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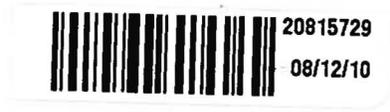
RECORDING REQUESTED BY:

Stefan Graef
432 Terrace Drive
San Jose, CA 95112

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Northern California
Coastal Cleanup Operations Branch

CONFORMED COPY: This document has
not been compared with the original.
SANTA CLARA COUNTY CLERK-RECORDER



SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: APN 249-63-006; 432 Terrace Drive, City of San José, County of Santa Clara

DTSC Site No. 7000112

This Covenant and Agreement ("Covenant") is made by and among Stefan Graef (the "Covenantor"), the current owner of property situated in the City of San José, County of Santa Clara, State of California, described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code Section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land (or portions of the land) of hazardous materials as defined in Health and Safety Code Section 25260 and hazardous substances as defined in Health and Safety Code Section 25316. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code Section 1471, and Health and Safety Code sections 25222.1 and 25355.5 that the use of the Property be restricted as set forth in this Covenant. The Parties further agree that this

Covenant shall conform with the requirements of California Code of Regulations, Title 22, Section 67391.1.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property comprises approximately .22 acres, and is located at 432 Terrace Drive, City of San José, County of Santa Clara, State of California, and generally described as Santa Clara County Assessor's Parcel No. 249-63-006. Prior to approximately 1950, the Property was part of an orchard that operated in the general area of the Property. Currently, the Property is used as a single family residence. The Property is located adjacent to an area owned by the City of San José (the "City") commonly referred to as Watson Park. From approximately 1913 through 1934, the City owned and operated portions of Watson Park as a municipal landfill and burn dump.

1.02. In early 2006, the City conducted a Preliminary Waste Characterization Study ("Preliminary Study") on the Property and approximately seven adjacent properties. The Preliminary Study included the collection of subsurface soil samples and surface soil samples from crawlspaces beneath structures on the properties. Analytical data for soil samples collected during the Preliminary Study included data from samples collected at the Property.

1.03. In July 2006, the City prepared a Removal Action Workplan ("RAW") documenting soil removal actions to be conducted on certain of the properties. The RAW set a cleanup level for lead in soil of 255 milligrams per kilogram (mg/kg). The Department approved the RAW on July 27, 2006 and the City's Addendum to the RAW on August 3, 2006. In August 2006, pursuant to the approved RAW, the City conducted soil excavation and removal activities as an Expedited Removal Action on certain of the subject properties, including the Property. The City collected confirmation soil samples from the excavation sidewalls and bottoms and analyzed for total lead remaining in place at the affected properties. Following the collection of the confirmation samples, the City placed a geotextile fabric on the excavation bottoms. Excavations at the properties were backfilled with imported fill material that met criteria established by the Department. Implementation of the RAW was documented in a Soil Removal Action Completion Report for Terrace Drive ("Completion Report") prepared by URS Corporation on behalf of the City (URS, March 5, 2007). The Department approved the Completion Report on March 28, 2007. Following public comment, the Department approved the Final Remedial Action Workplan for the

properties, including the Property, on March 14, 2008.

1.04 In August 2009, pursuant to the Terrace Drive Work Plan Phase II, in furtherance of the RAW (the "Phase II Work Plan"), the City removed additional impacted soil at the properties, including the Property. The purpose of the Phase II Work was to remove impacted or potentially impacted soil immediately adjacent to existing structures, to a depth of three feet below ground surface, and to the extent possible without destabilizing the structures. The Department verified and approved completion of the Phase II Work in November 2009.

1.05. Based on the above work and documentation, the Department has concluded that use of the Property as a single family residence, in accordance with the restrictions set forth in this Covenant, does not and will not pose an unacceptable risk to human health or the environment.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions: "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.07 "Restricted Concrete Cap Area" In some areas, it was not possible to remove impacted soil beneath existing asphalt, concrete, structures and other impervious surfaces at the Property. "Restricted Concrete Cap Area" means those areas beneath existing asphalt, concrete, structures or other impervious surfaces at the Property, and extends to

any exposed soil within 12 inches of such structures or surfaces. Restricted Concrete Cap Area(s) are shown on Exhibit "B," which is attached hereto and incorporated herein by reference.

2.08. "Restricted Soil Cap Area." Impacted soil was removed from the Property and replaced with clean soil. In some areas, soil containing lead concentrations above the Department approved cleanup goal remains in place at a depth of greater than three (3) feet beneath ground surface (bgs). "Restricted Soil Cap Area(s)" means those areas of the Property where such impacted soil remains at a depth of greater than three (3) feet bgs. Restricted Soil Cap Area(s) are shown on Exhibit "B," which is attached hereto and incorporated herein by reference

2.09. Unrestricted Area(s). "Unrestricted Area(s)" means all areas of the Property except the Restricted Soil Cap Area and Restricted Concrete Cap Area. Unrestricted Areas are shown on Exhibit "B," which is attached hereto and incorporated herein by reference.

ARTICLE III

GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code Sections 25222.1 and 25355.5 and Civil Code Section 1471; (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 the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, 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 are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant is hereby incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. Conveyance of Property. Not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other

non-possessory encumbrances), the Owner conveying such interest shall provide written notice to the Department of the conveyance. The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by City. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Pursuant to the Notice of Settlement and Release recorded against the Property on April __, 2010, the City has agreed that, pursuant to California Code of Regulations, Title 22, Section 67391.1(h), it shall pay all of the Department's cost in administering this Covenant. The Department agrees that it shall look first to the City, and not to any Owner or Occupant of the Property, for payment of such costs. In the event that the Department is unable to recover such costs from the City, then Covenantor covenants for Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the then-current owner of the Property shall pay the Department's costs in administering this Covenant. In such case, the then current owner of the Property shall retain any and all rights that it may have against the City with respect to such costs.

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.01. Restrictions

(a) Restricted Concrete Cap Area(s). There shall be no activities that will disturb Restricted Concrete Cap Area(s), including, without limitation, excavation, grading, movement, or removal of soil, except pursuant to a Soil Management Plan approved by the Department.

(b) Restricted Soil Cap Area(s). There shall be no activities that will disturb soil within the Restricted Soil Cap Area(s) at a depth of more than three (3) feet below grade, including, without limitation, excavation, grading, movement, or removal of soil, except pursuant to a Soil Management Plan approved by the Department.

4.02. Emergency Repairs. The restrictions described in Section 4.01 above, shall not apply to activities necessary for the maintenance, relocation, repair, replacement or upgrade of utilities at, or run through, over, or under, the Property, provided that, where any emergency maintenance to utilities is performed within the Restricted Concrete Cap Area(s), or more than three feet below ground surface within the Restricted Soil Cap Area(s), the then-current owner of the affected Property shall provide written notice of such repairs to the Department within fourteen (14) days after completion of such repairs. and shall provide a copy of this Covenant to any third party performing the excavation and/or repair work. Any soil brought to the surface from the Restricted Concrete Cap Area(s) or from more than three (3) feet below grade from the Restricted Soil Cap Area(s) during such work shall be used, to the extent possible, for backfill in the trench or excavation from which the soil was removed

4.03. Soil Management Plan. Prior to commencing any non-emergency activity which will disturb the Restricted Concrete Cap Area(s) or more than three feet below ground surface within the Restricted Soil Cap Area(s), the then-current Owner of the affected Property shall provide to the Department a Soil Management Plan identifying the procedures for handling soil brought to the surface from beneath any Restricted Concrete Cap Area or from more than three (3) feet below grade from any Restricted Soil Cap Area.

4.04. Access for Department. The Department 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 the Department in order to protect the public health or safety, or the environment.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions, as provided by law.

ARTICLE VI
ANNUAL COMPLIANCE NOTICE

6.01. Annual Compliance Letter. The Owner shall send the Department a letter reporting on its compliance with the Restrictions set forth in Article IV of this Covenant for activities in the Restricted Areas. No report shall be required for Unrestricted Areas of the Property.

6.02. Form of Annual Compliance Letter. The annual compliance letter shall be in a form substantially similar to the draft letter attached to this Covenant as Exhibit "C". The Owner shall send the Department the annual compliance letter by March 1st of each year and report on activities during the prior calendar year. The annual compliance letter shall be sent to the Department at the address listed in Article 8.04.

ARTICLE VII
VARIANCE, TERMINATION, AND TERM

7.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code Section 25233.

7.02. Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more 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. To the extent future work at the Property eliminates the need for portions of the Property to be designated as a Restricted Concrete Cap Area, or otherwise more accurately defines such areas, then, the Parties may modify Exhibit B as appropriate and record the revised Exhibit B in the County of Santa Clara. To the extent future work at the Property eliminates the need for portions of the Property to be designated as Restricted Soil Cap Areas, or otherwise more accurately defines such areas, then, the Parties may modify Exhibit B as appropriate and record the revised Exhibit B in the County of Santa Clara. To the extent future work or investigation at the Property more accurately defines the Unrestricted Areas at the Property, the Parties may modify Exhibit B as appropriate and record the revised Exhibit B in the County of Santa Clara.

7.03. Term. Unless ended in accordance with paragraph 7.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VIII
MISCELLANEOUS

8.01. 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.

8.02. Department and City References. All references to the Department and the City include successor entities.

8.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the receipt of a fully executed original.

8.04. 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, whichever is sooner:

To Owner:
Stefan Graef
432 Terrace Drive
San Jose, CA 95112

To Department:
Mark Piros, Unit Chief
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

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.

8.05. Partial Invalidity. If this Covenant or any of its terms 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 herein.

8.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant as of the last date indicated below.

Covenantor:

By: [Signature]
Stefan Graef,
Property Owner

Date: May 25, 2010

Department of Toxic Substances Control

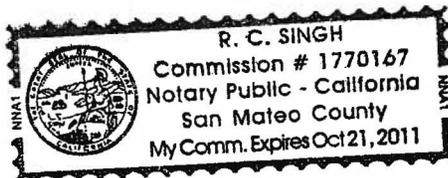
By: [Signature]
Karen M. Toth, Unit Chief

Date: August 11, 2010

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State of California County of SANTA CLARA)ss.
On 05/25/2010 before me R. C. SINGH
Notary Public, personally appeared STEFAN GRAEF
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.

[Signature]
(R. C. Singh)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ALAMEDA

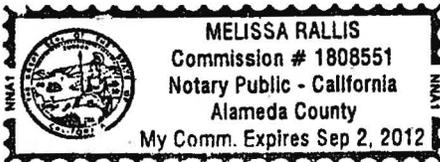
On 8-11-10
Date

before me,

MELISSA RALLIS (NOTARY)
Here Insert Name and Title of the Officer

personally appeared

KAREN M. TOFT
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.

Signature Melissa Rallis
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

APN: 249-63-006 (NRE: 7000112)

Title or Type of Document: COVENANT TO RESTRICT USE OF PROPERTY

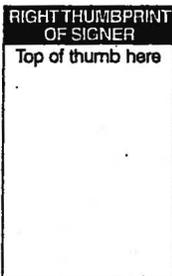
Document Date: 8/11/10 Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT A

DESCRIPTION:

The land referred to herein is situated in the State of California, County of Santa Clara, City of San Jose, and is described as follows:

PARCEL ONE:

LOT 26, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED, "TRACT NO. 566, GARDEN TERRACE", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JANUARY 17TH, 1949, IN BOOK 22 OF MAPS, AT PAGES 8 AND 9.

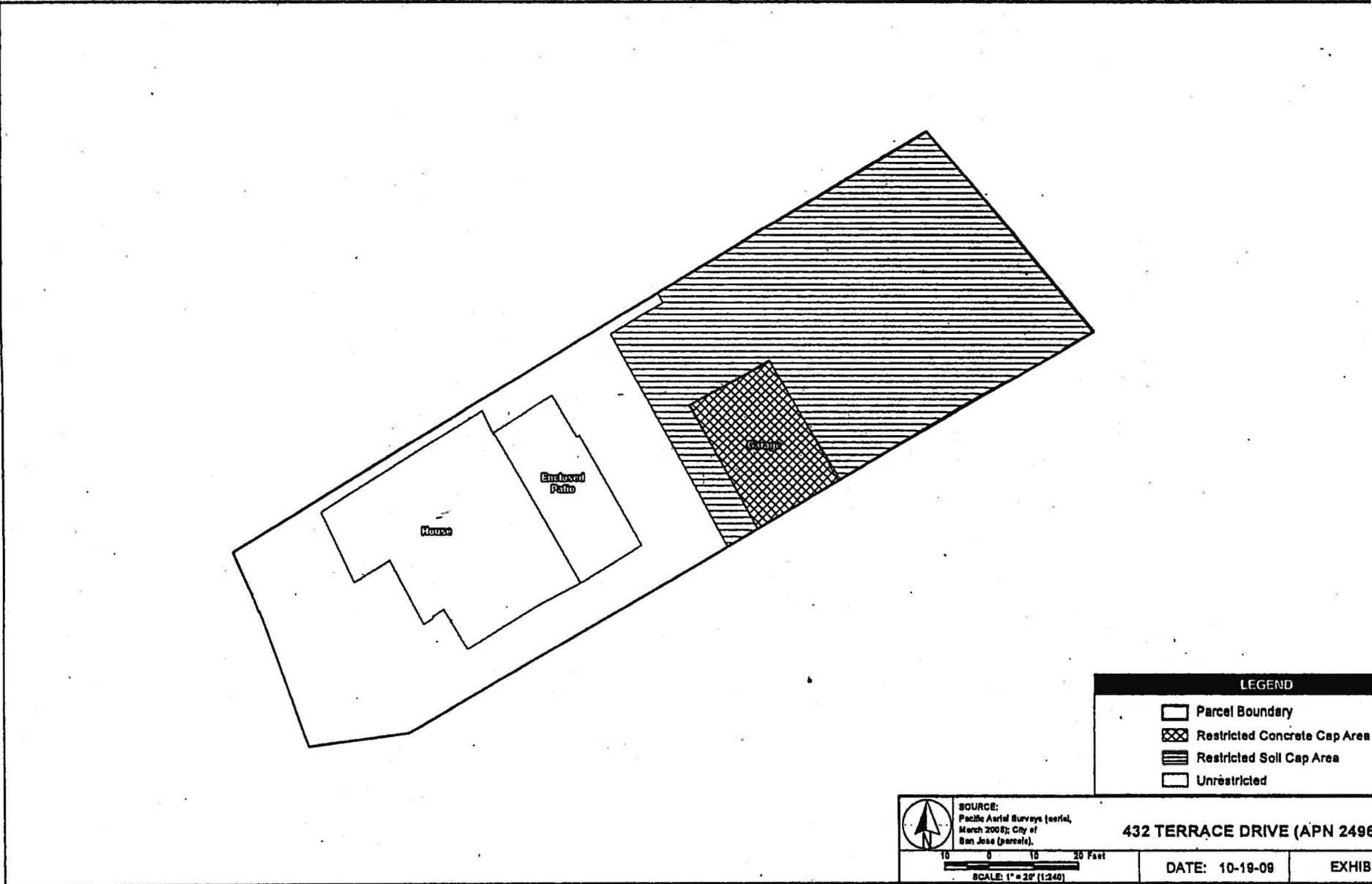
PARCEL TWO:

PORTION OF LOT 27, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "TRACT NO. 566, GARDEN TERRACE", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JANUARY 1, 1949, IN BOOK 22 OF MAPS, AT PAGES 8 AND 9, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF TERRACE DRIVE AT THE DIVIDING LINE BETWEEN LOTS 26 AND 27, AS SAID DRIVE AND LOT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "TRACT NO. 566, GARDEN TERRACE", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JANUARY 17, 1949 IN BOOK 22 OF MAPS, AT PAGES 8 AND 9; RUNNING THENCE SOUTHEASTERLY ALONG THE SAID NORTHEASTERLY LINE OF TERRACE DRIVE, 3 FEET, MORE OR LESS, TO THE INTERSECTION THEREOF WITH A LINE THAT IS DISTANT 3 FEET SOUTHEASTERLY, MEASURED AT RIGHT ANGLES FROM THE SAID DIVIDING LINE BETWEEN LOTS 26 AND 27; RUNNING THENCE NORTH 59° 21' EAST AND PARALLEL WITH THE DIVIDING LINE BETWEEN SAID LOTS 26 AND 27 AND DISTANT 3 FEET, AT RIGHT ANGLES SOUTHEASTERLY THEREFROM, FOR A DISTANCE OF 195 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY LINE OF SAID LOT 27; RUNNING THENCE NORTHERLY ALONG SAID LAST NAMED LINE 3 FEET, MORE OR LESS, TO THE DIVIDING LINE BETWEEN SAID LOTS 26 AND 27; RUNNING THENCE SOUTH 59° 21' WEST ALONG SAID LAST NAMED DIVIDING LINE 197.26 FEET TO THE POINT OF BEGINNING.

APN: 249-63-006

EXHIBIT A



March 1, _____ (year)

Mr. Mark Piros, Unit Chief
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

**Subject: Annual Compliance Letter – Covenant To Restrict Use Of Property
432 Terrace Drive, San Jose, CA**

Dear Mr. Piros:

This letter provides the Department of Toxic Substances Control (DTSC) with the Annual Compliance Report required by the Covenant To Restrict Use Of Property Environmental Restriction (Deed Restriction) recorded on April __, 2010, with respect to 432 Terrace Drive, San Jose, California (the Property).

Article VI of the Deed Restriction requires that the current owner of the Property provide a report "on its compliance with the Restrictions set forth in Article IV of this Covenant for activities in the Restricted Areas. No report shall be required for Unrestricted Areas of the Property."

The undersigned owner hereby certifies that, for the year commencing _____, 20____, and ending _____, 20____ (check one):

No activities took place at the Property that disturbed any Restricted Concrete Cap Area or any Restricted Soil Cap Area at a depth of more than three (3) feet below grade, except pursuant to a Soil Management Plan approved by DTSC.

The following activities took place at the Property that disturbed a Restricted Concrete Cap Area or a Restricted Soil Cap Area at a depth of more than three (3) feet below grade, without (or inconsistent with) a Soil Management Plan approved by DTSC. (Describe in detail; attach additional pages or documents, including maps, as necessary):

Mark Piros
Department of Toxic Substances Control
Page 2

As provided in the Notice of Settlement and Release regarding the Property recorded on April ____, 20____, the City of San Jose is responsible to pay DTSC's costs in administering the Deed Restriction, including costs associated with DTSC's review of this Annual Notice.

Sincerely,

Property Owner, 432 Terrace Drive, San Jose, CA

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