

RECORDING REQUESTED BY:
Sorrento West Properties
3550 General Atomics Court
San Diego, California 92121-1122

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Region 4
5796 Corporate Avenue
Cypress, California 90630
Attention: Stephen Lavinger, Chief
Tiered Permitting Corrective Action Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: Assessor's Parcel Number 316-180-11

Sorrento West Properties

This Covenant and Agreement ("Covenant") is made by and between Sorrento West Properties (the "Covenantor"), the current owner of certain property situated in San Diego, County of San Diego, State of California, described in Exhibit A, which is attached and incorporated by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the Department (collectively referred to as the "Parties")

therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health and safety and the environment.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property, totaling approximately 12.57 acres is more particularly described and depicted in Exhibit A. The Property is located in the area generally bounded by Evening Creek Drive North to the east, Interstate 15 to the west, and other commercial/industrial use properties to the south and north, in the City of San Diego, County of San Diego, State of California. This Property is more specifically described as San Diego County Assessor's Parcel Number(s): 316-180-11.

1.02. A limited portion of the Property is more particularly described in Exhibit B, which is attached and incorporated by this reference ("the Capped Property"). The restriction will apply to the Capped Property, described as an "L" shaped portion of the Property which includes the former Pattern Plate Line 1, Water Treatment, and a portion of the Cuposit Electroless Copper Plating Line Areas.

1.03. On July 19, 1993, the Department authorized an onsite hazardous waste treatment facility ("Facility") on the Property pursuant to Permit By Rule. Under this authorization, the Facility is subject to the requirements of the Hazardous Waste Control Law at Health and Safety Code section 25100 et seq. Pursuant to the corrective action requirements of the Hazardous

Waste Control Law, including Health and Safety Code section 25187, the Department is requiring this Covenant for the Facility. The Department circulated a Preliminary Endangerment Assessment which contained a Final Health Risk Assessment, a Corrective Measure Study, together with a draft Notice of Exemption prepared pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment from October 31, 2003 to December 1, 2003. Because hazardous wastes, including lead, copper, and arsenic remain in the soil at the Property, the Preliminary Endangerment Assessment and Corrective Measure Study provided that a deed restriction would be required as part of the corrective action. The Department approved the Preliminary Endangerment Assessment and Corrective Measure Study on March 25, 2002 and April 1, 2004, respectively. The Department approved the Notice of Exemption on September 22, 2003. The Implementation & Enforcement Operation and Maintenance Plan was approved by the Department on April 1, 2004. A Land Use Covenant Implementation & Enforcement Plan was prepared by the Department on July 8, 2004. A Response to Comments and Final Decision of Selected Remedy document was prepared by the Department and was public noticed on August 19, 2004.

1.04. As detailed in the Preliminary Endangerment Assessment as approved by the Department on March 25, 2002, a portion of the subsurface soils within two feet of the surface of the Property contain hazardous waste and hazardous materials, which include metal contaminants of concern. The metals and their maximum detected concentrations are: lead (2,030 parts per million (ppm)), copper (13,000 ppm), and arsenic (12 ppm), which may be naturally occurring. Remediation required for the property included installing and maintaining a concrete cover (“Cap”) over the Capped Property. The operation and maintenance of the Cap

shall be carried out pursuant to the Implementation & Enforcement Operation and Maintenance Plan approved by the Department on April 1, 2004. The Final Risk Assessment approved by the Department on March 25, 2002, concluded that use of the Property as a residence, hospital, school for persons under the age of 21, or day care center might entail an unacceptable cancer risk. The Department further concluded that restricting future land use of the Property to commercial/industrial use is protective of human health or safety and the environment. Groundwater at the Property is first found at 14 feet below ground surface. No contaminants greater than the California maximum contaminant level (MCL) were detected in the groundwater samples.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any persons or entities entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

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

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions 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 Capped Property and every portion of it shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every one of the Restrictions: (a) shall run with the land pursuant to Health and Safety Code sections 25202.5 and 25202.6 and Civil Code section 1471; (b) shall inure to the benefit of and pass with each and every portion of the Capped Property; (c) shall apply to and bind the respective successors in interest to the Property; (d) are for the benefit of, and shall be enforceable by the Department; and (e) are imposed upon the entire Property unless expressly stated as applicable only to a specific portion.

3.02. Binding upon Owners/Occupants. Pursuant to Health and Safety Code section 25202.5(b), this Covenant shall be binding upon the covenantor and all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound by this covenant for the benefit of the Department.

3.04. Written Notice of Hazardous Substance Release. The Owner shall, prior to the sale, lease, or rental of the Property, give written notice that a release of hazardous substances has come to be located on or beneath the Property, pursuant to Health and Safety Code section 25359.7. Such written notice shall include a copy of this Covenant.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than 30 days after conveyance of any ownership interest in the Property (except for mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect such proposed conveyance, except as otherwise provided by law, administrative order, or specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the subsurface soil, e.g., excavation, grading, removal, trenching, filling, earth movement, or mining shall be permitted on the Capped Property described in Exhibit B without a Soil Management Plan and a Health and Safety Plan approved by the Department .
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide written notice to the Department at least 14 days prior to any building, filling, grading, mining or excavating at the Capped Property.

4.03. Prohibited Activities. The following activities are prohibited at the Property:

- (a) No Raising of livestock, food crops, or fiber crops shall be permitted on the property.
- (b) No groundwater shall be extracted on the Property for purposes other than site remediation or construction dewatering.

4.04. Non-Interference with Cap

- (a) No activities that will disturb the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) are permitted on the Capped Property without prior review and approval by the Department.

- (b) All use and development of the Capped Property shall preserve the integrity of the Cap.
- (c) Any proposed alteration of the Cap requires written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location, and date of any disturbance to the Cap that would likely affect the ability of the Cap to contain subsurface hazardous wastes or hazardous materials in the Capped Property, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within 10 working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant, as deemed necessary by the Department in order to protect the public health and safety and the environment.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Implementation & Enforcement Operation and Maintenance Plan shall have reasonable right of entry and access to the Property for the purpose of implementing the Plan until such time as the Department determines that no further operation and maintenance will be required.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor and/or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Covenantor and/or Owner modify or remove any improvements. "Improvements" means all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Capped Property constructed in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions against the Covenantor and/or Owner as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Any Owner, or with the Owner's written consent, any Occupant of the Property or any portion of the Property may apply to the Department for a written variance from the provisions of this Covenant. The application shall be made in accordance with Health and Safety Code section 25202.6.

6.02. Termination. Any Owner, or with the Owner's written consent, any Occupant of the Property or any portion of the Property, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25202.6.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion of it to the general public or anyone else for any purpose.

7.02. Department References. All references to the Department include successor agencies or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Diego within ten business days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any notice ("Notice" means any demand or other communication with respect to this Covenant), each such Notice 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 (2) three business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Dr. Keith E. Asmussen
Sorrento West Properties
3550 General Atomics Court
San Diego, California 92121-1122

To Department: Stephen W. Lavinger, Branch Chief
Tiered Permitting Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth in this document is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor

Date: August 27, 2004

By: [original signed by John E. Jones]

Secretary & Treasurer

Department

Date: September 23, 2004

By: [original signed by Steve Lavinger]

Branch Chief

Tiered Permitting Corrective Action Branch

Note: Each signature shall be acknowledged by a Public-Notary.