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Book Page Index  
David C. Wall

After Recording Return to:

Andrea L. Rimer, Esq.  
Troutman Sanders LLP  
Bank of America Plaza  
600 Peachtree Street, Suite 5200  
Atlanta, Georgia 30334

### **Environmental Covenant**

This instrument is an Environmental Covenant executed pursuant to the Georgia Uniform Environmental Covenants Act, OCGA § 44-16-1, *et seq.* This Environmental Covenant subjects the Property identified below to the activity and/or use limitations specified in this document. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded in accordance with OCGA § 44-16-8(a).

<b>Fee Owner of Property/Grantor:</b>	Ethicon, Inc. 655 Ethicon Circle Cornelia, GA 30531
<b>Grantee/Holder:</b>	Ethicon, Inc. 655 Ethicon Circle Cornelia, GA 30531
<b>Grantee/Entity with express power to enforce:</b>	State of Georgia Department of Natural Resources Environmental Protection Division 2 Martin Luther King Jr. Drive, SE Suite 1054 East Tower Atlanta, GA 30334
<b>Parties with interest in the Property:</b>	Georgia Power Company Legal Services Attn: Stacey Turner 241 Ralph McGill Boulevard Atlanta, GA 30308

### **Property:**

The property subject to this Environmental Covenant is the Ethicon, Inc. (hereinafter "Ethicon") property, located at 655 Ethicon Circle in Cornelia, Habersham County, Georgia (hereinafter the "Property"). The Property was conveyed on September 25, 1998 from the Habersham County

Development Authority to Ethicon, Inc. and recorded in Deed Book 414, Pages 36-41 of the Habersham County Records. The area is located in Land Lots 114, 115, 138 and 139 of the 10th District of Habersham County, Georgia. The Property consists of approximately 35 acres, developed with a medical supply manufacturing facility. A complete legal description of the area is attached as Exhibit A and a map of the area is attached as Exhibit B.

**Tax Parcel Number(s):**

Tax Parcel 085A 009 of Habersham County, Georgia

**Name and Location of Administrative Records:**

The corrective action at the Property that is the subject of this Environmental Covenant is described in the following documents:

- Voluntary Investigation and Remediation Plan and Application, August 24, 2010.
- VRP Semi-Annual Status Updates, dated April 14, 2011, October 17, 2011, April 13, 2012, October 15, 2012 and April 11, 2013.
- March 23, 2012 and May 8, 2013 correspondence from EPD to Ethicon, Inc. concerning VRP Semi-Annual Status Updates.

These documents are available at the following locations:

Georgia Environmental Protection Division  
Response and Remediation Program  
2 MLK Jr. Drive, SE, Suite 1054 East Tower  
Atlanta, GA 30334  
M-F 8:00 AM to 4:30 PM excluding state holidays

Ethicon, Incorporated  
Attn: EH&S Manager  
655 Ethicon Circle  
Cornelia, Georgia 30531  
Please call 706-778-2281 to schedule a time to review during business hours

**Description of Contamination and Corrective Action:**

This Property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.

This Declaration of Covenant is made pursuant to the Georgia Uniform Environmental Covenants Act, O.C.G.A. § 44-16-1 *et seq.* by Ethicon, Inc., its successors and assigns, and the State of Georgia, Department of Natural Resources, Environmental Protection Division (hereinafter "EPD"), its successors and assigns. This Environmental Covenant is required because a release of regulated substances, including 1,1-dichloroethane; 1,1-dichloroethene; 1-2, dichloroethane; chloroform; cis-1,2-

dichloroethene; 1,1,2-trichloroethane; vinyl chloride; acetone; m,p-xylene; o-xylene; total xylenes; 1,1,1-trichloroethane; benzene; ethylbenzene; toluene; and isopropylbenzene, occurred on the Property. These chemicals are "regulated substances" as defined under the Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90 *et seq.*, and the rules promulgated thereunder (hereinafter "HSRA" and "Rules", respectively). The Corrective Action consists of the installation and maintenance of institutional controls (restrictions on use of groundwater and limitation of use to non-residential) to protect human health and the environment.

Grantor, Ethicon, Inc. (hereinafter "Ethicon"), hereby binds Grantor, its successors and assigns to the activity and use restriction(s) for the Property identified herein and grants such other rights under this Environmental Covenant in favor of Ethicon and EPD. EPD shall have full right of enforcement of the rights conveyed under this Environmental Covenant pursuant to HSRA, O.C.G.A. § 12-8-90 *et seq.*, and the rules promulgated thereunder. Failure to timely enforce compliance with this Environmental Covenant or the use or activity limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict EPD from exercising any authority under applicable law.

Ethicon makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, pursuant to O.C.G.A. § 44-16-5(a); is perpetual, unless modified or terminated pursuant to the terms of this Covenant pursuant to O.C.G.A. § 44-16-9; and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereinafter "Owner"). Should a transfer or sale of the Property occur before such time as this Environmental Covenant has been amended or revoked then said Environmental Covenant shall be binding on the transferee(s) or purchaser(s).

The Environmental Covenant shall inure to the benefit of Ethicon and EPD, and their respective successors and assigns and shall be enforceable by the Director or his agents or assigns, Ethicon or its successors and assigns, and other party(ies) as provided for in O.C.G.A. § 44-16-11 in a court of competent jurisdiction.

#### **Activity and/or Use Limitation(s)**

1. Registry. Pursuant to O.C.G.A. § 44-16-12, this Environmental Covenant and any amendment or termination thereof, may be contained in EPD's registry for environmental covenants.
2. Notice. The Owner of the Property must give thirty (30) day advance written notice to EPD of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Corrective Action.
3. Notice of Limitation in Future Conveyances. Each instrument hereafter conveying an interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of the Environmental Covenant.
4. Periodic Reporting. The Owner shall inspect the Property and applicable property instruments at least annually to ensure compliance with this document. Annually, by no later than September 15th, following the effective date of this Environmental Covenant, the Owner shall complete and submit

to EPD the VRP Annual Property Evaluation Form attached to this document as Exhibit C. This report will document whether or not the activity and use limitations in this Environmental Covenant are being abided by.

5. Activity and/or Use Limitations. The current use of the Property is non-residential, as defined in Section 391-3-19-.02 of the Rules and defined in and allowed under the Habersham County zoning regulations as of the date of this Environmental Covenant. Any residential use of the Property shall be prohibited until such time as EPD has concurred that the vapor intrusion pathway has been addressed for residential use. Any activity on the Property that may result in the release or exposure to the regulated substances that were contained as part of the Corrective Action, or create a new exposure pathway, is prohibited.
6. Groundwater Limitation. The use or extraction of groundwater beneath the Property for drinking water or for any other non-remedial purposes shall be prohibited.
7. Right of Access. In addition to any rights already possessed by EPD and/or Ethicon, the Owner shall allow authorized representatives of EPD and/or Ethicon the right to enter the Property at reasonable times for the purpose of evaluating the Corrective Action; to take samples, to inspect the Corrective Action conducted at the Property, to determine compliance with this Environmental Covenant, and to inspect records that are related to the Corrective Action.
8. Recording of Environmental Covenant and Proof of Notification. Within thirty (30) days after the date of the Director's signature, the Owner shall file this Environmental Covenant with the Records of Deeds for each County in which the Property is located, and send a file stamped copy of this Environmental Covenant to EPD within thirty (30) days of recording. Within that time period, the Owner shall also send a file-stamped copy to each of the following: (1) Ethicon as Holder, (2) each person holding a recorded interest in the Property subject to the covenant, (3) each person in possession of the real property subject to the covenant, (4) each municipality, county, consolidated government, or other unit of local government in which real property subject to the covenant is located, and (5) each owner in fee simple whose property abuts the property subject to the Environmental Covenant.
9. Termination or Modification. The Environmental Covenant shall remain in full force and effect in accordance with O.C.G.A. § 44-5-60, unless and until the Director determines that the Property is in compliance with applicable Risk Reduction Standards, as defined in Georgia Rules of Hazardous Site Response (Rules) Section 391-3-19-.07, whereupon the Environmental Covenant may be amended or revoked in accordance with Section 391-3-19-08(7) of the Rules and O.C.G.A. § 44-16-1 *et seq.*
10. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
11. No Property Interest Created in EPD. This Environmental Covenant does not in any way create any interest by EPD in the Property that is subject to the Environmental Covenant. Furthermore, the act of approving this Environmental Covenant does not in any way create any interest by EPD in the Property in accordance with O.C.G.A. § 44-16-3(b).

### **Representations and Warranties.**

Grantor hereby represents and warrants to the other signatories hereto:

- a) That the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

- b) That the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;
- c) That the Grantor has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Grantor's intention to enter into this Environmental Covenant;
- d) That this Environmental Covenant will not materially violate, contravene, or constitute a material default under any other agreement, document or instrument to which Grantor is a party, by which Grantor may be bound or affected;
- e) That the Grantor has served each of the people or entities referenced in Activity 8 above with an identical copy of this Environmental Covenant in accordance with O.C.G.A. § 44-16-4(d).
- f) That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property; and
- g) That this Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.

**Notices.**

Any document or communication required to be sent pursuant to the terms of this Environmental Covenant shall be sent to the following persons:

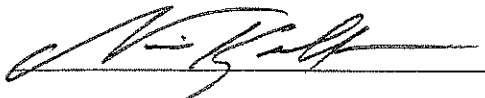
Georgia Environmental Protection Division  
Branch Chief, Land Protection Branch  
2 Martin Luther King Jr. Drive SE  
Suite 1054 East Tower  
Atlanta, GA 30334

Ethicon, Inc.  
Plant Manager  
655 Ethicon Circle  
Cornelia, Georgia 30531

Grantor has caused this Environmental Covenant to be executed pursuant to The Georgia Uniform Environmental Covenants Act, on the 18<sup>th</sup> day of September, 2013.

*[Signatures on next page]*

GRANTOR  
ETHICON, INC.

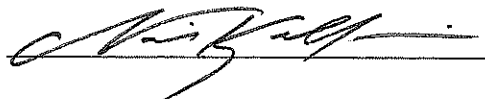


Name: NEIL KULKARNI

Title: VICE PRESIDENT OF MANUFACTURING

Dated: SEPTEMBER 18, 2013

HOLDER  
ETHICON, INC.



Name: NEIL KULKARNI

Title: VICE PRESIDENT OF MANUFACTURING

Dated: SEPTEMBER 18, 2013

STATE OF GEORGIA  
ENVIRONMENTAL PROTECTION DIVISION



Name: Judson H. Turner

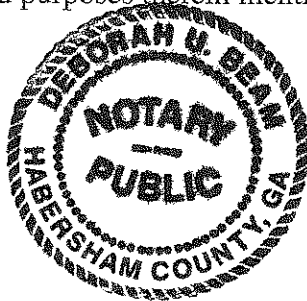
Title: Director

Dated: 10/17/13

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Georgia  
COUNTY OF Habersham

On this 18<sup>th</sup> day of September, 2013, I certify that NEIL KULKARNI personally appeared before me, and acknowledged that he/she is the individual described herein and who executed the within and foregoing instrument and signed the same at his/her free and voluntary act and deed for the uses and purposes therein mentioned.

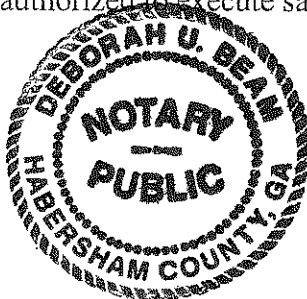


Deborah U. Beam  
Notary Public in and for the State of  
Georgia, residing at Mt. Airy, GA.  
My appointment expires 7-7-2016.

CORPORATE ACKNOWLEDGMENT

STATE OF Georgia  
COUNTY OF Habersham

On this 18<sup>th</sup> day of September, 2013, I certify that NEIL KULKARNI personally appeared before me, acknowledged that he/she is the VICE PRESIDENT OF MANUFACTURING of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said corporation.

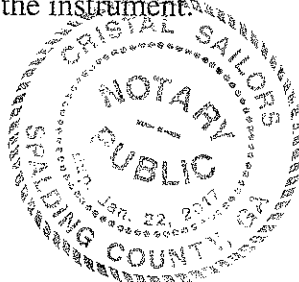


Deborah U. Beam  
Notary Public in and for the State of  
Georgia, residing at Mt. Airy, GA.  
My appointment expires 7-7-2016.

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF GEORGIA  
COUNTY OF FULTON

On this 17 day of October, 2013, I certify that Jackson H. Turner personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the Director of the Georgia Environmental Protection Division to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Crista L. Sellers  
Notary Public in and for the State of  
Georgia, residing at Spalding.  
My appointment expires 11/22/17.

## **Exhibit A**

### **Legal Description**

All that tract or parcel of land lying or being in Land Lots 114, 115, 138 and 139, 10th Land District of Habersham County, Georgia, being known as 35.00 acre Uniform Environmental Covenant Area, and being more particularly described as follows:

Beginning at an Aluminum Monument Set being located South 33 degrees 29 minutes 53 seconds East for a distance of 912.75 feet from the most NW Right of Way intersections of US Hwy. 441 Business and VFW Road being the Point Of Beginning.

Thence South 30 Degrees 59 Minutes 48 Seconds East for a distance of 1234.75 feet to an Aluminum Monument Set;

Thence South 59 Degrees 00 Minutes 12 Seconds West for a distance of 1234.75 feet to an Aluminum Monument Set;

Thence North 30 Degrees 59 Minutes 48 Seconds West for a distance of 1234.75 feet to an Aluminum Monument Set ;

Thence North 59 Degrees 00 Minutes 12 Seconds East for a distance of 1234.75 feet to an Aluminum Monument Set which is the POINT OF BEGINNING. Said property contains 35.00 acres.



**Exhibit B**

Property Map

*See attached survey entitled Uniform Environmental Covenant Plan  
for Ethicon, dated August 19, 2013*



## Exhibit C

**VRP ANNUAL PROPERTY EVALUATION FORM**  
**Ethicon, Inc. Property, HSI Site No. 10793**  
**655 Ethicon Circle, Cornelia, Habersham County, Georgia**  
**Tax Parcel 085A 009**

TYPE	No.	CRITERIA RESPONSE	YES	NO
Land Use	1	Does this VRP property meet the definition of non-residential property as defined in Section 391-3-19.02(2) of the Rules?  "Non-residential property means any property or portion of a property not currently being used for human habitation or for other purposes with a similar potential for human exposure, at which activities have been or are being conducted that can be categorized in one of the 1987 Standard Industrial Classification major group..."		
	1a	If no to 1, provide an explanation including a residential vapor intrusion exposure pathway evaluation to the EPD.		
Exposure	2	Has groundwater beneath the property been used or extracted for drinking water or any other non-remedial purpose?		
	2a	If yes to 2, use should be immediately terminated and a revised corrective action plan (CAP) that describes the actions necessary to bring the site's groundwater into compliance with appropriate risk reduction standards provided to EPD within 30 days.		
Property Instruments	3	Do all leases or other property instruments for the site have the applicable deed notice language inserted into them?		
	3a	If no to 3, provide a written explanation (attached) to the EPD.		

Certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\_\_\_\_\_  
NAME (Please type or print)

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE