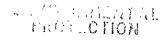


#### Nestlé USA

800 NORTH BRAND BLVD GLENDALE, CA 91203

TEU (818) 54')-6000 FAX (818) 549 5840



00 JIM 27 MIII: 19



LEGAL DEPARTMENT

June 23, 2000

Larry Seto Sr. Hazardous Materials Specialist ENVIRONMENTAL HEALTH SERVICES Environmental Protection 1131 Harbor Bay Parkway, Suite 250 Alameda, CA 94502-6577

Re: Covenant and Environmental Restriction on

Nestlé USA, Inc. – Oakland Property

Dear Mr. Seto:

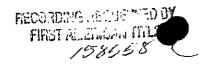
Enclosed please find a copy of the recorded deed restriction on the above property for your records. Please let me know if you need anything else from us at this time. Thanks again for your cooperation on this matter.

Sincerely yours,

Noelia Martí-Colon

Senior Counsel

**Enclosure** 



### Recording Requested By:

Nestle USA Inc. 800 North Brand Blvd. Glendale, California 91203

When Recorded, Mail To:

Leroy Griffin
Hazardous Materials Program Supervisor
City of Oakland Fire Services
1605 Martin Luther King Jr. Way
Oakland, California 94612

Trils is to certify that this and correct copy	s is a true
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in the Office of the Reci	order of
LITIG WY & CV	County
California, as Instrumen	it No.
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124 day of 1 m 2	. 2000
FIRST AMERICANTITLE GUA	RANTY COMPANY
By:	, , , , , ,

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### COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY

Northeast Portion of the Former Carnation Dairy Facility which Occupies 1315-1372 14<sup>th</sup> Street and 1315-1385 16<sup>th</sup> Street

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 15th day of 15th 2000 by Nestle USA ("Covenantor") who is the Owner of record of that certain property situated at 1315-1372 14th Street and 1315-1385 16th Street, in the City of Oakland, County of Alameda, State of California, which contains a contaminated area which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such contaminated area hereinafter referred to as the "Burdened Property"), for the benefit of the City of Oakland Fire Services (COFS), with reference to the following facts:

- A. The Burdened Property and groundwater underlying the property contains hazardous materials.
- B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by releases from petroleum underground storage tanks. These releases resulted in contamination of soil and groundwater with organic chemicals including benzene, toluene, ethylbenzene, xylenes, and 1,2 –dichloroethane, which are hazardous materials as that term is defined in Health & Safety Code Section 25260. Removal of underground storage tanks and remediation of the petroleum hydrocarbons was initiated in January 1988 and is summarized below:

### Tank, Line, and Dispenser Removal

Four (4) underground fuel storage tanks and associated piping were removed in December 1988. One (1) 1,000 gallon used-oil tank was removed in January 1989.

#### Remedial Actions

Soil Excavation: Between January and March 1989, 1,200 cubic yards of soil were removed in the area of the former underground storage tanks and associated piping. This soil was treated on-site and replaced back in the excavated area.

Liquid Petroleum Hydrocarbon Removal: Liquid petroleum hydrocarbons were removed using a product skimming system from the subsurface during January through March 1989.

Approximately 1,800 gallons were removed during this time period.

Soil Vapor Extraction: A soil vapor extraction system operated from January 1994 to December 1995 and removed an estimated 5,200 gallons of hydrocarbon.

Multi-phase Extraction: A multi-phase extraction system has been operating at the site since August 1997. Approximately 10,500 pounds of hydrocarbons have been removed using this system. Thickness of petroleum hydrocarbons decreased since August 1997.

- C. <u>Exposure Pathways</u>. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via the following pathways (onsite workers only):
  - > Ingestion and dermal contact with surface soils;
  - > Inhalation of volatile emissions from subsurface soils and groundwater

The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described in part B.

- D. <u>Adjacent Land Uses and Population Potentially Affected</u>. The Burdened Property is currently an unused industrial facility and is adjacent to industrial, commercial, and residential land uses.
- E. Full and voluntary disclosure to the COFS of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.
- F. Covenantor desires and intends that in order to benefit the COFS, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened 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 Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence of hazardous materials in the subsurface below the Burdened Property. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the COFS and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board").
- 1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened 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 for the benefit of the COFS and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.
- 1.3 Apportionment of Burden Among Multiple Owners. Where ownership of the Burdened Property is held by multiple persons, holding by several titles, the burdens imposed by this Covenant shall be apportioned between them proportionate to the value of the property held by each owner, if such value can be ascertained, and if not, then according to their respective interests in point of quantity. (Cal. Civ. Code, § 1467.)
- 1.4 <u>Incorporation into Deeds and Leases</u>. 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 Burdened 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 or incorporated into any given deed or lease.
- 1.5 <u>Purpose</u>. It is the purpose of this instrument to convey to the COFS real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

### ARTICLE II DEFINITIONS

- 2.1 <u>COFS</u>. "COFS" shall mean the City of Oakland Fire Services and shall include its successor agencies, if any.
- 2.2 <u>Board</u>. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.
- 2.3 <u>Improvements</u>. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.
- 2.4 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.
- 2.5 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

## ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

- 3.1 <u>Restrictions on Development and Use</u>. Covenantor promises to restrict the use of the Burdened Property as follows:
- a. Development of the Burdened Property shall be restricted to industrial, commercial or office space;
  - b. No residence for human habitation shall be permitted on the Burdened Property;
  - c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. No Owners or Occupants of the Burdened Property or any portion thereof shall conduct any excavation work on the Burdened Property, unless expressly permitted in writing by the COFS. Any contaminated soils brought to the surface by grading, excavation, trenching, or

backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;

- g. All uses and development of the Burdened Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the COFS, unless otherwise expressly permitted in writing by the COFS. Any development of the Burdened Property will maintain a surface cap of the soil, exclusive of minor landscape areas, by buildings or paved surfaces.
- h. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

#### 3.1.1 Notifications/Access/Non Aggravation

- a. The Owner shall notify the COFS 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 of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the COFS, 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 COFS shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;
- b. The Covenantor agrees that the COFS, and/or any persons acting pursuant to COFS orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
- c. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.
- 3.2 <u>Enforcement</u>. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the COFS, 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 COFS to file civil actions against the Owner as provided by law.
- 3.3 <u>Notice in Agreements</u>. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of <u>June 8</u>, 2000, and recorded on <u>Concurrently herewith 2000</u>, in the Official Records of <u>Alameda</u> County, California, which covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

### ARTICLE IV VARIANCE AND TERMINATION

- 4.1 <u>Variance</u>. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the COFS for a written variance from the provisions of this Covenant.
- 4.2 <u>Termination</u>. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the COFS for a termination of the Restrictions as they apply to all or any portion of the Burdened Property which consent to termination shall not be unreasonably withheld.
- 4.3 <u>Term</u>. 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 Burdened 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"
Nestlé USA, Inc.
Legal Department
800 North Brand Boulevard
Glendale, Ca. 91203

If To: "COFS"

City of Oakland Fire Services

Attention: Hazardous Materials Program Supervisor

1605 Martin Luther King Jr. Way

Oakland, California 94612

- 5.3 <u>Partial Invalidity</u>. 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 <u>Article Headings</u>. 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.
- 5.5 <u>Recordation</u>. This instrument shall be executed by the Hazardous Materials Program Supervisor of the COFS. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.
  - 5.6 References. All references to Code sections include successor provisions.
- 5.7 <u>Construction</u>. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. 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.

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

Covenar	ntor: NESTLE	USA, INC.
By:	Mander	Robert H. Sanders
Title:	V. P.	, , , , , , , , , , , , , , , , , , , ,
Date: _	4.8.00	
Agency:	City of Oakl	and Fire Services

By: LeRoy Griffin
Title: Hazardous Materials Program Supervisor

### APPENDIX A

# LEGAL DESCRIPTION DEED RESTRICTION AREA

# ROB BEIN, WILLIAM FROST & ASSOCIATED 1981 N. Broadway, Suite 235 Walnut Creek, California 94596

### LEGAL DESCRIPTION DEED RESTRICTION AREA

That certain parcel of land situated in the City of Oakland, County of Alameda, State of California described as follows:

Being a portion of Lots 4 through 23 and a portion Kirkham Street of the Scotchler Tract and Vicinity, Oakland, as shown on a map thereof filed in Book 7 of Maps at Page 21 on December 10, 1874 in the Office of the County Recorder of Alameda County more particularly described as follows:

BEGINNING at the intersection of said Kirkam Street and the northwest corner of lot 17, in block 584, as shown on the map of "Re-division of Blocks 584, 585, 601, 153 and 580-A, City of Oakland, County of Alameda, California", filed May 1, 1885, in Book 4 of Maps, at Page 25, in said office of the County Recorder;

Thence, along the northerly line of said Kirkham Street and said lots 13, 12, 11, 10, 9, 8, 7, 6 and 5, North 72°53'28" West 292.25 feet to the northwest corner of said lot 5, said point also being the northeasterly corner of that certain parcel of land described in the deed to the State of California, recorded May 12, 1955 in Volume 7658, of Official Records at Page 299, in said office of the County Recorder;

Thence, continuing along said northerly line of Kirkham Street, North 72°53'28" West 8.64 feet:

Thence, along said State of California parcel, along a non-tangent 1240 foot radius curve to the right, through a central angle of 2°59'04" to the easterly line of the parcel of land described in the deed to the State of California, recorded August 12, 1955 in Book 7749, of Official Records at Page 447, as Instrument Number AK-86901, in said office of the County Recorder;

Thence, along last said State of California parcel (7749 OR 447), along a non-tangent 1240 foot radius curve to the right from a tangent that bears South 10°54'36" West to the south line of said lot 22, said southerly line also being the north line of 15<sup>th</sup> Street, as shown on said map of the Scotchler Tract (7 M 21);

Thence, along said northerly line of 15<sup>th</sup> Street and the easterly prolongation of said north line, South 74°03'30" East 285.05 feet to the easterly line of said Kirkham Street;

Thence, along said easterly line, North 15°56'30" West 209.50 feet to the POINT OF BEGINNING.

EXHIBIT attached and by this reference made a part hereof.

HO. 5816

EXP. 6:30 2000

ATE OF CALIFORNIA

Patrick J. Tami, L.S. 5816

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		ted the same in his/her/their authorized capacity(ies),
		at by his/her/their signature(s) on the instrument the n(s), or the entity upon behalf of which the person(s)
ELLEN N, DOLESE		executed the instrument.
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### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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ig ig	personally appeared	Name(s) of Signer(s)
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8	MARIA HAZEL PERRI	to be the person(s) whose name(s) is/are subscribed to the within instrument and
Ø	Commission # 1113713	acknowledged to me that he/she/they executed
S S	Notary Public — California	the same in his/her/their authorized
Ž Ž	Los Angeles County  My Comm. Expires Oct 13, 2000	capacity(ies), and that by his/her/their
ğ		signature(s) on the instrument the person(s), or-
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