

21

Recording Requested by:

T H Agriculture & Nutrition, L.L.C.
15313 West 95th Street
Lenexa, KS 66219

When Recorded mail to:

Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, CA 93611
Attn: Kevin Shaddy



FRESNO County Recorder
Robert C. Werner
DOC- 2005-0230132
Thursday, SEP 29, 2005 10:57:42
Ttl Pd \$69.00 Nbr-0001970004
DJG/R6/1-21

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY

(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION (Civil Code section 1471)

(T H Agriculture & Nutrition Site, 7183 East McKinley Avenue, located in Section 35,
Township 13 South, Range 21 East of the Mount Diablo Base and Meridian, Fresno
County, California, Fresno County APN 310-062-09)

This Covenant and Agreement to Restrict Use of Property ("Covenant") is made by and between the California Department of Toxic Substances Control (the "Department") and T H Agriculture & Nutrition, L.L.C. ("Covenantor"), as the owner of record of certain land situated in the County of Fresno, State of California, which land is described in the Legal Description in Exhibit A, and shown outlined on the Site Plan in Exhibit B, (collectively referred to herein as the "Property"). Exhibit A and Exhibit B are attached hereto and incorporated herein by this reference. Pursuant to California Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future public health or safety or the environment as a result of the presence on the land of hazardous materials as defined in California Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471 and H&SC section 25355.5, that the use of the Property be restricted as set forth in

this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of the U.S. Environmental Protection Agency (“U.S. EPA”) as a third party beneficiary.

ARTICLE I
STATEMENT OF FACTS

1.01 Historical Use of the Property. The Property consists of an approximately 5.5 acre parcel located at 7183 East McKinley Avenue in Fresno County, approximately three miles northeast of Fresno, California. The Property is the former location of an agricultural chemical formulation, packaging and warehousing plant. Between 1950 and 1981, the Property was owned and/or operated by several companies that formulated, packaged and/or warehoused agricultural chemicals there. From 1950 to 1955, the Property was initially leased and then purchased by the Geigy Company, Inc. (later known as Novartis Crop Protection, Inc. and now known as Syngenta, Inc.). From 1955 until 1959, the site was owned and operated by Olin Mathieson Chemical Corporation (now Olin Corporation). Covenantor acquired and began to operate the Property in 1959 and discontinued operations at the Property in 1981.

1.02 Remedial Action Plan; Agency Oversight and Cleanup Orders.

a. In June 1999, a Final Remedial Action Plan (“RAP”) for the Property was approved pursuant to H&SC section 25356.1. Covenantor is in the process of implementing the RAP, including long term operation, monitoring and maintenance, and the requirement to prepare and record land use restrictions as specified herein. A copy of the RAP and other documents related to the Property have been provided to the Sunnyside Branch of the Fresno County Public Library as the designated document repository maintained in connection with the Property. These and other documents related to the Property are also maintained at the Department’s Clovis District Office.

b. Prior to development of the RAP, Covenantor performed investigative and remedial activities at and around the Property under the direction of several regulatory agencies. On February 3, 1984, the Central Valley Regional Water Quality Control Board (“RWQCB”) issued a cleanup and abatement order (“1984 CAO”) to Covenantor

and other parties associated with the Property. The 1984 CAO was amended on March 21, 1984. In early 1984, the California Department of Health Services (“DHS”) (the Department’s predecessor agency) began to take a more active role in oversight of investigation and remedial activities on the Property and, on May 28, 1985, DHS issued a Determination of Imminent or Substantial Endangerment and Remedial Action Order (Docket No. HSA 84/85-001) (“1985 Order”) to Covenantor and other parties associated with the Property. On July 17, 1985, RWQCB issued a new cleanup and abatement order (“1985 CAO”) with respect to the Property, which contained requirements consistent with the 1985 Order issued by DHS. On January 23, 1987, DHS issued a new Determination of Imminent or Substantial Endangerment and Remedial Action Order (Docket No. HSA 86/87-020 ED) (“1987 Order”) to Covenantor and North American Philips Corporation, Olin Corporation, and Ciba Geigy Corporation, pursuant to H&SC sections 25358.3, 25355.5, 25187, 205 and 206. The 1987 Order, which superseded the 1985 Order, was amended on May 8, 1987 and again on January 5, 1991. On June 29, 1988, RWQCB rescinded the 1985 CAO, based on its determination that the Orders issued by DHS satisfied RWQCB’s concerns regarding protection of water quality and that Covenantor was completing the requirements of the DHS Orders within the specified time-frames. Since 1987, Covenantor has performed the investigative and remedial activities specified in the 1987 Order, including development and implementation of the final RAP for the Property.

1.03 Pre-Remediation Conditions of the Property.

Since the spring of 1981, Covenantor has performed extensive remedial investigation activities at and around the Property. These investigations found that chemical constituents were present in onsite soil and in groundwater at or near the Property.

a. Soil. Soil samples were analyzed for the presence of organic chemicals and pesticides, priority pollutant metals, and certain inorganic chemicals. Several onsite chemical source areas were identified. The chemicals detected in onsite soils included organochlorine pesticides (DDT, DDD, DDE, dieldrin, lindane, and toxaphene), volatile

organic compounds (VOCs) (chloroform, xylenes, and ethylbenzene), and 1,2-Dibromo-3-chloropropane (DBCP).

b. Groundwater. Chemicals detected in samples of onsite and offsite groundwater included 1,2-dichloroethane (1,2-DCA), carbon tetrachloride, chloroform, dieldrin, DBCP, and 1,2,3-trichloropropane (1,2,3-TCP). Historically, the highest chemical concentrations in groundwater were detected in samples from the “A” zone (the shallowest water-bearing groundwater zone). Due to a significant drop in water levels since 1987, the “A” zone is currently unsaturated. Only rarely do “A” zone monitoring wells yield sufficient water to be sampled. Groundwater monitoring in recent years has confirmed that chemicals related to the Property are present in groundwater at low and, in general, slowly declining levels.

In the Fresno area, DBCP has been detected in groundwater regionally as a result of its regional application to crops. Recent groundwater studies indicate that, similar to DBCP, 1,2,3-TCP is likely a regional pollutant.

1.04 Remediation Activities and Current Condition of the Property.

a. Interim Remedial Measures. Interim remedial measures for the Property included soil excavation, structure demolition, soil vapor extraction, and the provision of alternative water supplies to nearby residents. More than 24,000 cubic yards of chemically-affected soil were excavated, and transported for offsite disposal during excavations conducted in 1984 and 1989. Numerous items and structures have been removed from the Property, including a concrete sump, concrete pads, storage tanks, a metal shed and other structures. Two soil vapor extraction systems, installed beginning in 1988 to remove volatile and semi-volatile organic compounds from unsaturated zone soils at the Property, were taken out of service in 1993 because the remedial action objectives for those compounds in that zone were achieved. Since 1985, Covenantor has provided bottled water or replacement carbon filters as needed to residences downgradient of the Property. From 1988 to 1990, Covenantor funded the design and construction of an extension of the City of Fresno domestic water supply system, and has

since offered connections to that system to households in Covenantor's domestic well sampling program at Covenantor's expense.

b. Final Remedial Action Plan - Soil Component. Pursuant to the soil component of the remedy set forth in the RAP, Covenantor designed and constructed a soil cap, including a bentonite barrier covered by clean fill soils, to cover the Property and minimize or eliminate migration of chemicals from onsite soils to other media, such as air and groundwater. The soil component of the remedy also includes the land use restrictions imposed by this Covenant, as well as Property access controls (maintaining existing fencing and signs), and monitoring and maintenance of the cap. Operation, maintenance and monitoring of the cap is required pursuant to an Operation, Maintenance & Monitoring Plan as approved by the Department on September 23, 2005 and as may be modified subsequently from time to time with the approval of the CERCLA Lead Agency (the "OM&M Plan") and such OM&M Plan is incorporated by reference into an Operation, Maintenance and Monitoring Agreement ("OM&M Agreement") between Covenantor and the Department.

c. Final Remedial Action Plan – Groundwater Component. Because of the regional presence of DBCP and 1,2,3-TCP in groundwater, groundwater in the vicinity of the Property is not currently suitable for use as a source of drinking water. Groundwater monitoring in recent years has confirmed that chemicals related to the Property are present in groundwater at low and, in general, slowly declining levels. Therefore, the groundwater remedy consists of monitored natural attenuation, including long term monitoring of groundwater monitoring wells and domestic wells, with a provision for contingency plans if warranted in the future by groundwater conditions. Operation, maintenance and monitoring of the groundwater component of the remedy will be required pursuant to the OM&M Plan.

d. Final Remedial Action Plan – Further Controls. Additional controls provided for in the RAP include continued provision of alternative water supply by connections to a public water supply system, point-of-use treatment, or bottled water;

financial assurances to ensure long-term maintenance and operation of remedial actions; and five-year reviews to confirm that the remedy remains effective in protecting public health and the environment.

e. Current Condition of the Property. The cap required by the soil component of the RAP has been constructed and the Department issued a letter of approval on June 30, 2003 confirming that this element of the remedial work has been carried out in accordance with the RAP. In accordance with the RAP, Covenantor and the Department desire to further protect public health and safety by restricting future use of the Property as set forth herein. Hazardous substances, as defined in H&SC section 25316 and section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. section 9601(14), and listed at 40 Code of Federal Regulations (“C.F.R.”) section 302.4, remain on all or portions of the surface and subsurface soils at the Property at concentrations of concern. These hazardous substances include, but are not limited to, the following: DDD, DDE, DDT, dieldrin, lindane and toxaphene. These substances are also hazardous materials as defined in H&SC section 25260.

1.05 Surrounding Land Use. Covenantor owns a 20-acre orchard parcel that borders the Property on its south, east and west sides. Properties within a one and one-half mile radius centered on the Property consist of farms, orchards, light-industrial properties, and low-density residential developments consisting primarily of single family homes. The Fresno Air Terminal is located approximately 2.25 miles west of the Site. All parcels adjoining the Property are zoned for rural residential use.

ARTICLE II DEFINITIONS

2.01 Department. “Department” means the California Department of Toxic Substances Control and shall include its successor agencies, departments or other successor entity, if any.

2.02 U.S. EPA. “U.S. EPA” means the United States Environmental Protection Agency and shall include its successor agencies, if any.

2.03 Owner. “Owner” or “Owners” means the Covenantor and its successors in interest, including heirs and assigns, who hold title 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 all or 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 at the Property under the National Contingency Plan (“NCP”), codified at 40 C.F.R. Part 300. The Department is the CERCLA Lead Agency at the time of the recording of this instrument.

2.06 Improvements. “Improvements” means all buildings, roads, driveways, walkways, landscaped areas and paved parking areas, constructed or placed upon any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as “Restrictions”), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5 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; (d) is for the benefit of U.S. EPA as a third party beneficiary; and (e) 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 H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of 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 and U.S. EPA.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, sublease, assignment or other transfer of the Property, or any portion thereof, the owner, lessor, sublessor, assignor or other transferor shall give the buyer, lessee, sublessee, assignee or other transferee written notice that hazardous substances are located on or beneath the Property.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, assignments, or other transfers of all or any portion of the Property that are hereafter executed or renewed. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice that is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTION AND COVENANT TO RESTRICT USE OF PROPERTY, RECORDED IN THE PUBLIC LAND RECORDS ON [DATE]_____, IN BOOK ____, PAGE _____, IN FAVOR OF AND ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL, AND FOR THE BENEFIT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

3.05 Conveyance of Property. 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 Owner shall provide notice of such conveyance to the Department and to U.S. EPA. The Department and U.S. EPA 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 a specific provision of this Covenant.

3.06 Costs of Administering the Restrictions to be paid by Owner. Without in any way limiting the provisions of Section 3.01 of this Agreement, the provisions of this Section 3.06 run with the land and will continue in perpetuity unless a variance is granted pursuant to Section 6.01, or unless terminated pursuant to Section 6.02. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for itself and for all subsequent owners that pursuant to Title 22, California Code of Regulations, section 67391.1(h), the Owner shall pay the Department's cost in administering the Restrictions. Notwithstanding Civil Code section 1466, in the event the Property ownership changes between the time that the Department's administrative costs were incurred and the invoice for such costs is received, each Owner of the Property for the period covered by the invoice, as well as the current Owner is responsible for such costs. Failure of the Owner to pay such costs when billed is a breach of the Covenant and enforceable pursuant to Section 5.01 of the Covenant. Further, the Covenantor, having chosen a remedy that employs land use restrictions, remains liable in the event of remedy failure and is deemed to enjoy the benefit of the Restrictions notwithstanding the fact that they may no longer be in possession of the Property. The OM&M Agreement provides additional information on payment of costs for activities associated with the deed restriction as well as information on the financial assurance as part of the OM&M Agreement.

ARTICLE IV

RESTRICTIONS; OM&M; ACCESS

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.
- e. Any other purpose involving residential occupancy on a 24-hour basis.

4.02 Soil and Extracted Groundwater Management.

a. The Owner and Occupants shall manage soils on the Property and any groundwater extracted in connection with monitoring or remediation performed pursuant to the RAP and/or during any construction activities on the Property in accordance with: (i) all applicable provisions of state and federal laws and (ii) the OM&M Plan. A current version of the OM&M Plan shall be maintained as a public record by the Department and shall be provided by the Owner to the Sunnyside Branch of the Fresno County Public Library as the document repository maintained in connection with the Property (for so long as the Public Library maintains such repository), and shall be maintained by the Owner at a location on the Property if there exists upon the Property a building or other structure suitable for storing such a document. If the Sunnyside Branch of the Fresno County Public Library ceases to exist, moves out of the area, or determines that it can no longer maintain the document repository, then the Owner shall consult with the Department to identify a suitable alternative.

b. No activities that will disturb site soils (e.g. excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan approved by the CERCLA Lead Agency unless the soil disturbance is expressly allowed under the terms of the OM&M Plan.

4.03. Non-Interference with Cap, and Monitoring Systems.

a. Activities that may disturb the bentonite barrier in the soil cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and written approval by the CERCLA Lead Agency unless such activity is expressly allowed under the terms of the OM&M Plan.

b. Activities that may disturb the effectiveness of the groundwater monitoring well system (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and

written approval by the CERCLA Lead Agency unless such activities are expressly allowed under the terms of the OM&M Plan. Whether or not a particular activity not provided for in the OM&M Plan may disturb the effectiveness of the groundwater monitoring well system shall be determined by the CERCLA Lead Agency.

c. All uses and development of the Property shall preserve the integrity and physical accessibility of the soil cap and groundwater monitoring well system.

d. The soil cap shall not be altered without prior written approval by the CERCLA Lead Agency.

e. Owner shall notify the CERCLA Lead Agency of each of the following: (i) the type, cause, location and date of any damage to the soil cap and (ii) the type and date of repair of such damage. Notification to the CERCLA Lead Agency shall be made as provided below within ten (10) working days after, respectively, the discovery of any such damage and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04 Inspection and Maintenance of Cover Materials and Improvements.

The bentonite/soil cap installed pursuant to the RAP and Improvements constructed on the Property shall be inspected and maintained as provided in the OM&M Plan. The Property shall be inspected as provided for in the OM&M Plan to ensure that there are no violations of the terms of this Covenant.

4.05 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities 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 C.F.R. Part 300) and its successor provisions, or other applicable federal law.

4.06 Access for Implementing OM&M Plan. The entities or persons responsible for implementing the OM&M Plan shall have reasonable right of entry and access to the Property for the purposes of implementing the OM&M Plan until the CERCLA Lead Agency determines that no further OM&M is necessary.

ARTICLE V
ENFORCEMENT

5.01 Enforcement. This Covenant shall be enforceable by the Department pursuant to Health and Safety Code, Division 20, Chapter 6.5, Article 8 (commencing with section 25180). Failure of the Covenantor, owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor, owner, or Occupant modify or remove any Improvements (notwithstanding the definition of Improvements in Section 2.06, for purposes of this Section 5.01 "Improvements" shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA, and violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law or equity.

ARTICLE VI
VARIANCE AND TERMINATION

6.01 Variance. Covenantor, 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 H&SC 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 Section 6.01 without prior notice to and opportunity to comment by U.S. EPA.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to

all or any portion of the Property. Such application shall be made in accordance with H&SC 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 Section 6.02 without prior notice to and opportunity to comment by U.S. EPA.

ARTICLE VII

TERM

7.01 Term. This Covenant shall continue in effect in perpetuity unless it is terminated in accordance with Section 6.02 hereof, or by the Department in the exercise of its discretion, or by law, or otherwise, after providing notice to and an opportunity to comment by U.S. EPA.

ARTICLE VIII

MISCELLANEOUS

8.01 No Dedication or Taking. 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 set forth in this Covenant shall be construed to affect a taking under state or federal law.

8.02 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Fresno within ten (10) days of the Covenantor's receipt of a fully executed original.

8.03 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 delivered personally or by nationally recognized overnight courier 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) five (5) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To Covenantor:

T H Agriculture & Nutrition, L.L.C.
15313 West 95th Street
Lenexa, KS 66219
Attention: James W. Smith, P.E.

To Department:

Mr. James L. Tjosvold, P.E., Chief
Department of Toxic Substances Control
Northern California – Central
Cleanup Operations Branch
1515 Tollhouse Road
Clovis, CA 93611
Attention: Kevin Shaddy

To U.S. EPA:

Ms. Lynn Suer
Superfund Remedial Project Manager
Mail Code SFD-7-2
U.S. Environmental Protection Agency – Region IX
75 Hawthorne Street
San Francisco, CA 94105

Any party may change its address or the individual to whose attention a notice, demand, or other communication is to be sent by giving written notice in compliance with this Section 7.0.

8.04 Partial Invalidity. If any portion of the Restrictions or other terms set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant, or the application of such portions to persons or circumstances other than those to which it is found to be invalid, shall remain in full force and effect as if such portion found invalid had not been included herein.

8.05 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found

to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

8.06 Governing Law. This Covenant shall be governed by and construed in accordance with the laws of the State of California.

8.07 Third Party Beneficiary. U.S. EPA's rights as a third party beneficiary of this Covenant shall be governed by and construed in accordance with the laws of the State of California.

8.08 Article and Section Headings. Headings at the beginning of each numbered Article and Section of this Covenant are solely for the convenience of the Parties and are not a part of the Covenant.

8.09 Statutory References. All statutory references include successor provisions.

8.10 Effective Date. This Covenant shall be effective upon such date that the Covenant is fully executed by Covenantor and the Department (the "Effective Date").

8.11 Execution in Counterparts. This Covenant may be executed in original counterparts with the same force and effect as if executed in one complete original document.

IN WITNESS WHEREOF, the Parties execute this Covenant as of the Effective Date.

Covenantor: T H AGRICULTURE & NUTRITION, L.L.C.

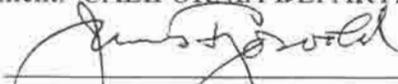
By: 

Name: Joseph L. Wolf, Jr.

Title: President

Date: 9/26/05

Department: CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: 

Name: James Jesvold

Title: Branch Chief

Date: 9/26/05

Acknowledgment as to Covenantor T H Agriculture & Nutrition, L.L.C.:

STATE OF New York)
COUNTY OF New York)

On this 26 day of September, in the year 2005, before me Joan Taylor, personally appeared Joseph L. Wolf, Jr., 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: Joan Taylor

JOAN TAYLOR
Notary Public, State of New York
No. 01TA8078178
Qualified in Nassau County
Commission Expires June 24, 2008

(5)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property situate in and being a portion of the Northwest quarter of Section 35, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, Fresno County, California, and being more particularly described as follows:

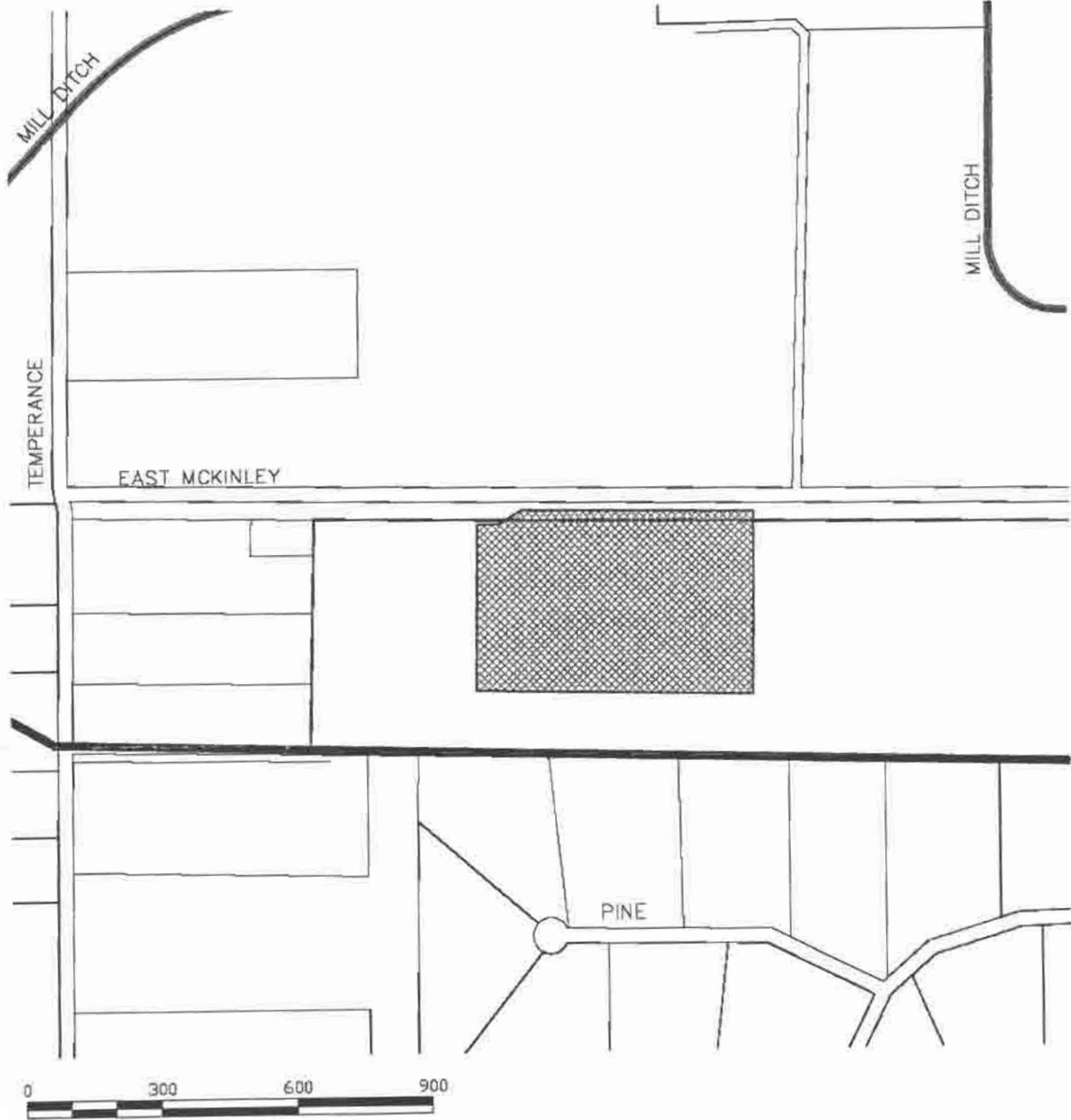
Commencing at a point 30 feet South of a point on the North line of Section 35, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, 937 feet East of the Northwest corner of said Section 35; thence North 89° East parallel with the North line of Section 35, a distance of 600 feet; thence South 1° East along a line at right angles to the North line of said Section 35, a distance of 400 feet; thence South 89° West parallel with the North line of said Section 35 a distance of 600 feet; thence North 1° West along a line at right angles to the North line of said Section 35, a distance of 400 feet to the point of commencement.

APN: 310-062-09

EXHIBIT B

SITE PLAN

(SEE NEXT PAGE)



LEGEND:

 SITE.



Kennedy/Jenks Consultants

T. H. AGRICULTURE & NUTRITION SITE
EASTERN FRESNO COUNTY, CALIFORNIA

SITE PLAN

K/J 844083*90
SEPTEMBER 2005

EXHIBIT B

-- 21 --

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY -
ENVIRONMENTAL RESTRICTION
T.H. AGRICULTURE & NUTRITION COMPANY

21