

RESOLUTION NO. 2007-913

Adopted by the Sacramento City Council

December 11, 2007

RESCINDING RESOLUTIONS NO. 94-737 AND 2000-578 TO REPEAL THE 1994 MEMORANDUM OF UNDERSTANDING AND THE 2000 ENVIRONMENTAL OVERSIGHT AGREEMENT WITH THE STATE DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) AND THE SOUTHERN PACIFIC TRANSPORTATION COMPANY, AND APPROVING THE MEMORANDUM OF UNDERSTANDING WITH DTSC AND S. THOMAS ENTERPRISES, LLC REGARDING REMEDIATION OF THE SACRAMENTO RAILYARDS

BACKGROUND

- A. On December 13, 1994, the City of Sacramento entered into a Memorandum of Understanding (1994 MOU) with the California Environmental Protection Agency Department of Toxic Substances Control (DTSC) and the Southern Pacific Transportation Company (SPTCo) regarding remediation and redevelopment of the Sacramento Locomotive Works (Sacramento Railyards).
- B. On October 3, 2003, the City Council approved the Environmental Oversight Agreement (2000 EOA) with DTSC and SPTCo that implemented the 1994 MOU by prescribing the methods for remediation of the Sacramento Railyards to allow for redevelopment and DTSC granted to the City oversight authority regarding remediation that was intended to ensure that SPTCo undertook remediation of the entire site in a manner that would allow for non-industrial development.
- C. The Union Pacific Railroad Company (UPRR) became a successor in interest to SPTCo for ownership of the Sacramento Railyards and thereafter undertakes site characterization and remediation work.
- D. In December 2006, S. Thomas Enterprises, LLC (Thomas) purchased the Sacramento Railyards from UPRR and has continued working with DTSC regarding site characterization and remediation under the DTSC approved Remedial Action Plans.
- E. Remediation of portions of the Sacramento Railyards has been completed and completion of the soil and groundwater contamination is targeted to occur within the next few years.
- F. A new Memorandum of Understanding has been developed between the City,

DTSC and Thomas to reflect the current site conditions and DTSC's regulatory process, and includes an obligation by Thomas to complete site remediation and to work with DTSC to develop the land use controls and the land use specific remediation approaches that will allow for redevelopment in accordance with the Railyards Specific Plan.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Resolutions 94-737 and 2000-578 are rescinded, thereby repealing the 1994 MOU and the 2000 EOA.

Section 2. The attached Memorandum of Understanding with the Department of Toxic Substances Control and S. Thomas Enterprises, LLC Concerning Remediation and Redevelopment of the Sacramento Locomotive Works, Sacramento California is hereby approved. The City Manager is authorized and directed to execute the Memorandum of Understanding on behalf of the City of Sacramento.

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Exhibit A: 2007 Memorandum of Understanding – 20 pages

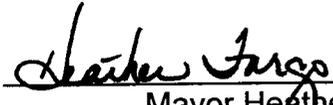
Adopted by the City of Sacramento City Council on December 11, 2007 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.



Mayor Heather Fargo

Attest:



Shirley Concolino, City Clerk

**MEMORANDUM OF UNDERSTANDING
AMONG THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL,
CITY OF SACRAMENTO, AND S. THOMAS ENTERPRISES OF
SACRAMENTO, LLC CONCERNING REMEDIATION AND
REDEVELOPMENT OF THE SACRAMENTO LOCOMOTIVE WORKS,
SACRAMENTO, CALIFORNIA**

RECITALS

- A. This Memorandum of Understanding ("MOU") between the Parties consists of general provisions for coordination of remediation and redevelopment of the site of the former Southern Pacific Transportation Company Sacramento Locomotive Works ("Railyards" or "Site"), which encompasses approximately 240 acres in the downtown area of the City of Sacramento. Exhibit A is a map depicting the Railyards Site and the remediation study areas.
- B. The Railyards was used by the Southern Pacific Transportation Company ("SPTCO") as a locomotive construction, repair and maintenance facility for over 100 years. As a result of these activities, the surface and subsurface soils were impacted to some degree by chemicals across much of the Site. In addition, the groundwater that underlies a portion of the Railyards was also impacted. The Department of Toxic Substances Control ("DTSC") issued enforcement orders to SPTCO to investigate and remediate the soil and groundwater contamination at the Railyards. In June 6, 1988, DTSC and SPTCO entered into an agreement regarding compliance with the enforcement orders ("Enforceable Agreement"), which has been amended over time to reflect the site investigation and remediation work undertaken under the oversight of DTSC
- C. On December 2, 1994, DTSC, SPTCO and the City of Sacramento ("CITY") entered into the Memorandum of Understanding ("1994 MOU") to set forth a program to ensure protection of human health and the environment during redevelopment of the Railyards. The 1994 MOU specified the respective responsibilities of each Party in implementing such program.
- D. On December 13, 1994, CITY approved the Railyards Specific Plan, which allowed for redevelopment of the Railyards from an industrial complex to a mixed use commercial, office and housing development, in reliance on the 1994 MOU that the Site would be remediated in a manner that would allow for such development.
- E. SPTCO commenced remediation of the Railyards under the oversight of DTSC in accordance with the Enforceable Agreement and the terms of the 1994 MOU. Thereafter, the Union Pacific Railroad Company (UPRR) became the successor to SPTCO in the ownership of the Railyards and continued the remediation efforts.
- F. Under the terms of the 1994 MOU, an Environmental Oversight Program was to be developed to address the development planning and permitting process, construction

activities, and ongoing remediation and environmental oversight of the Railyards. On July 31, 2000, DTSC, UPRR and the CITY entered into the Environmental Oversight Program (“2000 EOP”) for the purpose of implementing the provisions of the 1994 MOU. The 2000 EOP set out the framework for (1) the determination whether unacceptable risk may exist on a given parcel, (2) establishment of a process for managing impacted media (i.e., soil or groundwater contamination) encountered during construction, and (3) ensuring that development of the Railyards is protective of human health and the environment during construction and post-construction periods.

G. The 1994 MOU and 2000 EOP identified that the Railyards would be remediated to a baseline of “restricted-use” standard based on “construction worker” clean-up levels for the entire Site, which is also the cleanup level that is protective for commercial land uses at the Site. Land use specific remediation approaches (“LUSRA”) would be applied for certain parcels where utility corridors, residential and park uses were planned, and additional deed restrictions would be imposed to limit certain types of land uses and construction methods (e.g., excavation depths and dewatering) because contaminated soil would remain in place at a subsurface levels. The commercial land use/construction worker cleanup level, as applied to the Railyards through the risk assessment protocol, is based on an evaluation of the potential human exposure risk during long-term build-out and occupation of the Railyards property that concluded that the maximally exposed individual will be the construction worker. For specific land uses that require a more protective cleanup level, additional remedial measures including land use covenants, engineering controls, and LUSRAs would be needed to provide the appropriate level of protection.

H. In December of 2006, S. Thomas Enterprises of Sacramento, LLC (“THOMAS”) purchased the Railyards from UPRR. At the same time, THOMAS sold a portion of the Railyards to CITY, which is the site of the Sacramento Valley Station. Thereafter, THOMAS has been expeditiously undertaking continued remediation of the Railyards in accordance with the Enforceable Agreement and under the oversight of DTSC.

I. Remediation of portions of the Railyards completed to-date has been to levels acceptable for exposures typical of commercial land uses or construction workers in the following areas:

- Sand Blast Grit Piles
- Battery Shop Yard
- Ponds and Ditch
- Drum Storage Area
- Sacramento Station
- 7th Street right of way

J. For purposes of ongoing investigation and remediation of contaminated soil and groundwater at the Site, DTSC recognizes six soil study areas and the minimum targeted remediation level is for commercial land use/construction worker cleanup levels. The targeted soil remediation completion to allow for DTSC certification of the Remedial Action Plan (RAP) for the defined study areas is scheduled as follows:

- Lagoon (RAP Certification targeted for 2010)
- Car Shop Nine (RAP Certification targeted for 2009)
- Northern Shops/Drum S (RAP Certification targeted for 2009)
- Central Corridor (RAP Certification targeted for 2009)
- Manufactured Gas Plant (RAP Certification targeted for 2011)
- Central Shops (RAP Certification targeted for 2009)

DTSC recognizes three groundwater study areas. These areas targeted groundwater remediation completion to allow for DTSC RAP certification is as follows:

- Lagoon Groundwater Study Area (RAP Certification targeted for 2010)
- Central Shops (RAP Certification targeted for 2009)
- Former Manufactured Gas Plant (RAP Certification targeted for 2011)

K. Exhibit A depicts the location of the foregoing study areas for the Railyards. Exhibit B provides a schedule of anticipated completion dates for remaining remediation of soil and/or groundwater, as of the Effective Date of this MOU.

L. To ensure that uncontrolled exposure to soil and groundwater contamination that may remain in place does not occur, DTSC requires that use restrictions in the form of land use covenants ("LUCs") be recorded on those parcels at the Site which were not remediated to unrestricted use levels. The applicable LUCs may differ by parcel.

M. Exhibit C is a copy of the 7th Street LUC that includes restrictions concerning excavation, soil management, extraction of groundwater and other matters pertaining to the land uses at that portion of the Site. This serves as an example of types of restrictions that may be applicable to other portions of the Site. Section VIII of this Memorandum of Understanding sets forth the mechanism whereby LUCs specific to the redevelopment of the Railyards will be developed. Those LUCs will allow for residential development and parks if additional measures are implemented.

N. THOMAS proposes to redevelop the Railyards for mixed commercial (office and retail), high density residential, and parks and open spaces for public use. Plans for redevelopment are detailed in documents to be adopted by CITY, including the Railyards Specific Plan, Railyards Design Guidelines, and the Railyards Special Planning District zoning ordinance ("SPD"), which are collectively referred to herein as the "Development Plan." The Specific Plan establishes the land uses for each area of the Railyards, the Design Guidelines specify the design of buildings, streets, parks and open spaces, and the SPD establishes the process for approval of individual development projects. The SPD requires verification that the remediation of the parcels proposed for development has been completed and the development complies with the remedial measures defined for that portion of the Site, including LUCs. LUSRAs will be defined for various potential

land uses for the Site and will provide an aid to Developers. LUSRAs will provide a convenient template for development design that identifies acceptable controls that are consistent with the remedial measures determined by DTSC to be protective of public health and the environment.

O. The 1994 MOU and the 2000 EOP need to be updated, particularly in regards to: (1) the remediation methods and cleanup standards to reflect current conditions at the Railyards and DTSC's approved Remedial Action Plans and Remedial Design and Implementation Plans; (2) to insure that during construction in areas that have been remediated and in areas adjacent to where remediation is on-going, the public health and construction worker safety is protected by compliance with the LUCs; (3) to insure that planned residential development and park and open space areas can be developed by implementing updated LUSRAs; and (4) to provide for coordination between the Parties in regard to compliance with post-certification obligations.

P. On December 13, 1994, CITY approved the Railyards Specific Plan, which allowed for redevelopment of the Railyards from an industrial complex to a mixed use commercial, office and housing development, in reliance on the 1994 MOU that the Site would be remediated in a manner that would allow for such development.

AGREEMENT

THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL, THE CITY OF SACRAMENTO, AND S. THOMAS ENTERPRISES OF SACRAMENTO, LLC HAVE EXECUTED THIS MEMORANDUM OF UNDERSTANDING AS OF DECEMBER 11, 2007 ("EFFECTIVE DATE") AND AGREE AS FOLLOWS:

I. THE PARTIES AND THEIR ROLES

The parties to this Agreement ("Parties") are:

A. Department of Toxic Substance Control ("DTSC")

DTSC is a department of the California Environmental Protection Agency, an agency of the State of California. DTSC has authority to regulate the remediation of hazardous materials pursuant to Health and Safety Code, Chapter 6.5, Sections 25200 et seq., and Chapter 6.8, Sections 25300 et seq., and other provision of the law. On March 29, 2006, the California Environmental Protection Agency's ("Cal EPA") Site Designation Committee designated DTSC as the Administering Agency for the State of California for remediation of the Railyards pursuant to Health and Safety Code Section 25260 et seq.

B. City of Sacramento

CITY is a municipal corporation of the State of California. CITY has the authority to regulate land use and development within its jurisdiction pursuant to the police power (Cal. Const. Art. XI, §§ 5 and 7).

C. S. Thomas Enterprises of Sacramento, LLC

THOMAS is the owner of the Railyards and proposes to redevelop the Site as a mixed use commercial (retail and office) and residential community as permitted by CITY. Pursuant to the Enforceable Agreement, UPRR and THOMAS are the responsible parties for the continued remediation of hazardous materials on or emanating from the Site. Successors and subsequent property owners and subsequent property owners undertaking redevelopment of the Site (“Developers”) will also be subject to the applicable terms of this MOU through the CITY’s SPD provisions.

D. Exercise of Authority Consistent with the Authority of the Other Parties.

This MOU concerns the interrelationship of DTSC’s authority under the Health and Safety Code to regulate site remediation, the CITY’s authority under the police power to regulate land use, and the responsibility of THOMAS under the Enforceable Agreement to remediate the Railyards. By entering in this MOU in the spirit of cooperation, the Parties do not in any way intend to alter the legal authority or jurisdiction that each possesses pursuant to constitutional, statutory or common law. In particular, while the CITY does not relinquish its police power to regulate in the interests of the health, safety and welfare of its citizens, it has no intention of regulating or taking on liability for remediation of the Site. Thus, this MOU allows the CITY to administer land use in the Railyards without in any way substituting its judgment for DTSC’s on matters of remediation. This MOU and all LUCs and LUSRAs prepared pursuant to the terms of this MOU shall be binding upon all successors, including successor agencies.

II. REPEAL OF 1994 MOU AND 2000 EOP

Due to the remediation activities that have occurred since the 1994 MOU and the 2000 EOP were approved, changes in clean-up standards, additional soil characterization studies, and the level of remediation completed to-date; many of the components of the 1994 MOU and the 2000 EOP are no longer applicable to the current conditions at the Railyards. Those portions of the 1994 MOU and the 2000 EOP which are still relevant to the ongoing remediation of the Railyards for redevelopment in accordance with the Development Plan have been retained in this MOU. Also, the CITY no longer desires the authority to undertake environmental oversight of the remediation of the Railyards, subject to THOMAS’ compliance with the terms of this MOU, and the CITY is willing to administer the LUCs and LUSRAs as approved by DTSC. For these and other reasons, the Parties agree that the 1994 MOU and the 2000 EOP are hereby repealed and are no longer have any force or effect in regard to Railyards remediation and redevelopment.

III. PURPOSE OF THIS MOU

The Parties agree that the primary purpose of this MOU is to enable the orderly and timely completion of the remediation in a manner fully protective of human health and the environment and to allow for redevelopment of this Site in accordance with the Development Plan and consistent with the LUCs and LUSRAs. THOMAS has prepared a Development Plan for the Site, and will work with DTSC to assure that appropriate LUSRAs and LUCs will be put in place for the proposed land uses. In order to achieve this purpose, the Parties agree that the following provisions shall guide performance of their respective implementation responsibilities.

IV. COMMUNICATION AMONG THE PARTIES

Ongoing communication among the Parties is essential to implementation of this MOU, especially with regard to changes in remediation schedules, health risk assessment assumptions, land uses, and remediation standards, which may affect the types of permitted land uses and the timing of redevelopment of the Railyards. It is the intent of the Parties to meet within a reasonable time upon the request of any Party in advance of a decision that will affect the attainment of the remediation of the Railyards in a manner that will allow for timely implementation of the Development Plan.

V. DEVELOPMENT RESPONSIBILITIES

A. CITY Administration of DTSC Land Use Covenants

The Parties agree that CITY will establish and administer a process that will enable implementation of DTSC's land use restrictions consistent with the LUCs and the DTSC approved LUSRAs that will be recorded against applicable portion of the Railyards. Each property owner will be responsible for recording the applicable LUCs. This process will be administered through the CITY's Development Services Department. The CITY's expertise in land use and development approvals will ensure that the administration of the following process for compliance with the DTSC-approved LUCs and LUSRAs as applicable to the Railyards is carried out in an efficient manner:

1. Within two hundred and seventy (270) days after execution of this MOU, THOMAS will provide CITY with a listing, which has been reviewed and approved by DTSC, of all of the existing LUC's and LUSRAs ("List") that have been recorded against each of the parcels set out in the approved Railyards Master Tentative Parcel Map ("Map Parcels"). The List shall, at a minimum, include for each Map Parcel: (i) the APN number, (ii) tentative map parcel number, (iii) Specific Plan parcel number, (iv) DTSC designated study area, (v) the chemical constituents remaining in place, (vi) the date of DTSC certification that remediation of the subject parcel has been completed, and (vii) the recorded LUCs and DTSC approved LUSRAs. As remediation of each Map Parcel is completed, THOMAS will update this listing and resubmit a revised List to CITY, after review and approval of DTSC, which identifies the changes from the prior

List so that CITY can update its computer records. THOMAS shall provide this data in a format as specified by CITY so that it can be easily downloaded in CITY's computer system. CITY will input the LUCs and LUSRAs by APN and Map Parcel numbers into the CITY's computer system, which tracks zoning and map conditions by APN number. The Parties shall establish a format and schedule for monitoring and reporting to DTSC the status of land use, zoning, and parcelization.

2. Upon completion of implementation of a RAP for a study area or portions thereof, DTSC will issue either a clean parcel letter, RAP certification, or the equivalent documentation for the subject Map Parcel. This document will satisfy the SPD's remediation verification requirement for that Map Parcel. THOMAS shall not submit to CITY a proposed final map for a Map Parcel, and the CITY shall not approve a final map for that Map Parcel, until (i) DTSC has issued a clean parcel letter, RAP certification, or the equivalent documentation for the subject Map Parcel, (ii) the LUCs have been recorded or DTSC has approved the LUCs for that Map Parcel, and (iii) DTSC has approved the LUSRAs to allow for development of that Map Parcel in accordance with the Development Plan. After CITY approves and records the final map, CITY will update its computer system to denote the new APN number for each final map parcel. CITY will not issue a development permit or entitlement or a building permit for any land use which is not allowed under the LUCs or LUSRAs for that APN and/or Map Parcel.

3. Grading and other street and utility permits and approvals will not be issued by CITY unless THOMAS submits to CITY: (i) a DTSC clean parcel letter, RAP certification, or the equivalent documentation for the subject area that is to be graded or improved, and (ii) verification that the grading and improvement plan is in compliance with DTSC-approved remedial measures including LUCs regarding excavation depths, soil management, and dewatering restrictions. Also, grading permits and improvement plans for utility installations may be conditioned on compliance with the Utility Corridor requirements set out in Section VII, below.

4. CITY shall notify DTSC and THOMAS of any observed violations of LUCs, engineering controls, or LUSRAs.

5. THOMAS acknowledges that CITY's costs to input and administer the List and to review applications for final maps, development permits and grading and utility permits for compliance with the LUCs and LUSRAs will be included in CITY's application fees.

The foregoing provisions regarding CITY administration of the LUCs, which may restrict certain future excavations, land use development, and extraction of groundwater, are to ensure that: (a) land use is consistent with completed remediation, (b) specific development projects are compatible with remediation achieved, (c) construction and

development is protective of human health and the environment, and (d) procedures are established to guide the proper administration of the DTSC LUCs.

VI. CONTINUED REMEDIATION EFFORTS

DTSC has established priorities for investigations and remediation of portions of the Site based on actual or potential threats to human health and the environment from contamination, and the priorities may change as new information becomes available in the future. DTSC has approved schedules for investigation and remediation of the Railyards that take into account DTSC's priorities for remediation. THOMAS commits to undertaking all commercially practicable actions to continue remediation of the Railyards in compliance with the Enforceable Agreement.

Within sixty (60) days after receipt of a written request from CITY, THOMAS will provide CITY with information regarding the status of DTSC's approved Remedial Action Plans (RAP) and Remedial Design and Implementation Plans (RDIP), and the schedule for completion of the remediation of those portions of the Site which have not yet been certified by DTSC as of the date of the written request. CITY acknowledges that DTSC may approve amendments to the RAPs and RDIPs without CITY's approval and that in no event will the CITY's redevelopment goals outweigh protection of public health and the environment.

THOMAS may encounter unforeseen subsurface conditions while undertaking remediation of the Site that differ from those anticipated in an approved RAP. In the event that a RAP must be amended or revised to change the approved remediation standards or approach, THOMAS, DTSC and CITY will evaluate the impact of this change on implementation of the Development Plan in regards to whether it is practical to undertake the additional remediation for redevelopment of that portion of the Site.

VII. UTILITY AND CONSTRUCTION WORKER PROTECTIONS

DTSC has approved RAPs that require at a minimum that the Site be remediated to commercial land use/construction worker cleanup levels and such levels are protective of construction workers and utility workers who undertake excavation of the Site for installation and maintenance of public utilities and public streets, as well as protective of construction workers for private developments. Therefore, establishment of utility corridors with "no test soil" zones as set out in the 1994 MOU and the 2000 EOP are no longer required to be protective of utility and construction worker health and safety.

In general, utility corridors and the location of buildings in the Development Plan have been designed to avoid areas where contaminated soil has been left in place under the terms of the approved RAP. In those places where soil contamination exceeding commercial land use/construction worker cleanup levels will be left in place, THOMAS shall work with DTSC to obtain its concurrence that there will be no unacceptable risks associated with the contamination left in place.

In addition, construction methods employed by THOMAS for the private development shall include construction worker protections pursuant to a worker health and safety plan and protocols if contaminated soils above “thresholds of concern” (as defined by DTSC) are encountered, pursuant to the terms of the applicable soil management plan. Any utility or construction work which requires dewatering shall be subject to DTSC’s prior approval of a site-specific dewatering plan before CITY issues a grading, building or other permit. Any air monitoring required shall be performed in compliance with the Sacramento Metropolitan Air Quality Management District regulations and permits, as well as DTSC’s approved air monitoring plan.

VIII. LAND USE BASED REMEDIATION AND LUSRAS

Land Use Specific Remediation Approaches (LUSRAs) specified in the 1994 MOU and the 2000 EOP have been repealed. New LUSRAs will be developed by the Parties to define supplemental engineering and institutional controls or additional remediation that will be implemented to allow residential and park/open space land uses along with other uses that would otherwise be restricted by the LUCs at the Railyards.

A. Remediation Approaches to Allow for Residential Development

DTSC and THOMAS will establish LUCs specific to the redevelopment of the Railyards as referenced above. Those LUCs will allow for residential development if certain additional measures are implemented. These additional measures or LUSRAs, consisting of engineering and institutional controls, will be specific to the land uses and conditions at each portion of the Site. The LUSRAs approved by DTSC will be consistent with decisions made in accordance with the Enforceable Agreement and Chapter 6.8 of the Health and Safety Code.

LUSRAs typically allow for residential development if the building design provides that living areas are not located on the ground or first floor of any building, so as to provide a physical separation between the contaminated soil and the residents, or if imported clean soil is placed on the parcel at specified depths to provide a soil barrier. In addition, for areas of the Site with a history of volatile organic compounds (“VOCs”) constituents in soil and/or groundwater, LUCs and LUSRAs may also include measures to prevent the migration and accumulation of soil vapors in interior spaces, for example with impermeable membranes or specialized ventilation systems.

In order to implement the Development Plan, THOMAS must obtain DTSC’s approval of the applicable LUSRAs required to allow for residential development throughout the Site. Exhibit D sets out a list of LUSRAs that may be acceptable to DTSC for implementation by THOMAS or Developers to permit residential development at the Railyards consistent with the Development Plan. Exhibit D shall be replaced with the LUSRAs list after approval by DTSC.

B. Remediation Approaches to Allow for Park Development

DTSC and Thomas will establish LUCs specific to this Railyards as referenced above. Those LUCs will allow for park and open space development if certain additional measures are implemented. These additional measures will be specific to land uses and conditions at each portion of the Site and are also referred to as LUSRAs. The LUSRAs for parks and open spaces and landscaped areas typically require the placement of acceptable fill at specified depths and/or impervious caps so that the public is not exposed to contaminated soil or hazardous soil vapors. In addition, for areas of the Site with a history of volatile organic compounds (“VOCs”) constituents in soil and/or groundwater, the LUCs and LUSRAs may also include measures to prevent unacceptable exposure to soil vapors, for example with impermeable membranes or specialized ventilation systems.

In order to implement the Development Plan, THOMAS must obtain DTSC’s approval of the applicable LUSRAs required to allow for development of parks and open spaces and landscaped areas throughout the Site. The type and amount of fill required may differ by location and types of use. Exhibit D also sets out the list of LUSRAs that DTSC may require THOMAS or Developers to implement in order to permit park and open space development and landscaped areas throughout the Railyards consistent with the Development Plan. Exhibit D shall be replaced with the LUSRAs list after approval by DTSC.

C. Schedule for Approval of LUSRAs by DTSC

Prior to CITY’s approval of the first final map or issuance of the first building permit for development in the Railyards, THOMAS must: (1) obtain DTSC’s approval of the LUSRAs and the terms of the LUCs that will allow for implementation of the Development Plan, including development of all planned residential uses and parks and open spaces and landscaped areas; and (2) modify any previously recorded LUCs that would prevent implementation of the Development Plan for each portion of the Site.

IX. POST-CERTIFICATION REMEDIAL ACTIVITIES

A. Additional Remediation Following Certification

The Parties recognize that additional remedial activities may be necessary after DTSC certification that the Remedial Action Plan (RAP) has been implemented and the remediation work has been fully completed. Additional Remediation means additional assessment and/or remediation arising under one or more of the following circumstances, among others: (i) discovery of soil conditions that create unacceptable risks to utility or construction workers during construction, (ii) a change of land use or development types or building designs, or (iii) a change of remediation standards that significantly impact risks to human health or the environment. It is the intent of the THOMAS and DTSC to carry out any Additional Remediation in a timely and efficient manner. To ensure that this occurs, the Parties agree to comply with the following principles:

1. DTSC will be notified in a timely manner by the Party that discovers during construction soil conditions that may require Additional Remediation. In the case of a change of applicable remediation standards as noted above, DTSC will notify the CITY and THOMAS and specify the regulatory process, pursuant to the Health and Safety Code, applicable to the proposed Additional Remediation.

2. The Parties agree that the process to be used to complete Additional Remediation will be the most efficient consistent with current RAP approvals and the need to protect human health and the environment. THOMAS or Developer, as applicable, will be responsible to undertake such Additional Remediation subject to DTSC oversight and in accordance with the provisions of the Enforceable Agreement. CITY may deny or condition a grading or building permit or issue a stop work order at a development site which requires Additional Remediation if the CITY determines that such action is needed to protect the public health or the environment or if DTSC requests CITY take such action.

3. DTSC will ensure where applicable that the process used to complete Additional Remediation will apply DTSC approved documents in effect as of the date of discovery of the need for Additional Remediation, including the applicable cleanup goals and remediation technologies approved for the Railyards. The DTSC approved documents as of the Effective Date are listed in Exhibit E, on file with DTSC, and incorporated herein by this reference as if set forth in full. Notwithstanding the terms of the existing documents as set out in Exhibit E, DTSC will follow Chapter 6.8 of the Health and Safety Code during oversight of any Additional Remediation. Upon review of and concurrence with the adequacy of investigation and completion of the remediation of the contaminants, DTSC will provide written certification that the Additional Remediation was properly undertaken, and additional LUCs will be recorded, if applicable, prior to CITY's approval of any additional or continued development at the subject site.

4. For all Additional Remediation required, THOMAS shall notify both the CITY and DTSC in writing to identify the legal entity that will be responsible for such remediation, the schedule for submittal of the required documentation to DTSC to obtain approval to undertake the remediation, and identify the proposed contractor that will be undertaking the work and the schedule for completion.

B. Changing Land Uses Following Certification

The Parties recognize that over the term of the development of the Railyards in accordance with the Development Plan, changes in and modification of the Development Plan and the RAPs may occur for areas for which remediation has not been completed prior to the Effective Date. If in the future CITY or THOMAS proposes to make changes to the Development Plan, such changes will be submitted to DTSC for a determination whether the proposed new or modified land use is of a type that is consistent with

existing cleanup standards and LUCs and LUSRAs. A health risk assessment or other analysis may be required to establish remediation levels for the proposed change in the Development Plan. In such cases, Additional Remediation may be required and/or additional LUCs and LUSRAs may need to be developed. In all cases where the change to the Development Plan would require Additional Remediation and/or imposition of new or differing LUCs and/or LUSRAs, DTSC approval of modified LUCs or LUSRAs must be obtained before CITY amends the Development Plan or issues any development-related permits for that portion of the Site.

C. Changing Standards Following Certification

The Parties recognize that over the term of the development of the Railyards in accordance with the Development Plan, relevant remediation standards may be revised downward or more restrictive standards may be adopted as needed to protect human health and the environment. Under terms of an Operation and Maintenance Agreement between THOMAS and DTSC, THOMAS will review and reevaluate the Response Action every five (5) years to determine the adequacy of the implemented response measures in protecting human health and the environment. Based on DTSC's review of Thomas' 5-Year Review Report, as well as other information, DTSC may determine if there is a significant change in risk requiring Additional Remediation or other action such as engineering and/or institutional controls. The additional measures required may include further remediation of soil and/or groundwater, imposition of additional LUCs and/or engineering controls/LUSRAs to reduce the risk to human health and the environment for the anticipated exposures to acceptable levels.

X. IMPLEMENTATION

A. Amendment of MOU

All amendments to the provisions of this MOU shall require an agreement in writing by all of the Parties' representatives authorized to execute this MOU.

B. Term

This MOU shall remain in effect until terminated by all of the Parties in writing.

C. Notices

All notices required pursuant to this MOU shall be in written form and transmitted simultaneously by either first class mail or telefacsimile (followed by first class mail) to each Party's designated point of contact. The points of contact are as follows:

CITY: Lezley Buford
Environmental Services Manager
Development Services Department
915 I Street, New City Hall
Sacramento CA 95814
Phone: (916) 808-5935
Fax: (916) 556-3968

DTSC: James Tjosvold
Chief of Northern California, Central Cleanup Operations Branch
Department of Toxic Substances Control
Attention: Paul Carpenter, Project Manager
8800 Cal Center Drive
Sacramento, 95826-3200
Phone: (916) 255-3730
Fax: (916) 255-3936

THOMAS: Elias A. Rashmawi
Director of Land Redevelopment
S. Thomas Enterprises of Sacramento, LLC
401 I Street
Sacramento, CA 95814
Phone: (916) 329-4500
Fax: (916) 329-4501

XI. RESPONSIBILITIES OF THE PARTIES

Each Party agrees to perform the tasks listed below in addition to their duties in Sections II through X within the time periods specified.

A. DTSC

1. DTSC agrees to provide, to the extent within its control and consistent with protection of human health and the environment of the State of California, the staffing it determines necessary to meet its responsibilities under this MOU.
2. DTSC agrees that it will use its best efforts to provide oversight for purposes of overseeing ongoing remediation of the Railyards after the Effective Date and certifying Additional Remediation.
3. DTSC agrees to exercise reasonable efforts to respond to submittals detailed in this MOU consistent with agreed upon schedules.

4. Pursuant to their lead agency designation, DTSC is responsible for determining that all applicable state laws, regulations and standards regarding remediation have been complied with at the time of completion of the investigation and remediation of each portion of the Site, including both soil and groundwater remediation.

B. CITY

1. CITY's primary role will be to assist DTSC in administering the LUCs and LUSRAs, where applicable, for each portion of the Site, and to confirm with DTSC that remediation has been performed to standards consistent with proposed development.

C. THOMAS

1. In addition to preparation of the List and development of the applicable LUCs and LUSRAs for DTSC's approval, THOMAS shall prepare guidance documents for approval by DTSC to provide prospective developers at the Railyards with appropriate guidance for administration of LUCs and complying with the applicable LUSRAs, and post-remediation (Additional Remediation) provisions of this Agreement.

2. THOMAS will monitor LUC implementation and provide reports on LUC implementation (including O&M responsibilities) to DTSC and CITY as required by DTSC.

3. THOMAS shall continue to fund DTSC's oversight costs in accordance with the March 29, 2006 resolution approved by the Cal/EPA Site Designation Committee designating DTSC as the Administering Agency for the Railyards and DTSC's oversight costs for any long-term operation and maintenance activities, and administration of all LUCs.

4. THOMAS will continue to provide CITY with notices when major remediation milestones have been reached and provide copies of the applicable remediation documents upon request.

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Exhibit A:
SITE MAP INDICATING STUDY AREAS

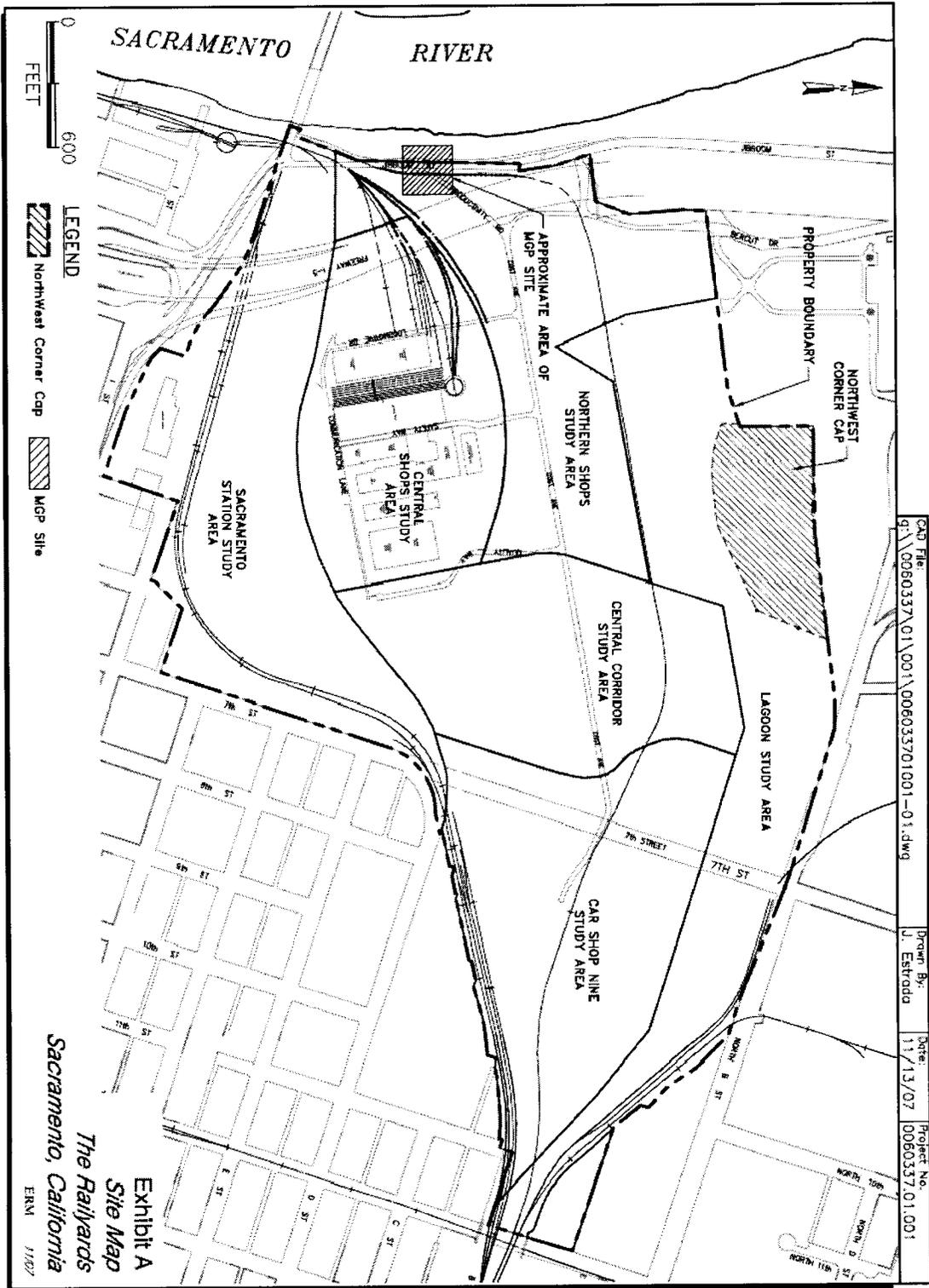


Exhibit A
Site Map
The Railyards
Sacramento, California
 ENM 11/07

Exhibit B:

REMEDIATION STATUS AND ESTIMATED COMPLETION SCHEDULE

**Railyards Study Area Remediation Status
November 2007**

Study Area	Status	Anticipated Certification Date
Drum Storage Area Soil	Remediation ongoing with Northern Shops; to be completed by 4Q 2008	2009
Drum Storage Area Ground Water	To be remediated with Lagoon Ground Water	2010
Battery Shop	Remediation completed	1989
Sand Piles	Remediation completed	1989
Ponds and Ditch	Remediation completed	1995
Lagoon Soil	To be completed by 4Q 2009	2010
Lagoon Ground Water	RAP complete by 1Q 2009	2010
Car Shop Nine	Remediation completed	2009
Central Corridor	To be completed by 4Q 2008	2009
Northern Shops	To be completed by 4Q 2008	2009
Central Shops Soil	RAP complete by 3Q 2008	2009
Manufactured Gas Plant	RAP complete by 2010	2011
Sacramento Station	Remediation completed	1994
Central Shops/South Plume Ground Water	RAP complete by 3Q 2008	2009

**Exhibit C:
LAND USE CONTROLS (DEED RESTRICTION)**

Attached is DTSC's Land Use Covenant for the 7th Street Corridor that sets out typical land use restrictions for the Railyards. The Land Use Specific Remediation Approaches to be developed under this MOU will provide the means for development of multi-family residential, parks and open spaces consistent with the LUCs.

RECORDING REQUESTED BY:
Union Pacific Railroad Company
Attention: Mike W. Casey
General Director of Special Properties
U.S. Bank Plaza
980 9th Street, Suite 2050
Sacramento, California 95814

Sacramento County Recording
Mark Norris, Clerk/Recorder
BOOK **20010711** PAGE **1498**
Wednesday, JUL 11, 2001 2:53:15 PM
Ttl Pd \$54.00 Nbr-0000735456
DLM/17/1-16

WHEN RECORDED, MAIL TO:
Department of Toxic Substances Control
Northern California, Central Cleanup Operations
10151 Croydon Way, Suite 3
Sacramento, California 95827
Attention: James L. Tjosvold, Chief
Site Mitigation Branch

Space Above Reserved for Sacramento County Recorder's use

COVENANT TO RESTRICT USE OF PROPERTY
(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION
(Civil Code section 1471)

(Re: 7TH STREET CORRIDOR, FORMER SOUTHERN PACIFIC TRANSPORTATION
COMPANY, SACRAMENTO LOCOMOTIVE WORKS, SACRAMENTO COUNTY,
CALIFORNIA)

This Covenant and Agreement ("Covenant") is made by and between Union Pacific Railroad Company, a Delaware corporation (the "Covenantor"), the current owner of property situated in Sacramento, County of Sacramento, State of California, described in Section 1.01 of this Covenant and depicted in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the State of California acting by and through 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, pursuant to Civil Code section 1471(c) and H&SC sections 25222.1 and 25355.5 that the use of the Property be restricted as set forth in this Covenant and that this Covenant shall run with the land.

7th Street Corridor Deed Restriction Page 1

ARTICLE I
STATEMENT OF FACTS

1.01. The legal description of the Property is:

The Property, known as the "7th Street Corridor" and as described in exhibits A1, B1, A2, and B2, is located within other real property known as the former Southern Pacific Transportation Company (SPTCo), Sacramento Locomotive Works. The SPTCo Sacramento Locomotive Works consists of approximately 240 acres of industrial property located immediately north of downtown Sacramento, east of the Sacramento river, and south of the American river. The SPTCo Sacramento Locomotive Works was SPTCo's primary locomotive maintenance, repair, and rebuilding facility since 1863. Based on historical use, the SPTCo Sacramento Locomotive Works was divided into six major study areas to facilitate characterization and remediation: Lagoon Study Area (LSA), Car Shop Nine Study Area (CNSA), Central Corridor Study Area (CCSA), Northern Shops Study Area (NSSA), Central Shops Study Area (CSSA), and Sacramento Station Study Area (SSSA). The 7th Street Corridor bisects three of these study areas; LSA, CNSA, and SSSA. Figure 1, attached, shows the general location and shape of the SPTCo Sacramento Locomotive Works. Figure 2, attached, shows the location and relationship of the six major study areas to the Property, 7th Street Corridor.

Historical activities and features for the LSA include the flood control levee on the north and northeastern sides of the property, and an industrial wastewater lagoon along the southern side of the levee. Other LSA features includes a former refuse dump, the Oil Storage Area, the Unit shop and associated wash pad, foundry activities, and the Pond and Ditch RCRA Unit.

Historically the CNSA served as the main shop for building, repair, and painting of railroad cars through the early 1980's. Significant features included underground storage tanks, sand blasting areas, painting sheds, and general office and rail yard operation buildings.

Historical activities for the SSSA have included foundry activities, right-of-way maintenance and company equipment facilities, a rail passenger terminal, passenger train and car maintenance, and other industrial uses. A Remedial Action Plan (RAP) for SSSA was approved on December 7, 1998.

Attached hereto and incorporated herein by this reference are Exhibits A1, B1, A2, and B2 that describe and depict the specific land subject to this covenant and restriction which is a portion of Assessor's Parcel Numbers 002-0010-005, 002-0010-033 and 002-0010-034. The Property is approximately 6.534 acres and is located within the SPTCo Sacramento Locomotive Works. The Property is now bounded on the north side by North B Street, on the south side by 2nd Street, on the west side by LSA, CCSA, and

7th Street Corridor Deed Restriction Page 2

SSSA and on the east side by CNSA in Sacramento, Sacramento County, State of California.

1.02. The Property is being developed as public right-of-way, 7th Street, which will include utility corridors, pedestrian and bike paths, storm water control, and Light Rail. The proposed use of the property, public right-of-way, is consistent with the Departments approved RAPs for impacted study areas, which were based on commercial/industrial exposure scenarios. This Covenant will restrict the Property to non-residential uses only.

1.03 In June of 1988, the Department and Southern Pacific Transportation Company (SPTCo) entered into an Enforceable Agreement to characterize and remediate the SPTCo Sacramento Locomotive Works. The Enforceable Agreement ensures that the releases or threatened releases of hazardous substances or hazardous waste from the SPTCo Sacramento Locomotive Works are adequately investigated and that the appropriate remedial action has been selected by completion and approval of a RAP. In November 1994, the Department approved separation of soil and groundwater characterization and remediation to expedite remediation of soil contamination. Therefore, the approved RAPs, associated with the 7th Street Corridor Site, LSA, CNSA, and LSA are for the remediation of soil contamination only. Groundwater contamination is being characterized and remediated under the Lagoon Ground Water Study for the northern groundwater contamination and South Plume Ground Water Study for the southern groundwater contamination. The LSA and CNSA RAPs were approved on **MARCH 31, 2000**. Remedial activities specified in the RAPs for the LSA and CNSA, for those areas which the 7th Street Corridor crosses, was approved by the Department as complete on **NOVEMBER 15, 2000**. The remedial activities defined in the RAP for the entire SSSA were certified as complete by the Department on June 21, 1994.

In compliance with the RAP for the SSSA, soil contamination including, but not limited to, antimony, arsenic, lead, copper, and petroleum hydrocarbon was remediated. Investigation of groundwater contamination for the SSSA indicates that the groundwater contains, but is not limited to, vinyl chloride, 1,1 dichloroethane (DCA), 1,2 dichloroethene (DCE), trichloroethene (TCE), 1,4, Dioxane, methylnaphthalene, tetrachloroethene (PCE), naphthalene, arsenic, and lead. Chronic exposure of lead has been known to cause learning deficits in children. The United States Environmental Protection Agency (USEPA) classifies lead as a probable human carcinogen. Exposure to arsenic has been shown to cause hyperkeratosis, anemia, skin cancer, and leukemia. Arsenic is classified by USEPA as a known human carcinogen. Chronic exposure to antimony may cause pneumoconiosis. DCA and DCE are classified by USEPA as possible human carcinogens. PCE and TCE are classified by USEPA as probable human carcinogens.

The LSA RAP identified soil contamination that included, but is not limited to, benzene, DCA, DCE, TCE, PCE, Benzo(a)pyrene (BAP), Benzo(a)anthracene (BAA),

7th Street Corridor Deed Restriction Page 3

Benzo(b)fluoranthene (BBF), Benzo(k)fluoranthene (BKF), antimony, arsenic, cadmium, lead, and petroleum hydrocarbon. Groundwater contamination associated with the LSA has been identified as containing, but not limited to, DCA, DCE, vinyl chloride, PCE, lead, and cadmium. In addition to the adverse health effects previously discussed, benzene and vinyl chloride are classified by USEPA as known human carcinogens. Exposure to cadmium has been known to cause heart, kidney, and lung disease. Cadmium is classified as a probable human carcinogen. BAP is classified by the USEPA as a probable human carcinogen.

The CNSA RAP identified soil contamination that included, but is not limited to, benzene, DCA, DCE, TCE, PCE, Benzo(a)pyrene (BAP), Benzo(a)anthracene (BAA), Benzo(b)fluoranthene (BBF), Benzo(k)fluoranthene (BKF), antimony, arsenic, cadmium, copper, lead, and petroleum hydrocarbon. Groundwater contamination associated with the LSA has been identified as containing, but not limited to, DCA, DCE, vinyl chloride, PCE, lead, and cadmium. BAP, BAA, BBF, and BKF are part of a group of polycyclic aromatic hydrocarbons compounds identified at the SPTCo Sacramento Locomotive Works classified by USEPA as probable human carcinogens.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the State of California by and through the 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.

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.

7th Street Corridor Deed Restriction Page 4

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, Leases and Subleases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases and subleases for any portion of the Property. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTION AND COVENANT TO RESTRICT USE OF PROPERTY, RECORDED IN THE PUBLIC LAND RECORDS ON [DATE] , IN BOOK , PAGE , IN FAVOR OF AND ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL.

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 18 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 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 (livestock, food crops, etc.).
- (b) Drilling for water, oil, or gas without prior written approval by the Department.
- (c) Extraction of groundwater for purposes other than site remediation or construction dewatering.

4.04. Access for Department. The Department and its designees 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. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA, and violations of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law or equity, including but not limited to, nuisance or abatement against the Owner or Occupant as provided by law. Additionally, the State of California and the Department shall have all remedies as provided in California Civil Code Section 815.7 as that enactment may be from time to time amended.

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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. The Department will grant the variance only after finding that such a variance would be protective of human, health, safety and the environment.

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. No termination or other terms of this Covenant shall extinguish or modify the retained interest held by the Covenantor.

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. Further, nothing set forth in this Covenant shall be construed to effect a taking under federal or state law.

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 Sacramento 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 Owner:
Union Pacific Railroad Company
Attention: Mike W. Casey
General Director of Special Properties
U.S. Bank Plaza
980 9th Street, Suite 2050
Sacramento, California 95814

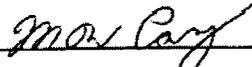
To Department:
Department of Toxic Substances Control
Northern California, Central Cleanup Operations Branch
10151 Croydon Way, Suite 3
Sacramento, California 91201
Attention: Mr. James L. Tjosvold, Branch Chief

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: Union Pacific Railroad Company

By: 
Name: M W CASEY
Title: GENERAL DIRECTOR
Date: 5/9/01

Department of Toxic Substances Control

By: 
Name: James L. Tjosvold
Title: Branch Chief
Date: June 5, 2001

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Exhibit D:

**LAND USE SPECIFIC REMEDIATION APPROACHES
FOR RESIDENTIAL DEVELOPMENTS AND PARKS, OPEN SPACES AND
LANDSCAPED AREAS WITHIN RAILYARDS
CONSISTENT WITH THE DEVELOPMENT PLAN**

The terms of the LUSRAs have yet to be defined; however, components may include the following:

Multi-Family Residential Land Uses.

- Vapor mitigation (e.g., barrier, ventilation, remediation) for areas of elevated VOC risk
- Alternate first floor uses (e.g., parking, commercial)
- Physical barriers (e.g., pavement, hardscape, clean fill)

Parks/Open Spaces.

- Clean fill placed over remediated soil (thickness of soil to be determined based on actual risk and land use)
- Physical barriers (e.g., pavement, hardscape, containerized plantings)
- Vapor mitigation (e.g., barrier, ventilation, remediation) for areas of elevated VOC risk

Exhibit E:

**DTSC APPROVED DOCUMENTS ON FILE
THAT PERTAIN TO ON-GOING AND POST-REMEDATION**

REMEDIAL ACTION PLANS

REMEDIAL DESIGN AND IMPLEMENTATION PLANS

SOIL TRANSPORT PLAN

AIR MONITORING PLAN

SOIL SAMPLING PLAN