

RECORD WITHOUT FEE PURSUANT TO
GOV'T CODE § 6103

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**AGREEMENT AND COVENANT RUNNING WITH THE LAND
FOR THE TRANSFER OF PROPERTY**

[Restriction on 1205 Coleman Avenue, Santa Clara, CA]

This Agreement and Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2018 ("Effective Date"), by TOD Brokaw, LLC, a California limited liability company, formerly known as BFV, LLC, a California limited liability company ("Owner"), and the City of Santa Clara, California, a chartered California municipal corporation ("City"). City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party".

RECITALS

- a. WHEREAS, Owner is the sole and exclusive owner of real property commonly known as 1205 Coleman Avenue in the City of Santa Clara, California, and is shown on the 2018-19 Santa Clara County Property Tax Roll as Assessor's Parcel Nos. 230-46-069 and 230-46-070 ("Lot A"). Lot A, is described in that Grant Deed filed for record on January 19, 2011 as Document No. 21052359, Santa Clara County Records.
- b. WHEREAS, City is the owner of a street easement ("Property") over a portion of Lot A, said street easement being a portion Coleman Avenue, a public right-of-way.
- c. WHEREAS, Owner desires to grant, in fee title, the above said Property and City desires to accept the Property. The conveyance of the Property will reduce the size of Lot A by approximately 1.690 acres (the "Reduced Lot A").
- d. WHEREAS, Lot A and the Property are within an area of real property ("FMC Land") that was formerly owned by FMC Corporation ("FMC") and leased to United Defense, L.P. ("UDLP"), and historical operations on the FMC Land impacted the subsurface with certain Hazardous Materials (as defined in Exhibit "C").
- e. WHEREAS, various documentation concerning the environmental condition of the FMC Land is available on the State of California's Geotracker website under the file number SL18204584, including, without limitation, the certain Corrective Action Consent Agreement dated January 2, 1996 among FMC, UDLP and the State of California's Department of Toxic

Substances Control ("DTSC"), and Site Cleanup Requirements Order Nos. 91-164 and 96-024 issued by the California Regional Water Quality Control Board ("Board").

f. WHEREFORE, the Parties enter into the following Covenant:

COVENANT

1. Owner shall grant, in fee title by Grant Deed, the above said Property and City agrees to accept the grant of Property, as described in **EXHIBIT A** and shown on **EXHIBIT B**.
2. Owner, during its period of ownership of Reduced Lot A, agrees to protect, defend, indemnify and hold harmless, City, its officers, employees, representatives, and agents, from and against any and all third party initiated claims, costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses, including without limitation, attorneys' fees and court costs, of whatever kind or nature (collectively, "claims"), whether paid, incurred, suffered, alleged, asserted, or related thereto arising directly or indirectly from or attributable to the environmental condition of the Property existing or alleged to exist in, on, under, above, or about the Property as of the date of transfer of the Property (recordation of Grant Deed), including but not limited to: any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Materials on, under or about the Property. To the fullest extent permitted by law, the foregoing hold harmless and indemnification provision shall apply except where such claim is the result of sole active negligence or willful misconduct of City, its officers, employees, representatives, or agents. Without limiting the generality of this indemnity and hold harmless provision in any way, this provision is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order to indemnify, defend, protect and hold harmless City for any liability pursuant to such sections. Owner and City agree that for purposes of this Agreement, the term "Hazardous Materials" shall have the definition set forth in **EXHIBIT C** which is attached to this Agreement and incorporated by reference. The obligations of Owner under this Section shall survive the transfer of Property and delivery of the Grant Deed and be binding on Owner and each respective owner of Reduced Lot A during its respective period of ownership, such that each transferring owner is immediately released from liability under this Covenant upon the transfer to the successive owner of Reduced Lot A.
3. Owner acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Owner for the benefit of City set forth in this Covenant are a material element of the consideration to the City for the performance of City's obligations under this Covenant, and that the City would not have entered this Covenant but for such obligations of Owner as provided for herein.
4. If remediation work within said Property is required on or after the transfer of Property, Owner (and its designees) shall have the right to enter the Property at no cost to Owner other than Encroachment Permit fees, and shall maintain, at Owner's expense, any work area within the Property in a safe condition in compliance with governmental agencies' ordinances, rules, regulations, and such terms and conditions as all of the aforesaid are required by governmental agencies from time to time. City approval of work area does not constitute approval on behalf of public utility companies. Approval of public utility companies shall be obtained separately

by Owner. The work area shall be left in a safe condition. All work within the Property pursuant to this Agreement shall be at Owner's expense and performed under an Encroachment Permit issued by City. Upon completion of the remediation work, City shall confirm that the work area has been returned to its original or better condition.

5. Owner shall pay City for any damages to City owned facilities caused by the remediation done by Owner in the street right-of-way. Payment to City shall be made within sixty (60) calendar days of said demand.
6. If Owner fails to pay City for damage to City facilities or for City caused work the Owner failed to perform upon City demand, City may enforce this Covenant in any manner allowed by law including a levy against the Reduced Lot A.
7. As used herein, street right-of-way includes the roadway traveled by vehicles, curb and gutter, sidewalk and area between and beyond the sidewalk, if any, to the private property lines or exterior line of right-of-way easements.
8. Each and every covenant made by Owner and City in this Covenant is made for the direct benefit of the respective lands described above or the interests in such lands held by the Parties, their heirs, assigns and/or successors in interest, and shall run with said respective lands or interest in lands during the period of ownership by each owner, and if applicable, the responsibilities and burdens thereof are imposed on and shall run with said respective lands or interest in lands held by the Parties, their heirs, assigns and successors in interest and each transferring owner shall automatically be released from liability under this Covenant upon the transfer of Reduced Lot A to the successor owner.
9. The lands of Owner which are burdened by this Covenant and which will have the responsibility and burden for the remediation of any Hazardous Materials is the above mentioned Reduced Lot A.
10. The lands of City which are benefited by the covenants included in this Covenant is Coleman Avenue, a public street owned by City.
11. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Covenant.
12. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
13. Owner represents and warrants to City that they are the owner(s) of Lot A at the time of their signature hereto, and have the authority to enter into this Covenant and the covenants contained herein, and grant such interests as are necessary to effectuate this Covenant.
14. Wherever the term "Owner" is used, it shall refer collectively to the Owner(s) signing this Covenant, and/or Owner's assigns and successors in interest. It is the express intent of the Parties hereto to have the benefits and burdens of this covenant run with the land during each owner's respective period of ownership of Reduced Lot A.

15. This Covenant shall be recorded by City in the Office of the County Recorder of Santa Clara County.

The Parties acknowledge and accept the terms and conditions of this Covenant as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Covenant shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered municipal corporation

TOD Brokaw, LLC
A California limited liability company

DEANNA J. SANTANA
City Manager

By: H/S Brokaw, LLC,
A California limited liability company
Its: Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: 408/615-2210
Fax Number: 408/241-6771

By: _____
Name: Derek K. Hunter, Jr.
Its: Manager

By: _____
Name: Edward D. Storm
Its: Manager

APPROVED AS TO FORM:

Mailing Address: 10121 MILLER AVE
STE. 200, CUPERTINO, CA 95014
Phone #: (408) 255-4100 Fax #: (408) 996-8425

BRIAN DOYLE
City Attorney

“OWNER” [APN 230-46-069 and 070 (2018-19)]

ATTEST:

JENNIFER YAMAGUMA
Acting City Clerk

“CITY”

ALL LEGAL OWNER(S) OF PROPERTY MUST SIGN THIS DOCUMENT. IF OWNER(S) IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER(S).

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)SS
COUNTY OF Santa Clara)

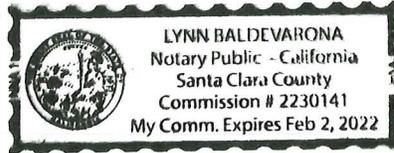
On Sept. 26, 2018 before me, Lynn Baldevarona, Notary Public, personally appeared Derek K. Hunter, Jr.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lynn Baldevarona



This area for official notarial seal.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)SS
COUNTY OF Santa Clara)

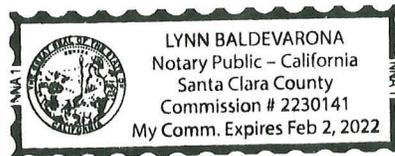
On Sept. 26, 2018 before me, Lynn Baldevarona, Notary Public, personally appeared Edward D. Storm

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lynn Baldevarona



This area for official notarial seal.

EXHIBIT "A"

LEGAL DESCRIPTION AGREEMENT AND COVENANT RUNNING WITH THE LAND

All that certain real property located in the City of Santa Clara, County of Santa Clara, State of California, being a portion of that land reserved as an easement for street and highway purposes from Parcel No. 1 in that certain document entitled "Grant Deed" recorded January 08, 1960 in Book 4659, Page 133 of Official Records of Santa Clara County. Said real property also being a portion of Lot A as described in that certain document entitled "Grant Deed" recorded January 19, 2011 as Document No. 21052359, Official Records of Santa Clara County, and being more particularly described as follows:

BEGINNING at the point of intersection of the northeasterly line of said easement and the City Limit Line between the City of Santa Clara and the City of San Jose as shown on that Record of Survey filed for record on January 25, 1960 in Book 116 of Maps at Page 18, Santa Clara County Records;

Thence along said City Limit Line, **South 00°05'35" East, 117.29 feet** to a point on the southerly line of said easement;

Thence leaving said City Limit Line and continuing along the boundary of said easement the following six (6) courses and distances:

1. **North 57°34'50" West, 18.64 feet;**
2. Along a curve to the left having a radius of **800.00 feet**, through a central angle of **30°00'00"** for an arc distance of **418.88 feet;**
3. **North 87°34'50" West, 338.43 feet;**
4. **North 36°48'20" East, 121.18 feet;**
5. **South 87°34'50" East, 269.99 feet;**
6. Along a curve to the right having a radius of **900.00 feet**, through a central angle of **27°10'21"** for an arc distance of **426.82 feet** to the **POINT OF BEGINNING.**

Containing 1.690 Acres, more or less.

As shown on **EXHIBIT "B"** attached hereto and by this reference made a part hereof.

Legal Description prepared by Shane R. Barber for Nterra Group.

Date 08 AUG 2018


Shane R. Barber LS 9097



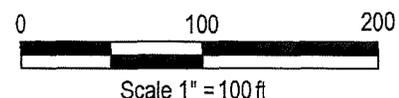
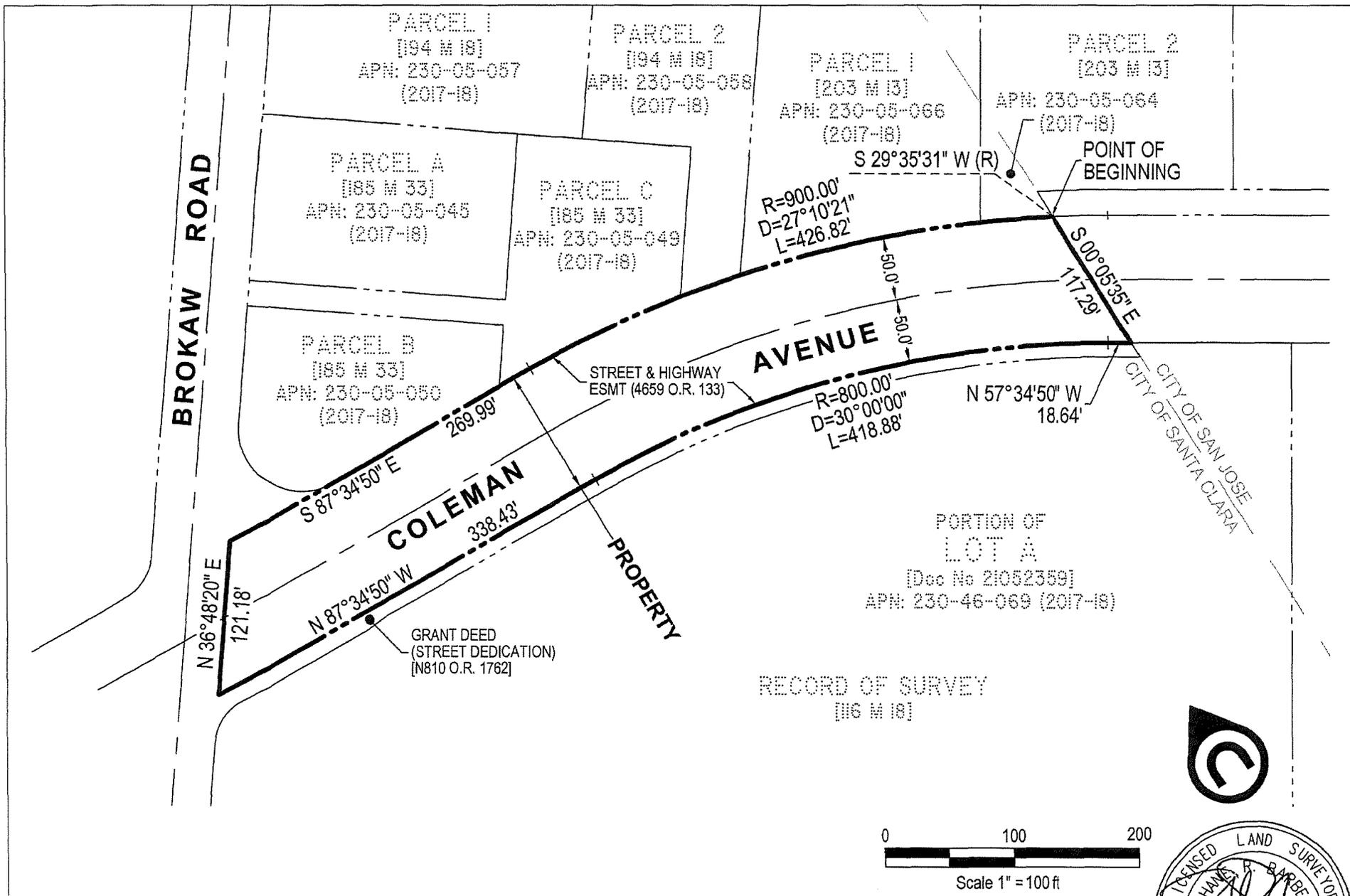


EXHIBIT "B"  NTERRA GROUP 1155 N. FIRST ST, # 214 SAN JOSE, CA 95112	PLAT TO ACCOMPANY LEGAL DESCRIPTION AGREEMENT AND COVENANT RUNNING WITH THE LAND SANTA CLARA CALIFORNIA	SCALE 1" = 100' DATE AUG. 2018 PROJECT 15-006 DRAWN SB CHECKED SB	SHEET 1 OF 1 SHEETS

EXHIBIT C

AGREEMENT AND COVENANT RUNNING WITH THE LAND

HAZARDOUS MATERIALS DEFINITION

The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq., (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

The term "Environmental Laws" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, and all Hazardous Materials, including without limitation, all federal or state superfund or environmental clean-up statutes.