

Attachment C-1

*Covenant and Environmental Restriction on Property
dated April 2004*

CONTRA COSTA Co Recorder Office
 STEPHEN L. WEIR, Clerk-Recorder
 DOC- 2004-0148737-00

Monday, APR 26, 2004 09:09:46
 FRE \$0.00

Ttl Pd \$0.00

Nbr-0002096572
 1rc/RS/1-122

Recording Requested By:

Cherokee Simeon Venture I, LLC,

When Recorded, Mail To:

Executive Officer
 California Regional Water Quality Control Board
 San Francisco Bay Region
 1515 Clay Street, Suite 1400
 Oakland, California 94612

COVENANT AND ENVIRONMENTAL RESTRICTION
 ON PROPERTY

[Campus Bay Site, Richmond, California]

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 1st day of August, 2003 by Cherokee Simeon Venture I, LLC, a Delaware limited liability company ("Covenantor") who is the Owner of record of that certain property situated in the City of Richmond, County of Contra Costa, State of California, which is more particularly described in Exhibit A attached hereto as "New Parcel C" and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

A. Burdened Property. The Burdened Property and groundwater underlying the Burdened Property contains hazardous materials.

B. Contamination of the Burdened Property. The Burdened Property was contaminated by industrial chemical and agricultural chemical manufacturing operations and related activities. These operations resulted in contamination of soil and groundwater with inorganic and organic chemicals including metals and volatile organic chemicals, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. A prior owner, Zeneca Inc., performed remedial investigations and a risk assessment to determine where contaminants were present, in what concentrations, and the level of risk presented by those contaminants to human health and the environment. Based on those evaluations, Zeneca Inc. commenced implementation of a remedial program that included both excavation and removal of some contaminated materials from the Burdened Property and the excavation, treatment and placement of additional materials, primarily consisting of pyrite cinders, on the Burdened Property under a cap, and the installation of a biologically active permeable barrier downgradient of the capped area. This remedial program will continue in the future, including long-term monitoring, until the Board determines the remedial action is complete.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Without the mitigation measures which have been or will be performed on the Burdened Property, exposure to these contaminants could take place via in place contact during excavation activities or surface water runoff, potentially resulting in dermal contact, inhalation or ingestion by humans. Residual contaminants are or will be covered or do not or will not otherwise present an unacceptable risk to human health so long as the Risk Management Plan attached hereto as Exhibit B is implemented and complied with fully at all times. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is currently used for commercial office space or is vacant and is adjacent to commercial and industrial land uses, including the University of California's Richmond Field Station.

E. Full Disclosure. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. Covenantor's Intent. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

ARTICLE I
GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Burdened Property

and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

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

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Owners promise to restrict the use of the Burdened Property as follows:

a. Development of the Burdened Property shall be restricted to industrial, commercial or office space, except under the limited circumstances set forth below;

b. The Burdened Property may not be used for residential purposes unless and until the Board approves in writing of residential use and: 1) a residential construction design plan; and 2) a risk assessment to be submitted with the design plan establishing acceptable risk levels from residual contaminants to future residents. In no case, however, shall the Burdened Property be used for detached, single family residences. If the Board approves residential development on any portion of the Burdened Property, then Owners shall require that a homeowner's association,

or an alternative secure vehicle, be formed for the residential portion of the Burdened Property to undertake in perpetuity the obligations to perform the maintenance and monitoring obligations set forth in the Risk Management Plan attached hereto as Exhibit B as they relate to the residential portion of the Burdened Property. If Owners propose a change to residential use, Owners must send by overnight delivery, simultaneously with their delivery to the Board, copies of the design plan and risk assessment required by this section to:

Zeneca Inc.

Attn.: General Manager, Env'tl. Services and Engineering
1800 Concord Pike
Wilmington, Delaware 19850-5437;

- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. No Owners or Occupants of the Burdened Property or any portion thereof shall conduct or permit any excavation work on the Burdened Property, unless performed consistent with the terms of the Risk Management Plan attached hereto as Exhibit B or unless permitted in writing by the Board. Owners and Occupants of the Burdened Property shall review the Risk Management Plan and shall comply fully and at all times with each of its requirements, including the construction of clean utility corridors. As a condition precedent to engagement in any excavation work on the Burdened Property outside of the established clean corridors, every on-site utility, maintenance or construction worker or contractor shall be provided a copy of the Risk Management Plan and be instructed to comply with its requirements. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with the Risk Management Plan and all applicable provisions of local, state and federal law;
- g. All uses and development of the Burdened Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto. Specifically, Owners shall not act or fail to act in violation of the discharger's duties set forth in Tasks 5.a, 5.b, 6.c, 6.d and Provisions D.3, D.7, D.8 and D.9 of Site Cleanup Requirements Order 01-101 issued by the Board, or any amended or successive order containing the same or similar provisions. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.
- h. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including, but

not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

i. The Owner shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of each of the following events: 1) the discovery of such disturbance; and 2) the completion of repairs;

j. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

k. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas except for excavation activities performed consistent with the terms of the Risk Management Plan as permitted pursuant to subparagraph (f) above.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law. From time to time upon 30 working days notice from Owner, the Board will execute and deliver a written statement in recordable form certifying whether:

(i) Owner's proposed development/excavation activities are in compliance with the terms of this Covenant and the Risk Management Plan;

(ii) Owner's completed development/improvements are in compliance with the terms of this Covenant and the Risk Management Plan; and

(iii) any uncured default exists on the part of the Owner, to the Board's knowledge, or specifying such defaults if any are claimed.

Any such statement may be relied upon by any prospective transferee or encumbrancer of all or any portion of the Property or any assignee of such person.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of _____, 2004, and recorded on _____, 2004, in the Official Records of Contra Costa County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. After giving at least 30 days prior written notice to Zeneca Inc. at the address set forth in Section 3.1(b) herein, any Owner or, with the Owner's prior written consent, any Occupant of the Burdened Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. After giving at least 30 days prior written notice to Zeneca Inc. at the address set forth in Section 3.1(b) herein, any Owner or, with the Owner's prior written consent, any Occupant of the Burdened 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 Burdened 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 Burdened Property or any portion thereof to the general public.

5.2 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, if personally delivered to the person being served or official of a government agency 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:

If to: "Covenantor"

Cherokee Simeon Venture I, LLC, a Delaware limited liability company
c/o Cherokee Investment Partners, LLC
Attention: Dwight Stenseth
5445 DTC Parkway, Suite 900
Greenwood Village, CO 80111
Fax No. (303) 771-9270

with a copy to:

Russ Pitto
SIMEON Commercial Properties
655 Montgomery Street, Suite 1190
San Francisco, CA 94111
Phone No.: (415) 986-2002
Fax No.: (415) 986-2130

If to: "Board"

Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, California 94612

Notwithstanding the foregoing, if Covenantor is not the Owner of the relevant portion of the Property at the time notice is given, notice shall be given to the then Owner of record at the address set forth in its deed or any address given by recorded supplement to this Covenant.

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein 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.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Contra Costa within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenantor to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that

would render the provision valid shall be favored over any interpretation that would render it invalid.

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

Covenantor: Cherokee Simeon Venture-I, LLC

[Handwritten Signature]

By: Michael Erb

Title: SVP

Date: 4/5/04

Agency: State of California
Regional Water Quality Board,
San Francisco Bay Region

By: *[Handwritten Signature]*

Title: Acting Executive Officer

Date: 4/13/04

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

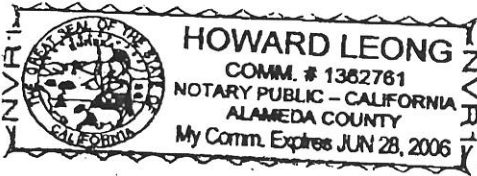
State of California }
County of Alameda } ss.

On 4/13/2004, before me, Howard Leong, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared STEPHEN MORSE
Name(s) of Signer(s)

- personally known to me
- 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.

Howard Leong
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

Title or Type of Document: COVENANT

Document Date: _____ Number of Pages: _____

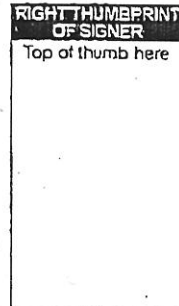
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



State of California

County of San Francisco }

On April 5, 2004 before me, Debra A. Briggs

personally appeared Michael S. Erb

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.

Debra A. Briggs
Signature

