

RECORDING REQUESTED BY:

Thomas L. Jackson and Anita E. Jackson
Trustees, Jackson Family Trust
22486 Cupertino Road
Cupertino, California 95014

WHEN RECORDED, MAIL TO:

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

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

***County of Santa Clara, APN #817-04-030
235 Tennant Avenue, Morgan Hill, CA 95037
DTSC Site Code 550004***

This Covenant and Agreement ("Covenant") is made by and between Thomas L. Jackson and Anita E. Jackson, Trustees of the Jackson Family Trust (the "Covenantors"), the current owners, in trust, of property situated in Morgan Hill, 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 and Health and Safety Code section 25202.5, 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 Covenantors and Department, collectively referred to as the "Parties", hereby agree that the use of the Property shall be restricted as set forth in this Covenant.

ARTICLE I STATEMENT OF FACTS

1.1. The Property, totaling approximately 1.14 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Edmundson Avenue to the North, Church Street to the West, Vineyard Avenue to the East, and Tennant Avenue to the South, County of Santa Clara State of California. The Property is also generally described as Santa Clara County Assessor's Parcel No.817-04-030. The property was

formerly a portion of a larger property of approximately 2.5 acres with the address of 16035 Vineyard Boulevard. In 2005, the original property was split into two parcels: 235 Tennant Avenue (the subject Property), and 16035 Vineyard Boulevard.

1.2. The Property has been the site of a manufacturing facility. The former facility owner/operator was authorized by the Department on August 25, 1993, to treat certain hazardous waste onsite under Permit By Rule. Under this authorization, the Property was and is subject to the requirements of the Hazardous Waste Control Law at Health and Safety Code Sections 25100 et seq. The Property has also been the subject of a Corrective Action Consent Agreement dated September 13, 2004 between the Department and the former facility owner/operator. Pursuant to the corrective action requirements of the Hazardous Waste Control Law, including Health and Safety Code Section 25187 and 25205.5, the Department is requiring this Covenant due to identified hazardous waste constituents that will remain at a portion of the Property at levels which are not suitable for unrestricted use of the land.

1.3. Pursuant to the above requirements and to the Corrective Action Consent Agreement dated September 13, 2004, the former owner investigated 12 areas of concern ("AOCs") at the Property under the oversight of the Department. One of those 12 AOCs, AOC 8, is the only affected portion of the Property where identified hazardous materials will remain at levels which are not suitable for unrestricted use. AOC 8 is capped by a concrete slab floor over the area. The limited portion and exact location of the Property covered by this Covenant are more particularly illustrated in Exhibit "B," attached to this Covenant and incorporated by this reference.

1.4. The shallow subsurface soil at the affected portion of the Property at AOC 8 contained an elevated level of Total Petroleum Hydrocarbon ("TPH") with a maximum concentration of 23,400 mg/kg exceeding a risk-based regulatory level for TPH in soil set by the San Francisco Bay Regional Water Quality Control Board, namely an Environmental Screening Level ("ESL") of 100 to 500 mg/kg for TPH. Because the impacted soil has a cement cap and is located inside the building, the level of contamination is being managed to meet restricted use clean up standards. The Department concludes that the Property, so long as it is subject to the deed restriction of this Covenant, does and will not present an unacceptable threat to present or future human or public health, safety or the environment if future use of the Property is consistent with the restrictions described herein.

ARTICLE II DEFINITIONS

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

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

2.3. Improvements. "Improvements" includes, but is not limited to: buildings,

structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

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

2.5. 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.

2.6. Owner. "Owner" or "Owners" means the Covenantors, and their successors in interest, including but not limited to heirs and assigns, who at any time hold title to all or any portion of the Property.

2.7. Cap. The "Cap" means the concrete slab floor covering the area indicated by the dashed lines in Exhibit B-2.

ARTICLE III GENERAL PROVISIONS

3.1. 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 25202.5 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.

3.2. 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.

3.3. 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. This notice requirement applies only after the date this covenant is executed. Lessees or sublessees who occupy the property on the date this covenant is executed will be notified in accordance with this paragraph within sixty days of that date.

3.4. 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.

3.5. 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 Leases, and mortgages, liens, 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.

3.6. Costs of Administering the Covenant to be paid by Owners. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owners hereby covenant for themselves and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owners agree to pay the Department's costs in administering the Covenant.

ARTICLE IV RESTRICTIONS

4.1. 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.

4.2. Soil Management: Owner agrees:

- (a) No activities that will disturb the soil below the concrete slab floor Cap at AOC 8 shown on Exhibit B to this Covenant (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling below the Cap 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, removal, trenching, filling, earth movement or mining in the Property below the Cap.

4.3. Non-Interference with Cap. Owner agrees:

(a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted without prior review and approval by the Department.

(b) All uses and development of the Property shall preserve the integrity of the Cap.

(c) The Cap shall not be altered without written approval by the Department.

(b) Owner shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap 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

4.4. 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

5.1. 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.

ARTICLE VI MODIFICATION OR REMOVAL, AND TERM

6.1. Modification or Removal. Any Owner may make a written request of the Department to modify or remove the provisions of this Covenant. Such a request shall be made by an Owner and shall be reviewed and acted upon by the Department in accordance with Health and Safety Code section 25202.6.

6.2. Term. Unless ended in accordance with paragraph 6.1, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.1. 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.

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

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

7.4. 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, shall specifically refer to this Covenant, 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 Owners:

Thomas L. Jackson and Anita E. Jackson, Trustees
Jackson Family Trust
22486 Cupertino Road
Cupertino, California 95014

To Department:

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

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.

7.5. 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.

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

7.7 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the limited portion and exact location of the Property covered by this Covenant, namely AOC 8 illustrated on the Figure marked as Exhibit B2 and attached as part of Exhibit B to this Covenant, in the month of January of each year and shall submit an Annual Inspection Report to the Department for its approval within sixty (60) days following the inspection. The annual report, must include the dates, times, and names of those who conducted the inspection and prepared 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 the inspection results in a finding of compliance, the Owner shall so certify in the annual report. 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(s) 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 as of the dates set forth below.

Covenantors

By: _____
Thomas L. Jackson
Title: Trustee, Jackson Family Trust
Date: _____

By: _____
Anita E. Jackson
Title: Trustee, Jackson Family Trust
Date: _____

Department of Toxic Substances Control

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