

DRAFT September 6, 2007

LAND USE COVENANT IMPLEMENTATION AND ENFORCEMENT PLAN

**For the
PROPERTY
Located at
235 TENNANT AVENUE
MORGAN HILL, CALIFORNIA 95037**

This is a covenant and agreement between the California Department of Toxic Substances Control (“DTSC”), for itself and its successor agencies of the State of California, and Thomas L Jackson and Anita E. Jackson as Trustees of the Jackson Family Trust (the “Trust”), and as owners, in trust, of property located at 235 Tennant Avenue, Morgan Hill, California 95037 (the “Property”), for themselves and future owners of the Property. The owners have recorded, in the county where the land is located, a Covenant to Restrict Use of Property dated _____, 2007 (hereinafter referred to as the “Land Use Covenant”) to carry out the limitations and controls selected by DTSC for the Property in accordance with California Code of Regulations, title 22, section 67391.1. The Land Use Covenant shall be implemented and enforced in accordance with this Land Use Covenant Implementation and Enforcement Plan (“LUC I&E Plan”):

1. Prior to any sale of the Property by its present or future owners, the owners shall provide a copy of the Land Use Covenant to any buyer of the Property from the owners and otherwise comply with all requirements of the Land Use Covenant pertaining to conveyance of the Property. The Land Use Covenant, by its terms, runs with the land and is binding upon the present owners and all successive owners and occupants of the Property.
2. The owners of the Property shall inspect the Property annually in January to verify continued compliance with the Land Use Covenant and shall report in writing on the inspection, including but not limited to a certification of continued compliance or a detailed description of instances of non-compliance, to DTSC within sixty (60) days following the inspection. DTSC may inspect the Property annually for compliance with the Land Use Covenant. Any violation of the Land Use Covenant will be grounds for DTSC to take enforcement action in accordance with applicable law.
3. Pursuant to the California Code of Regulations, title 22, section 67391.1, subdivision (h), the owners shall reimburse DTSC for all costs it incurs, if any, associated with the administration of this LUC I&E Plan, including but not limited to the costs associated with the annual inspections described in Paragraph 2. An estimate of DTSC’s annual costs is attached as Exhibit A showing the amount of \$64,620.00 for thirty years. It is understood by the parties that this amount is only an estimate of the costs that may be incurred by DTSC for the activities shown in

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Exhibit A, and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this LUC I&E Plan. DTSC will provide owners with a billing statement for costs incurred by DTSC in the preceding quarter, if any, as required by Health and Safety Code section 25269.6(a), which will include the name(s) of the employee(s), identification of the activities, the amount of time spent, and the hourly rate charged. DTSC will retain all cost records associated with the work performed under this LUC I&E Plan as required by State law. DTSC will make the documents that support DTSC's cost determination available for inspection upon request, as provided by the Public Records Act. Any dispute concerning DTSC's costs is subject to the Dispute Resolution provisions in the September 13, 2004 Corrective Action Consent Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2.

4. As provided in the Land Use Covenant, DTSC shall have reasonable right of entry and access to the property for inspection, monitoring and other activity consistent with the purposes of enforcing the Land Use Covenant as deemed necessary in order to protect public health and the environment.

Department of Toxic Substances Control

Stephen W. Lavinger, Branch Chief
Tiered Permitting Corrective Action Branch
Date: _____

The Jackson Family Trust

Thomas L Jackson, Trustee
Date: _____

Anita E. Jackson. Trustee
Date: _____