

**Recording Requested By:**  
Redevelopment Agency of the City of Hayward  
777 B Street  
Hayward, CA 94541



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07/21/2006 01:41 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY  
PATRICK O'CONNELL  
RECORDING FEE 0.00

**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



10 PGS

This instrument is exempt from Recording Fees (Govt. Code  
**COVENANT AND ENVIRONMENTAL RESTRICTION 27383)**  
**ON PROPERTY**

22695 Foothill Boulevard, Hayward, California  
APN: 428-0066-034-08

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 10 day of July, 2006 by the Redevelopment Agency of the City of Hayward ("Covenantor") who is the Owner of record of that certain property situated at 22695 Foothill Boulevard, 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. The Burdened Property and groundwater underlying the property contains hazardous materials.

B. Contamination of the Burdened Property. The Burdened Property was contaminated by chlorinated solvents, possibly by historic dry-cleaning operations. These operations resulted in impacts to soil, soil vapor and groundwater with organic chemicals including tetrachloroethene, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil vapor and groundwater, and to a lesser degree, in soil on the Burdened Property. Following development, the primary potential exposure pathway to these contaminants is via vapor intrusion into the planned commercial and theatre-complex building. A development-specific human health risk assessment indicated that the potential incremental risk is less than  $1 \times 10^{-5}$ , which is acceptable by the Board for commercial development. As an added protective measure, the proposed development will include a vapor barrier to mitigate the potential for future

migration of vapors from the subsurface into the building. Tetrachloroethene (PCE) and methyl tertiary butyl ether (MTBE) are present in groundwater at concentrations above their respective maximum contaminant levels (MCLs); however, water for all uses at the site, including potable and landscaping uses, will be supplied via the municipal water supply. As such, no exposure pathway to groundwater will exist at the site.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is to be used for commercial/retail purposes and potentially upper-story residential and is adjacent to commercial/retail land uses.

F. 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.

F. 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 on the land of hazardous materials. 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 Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and 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 and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of 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 all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

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.

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.

## ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

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

a. Development of the Burdened Property shall be restricted to industrial, commercial, or office space on the ground floor;

b. No hospitals shall be permitted on the Burdened Property;

c. No schools for persons under 21 years of age shall be permitted on the Burdened Property;

d. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;

e. Provisions, including air monitoring and soil handling, during soil excavation are outlined in the June 2006 Risk Management Plan for the Burdened Property. These provisions shall apply during site grading and excavation during redevelopment and for any future subsurface work. The Board shall be notified of any subsurface intrusion prior to its performance. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;

f. All uses and development of the Burdened Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto. As outlined in the June 2006 Risk Management Plan, a vapor barrier consisting of a membrane to inhibit vapor intrusion to indoor air will be installed beneath site structures. All uses and development shall preserve the integrity of the vapor barrier. Additionally, all uses and development shall preserve the integrity of any other remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.

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

h. The Owner shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to the vapor barrier, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

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

j. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of the vapor barrier that is installed beneath site structures.

**3.2 Enforcement.** Failure of an Owner or Occupant to comply with any of the restrictions, 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 Owner modify or remove any 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 leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of \_\_\_\_\_, 20\_\_\_\_, and recorded on \_\_\_\_\_, 20\_\_\_\_, in the Official Records of \_\_\_\_\_ 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"*



Redevelopment Agency of the City of Hayward  
777 B Street  
Hayward, CA 94541  
Attention: Executive Director

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.

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: Redevelopment Agency of the City of Hayward

By: [Signature]  
Title: Executive Director

Date: July 10, 2006

FORM APPROVED  
CITY ATTORNEY

BY [Signature]

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

By:

*David N. Walker*

Title: Executive Officer

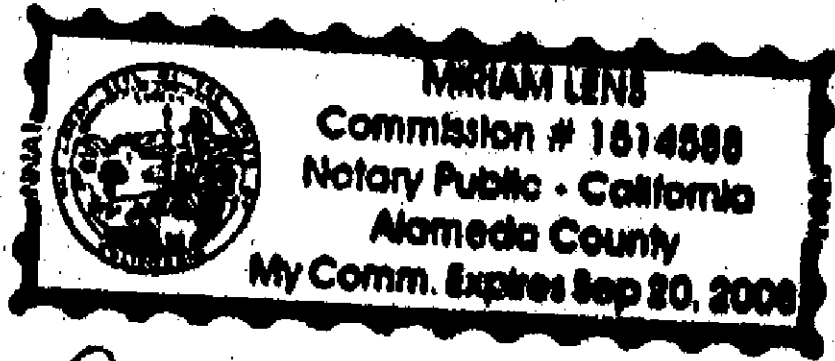
Date: 7/20/2010

**CALIFORNIA ACKNOWLEDGMENT**

State of California            )  
  )ss.  
County of Alameda            )

On July 10, 2006, before me, Miriam Lens, Notary Public, personally appeared Jesús Armas, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



*Miriam Lens*  
Miriam Lens, Notary Public

*Commission # 1514508  
My Comm Expires Sep 20, 2008*

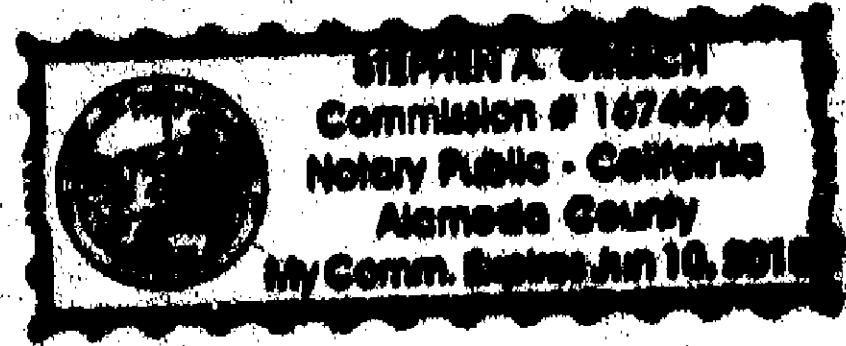


STATE OF CALIFORNIA )  
 )  
COUNTY OF Alameda )

On July 20, 2016 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 <sup>with wife</sup> to be the person who executed the within instrument, ~~and acknowledged~~ to me that he executed the same in his authorized capacity.

WITNESS my hand and official seal.

[Signature]  
Notary Public in and for said  
County and State



STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, the undersigned a Notary Public in and for said state, personally appeared Bruce H. Wolfe, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said  
County and State

## Exhibit A

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

Beginning at a point on the Southeastern line of "B" Street, distant thereon North 47° 55' East 300.80 feet from the Northeastern line of Main Street; said point being the Northeastern corner of the parcel of land described in the Deed from Nellie C. Thompson to Arthur B. Petersen, et al, recorded September 15, 1949 in Book 5887 of the Official Records of Alameda County at Page 265 (Series Number AD42516); thence along said line North 47° 55' East 270.83 feet to the Northwestern corner of the parcel of land described in the Notice of Pendency of Action filed in the action of the people of the State of California vs. Nellie C. Thompson, et al., Case No 217086, Superior Court, Alameda County, dated February 9, 1949 and recorded February 9, 1949 in Book 5723 of the Official Records of Alameda County at Page 175; thence along the general Southwestern line of said parcel of land, along the arc of a tangent curve to the right having a radius of 25 feet through a central angle of 98° 37' 43" for a distance of 43.04 feet to a point of compound curve; thence continuing along said Southwestern line and along the general Northeastern line of the parcel of land described in the Deed from the State of California to Nellie C. Thompson, recorded December 29, 1950 in Book 6324 of the Official Records of Alameda County at Page 31, along the arc of a tangent curve to the right having a radius of 1200 feet through a central angle of 18° 08' 36" for a distance of 379.99 feet to a point of compound curve; thence continuing along said Northeastern line along the arc of a tangent curve to the right having a radius of 16 feet through a central angle of 63° 13' 42" for a distance of 17.66 feet to a point on the Northwestern line of "C" Street; thence along said line South 47° 55' West 205.43 feet to a point distant thereon North 47° 55' East 301.20 feet from the aforementioned Northeastern line of Main Street; thence leaving said Northwestern line North 36° 24' West parallel with said line of Main Street 200.00 feet; thence South 47° 55' West 39.14 feet to the Southwestern corner of the parcel of land described in the Deed from Arthur B. Petersen, et al. to Bank of America, recorded May 15, 1953 in Book 7030 of the Official Records of Alameda County at Page 47 (Series No. AH-43537); thence along the general Northwestern line of said parcel the following four courses: North 36° 24' West 76.84 feet; thence North 53° 36' East 28.55 feet; thence North 36° 24' West 32.50 feet thence North 53° 36' East 10.00 feet to the Northeastern line of the aforementioned Deed to Arthur B. Petersen (Series No. AD-62516); thence along said Northeastern line North 36° 24' West 94.50 feet to the point of beginning.

APN: 428-0066-034-08