

3

RECORDING REQUESTED BY:

Richmond Redevelopment Agency
1401 Marina Way South
Richmond, California 94804



CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2004-0322886-00

Thursday, AUG 19, 2004 15:47:16
FRE \$0.00

Ttl Pd \$0.00

Nbr-0002298070
lrc/R9/1-13

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION
PARCEL T
MARINA BAY REDEVELOPMENT
RICHMOND, CALIFORNIA

This Covenant and Agreement ("Covenant") is made by and between the Richmond Redevelopment Agency (the "Covenantor"), the current owner of Parcel T situated within the Marina Bay Redevelopment project in Richmond, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Covenantee, the Department of Toxic Substances Control (the [Department]). Pursuant to Civil Code section 1471(c), 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, encompasses approximately 1.7 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property, adjacent to the Richmond Marina Bay waterfront and is located within the East Shore Areas of the Marina Bay Project, is bounded by a multi-tenant residential complex constructed on Area S to the east, Marina Bay Parkway and Shimada Friendship Park to the southeast, Peninsula Drive and single-family residences constructed on Area U to the West, and Marina Bay Esplanade and Richmond Marina Bay to the north and northwest, County of Contra Costa, State of California. This property is more specifically described in Exhibit A.

1.02. The Property is being remediated pursuant to a Remedial Action Plan pursuant to Chapter 6.8 of Division 20 of the H&SC. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including total petroleum hydrocarbons ("TPH") and lead remain in the soil under portions of the Property, the Remedial Action Plan provides that a deed restriction be required as part of the site remediation. The Department circulated the RAP, which contains a Final Health Risk Assessment, together with a draft Negative Declaration prepared pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The Remedial Action Plan and the negative declaration were approved by the Department on May 24, 1993. Remediation includes installing and maintaining a vegetated soil capped over the entire Property. Operation and maintenance of the vegetated cap and groundwater monitoring will be required pursuant to an Operation and Maintenance Plan incorporated into an Operation and Maintenance Agreement between Richmond Redevelopment Agency and the Department.

1.03. As detailed in the Final Health Risk Assessment as approved by the Department in 1988, all or a portion of the surface and subsurface soils within 10 feet of the surface on the Property contain hazardous substances, as defined in H&SC section

25316, and hazardous materials as defined in H&SC section 25260, which include lead and TPH at significant concentrations. Groundwater is first encountered between 8 and 10 feet below ground surface of Parcel T. Based on the Final Health Risk Assessment, the Department has determined that the use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department has further determined that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable risk to human health or the environment, if limited to commercial and industrial, parks, 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 occupy any portion of the Property.

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"), to which the Property and every portion thereof is subject notwithstanding how the Property is improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to 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 Civil Code section 1471(b), this Covenant expressly binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.03. Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessees, or sublessee a copy of this Covenant.

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. Covenantor agrees that the Owner shall provide written 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/developed 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 or hospice 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 vegetated soil cap (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) without a Soil Management Plan and a Health and Safety Plan approved 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 on the Property, whether such activities are under the control or direction of the Owner or the Owner's Occupant.

4.03. Non-Interference with the Vegetated Soil Cap. Covenantor agrees:

- (a) Activities that may disturb the soil cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted without prior review and approval by the Department, as required under 4.02(c).
- (b) All uses and development of the Property shall preserve the integrity of the vegetated soil cap.
- (c) The vegetated soil cap shall not be altered without prior written approval of the Department, as required under 4.02(c).
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any other disturbance to the cap that could affect the cap's ability to contain subsurface hazardous wastes or

hazardous materials underneath the Property, and (ii) the type and date of repair of such disturbance. 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.

4.04. 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 and safety, or the environment.

4.05. Access for Implementing O&M. The entity or person responsible for implementing Operation and Maintenance activities shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance activities until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor or Owner 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. 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 Contra Costa 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 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 Owner: Richmond Redevelopment Agency
1401 Marina Way South
Richmond, California 94804

City Attorney's Office
City of Richmond
1401 Marina Way South
Richmond, California 94804

To Department: Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch

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 Authority to Bind. Each of the signatories below warrants and represents that he or she is authorized to execute this Covenant of behalf of its respective Party and to legally bind same to the terms and conditions of this Covenant.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Richmond Redevelopment Agency

Signatory's Name:

Irma L. Anderson
Chair, Richmond Redevelopment Agency

Title:

MAYOR - CITY OF RICHMOND

Date:

8/18/2004

Department of Toxic Substances Control

Signatory's Name:

Barbara For

Title:

BRANCH CHIEF

Date:

8/18/2004

Reviewed By:

Rachel J. Dragomir
Agency Attorney

Attest By:

Diane Holmes
Agency Secretary

322886

EXHIBIT A
Site Location, Vicinity, and Parcel Maps
Legal Description

LEGAL DESCRIPTION
AREA T MARINA BAY

Parcel of land situate in the City of Richmond, County of Contra Costa, State of California, described as follows:

Commencing at a northeast corner of Subdivision Tract 7440 recorded in 1995 in MB 383, Page 2, Contra Costa County records at a point on the south right of way line of Peninsula Drive as shown on said Tract; thence North, a distance of 42.46 feet to the POINT OF BEGINNING on the north line of said Peninsula Drive, said point also being on a curve to the right, of which the radius point lies N05°47'45"E, a radial distance of 100.00 feet; thence along said north line westerly along the arc, through a central angle of 09°38'49", a distance of 16.84 feet to a point of compound curve to the right having a radius of 130.00 feet and a central angle of 33°33'26"; thence continuing along said north line the following courses; northwesterly along the arc, a distance of 76.14 feet; thence N41°00'00"W, a distance of 26.72 feet to a point of curve to the left having a radius of 430.00 feet and a central angle of 06°25'00"; thence northwesterly along the arc a distance of 48.16 feet; thence N47°25'00"W, a distance of 120.59 feet to a point of curve to the left having a radius of 130.00 feet and a central angle of 18°19'31"; thence northwesterly along the arc a distance of 41.58 feet; thence N02°00'00"E, a distance of 29.69 feet; thence N20°30'00"W, a distance of 12.99 feet; thence N47°00'00"E, a distance of 69.77 feet; thence N01°08'16"E, a distance of 33.66 feet; thence N19°42'19"E, a distance of 56.53 feet; thence S88°51'44"E, a distance of 65.00 feet; thence S39°51'44"E, a distance of 383.57 feet to the point of curve of a non tangent curve to the left, of which the radius point lies S45°53'05"E, a radial distance of 230.80 feet; thence southwesterly along the arc, through a central angle of 11°41'13", a distance of 47.08 feet to a point of reverse curve to the right having a radius of 100.00 feet and a central angle of 63°22'02"; thence southwesterly along the arc, a distance of 110.60 feet to the POINT OF BEGINNING. Containing 73,986.94 square feet or 1.6985 acres, more or less.

Reference: Marina Bay – Area T
A-N West, Inc.
7-29-04
5836-01
AR-1



TRACT 7683 (360 MB 13)

N39°51'44"W
383.57'

S45°53'05"E (R)



N 8400' ±
E 8000

R=230.80'
L=47.08'
Δ=11°41'13"

R=100.00'
L=110.60'
Δ=63°22'02"

R=100.00'
L=16.84'
Δ=9°38'49"

R=130.00'
L=76.14'
Δ=33°33'26"

R=100.00'
L=127.44'(T)
Δ=73°00'52"

R=430.00'
L=48.16'
Δ=6°25'00"

S41°00'00"E
26.72'

N20°30'00"W
12.99'

R=130.00'
L=41.58'
Δ=18°19'31"

S47°25'00"E
120.59'

CENTERLINE

PENINSULA DRIVE

N02°00'00"E
29.69'

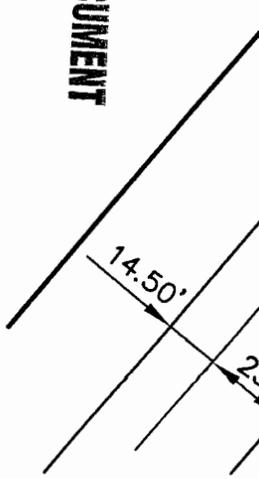
N47°00'00"E
69.77'

N01°08'16"E
33.66'

N88°51'44"W
65.00'

N19°42'19"E
56.53'

END OF DOCUMENT



EC 15+43.56

EC 16+64.15

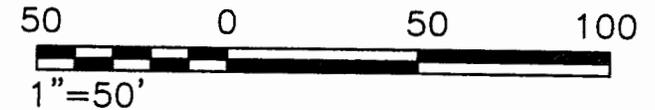
EC 17+10.40

EC 17+43.75

POINT OF BEGINNING

POINT OF COMMENCE

PLAN
1"=50'



Rev.	Date	Description	By

ANWEST INC.
Consulting Engineers
3095 Richmond Parkway
Suite 201
Richmond, California 94808

Designed By: FRB	Scale: 1"=50'
Drawn By: TFJR	Project No: 5836-01
Checked By: RSB	Date: 7/29/04

**AREA T - MARINA BAY
ADJACENT PENINSULA DRIVE**

Dwg No:
AR-1