

RECORDED WITHOUT FEE UNDER SECTION 6103 GOVERNMENT CODE OF THE STATE OF CALIFORNIA

**RECORDING REQUESTED BY:**

City of San Jose

**MAIL TAX STATEMENT TO:**

City of San José  
Office of Economic Development  
Real Estate Services  
200 East Santa Clara Street, 12<sup>th</sup> Floor  
San José, CA 95113-1905  
Attn: Administrative Officer

File/Doc. No:  
APN: 458-14-030 (portion)

Space above this line for Recorder's Use

**EASEMENT AGREEMENT BY AND BETWEEN**  
**THE CITY OF SAN JOSE AND**  
**BROOKDALE LIVING COMMUNITIES OF CALIFORNIA, LLC**  
**(portion of APN 458-14-030 Blossom River Drive)**

**The Undersigned Declares: DOCUMENTARY TRANSFER TAX \$ \_\_; CITY TRANSFER TAX \$ \_\_;**

- computed on the consideration or full value of property conveyed, OR
- computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
- unincorporated area;  **City of San Jose**, and
- Signature of Declarant

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THIS EASEMENT AGREEMENT** (the "Agreement") is made by and between BROOKDALE LIVING COMMUNITIES OF CALIFORNIA, LLC, a Delaware limited liability company authorized to do business in the State of California, ("Grantor"), and the CITY OF SAN JOSE, a municipal corporation of the State of California, (hereinafter referred to as "City" or "Grantee"), effective upon and as of the last date of execution by both parties (the "Effective Date").

**RECITALS**

- A. Grantor is the owner of property in San José, California, identified as APN 458-14-030, as depicted in **Exhibit A** and incorporated herein ("Grantor's Property"); and

- B. Grantee desires to enter upon an approximately 412 square foot portion of the Grantor's Property as described in **Exhibit B** attached hereto and incorporated herein ("Easement Area"), for the purpose of constructing, installing, controlling and maintaining a multi-use trail connection for public access.
- C. Grantor is amenable to permitting a right to enter the Easement Area to Grantee solely for the purposes described herein.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee the following easements: (1) a temporary construction easement (the "Construction Easement") on over and through the Easement Area for the purpose of constructing, installing, maintaining and supervising a multi-use trail connection (the "Pathway") within the Easement Area as a means of pedestrian and bicycle access to the Guadalupe River Trail adjacent to the Easement Area; and (2) a permanent, non-exclusive easement (the "Permanent Easement" and together with the Construction Easement, collectively, the "Easements") on, over and through the Easement Area solely for pedestrian and bicycle use, maintenance and repair of the constructed Pathway and Easement Area. The Easements are granted solely for the purposes described herein and are subject to all licenses, easements, leases, encumbrances and claims of title affecting the Grantor's Property.
2. Term. Except as set forth below, the term of the Permanent Easement shall be perpetual in duration and the term of the Construction Easement shall extend for the completion of construction of the Pathway not to exceed one hundred and twenty (120) days following the Effective Date. Further, the City shall, at its sole cost and expense, cause the Construction Easement to be released of record in the appropriate offices and land records of Santa Clara County, California within fifteen (15) days following the expiration of the term of the Construction Easement. Notwithstanding anything contained herein to the contrary, this Agreement, and the Easements granted hereby, shall terminate upon removal or abandonment of the Pathway by the City. Thereafter, the City shall, at its sole cost and expense, cause this Agreement and the Easements to be released and terminated of record in the land records of the aforesaid offices.
3. Terms and Conditions. The Easement is given subject to the following terms and conditions.
  - 3.1 Compensation. In consideration of the City constructing and installing the Pathway and the benefits realized by the Grantor's residents as a result thereof, Grantee shall pay Grantor no fee in return for the rights granted under this Agreement.

- 3.2 Use of the Easement Area. Notwithstanding anything herein to the contrary, no portion of the Easement Area may be used in any manner that would create a nuisance or for any construction staging or for the storage of any vehicles or equipment or for worker parking. All construction activities related to the construction and installation of the Pathway shall be completed in a good and workmanlike manner and, once commenced, diligently prosecuted to completion without delay or interruption except for delays resulting from “Acts of God” or other force majeure outside of Grantee’s reasonable control. Use of the Easement Area, the Easements granted hereby and the Pathway to be located in the Easement Area by Grantee or any of its permittees shall not, at any time or in any manner, interfere with or limit access to the facility located on Grantor’s Property. Grantee’s construction activities shall include, but not be limited to, the removal of two existing trees as depicted in **Exhibit D**, “Demolition Layout”.
- 3.3 Compliance with Laws; Other Conditions of Use. Grantee shall, at its sole cost and expense, obtain and maintain all necessary permits, licenses and approvals, from the relevant governmental authorities and comply with all applicable laws, ordinances, orders, rules, regulations and permits with respect to its use of the Easement Area pursuant to this Agreement.
- 3.4 As-Is Condition and Assumption of Risk. Grantee accepts the condition of the Easement Area “as-is”, “where-is” and “with all faults” and acknowledges that: i) Grantor is under no obligation to provide any additional preparations or improvements to the Easement Area prior to use thereof by Grantee or any agent, employee, contractor, permittee or resident of Grantee for the purposes herein stated, and ii) its use and control of the Easement Area is entirely at its own risk.
- 3.5 Release and Waiver. Grantee waives and releases Grantor and Grantor’s tenant(s) and their respective officers, agents, employees, contractors, directors, affiliates, members, managers, mortgagees, successors and assigns (each a “Grantor Party” and, collectively, the “Grantor Parties”) from any and all liability to Grantee, its officers, employees or agents for any loss, damage, liability, or liability for damages, whether for loss of or damage to property, or injury to or death of persons, which may arise out of the use, maintenance, construction, inspection or supervision of, as applicable, the Easement Area, the Easements granted hereby, or the Pathway located within the Easement Area, except such loss or damage as is caused by or arises out of the sole active negligence or willful misconduct of Grantor, its officers, employees or agents. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from Hazardous Materials, as defined in **Exhibit C**, on or under the Easement Area.

- 3.6 Indemnification. Grantee shall indemnify, defend, and hold harmless the Grantor Parties from and against any and all claims, liabilities, losses, damages, suits, actions, expenses, and demands of any kind or nature, resulting from or arising out of the use, maintenance, construction, inspection or supervision of, as applicable, the Easement Area, the Easements granted hereby, or the Pathway located within the Easement Area (collectively, "Claims"), except to the extent that such loss or damage is caused by or arises out of the sole active negligence or willful misconduct of Grantor, its officers, employees or agents. The foregoing shall include, but not be limited to, any Claims resulting from Hazardous Materials on or under the Easement Area. This provision shall survive the termination and expiration of this Agreement and the Easements hereby granted.
- 3.7 Insurance. Grantee is self-insured and will provide Grantor with a letter of self-insurance prior to the execution and delivery of this Easement and, following the Effective Date, as from time to time requested by Grantor. Further, Grantor shall cause its contractors and contractor's subcontractors accessing the Easement Area to maintain in full force and effect (i) commercial general liability insurance written on an occurrence policy form, including without limitation contractual liability coverage, bodily injury, including death, personal and advertising injury liability, independent contractors liability, products and completed operations liability, broad form property damage liability (including coverage for explosion, collapse and underground damage), insuring against all liability for loss or damage to person or property arising out of the access, use, construction, maintenance, repair of the Easement Area with limits not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate; (ii) motor vehicle liability insurance covering all vehicles for bodily injury and property damage with limits not less than \$1,000,000 combined single limit each accident; (iii) workers' compensation insurance to meet statutory and legal requirements and employer's liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 bodily injury by disease each employee and \$1,000,000 bodily injury by disease policy limit; and (iv) excess/umbrella liability insurance written on an occurrence policy form in excess of the primary commercial general liability, motor vehicle liability and employer's liability insurance with limits not less than \$2,000,000 each occurrence and \$2,000,000 annual aggregate. Such insurance policy or policies shall (a) name the Grantor Parties as additional insureds (except on the workers' compensation and employer's liability policy) and (b) provide waivers of subrogation and waiver of all rights of recovery against and in favor of the Grantor Parties. Such insurance shall be primary and non-contributory to any insurance maintained by the Grantor Parties and shall be maintained in full force and effect, without lapse in coverage, and Grantee agrees to furnish, or cause to be furnished, to Grantor, in writing, certificates of insurance, including

renewal certificates of insurance, evidencing the above requirements and that the other requirements of this Agreement have been satisfied.

- 3.8 Maintenance and Repair of Easement Area. At all times during the term of the Permanent Easement, Grantee shall, at its sole cost and expense, inspect, maintain and supervise the Easement Area and the Pathway located therein in good repair and in a safe, clean and orderly condition free of trash and debris.
- 3.9 Grantor Access to Easement Area. The Easements are non-exclusive. Grantor shall continue to have the right to use and access the Easement Area in its entirety and grant such use and access rights to third parties, so long as such access and use does not unreasonably interfere with Grantee's free use and enjoyment of the Easement Area on a non-exclusive basis.
4. Condition Precedent. The grant of the Easements referenced herein is expressly conditioned upon the City's agreement to reimburse Grantor for its out-of-pocket costs and expenses incurred by it in connection with the review, negotiation and preparation of this Agreement to include, without limitation, Grantor's reasonable attorneys' fees.
5. Notices. All notices given in conjunction with this Agreement shall be written, and shall be effective upon personal delivery to the other party or, if by mail, three (3) days after deposit in the U.S. Mail, first class postage prepaid to the applicable address stated below, or to such other address as the party may designate by written notice:

Grantee: City of San José  
Office of Economic Development / Real Estate  
200 East Santa Clara Street, 12<sup>th</sup> floor  
San José, CA 95113-1905  
Attn: Administrative Officer

with a copy to San José City Attorney's Office  
200 East Santa Clara Street, 16th Floor  
San José, CA 95113-1905  
Attn: Real Estate Attorney  
Fax: (408) 998-3131

Grantor: Brookdale Living Communities of California, LLC  
c/o Ventas, Inc.  
353 N. Clark Street, Suite 3300  
Chicago, IL 60654  
Attn: Asset Management

With a copy to Ventas, Inc.  
353 N. Clark Street, Suite 3300

Chicago, IL 60654  
Attn: Legal Department

6. Exhibits. All Exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as set forth fully herein. The Exhibits to this Agreement are:

Exhibit A – Depiction of Grantor’s Property  
Exhibit B – Legal Description and Plat Map of Easement Area  
Exhibit C – Description of Hazardous Materials  
Exhibit D – Demolition Layout

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument as of the Effective Date.

**“Grantor”**

BROOKDALE LIVING COMMUNITIES  
OF CALIFORNIA, LLC,  
a Delaware limited liability company

By: PSLT-BLC Properties Holdings,  
LLC, its sole member

By: PSLT OP, L.P., its sole member

By: PSLT GP, LLC, its general partner

By: Ventas Provident, LLC, its sole  
member

By: \_\_\_\_\_

\_\_\_\_\_ Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“Grantee”**

APPROVED AS TO FORM: CITY OF SAN JOSE, a California  
municipal corporation

\_\_\_\_\_  
Cameron Day  
Deputy City Attorney

\_\_\_\_\_  
Leland Wilcox  
Chief of Staff  
Office of the City Manager

\_\_\_\_\_ Date

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
*Date Here Insert Name and Title of the Officer*

personally appeared \_\_\_\_\_  
*Name(s) of Signer(s)*

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 \_\_\_\_\_  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Partner —  Limited  General

Individual  Attorney in Fact

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

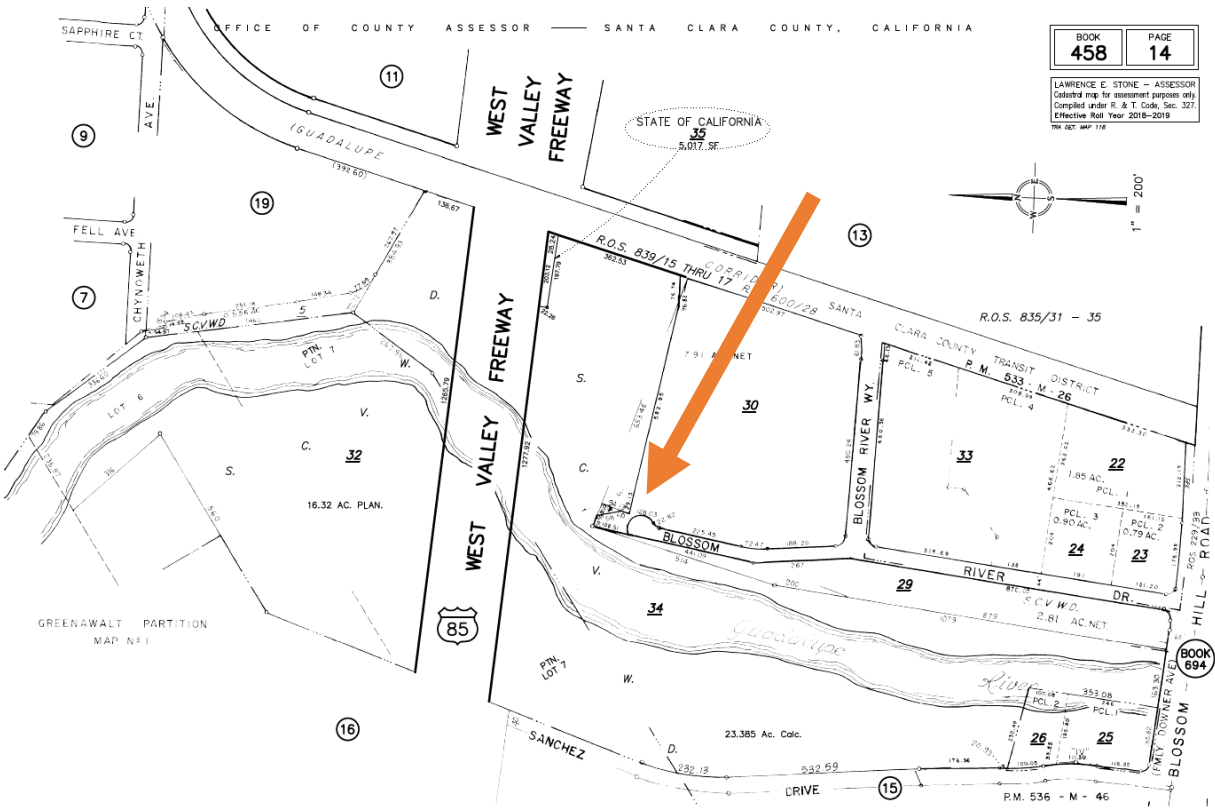
Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**EXHIBIT A**  
**Depiction of Grantor's Property**  
**APN 458-14-030**



**EXHIBIT B**

**Description of Easement Area**

**Portion of APN 458-14-030 (red outline area)**

BEGINNING at that point hereinabove described as "POINT A" ; thence along said westerly line S 09°57'37" W 12.68 feet, to a non-tangent curve, from a radial bearing of N 33°15'45" E, easterly along a curve to the right, concave southerly, having a radius of 17.69 feet and a central angle of 36°17'51", for an arc length of 11.21 feet; thence S 12°16'07" E 15.88 feet to a point on the northerly line of Blossom River Drive as shown on said Record of Survey; thence along said northerly line of said Blossom River Drive, from a radial bearing of N 20°00'11" W, easterly along a curve to the right, concave southerly, having a radius of 35.50 feet and a central angle of 19°28'23", for an arc length of 12.07 feet; thence leaving said northerly line of Blossom River Drive, N 12°16'07" W 16.94 feet, to a non-tangent curve, from a radial bearing of N 72°32'21" E, westerly along a curve to the left, concave southerly, having a radius of 28.91 feet and a central angle of 49°30'59", for an arc length of 24.99 feet, to the POINT OF BEGINNING.

Contains approximately 412 +/- sq. ft. (0.009 ac).

The Basis of Bearings for this description is the bearing S 09°57'37" W of the northerly portion of the monument line of Blossom River Drive as shown on the Record of Survey filed for record on June 8, 1989 in Book 600 of Maps, at Page 28, Records of Santa Clara County.

Plat labeled "A-1" to accompany this description and made a part hereof.

---

This description, and plat attached, has been compiled from record data and not on a field survey.

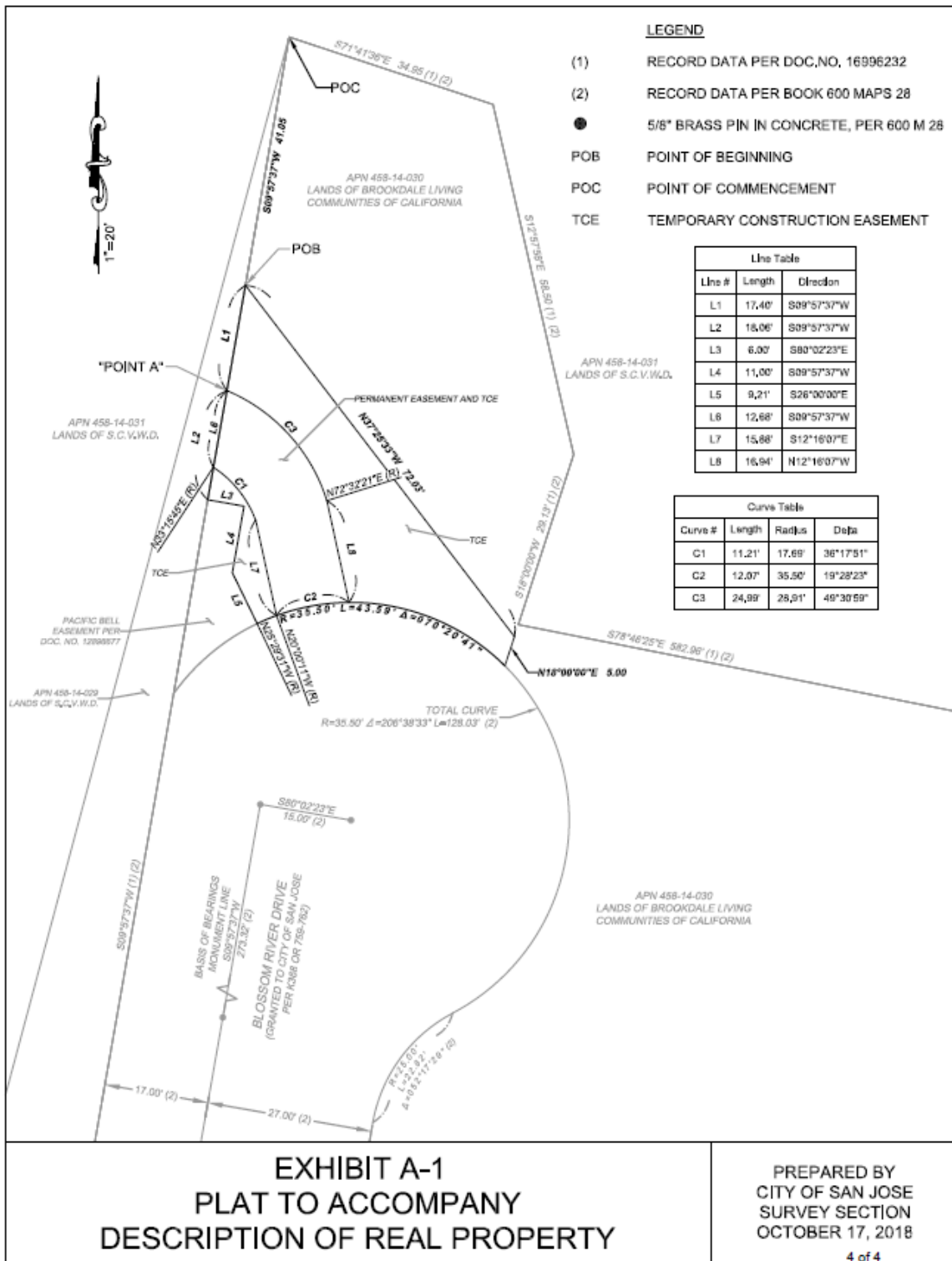
The above description of real property was prepared by me, or under my supervision, in conformance with the requirements of Section 8726 (g, k, l, m) of the Business and Professions Code of the State of California.



A handwritten signature in blue ink, appearing to read "S. G. Choy", positioned above a horizontal line.

Steve G. Choy, PLS 6672

# Plat Map of Easement Area



## EXHIBIT C

### Definition of Hazardous Materials

For the purpose of this Agreement, “**Hazardous Materials**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Agreement, “**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, any and all Hazardous Materials, including without limitation, all federal or state super-lien or environmental clean-up.

