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06/04/2007 11:31 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY  
PATRICK O'CONNELL  
RECORDING FEE: 37.00

**Recording Requested By:**

SCS Development Company



8 PGS

**When Recorded, Mail To:**

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

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**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

Pursuant to California Civil Code Section 1471

For a Portion of the Former Cannery Site  
24 Cannery Court, Hayward, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 31<sup>st</sup> of MAY, 2007 by SCS Development Company dba Citation Homes Central, a California Corporation ("Covenantor"), who is the Owner of record of that certain property situated at 24 Cannery Court, in the City of Hayward, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

A. Contamination of the Burdened Property. Surficial soil at the Burdened Property was contaminated by arsenic and lead pesticides through former agricultural uses conducted by certain of Covenantor's predecessors' in interest. The cleanup goals were successfully achieved at the site in accordance with the Water Board approved Remedial Action Plan and Risk Management Plan (RAP/RMP) dated March 6, 2007. After SCS Development completed site remediation, the Board issued its No Further Action letter on May 4, 2007. In addition, groundwater beneath the Burdened Property contains detectable concentrations of chlorinated volatile organic compounds (CVOCs) originating from on an off-site of property. These offsite operations resulted in contamination of groundwater beneath the Burdened Property with CVOCs, including tetrachloroethene (PCE), trichloroethene (TCE), dichloroethene (DCE) and dichloroethane (DCA). The Board has determined that the presence of these CVOCs present no risk to public health given that:

- Depth to groundwater is greater than 35 feet below ground surface and the subsurface soil consists of silty clay, which has very low permeability, and
- Groundwater usage is prohibited by this deed restriction.

Given these facts, no additional controls are deemed necessary, other than recording this deed restriction preventing use of the groundwater beneath the site.

B. Exposure Pathways. The contaminants addressed in this Covenant are present in groundwater beneath the Burdened Property. Without the deed restriction, exposure to these contaminants could take place via ingestion by humans. The risk of public exposure to the contaminants has been substantially lessened by this deed restriction.

C. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is in the process of being developed into a residential community. The Burdened Property is adjacent to a variety of land uses, including industrial to the north, residential to the east and west, and commercial to the south.

D. Disclosure to Board. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Burdened Property has been made, and extensive sampling of the Burdened Property has been conducted.

E. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

## ARTICLE I GENERAL PROVISIONS

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

1.2 Concurrence of Owners Presumed. All Owners shall be deemed by their purchase, leasing, or possession of such Burdened Property, to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the

Restrictions contained herein.

1.3 Incorporation into Deeds. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in deeds for any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

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

2.2 Improvements. "Improvements" shall mean a water well and related equipment constructed or placed upon any portion of the Burdened Property in violation of this deed restriction.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property; provided however, that for the purposes of this Covenant, with regard to any property held by more than one fee owner as part of a condominium or other common interest residential development, whose management of common areas is delegated to a home owners association or other similar entity, "Occupants" and "Owners" shall mean only the home owners association or other similar entity and individual unit owners or interest holders shall not be considered Owners or Occupants.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property provided however, that for the purposes of this Covenant, with regard to any property held by more than one fee owner as part of a condominium or other common interest residential development, whose management of common areas is delegated to a home owners association or other similar entity, "Occupants" and "Owners" shall mean only the home owners association or other similar entity and individual unit owners or interest holders shall not be considered Owners or Occupants.

ARTICLE III  
DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restriction on Development and Use. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting groundwater for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

3.2 Enforcement. Failure of an Owner or Occupant to comply with the restriction, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the offending Owner modify or remove the Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or ground leases of all or any portion of the Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in the groundwater under the property, and is subject to a deed restriction dated as of \_\_\_\_\_ 2007, and recorded on \_\_\_\_\_, 2007, in the Official Records of Alameda County, California, as Document No. \_\_\_\_\_, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV  
VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V  
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency 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:

*If To: "Covenantor"*

SCS Development Company  
Attention: Charles G. McKeag  
404 Saratoga Avenue, Suite 100  
Santa Clara, CA 95050

*If To: "Board"*

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

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

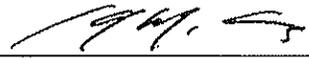
5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution by the Executive Officer.

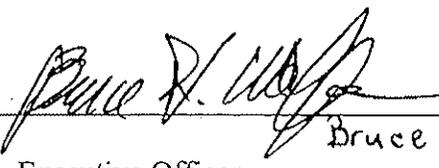
5.6 References. All references to Code sections include successor provisions.

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

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.  
Covenantor: SCS Development Company

By:   
Title: VICE PRESIDENT - LAND ACQUISITION, Charles G. McKeag  
Date: MAY 31, 2007

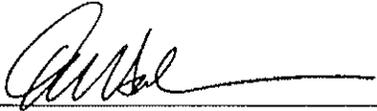
Agency: State of California  
Regional Water Quality Board,  
San Francisco Bay Region

By:   
Title: Executive Officer  
Date: May 31, 2007  
Bruce H. Wolfe

STATE OF CALIFORNIA )  
 )  
COUNTY OF Alameda )

On May 31, 2007 before me, the undersigned a Notary Public in and for said state, personally appeared [~~Covenantor~~], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.  
Charles G. McKeag

WITNESS my hand and official seal.



Notary Public in and for said  
County and State

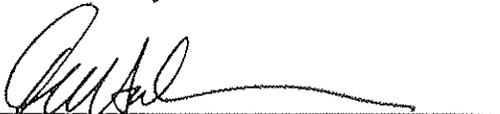
*David E. Halverson*



STATE OF CALIFORNIA )  
 )  
COUNTY OF Alameda )

On May 31, 2007 before me, the undersigned a Notary Public in and for said state, personally appeared [~~EXECUTIVE OFFICER~~], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.  
Bruce H. Wolfe

WITNESS my hand and official seal.



Notary Public in and for said  
County and State

*David E. Halverson*



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of Hayward, County of Alameda, State of California, described as follows:

All of Tract 7613, filed May 15, 2007, Map Book 299, Pages 20 through 34, inclusive, Alameda County Records.

Excepting therefrom, Parcels I-I and J-J, inclusive of said Tract 7613.

APN: 431-0060-001-04 (portion)  
431-0060-002-08 (portion)  
431-0056-079  
431-0056-080  
431-0056-081  
431-0056-082-02