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geology. All borings and excavations shall be performed and all wells constructed in conformance with the standards of the Santa Clara Valley Water District, and shall incorporate practicable efforts to minimize: (a) any significant threat to humans and animals and (b) any significant transfer of contaminants from the lithosphere to the atmosphere or between water-bearing, or potentially water-bearing, soil or rock zones.

(3) Any or all wastes must be managed in accordance with all applicable requirements.

3.02 Conveyance of Property. If Covenantor proposes to sell, lease, or otherwise convey the Property, or any portion thereof, Covenantor shall provide advance written notice to the Board at the address specified in paragraph 5.02. Such notice shall be provided thirty days prior to the proposed sale, lease, or other conveyance, or upon Covenantor's first knowledge of the proposed closing date or date of lease, whichever is shorter. The notice required in this section shall consist of the proposed date of lease or conveyance. Within two weeks after the closing date or date of lease, Covenantor shall supply notice to the Board of the completion of the transaction, containing a description of the property to be leased or conveyed, the name or names of the lessee(s) or buyer(s), and, if known to the Covenantor, the general purpose for which the property to be leased or conveyed will be used. Notice is required hereunder for the sole purpose of maintaining a current record of the Owners and ground leases of the Property.

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3.03 Enforcement. Failure of the Owner to comply with any of the requirements as 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 this Covenant shall be grounds for the Board to file civil and criminal actions against the Owner as provided by law. The Board shall not by reason of the Covenant have the authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or any portion of the Property, unless provided otherwise by statute. This Covenant shall not create any private right of action against Covenantor or any Owner or Occupant of the Property or any portion thereof.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or ground leases 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 6/9/92, and recorded on 6/10/92, in the Official Records of California, as Document No. 11401162, 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."

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3.05 Limitation of Covenantor's Obligations Upon Conveyance of Ownership. Upon conveyance of ownership of the Property, or any portion thereof, by deed or other appropriate conveyance instrument, which instrument contains the provisions set forth herein at paragraph 3.04, Covenantor shall be released from any and all obligations under this Covenant as to that portion of the Property which has been conveyed.

3.06 Limitation of Covenantor's Obligations Upon Conveyance by Lease. If, during Covenantor's ownership, the Property or any portion thereof is conveyed by ground lease containing the provisions set forth herein at paragraph 3.04, Covenantor intends that the Lessee shall undertake any and all obligations under this Covenant as to that portion of the Property which has been leased, and Covenantor intends that the Lessee shall release and indemnify Covenantor for such obligations, unless expressly provided otherwise by the terms of said lease. As between Covenantor and Lessee, Covenantor intends that the Lessee shall be responsible for policing and enforcing the observance of the Restrictions contained herein for that portion of the Property which has been leased. Nothing in this paragraph is intended to convey any position by the Board as to the relative responsibilities of the Covenantor or any Lessees, and nothing in this paragraph is intended to restrict the Board's authority to enforce the Restrictions against the Covenantor or any Lessees.

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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 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

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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:
 - 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

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record 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 to all other parties, if personally delivered to the person being served or to an officer of a corporate party being served or an official of a government agency being served, or (2) three (3) business days after deposit in the mail to all other parties if