

RECORDING REQUESTED BY:  
Steelscape, Inc.  
11200 Arrow Route  
Rancho Cucamonga, California 91730-4805

DRAFT

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630  
Attention: Stephen W. Lavinger, Chief  
Tiered Permitting Corrective Action Branch

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## COVENANT TO RESTRICT USE OF PROPERTY

### ENVIRONMENTAL RESTRICTION

Re: Assessor's Parcel Number 0208-961-26-0000  
Steelscape, Inc.

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This Covenant and Agreement ("Covenant") is made by and between Steelscape, Inc. (the "Covenantor"), the current owner of property situated in Rancho Cucamonga, County of San Bernardino, 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 of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25222.1 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the 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, totaling approximately 14 acres is more particularly described and depicted in Exhibit "A". The Property is located in the area now generally bounded by Arrow Route to the south, Foothill Boulevard to the north, and other commercial/industrial use properties to the east and west, in the City of Rancho Cucamonga, County of San Bernardino, State of California. The Property is more specifically described as San Bernardino County Assessor's Parcel Number 0208-961-26-0000.

1.02. A limited portion of the Property is more particularly described in Exhibit "B," which is attached and incorporated by this reference ("Restricted Property"). The restriction will apply to the Restricted Property, described as a rectangular shaped portion of the Property.

1.03. On September 7, 1993, the Department authorized an onsite hazardous waste treatment facility ("Facility") on the Property pursuant to Conditional Authorization. Under this authorization, the Facility is subject to the requirements of the Hazardous Waste Control Law at Health and Safety Code section 25100 et seq. Pursuant to the corrective action requirements of the Hazardous Waste Control Law, including Health and Safety Code section 25187, the Department is requiring this Covenant for the Facility.

1.04. A preliminary environmental assessment (PEA) was conducted to assess potential impacts from current and historical land uses. During the PEA investigations from September 2003 through August 2006, the Property was investigated for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals, cyanide, pH and polynuclear aromatic hydrocarbons. The soil gas survey indicated elevated levels of benzene at SG-3, 4 and 6 (0.029 to 0.33 µg/l) and Tetrachloroethene (PCE) at SG-6 (0.22 to 0.38 µg/l). Based on the PEA Report and Human Health Risk Evaluation, DTSC has concluded that the Property, as subject to restrictions of this Covenant, does not present any unacceptable threat to the environment or human health.

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 are not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities installations.

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, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

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 section 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 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. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, Leases, and other non-possessory encumbrances). 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, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has incurred and will, in the future, incur costs associated with the administration of this Covenant including any inspection of the property. Therefore, the Covenantor, hereby covenants for the Covenantor and for all subsequent Owners that,

pursuant to California Code of regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs of administering, implementing, and enforcing this Covenant.

ARTICLE IV  
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Restricted Property described in Exhibit B without a Soil Management Plan approved by the Department.
- (b) Any contaminated soils brought from the Restricted Property to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating at the Restricted Property.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops);

- (b) Drilling for water, oil, or gas [without prior written approval by the Department].

4.04. Non-Interference with the Restricted Property

- (a) Activities that may disturb the Restricted Property (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Restricted Property without prior review and approval by the Department.
- (b) All uses and development of the Restricted Property shall preserve the integrity.
- (c) The Restricted Property shall not be altered without written approval by the Department.
- (d) Owner shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Restricted Property and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any person falling within the definition of Owner or Occupant shall satisfy this requirement on behalf of all persons falling within the definition of Owner and Occupant.

4.05. 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.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing any required Operation and Maintenance activities shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance activities until the Department determines that no further Operation and Maintenance is required.

## ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. 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

### VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, 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.

6.02 Termination or Modification. 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.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## 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. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. 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:

To Owner:                    Mr. Miguel Alvarez  
                                      President and Chief Financial Officer  
                                      222 West Kalama River Road  
                                      Kalama, WA 98625-9420

To Department:            Stephen W. Lavinger, Branch Chief  
                                      Tiered Permitting Corrective Action Branch  
                                      Hazardous Waste Management Program  
                                      Department of Toxic Substances Control  
                                      5796 Corporate Avenue  
                                      Cypress, California 90630

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.

7.05. 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.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report, in a form similar to the attached example, to the Department for its approval by January 15<sup>th</sup> of each year. The annual report must include the dates, times, and names of those who conducted and reviewed the

annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Miguel Alvarez

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: Miguel Alvarez, President and Chief Financial Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: Stephen W. Lavinger, Branch Chief  
Department of Toxic Substances Control

STATE OF CALIFORNIA )

)

COUNTY OF SAN BERNARDINO \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_2008\_\_ ,

before me \_\_\_\_\_, personally appeared

\_\_\_\_\_ ,

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 \_\_\_\_\_