

N132 PAGE 0096

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RECORD AT REQUEST OF

ATTORNEY

NOV 12 9 49 AM '93

SANTA CLARA COUNTY
CLERK OF COURT

Recording Requested By:

Kim Camp III
c/o Kimball Small Properties
50 West San Fernando Street
Suite 1020
San Jose, CA 95113

REC FEE	19
BMF	16
MICRO	
HTCF	15
EMM	
STAMP	
10	BOOK

When Recorded, Mail To:

California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

M>

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made as of the 21st day of May, 1993 by Kim Camp III, a California general partnership ("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 Property and the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Board"), with reference to the following facts:

A. The Property is located at: 2986 Oakmead Village Court, Santa Clara, CA 95051.

B. During investigations of the Property in 1988 and 1991, soil contamination by volatile organic compounds was discovered. These compounds were TCE, TCA, and Freon 113, with some breakdown products. The apparent source was a limited release in the parking lot to the west of the building on the Property. Soil, soil-gas and groundwater data suggest that the volatile organic compounds have leached or volatilized out of the source area, and that only low levels of these compounds, not prone to migration, remain in unsaturated soil on the Property. The contamination is thus primarily in the ground water, and is limited to the shallowest zone within the uppermost ground water aquifer, 10-20 feet below the surface.

C. Pursuant to the South Bay Multi-Site Cooperative Agreement and the South Bay Ground Water Contamination Enforcement Agreement, entered into on May 2, 1985, (as subsequently amended) by the Regional Board, the U.S. Environmental Protection Agency and the California Department of Health Services, the Regional Board has been acting as the lead regulatory agency. The Regional Board will continue to regulate the discharger's remediation and administer enforcement actions under the federal Comprehensive Environmental Response, Compensation and Liability Act as amended, the California Water Code, California Health and Safety Code, and regulations adopted thereunder.

D. The site is on the National Priorities List (NPL) and is regulated by Regional Board Order No. 91-119. Regional Board Order No. 91-119 requires Covenantor to implement a deed restriction prohibiting the use of A zone ground water as a source of drinking water (Board Order No. 91-119, Section C.4.c.)

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

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

ARTICLE I

DEFINITIONS

1.01 Regional Board. "Regional Board" shall mean the California Water Quality Control Board, San Francisco Bay Region and shall include its successor agencies, if any.

1.02 Ground Water. "Ground Water" shall mean, pursuant to Health and Safety Code Section 25159.12(i), water below the land surface in a zone of saturation.

1.03 Production Well. "Production Well(s)" shall mean any well, boring or excavation that allows extraction of ground water from the "A" water bearing zone which zone exists above a depth of approximately 20 feet below 1990 ground surface. For purposes of this Covenant, the following are not Production Wells: monitoring or other test wells, including but not limited to, borings for the purpose of testing soils; excavations for

foundations, utilities or similar purposes; wells for monitoring the quality of ground water; or borings to define geology.

1.04 Improvements. "Improvements" shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon the Property.

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

1.06 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold fee simple title to all or any portion of the Property. "Owner" shall not include the Covenantor following Covenantor's transfer of the fee title to the Property, where Covenantor did not cause this Covenant to be violated.

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

ARTICLE II

ESTABLISHMENT OF RESTRICTIONS

2.01 Provisions to Run with the Land. This covenant sets forth and establishes a common scheme and plan for the use, enjoyment, conveyance, development, repair, maintenance and improvement of the Property, and establishes certain protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used,

occupied, ground leased, sold, hypothecated, encumbered, and conveyed. Each and all of the Restrictions are declared to be in furtherance of a plan established for the purpose of enhancing and protecting the value, desirability and enjoyment of the Property. Each and all of the Restrictions shall run with the land, including any interest in the Property conveyed or reserved, and be for the benefit of and be binding on any interest conveyed or reserved, and all parties having or acquiring any right, title, interest or estate in the Property and any successors in interest thereto. Each and all of the Restrictions are imposed as equitable servitudes upon the Property and on any portion thereof, for the benefit of the Property and the Regional Board and shall be enforceable solely by the Regional Board and any successor agency thereto.

2.02 Concurrence of Owners Presumed. All purchasers and ground lessees of the Property or any portion thereof shall be deemed by their purchase, leasing, or possession of all or any portion of the Property, to be in accord with the Restrictions 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 Restrictions shall be adhered to for the benefit of the Regional Board and the future owners and occupants of the Property and that their interest in the Property shall be subject to the Restrictions contained herein.

2.03 Incorporation Into Deeds and Leases. Covenantor covenants that the Covenant shall be attached to, and the Restrictions shall hereafter be contained in, each and all subsequent deeds and leases of any portion of the Property in accordance with Sections 1468, 1469, and 1470 of the California Civil Code, provided, however, that the right to enforce the Restrictions shall exist only in the Regional Board. In addition to any express provision required to comply with California Civil Code Section 1468, 1469, and 1470, the following statement shall appear:

This grant of interest in real property is expressly made subject to the certain Covenant and Agreement dated _____, and recorded on _____, in the Official Records of the County of Santa Clara, State of California, as document No. _____, which Covenant and Agreement imposes certain covenants, conditions, and restrictions on usage of ground water underlying the real property described herein. The provisions of the Covenant and Agreement are incorporated herein and made a part hereof as if set forth in full. The only persons who have the right to enforce the Covenant and Agreement are the California Regional Water Quality Control Board, San Francisco Bay Region.

2.04 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 the Property or on any portion of it.

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of the Property as follows:

No Production Wells, or borings or wells penetrating through the "A" water bearing zone, may be drilled on the Property without the express prior written approval of the Regional Board and any other agency with jurisdiction.

3.02 Conveyance of 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, 20 days before executing any such purchase or ground lease, written notice of the proposed purchase or ground lease to the Regional Board and to Covenantor at the addresses specified in paragraph 5.02. The Regional Board shall not by reason of the Covenant have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or of any portion of the Property, except as otherwise provided by law or by administrative order. Notice is required hereunder only for the purpose of maintaining a current record of the Owners and ground lessees of the Property.

3.03 Enforcement. Failure of the Owner or Occupants to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Regional Board, by reason of the

Covenant, to require that the Owner or Occupant modify or remove any Production Wells constructed in violation of that paragraph. Violation of the Restrictions shall be grounds for the Regional Board to file actions against the Owner as provided by law, including but not limited to the provisions of Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This Covenant shall not create any private right of action against Covenantor or any Owner or Occupant of the Property or any portion thereof.

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 Regional Board for a written variance from the provisions of this Covenant.

4.02 Termination. The Restrictions shall remain in full force and effect until groundwater cleanup standards have been achieved and pollutant levels have been stabilized in onsite aquifers in accordance with Regional Board Order 91-119, and/or subsequent orders. Any Owner or, with the Owner's consent, any Occupant of the Property or a portion thereof, may apply to the Regional Board for an amendment or termination of the Covenant, including but not limited to the Restrictions, as applied to that portion of the Property which is owned or ground leased by the Owner or Occupant. The Covenant shall remain in full force and

effect with respect to the Property and shall run with the land until such time as the Owner of the Property, or any portion thereof, records a release of the Property or a portion thereof from the provisions of the Covenant. Any such release shall contain a sworn statement that the Owner of the Property to be released has demonstrated, to the written satisfaction of the Regional Board, that the Covenant is no longer reasonably necessary to protect the public health or safety from any chemicals which may be located on the Property or that portion of the Property to be released from the Covenant. In addition, any such release shall have attached an acknowledgement by the Regional Board that the statements contained in the release are correct. Any such release shall be effective without the concurrence of any other Owner of any portion of the Property, or any adjacent property.

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 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: Kim Camp III
 c/o Kimball Small Properties
 50 West San Fernando Street, Suite 1020
 San Jose, CA 95113

Copy To: California Regional Water Quality
 Control Board
 San Francisco Bay Region
 2101 Webster Street, Suite 500
 Oakland CA 94612

5.03 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 had not been included herein.


5.04 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.

5.05 Recordation. This instrument shall be executed by Covenantor and by the Executive Officer, Regional Water Quality Control Board, San Francisco Bay Region. This instrument shall be recorded by Covenantor in the County of Santa Clara within (10) days of the date of full execution.

5.06 Statement of Compliance. Within a reasonable time after receipt of a written request from any Owner or Occupant of a Property or any portion thereof, the Regional Board shall provide to such Owner or Occupant a written statement, substantially in the form attached hereto as Exhibit B, indicating whether to the Regional Board's knowledge such Owner or Occupant is operating in compliance with the provisions of this Covenant.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO
BAY REGION

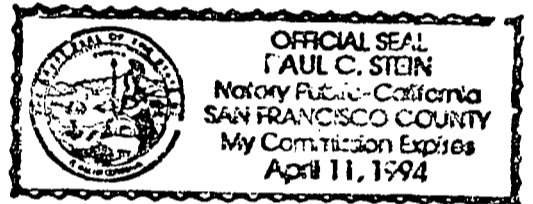
By: 
Name: STEVEN R. RICHIE
Title: EXECUTIVE OFFICER

State of California)
County of Alameda)

On October 26 1993, before me personally appeared Steven R. Ritchie, Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region, personally known to me (or proved to me on the basis of satisfactory evidence) 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.

Paul C. Stein
Notary Public in and for said
County and State



KIM CAMP NO. III, a California general partnership

By: WESTALL CORPORATION, a California corporation, a
general partner

By: [Signature]

Kimball W. Small
President

By: KIMBALL SMALL INVESTMENTS III, a California limited
partnership, a general partner

By: WESTALL CORPORATION, a California corporation,
sole general partner

By: [Signature]

Kimball W. Small
President

State of California)
County of Santa Clara)

On NOVEMBER 5, 1993, before me, M. Hedgpeth, Notary
Public for the State of California, personally appeared
Kimball W. Small, personally known to me (or
proved to me on the basis of satisfactory evidence) 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 he, or the
entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

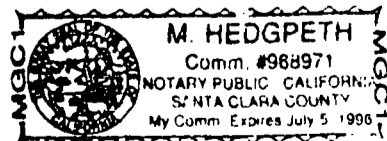


EXHIBIT "A"

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LEGAL DESCRIPTION:

All that certain real property situate in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of that certain 1.1044 acre parcel shown as Parcel 19 on that Parcel Map filed for record in the office of the Recorder of the County of Santa Clara, State of California on March 2, 1978 in Book 414 of Maps at page 2.

EXCEPTING THEREFROM that portion of said property lying below a depth of five hundred (500) feet measured vertically from the contour of the surface thereof, as reserved by Golden Empire Investment Corporation, a corporation, by Deed recorded November 3, 1972, in Book 0097, page 711 of Official Records; provided however, that said grantor its successors and assigns, shall not have the right for any and all purposes to enter above 500 feet, measured vertically from the contour of the surface of said property.

PARCEL TWO:

An easement for ingress and egress for common driveway purposes and for storm drainage and attendant and appurtenant facilities used in connection therewith, in, under, upon, over and across the Northerly 12.5 feet of the Easterly 286.88 feet of Parcel 7, as said Parcel 7 is shown on that certain parcel Map filed for record in the office of the Recorder of the County of Santa Clara, State of California, on September 12, 1977 in Book 361 of Maps, at pages 25, 26 and 27.

PARCEL THREE:

An easement for ingress and egress for common driveway and storm drainage purposes over and across a portion of Parcel 18, as said Parcel 18 is shown on that certain Parcel Map filed for record in the office of the Recorder of the County of Santa Clara, State of California, on March 2, 1978 in Book 414 of Maps at page 2, said easement being more particularly described as follows:

BEGINNING at the most easterly point of Parcel 19, as shown on the Parcel Map recorded on March 2, 1978 in Book 414 of Maps at page 2; thence from said point of beginning along the most Northerly boundary line of said Parcel 19, North 45° 47' 52" West 52.60 feet to an angle point therein; thence continuing along said most Northerly line, South 89° 17' 05" West 172.91 feet; thence at right angles North 00° 42' 55" West 12.50 feet; thence at right angles North 89° 17' 05" East 178.08 feet; thence South 45° 47' 52" East 53.30 feet to a point in the Westerly line of Oakmead Village Court as shown on the Map hereinabove referred to; thence Southerly along said Westerly line of Oakmead Village Court through a curve to the left having a radius of 240.00 feet for an arc distance of 13.28 feet to the point of beginning.

EXHIBIT B

Date _____

Dear _____:

This is to notify (Owner) in response to a request dated _____ made pursuant to that certain Covenant and Agreement to Restrict Use of Property dated _____ (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) to comply with the provisions of the Covenant. (or Regional Board has knowledge of the following facts: _____.) In providing this statement, the Regional Board has relied upon review of its official records and has made no other inquiries and has made no inspection of the Property owned by (Owner).

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD, SAN FRANCISCO BAY REGION

By: _____