

RECORDING REQUESTED BY:

Department of Toxic Substances Control

and

The County of Tulare  
2800 West Burrel Avenue  
Visalia, California 93291

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
1515 Tollhouse Road  
Clovis, California 93611  
Attention: Joe Tapia, PE, Unit Chief  
Office of Engineering and Special Projects  
Site Mitigation and Restoration Program

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

LAND USE COVENANT AND AGREEMENT

ENVIRONMENTAL RESTRICTIONS

County of Tulare, Assessor Parcel Number(s): 314-080-045 and 314-080-046  
Harmon Field  
(DTSC PCA: 11018; Site: 100073-00)

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This Land Use Covenant and Agreement ("Covenant") is made by and between the County of Tulare (the "Covenantor"), the current owner of property located in the County of Tulare, State of California (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 hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5, the use of the Property be restricted as set forth in this Covenant and that the Covenant shall conform with the requirements of

California Code of Regulations, title 22, section 67391.1.

## ARTICLE I

### STATEMENT OF FACTS

1.1. Property Location. The Property that is subject to this Covenant, totaling approximately 65 acres, is more particularly described in the attached Exhibit A, "Legal Description", and depicted in Exhibit B, "Site Map". The Property is located in the area now generally bounded by commercial property to the north (Parcel 3), Pixley Irrigation District Canal to the east and south (Parcel 4) and vacant land and commercial property to the west. The Property is also identified as County of Tulare, Assessor Parcel Number(s) 314-080-045 (also referred to as Parcel 1), 314-080-046 (also referred to as Parcel 2) and depicted on Exhibit C, "Parcel Map".

a) The Parcel 1 Vault, is depicted on Exhibit D, "Parcel 1 Vault Map." The Parcel 1 Vault occupies the 1.07-acre Parcel 1 at the southern border of the property. Operation, maintenance and access to the Parcel 1 Vault is described in the Operation & Maintenance Plan with Access Control Plan, dated January 17, 2019.

1.2. Remediation of Property. This Property has been investigated and remediated under the Department's oversight. The Department approved the December 2010 Final Remedial Action Plan (RAP) in a correspondence dated December 1, 2010, in accordance with Health and Safety Code, division 20, chapter 6.8. The remediation activities conducted at the Property were described in the June 2015 Remedial Action Completion Report (RACR) and October 2015 RACR addendum. Cleanup goals established in the RAP were based on a risk level of  $10^{-5}$  for commercial/industrial receptors. Remediation activities included the excavation of impacted soil and oiled sand, thermal treatment of removed impacted soil, backfilling of excavated areas using the treated soil and placement of oiled sand and impacted concrete debris in the Parcel 1 Vault.

The Parcel 1 Vault consists of an approximately 100 feet wide by 215 feet long by approximately 4-foot deep earthen vault. A non-woven geotextile was installed in the bottom of the vault. Hazardous waste-bearing oiled sand and concrete were then placed inside after which a semi-permeable geosynthetic clay liner was installed over the oiled sand and concrete. Lastly, approximately 2 feet of native clean fill and 18 inches of riprap was placed on top

of the liner to protect it from environmental and biological factors. No hazardous substances are located on Parcel 1 except for materials contained inside the Parcel 1 vault. Hazardous substances including organochlorine pesticides, toxaphene and oiled sands remain at the Property above levels acceptable for unrestricted land use.

1.3. Basis for Environmental Restrictions. As a result of the presence of hazardous substances, which are also hazardous materials as defined in Health and Safety Code section 25260, at the Property, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as part of the Department-approved remedy for the Property. The Department has also concluded that the Property, as remediated and when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

## ARTICLE II

### DEFINITIONS

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

2.2. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, requirements, prohibitions, and terms and conditions as set forth in this Covenant.

2.3. Improvements. "Improvements" includes, but is not limited to buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

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

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

2.6. Owner. "Owner" or "Owners" means the Covenantor, and any successor in interest including any heir and assignee, who at any time holds title to all or any portion of the Property.

ARTICLE III  
GENERAL PROVISIONS

3.1. Runs 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, or conveyed. This Covenant: (a) runs with the land pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5; (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.

3.2. Binding upon Owners/Occupants. This Covenant: (a) binds all Owners of the Property, their heirs, successors, and assignees; and (b) the agents, employees, and lessees of the Owners and 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; this Covenant, however, is binding on all Owners and Occupants, and their respective successors and assignees, only during their respective periods of ownership or occupancy except that such Owners or Occupants shall continue to be liable for any violations of, or non-compliance with, the Environmental Restrictions of this Covenant or any acts or omissions during their ownership or occupancy.

3.3. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.4. Conveyance of Property. The Owner and new Owner shall provide Notice to the Department not later than 30 calendar days after any conveyance or receipt of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The Notice shall include the name and mailing address of the new Owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number(s) noted on page one. If the new Owner's property has been assigned a different Assessor Parcel Number, each such Assessor Parcel Number 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.

3.5. Costs of Administering the Covenant to Be Paid by Owner. The Department has already incurred and will in the future incur costs associated with this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering, implementing and enforcing this Covenant.

#### ARTICLE IV

#### RESTRICTIONS AND REQUIREMENTS

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes without prior written approval by the Department:

- (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 18 years of age.
- (d) A day care center for children.

4.2. Soil Management. Soil management activities at the Property are subject to the following requirements in addition to any other applicable Environmental Restrictions:

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) except for activities necessary to maintain the Site as described in Sections 2.6 and 2.7 of the Environmental Property Management Plan (EPMP), dated December 5, 2019, shall be allowed at the Property without a Soil Management Plan pre-approved by the Department in writing.
- (b) Any soil brought to the surface by grading, excavation, or trenching shall be managed in accordance with all applicable provisions of state and federal law.
- (c) Access to and the management of the Property including the Parcel 1

Vault shall be conducted in accordance with the Department approved Operation & Maintenance Plan with Access Control Plan dated January 17, 2019, and Environmental Property Management Plan (EPMP), dated December 5, 2019.

4.3. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Drilling and installation of water supply well(s) on the original Harmon Field Site, as noted in EPMP Section 2.5.1. Drilling for any oil, or gas without prior written approval by the Department.
- (b) Extraction or removal of groundwater without a Groundwater Management Plan pre-approved by the Department in writing.
- (c) Activities that may disturb the Parcel 1 Vault (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) or interfere with activities conducted under the Department approved Operation & Maintenance Plan with Access Control Plan dated January 17, 2019, without prior written approval by the Department.

4.4. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

4.5. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities, if any, shall have reasonable right of entry and access to the Property for the purpose of implementing such operation and maintenance activities until the Department determines that no further operation and maintenance activity is required.

4.6. Inspection and Reporting Requirements.

The Owner shall conduct an annual inspection of the Property consistent with the inspections required by the Operation & Maintenance Plan with Access Control Plan dated January 17, 2019, verifying compliance with this Covenant and shall submit an annual inspection report to the Department for its approval by February 15 of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall

describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspection or at any other time, the Owner must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the Covenant; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 calendar days of its original transmission.

ARTICLE V  
ENFORCEMENT

5.1. Enforcement. Failure of the 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, such as failure to submit (including submission of any false statement) record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI  
VARIANCE, REMOVAL AND TERM

6.1. Variance from Environmental Restrictions. Any person may apply to the Department for a written variance from any of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2. Removal of Environmental Restrictions. Any person may apply to the Department to remove any of the Environmental Restrictions imposed by this Covenant or terminate the Covenant in its entirety. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3. Term. Unless ended in accordance with paragraph 6.2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII  
MISCELLANEOUS

7.1. No Dedication 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.

7.2. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Tulare within 10 calendar days of the Covenantor's receipt of a fully executed original.

7.3. 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: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) five calendar days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Laura Silva, Manager  
Tulare County General Services  
Agency  
2637 West Burrel Avenue. Suite 200  
Visalia, CA 93291

To Property Representative: Allison Shuklian  
Environmental Quality Coordinator  
Tulare County Health and Human Services Agency  
5957 South Mooney Boulevard  
Visalia, CA 93277

And

To Department: Joe Tapia  
Supervising Hazardous Substances Engineer I  
Engineering and Special Projects Branch, Clovis Office  
1515 Tollhouse Road  
Clovis, California 93611



Any party may change its address or the individual to whose attention a Notice is to be sent by giving advance written Notice in compliance with this paragraph.

7.4. 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 shall remain in full force and effect as if such portion found invalid had not been included herein.

7.5. Statutory References. All statutory or regulatory references include successor provisions.

7.6. Incorporation of Exhibits. All exhibits and attachments to this Covenant are incorporated herein by reference.

[THIS SPACE LEFT BLANK INTENTIONALLY;  
SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Covenantor and the Department hereby execute this Covenant.

**Covenantor: County of Tulare**

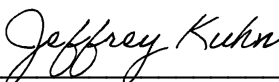
By: \_\_\_\_\_  
Pete Vander Poel,  
Chair, Board of Supervisors

Date: \_\_\_\_\_

ATTEST: JASON T. BRITT, County Administrative Officer/  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
COUNTY COUNSEL

By:  \_\_\_\_\_  
Deputy

Matter No. 2020453

**Department: Department of Toxic Substances Control**

By: \_\_\_\_\_  
Ed Walker, Branch Chief  
Site Mitigation and Restoration

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me,

---

*(space above this line is for name and title of the officer/notary),*

personally appeared \_\_\_\_\_, who 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.

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

WITNESS my hand and official seal,

\_\_\_\_\_(seal)  
Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me,

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*(space above this line is for name and title of the officer/notary),*

personally appeared \_\_\_\_\_, who 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.

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

WITNESS my hand and official seal,

\_\_\_\_\_(seal)  
Signature of Notary Public

## Exhibit A

### Parcel 1 of Parcel Map 5195

That portion of the Northeast Quarter of Section 6, Township 23 South, Range 25 East, Mount Diablo Meridian, County of Tulare, State of California, more particularly described as follows:

Commencing for reference at the East Quarter corner of said Section 6;

Thence North  $88^{\circ} 44' 42''$  West along the South line of said Northeast Quarter a distance of 933.30 feet;

Thence leaving said South line North  $29^{\circ} 44' 59''$  West a distance of 70.00 feet;

Thence South  $88^{\circ} 44' 42''$  East a distance of 334.38 to a point, said point being the True Point of Beginning of the parcel being described;

Thence North  $01^{\circ} 15' 18''$  East a distance of 169.14 feet;

Thence South  $89^{\circ} 47' 17''$  East a distance of 266.18 feet;

Thence South  $02^{\circ} 30' 54''$  East a distance of 174.36 feet;

Thence North  $88^{\circ} 44' 42''$  West a distance of 277.60 feet to the True Point of Beginning.

Also being Parcel 1 of Parcel Map 5195 recorded in Book 53 of Parcel Maps at Page 2 in the Office of the Tulare County Recorder.

Containing 1.07 acres.

Parcel 2 of Parcel Map 5195

That portion of the Northeast Quarter of Section 6, Township 23 South, Range 25 East, Mount Diablo Meridian, County of Tulare, State of California, more particularly described as follows:

Commencing for reference at the East Quarter corner of said Section 6;

Thence North  $88^{\circ} 44' 42''$  West along the South line of said Northeast Quarter a distance of 933.30 feet;

Thence leaving said South line North  $29^{\circ} 44' 59''$  West a distance of 70.00 feet to a point, said point being the True Point of Beginning of the parcel being described;

Thence South  $88^{\circ} 44' 42''$  East a distance of 334.38 feet;

Thence North  $01^{\circ} 15' 18''$  East a distance of 169.14 feet;

Thence South  $89^{\circ} 47' 17''$  East a distance of 266.18 feet;

Thence South  $02^{\circ} 30' 54''$  East a distance of 174.36 feet;

Thence South  $88^{\circ} 44' 42''$  East a distance of 190.41 feet;

Thence North  $35^{\circ} 42' 35''$  East a distance of 86.72 feet;

Thence North  $00^{\circ} 00' 00''$  East a distance of 1478.73 feet;

Thence South  $70^{\circ} 37' 40''$  West a distance of 248.03 feet;

Thence North  $00^{\circ} 10' 17''$  West a distance of 144.64 feet;

Thence North  $74^{\circ} 00' 06''$  West a distance of 205.78 feet;

Thence North  $68^{\circ} 34' 33''$  West a distance of 388.14 feet;

Thence North  $44^{\circ} 01' 19''$  West a distance of 778.34 feet;

Thence South  $83^{\circ} 45' 05''$  West a distance of 816.75 feet;

Thence South  $29^{\circ} 44' 59''$  East a distance of 2606.78 feet the True Point of Beginning.

Also being Parcel 2 of Parcel Map 5195 recorded in Book 53 of Parcel Maps at Page 2 in the Office of the Tulare County Recorder.

Containing 63.88 Acres.







