

**Recording Requested by:**  
**First American Title**

Recorded at the request of  
Interra (Coalinga), LLC, a California limited liability company  
950 Glenn Drive, Ste. 100  
Folsom, California 95630  
When Recorded Return to:

Department of Toxic Substances Control  
1515 Tollhouse Road  
Clovis, California 93611  
Attention: Thomas W. Kovac, P.E., Chief  
Fresno Responsible Party Unit, Brownfields  
And Environmental Restoration Program

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**FRESNO County Recorder**

**Robert C. Werner**

**DOC- 2008-0116460**

Acct 5-First American Title Insurance Company

Friday, AUG 15, 2008 08:00:00

Ttl Pd \$59.00

Nbr-0002826194

EMF/R5/1-17

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Coalinga, CA  
APN: 072-200-38S, 34S, 37S  
NCS-200000Y-SF

## **Covenant to Restrict Use of Property Environmental Restriction**

RECORDING REQUESTED BY:  
Interra(Coalinga), LLC, a California limited  
liability company  
950 Glenn Drive, Suite 100  
Folsom, California 95630

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
1515 Tollhouse Road  
Clovis, California 93611  
Attention: Thomas W. Kovac, P.E., Chief  
Fresno Responsible Party Unit, Brownfields  
and Environmental Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## COVENANT TO RESTRICT USE OF PROPERTY

### ENVIRONMENTAL RESTRICTION

County of Fresno, APNs 072-200-38-S, 072-200-37-S and 072-200-34-S  
Interra(Coalinga), LLC (formerly APN 072-200-01, 072-200-02, and 072-200-03)  
DTSC site code – 101868-11

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This Covenant and Agreement ("Covenant") is made by and between Interra(Coalinga), LLC, a California limited liability company (the "Covenantor"), the current owner of property situated in Coalinga, County of Fresno, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (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 Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25222.1 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately 2.95 acres, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by West Forest Street on the northwest, South 6<sup>th</sup> Street on the northeast, West Glenn Street on the south east, and East Polk on the south, County of Fresno, State of California. The Property is also generally described as Fresno County Assessor's Parcel Nos. 072-200-38-S and 072-200-37-S, and 072-200-34-S, and an alley that lies between the parcels.

1.02. On December 4, 2007 a final Removal Action Workplan (RAW) for the site was approved by DTSC. Plans for the removal of surface soil at the site that contain arsenic at concentrations above background concentrations are included in the RAW. The RAW was implemented in two phases. Initial excavation activities were conducted between January 9 and 11, 2008. Supplemental excavation activities were conducted between February 13 and 14, 2008. A total of approximately 1200 cubic yards of arsenic affected soil was removed from two locations. During past sampling events volatile organic compounds (VOCs) and total petroleum hydrocarbons (TPHs) have been detected. One VOC detected was ethylbenzene, which was detected in soil gas samples collected from two locations at concentrations less than the USEPA Target Shallow Gas Concentration. Isopropylbenzene, another VOC, was detected in samples from one location at concentrations also less than the USEPA Target Shallow Gas Concentration. Total xylenes were detected in samples from two locations at concentrations less than the CalEPA California Human Health Screening Level. Because arsenic has been identified as the primary chemical of potential concern, the RAW focused on removal of onsite soil containing arsenic above background concentrations. The concentration of arsenic in background samples ranges from 6.88 to 15.5 milligrams per kilogram (mg/kg). The concentration of arsenic detected in some near surface soil samples exceeded background concentrations. The objective of the removal action was to remove soil from the site that contains arsenic above background concentrations. A VOC risk model run for the site was based on a commercial/industrial setting. As a result there is a need for a deed restriction

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to preclude future residential or other sensitive land uses.

1.03 Covenantor remediated the Property under the supervision, oversight and authority of the Department. The Property was remediated, pursuant to a RAW and in accordance with Health and Safety Code, division 20, chapter 6.8. Because hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, including VOCs, and TPHs remain in the soil under portions of the Property, the RAW provided that a Covenant be required as part of the site remediation. The Department circulated for public review and comment the RAW, which contains a human health risk assessment summary, together with a draft Notice of Exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. A final RAW and the Notice of Exemption, were approved by the Department on December 4, 2007. Remediation activities included the removal of near surface from two locations.

1.04. A "Site-Specific Health Risk Assessment" dated February 1, 2007 identifies hazardous substances, as defined in Health and Safety Code section 25316, that are present at the site. The approved final RAW summarizes human health risks. Identified VOCs along with their maximum concentration detected in soil gas samples are as follows: ethylbenzene – 3.3 micrograms per liter (ug/l); isopropylbenzene – 0.14 ug/l; 1,3,5-trimethylbenzene - 0.029 ug/l; and xylenes – 25.4 ug/l. The ethylbenzene and isopropylbenzene soil gas concentrations are below USEPA Target shallow Gas Concentrations. The total xylenes were detected in samples from two locations at concentrations less than the CalEPA California Human Health Screening Level. A VOC risk model based on the Johnson and Ettinger model was run for the site, and is summarized in the RAW. The model that was run is based on a commercial/industrial setting. The calculated risks were determined to fall within acceptable risk ranges for a commercial/industrial setting. TPH (as extractable fuel hydrocarbons) have been detected in soil at concentrations ranging from less than 10 milligrams per kilogram (mg/kg) to 45,000 mg/kg. TPH (as diesel) was reported at concentrations of 4,410 mg/kg to 23,800 mg/kg. Based on the risk assessment summary included in the RAW, the Department has concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department

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further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to commercial and industrial use.

ARTICLE II  
DEFINITIONS

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

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

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

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

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

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III  
GENERAL PROVISIONS

3.01. 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 Health and Safety Code section 25222.1 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, and (d) 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 the Health and Safety Code, 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.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

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

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written 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 (APN) noted on page one. If the new owner's property has been assigned a different APN, each

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such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect a proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for himself 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 cost in administering the Covenant.

#### ARTICLE IV RESTRICTIONS

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. A retail medical clinic or doctor's office that does not provide overnight patient care shall not be considered a hospital for purposes of this restriction.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb contaminated soil (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 Department in advance.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in

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accordance with all applicable provisions of state and federal law.

- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property more than 2 feet below the soil surface.

4.03. 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.

## ARTICLE V ENFORCEMENT

5.01. 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, including but not limited to, failure to submit, or the 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, TERMINATION, AND TERM

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 Health and Safety Code section 25233.

6.02 Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the

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Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII  
MISCELLANEOUS

7.01. 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.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. 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.

7.04. 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: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party 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:

To Owner: Mr. Brian Kisling, Interra(Coalinga), LLC, a California Limited Liability Company, 950 Glenn Drive, Suite 100, Folsom, CA 95630

Copies to: Interra Development, 737 North Michigan Avenue, Suite 1050, Chicago, IL 60611, Attention: Tom Gamsjaeger; Jeffrey S. Lawson, Silicon Valley Law Group, 25 Metro Drive, Suite 600, San Jose, CA 95110

To Department: Mr. Thomas W. Kovac, P.E., Chief, Fresno Responsible Party Unit, Brownfields and Environmental Restoration Program, 1515 Tollhouse Road, Clovis, California, 93619.

Copy to: Mr. Michael Pfister, Department of Toxic Substances Control, 1515  
Tollhouse Road, Clovis, California, 93619.

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

7.05. 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.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15<sup>th</sup> of each year. The annual report, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission. Notwithstanding anything set forth in this Section 7.07 to the contrary, the inspection and reporting requirements may be fulfilled by the Owner's tenants or occupants. Furthermore, in the event of multiple ownership of the Property, the Owner (or its tenant or occupant) of such portion of the Property identified as Parcel 2 of Parcel Map No. 06-03 (APN 072-200-34-S) shall be responsible for conducting the inspection and preparing the Inspection Report for the entire Property. The Owners of the remaining portions of the Property shall cooperate with such Owner conducting the inspection and

promptly provide such information as is reasonably necessary to complete the Inspection Report.

7.08 Warranty of Authority. The undersigned representative of Interra Ventures, LLC, a Delaware Limited Liability Company, hereby represents and warrants that Interra (Coalinga), LLC is fully authorized and permitted to execute this covenant, to execute any and all documentation required herein, and to perform the terms of this covenant. The execution, delivery and performance of this covenant have been duly authorized by all requisite action on the part of Interra (Coalinga), LLC.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Interra(Coalinga), LLC, a California Limited Liability Company

By: Interra Development Partners, LLC, a Delaware Limited Liability Company,  
Manager

By: Interra Ventures, LLC, a Delaware Limited Liability Company, Manager

By: Deno Varlas DENO VARLAS

Title: Chief Financial Officer

Date: 7/17/08

SIGNED IN COUNTERPART

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

Title: \_\_\_\_\_

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

Department of Toxic Substances Control

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

Title: Thomas W. Kovac, P.E., Chief, Fresno Responsible Party Unit, Brownfields  
and Environmental Restoration Program

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

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promptly provide such information as is reasonably necessary to complete the Inspection Report.

7.08 Warranty of Authority. The undersigned representative of Interra Ventures, LLC, a Delaware Limited Liability Company, hereby represents and warrants that Interra (Coalinga), LLC is fully authorized and permitted to execute this covenant, to execute any and all documentation required herein, and to perform the terms of this covenant. The execution, delivery and performance of this covenant have been duly authorized by all requisite action on the part of Interra (Coalinga), LLC.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Interra(Coalinga), LLC, a California Limited Liability Company

By: Interra Development Partners, LLC, a Delaware Limited Liability Company,  
Manager

By: Interra Ventures, LLC, a Delaware Limited Liability Company, Manager

By: *[Signature]*

Title: Chief Financial Officer

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

By: *[Signature]*

SIGNED IN COUNTERPART

Title: Vice President JOHN CIPOLETTI

Date: 7/17/08

Department of Toxic Substances Control

By: *[Signature]*

Title: Thomas W. Kovac, P.E., Chief, Fresno Responsible Party Unit, Brownfields  
and Environmental Restoration Program

Date: August 6, 2008

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STATE OF Illinois )  
 ) ss.  
County of Cook )

The foregoing instrument was acknowledged before me,  
Brianne M. Garritano, this 17<sup>th</sup> day of July, 2008,  
by Deno Varlas, the  
CFO of INTERRA VENTURES, LLC, a Delaware limited  
liability company, Manager of INTERRA DEVELOPMENT PARTNERS, LLC, a  
Delaware limited liability company, Manager of INTERRA (COALINGA), LLC,  
a California limited liability company, on behalf of that limited liability company.  
Deno Varlas is personally known to me (or proved to me on the basis  
of satisfactory evidence) to be the person whose name is subscribed to the within  
instrument and acknowledged to me that he/she executed the same in his/her/  
authorized capacity(ies), and that by his/her/ signature on the instrument the person, or  
the entity upon behalf of which the person 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.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Brianne M. Garritano  
Notary Public  
My commission expires:  
7/19/2011



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# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California  
County of Fresno

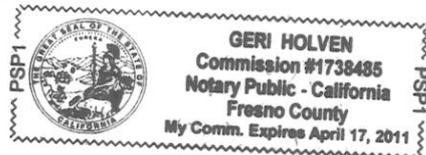
On Aug 6, 2008 before me, Geri Holven, Notary Public, personally appeared THOMAS W. KOVAC

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.

Signature *Geri Holven* (seal)



## OPTIONAL

Description of the Attached Document:

Title or Type of Document: Consent to Restrict Use of Property  
Date of Document: 8-6-08 Number of pages: 12 + ACK  
Signer(s) other than the above: JOHN C. POLETTI  
JOHN C. POLETTI

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STATE OF CALIFORNIA )

)

COUNTY OF FRESNO )

On this 6th day of AUGUST, in the year 2008,

before me GERI HOLVEN, NOTARY PUBLIC, personally appeared

THOMAS W. KOVAC

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.

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.

Signature \_\_\_\_\_

Exhibit A

Real property in the City of Coalinga, County of Fresno, State of California, described as follows:

Parcels 1, 2 and 3, as shown on that certain Parcel Map filed for record April 8, 2008 in Book 68 of Parcel Maps, pages 50, 51 and 52, Fresno County Records.

APN: 072-200-38S and 072-200-34S and 072-200-37S

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