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SANTA CLARA COUNTY RECORDER

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FILED FOR RECORD
AT REQUEST OF

Recording Requested By:

Scott Boulevard, Inc.

When Recorded, Mail To:

Scott Boulevard, Inc.
c/o Mellon/McMahan Real Estate Advisors, Inc.
444 Market Street, Suite 2100
San Francisco, CA 94111
Attn: Ms. Genia Demetriades

94 MAY -9 AM 11:00

CLERK OF RECORDS
SANTA CLARA COUNTY
EMILY DAVIS
CLERK

COVENANT TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made on the 7th day of April, 1994 by Scott Boulevard, Inc. ("Covenantor"), which is the owner of record of certain property situated at 3333 Scott Boulevard, in the City of Santa Clara, County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the Regional Water Quality Control Board, San Francisco Bay Region (the "Board") with reference to the following facts:

- A. Portions of this property have contained and currently contain hazardous substances.
- B. Certain areas of the site's groundwater have been found to have residual synthetic volatile organic compounds remaining after the completion of groundwater treatment as described in the report entitled "Remediation Plan, Former Magnetic Peripherals, Inc. MPI Facility" prepared by Unisys Corporation and filed with the Board.
- C. Covenantor desires and intends that to protect public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances which have been found on portions of the Property. These substances include volatile organic compounds (VOCs). The nature and extent of VOCs have been defined at the site and remedial efforts consisting of groundwater extraction and treatment have been completed to reduce concentrations of VOCs to levels which

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do not pose a risk to the public health. Specifically, the potential human health effects resulting from the presence of VOCS in the groundwater have been evaluated by way of a quantitative risk assessment. The risk assessment considered potential future exposure scenarios where the Property would be used for residential purposes and the groundwater used for drinking, showering and irrigation.

Certain areas of the site's groundwater have residual VOCs remaining after completion of groundwater treatment. These VOCs principally consist of Trichlorethylene (TCE), cis-1,2-Dichloroethylene (DCE), Trichlorofluoromethane (Freon 11) and Trichlorotrifluoroethane (Freon 113). The location and concentration of the VOCs is determined through groundwater monitoring and is reported to the Board not less than annually. The VOCs are primarily limited to two distinct locations on site.

ARTICLE I

GENERAL PROVISIONS

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (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. 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 and bind the respective successors in interest thereof. 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 imposed pursuant to Sections 25355.5 of the Health and Safety Code, Section 13267 of the Water Code and shall be enforceable by the Board.

1.02 Concurrence of Owners 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 future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

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1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE II

DEFINITIONS

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

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

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

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property. Owner shall exclude any person holding only a security interest in the Property.

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of the portion of the Property as described in Exhibit A as follows:

- (1) Until the Board, or its successor agency, determines in accordance with the provisions of Site Clean-up Requirements Order Number 93-163 adopted by the Board on December 15, 1993 ("Order"), and any amendments thereto, that the withdrawal of water for beneficial uses (as defined in Section 13050 of the California Water Code) from Shallow Wells on the property does not pose a significant existing or potential hazard to present or future public health or safety, no Owner or Occupant of the Property or any portion thereof shall drill, bore, excavate, or otherwise construct a Shallow Well for purposes of extracting water for beneficial use as defined in Section 13050 of the California Water Code. Notwithstanding the foregoing, it shall be permissible to construct Shallow Wells pursuant to a plan for remediation or monitoring of any

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groundwater contamination that may be on the property and to use water extracted from such wells for any use which is specifically approved by the Board or the Santa Clara Valley Water District. As used herein, "Shallow Wells" shall mean any well, boring, or excavation that allows extraction of water from any water bearing zone above a depth of approximately seventy-five (75) feet below ground surface. Nothing contained herein shall restrict any other use of the property. The foregoing restriction shall run with the land and shall be binding upon the covenantor and each other person acquiring a possessory interest in the property until the foregoing restriction is removed in accordance with the terms of the Order.

(2) Until and unless the Board determines in accordance with the provisions of Site Cleanup Requirements Order No. 93-163 and any amendments thereto that the drilling or boring of wells and/or exploration holes deeper than 75 feet below the surface poses no hazard or threat to present or future public health or safety, no owner or occupant of the property or any portion thereof shall drill, bore, excavate, or otherwise construct such wells or holes for any purpose including the extraction of water for beneficial use.

(3) The excavation of soil at any depth for any purpose shall not commence until and unless the owner or occupant desiring to make said excavation has proposed a plan for protecting public health and safety and the health and safety of site workers which is acceptable to the Board, and implements said plan as proposed and accepted, upon commencement of the excavation.

The use restriction shall not restrict any other use of the property except as expressly provided therein. Specifically, the use restriction will not restrict drilling, boring, or excavation for any soils or geological testing.

Parcel A as shown on that Parcel Map filed for record on March 22, 1978 in the office of the recorder, County of Santa Clara, State of California, in Book 415 of Maps at Page 24 and designated by Assessor's Parcel Number 216-31-075, as shown on the attached Figure 1.

3.02 Conveyance of Property. The Owner or Owners shall provide thirty (30) days advance notice to the Board of any sale, lease, or other conveyance of the Property or a possessory interest in the Property to a third person. The Board shall not, by reason of the 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.

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3.03 Enforcement. Failure of the Owner to comply with any of the requirements set forth in paragraph 3.01 shall be grounds for the Board, by reason of the Covenant, 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 and criminal actions against the Owner as provided by law. Nothing in this Covenant shall be construed to subject any lender or other person having only a security interest in the Property to enforcement action or any other provision of this Covenant unless and until such lender or other person becomes an Owner or Occupant.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances, and is subject to a deed restriction dated _____, and recorded on _____, in the Official records of California, as Document No. _____ which Covenant and Agreement imposes certain covenants, conditions, and restrictions on usage of the property described herein. The provisions of the Covenant and Agreement 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

4.01 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. Such application shall contain (1) a statement of who is applying for the variance; (2) the proposed variance; and (3) a statement of reasons in support of the granting of the variance. In addition, the owner shall demonstrate to the satisfaction of the Board that the proposed variance will not cause or allow any of the following effects associated with hazardous chemicals or extremely hazardous chemicals:

- A. The creation or increase of significant present or future hazards to the public.
- B. Any significant diminution of the ability to mitigate any significant potential or actual hazard to public health.
- C. Any long-term increase in the number of humans or animals exposed to significant

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hazards which affect the health, well-being, or safety of the public.

Upon making a decision to approve or deny the proposed variance, the Board shall state in writing and cause to be served its response on the owner of the land, the legislative body of the city or county in whose jurisdiction the land is located, and upon any other interested persons made known to the Board. If the Board agrees to the proposed variance, the Board and all of the owners of the land shall execute an instrument reflecting this agreement, shall particularly describe the real property affected by the variance, and the owner shall record the instrument in the county in which the land is located within ten (10) days of the date of execution.

4.02 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 on the ground that the chemicals no longer create a significant existing or potential hazard to present or future public health or safety. Any application shall contain sufficient evidence for the Board to make a determination upon any or all of the following grounds:

- A. The hazardous chemicals which caused the land to be contaminated have since been removed or altered in a manner which precludes any significant existing or potential hazard to present or future public health.
- B. New scientific evidence is available concerning either of the following which shows that any significant existing or potential hazard to present or future public health has been precluded or eliminated:
 - 1. The nature of the hazardous chemicals contamination; or
 - 2. The geology or other physical environmental characteristics of the contaminated land.

Upon making a decision to approve or deny the proposed termination, the Board shall state in writing and cause to be served its response on the Owners of the land, the legislative body, and the city or county in whose jurisdiction the land is located, and upon any other interested person. If the Board approves, in writing, the proposed termination of the restrictions, the Board and all of the Owners of the land shall record

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or cause to be recorded a termination of the restrictions which shall (i) particularly describe the real property subject to the restrictions, and (ii) be indexed by the recorder in the grantor index in the name of the record title owner of the real property subject to the restrictions, and in the grantee index in the name of the Board. Any applicant seeking termination of the restrictions shall pay the Board all costs incurred by the Board in processing the application.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 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 purposes whatsoever.

5.02 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 mail, postage paid certified, return receipt requested:

To: Scott Boulevard, Inc.
c/o Mellon/McMahan Real Estate Advisors, Inc.
444 Market Street, Suite 2100
San Francisco, CA 94111
Attn: Ms. Genia Demetriades

Copy to: California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612
Attention: Steve Morse

5.03 Partial Invalidity. If any portion of the Restrictions set forth herein or terms 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.

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5.04 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.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the California Regional Water Quality Control Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

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

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Scott Boulevard, Inc.

By: Phigenia Demetriades
Title: Vice President
Date: April 7, 1994

Regional Water Quality Control Board

By: [Signature]
Title: EXECUTIVE OFFICER
Date: 4/26/94

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
 County of San Francisco
 On 4-7-94 before me, Monica Melendez, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"
 personally appeared Iphigenia Demetriades
NAME(S) OF SIGNER(S)

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]
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
The President
TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
WILSEA, Inc as
Scott Boulevard, Inc

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT Deed Notice - Scott Blvd
 NUMBER OF PAGES 9 DATE OF DOCUMENT 4-7-94
 SIGNER(S) OTHER THAN NAMED ABOVE n/a

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

DEVELOPMENT AND IMPLEMENTATION OF
LAND USE COVENANTS

STATE OF CALIFORNIA)
COUNTY OF San Francisco)

On 4-7, 1994 before me, the undersigned, a Notary Public in and for said state, personally appeared Iphigene Demetriades, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)
COUNTY OF Alameda)

On April 26, 1994 before me, the undersigned, a Notary Public in and for said state, personally appeared Steven Ritchie, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Executive Officer, of San Francisco Bay Regional Water Quality Control Board, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.



Cynthia M. Troske
Notary Public in and for said
County and State

AGREEMENT/SANCLARA

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EXHIBIT A

Parcel A as shown on that Parcel Map filed for record on March 22, 1978 in the office of the recorder, County of Santa Clara, State of California, in Book 415 of Maps at Page 24 and designated by Assessor's Parcel Number 216-31-075, as shown on the attached Figure 1.

