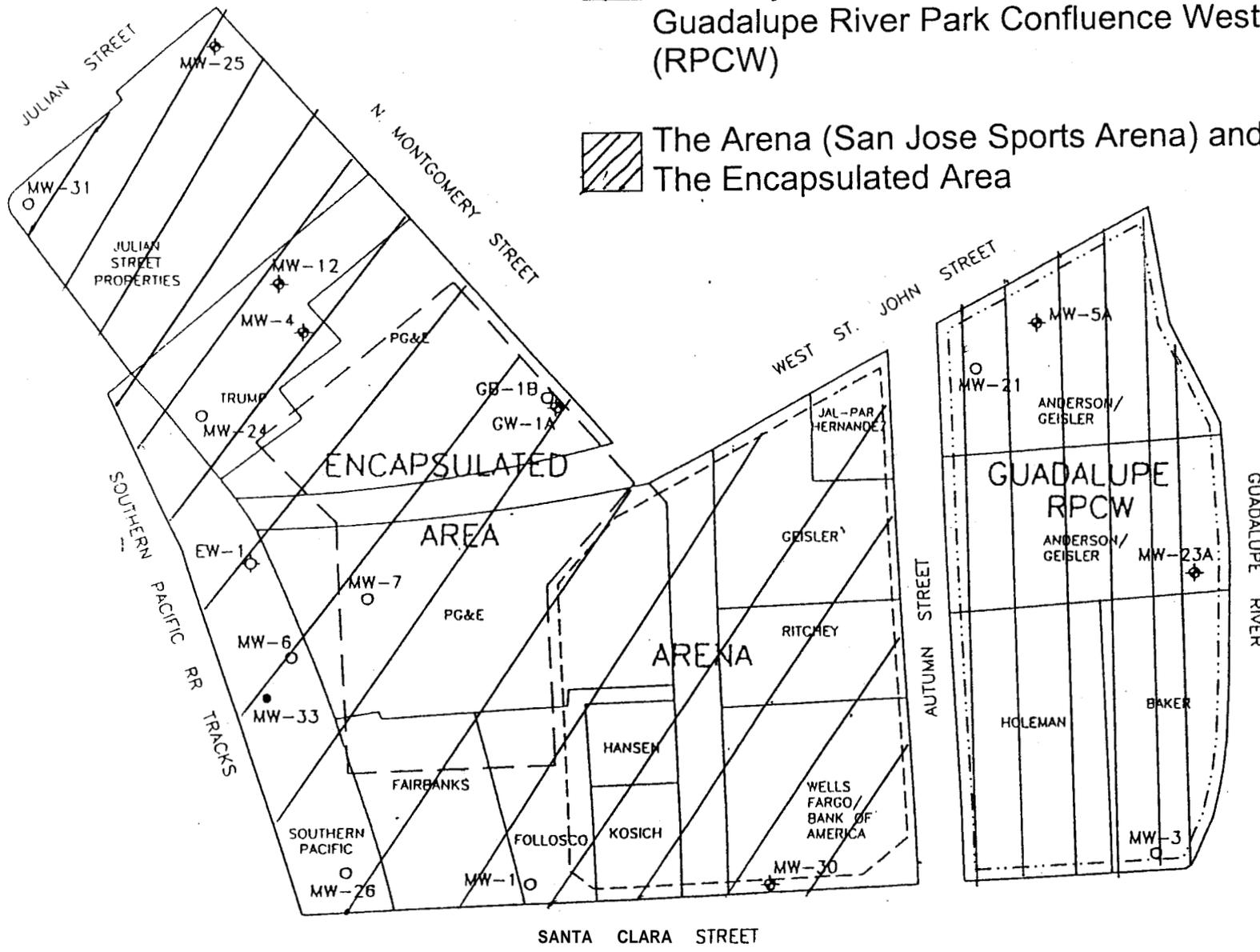
WITNESS my hand and official seal.

Signature Celia M. Miller



 "Arena Green" Owned by the City Of San Jose
Formerly known as
Guadalupe River Park Confluence West
(RPCW)

 The Arena (San Jose Sports Arena) and
The Encapsulated Area



EXPLANATION

-  MW-2 "A" ZONE MONITORING W
 -  MW-22 "B" ZONE MONITORING W
 -  EW-1 "B" ZONE EXTRACTION W
 -  MW-33 MONITORING WELLS EITHER AN INTERMEDIATE ZONE ("C" ZONE (MW-33), OR ACCESSIBLE (MW-3A))
 -  GUADALUPE RIVER PARK CONFLUENCE WEST
 -  SAN JOSE ARENA
 -  ENCAPSULATED AREA
- (BOUNDARIES ARE APPROXIMATE)

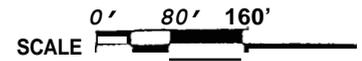


EXHIBIT B

1997 Parcel Map



Rust Environment & Infrastructure Inc.

**FIGURE 1
PARCEL MAP**

CITY OF SAN JOSE MULTIPURPOSE
GUADALUPE RIVER PARK CONFLUENCE WEST

MARCH 1997