RECORDING REQUESTED BY:
Trustee for
The Brett and Chris Warner Trust, dated
May 31, 2012
15250 Ventura Blvd.
Suite 100
Sherman Oaks, California 91403

WHEN RECORDED, MAIL TO:

ADDRESS ABOVE, and,

State of California
Department of Toxic Substances Control
[Street Address]
[City], California **[zip code]**
Attention: **[Unit Chief]**
[Unit]

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(RE: Parcel Number 5625-015-006)

DTSC Site Code **[Site Code]**

This Covenant and Agreement ("Covenant") is made by and between Brett P. Warner (the "Covenantor"), the current owner of property situated in Burbank, County of Los Angeles, State of California, described in Exhibit "A" and depicted in Exhibit "B," 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 the 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. The provisions of this Covenant shall be for the benefit of, and shall be enforceable by, the United States Environmental Protection Agency ("U.S. EPA"), as a third party beneficiary pursuant to general contract law, including, but not limited to, Civil Code Section 1559.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property. The Property, totaling approximately 10,000 square feet, is more particularly described and depicted in the attached Exhibits "A" and "B." The Property is located at 264 W. Spazier Avenue, at the end of a cul-de-sac in a mixed residential and commercial area of Burbank. An open concrete flood control canal is located along the northeast property line. Directly to the east of the Site is an apartment complex. A graphics arts business is next door to the south. A commercial plumbing supply business is across the street to the west. Directly across the flood control channel to the north are single and multiple family residential structures. The Property is also generally described as Los Angeles County Assessor's Parcel Number 5625-015-006.

1.01 The property, as used for the purposes of inspection, remediation and access shall be confined to the 30X30 area at the North West corner of property depicted on Exhibit "B" and monitory wells on property.

1.02. Hazardous Substances. As defined in section 25316 of the California Health and Safety Code ("H&SC"), (within Chapter 6.8, Division 20 of the H&SC), and in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") (42 USC §9601 (14)); and also Title 40 Code of Federal Regulations ("CFR") parts 261.3 and 302.4, hazardous substances remain on portions of the Property. These substances are also hazardous materials as defined in Health and Safety Code section 25260(d). These contaminant(s) include soils at depth contaminated with chromium, and other metals remaining from a former metal plating business.

1.03. Remediation of the Property. The Property will be remediated pursuant to a Record of Decision ("ROD") for the Glendale Chromium Operable Unit (GCOU) of the San Fernando Valley Superfund Site (the "Site") to be issued by the U.S. EPA, in 2015. Under the ROD, the U.S. EPA Region IX Superfund Division Director will select one or

more remedial actions for the GCOU, including the Property, pursuant to CERCLA. The Department expects to concur with the remedy.

1.03 Remedial action on the property, if taken, shall be confined to the area depicted to attached Exhibit "B" commonly known as a 30X30 area at the North West corner of said property.

1.04. Land Use Covenant. A land use covenant is necessary to preclude residential use of the Property given that hazardous substances currently remain and may continue to remain at the Property following completion of the remediation and to preclude disruption of the selected constructed remedy. As noted above, the ROD will provide for a land use covenant to limit future uses of the Property. U.S. EPA, with the concurrence of the Department, has concluded that the Property, when used in compliance with the terms of this Covenant, does not present an unacceptable threat to human safety or the environment.

ARTICLE II
DEFINITIONS

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

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, which at any time hold title or an ownership interest to all or any portion of the Property.

2.04. 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.

2.05. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA or a state agency acting pursuant to a contract or cooperative agreement executed under CERCLA

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section 104(d)(1), 42 U.S.C. 9604(d)(1), or designated pursuant to a CERCLA Memorandum of Agreement entered into under subpart F of the NCP (40 C.F.R. 300.505) may be designated CERCLA Lead Agency.

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

2.07 Improvements. "Improvements" include, but are not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

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

2.09 Remedial Systems. "Remedial Systems" shall mean the remedial equipment and systems to be located on or adjacent to the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run 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, and/or conveyed. This Covenant: (a) Runs with the land pursuant to Health and Safety Code section 25355.5(a) 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 and Occupants of the Property. 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. The Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding 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 DTSC site code **[list DTSC site code]**. The notice shall also include the Assessor's Parcel Number ("APN") listed in Section 1.01. 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.

ARTICLE IV
RESTRICTIONS

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. Any contaminated soils or contaminated materials brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of State and federal law. Such soils and materials shall not be removed from the Property without a Soil Management Plan approved by the Department.

4.03. Prohibited Activities. Unless a change is authorized pursuant to Article VI of this Covenant, the following conditions and restrictions apply unless prior written approval of modifications to the following conditions and restrictions is obtained from the CERCLA Lead Agency:

a. No drilling of any monitoring, extraction, injection, or other wells on the Property, without prior approval of EPA. EPA has agreed in concept to the proposed drilling of a new ground water monitoring well (MW #3R) in the southeast corner of the property, provided that Purchaser submits documentation that details the planned drilling, construction and development of the new well for final review and approval.

b. No extraction of ground water from or injection of fluids into any existing wells on the Property, except with approval of EPA. Purchaser must submit for final review and approval a plan describing the procedure to be followed for abandoning groundwater monitoring well AMP-W3 and installation of a replacement ground water monitoring well (i.e., proposed well MW #3R) in an acceptable alternative location.

c. No interference with the extraction wells, injection wells, monitoring wells (including AMP-W1, as shown on the attached diagram of the Property), vapor or ground water conveyance piping, the treatment facilities, or other components of the EPA remedy either currently installed or that may be installed on the Property (specific locations will be provided upon request), except with approval of EPA. EPA has agreed in concept to the proposed abandonment of monitoring well AMP-W3 per the conditions noted in Paragraph 4.03.b above.

d. Maintain a clear and unobstructed area of no less than twenty (20) feet long by eight (8) feet wide in one direction around each well (including future wells) on the Property, except as provided below, and a vertical clearance of no less than approximately twenty-five (25) feet directly above each well, except with approval of EPA. Purchaser must ensure that EPA will have a safe access

route across the Property to each well at all times. EPA has agreed in concept to the proposed location of new monitoring well MW #3R, which includes clearance of an area of approximately eighteen (18) feet long by five (5) feet wide centered around the proposed well; and planned access through a door in the rear of the building proposed for construction on the Property.

e. Maintain the asphalt cap over the entire 30 x 30 foot area in the northeast corner of the Property near the cul-de-sac (refer to the attached diagram of the Property) with a five foot buffer (to prevent water infiltration from washing the hexavalent chromium and other metals down into the ground water) and ensure that the integrity of the cap is not compromised (i.e., conduct routine cap inspection and repair/seal cracks in the areas above the cap). EPA has agreed in concept to the plan by Purchaser to replace the existing asphalt cap across the Property with a new concrete pad over the planned parking lot area in the northern half of the Property along W. Spazier Avenue (including the northeast corner of the Property); and to construct a building in the southern half of the Property, provided that Purchaser submits for review and approval by EPA of a plan describing the construction details of the concrete pad and building foundation.

f. Prevent the use of a 30 to 40 foot stretch of the property along the sidewalk paralleling Spazier Avenue at the northeast corner of the property as an access point/driveway into the property (to avoid future interference with potential future remedial work), except subject to final approval of EPA. EPA has agreed in concept to the plan to place an access point/driveway on the Property at a location slightly less than 30 feet (i.e., 27 feet 9 inches) from the northeast corner of the Property.

g. Provide unrestricted access for EPA (or its designees) and the State, and their contractors to the Property for sampling, cleanup and investigation activities. Such access may require modifying or suspending activities for a time to ensure a safe work area for such access.

h. Obtain written approval from EPA prior to any modification of the 30 x 30 foot cap located in the northeast corner of the Property and prior to any building construction, subsurface excavation, coring, piling, or other activities within the capped area. EPA has agreed in concept to the plan to replace the existing asphalt cap with a new concrete pad over the planned parking lot area in the northern half of the Property along W. Spazier Avenue (including the northeast corner of the Property) per the conditions noted in Paragraph 4.03.f above.

i. Obtain written approval from EPA prior to any subsurface excavation, coring, piling, or other activities at depths greater than five feet anywhere on the Property. EPA has agreed in concept to the proposed drilling of a new ground water monitoring well (MW #3R) in the southeast corner of the property, provided that Purchaser submits documentation that details the planned drilling, construction and development the new well for review and approval, per the conditions noted in paragraph 4.03.a above.

j. Coordinate with EPA regarding Purchaser's recent evaluation of shallow soils beneath the footprint of the planned building for potential vapor intrusion from volatile organic compounds (VOCs) to indoor air, and discuss with EPA whether implementing any actions to mitigate potential exposures to VOCs is appropriate.

k. Ensure appropriate measures are implemented during any construction to minimize potential worker exposure to soils possibly impacted by contamination.

4.04. Non-Interference with Remedial Systems.

a. The Owner and Occupant shall not participate in or allow any activity that would interfere with the operation of the Remedial Systems or other Site-wide response activities at the Property without prior written approval from the CERCLA Lead Agency, such approval not to be unreasonably withheld.

b. All uses and development of the Property shall preserve the integrity of the Remedial Systems or other Site-wide response activities.

c. Owner shall provide a copy of this Covenant to all easement holders for all or any portion of the Property.

4.05. Access for the Department and U.S. EPA. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities for the Remedial Systems on the Property 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. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; or federal law. Nothing in this instrument shall limit or otherwise effect the Department's right of entry and access, or authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; Chapter 6.8, Division 20 of the California Health and Safety Code; California Civil Code, or other applicable State Law.

4.06 Access for Implementing Operation and Maintenance. The entity, person or persons responsible for implementing the operation and maintenance activities related to the Remedial Systems shall have reasonable right of entry and access to the Property for the purpose of implementing these operation and maintenance activities. Such right of entry and access shall continue until such time as the CERCLA Lead Agency determines that such activities are no longer required.

4.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15th of each year. The annual report shall describe how all requirements outlined in this Covenant have been met. The annual report, filed under penalty of perjury, shall certify that the Property is being used in a manner consistent with this

Covenant. The annual report must include the dates, times, and names of those who conducted 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 report (e.g., drive by, fly over, walk in, etc.). 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 ten (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 cease immediately. Additionally, copies of any correspondence related to the enforcement of this covenant shall be sent to the Department and U.S. EPA within ten (10) days of its original transmission.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, 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.

5.02 Enforcement Rights of U.S. EPA as a Third Party Beneficiary. U.S. EPA, as a third party beneficiary, has the right to enforce the Environmental Restrictions contained herein.

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 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No variance may be granted under this paragraph without prior notice to and an opportunity to comment by U.S. EPA.

6.02 Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or modification 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 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No termination may be granted under this paragraph without prior notice to and opportunity to comment by U.S. EPA.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, after providing notice to and an opportunity to comment by U.S. EPA, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication or Taking 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. Further, nothing in this Covenant shall be construed to effect a taking under State or federal law.

7.02. 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:	Brett and Chris Warner Trust, dated May 31, 2012 15250 Ventura Blvd. Suite 100 Sherman Oaks, California 91403
To Department:	Department of Toxic Substances Control Attention: **[Unit Chief]** **[Unit]** **[Street Address]** **[City]** CA **[zip code]**
To the U.S. EPA:	U.S. Environmental Protection Agency Region IX Attention: Lisa Hanusiak[1] 75 Hawthorne Street San Francisco, CA 94105-3901

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.

7.03. 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, or the application of it to any person or circumstance, shall remain in full force and effect as if such portion found invalid had not been included herein.

7.04. Statutory and Regulatory References. All statutory and regulatory references include successor provisions.

[1] Or current remedial project manager for San Fernando Valley Area 2 Superfund Site, Glendale Chromium Operable Unit.

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

7.06. California Law. This Covenant shall be governed, performed and interpreted under the laws of the State of California.

7.07. No Delegation. Nothing set forth in this Covenant shall be construed to be a delegation of any authorities of DTSC under any statute or regulation.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

By: _____Date:_____

Trustee for the Brett and Chris Warner Trust, dated May 31, 2012

Department of Toxic Substances Control

By: _____Date:_____

[Unit Chief)
[Unit)
Department of Toxic Substances Control

EXHIBITS

A – LEGAL PROPERTY DESCRIPTION

B – SURVEY MAP

[If non-interference with the remedy is included as part of the LUC, an exhibit depicting the location of the remedy components (Cap, wells, SVE system, etc.) should also be included and referenced appropriately (e.g. Exhibit C)]

SAMPLE COVENANT

Exhibit A
Legal Property Description
Property Subject to Environmental Restriction

Exhibit "A"

LEGAL DESCRIPTION

Real property in the City of Burbank, County of Los Angeles, State of California, described as follows:

THE NORTHWEST 1/2 OF LOT 39, TRACT 8190, AS PER MAP RECORDED IN BOOK 87, PAGE 79 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO, THE NORTHWEST 1/2 OF THAT PORTION OF LOT 38, TRACT 8190 LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF THE 90 FOOT FLOOD CONTROL CHANNEL DESCRIBED IN THE DECREE OF CONDEMNATION IN CASE NO. 473793 SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA.

APN: 5625-015-006

SAMPLE COVENANT

State of California

County of _____

On _____ before me,

_____

(here insert name and title of the officer/notary),

Personally appeared_____

_____

_____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

SAMPLE COVENANT

State of California

County of _____

On _____ before me,

_____

(here insert name and title of the officer/notary),

Personally appeared_____

_____

_____, personally

known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit "B"

North

0 75

Approximate scale in feet

= Onsite Monitoring Wells

= Property Fenced Area

= 30' x 30' Area of Potential Remediation

FIGURE 1
Site Features
Former All Metals Processing Facility
Glendale Chromium OU

Aerial image © Google Earth, 2009. Annotation by CH2M HILL, 2011.

CH2MHILL

427727.PP.04 GlendaleChromium_site_features.ai 11/11