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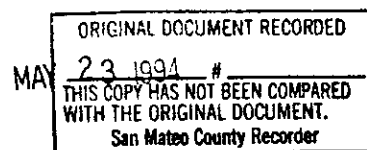
31.004

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COVENANT OF DEED RESTRICTION

Recording Requested By:  
RHONE-POULENC INC.  
Black Horse Lane  
Monmouth Junction, N.J. 08852



When Recorded, Mail To:  
Steven Ritchie, Executive Officer  
California Regional Water Quality  
Control Board  
San Francisco Bay Region  
2101 Webster Street, Suite 500  
Oakland, California 94612

COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY

RHONE-POULENC INC.  
1990 BAY ROAD  
East Palo Alto, California

This Covenant and Agreement to Restrict Use of Property (this "Covenant") is made as of the 13th day of May, 1994 by Rhone-Poulenc Inc. ("Covenantor"), which is the Owner of record of that certain property situated in the City of East Palo Alto, County of San Mateo, State of California, which is described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Property"), and by the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board") with reference to the following facts:

- A. The Property contains hazardous substances.

B. Description of Facts.

B.1. Contamination of the Property. Soil and groundwater at the Property were contaminated by herbicide formulation operations conducted by prior owners of the Property. These operations resulted in contamination of soil and groundwater with inorganic chemicals including arsenic, lead, cadmium, mercury, and selenium. Contaminated soils containing concentrations of arsenic in excess of 5000 ppm were excavated and removed from the Property in 1992, and soils containing concentrations of arsenic in excess of 500 ppm were treated and capped, except for areas beneath existing structures.

B.2. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Property. Without the mitigation measures which have been performed on the Property, exposure to these contaminants could take place via in-place contact, surface-water runoff, and wind dispersal, resulting in dermal contact, inhalation, or ingestion by humans. The risk of public exposure to the contaminants has been substantially lessened by the treatment of contaminated soils and the placement of an impermeable asphalt cap over the buried soils. The purpose of the restrictions on the use of the Property contained in this Covenant is to eliminate any significant risks to human health and beneficial uses of waters of the State posed by high exposure levels. If exposure pathways are not mitigated, potential human health effects resulting from exposure to arsenic, lead, cadmium, mercury and selenium include

birth defects and fetotoxicity; Central Nervous System (CNS) damage including convulsions and permanent brain damage; kidney damage; hepatic injury; blood dysplasia and anemia; and gastro-intestinal disorders.

B.3. Adjacent Land Uses and Population Potentially Affected. The Property is used for chemical manufacturing, and is adjacent to other industrial land uses.

C. Full and voluntary disclosure to the Board of the presence of hazardous substances on the Property has been made and extensive sampling of the Property has been conducted.

D. Covenantor desires and intends that to protect the present and future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances which may have been deposited on portions of the Property.

## ARTICLE I

### GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (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 all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof. Each and all

of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to the Water Code and Health and Safety Code Section 25356.1 and run with the land pursuant to Health and Safety Code Section 25356.1. All terms, time periods, and provisions not otherwise defined herein shall take the meaning ascribed to them in Health & Safety Code Sections 25233 and 25234 as of the date of this Covenant. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to, and that the interest of the future Owners and Occupants of the Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees,

regardless of whether a copy of this Covenant and Agreement has been attached to any given deed or lease.

## ARTICLE II

### DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas constructed or placed upon any portion of the Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold(s) title to all or any portion of the Property.

## ARTICLE III

### DEVELOPMENT, USE AND CONVEYANCE OF THE Property

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as follows:

- a. Development of the Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Property;
- c. No hospitals shall be permitted on the Property;

d. No schools for persons under 21 years of age shall be permitted on the Property;

e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Property;

f. The Property shall be posted with a bilingual sign in English and Spanish warning against undertaking of any excavation activities on the Property, and that the Owner and the Board should be contacted for further information;

g. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or its agent in accordance with all applicable provisions of state and federal law;

h. All uses and development of the Property shall be consistent with the Record of Decision issued by the U.S. Environmental Protection Agency, and shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and the groundwater monitoring system installed on the Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.

i. The Owner shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and/or of the groundwater monitoring system installed on the Property pursuant to the requirements of the Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform

their respective functions and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

j. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have access to the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Chapter 4 of Division 7 of the Water Code.

k. No Owners or Occupants of the Property or any portion thereof shall drill, bore, excavate or otherwise construct any well, boring or excavation on or into the Property for any purpose, except that it shall be permissible to construct wells, borings, or excavations which are (i) required by or reasonably necessary to implement a plan for remediation of groundwater contamination approved by the Board, or (ii) specifically approved in a written decision by the Board or the San Mateo County Department of Health Services. All borings and excavations shall be performed and all wells constructed in conformance with the standards of the San Mateo County Department of Health Services, and shall incorporate practicable efforts to minimize: (a) any significant threat to humans and animals and (b) any significant transfer of contaminants from the lithosphere to the atmosphere or between water-bearing, or potentially water-bearing, soil or rock zones.

3.2 Conveyance of Property. The Owner or Owners shall provide thirty (30) days advance notice to the Board of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Board shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law or explicitly provided by this Covenant.

3.3 Enforcement. Failure of the Owner to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.4 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement: "The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions and liabilities of Division 7 of the California Water Code and Chapters 6.5 and 6.8 of Division 20 of the California Health and Safety Code, and their successor provisions. This statement is not a declaration that a hazard exists."



## ARTICLE IV

### VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

## ARTICLE V

### MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein 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.

5.2 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 (1) when delivered, if personally delivered to the person being served or official of a government agency 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:

If To: "Covenantor"

If by mail:

General Counsel  
Rhone-Poulenc Inc.  
CN5266 / BHL-1  
Princeton, N.J. 08543-5266

If by courier:

General Counsel  
Rhone-Poulenc Inc.  
Building 1  
Black Horse Lane  
Monmouth Junction, N.J. 08852

If To: "Board"

Regional Water Quality Control Board  
San Francisco Bay Region  
Attention: East Palo Alto Protection Officer  
2101 Webster Street  
Oakland, California 94612

If notice is not initiated by the Covenantor or by the Board, copies of such notice shall be sent, in accordance with instructions of this paragraph, to both the Covenantor and the Board.

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Counterparts. This Covenant may be executed in one (1) or more counterparts, and all the counterparts shall constitute

but one and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

5.5 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.6 Recordation. This instrument shall be executed by the Covenantor, the Owner of the Property, and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of San Mateo within ten (10) days of the date of execution.

5.7 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: RHONE-POULENC INC.

By: *John V. Lutz*  
Title: Assistant Secretary  
Date: 5/13/94

Agency: State of California  
Environmental Protection Agency  
Regional Water Quality Board,  
San Francisco Bay Region

By: *Steven Ritchie*  
Title: Executive Officer  
Date: 5/13/94

STATE OF CALIFORNIA )  
 )  
COUNTY OF ALAMEDA )

On May 3, 1994 before me, Cynthia N. Troske, Notary Public  
(date) (Name, Title of Officer)  
personally appeared Steven Ritchie,  personally  
(Name(s) of Signer(s))  
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.

Seal:



Cynthia N. Troske  
(Signature of Notary)

STATE OF NEW JERSEY )  
COUNTY OF MIDDLESEX )

On May 13, 1994 before me, Gladys S. Lankford Notary Public  
(date) (Name, Title of Officer)  
personally appeared John M. Iatesta  
(Name(s) of Signer(s))

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.

Seal:

Gladys S. Lankford  
(Signature of Notary)

GLADYS S. LANKFORD  
Notary Public, State of New Jersey  
County of Middlesex  
Commission Expires October 16, 1997

**EXHIBIT A**

85125-36  
8/19/93  
THM

**LEGAL DESCRIPTION**

Being all of a parcel of land conveyed to Rhone-Poulenc Inc. by Grant Deed filed December 1, 1993 at Series Number 93207948 in the Office of the Recorder, County of San Mateo, situated in the City of East Palo Alto, County of San Mateo, State of California, being more particularly described as follows:

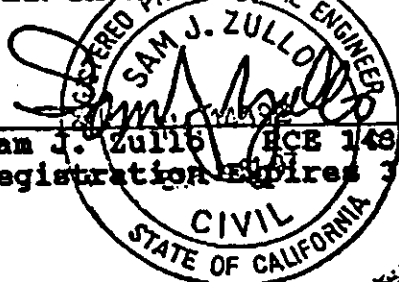
**BEGINNING** at the Northwest corner of said Rhone-Poulenc Inc. Parcel being in the centerline of Bay Road, said point also being distant North 65 deg. 11 min. 00 sec. East 430.60 feet along the centerline of Bay Road from the intersection of Pulgas Avenue; thence North 65 deg. 11 min. 00 sec. East, 430.60 feet to the Northeasterly corner of said Rhone-Poulenc Inc. Parcel; thence running along the Northeasterly line of said Rhone-Poulenc Inc. Parcel South 24 deg. 49 min. 00 sec. East, 525.00 feet to the Easterly corner of said Rhone-Poulenc Inc. Parcel; thence leaving said Easterly corner and running along the Southeasterly line of said Rhone-Poulenc Inc. Parcel South 65 deg. 11 min. 00 sec. West, 430.60 feet to the Southerly corner of said Rhone-Poulenc Inc. Parcel; thence leaving the Southerly corner of said Rhone-Poulenc Inc. Parcel and running along the Southwesterly line of said Rhone-Poulenc Inc. Parcel North 24 deg. 49 min. 00 sec. West, 525.00 to the TRUE POINT OF BEGINNING:

Containing 5.190 acres of land, more or less.

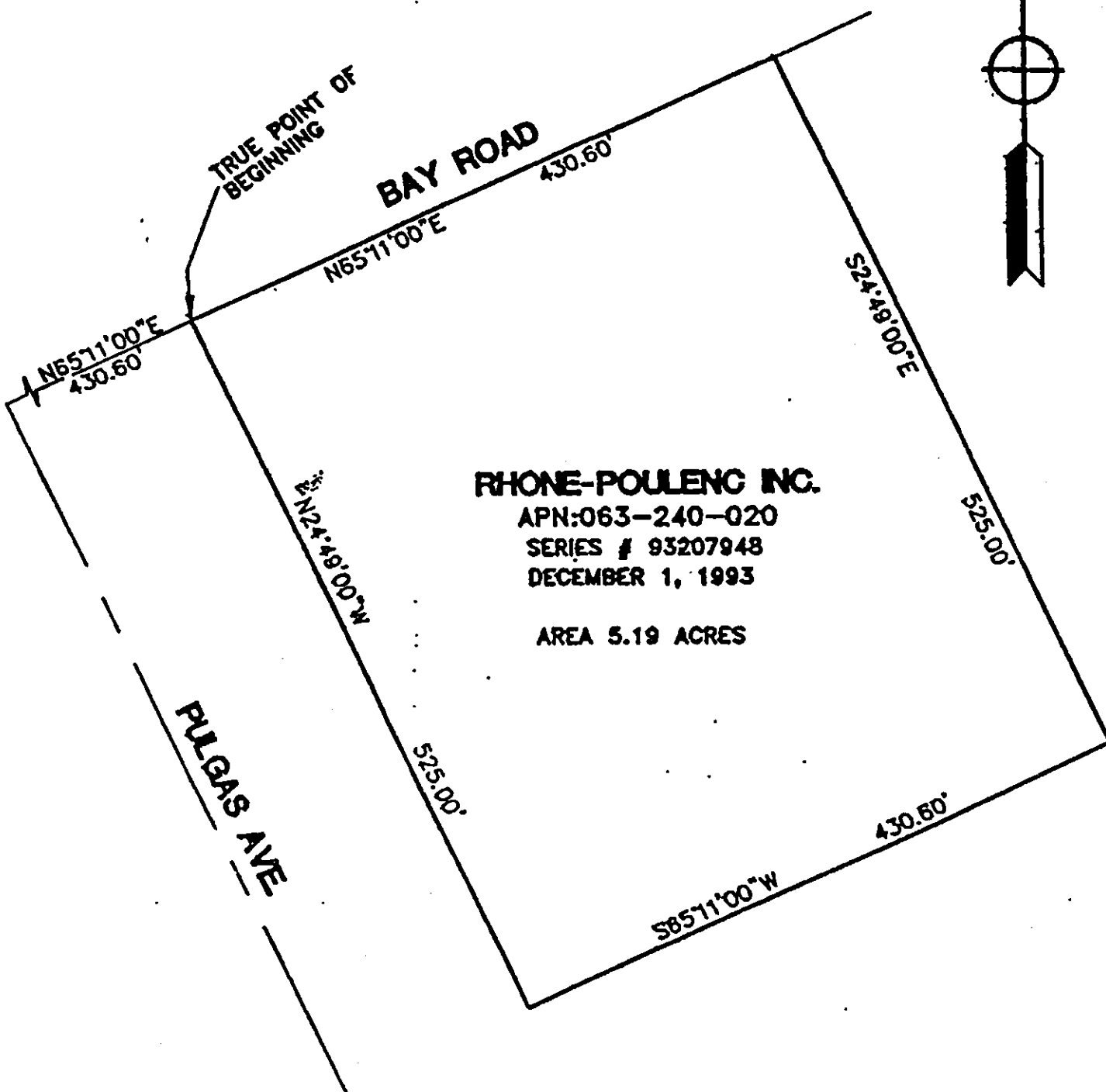
The above described parcel is for restricted and conditional use only, and is not intended to create any new property lines.


Prepared June 7, 1993

MARK THOMAS PROFESSIONAL INC.

  
Sam J. Zullo  
Registration Expires 3/31/97  
CIVIL  
STATE OF CALIFORNIA

# CITY OF EAST PALO ALTO SAN MATEO COUNTY, CALIFORNIA



		<b>MARK THOMAS &amp; CO. INC.</b>	
CONSULTING CIVIL ENGINEERS & MUNICIPAL PLANNERS OFFICES IN SAN JOSE, CLIFTON, SACRAMENTO AND DELMAR			
DESIGNED BY: <u>THM</u>	APPROVED BY: _____	JOB NO. <u>85125</u>	SHEET <u>1</u>
DRAWN BY: <u>THM</u>	BY: _____	FILE NO. _____	<u>1</u>
DATE: <u>6/7/93</u>	DATE: _____		
SCALE: <u>1"=100'</u>	DATE: _____		

SAND.DWG

REV. DEC. 10, 1993-NEW OWNER



but one and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

5.5 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

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By: *John M. DeStata*  
Title: Assistant Secretary  
Date: 5/13/94

Agency: State of California  
Environmental Protection Agency  
Regional Water Quality Board,  
San Francisco Bay Region

By: *Steven Ritchie*  
Title: Executive Officer  
Date: 5/13/94