RECORDING REQUESTED BY:

Mr. Tom Hess
6th and Radio Business Park II, L.L.C.
P.O. Box 63
Rancho Santa Fe, CA 92067

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attention: Greg Holmes, Unit Chief

DOC # 2009-0045970
01/30/2009 08:00A Fee:51.00
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Recorded in Official Records
County of Riverside
Larry W Ward
Assessor, County Clerk & Recorder

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

C 603

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COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: County of Riverside APN 115-20-0002, Former IMCO Waste Disposal Area, DTSC site code number 401281.

This Covenant and Agreement ("Covenant") is made by and between Mr. Tom Hess (the "Covenantor"), the current owner of property situated in Corona, County of Riverside, State of California, described in Exhibit "A" and depicted in ~~Exhibit "B,"~~ H attached, (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 25355.5 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, known as the Former IMCO Waste Disposal Area, totaling approximately 3.9 acres, is more particularly described and depicted in the attached Exhibits "A" and "~~B~~". The Property is located in the area now generally bounded by 6th Street to the south, Railroad right-of-way on the north, Commercial and light industry to the east and west. The Property is also generally described as Riverside County Assessor's Parcel No. 11500002-9.

1.02 The Former IMCO Waste Disposal Area is being remediated pursuant to a Removal Action Workplan developed in accordance with Health and Safety Code, division 20, chapter 6.8 under the oversight of the Department. The Removal Action Workplan, including a Health Risk Assessment and a Notice of Exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. were released for public review and comment and subsequently approved by the Department on November 26, 2008. The Removal Action Workplan, including a Health Risk Assessment, requires a Covenant as part of the site remediation because various metals throughout the site, are hazardous substances as defined in Health and Safety Code section 25316, and hazardous materials as defined in Health and Safety Code section 25260, and remain above cleanup goals for unrestricted use, from the ground surface to depths of 12 feet or more below the surface of the Property. The Removal Action Workplan, including a Health Risk Assessment, requires a Covenant as part of the site remediation. Remediation includes installing and maintaining institutional and engineering controls such as a pavement or concrete, above-ground planters, building foundations (collectively referred herein as the "Cap") as part of the Site development plans, in order to create a barrier between soil at the site and the onsite worker. Requirements for the operation and maintenance of the Cap will be in a Site Management Plan as specified in Article IV of the covenant.

1.04. As detailed in the Final Removal Action Workplan, and the Health Risk Assessment approved by the Department in June 2008, all or a portion of the surface

and subsurface soils to a depth of 12 feet contain elevated levels of hazardous substances as defined in Health and Safety Code section 25316. Maximum levels of hazardous substances that were found to be chemicals of concern and a comparison of unrestricted land use goals can be found below:

- Copper: 80,000 mg/kg in soil
- Polychlorinated Biphenyl (PCB) as Arochlor 1260: 0.3 ug/kg in soil
- Chloroethene: 138 ug/m^3 in soil gas
- Benzene: 87.3 ug/m^3 in soil gas

Exposure to the above chemicals in elevated concentrations can pose an unacceptable risk to human health under an unrestricted residential use. Based on the Final Risk Assessment, the Department concluded that the Property, as subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment, if limited to commercial and industrial use. Information regarding the nature of the chemicals and potential adverse health effects from extended exposure are presented below. PCBs can cause liver enlargement, chloracne and immune function disorders. Inhalation of copper dusts can irritate the upper respiratory tract, while ingestion of high levels of this metal can cause gastrointestinal disturbances, nausea and ulcers. Soil vapors are also reported to contain benzene and chloroethene, which are both known carcinogens. In addition, investigations have revealed ammonia vapors in the subsurface, which can cause eye and nose irritation.

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.

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

3.04. 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 or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. 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 in administering the Covenant.

ARTICLE IV
RESTRICTIONS AND REQUIREMENTS

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 at or below 12 feet below grade (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed on the Property without following a Site Management Plan approved by the Department in advance.

(b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.03 Non-Interference with Cap

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

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

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

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. Inspection and Reporting Requirements The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection 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 inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection 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 ceases immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 days of its original transmission.

ARTICLE V
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. 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.

6.02 Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination 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. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Riverside within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. 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. Tom Hess
6th and Radio Business Park, LLC
P.O. Box 63
Rancho Santa Fe, CA 92067

and

To Department:

Mr. Greg Holmes, Unit Chief
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 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.

7.04. 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.

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

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Mr. Tom Hess

By: _____

Title: Property Owner

Date: JAN 6, 2009

ACKNOWLEDGEMENT

State of California)

County of San Diego)

On Jan. 6, 2009, before me, D. Sjöberg-Zynda, Notary Public, personally appeared Tom Hess, 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,

D SJOBERG-ZYNDA
COMM. # 1581837
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
COMM. EXP. JUNE 21, 2009

(seal)
Signature of Notary Public

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Department of Toxic Substances Control:

By: _____

Title: Unit Chief

Date: 1/16/09 GREG HOLMES

ACKNOWLEDGEMENT

State of California)

County of Orange)

On January 16, 2009, before me, Deborah R. Saito, Notary Public, personally appeared Gregory Holmes, 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,

NRO1 DEBORAH R. SAITO COMM. #1571083 Notary Public - California Orange County My Comm. Expires Apr. 19, 2009 NRO1

Deborah R. Saito (seal)
Signature of Notary Public

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EXHIBIT A

PARCEL ONE:
THAT PORTION OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 6 WEST, AS SHOWN BY SECTIONIZED SURVEY OF THE RANCHO EL SOBRANTE DE SAN JACINTO ON FILE IN BOOK 7, PAGE 10 OF MAPS, SAN BERNADINO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY PORPHRYRY SPUR RIGHT OF WAY AND THE NORTHERLY LINE OF THE NORTH DRIVE OF EAST SIXTH STREET AS CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED IN BOOK 793, PAGE 464 OF DEEDS, RIVERSIDE COUNTY RECORDS; THENCE WESTERLY, UPON THE NORTHERN LINE OF NORTH DRIVE OF EAST SIXTH STREET AS AFORESAID, 291 FEET; THENCE NORTH 4°44' EAST 916.27 FEET TO A POINT ON THE WESTERLY LINE OF THE ATCHISON, TOPEKA AND SANTE FE RAILWAY PORPHYRY SPUR RIGHT OF WAY; THENCE SOUTHEASTERLY ON THE WESTERLY LINE OF SAID ATCHISON, TOPEKA AND SANTA FE RAILWAY PORPHYRY SPUR RIGHT OF WAY, TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 115-20-0002