

JUL 28 2008

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LOS ANGELES COUNTY REGISTRAR - RECORDER

WHEN RECORDED MAIL TO

NAME *The Wohl Great American  
Armona Company, LLC*  
MAILING ADDRESS *2828 E. Foothill Blvd  
Suite 203*  
CITY, STATE ZIP CODE *Pasadena, Ca 91707*

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

*Covenant to Restrict use of Property Environmental Restriction*

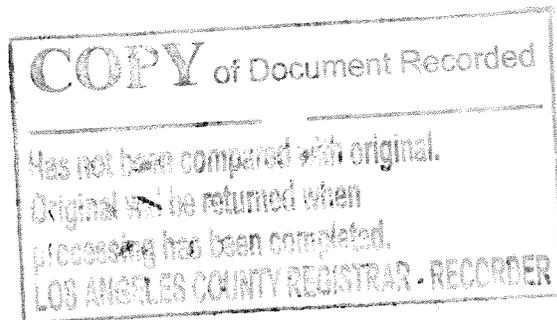
# COPY

**RECORDING REQUESTED BY:**

The Wohl Great American Pomona Company, LLC  
2828 East Foothill Boulevard, Suite 203  
Pasadena, California 91707  
Attention: Mr. Skip Wohl

**WHEN RECORDED, MAIL TO:**

Department of Toxic Substances Control  
Glendale Office  
1011 North Grandview Avenue  
Glendale, California 91201  
Attn: Sayareh Amir, Chief  
Southern California Cleanup  
Operations Branch



Space above this line is reserved for recorder's use

## **COVENANT TO RESTRICT USE OF PROPERTY**

### **ENVIRONMENTAL RESTRICTION**

**Former TiTech Site  
4000 West Valley Boulevard  
Pomona, California  
(APN: 8709-026-011 and 8709-026-016)**

This Covenant to Restrict Use of Property ("Covenant") is made by and between The Wohl Great American Pomona Company, LLC, herein referred to as the "Covenantor," the current owner of property situated at 4000 West Valley Boulevard in the City of Pomona, County of Los Angeles, State of California, described in Exhibit A, which is attached and incorporated herein by this reference ("Property") and the State of California, Department of Toxic Substances Control ("DTSC"). Pursuant to California Civil Code ("Civil Code") section 1471(a)(3), DTSC has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment. The Covenantor and DTSC, collectively referred to as the "Parties," hereby agree that in accordance with Civil Code section 1471, California Health and Safety Code sections 25222.1 and 25355.5, and California Code of Regulations, title 22, section 67391.1, that the use of the Property be restricted as set forth in this Covenant to protect human health, safety, and the environment and that this Covenant shall run with the land.

## ARTICLE I STATEMENT OF FACTS

**1.01** The Property, approximately 9 acres, is described and depicted in Exhibit A. Exhibit A contains a legal description of the Property. The Property is generally bounded by West Valley Boulevard to the west, and commercial properties to the north and south, and the San Jose Creek and railroad to the east. The Property is more specifically described as County Assessor's Parcel Numbers: 8709-026-011 & 8709-026-016.

**1.02** The Property was used in the past as a titanium foundry. Previous investigations conducted under the oversight of the Los Angeles County Health Department, the United States Environmental Protection Agency (US EPA) and the Regional Water Quality Control Board indicated elevated levels of volatile organic compounds (VOCs) in the soil and groundwater. Investigative site assessments for the soil performed under DTSC oversight in 2004 verified that these contaminants existed on the Property.

**1.03** The Property underwent a Preliminary Endangerment Assessment (PEA) by URS to evaluate the Property for potential health risks. The PEA Report, dated October 24, 2004, was approved by DTSC, and further action was recommended by DTSC. The PEA Report is available for inspection at DTSC in the Glendale Office. Subsequently, a Removal Action Workplan (RAW) was prepared for the Covenantor to address the elevated levels of tetrachloroethylene (PCE), trichloroethylene (TCE), and petroleum hydrocarbons (TPH) in the soil. The RAW describes contamination in various locations throughout the Property and describes means by which such contamination will be remediated. The remediation consisted of removal of contaminated soil. Based on the Risk Evaluation included in the RAW and the data presented in the Removal Action Completion Report, DTSC concluded that the use of the Property as a residence, hospital, school for persons under the age of 21 or a day care facility could constitute an unacceptable health risk. However, the Property will not present an unacceptable threat to human health or the environment if limited to commercial and/or industrial use by an environmental restriction covenant.

## ARTICLE II DEFINITIONS

**2.01** Covenantor. "Covenantor" shall mean The Wohl Great American Pomona Company, LLC, and its successors and assigns.

**2.02** DTSC. "DTSC" shall mean the State of California Department of Toxic Substances Control and includes its successor agencies, if any.

**2.03** Environmental Restrictions. "Environmental Restrictions" shall have the meaning set forth in Section 4.01 hereof.

**2.04** Improvements. "Improvements" shall include, but not be limited to, all buildings, structures, utilities, roads, driveways, and paved parking areas on the Property.

**2.05 Occupant.** "Occupant" shall mean Owners and any person or entity entitled by leasehold, license, easement, servitude, agreement or other legal relationship the right to enter and possess, occupy or improve any portion of the Property.

**2.06 Owner.** "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or 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, subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Environmental Restriction: (a) runs with the land pursuant to Health and Safety Code sections 25222.1 and/or 25355.5(a)(1)(C), Civil Code section 1471, and California Code of Regulations, title 22, section 67391.1; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by DTSC; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion of the Property.

**3.02 Binding upon Owners and Occupants.** Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants of the Property, their heirs, successors and assignees, and the agents, employees, and lessees of the owners, heirs, successors and assignees. Pursuant to Civil Code section 1471 all successive owners of the Property and each person having any interest derived through any owner are expressly bound hereby for the benefit of DTSC.

**3.03 Written Notification of the Presence of Hazardous Substances.** Prior to the sale, lease, rent, or sublease of the Property, or any portion thereof, the owner, lessor, renter, or sublessor shall give the buyer, lessee, renter, or sublessee notice that hazardous substances are located on or beneath the Property, pursuant to Health and Safety Code section 25359.7.

**3.04 Incorporation into Deeds, Leases, or Rental Agreements.** The Environmental Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, or rental agreements entered into for any portion of the Property to which they are in effect and applicable.

**3.05 Conveyance of Property.** The Owner shall provide notice to DTSC not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances).

**3.06 Access for DTSC.** DTSC 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 DTSC to protect the public health or safety or the environment.

**3.07 Costs of Administering the Covenant.** DTSC has incurred and will in the future incur costs associated with the administration of this Covenant. Prior to the recordation of this Covenant, Owner has paid, in advance, all of DTSC's costs incurred now and in the future associated with DTSC's administration of this Covenant.

#### **ARTICLE IV ENVIRONMENTAL RESTRICTIONS**

**4.01 Environmental Restrictions.**

(a) The Property shall not be used for residential housing, schools for persons under the age of 21, day-care facilities, hospitals and hospices.

(b) Reuse of Property soil outside of the Property boundary for any purpose is prohibited without the written approval of DTSC.

(c) The construction of groundwater wells and extraction of groundwater from new and/or existing wells for any purpose is prohibited without the written approval of DTSC.

**4.02 Implementation and Enforcement Plan.** All Owners shall comply with the following requirements:

(a) Owner or qualified contractor (on behalf of Owner) shall conduct a visual inspection of the Property no less than annually to ensure compliance with this Covenant.

(b) Owner or qualified contractor (on behalf of Owner) shall submit a written letter report to DTSC annually. The letter report shall be submitted within thirty (30) days following the annual anniversary date of the recordation of this Covenant. The letter report shall contain: (1) visual inspection results; and (2) a certification by the Owner attesting to the compliance of the terms and conditions of this Covenant. (3) If any violations of the Covenant's Environmental Restrictions occurred during the reporting period, such violations shall be explained and information of how the violations were addressed shall be provided in the report.

(c) Owner shall provide DTSC reasonable right of entry and access to the Property in accordance with section 3.06 in order that DTSC can ensure compliance with this Covenant.

#### **ARTICLE V ENFORCEMENT**

**5.01 Enforcement.** Failure of the Owner to comply with any of the Environmental Restrictions specifically applicable to it shall be grounds for DTSC to obtain injunctive relief prohibiting commencement or continuation of any activities restricted by this Covenant. Actual or threatened violation of this Covenant, including but not limited to commencement or completion of any activities that violate this Covenant, may be prohibited or restrained, or the interest intended for protection by this Covenant may be enforced, by injunctive relief or any other remedy as provided by law.

**ARTICLE VI  
VARIANCE, TERMINATION AND TERM**

**6.01 Variance.** Covenantor, or any other aggrieved person, may apply to DTSC for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233. DTSC may modify this Covenant in accordance with California Code of Regulation, title 22, section 67391.1.

**6.02 Termination.** Covenantor, or any other aggrieved person, may apply to DTSC for a termination of the Environmental 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 25234. DTSC may terminate this Covenant in accordance with California Code of Regulation, title 22, section 67391.1. Furthermore, after Owner submits a written request to DTSC to terminate this Covenant, accompanied by a confirmation report and all supporting documentation from a reputable environmental consultant, that the levels of VOCs in the areas shown on Exhibit B attached hereto have been reduced to the risk-based concentrations for protection of indoor air in residential buildings (as set forth in Table 3 of the RAW), and based on the adequacy of the information provided, DTSC shall terminate this Covenant. Owner shall pay DTSC all costs incurred by DTSC relating to the termination process.

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

**6.04 Effect of Termination.** Upon termination of this Covenant, all obligations of any Owner or Occupant of the Property pursuant to this Covenant shall terminate and no longer be of any force and effect.

**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 thereof to the general public or anyone else for any purpose whatsoever.

**7.02 Recordation.** The Covenantor shall record this Covenant, with Exhibit A, in the County of Los Angeles within ten (10) days of the Covenantor's receipt of a fully executed original from DTSC.

**7.03 Notices.** Whenever any person gives or serves any notice ("notice" as used herein includes 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 (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: The Wohl Great American Pomona Company, LLC  
2828 East Foothill Boulevard, Suite 203  
Pasadena, California 91707  
Attention: Mr. Skip Wohl

To DTSC: Department of Toxic Substances Control  
Glendale Office  
1011 North Grandview Avenue  
Glendale, California 91201  
Attention: Sayareh Amir, Chief  
Southern California Cleanup Operations

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.

**7.04 Partial Invalidity.** If any portion of this Covenant or other terms set forth herein are 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.

**7.05 Exhibit.** The exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

**7.06 Section Headings.** The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

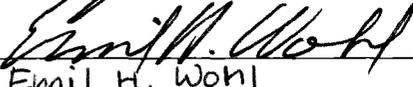
**7.07 Representative Authority.** The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

**7.08 Statutory References.** All statutory references include successor provisions.

7.09 Counterparts. This Covenant may be executed in one or more counterparts.

**IN WITNESS WHEREOF, the Parties execute this Covenant.**

**Covenantor: The Wohl Great American Pomona Company, LLC**

By:   
Name: Emil H. Wohl  
Title: \_\_\_\_\_

Date: 7/11/06

**Department of Toxic Substances Control:**

By:   
Sayareh Amir  
Southern California Cleanup Operations

Date: 7/24/06

The Wohl Great American Pomona Co, LLC  
By: Wohl Property Group, LLC, Manager  
By: Emil H. Wohl, Manager

**ACKNOWLEDGMENT**

State of California  
County of Los Angeles

On July 11, 2006 before me, Margaret Danielak, Notary Public - California,  
(here insert name and title of the officer)

personally appeared Emil H. Wohl

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.

WITNESS my hand and official seal.

Signature Margaret Danielak



(Seal)

STATE OF CALIFORNIA )

COUNTY OF LOS ANGELES )

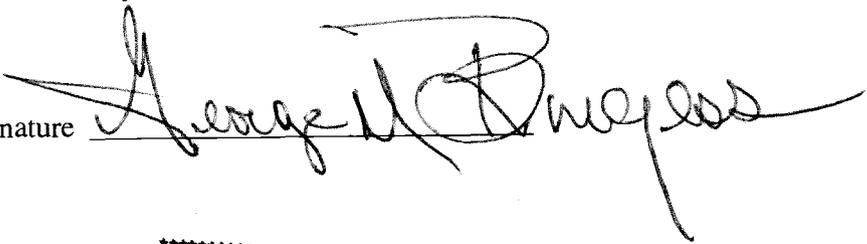
On this 24<sup>TH</sup> day of JULY, in the year 2006, before me

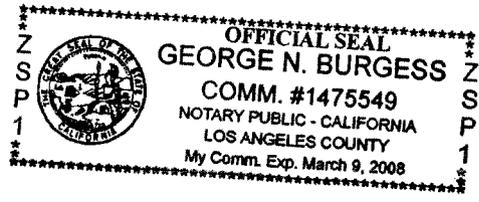
GEORGE N. BURGESS, a Notary Public in and for said State,

personally appeared SAYAREH AMIR,

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.

WITNESS my hand and official seal.

Signature 



**EXHIBIT A**

**LEGAL DESCRIPTION**

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

PARCELS 1 AND 2 OF PARCEL MAP NO. 2403, IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 36 PAGE 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THAT PORTION OF SAID PARCEL 2, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL 1 OF SAID PARCEL MAP; THENCE ALONG THE SOUTHWESTERLY LINE OF PARCEL 1, NORTH 57 DEGREES 31 MINUTES 02 SECONDS WEST 26.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 57 DEGREES 31 MINUTES 02 SECONDS WEST, 574.00 FEET TO THE SOUTHEASTERLY LINE OF VALLEY BOULEVARD, AS SHOWN ON SAID PARCEL MAP, SAID SOUTHEASTERLY LINE BEING A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1, 363.79 FEET, A RADIAL THROUGH SAID POINT BEARS NORTH 55 DEGREES 47 MINUTES 04 SECONDS WEST; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE 08 DEGREES 14 MINUTES 01 SECONDS, AN ARC DISTANCE OF 195.98 FEET TO THE INTERSECTION OF SAID CURVE AND THE SOUTHWESTERLY LINE OF PARCEL 2; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 57 DEGREES 31 MINUTES 02 SECONDS EAST 565.85 FEET; THENCE NORTH 32 DEGREES 28 MINUTES 58 SECONDS EAST 195.64 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

SAID LAND IS SHOWN AND DESIGNATED AND DESCRIBED AS PARCEL 1 ON THAT CERTAIN LOT-LINE ADJUSTMENT APPROVED BY THE CITY COUNCIL OF THE CITY OF POMONA, RECORDED MARCH 23, 1989 AS INSTRUMENT NO. 89-451004, OFFICIAL RECORDS.

**EXHIBIT B**

**SAMPLING LOCATIONS SHOWING ELEVATED LEVELS OF VOCs**

**Proposed Redevelopment Plan**  
**Depicting Soil Vapor Sample Locations –**  
**December 2005 and April 2006**  
 Former TITech International, Inc. Facility  
 4000 West Valley Boulevard  
 Pomona, California

Data points shown indicate where PCE in soil vapor exceeds the 10<sup>4</sup> cancer risk based concentration of 0.402 ug/L for protection of indoor air in residential buildings.

**Key:**  
 - - - - - Property Boundary  
 ● URSSG-1 Soil Vapor Sample  
 ○ 5'-12" DCE PCE, TCE concentrations in ug/L

