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RECORDING REQUESTED BY:
Department of Toxic Substances Control
and
Ashlan Park Center, LLC
c/o Centers Dynamic, Inc.
303 Twin Dolphin Dr. Suite 600
Redwood Shores, CA 94065

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
1515 Tollhouse Rd.
Clovis, California 93611
Attention: Kevin L Shaddy, Unit Chief
Brownfields and Environmental
Restoration Program



FRESNO County Recorder
Paul Dictos, C.P.A.

DOC- 2016-0034242

Friday, MAR 18, 2016 10:19:46

Ttl Pd \$0.00

Rcpt # 0004495795
RGR/R4/1-14

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

LAND USE COVENANT AND AGREEMENT

ENVIRONMENTAL RESTRICTIONS

County of Fresno, Assessor Parcel Number(s): 428-300-09
4005 and 4017 East Ashlan Ave
DTSC Site Code 102266

This Land Use Covenant and Agreement ("Covenant") is made by and between Ashlan Park Center, LLC (the "Covenantor"), the current owner of property located at 4005 and 4017 E. Ashlan Ave, in the County of Fresno, State of California (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 the Department hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 25202.5, the use of the Property be restricted as set forth in this Covenant and that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.1. Property Location. The Property that is subject to this Covenant, totaling approximately 0.65 acres, is more particularly described in the attached Exhibit A, "Legal Description," and depicted in Exhibit B, Site Diagram. The Property is located in the area now generally bounded by Ashlan Ave. to the south, Holland Ave. to the North, 9th Street to the West and Cedar Ave. to the east. The Property is also identified as County of Fresno, Assessor Parcel Number(s) 428-300-09.

1.2. Investigation of Property. The Property was formerly occupied by two buildings: A former dry cleaner at 4005 E. Ashlan Ave. and a former liquor store at 4017 E. Ashlan Ave. The former dry cleaner was in operation from approximately 1965 until 1990. Valley Small Appliance operated at 4005 E. Ashlan Ave. from 1975 until approximately 2013. These two buildings were demolished and the gas station and mini mart were constructed in 2014. The Department reviewed a June 8, 2015 Request for No Further Action (Report) for 4005 East Ashlan Avenue, Fresno, CA. The Report summarized investigation activities conducted at the Property that included the collection of soil and soil gas samples. Soil and/or soil gas samples were collected and analyzed in 2005, 2006, 2013, 2014, and 2015. Volatile organic compounds (VOCs) and BTEX analytical results obtained from Property soil samples were all below DTSC screening concentrations. Soil gas samples obtained from Property contained VOCs at concentrations exceeding DTSC's future residential screening concentrations, but generally decreased over time. DTSC's review of analytical data indicates that residual volatile organic compound concentrations at the outer perimeter of the Property do not pose a human health risk for adjacent residential parcels. Hazardous substances remain in soil vapor in samples collected from central areas of the Property above concentrations acceptable for unrestricted use.

1.3. Basis for Environmental Restrictions. As a result of the presence of hazardous substances, which are also hazardous materials as defined in Health and Safety Code section 25260, at the Property, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment. The Department has also concluded

that the Property, when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

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, requirements, prohibitions, and terms and conditions as set forth in 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" or "Occupants" means Owner 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 Covenantor, and any successor in interest including any heir and assignee, who at any time holds title to all or any portion of the Property.

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 Civil Code section 1471 and Health and Safety Code section 25355.5 (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. This Covenant: (a) binds all Owners of the Property, their heirs, successors, and assignees; and (b) the agents, employees, and lessees of the Owners and 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; this Covenant, however, is binding on all Owners and Occupants, and their respective successors and assignees, only during their respective periods of ownership or occupancy except that such Owners or Occupants shall continue to be liable for any violations of, or non-compliance with, the Environmental Restrictions of this Covenant or any acts or omissions during their ownership or occupancy.

3.3. 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.

3.4. Conveyance of Property. The Owner and new Owner shall provide Notice to the Department not later than 30 calendar days after any conveyance or receipt of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The 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(s) noted on page one. If the new Owner's property has been assigned a different Assessor Parcel Number, each such Assessor Parcel Number 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.

3.5. Costs of Administering the Covenant to Be Paid by Owner. The Department has already incurred and will in the future incur costs associated with 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, implementing and enforcing this Covenant.

ARTICLE IV
RESTRICTIONS AND REQUIREMENTS

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes without prior written approval by the Department:

- (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 18 years of age.
- (d) A day care center for children.

4.2. Soil Management. Soil management activities at the Property are subject to the following requirements in addition to any other applicable Environmental Restrictions:

- (a) Any soil brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (b) If the current structures are removed, the Owner must contact DTSC prior to constructing new structures on the Property. The purpose of this contact is for DTSC to determine the need for appropriate vapor intrusion mitigation measures necessary, if any, that may be required for future construction on the Property.

4.3. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

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

4.5. 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 March 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 that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspection or at any other time, the Owner must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the Covenant; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 calendar days of its original transmission.

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, such as failure to submit (including 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, REMOVAL AND TERM

6.1. Variance from Environmental Restrictions. Any person may apply to the Department for a written variance from any of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2 Removal of Environmental Restrictions. Any person may apply to the Department to remove any of the Environmental Restrictions imposed by this Covenant or terminate the Covenant in its entirety. Such application shall be made in accordance

with Health and Safety Code section 25224.

6.3 Term. Unless ended in accordance with paragraph 6.2, 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. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Fresno within 10 calendar days of the Covenantor's receipt of a fully executed original.

7.3. 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: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) five calendar days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: George A. Arce, Jr. Member-Manager
Ashlan Park Center, LLC
c/o Centers Dynamic, Inc.
303 Twin Dolphin Dr. Suite 600
Redwood Shores, CA 94065

And

To Department: Kevin L. Shaddy, P.E., Unit Chief
Brownfields and Environmental Restoration Program
Cleanup Program, Clovis Office
1515 Tollhouse Rd. Clovis, CA 93611

Any party may change its address or the individual to whose attention a Notice is to be sent by giving advance written Notice in compliance with this paragraph.

7.4. 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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Fresno

On March 17, 2016 before me,

Karlee Mezquita, Notary Public

(space above this line is for name and title of the officer/notary),

personally appeared Kevin Lawrence Shaddy, 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,

Karlee Mezquita (seal)
Signature of Notary Public



been included herein.

7.5. Statutory References. All statutory or regulatory references include successor provisions.

7.6. Incorporation of Exhibits. All exhibits and attachments to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Covenantor and the Department hereby execute this Covenant.

Covenantor: Ashlan Park Center, LLC

By:



Title: George A. Arce, Jr. Member-Manager

Date: 03/11/16

Department of Toxic Substances Control:

By:



Title: Kevin L. Shaddy, P.E. Unit Chief AKA Kevin Lawrence Shaddy

Date: 3/17/16

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of NEVADA

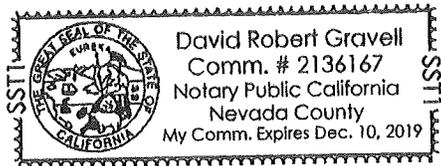
On MARCH 11, 2016 before me,

DAVID ROBERT GRAVELL, NOTARY PUBLIC
(space above this line is for name and title of the officer/notary),

personally appeared GEORGE A. ARCE, JR., 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,



David Robert Gravel (seal)
Signature of Notary Public

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EXHIBIT A – LEGAL DESCRIPTION

Fresno Co. A.P.N. 428-300-09

REAL PROPERTY IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA,
DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF LOT 234 OF TRACT NO. 1376, ASHLAN PARK NO. 2, ACCORDING TO THE
MAP THEREOF RECORDED IN BOOK 17 OF PLATS, PAGES 13 & 14, IN THE OFFICE OF THE
RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 234; THENCE SOUTH 89° 35' 45"
WEST, ALONG THE SOUTH LINE OF SAID LOT, A DISTANCE OF 965.25 FEET TO THE TRUE POINT
OF BEGINNING; THENCE NORTH 0° 03' 15" WEST PARALLEL WITH THE WEST LINE OF SAID LOT,
A DISTANCE OF 190 FEET; THENCE SOUTH 89° 35' 45" WEST PARALLEL WITH THE SOUTH LINE
OF SAID LOT, A DISTANCE OF 150 FEET MORE OR LESS; TO A POINT ON THE WEST LINE OF
SAID LOT; THENCE ALONG THE WEST LINE OF SAID LOT, SOUTH 0° 03' 15" EAST 190 FEET, TO
THE SOUTHWEST CORNER THEREOF, THENCE NORTH 89° 35' 45" EAST ALONG THE SOUTH
LINE OF SAID LOT, A DISTANCE OF 150 FEET, MORE OR LESS, TO THE TRUE POINT OF
BEGINNING.

DIAGRAM OF DEED RESTRICTED PARCEL

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EXHIBIT B – SITE DIAGRAM



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