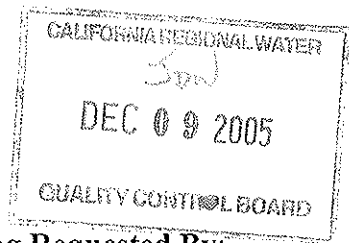
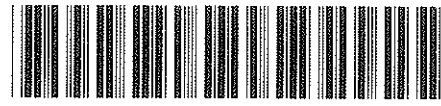


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2005494194 11/17/2005 08:30 AM  
OFFICIAL RECORDS OF ALAMEDA COUNTY  
PATRICK O'CONNELL  
RECORDING FEE: 0.00

Recording Requested By:



13 PGS

City of Hayward

**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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Gov No Fee  
Code 27383

**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

Skywest Plaza Shopping Center  
North West Corner of Hesperian Boulevard and West A Street

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 9<sup>th</sup> day of November, 2005, by the City Hayward ("Covenantor") who is the Owner of record of that certain property situated at the Northwest Corner of Hesperian Boulevard and West A Street, 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. Soil at the Burdened Property was contaminated by migration of hydrocarbon contamination from off-site sources and, possibly to a lesser extent, by on-site sources. The Board has identified potential responsible parties for this groundwater contamination as being off-site sources. These operations resulted in contamination of soil and groundwater with organic chemicals including petroleum hydrocarbons constituents of gasoline and diesel, related BTEX and fuel oxygenate compounds, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. A single focused remediation will occur during redevelopment of the property. Two areas identified from the Environmental Screening Assessment/Risk Mitigation Plan (ESA/RMP dated September 8, 2005, Drawing No. 7), will utilize an in-situ methodology to enhance natural biodegradation. This will be accomplished by the addition of oxygen in Zone A. In-Situ Chemical Oxidation (ISCO) will be utilized in Zone B and if required by the Board in the area designated as Future ISCO Treatment. These one time remedial events will be conducted with the use of direct push injection technologies.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Without the mitigation measures which will be performed on the Burdened Property, exposure to these contaminants could take place via dermal contact, inhalation, or ingestion by humans. The risk of public exposure to the contaminants will be substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is being redeveloped as retail shopping and is adjacent to commercial land uses.

E. 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, retail, commercial or office space;
- b. No residence for human habitation shall be permitted on the Burdened Property;
- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted

on the Burdened Property;

f. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work below 7 feet on the Property, unless expressly permitted in writing by the Board. 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;

g. All uses and development of the Burdened Property shall be consistent with any applicable Board Order or the Risk Mitigation Plan, dated September 8, 2005, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any cap, any 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.

h. 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.

i. The Owner shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to any cap, 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;

j. 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, installation and operation of any soil and/or groundwater remediation system, or monitoring, as provided for in Division 7 of the Water Code; provided the Board and/or any person acting pursuant to Board orders will do so in a manner that will not materially interfere with Owner's (or its Occupants) use and operation of the Burdened Property, any contractor performing such work relating to the Burdened Property shall maintain the appropriate insurance to perform such work.

k. 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 any capped areas.

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 9, November, 2005, and recorded on 17 November, 2005, 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. \* 2005-194194

#### 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"*  
[Owners name and address]  
City of Hayward  
777 B Street  
Hayward, California 94541

*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 affect 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: City of Hayward

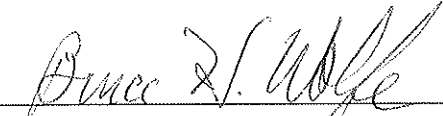
By: 

Title: City Manager Jesus Armas

Date: November 9, 2005

FORM APPROVED  
CITY ATTORNEY  


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

By: 

Title: Executive Officer

Date: November 9, 2005

**CALIFORNIA ACKNOWLEDGMENT**

State of California            )  
  )ss.  
County of Alameda            )

On November 9, 2005, 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



ILLEGIBLE NOTARY SEAL DECLARATION

(GOVERNMENT CODE 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

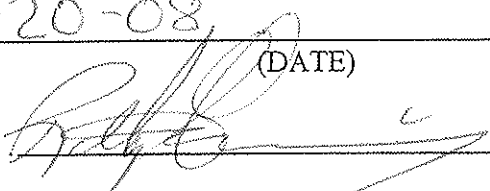
NAME OF NOTARY PUBLIC: MIRIAM LENS

COMMISSION NUMBER: 1514588

NOTARY PUBLIC STATE: CALIFORNIA

COUNTY: ALAMEDA

MY COMM. EXPIRES: 9-20-08  
(DATE)

SIGNATURE OF DECLARANT: 

PRINT NAME OF DECLARANT: RANDY GRUENING

CITY & STATE OF EXECUTION: CONCORD, CALIFORNIA

DATE SIGNED: November 11, 2005

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

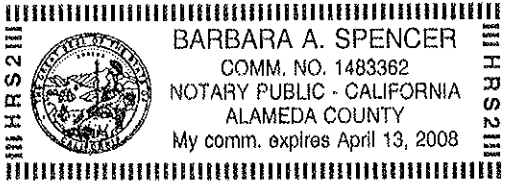
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of ALAMEDA } ss.

On November 9, 2005 before me, BARBARA A. SPENCER Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
 personally appeared Bruce H. Wolfe  
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.



WITNESS my hand and official seal.  
Barbara A. Spencer  
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.*

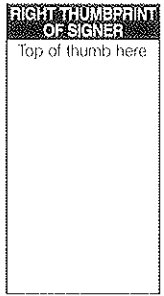
**Description of Attached Document**

Title or Type of Document: Covenant and Environmental Restriction on Property  
 Document Date: \_\_\_\_\_ Number of Pages: 10  
 Signer(s) Other Than Named Above: by City of Hayward

**Capacity(ies) Claimed by Signer**

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

for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region



Signer Is Representing: \_\_\_\_\_

ILLEGIBLE NOTARY SEAL DECLARATION

(GOVERNMENT CODE 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

NAME OF NOTARY PUBLIC: Barbara A. Spencer

COMMISSION NUMBER: 1483362

NOTARY PUBLIC STATE: CALIFORNIA

COUNTY: Alameda

MY COMM. EXPIRES: 4-13-08  
(DATE)

SIGNATURE OF DECLARANT: \_\_\_\_\_

PRINT NAME OF DECLARANT: RANDY GRUENING

CITY & STATE OF EXECUTION: CONCORD, CALIFORNIA

DATE SIGNED: November 11, 2005

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

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

On \_\_\_\_\_, 20\_\_ 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.

WITNESS my hand and official seal.

\_\_\_\_\_  
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 [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.

WITNESS my hand and official seal.

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

City of Hayward

Parcels 1, 2, 3, 4 and 5, as shown on the parcel map entitled

“Parcel Map 8813 being a division of City of leasehold parcels, City of Hayward, County of Alameda, State of California” recorded October 31, 2005, in Book 284 of parcel maps at Pages 83 to 84.