When Recorded:

Mail to: Shahinian Management

c/o Lee Shahinian, Jr., M.D.
2500 Hospital Drive, Bldg. 2
Mountain View, CA 94040

11837279

M692PAGE0658

COVENANT AND AGREEMENT

TO RESTRICT THE USE OF PROPERTY

This Covenant and Agreement (the "Covenant") is made as of the 6th day of March, 1993 by Shahinian Management ("Covenantor") which is the owner of record of certain property situated 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") for the benefit of the California Regional Water Quality Control Board, San Francisco Bay Region, as defined in Paragraph 1.8, (the "Regional Board"), with reference to the following facts:

A. The Property is among the properties that are subject to Regional Board Site Cleanup Requirements Order No. 91-137 issued on September 18, 1991 ("Regional Board Order No. 91-137"). Organic chemicals have been detected in the soils at all or a portion of the properties subject to Regional Board Order No. 91-137. In addition, halogenated and aromatic volatile organic compounds ("VOCs") and phenols have been detected under all or a portion of the properties subject to Order No. 91-137 in shallow ground water aquifers. Regional Board Order No. 91-137 provides for the remediation of soil and groundwater contamination at the properties subject to said Order.

B. Regional Board Order No. 91-137 requires Covenantor to implement a deed restriction prohibiting the use of the A and B Aquifers as a source of drinking water until ground water cleanup standards have been achieved and contaminant levels have been stabilized in the A and B Aquifers underlying the Property or any portion thereof in accordance with Order No. 91-137. Regional Board Order No. 91-137, Provision C(3)(b).

C. Covenantor desires and intends that use of the Property shall be subject to the requirements stated herein.

Now, therefore, Covenantor and the Regional Board declare and agree as follows:

11837279

FILED FOR RECORD AT REQUEST OF GRANTOR
Mar 30 8 30 AM '93
OFFICIAL RECORDS SANTA CLARA COUNTY LAURIE KANE RECORDER

REC FEE	13
RMF	11
MICRO	1
RTCF	10
LIEN	
SMPF	
2 PCOR	

2821K

ARTICLE I

DEFINITIONS

1.1 A Aquifer: The "A Aquifer" is that zone of ground water beneath the Property which occurs between 5 and 25 feet below ground surface.

1.2 B Aquifer: The "B Aquifer" consists of those zones of ground water beneath the Property which occur between 30 and 45 feet below ground surface (the "B1 Aquifer"), between 50 and 65 feet below ground surface (the "B2 Aquifer"), and between 70 and 90 feet below ground surface (the "B3 Aquifer").

1.3 Ground Water. "Ground Water" shall mean water below the ground surface in a zone of saturation.

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

1.5 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold fee simple title to the Property or any portion thereof.

1.6 Precluded Production Well(s). "Precluded Production Well(s)" shall mean any well, boring or excavation that allows extraction of Ground Water from the A aquifer or the B aquifer that is intended to be used as drinking water for human consumption.

1.7 Property. The "Property" consists of the land described in Exhibit A.

1.8 Regional Board. "Regional Board" shall mean the California Regional Water Quality Control Board, San Francisco Bay Region.

ARTICLE II

EFFECT OF COVENANT

2.1 Provisions to Run with the Land. This Covenant sets forth protective covenants and conditions upon and subject to which the Property or portions thereof shall be improved, held, used, occupied, ground leased, sold, hypothecated, encumbered, and/or conveyed. The covenants and conditions are imposed pursuant to California Health and Safety Code Sections 25355.5

and 25356.1, and shall run with the land pursuant to California Health and Safety Code Section 25355.5. The covenants and conditions are enforceable solely by the Regional Board.

2.2 Concurrence of Owners Presumed. All purchasers, ground lessees, or possessors of the Property or any portions thereof shall be deemed by their purchase, leasing, or possession of all or portions of the Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assigns, and the agents, employees, and ground lessees of such owners, heirs, successors, and assigns, that the covenants and conditions herein established shall be adhered to for the benefit of the Regional Board and that their interest in the Property shall be subject to the covenants and conditions contained herein.

2.3 Incorporation into Deeds and Leases. Covenantor agrees and covenants that the restriction in Paragraph 3.1 will be incorporated by reference in any deeds and ground leases conveying an interest in the Property or any portion thereof until the covenants and conditions are terminated as to the relevant portion(s) under Paragraph 4.2 of this Covenant. In addition to any express provisions required to incorporate the the covenants and conditions in accordance with Sections 1468, 1469, and 1470 of the California Civil Code, the following statement shall appear on or be attached to deeds and leases subject to this Covenant.

> This grant of interest in real property is expressly made subject to the Covenant and Agreement dated MARCH 1, 1993, and recorded on _____, 1992, in the Official Records of the County of Santa Clara, State of California, as document No. _____, which Covenant and Agreement is intended to place controls on activities at the Property that might otherwise endanger the public health, the environment, or water quality. Accordingly, the Covenant and Agreement imposes certain covenants and conditions on usage of certain ground water aquifers underlying the real property described herein as sources of drinking water. The provisions of the Covenant and Agreement are incorporated herein and made a part hereof as if set forth in full. The only entity which shall have the right to enforce the Covenant is the California Regional Water Quality Control Board, San Francisco Bay Region.

2.4 Statement Regarding Hazard. Nothing in this Covenant shall be construed as a statement, admission or declaration that any existing or potential health, environmental, or other hazard exists or will exist on or beneath the Property or any portion thereof.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.1 Restrictions on Use. Covenantor agrees to restrict the use of the Property and any portion thereof as follows:

> No Precluded Production Wells may be drilled, installed, or used on the Property or any portion thereof, except pursuant to (1) the express prior written approval of the Regional Board, or (2) a variance or termination obtained in accordance with Paragraphs 4.1 and 4.2 of this Covenant. Wells not subject to this restriction include but are not limited to wells installed for purposes of monitoring and testing (such as borings for the purpose of testing soils, wells for monitoring the quality of ground water, and borings to define geology), production wells associated with remediation activities, wells for construction dewatering, and excavations for foundations, utilities or similar purposes.

3.2 Notice of Installation of Wells Other than Precluded Production Wells. The Owner of the Property shall provide a written notice to the Regional Board at least thirty (30) days before the Owner installs a well, boring, or excavation which (a) is not a Precluded Production Well, and (b) extends to a depth of twenty (20) feet or more below ground surface. The Regional Board will be deemed to have received notice in accordance with this Paragraph 3.2 for all wells, borings or excavations that are installed or will be installed in compliance with the terms and conditions of Regional Board Order No. 91-137 and any amendments thereto.

3.3 Conveyance of Property. Within thirty (30) days after the closing of any sale, lease, or other conveyance of the Property or any portion of the Property, any person acquiring ownership of the Property or any portion thereof, or entering

into a ground lease as lessee of the Property or any portion thereof, shall provide written notice of the conveyance to the Regional Board and to Covenantor at the addresses specified in Paragraph 5.2. Except as otherwise provided by law, or by regulation, the Regional Board shall not by reason of this Covenant have authority to approve or disapprove or otherwise affect any sale, lease, or other conveyance of the Property or of any portion of the Property. Notice is required under this Paragraph 3.3 only for the purpose of maintaining a current record of the Owners and ground lessees of the Property.

3.4 Enforcement. Failure of the Owner or Occupant to comply with Paragraph 3.1 of this Covenant shall be grounds for the Regional Board, by reason of this Covenant, to require that the Owner cease operation of and close all Precluded Production Wells installed in violation of that Paragraph. Failure to observe the restrictions set forth in Paragraph 3.1 or the notice requirements set forth in Paragraph 3.2 and 3.3 shall be grounds for the Regional Board to pursue any remedy provided by law to enforce the provisions of Paragraphs 3.1, 3.2 or 3.3. This Covenant shall not create any private right of action against Covenantor or any Owner or Occupant of the Property or any portion thereof.

3.5 Extent of Covenantor's Obligations. Upon conveyance of all or any portion of the Property by deed, ground lease or other appropriate instrument, which conveyancing instrument contains the provisions set forth in Paragraph 2.3, Covenantor shall be released from any and all obligations under this Covenant as to that portion of the Property which has been conveyed. Covenantor shall have no obligation to police or to enforce the observance of the covenants and conditions contained herein by other Owners or Occupants of the Property or any portion thereof.

ARTICLE IV

VARIANCE AND TERMINATION

4.1 Variance. Any Owner, or with the Owner's written consent, which shall not unreasonably be withheld, any Occupant, of the Property or any portion thereof, may apply to the Regional Board for a written variance from the provisions of this Covenant as it applies to all or any portion of the Property owned or occupied by the applicant.

4.2 Termination. Any Owner, or with the Owner's written consent, which shall not unreasonably be withheld, any Occupant, of the Property or any portion thereof, may apply to the Regional Board for an amendment or termination of the Covenant as it applies to all or any portion of the Property owned or occupied by the applicant. The Regional Board shall grant a release from the covenants and conditions of the Covenant as to the Property or the portion of the Property that is the subject of the application when ground water cleanup standards have been achieved and pollutant levels have been stabilized in the A Aquifer and the B Aquifer underlying the Property or the portion of the property that is the subject of the application in accordance with Regional Board Order No. 91-137 and any amendment thereto that is in effect at the time such application is submitted to the Regional Board. Any release from the provisions of the Covenant granted by the Regional Board under this Paragraph shall be effective when recorded by the Owner of the Property or relevant portion thereof in the County of Santa Clara. Any such release shall be effective without the concurrence of any other Owner of any other portion of the Property, or any adjacent 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 purposes whatsoever.

5.2 Notices. Whenever any person shall desire to give or serve 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 (i) 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 (ii) five (5) days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested, to Covenantor and the Regional Board at the following addresses or at such other addresses as Covenantor or the Regional Board may designate in a written notice which shall be addressed and delivered personally or by certified mail to each of the then Owners and Occupants of the Property.

To: Shahinian Management

c/o Lee Shahinian, Jr., M.D.
2500 Hospital Drive, Bldg. 2
Mountain View, CA 94040

With a copy to:

Larry Cogan, Esq.
Ware and Freidenrich
400 Hamilton Avenue
Palo Alto, CA 94301

To: California Regional Water Quality Control Board

c/o Executive Officer
California Regional Water Quality
Control Board
San Francisco Bay Region
2101 Webster St., Suite 500
Oakland, CA 94612

With a copy to:

Legal Counsel
California Regional Water Quality
Control Board
San Francisco Bay Region
2101 Webster St., Suite 500
Oakland, CA 94612

5.3 Partial Invalidity. If any portion of this Covenant is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion has 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 intended to aid in the meaning or interpretation of any part of the Covenant.

5.5 Recordation. This instrument shall be executed by Covenantor and by the Executive Officer of the Regional Board. This instrument shall be recorded by Covenantor in the County of Santa Clara within ten (10) days after the date of full execution.

ALL-PURPOSE ACKNOWLEDGMENT

ND 206

State of California
County of Santa Clara

On 03-1-93 (DATE) before me, Faith A. Tuban (NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC")

personally appeared Lee Shahinian Jr. (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.

OFFICIAL SEAL
FAITH A. TUBAN
NOTARY PUBLIC-CALIFORNIA
SANTA CLARA COUNTY
My Commission Expires Sept. 24, 1993

Witness my hand and official seal.

Faith A. Tuban
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL(S)
☑ CORPORATE OFFICER(S) Mgr. (TITLE(S))
☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ SUBSCRIBING WITNESS
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

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SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
Shahinian Mgmt

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

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

Title or Type of Document Covenant & Agreement for Property
Number of Pages 11 Date of Document 3-1-93
Signer(s) Other Than Named Above Steven Ritchie

ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
County of ALAMEDA

On 01-29-93 (DATE) before me, Remedios T. Deocampo (NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC")

personally appeared STEVEN RITCHIE (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.

OFFICIAL SEAL
REMEDIOS T. DEOCAMPO
NOTARY PUBLIC-CALIFORNIA
ALAMEDA COUNTY
My Comm. Expires May, 16, 1994

Witness my hand and official seal.

Remedios T. Deocampo
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

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

☐ INDIVIDUAL
☑ CORPORATE OFFICER(S) EXECUTIVE OFFICER (TITLE(S))
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

OPTIONAL SECTION

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

Title or Type of Document COVENANT AND AGREEMENT
Number of Pages 12 Date of Document 01-29-93
Signer(s) Other Than Named Above

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

3214 (12/92)

EXHIBIT A

PROPERTY DESCRIPTION

LOT 7, as shown on the Map entitled, "Tract No. 1785, San Ysidro Tract," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on October 22, 1956 in Book of Maps numbered 73, at page 25.

EXHIBIT B

FORM LETTER FOR REGIONAL BOARD RESPONSES
TO REQUESTS FOR COMPLIANCE STATUS

"Dear _____:

This is to notify [Owner or Occupant requesting this letter] in response to a request dated _____ made pursuant to that certain Covenant and Agreement to Restrict the Use of Property dated _____, 1992 (the "Covenant") and recorded in the Official Records of Santa Clara County at Page ____ of Book ____ that the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Board") has no knowledge of any failure of [Owner or Occupant] to comply with the provisions of the Covenant. [Or, the Regional Board has knowledge of following _____.] In facts:_____ providing this statement, the Regional Board has relied upon a review of its official records, has made no other inquiries, and has made no inspection of the property owned [Or, occupied] by [Owner or Occupant].

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION

BY: _____

2821K