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west virginia department of environmental protection

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Division of Land Restoration  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
(304) 926-0455

Joe Manchin III, Governor  
Stephanie R. Timmermeyer, Cabinet Secretary  
www.wvdep.org

February 13, 2007

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Mr. Tom Sayre  
Toll Brothers, Inc.  
P.O. Box 588  
Inwood, WV 25428

RE: Land Use Covenant for Oates Property Parcel 1B  
Martinsburg, Berkeley County, VRP # 07028

Dear Mr. Sayre:

Enclosed please find the signed and notarized Land Use Covenant for the subject parcel. The Certificate of Completion issued for the subject site and dated February 13, 2007, will become effective once the Land Use Covenant is recorded.

Please make arrangements to have the land use covenant properly recorded with the Berkeley County Clerk, and request the Clerk to return a copy of the recorded instrument to my attention:

Mr. Ken Ellison, Director  
WVDEP, Division of Land Restoration  
601 57<sup>th</sup> Street  
Charleston, WV 25304

Thank you for your attention to this matter, and please feel free to contact Assistant Director Don Martin (304-924-6211) or me if you have any questions.

Sincerely,

Ken Ellison  
Director

Enclosure

C: David Duncan, LRS  
Patty Hickman, Project Manager  
Don Martin  
file

## LAND USE COVENANT

Martinsburg Ventures, LLC has entered into a Voluntary Remediation Agreement (hereinafter referred to as "the Agreement") with the Department of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §§ 22-22-1 through 22-22-2 (hereinafter referred to as "the Act"), for certain property, located on Delmar Orchard Road in the City of Martinsburg, Berkeley County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Berkeley County, West Virginia. Paragraph 75 of the Agreement requires Martinsburg Ventures, LLC, as the owner of said property, to file a Land Use Covenant with the Clerk of the Berkeley County Commission. The Agreement allows certain levels of contamination to remain on the property and requires a land use covenant be recorded in the office of the Clerk of the Berkeley County Commission for the purposes of protecting public health and the environment and to prevent interference with the performance, operation and maintenance of any remedial actions required by the Agreement.

The areas of the subject property bound by the Land Use Covenant are more specifically described as follows:

### **INTERMENT AREA 4:**

BEGINNING AT A POINT, SAID POINT BEING S 43°30'12" E, 10.00 FEET FROM THE INTERSESION OF THE EASTERN RIGHT-OF-WAY LINE OF KLEE DRIVE (BEING AN 80 FOOT WIDE RIGHT-OF-WAY) AND THE NORTHERN RIGHT-OF-WAY LINE OF DARDEN COURT (BEING A 50 FOOT WIDE RIGHT-OF-WAY), AS RECORDED IN PLAT BOOK 12 AT PAGE 96 AMONG THE LAND RECORDS OF BERKELEY COUNTY, WEST VIRGINIA, :

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1360.00 FEET AN ARC LENGTH OF 123.12 FEET, A CHORD BEARING AND DISTANCE OF N 49°05'24" E, 123.07 FEET AND A DELTA ANGLE OF 05°11'12" TO A POINT;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET AN ARC LENGTH OF 27.04 FEET, A CHORD BEARING AND DISTANCE OF S 76°40'30" E, 23.52 FEET AND A DELTA ANGLE OF 103°16'59" TO A POINT;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 315.00 FEET AN ARC LENGTH OF 117.27 FEET, A CHORD BEARING AND DISTANCE OF S 14°22'07" E, 116.59 FEET AND A DELTA ANGLE OF 21°19'48" TO A POINT;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET AN ARC LENGTH OF 25.27 FEET, A CHORD BEARING AND DISTANCE OF S 44°33'55" W, 22.39 FEET AND A DELTA ANGLE OF 96°32'16" TO A POINT;

THENCE N 87°09'57" W, 29.75 FEET TO A POINT;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 215.00 FEET AN ARC LENGTH OF 101.59 FEET, A CHORD BEARING AND DISTANCE OF N 73°37'47" W, 100.65 FEET AND A DELTA ANGLE OF 27°04'20" TO A POINT;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET AN ARC LENGTH OF 27.91 FEET, A CHORD BEARING AND DISTANCE OF N 06°47'55" W, 24.05 FEET AND A DELTA ANGLE OF 106°35'25" TO THE POINT OF BEGINNING.

CONTAINING 13,287 SQ.FT OR 0.3050 ACRES, MORE OR LESS. SAID AREA BEING WITHIN PARCEL A, AS RECORDED IN PLAT BOOK 12 AT PAGE 96 AMONG THE LAND RECORDS OF BERKELEY COUNTY, WEST VIRGINIA.

**NOW THEREFORE**, as Martinsburg Ventures, LLC, hereinafter referred to as "Owner," and the Secretary have provided in the Agreement, the following restrictions shall apply to those portions of the property bound by this Land Use Covenant:

1. The Owner shall prohibit all activities on the property which may interfere with the remedial action required by the Agreement.

2. The Owner shall prohibit all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant that was contained as part of the remedial action. These activities include, but are not limited to:

(a) Excavation, drilling, or subsurface work at depths greater than two feet unless the excavation operations and activities are either (i) performed by a qualified and knowledgeable contractor that is aware of any potential release of a contaminant and has a Health and Safety Plan to protect the public and workers, or (ii) performed by a qualified and knowledgeable contractor working under the direct supervision of a Licensed Remediation Specialist (LRS) or a similarly qualified individual or organization;

(b) Disturbance of Interment Area 4 except to maintain or repair the same, maintain or install utilities, expand existing facilities or construct future facilities, or as part of any future remedial action; and

(c) Failure to maintain the integrity of the soil and vegetative cap to enhance rooting and soil stabilization on Interment Area 4.

3. The Owner shall restrict the uses of the property to:

nonresidential use as described by the Voluntary Remediation Act (West Virginia Code 22-22-1, et seq).

4. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to transfer any interest in the property.

5. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued implementation, operation and maintenance of any

remedial action that has been implemented on the property pursuant to the Agreement and without assuring prevention of the releases and exposures described in the provisions of paragraph 2, above.

6. The Owner shall grant the West Virginia Department of Environmental Protection and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the Agreement, and the Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.

7. The Department of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

8. In accordance with the provisions of the Act regarding land use covenants, W. Va. Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner any person identified in W. Va. Code §22-22-18 from all civil liability to the state as provided under the Act so long as the property complies with the applicable standards identified in the Agreement.

9. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owners, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or release signed by the Secretary and the owner at the time of such modification or release, and filed in the office of the Clerk of the County Commission of the county where these covenants have been recorded, this Land Use Covenant shall continue in perpetuity.

10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the Secretary of the West Virginia Department of Environmental Protection, or his successor in accordance with regulations promulgated by the Secretary or his successor. Within 5 days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record

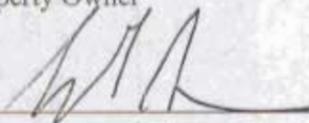
such amendment, modification or termination with the Clerk of the Berkeley County Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the Department of Environmental Protection.

The undersigned persons executing this Land Use Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

IN WITNESS WHEREOF, the said Owner of the above described property and the Secretary of the Department of Environmental Protection have caused this Land Use Covenant to be executed this 2nd day of February, 2007.

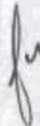
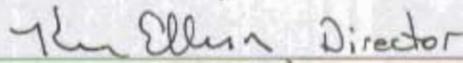
SIGNED:

Property Owner



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Gordon Ivascu  
Martinsburg Ventures LLC.

 Secretary, Department of Environmental Protection  


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I, Ladan Bennett, a Notary Public in and for the State and County aforesaid, do hereby certify that Gordon Vasco, whose name is signed to the writing above, bearing date the 2<sup>nd</sup> day of Feb, 2007, has this day acknowledged same to be his true act and deed.

Given under my hand this the 2<sup>nd</sup> day of Feb, 2007

My commission expires

Ladan Bennett  
NOTARY PUBLIC  
Commonwealth of Virginia  
My Commission Expires 5/31/09

*Ladan Bennett*

Notary Public

I, Rhonda F. McGlothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, whose name is signed to the writing above, bearing date the 13<sup>th</sup> day of February, 2007, has this day acknowledged same to be his true act and deed.

Given under my hand this the 13<sup>th</sup> day of February, 2007

My commission expires



*Rhonda F. McGlothlin*  
Notary Public

