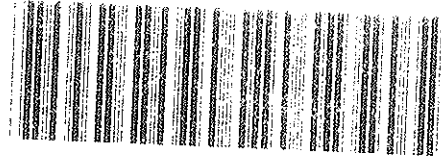


**Recording Requested By:**

Douglas Federighi  
1051 Mac Arthur Blvd.  
San Leandro, CA 94577



10 PGS

**When Recorded, Mail To:**

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

*Handwritten initials: R26, 10, HI*

**COVENANT AND ENVIRONMENTAL RESTRICTION  
LIMITING THE USE OF GROUNDWATER BENEATH PROPERTY**

1300-1370 Davis Street, San Leandro, County of Alameda, California.

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 23rd day of October, 2002 by and among William Leitao, Trustee of the Federighi Trust No. 2, Douglas T. Federighi as Trustee of the Douglas T. and Carol Federighi Family Living Trust, and Michael Federighi (collectively "Covenantor") who are the owners of record of that certain property situated at 1300-1370 Davis Street, in the City of San Leandro, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (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. Groundwater underlying the Burdened Property may contain hazardous materials.

B. Contamination of Burdened Property. Historic service station and dry cleaning operations at the Burdened Property caused impacts to soil and groundwater by petroleum and tetrachlorethylene (dry cleaning solvent, including related breakdown products). Underground storage tanks containing petroleum products were removed from a portion of the property. Impacted soil was remediated to levels appropriate for unrestricted use of the property, although low levels of residual petroleum and solvent contamination may remain. Targeted remediation of impacted groundwater was carried out in some areas but cleanup to applicable drinking water standards was not practicable.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in groundwater above applicable drinking water standards on the Burdened Property. Shallow groundwater is not currently used as a source of drinking water. Without the restrictions in this Covenant, however, exposure to these contaminants could take place if groundwater beneath the Burdened Property were used as a source of drinking water in the future. The risk of public

exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is currently zoned for commercial use. But it may be developed for residential purposes as well. It is adjacent to commercial and residential land uses.

E. Disclosure. 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. Protection of Public Health and Safety. 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 water wells, 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. 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 water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

b. 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.

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:

Historic operation of a dry cleaner and service station on the land described herein caused soil and groundwater to be impacted by petroleum and other hazardous chemicals. Cleanup of the property was carried out in accordance with Corrective Action Plans approved by the California Environmental Protection Agency and the County of Alameda. The property is subject to a deed covenant dated as of November 21, 2002, and recorded on November 21, 2002, in the Official Records of Alameda County, California, as Document No. 2002545415. This document imposes certain covenants, conditions and restrictions on usage of the groundwater beneath 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 (i) when delivered, if personally delivered to the person being served or official of a government agency being served; or (ii) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested; or (iii) upon receipt of a facsimile machine generated confirmation of successful transmission if transmitted via facsimile:

If To: "Covenantor"

Douglas T. Federighi  
1051 Mac Arthur Blvd.  
San Leandro, CA 94577  
Telephone: (510) 635-1158  
Facsimile: (510) 635-1160

If To: "Board"

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

**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.

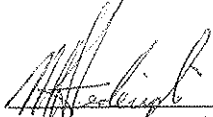
F. J. Federighi Trust No. 2

  
\_\_\_\_\_  
William Leitao, Trustee  
Date: November 4, 2002


**Douglas T. and Carol Federighi Family Living Trust**

  
\_\_\_\_\_  
Douglas T. Federighi, Trustee  
Date: November 4, 2002

**Michael H. Federighi**

  
\_\_\_\_\_  
Michael H. Federighi  
Date: 10-28-02

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

  
\_\_\_\_\_  
Loretta Barsamian, Executive Officer  
Date: 11/13/02

# Exhibit A

## Legal Description Of Property

Lot 95, Tract 636 Recorded May 19, 1942, Map Book 12, Page 7, Alameda County Records.

A.P. #77A – 661 – 21 - 1 & 77A – 661 – 21 - 2

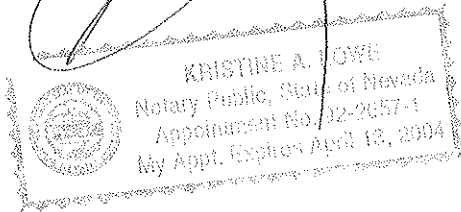
Commonly known as: 1300 - 1370 Davis Street  
San Leandro, CA

NEVADA  
STATE OF CALIFORNIA )  
COUNTY OF CLARK )

On Oct. 28, 2002 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. MICHAEL FEDERIGHI

WITNESS my hand and official seal.

  
Notary Public in and for said County and State





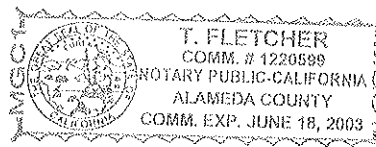
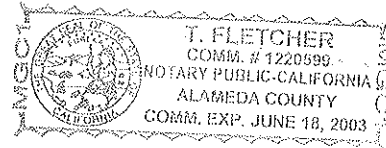
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ALAMEDA )

On November 4th, 2002 before me, T. Fletcher, Notary Public, personally appeared Douglas T. Federighi and William Leitao, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.



\_\_\_\_\_  
Notary Public



STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF ALAMEDA )

On this 13<sup>th</sup> day of November 2002, before me, the undersigned Notary Public, personally appeared Loretta Barsamian,  
[ ] personally known to me  
[ X ] proved to me on the basis of satisfactory evidence  
to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same in her authorized capacity, and that by her 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.

Signature *Loretta G. Armstrong*  
Print Name: Loretta G. Armstrong

