



2001-0041702

SEP 12 2001

Recorded  
Official Records  
County Of  
Marin  
JOAN C. THAYER  
Recorder

REC FEE 48.00

08:00AM 10-Jul-2001

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Page 1 of 12

RECORDING REQUESTED BY:  
AS SHOWN

WHEN RECORDED MAIL TO:

AS SHOWN

QUALITY CONTROL BOARD

THIS SPACE FOR RECORDERS USE ONLY

DOCUMENT TITLE

THIS PAGE IS ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

ADDITIONAL RECORDING FEE APPLIES

Recorded at the request of:  
First American Title Co.  
Title Order 8-212649sb  
Escrow No. 519336

**California Regional Water Quality Control Board  
San Francisco Bay Region**

**Recording Requested By:**

4300 Redwood Road Venture, LLC  
700 Emerson Street  
Palo Alto, CA 94301

**When Recorded, Mail To:**

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

AP#155-110-05 & 06.

**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

4300 Redwood Highway, San Rafael, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 10<sup>th</sup> day of July, 2001 by 4300 Redwood Road Venture, LLC, a Delaware limited liability company ("Covenantor"), which is the Owner of record of that certain property situated at 4300 Redwood Highway, in the City of San Rafael, County of Marin, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such property hereinafter referred to as the "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. VOCs and Metals at the Property. Portions of the Property's soil and groundwater contain trichloroethene and other volatile organic compounds ("VOCs") and metals as described in the Final Remedial Action Plan dated August 5, 2000 filed with the Board.

B. Property Investigation and Final Remedial Action Plan. The nature and extent of the VOCs and metals in the soil and groundwater at the Property have been defined and a Final Remedial Action Plan acceptable to the Board has been developed and is currently being implemented at the Property under Board Site Cleanup Requirements Order No. 00-122.

C. Exposure Pathways. VOCs and metals are present in soil and groundwater at the Property. Without the mitigation measures that have been performed on the Property, exposure to VOCs and metals may have been possible as a result of soil excavation or groundwater use.

However, the risk of exposure to VOCs and metals has been substantially lessened by the remediation and controls referenced herein.

D. Adjacent Land Uses. The Property currently is vacant, but is zoned to allow light industrial and office land uses and is adjacent to other industrial and commercial land uses.

E. Disclosure. To the best of Covenantor's knowledge, extensive sampling of the Property has been conducted and Covenantor is unaware of the presence of hazardous materials on the Property other than the hazardous materials that have been disclosed to the Board pursuant to Order No. 00-122.

F. Notice. Covenantor desires to provide notice of certain matters respecting the Property and to impose certain covenants, conditions and environmental restrictions on the Property.

## ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. Pursuant to California Civil Code Section 1471, this Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Board has determined that 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 Property of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the 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 Property unless expressly stated as applicable to a specific portion of the Property. 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 Property shall be deemed by their purchase, leasing, or possession of such 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 Property and that the interest of the Owners and Occupants of the 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 Property.

1.4 Purpose. It is the purpose of this instrument to set forth protective provisions, covenants, conditions and restrictions that will run with the land to facilitate the remediation of VOCs and metals at the Property and to protect human health and the environment by reducing the risk of exposure to residual VOCs and metals in soils and groundwater.

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 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.3 Order. "Order" shall mean Board Site Cleanup Requirements Order No. 00-122, adopted by the Board on November 29, 2000.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and any successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

ARTICLE III  
DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

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

a. Development of the Property shall be restricted to industrial, commercial and/or office uses.

b. No residence for human habitation shall be permitted on the Property.

c. No hospitals shall be permitted on the Property.

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

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

f. Until the Board, or its successor agency, determines in accordance with the provisions of Order No. 00-122, and any amendments to the Order, that the withdrawal of groundwater from the Property does not pose a significant existing or potential hazard to present or future public health or safety or to the environment, no Owner or Occupant of the Property or any portion of the Property shall drill or otherwise construct a well at the Property for purposes of extracting water. Notwithstanding the foregoing, it shall be permissible to construct wells at the Property pursuant to the Final Remedial Action Plan for remediation or monitoring of groundwater on the Property.

g. The excavation of soil below four feet or extraction of groundwater at any depth for any purpose shall not commence unless and until the Owner or Occupant desiring to make the

excavation or extract groundwater has proposed a plan for protecting public health and safety and the health and safety of workers, which plan is acceptable to the Board, and implements that plan as proposed and accepted by the Board. A Risk Management Plan for the Property was prepared and approved by the Board as part of the Final Remedial Action Plan dated August 5, 2000. Soil excavation and groundwater extraction that complies with that Risk Management Plan and is consistent with the Final Remedial Action Plan shall not require a separate plan or separate Board acceptance pursuant to this subparagraph 3.1(g).

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

i. Except as permitted by the Final Remedial Action Plan or other approval of the Board, no Owner or Occupant of the Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Property.

3.2 Conveyance of Property. The Owner shall provide notice to the Board of the closing of any sale, lease or other conveyance of the Property or a possessory interest in the Property to a third person within thirty (30) days of the closing of the sale or lease. The Board shall not, by reason of this Covenant, have authority to approve, disapprove or otherwise affect any sale, lease or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.3 Enforcement. Failure of the Owner to comply with any of the requirements 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 any use of the Property in violation of the provisions of subparagraphs 3.1(a) through (e) and (g) and modify or remove any wells installed in violation of the provisions of subparagraph 3.1(f) of this Covenant. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.4 Notice in Agreements. All Owners and Occupants shall execute a written instrument that shall accompany all purchase, lease, sublease or rental agreements relating to the Property and executed after the date of recording of this Covenant. The instrument shall contain the following statement:

The land described herein contains hazardous substances, as defined in Section 25316 of the California Health and Safety Code, and is subject to the requirements of a Covenant and Environmental Restriction on Property dated July 10, 2001, 2001, and recorded on July 10, 2001, in the Official Records of Marin County, California, as Document No. 2001-0641902, which Covenant imposes certain covenants, conditions, and environmental restrictions pursuant to California Civil Code Section 1471 on the use of the property described herein. The provisions of the Covenant are incorporated herein and made a part hereof as if set forth in full. 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 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 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 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 Property or any portion thereof to the general public or for any purpose whatsoever.

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 to an officer of a corporate party 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 certified mail, postage pre-paid , return receipt requested:

*If To: "Covenantor"*  
4300 Redwood Road Venture, LLC  
Attention: John B. Lovewell  
700 Emerson Street  
Palo Alto, CA 94301

*If To: "Board"*  
California 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 or term of the Restrictions set forth in this Covenant is determined to be invalid for any reason, the remaining portions and terms shall remain in full force and effect as if such invalid portion had not been included in this Covenant.

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.

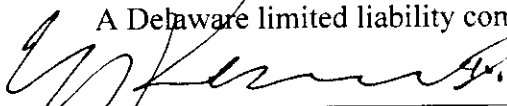
5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. The Covenantor shall record this instrument in the County of Marin within ten (10) days of the date of execution.


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

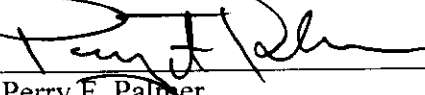
5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, 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: 4300 Redwood Road Venture, LLC,  
A Delaware limited liability company

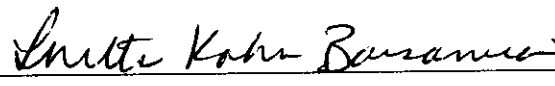
By:   
Charles J. Keenan, III  
Title: Manager

By:   
John B. Lovewell  
Title: Manager

By:   
Perry F. Palmer  
Title: Manager

Date: 7/03/01

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

By:   
Title: Executive Officer

Date: July 9, 2001

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Santa Clara } ss.

On July 3, 2001, before me, Susan Davis, Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Charles J. Keenan, III, John B. Lovewell and Perry F. Palmer  
Name(s) of Signer(s)

- personally known to me
- 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Susan Davis  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Covenant and Environmental Restriction on Property

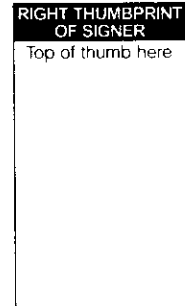
Document Date: \_\_\_\_\_ Number of Pages: 8

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

- Signer's Name: \_\_\_\_\_
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: Manager

Signer Is Representing: 4300 Redwood Road Venture, LLC





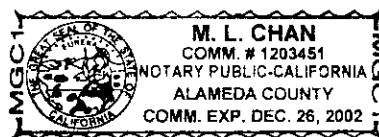
NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA }ss
COUNTY OF Alameda }

On July 9, 2001, before me, M. L. Chan, a Notary Public in and for said State, personally appeared Loretta Kahn Barsamian (Executive Officer)

personally known to me (or 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. WITNESS my hand and official seal.

Signature [Handwritten Signature]



(This area for official notarial seal)

OPTIONAL:

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Date of Document

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

DESCRIPTION

All that certain real property situate in the City of San Rafael, County of Marin, State of California, described as follows:

PARCEL ONE:

BEGINNING at the Northerly terminus of the course described as "South 18° 47' 22" West 186.02 feet" in Parcel 2 of the property granted by Manual T. Freitas, et al, to the State of California by Deed recorded in Book 1208 of Official Records, at Page 255; thence South 18° 47' 22" West, 30.00 feet to the true point of beginning; thence South 71° 12' 38" East, 132.42 feet; thence North 81° 02' 46" East, 107.43 feet; thence South 8° 57' 14" East, 335.00 feet; thence North 81° 02' 46" East, 146.95 feet; thence South 8° 57' 14" East, 183.02 feet to the Southerly line of the lands firstly described in the Deed from Rose Freitas Rose, et al, to Associated Construction Engineering Company of California, Inc., a corporation, et al, dated February 25, 1960 and recorded March 3, 1960 in Volume 1349 of Official Records, at Page 199, Marin County Records; running thence Westerly along said Southerly line the following three courses and distances; thence South 86° 14' 01" West, 159.39 feet; thence South 72° 36' 11" West, 258.81 feet; thence North 81° 19' 24" West, 171.11 feet to a point on the Easterly boundary of said Parcel 2 (1208 O.R. 255); thence along said Easterly boundary (1208 O.R. 255), North 6° 41' 43" East, 272.09 feet; thence along a tangent curve to the right, having a radius of 773.05 feet; through a central angle of 12° 05' 39" for a distance of 163.18 feet; and North 18° 47' 22" East, 156.02 feet to the true point of beginning.

PARCEL TWO:

BEGINNING at the Northerly terminus of the course described as "South 18° 47' 22" West, 186.02 feet" in Parcel 2 of the property granted by Manual T. Freitas, et al, to the State of California by Deed recorded in Book 1208 of Official Records, at Page 255; running thence South 18° 47' 22" West 30.00 feet; thence South 71° 12' 38" East 132.42 feet; thence North 81° 02' 46" East 107.43 feet; thence South 8° 57' 14" East, 335.00 feet; thence North 81° 02' 46" East, 146.95 feet; thence South 8° 57' 14" East, 183.02 feet to the Southerly line of the lands firstly described in the Deed from Rose Freitas Rose, et al, to Associated Construction Engineering Company of California, Inc., a corporation, et al, dated February 25, 1960 and recorded March 3, 1960 in Volume 1349 of Official Records, at Page 199, Marin County Records; running thence Easterly along said Southerly line North 86° 14' 01" East 281.48 feet to an angle point therein; thence Northerly and Westerly along the Easterly and Northerly lines of the lands described in said last named deed the following three courses and distances: North 8° 57' 14" West 573.47 feet, South 81° 02' 46" West 527.30 feet and North 71° 12' 38" West 125.01 feet to the point of beginning.

PARCEL THREE:

A 10-FOOT sanitary sewer easement lying 5 feet on either side of the following described center line:

continues.....

**BEGINNING** at the Northerly terminus of the course described as "South 6° 41' 43" West 614.70 feet" in Parcel 2 of the Deed granted by Manuel T. Freitas, et al, to the State of California recorded in Book 1208 of Official Records, at Page 255; thence South 6° 41' 43" West 272.09 feet; thence South 81° 19' 24" East, 171.11 feet; thence North 72° 36' 11" East 49.00 feet to the true point of beginning; thence South 33° 06' 00" West, 22.00 feet; thence South 6° 54' 00" West, 51.00 feet; thence South 22° 06' 00" West, 180 feet more or less to an existing 10-foot wide sanitary sewer easement described in the Deed from Rose Freitas Rose, et al, to Terra Linda Corporation, a corporation, recorded March 17, 1954 in Book 855 of Official Records, at Page 506, Marin County Records.