

**California Regional Water Quality Control Board
San Francisco Bay Region**

Recording Requested By:

Arrowhead Marsh LLC
c/o Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

When Recorded, Mail To:

Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

Pardee Drive and Swan Way, Oakland, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the __ day of _____, 2004 by Arrowhead Marsh LLC, a Delaware Limited Liability Company ("Covenantor") which is the Owner of record of that certain property situated at Pardee Drive and Swan Way, in the City of Oakland, County of Alameda, State of California, which is more particularly described in Exhibit A of the Mutual Release and Covenant Not to Sue attached hereto and incorporated herein by this reference (such property hereinafter referred to as the "Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

A. Contaminants at the Property. Portions of the Property's soil and groundwater contain various regulated chemical compounds, including polycyclic aromatic hydrocarbons, total petroleum hydrocarbons as diesel, gasoline and motor oil, grease, volatile organic compounds, chlorinated solvents and heavy metals, (collectively, "Compounds") as described in various reports filed with the Board, including without limitation, Baseline Environmental Consulting's, "*Phase I/II, Site Assessment, Arrowhead Marsh Site Parcel PO592, Pardee Drive and Swan Way, Oakland, California, December 1999*", and other information and reports referenced therein, and ENV America's "*Phase 1*

Environmental Site Assessment, dated December 2003" and its "*Limited Soil and Groundwater Investigation*, dated February 2, 2004".

B. Property Investigation and Final Remedial Action Plan. The nature and extent of the Compounds in the soil and groundwater at the Property have been defined in the reports on file with the Board. No additional investigation or remediation is required.

C. Exposure Pathways. Compounds are present in soil and groundwater at the Property. Without the mitigation measures incorporated in this Covenant, exposure to the Compounds may be possible as a result of soil excavation or groundwater use. However, the risk of exposure to the Compounds has been substantially lessened by the controls referenced herein.

D. Adjacent Land Uses. The Property is located in a redeveloping area zoned to allow light industrial and other commercial uses and is adjacent to other industrial and commercial properties.

E. Disclosure. To the best of Covenantor's knowledge, extensive sampling of the Property has been conducted and Covenantor is unaware of the presence of hazardous materials on the Property other than the Compounds that have been disclosed to the Board in the Reports on file with the Board.

F. Notice. Covenantor desires to provide notice of certain matters respecting the Property and to impose certain covenants, conditions and environmental restrictions on the Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. Pursuant to California Civil Code Section 1471, this Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Board has determined that the restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the Property of the Compounds. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants pursuant to Civil Code Section 1471. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are enforceable by the Board and the Covenantor.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with and are bound by the provisions of this Covenant and to agree for and among themselves, and their respective members, shareholders, directors, officers, employees, partners, partnerships, agents, representatives, attorneys, heirs, successors, and assigns, that the provisions as herein established must be adhered to for the benefit of the Board, the Covenantor, and the Owners and Occupants of the Property and that the interest of the Owners and Occupants of the Property shall be subject to the provisions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and/or attached to each and all deeds and leases of any portion of the Property.

1.4 Purpose. It is the purpose of this instrument to protect human health and the environment by reducing the risk of exposure to residual Compounds in soils and groundwater.

ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Occupants. "Occupants" shall mean Owners and those persons entitled, by any means, including without limitation, by ownership, leasehold, or other legal right or relationship to the right to occupy any portion of the Property.

2.3 Order. "Order" shall mean any and all orders and resolutions adopted by the Board, including Resolution No. R2-2004-0016, adopted on March 18, 2004 and the Mutual Release and Covenant Not to Sue Attachment to the Resolution, together with Exhibits A-D thereto.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and any and all successors in interest, including heirs and assigns, who, by any means, hold title to all or any portion of the Property.

2.5 Soil Management Plan (SMP). Exhibit B to the Mutual Release attached to Board's Resolution No. R2-2004-0016.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as follows:

a. Development of the Property is prohibited for permanent human habitation under any land use or including single or multi-family housing. Office, retail, commercial, and industrial uses are acceptable uses.

b. Until the Board, or its successor agency, determines that the withdrawal of groundwater from the Property does not pose a significant existing or potential hazard to present or future public health or safety or to the environment, no Owner or Occupant of the Property or any portion of the Property shall drill or otherwise construct a well at the Property for purposes of extracting water.

c. The excavation of soil below the pavement or extraction of groundwater at any depth for any purpose shall not commence unless and until the Owner or Occupant desiring to make the excavation or extract groundwater implements the requirements contained in the SMP. Soil excavation and groundwater extraction that complies with the SMP shall not require a separate plan or separate Board acceptance pursuant to this subparagraph 3.1(c).

d. The Covenantor agrees that the Board, and/or any persons acting pursuant to the Order, shall have reasonable access to the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the California Water Code.

e. Except as permitted by the SMP or the Board, no Owner or Occupant of the Property shall act in any manner that will materially exacerbate or contribute to the existing environmental conditions of the Property.

f. All uses and development of the Property shall be consistent with the SMP.

3.2 Enforcement. Failure of the Owner to comply with any of the requirements set forth in paragraph 3.1 shall be grounds for the Board, or the Covenantor by reason of this Covenant, to have the authority to require that the Owner or Occupant modify any use of the Property in material violation of the provisions of subparagraphs 3.1(a) through (e). Material violation by an Owner or Occupant of the Covenant shall be grounds for the Board or Covenantor to file civil actions against the offending Owner or Occupant as provided by law. Nothing in this Section creates the obligation on the part of the Board or the Covenantor to enforce the provisions of the Covenant.

3.3 Notice in Agreements: All purchase and lease agreements for the Property executed after the date of recording of this Covenant shall contain the following statement:

The land described herein contains hazardous substances, as defined in Section 25316 of the California Health and Safety Code, and is subject to the requirements of a Covenant and Environmental Restriction on Property dated _____, 2004, and recorded on _____, 2004, in the Official Records of Alameda County, California, as Document No. _____, which Covenant imposes certain covenants, conditions, and environmental restrictions pursuant to California Civil Code Section 1471 on the use of the property described herein. The provisions of the Covenant are incorporated herein and made a part hereof as if set forth in full. This statement is not a declaration that a hazard exists.

ARTICLE IV
VARIANCE AND TERMINATION

4.1 Term. Unless terminated with the written consent of the Board and the original Covenantor, this Covenant shall continue in effect until it can be conclusively demonstrated that there are no Compounds present in, on, under, beneath or migrating onto or off of the Property.

ARTICLE V
MISCELLANEOUS

5.1 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 purpose whatsoever.

5.2 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 certified mail, postage pre-paid, return receipt requested:

If To: "Covenantor"

Arrowhead Marsh LLC
c/o Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

If To: "Board"
California Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, California 94612

Either party may change its notice address upon ten (10) days advance written notice to the other.

All Notices shall be copied to:

"Port": Port of Oakland
c/o Port Attorney
Michele Heffes, Deputy Port Attorney
530 Water Street, 4th Floor
Oakland, CA 94612

5.3 Partial Invalidity. If any portion or term of the Restrictions set forth in this Covenant is determined to be invalid for any reason, the remaining portions and terms shall remain in full force and effect as if such invalid portion had not been included in this Covenant.

5.4 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.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. The Covenantor shall record this instrument in the County of Alameda within ninety (90) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

Covenantor: Arrowhead Marsh LLC
A Delaware limited liability company

By: _____
Title: A Member
Date: _____

Agency: State of California
Regional Water Quality Control Board,
San Francisco Bay Region

By: _____
Title: Executive Officer
Date: _____

