

Recorded at the request of
Public

Recording Requested by:

de maximis, inc.
2203 Timberloch Place, Suite 213
The Woodlands, TX 77380
(attn: Dave Roberson)

DOC#: 0208153424

Stat Types: 1 Pages: 14



| | |
|--------|---------|
| Fees | 48.00 |
| Taxes | 0.00 |
| Others | 19.00 |
| PAID | \$67.00 |

When Recorded, Mail to:

Paul Ruffin
Hazardous Substances Engineer
California Department of Toxic Substances Control
8800 Cal Center Dr.
Sacramento, CA 95826-3200

COVENANT AND ENVIRONMENTAL RESTRICTION

ON PROPERTY

(Re: County of Kern APN 332-230-58-00-6-Gibson Environmental, DTSC Site Code: 100204)

This Covenant and Environmental Restriction on Property (“Covenant”) is made effective as of the ^{28th} day of August, 2008, by de maximis, inc. (“Covenantor”), who is the Owner of record, as agent for the Gibson Group Trust, of that certain property situated at 2401 Gibson Street, in the City of Bakersfield, County of Kern, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the “Property”), for the benefit of the California Environmental Protection Agency, Department of Toxic Substances Control (the “Department”), with reference to the following facts:

RECITALS

A. In November, 1999, the Department issued Imminent and Substantial Endangerment Order No. 99/00-002, regarding the Property. Since 1999, Order No. 99/00-002 has been amended on several occasions and, as amended, will be referred to in this Covenant as the “Order.” The Order was issued as a result of Hazardous Substances (as defined in California Health & Safety Code (“H&SC”) section 25316) found in liquids in tanks, soil piles and subsurface soils at the Property. Since 1999, substantial removal measures and remedial investigation, described below, have been implemented at the Property. However, some residual Hazardous Substances remain in subsurface soils at the Property. Therefore, this Covenant is

1 reasonably necessary to protect present or future public health and safety and/or the environment at
2 the Property.

3 B. The Property was used for oil production operations as early as the 1940s. From
4 approximately 1987 to 1995, Gibson Environmental, Inc. conducted hazardous waste operations at
5 the Property. In the Order, the Department found that as a result of the operations of Gibson
6 Environmental, Inc., liquid Hazardous Substances stored in tanks and soil piles containing
7 Hazardous Substances were abandoned at the Property. Tests conducted on August 16, 1995
8 indicated that the soil piles contained concentrations of soluble lead and polychlorinated biphenyls
9 (PCBs). Tests conducted in April 1996 indicated that the liquids in tanks on the Property also
10 contained Hazardous Substances including: flammable liquids; corrosive liquid; solvent-
11 contaminated liquids (trichloroethene, tetrachloroethene, methylene chloride, acetone, methyl
12 isobutyl ketone); benzene-contaminated liquids; and heavy metal-contaminated liquids (lead, zinc,
13 molybdenum, chromium, and/or copper).

14 C. Pursuant to the Order, in 2000 and 2001, all liquids and sludge were removed from
15 tanks on the Property and transported to a licensed disposal site. In 2001, twenty-one above
16 ground tanks and associated piping were decommissioned and removed from the Property. No
17 tanks remain on the Property at this time. In 2007, all soil which had been left in large stockpiles
18 was removed from the Property. In addition, concrete pavement and below grade structures were
19 removed and below grade piping was removed from the Property. In addition to the removal
20 actions described above, remedial investigations of soil and groundwater were conducted and a
21 human health and ecological risk assessment ("HRA") was prepared to evaluate risks at the
22 Property. The Department approved a final remedy at the Property which is found in the
23 Feasibility Study and Remedial Action Plan ("RAP"), which was approved by the Department on
24 July 31, 2008. The RAP describes the Hazardous Substances that remain in subsurface soils at the
25 Property including: polynuclear aromatic hydrocarbons (PAHS), volatile organic compounds
26 (VOCs), semivolatle organic compounds (SVOCs), polychlorinated biphenyls (PCBs),
27 organochlorine pesticides and metals. The RAP also describes the nature and extent of petroleum
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1 hydrocarbons (TPHd and TPHg) that remain in the subsurface soils at the Property. The RAP
2 concludes that groundwater has not been impacted by Hazardous Substances or petroleum
3 hydrocarbons at the Property and also describes the HRA conducted to assess potential exposures
4 to Hazardous Substances and petroleum hydrocarbons remaining in subsurface soils at the
5 Property. The RAP concludes that the risk of exposure to Hazardous Substances and petroleum
6 hydrocarbons has been substantially lessened by the removal actions and controls conducted on the
7 Property, but Hazardous Substances and petroleum hydrocarbons remain at the Property at levels
8 which are not suitable to allow unrestricted use of the Property.

9 D. The Property is currently vacant. Covenantor intends to transfer the Property to a
10 third-party purchaser for purposes of commercial and/or industrial development. The parcels
11 within one-fourth mile of the Property are also used and zoned for commercial/industrial uses to
12 the best of Covenantor's knowledge as of the date of this Covenant.

13 E. Full and voluntary disclosure to the Department of the presence of Hazardous
14 Substances and petroleum hydrocarbons on the Property has been made, and extensive sampling of
15 the Property has been conducted. The Property has been remediated to levels deemed appropriate
16 for restricted use by the Department.

17 F. Covenantor now desires to impose certain restrictions on the use of the Property,
18 which restrictions are reasonably necessary to protect present or future human health or safety or
19 the environment as a result of the presence on the Property of Hazardous Substances, as defined in
20 H&SC section 25316, and petroleum hydrocarbons and it is the intent of Covenantor that it and all
21 future owners and occupants of the Property shall be subject to and bound to comply with the
22 restrictions set forth herein.

23 G. Covenantor desires and intends that in order to benefit the Department and to
24 protect the present and future public health and safety, the Property shall be used in such a manner
25 as to avoid potential harm to persons or property that may result from Hazardous Substances and
26 petroleum hydrocarbons that may remain on portions of the Property.

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1 H. The Department has determined that the Property, as a result of the removal actions
2 and controls described above, does not present an unacceptable risk to human health or the
3 environment when used in a manner consistent with this Covenant.

4 ARTICLE I.

5 DEFINITIONS

6
7 1.1 Improvements. "Improvements" means all buildings, roads, driveways, regrading,
8 and paved parking areas, constructed or placed upon any portion of the Property.

9 1.2 Occupant. "Occupant" means any Owner and any person or entity entitled by
10 ownership, leasehold, or other legal relationship to occupy any portion of the Property.

11 1.3 Owner(s). "Owner(s)" means Covenantor and any and all successors-in-interest to
12 Covenantor, with respect to ownership of the Property, including without limitation all donees and
13 purchasers of Covenantor's interest in the Property, and their respective successors-in-interest,
14 including heirs and assigns, who at any time hold fee title to all or any portion of the Property.

15 ARTICLE II.

16 GENERAL PROVISIONS

17
18 2.1 Restrictions to Run with the Land. This Covenant sets forth protective provisions,
19 covenants, conditions and restrictions (collectively referred to as "Restrictions"), subject to which
20 the Property and every portion thereof shall be improved, held, used, occupied, leased, sold,
21 hypothecated, encumbered and/or conveyed. The Restrictions set forth in Article III of this
22 Covenant are reasonably necessary to protect present and future human health and safety or the
23 environment as a result of the presence of Hazardous Substances and petroleum hydrocarbons on
24 the Property. Each and all of the Restrictions shall run with the land, and pass with each and every
25 portion of the Property, and shall apply to, inure to the benefit of, and bind the respective
26 successors-in-interest thereof, for the benefit of the Department and all Owners and Occupants.
27 Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as
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1 applicable to a specific portion of the Property. Each and all of the Restrictions run with the land
2 pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the
3 Department.

4 2.2 Binding Upon Owners/Occupants. All Owners or Occupants of any portion of the
5 Property shall be deemed by their purchase, leasing, or possessory interest in the Property, to be in
6 accord with the foregoing and to agree that the Restrictions as herein established must be adhered
7 to for the benefit of the Department and the Owners and Occupants of the Property. The interest of
8 all Owners and Occupants of the Property shall be subject to the Restrictions contained herein.
9 Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants.
10 Pursuant to Civil Code section 1471(b), any Owner of the Property and any person having an
11 interest in the Property derived from an Owner of the Property are expressly bound hereby for the
12 benefit of Covenantor and the Department.

13 2.3 Incorporation into Deeds. Covenantor desires and covenants that the Restrictions
14 set out herein shall be incorporated by reference in each and all deeds for any portion of the
15 Property and into agreements as set forth in Section 3.5 below. Recordation of this Covenant shall
16 be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this
17 Covenant has been attached to or incorporated into any given deed.

18 2.4 Written Notice of Release of Hazardous Substances. Prior to the sale, lease or
19 sublease of the Property, the Owner or Occupant shall give the buyer, lessee, or sublessee notice
20 that Hazardous Substances are located on or beneath the Property, as required by H&SC section
21 25359.7. Compliance with Section 3.5 will be deemed compliance with requirements of this
22 Section 2.4.

23 ARTICLE III.

24 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

25
26 3.1 Restrictions on Development and Use. Each and every Owner and Occupant shall
27 restrict the use of the Property as follows:
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- 1 a. The Property shall be restricted to commercial and/or industrial uses.
- 2 b. Residential development shall not be permitted on the Property.
- 3 c. Hospitals or health clinics for humans shall not be constructed on the Property.
- 4 d. Day-care centers for either children or senior citizens shall not be permitted on the
- 5 Property.
- 6 e. Schools for children under 21 years of age shall not be permitted on the Property.
- 7 f. Any subdivision of the Property by an Owner pursuant to California Government
- 8 Code § 66460 *et seq.* shall require that the Owner of each such subdivision evaluate
- 9 risks to human health and the environment to assure that the planned use of the
- 10 subdivided portion of the Property does not present an unacceptable risk for the
- 11 proposed use.
- 12 g. Any soils brought to the surface by grading, excavating, trenching or backfilling
- 13 shall be managed in accordance with applicable provisions of state and federal law.
- 14 h. Activities that will disturb the soil on the Property such as excavation, grading,
- 15 removal, trenching or other earth movement, shall only be permitted pursuant to a
- 16 Soil Management Plan and a Health and Safety Plan as approved by the Department
- 17 which approval shall not be unreasonably withheld.
- 18 i. The Owner(s)/Occupant(s) shall allow the Department access to the Property for
- 19 non-destructive inspection, surveillance, monitoring, maintenance, and other
- 20 activities consistent with the purposes of this Covenant as deemed necessary by the
- 21 Department. The Department shall provide the Owner(s)/Occupant(s) with
- 22 reasonable advance notice of such non-destructive inspection, surveillance,
- 23 monitoring, maintenance and other activities.

24 3.2 Conveyance of Property. The Owner(s) shall provide a notice to the Department

25 not later than thirty (30) days after any sale, lease or other conveyance of the Property or a real

26 property estate in the Property. The written notice shall include the name and mailing address of

27 the new owner of the Property and shall reference the site name and site code as listed on page one

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1 of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on
2 page one. If the new owner's property has been assigned a different APN, each such APN that
3 covers the Property must be provided. The Department shall not, by these provisions, have
4 authority to approve, disapprove, or otherwise affect any such sale, lease, or other conveyance of
5 the Property or estate.

6 3.3 Inspection and Reporting Requirements. Any Owner of the Property shall conduct
7 an annual inspection to confirm that the Property is being used in a manner consistent with this
8 Covenant. The then-current Owner shall submit an annual report, made under penalty of perjury,
9 by January 31 of each calendar year describing how the requirements set forth in Section 3.1 of
10 this Covenant are being met. The annual report must include the dates and times of the annual
11 inspection, identify the name and address of the person or persons who conducted the inspection,
12 and describe the observations during the inspection that are the basis for the report. If violations of
13 this Covenant are noted by the inspector, the report must detail the violations and detail the steps
14 taken to return to compliance. In addition, the Department shall have the right to conduct annual
15 inspections of the Property pursuant to the Implementation and Enforcement Plan attached hereto
16 as Exhibit B.

17 3.4 Enforcement. Failure of an Owner or Occupant to comply with any of the
18 restrictions, as set forth in paragraph 3.1, or failure of an Owner to submit an annual report as
19 provided in paragraph 3.3, shall be grounds for the Department (following written notice and a
20 reasonable opportunity to cure to the Owner and Occupant), by reason of this Covenant, to have
21 the authority to require that the Owner or Occupant take all appropriate actions to ensure
22 compliance with this Covenant. Violation of this Covenant, following notice and opportunity to
23 cure, shall be grounds for the Department to pursue administrative, civil or criminal actions against
24 the Owner or Occupant as provided by law.

25 3.5 Notice in Agreements. After the date of recordation hereof, all Owners and
26 Occupants who convey a possessory interest in the Property shall execute a written instrument
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1 which shall accompany all purchase agreements or leases relating to the Property. Any such
2 instrument shall contain the following statement or language substantially similar:

3 The land described herein contains hazardous substances and petroleum
4 hydrocarbons in soils under the property, and is subject to a land use covenant
5 dated as of _____, 2008, and recorded on _____, 2008,
6 in the Official Records of Kern County, California, as Document No. _____,
7 which Covenant and Restriction imposes certain covenants, conditions, and
8 restrictions on usage of the property described herein. This statement is not a
9 declaration that a hazard exists.

10 3.6 Costs of Administering the Covenant To Be Paid By Owner. The Department has
11 already incurred and will in the future incur costs associated with the administration of this
12 Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent
13 Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner
14 agrees to pay the Department's costs in administering the Covenant.

15 ARTICLE IV.

16 VARIANCE AND TERMINATION

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18 4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property
19 or any portion thereof may apply to the Department for a written variance from the provisions of
20 this Covenant.

21 4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the
22 Property or a portion thereof may apply to the Department for a termination of the Restrictions as
23 they apply to all or any portion of the Property.

24 4.3 Term. Unless terminated by law or in accordance with paragraph 4.2, this Covenant
25 shall continue in effect in perpetuity.

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ARTICLE V.

MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein 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.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or, (ii) three (3) business days after deposit in the mail if mailed by United States mail, postage paid and certified, return receipt requested:

To: Paul Ruffin or Current Project Manager
Gibson Environmental, Inc. Site (CAR000086942)
California Department of Toxic Substances Control
Standardized Permitting & Corrective Action Branch
8800 Cal Center Dr.
Sacramento, CA 95826-3200

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

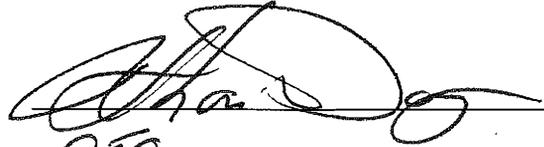
5.5 Recordation. This instrument shall be executed by Covenantor and recorded in the Official Records for the Property within ten days of the Covenantor's receipt of a fully executed original.

5.6 Department References. All references to the Department include successor agencies/ departments or other successor entities to the Department.

1 5.7 Construction. Any general rule of construction to the contrary notwithstanding, this
2 instrument shall be liberally construed in favor of the Covenant to effect the purpose of this
3 instrument and the policy and purpose of the Health and Safety Code. If any provision of this
4 instrument is found to be ambiguous, an interpretation consistent with the purpose of this
5 instrument that would render the provision valid shall be favored over any interpretation that
6 would render it invalid.

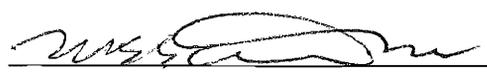
7
8 IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

9
10 DE MAXIMIS, INC. FOR THE GIBSON GROUP TRUST

11
12 By: 
13 Title: CFO
14 Date: 8/21/08

15
16 Acknowledged by:

17 STATE OF CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, DEPARTMENT OF
18 TOXIC SUBSTANCES CONTROL

19 By: 
20 Title: Supervising Hazardous Substances Engineer II
21 Date: August 19, 2008
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Exhibit A

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Legal Description:

Real Property in the City of Bakersfield, County of Kern, State of California, described as follows:

APN: 332-230-58-00-6

Legal Description:

That portion of the northwest quarter of Section 26, Township 29 South, Range 27 East, Mount Diablo Meridian, in the unincorporated area of the County of Kern, State of California, according to the official plat thereof, described as follows: Beginning at a point which bears south 0 17'00" west, 963.40 feet from the northwest corner of said section 26, being the true point of beginning; thence south 89 50'00" east, 196.7 feet on map and closure; thence north 0 17'00" east, 277.00 feet; thence south 89 50'00" east, 270.00 feet; thence south 0 17'00" west, 277.00 feet to the centerline of Commercial Street; thence south 89 50'00" east 360.21 feet along said centerline; thence south 0 17'30" west, 30.00 feet; thence north 89 50'00" west, 165.38 feet; thence south 0 17'30" west, 254.00 feet; thence north 89 50'00" west, 661.51 feet, to a point on the west line of said Section 26; thence north 0 17'00" east, 284.00 feet to the true point of beginning, containing 6.15 acres more or less.

Subject to any mineral reservations of record.

1 **Land Use Covenant Implementation and Enforcement Plan**

2 **(Exhibit B to Land Use Covenant)**

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4 **1.0 DTSC Rights**

5 This Implementation and Enforcement Plan ("Plan") is part of a Land Use
6 Covenant ("LUC") recorded on property located at 2401 Gibson Street in Bakersfield,
7 California as particularly described in Exhibit A to the LUC (the "Property"). Pursuant to
8 this Plan, the California Department of Toxic Substances Control shall have the right to
9 conduct annual inspections of the Property to ensure that the land use restrictions stated in
10 Section 3.1 of the LUC remain in place and protective of human health and the
11 environment.

12 **2.0 Access Provisions**

13 DTSC shall have reasonable right of entry and access to the Property for inspection and
14 other activities consistent with the purposes of implementing and enforcing the LUC as
15 deemed necessary by DTSC in order to protect public health and the environment.

16
17 **3.0 Reimbursement of DTSC Costs**

18 To the extent DTSC exercises its rights under this Plan or the LUC, the Owner of the
19 Property at the time shall reimburse DTSC for its reasonable out of pocket costs incurred in
20 conducting any inspection or enforcement effort.

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1 STATE OF CALIFORNIA)
2)
3 COUNTY OF SACRAMENTO)
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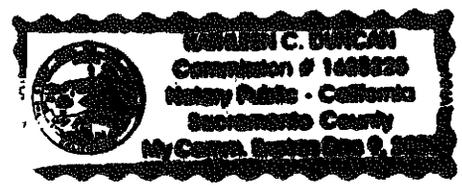
5 On August 19, 2008, before me, Kathleen C. Duncan, Notary Public, personally appeared
6 Mohinder S. Sandhu, who proved to me on the basis of satisfactory evidence to be the person
7 whose name is subscribed to the within instrument and acknowledged to me that he executed the
same in his capacity and that by his signature on the instrument the person, or the entity upon
behalf of which the person acted, executed the instrument.

8 I certify under PENALTY OF PERJURY under the laws of the State of California that the
9 foregoing paragraph is true and correct.

10 WITNESS my hand and official seal.

11 

12 Notary's Signature
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1 STATE OF TENNESSEE)

2)

3 COUNTY OF Knox)

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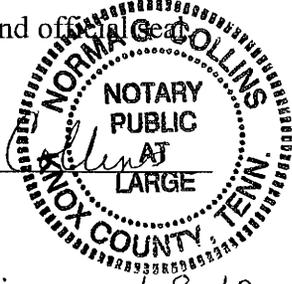
5 On August 21, 2008, before me, Norma G. Collins, Notary Public, personally appeared
6 R. Thomas Dorsey, who proved to me on the basis of satisfactory evidence to be the person whose
7 name is subscribed to the within instrument and acknowledged to me that he/she executed the
8 same in his/her capacity and that by his/her signature on the instrument the person, or the entity
9 upon behalf of which the person acted, executed the instrument.

8 I certify under PENALTY OF PERJURY under the laws of the State of Tennessee that the
9 foregoing paragraph is true and correct.

10 WITNESS my hand and official seal

11 Norma G. Collins

12 Notary's Signature



14 My Comm. Expires: 1-8-12

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