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SANTA CLARA COUNTY RECORDER
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Owner

RDE # 008
3/25/2015
11:10 AM

Recording Requested By:

East Charleston, Inc.
104 Caledonia Street
Sausalito, California 94965

When Recorded, Mail To:

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

COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY

844 East Charleston Road
Palo Alto, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 14th day of January, 2015 by East Charleston, Inc. ("Covenantor") who is the Owner of record of that certain property situated at 844 East Charleston Road, in the City of Palo Alto, County of Santa Clara, 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 releases of solvents during various operations conducted at the Burdened Property prior to acquisition of the Burdened Property by Covenantor. These operations resulted in contamination of soil and groundwater with organic chemicals including trichlorothene (TCE), which constitute hazardous materials as that term is defined in California Health & Safety Code Section 25260. Remediation has been conducted on the Burdened Property since 1999. Between 1999 and 2002, remedial activities included groundwater extraction, treatment and reinjection. Subsequently, enhanced in-situ bioremediation has been used to treat contaminated groundwater. Soil gas investigations have revealed TCE, and certain associated degradation products, at levels that have a potential to pose a risk to human health through vapor intrusion. However, indoor air sampling has not revealed concentrations of chemicals at levels posing an unacceptable risk.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil, soil gas and groundwater on the Burdened Property. Without the mitigation measures which have

been performed on the Burdened Property, exposure to these contaminants could take place via inhalation of vapors or ingestion of groundwater by humans. 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 used for commercial offices and storage and is adjacent to commercial land uses to the east and west and mixed-use to the north of East Charleston Road.

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, 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 Burdened Property or any portion thereof shall conduct any excavation work on the Property, unless expressly permitted in writing by the Board. For purposes of the paragraph, however, "Excavation work" shall not include work performed in the top nine inches of soil on the Burdened Property, outside the footprint of the existing building and in connection with landscaping or paving. 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 Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of 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, to the extent that it is not already addressed in a work plan or other notice sent to, and approved by the Board in advance: (1) The type, cause, location and date of any disturbance to 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 or overnight express service within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

j. The Owner 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 conducting any remedial, removal or other cleanup action, inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code and/or any final order issued by the Board or other regulatory agency with jurisdiction over the Site.

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 _____, 2015, and recorded on _____, 2015, in the Official Records of Santa Clara 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.

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"
East Charleston, Inc.
104 Caledonia Street
Sausalito, California 94965

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 _____ 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: _____

By: FRANCIS MEYNARD
Title: TREASURER
Date: 01-14-2015

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

By: Bruce H. Wolfe
Title: Executive Officer
Date: Feb. 17, 2015

2809216.1

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of MARIN)

On JANUARY 14, 2015 before me, CYNTHIA LOUIE, NOTARY PUBLIC,
Date Here Insert Name and Title of the Officer

personally appeared FRANCIS MEYNARD
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CYNTHIA LOUIE
Commission # 1983133
Notary Public - California
Marin County
My Comm. Expires Jul 21, 2016

Signature
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY Document Date: JANUARY 14, 2015
Number of Pages: 6 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

Sec 2. Section 1189 of the Civil Code is amended to read:
1189 (a) (1) Any certification of acknowledgment taken within this state shall be in the following form:

State of California
County of Alameda
On Feb 17 2014 before me, Adrienne McDowell Vann, Notary Public, personally appeared Bruce H. Wolfe, who 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 signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature Adrienne McDowell Vann

ADRIENNE McDOWELL VANN
COMM. #2081444
Notary Public - California
Alameda County
My Comm. Expires Sep. 12, 2018