



DELAWARE DEPARTMENT OF
**NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

Department of Natural Resources and Environmental Control
(DNREC)
Remediation Section
www.dnrec.delaware.gov



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Michael E. Kozikowski T20230010478
New Castle Recorder MISC

Tax Parcel No.: 0612600002
Prepared By: Department of Natural
Resources
and Environmental Control
391 Lukens Drive
New Castle, DE 19720
Return To: Qazi Salahuddin
Environmental Program
Administrator
DNREC-RS
391 Lukens Drive
New Castle, DE 19720

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by DuPont Specialty Products USA, LLC, (“Owner”)] and the Delaware Department of Natural Resources and Environmental Control (“DNREC” or “Holder”) pursuant to 7 *Del. C. ch. 79*, subchapter II, Uniform Environmental Covenants Act, for the purpose of subjecting the property identified below to the activity and use limitations and requirements as set forth herein.

WITNESSETH

WHEREAS, DuPont Specialty Products USA, LLC, is the Owner of certain real estate located at 200 Powder Mill Road, Wilmington, DE, 19803 in New Castle County, Delaware, as described below; and

WHEREAS, in 1985, the State of Delaware, Department of Natural Resources and Environmental Control (DNREC) issued a Resource Conservation and Recovery Act (RCRA) hazardous waste permit to DuPont for storage and treatment; and

WHEREAS, in 1993, EPA issued an administrative consent order based on investigations and a RCRA ROD to protect human health and the environment in an area of the site known as Creek Road Contamination Area (CRCA); and

WHEREAS, from 1985 to May 2021, DuPont operated the permitted Hazardous Waste Storage and Treatment facility units; and

WHEREAS, from May 2020 to December 2021, DuPont completed closure and demolition activities for the permitted storage and thermal treatment units and achieved risk-based clean closure based on DNREC Closure Performance Standards (CPS);

WHEREAS, on October 12, 2022, DNREC issued a Statement of Basis, which summarized the results of environmental investigations of the property and proposed remedy of the property; and

WHEREAS, on November 29, 2022, DNREC issued a Final Decision and Response to Comments ("FDRTC") in which it selected a remedy ("Final Remedy") for the DuPont Experimental Station, DED003930807 ("Site"), which includes the property; and

WHEREAS, the Final Remedy for the Site requires that certain activity and use limitations and requirements be placed on the Property; and

WHEREAS, Owner is willing to establish this Environmental Covenant on the property as required by the Final Remedy.

NOW THEREFORE, Owner and DNREC agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to 7 *Del. C.* ch. 79, subchapter II, Uniform Environmental Covenants Act.
2. Property. This Environmental Covenant concerns an approximately 125 acre tract of real property further identified on the *New Castle* County tax maps as tax parcel number(s) 0612600002 ("the Property"). The Property is located at the DuPont Experimental Station, 200 Powder Mill Road, Wilmington, DE, 19803, in New Castle County, Delaware. Three locations within the property have Activity and Use Limitations and Requirements, and they are particularly described as follows:
 - [a.] A 6-acre area identified as "Creek Road Contamination Area" (CRCA); the 6 acre "CRCA" area encompasses the former RCRA permitted storage and thermal treatment units. The "CRCA" area is described in Exhibit A attached hereto and incorporated by reference
 - [b.] The following two sub-acre areas located within the Parking-Lot 1 area are shown in Exhibit B map, and further described as follows:
 - 1) A 0.281 acre area identified as "Soil Covenant Area 1" (aka AOC SB-03), described in Exhibit B attached hereto and incorporated by reference
 - 2) A 0.784 acre identified as "Soil Covenant Area 2" (aka AOC SB-22), described in Exhibit B attached hereto and incorporated by reference
3. Owner. DuPont Specialty Products, USA, LLC, located at Chestnut Run Plaza, 974 Centre Road, Wilmington, DE, 19805, is the owner of the Property.
4. Holder. DNREC is the Holder of this Environmental Covenant.
5. Activity and Use Limitations and Requirements. As required by the Final Decision and Response to Comments (FDRTC) issued November 29, 2022,

Owner hereby agrees to comply with the following activity and use limitations and requirements:

- [a.] Use Restriction. Use of the “CRCA,” “Soil Covenant Area 1,” and “Soil Covenant Area 2” locations shall be restricted solely to those non-residential type uses permitted within commercial, manufacturing, or industrial districts respectively, as such district types and uses (including ancillary or accessory uses) are permitted pursuant to the corresponding zoning district classification of the *New Castle County Code*; Any change to the current site use must be pre-approved by DNREC.
 - [b.] Interference with Remedy. There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activity in the “CRCA,” “Soil Covenant Area 1,” and “Soil Covenant Area 2” locations at depths greater than 1 foot, including any repair, renovation or demolition of the existing structures on the Property, without the prior written approval of DNREC;
 - [c.] Limitation of Groundwater Withdrawal. No groundwater wells shall be installed, and no groundwater shall be withdrawn from any well on the CRCA and Parking Lot 1 AOC locations without the prior written approval of DNREC’s Remediation Section and DNREC’s Division of Water;
 - [d.] Compliance with the Long-Term Stewardship (LTS) Plan. All work required by the Long-Term Stewardship Plan must be performed to DNREC’s satisfaction in accordance with the Plan.
 - [e.] Compliance with the Contaminated Materials Management Plan (CMMP). All work required by the Contaminated Materials Management Plan must be performed to DNREC’s satisfaction in accordance with the Plan.
 - [f.] Emergency Oversight A person may undertake an emergency response action at these locations after initiation of a remedy without DNREC’s oversight provided the person notifies the DNREC of the details of the action taken, within 48 hours of the initiation of the emergency response action. This does not limit or relieve a person’s liability under other existing federal or state laws or regulations for undertaking an emergency response at a location.
6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, in accordance with 7 *Del. C. § 7910(a)*, subject to amendment or termination as set forth herein. The term “Transferee” as used in this Environmental Covenant shall mean any future owner of any interest in the

Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to 7 *Del. C.* § 7916. Failure to timely seek to enforce compliance with this Covenant or the use limitations or requirements contained herein by any Holder shall not bar any subsequent enforcement effort by such Holder and shall not be deemed a waiver of the Holder's right to take action to enforce for non-compliance. Nothing in this Environmental Covenant shall restrict the Secretary of DNREC from exercising any other authority provided to him under applicable law.
8. Rights of Access. Owner hereby grants to DNREC, its employees, agents, and contractors, the right of access to the Property for implementation or enforcement of this Environmental Covenant.
9. Remedial Decision Record. The Remedial Decision Record containing all documents that support the issuance of the Final Remedy is available for review at the DNREC's office located at 391 Lukens Drive, New Castle, Delaware.
10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations and requirements set forth in this Environmental Covenant, and shall identify the location where the Covenant has been recorded. The notice upon conveyance shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE ENVIRONMENTAL COVENANT DATED AND RECORDED IN THE OFFICIAL RECORDS OF THE NEW CASTLE COUNTY OFFICE OF THE RECORDER OF DEEDS ON THE DATE OF THIS DOCUMENT AND NOTED AS THE INSTRUMENT NUMBER ON THE TOP LEFT CORNER OF THE FIRST PAGE OF THIS ENVIRONMENTAL COVENANT. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS AND REQUIREMENTS:

- [a.] Use Restriction. Use of the "CRCA," "Soil Covenant 1," and "Soil Covenant 2" locations shall be restricted solely to those non-residential type uses permitted within commercial, manufacturing, or industrial districts respectively, as such district types and uses (including ancillary or accessory uses) are permitted pursuant to the corresponding zoning district classification of the *New Castle County Code*; any changes to the current site use must be pre-approved by DNREC;

- [b.] Interference with Remedy. There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activity in the “CRCA,” “Soil Covenant Area 1,” and “Soil Covenant Area 2” locations at depths greater than 1 foot, including any repair, renovation or demolition of the existing structures on the Property, without the prior written approval of DNREC;
- [c.] Limitation of Groundwater Withdrawal. No groundwater wells shall be installed, and no groundwater shall be withdrawn from any well on the CRCA and Parking Lot 1 AOC locations without the prior written approval of DNREC’s Remediation Section and DNREC’s Division of Water;
- [d.] Compliance with the Long-Term Stewardship (LTS) Plan. All work required by the Long-Term Stewardship Plan must be performed to DNREC’s satisfaction in accordance with the Plan.
- [e.] Compliance with the Contaminated Materials Management Plan (CMMP). All work required by the Contaminated Materials Management Plan must be performed to DNREC’s satisfaction in accordance with the Plan.
- [f.] Emergency Oversight A person may undertake an emergency response action at these locations after initiation of a remedy without DNREC’s oversight provided the person notifies DNREC of the details of the action taken, within 48 hours of the initiation of the emergency response action. This does not limit or relieve a person’s liability under other existing federal or state laws or regulations for undertaking an emergency response at a location.

Owner shall notify DNREC within ten (10) days after each conveyance of an interest in any portion of the Property. Owner’s notice shall include the name, address, and telephone numbers of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

- 11. Representations and Warranties. Owner hereby represents and warrants to DNREC, the Holder of this Environmental Covenant as follows:
 - [a.] that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all of the obligations hereunder;
 - [b.] that the Owner is the sole owner of the Property and holds fee simple title, which is free, clear and unencumbered;

- [c.] that the Owner has identified all other parties that hold any interest (e.g., an encumbrance) in the Property and has notified such parties of the Owner's intention to enter into this Environmental Covenant; and
- [d.] that this Environmental Covenant will not materially violate, contravene or constitute a material default under any other agreement, contract or instrument to which the Owner is a party or by which the Owner may be bound or affected.

12. Amendment or Termination.

- [a.] This Environmental Covenant is subject to amendment or termination by the mutual consent of Owner (or Transferee) and DNREC pursuant to 7 Del. C. § 7915. As used in this Environmental Covenant, the term "Amendment" means any material changes to the provisions of the Environmental Covenant, including the activity and use limitations or requirements set forth herein; or the elimination of one or more activity and use limitations or requirements when there is at least one limitation or requirement remaining. An Amendment shall also include an assignment of the Environmental Covenant as specified in 7 Del. C. § 7915.
- [b.] As used in this Environmental Covenant, the term "Termination" shall mean the elimination of all activity and use limitations and requirements set forth herein and any other material obligations provided for by this Environmental Covenant.
- [c.] This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Owner (or Transferee) of the Property and DNREC. Within thirty (30) days of the execution of any Amendment, or the Termination of the Environmental Covenant by the Owner and DNREC, the Owner shall file such instrument for recording in the Office of the New Castle County Recorder of Deeds and shall provide a file-and date-stamped copy of the recorded instrument to DNREC.

- 13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Delaware.
- 15. Recordation. Within thirty (30) days following the date that this Environmental Covenant is fully executed, it shall be filed by the Owner in the Office of the New Castle County Recorder of Deeds, in the same manner as a deed to the Property.

This Covenant must be indexed in the grantor's index in the name of the Owner, and in the grantee's index in the name of the Holder, DNREC.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant is recorded as a deed record for the Property in the Office of the New Castle County Recorder of Deeds.
17. Distribution of Environmental Covenant. The Owner shall distribute a filed and date stamped copy of the recorded Environmental Covenant to DNREC.
18. Notice. Any document or communication that is required to be provided to the parties to this Environmental Covenant shall be submitted to:


Environmental Program Administrator
DNREC-RS
391 Lukens Drive
New Castle, DE 19720

Namit Jain
Sr. Manager Real Estate
DuPont Specialty Products, LLC
974 Centre Road
Wilmington, DE 19805

19. Authorized Signatory. The undersigned representative of the Owner represents and certifies that he/she is authorized to execute this Environmental Covenant on the Owner's behalf.

IT IS SO AGREED:

DuPont Specialty Products USA, LLC

Signature of Owner 

Namit Jain
Sr. Manager Real Estate
Printed Name and Title

Date

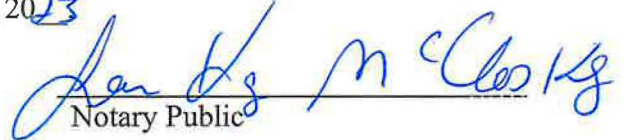
3/15/23

State of Delaware)
County of New Castle)

ss: Wilmington

Before me, a notary public, in and for said county and state, personally appeared Namit Jain, a duly authorized representative of DuPont Spa, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of DuPont Specialty Products

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 15 day of March, 2023


Notary Public

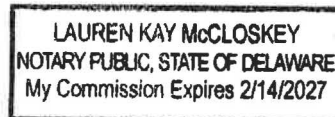


EXHIBIT A - Map of Creek Rd Contamination Area with associated Northing and Easting

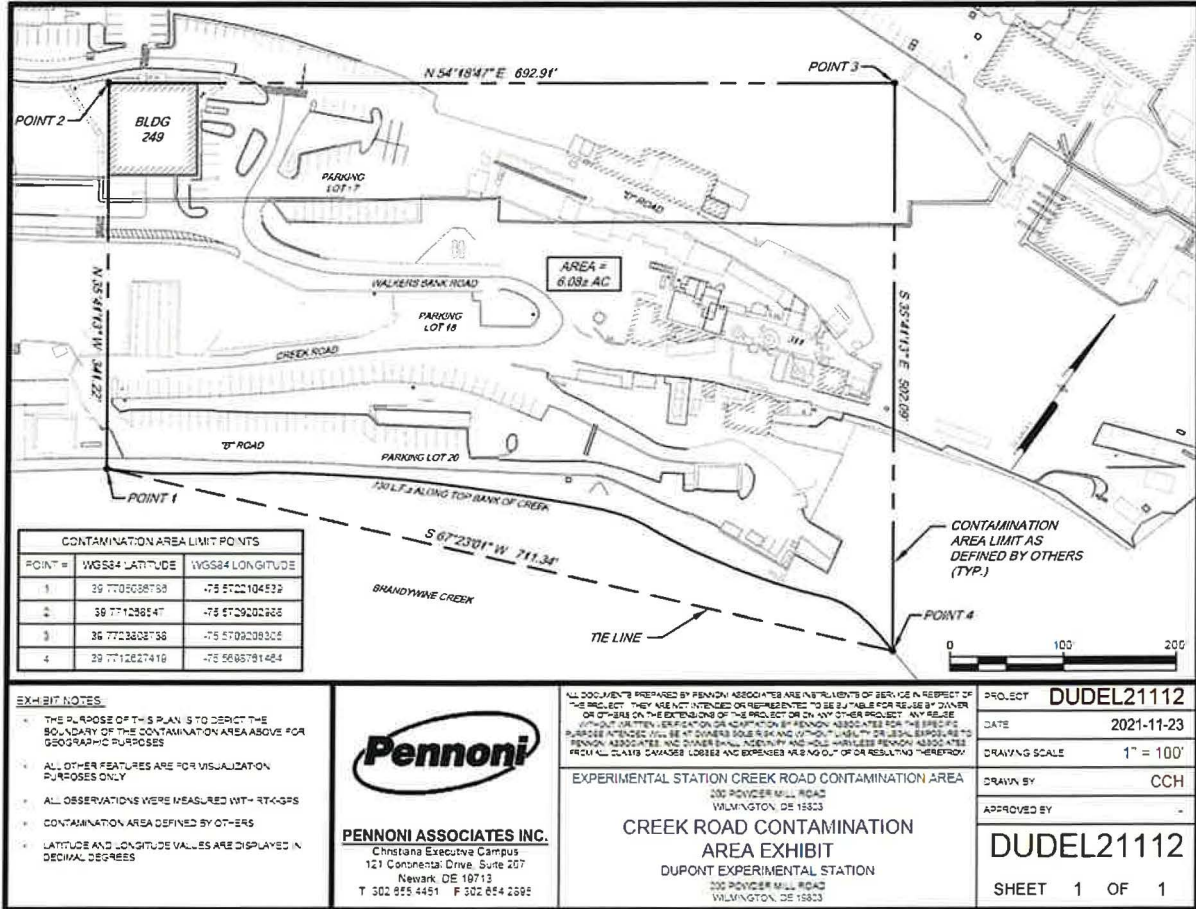


EXHIBIT NOTES

- THE PURPOSE OF THIS PLAN IS TO DEPICT THE BOUNDARY OF THE CONTAMINATION AREA ABOVE FOR GEOGRAPHIC PURPOSES
- ALL OTHER FEATURES ARE FOR VISUALIZATION PURPOSES ONLY
- ALL OBSERVATIONS WERE MEASURED WITH RTK-GPS
- CONTAMINATION AREA DEFINED BY OTHERS
- LATITUDE AND LONGITUDE VALUES ARE DISPLAYED IN DECIMAL DEGREES



PENNONI ASSOCIATES INC.
 Christiana Executive Campus
 121 Continental Drive, Suite 207
 Newark, DE 19713
 T 302.955.4451 F 302.854.2595

ALL DOCUMENTS PREPARED BY PENNONI ASSOCIATES ARE INSTRUMENTS OF SERVICE. IN RESPECT OF THIS PROJECT, THEY ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR RE-USE BY OWNER OR OTHERS ON THE EXTENSIONS OF THIS PROJECT OR ON ANY OTHER PROJECT. ANY RE-USE WITHOUT VERIFICATION OR ADAPTATION BY PENNONI ASSOCIATES FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT OWNERS SOLE RISK AND WITHOUT LIABILITY TO PENNONI ASSOCIATES. PENNONI ASSOCIATES AND OTHERS SHALL ACCEPT NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LOSS OR EXPENSES WHATSOEVER OF OR RESULTING THEREFROM.

EXPERIMENTAL STATION CREEK ROAD CONTAMINATION AREA
 300 POWDER MILL ROAD
 WILMINGTON, DE 19823

CREEK ROAD CONTAMINATION AREA EXHIBIT
 DUPONT EXPERIMENTAL STATION
 300 POWDER MILL ROAD
 WILMINGTON, DE 19823

PROJECT	DUDEL21112
DATE	2021-11-23
DRAWING SCALE	1" = 100'
DRAWN BY	CCH
APPROVED BY	-
DUDEL21112	
SHEET 1 OF 1	

EXHIBIT B – Map of Parking Lot 1:
Soil Covenant Area 1 and Soil Covenant Area 2 with associated Northing and Easting

EXHIBIT B: Sheet 1 of 3

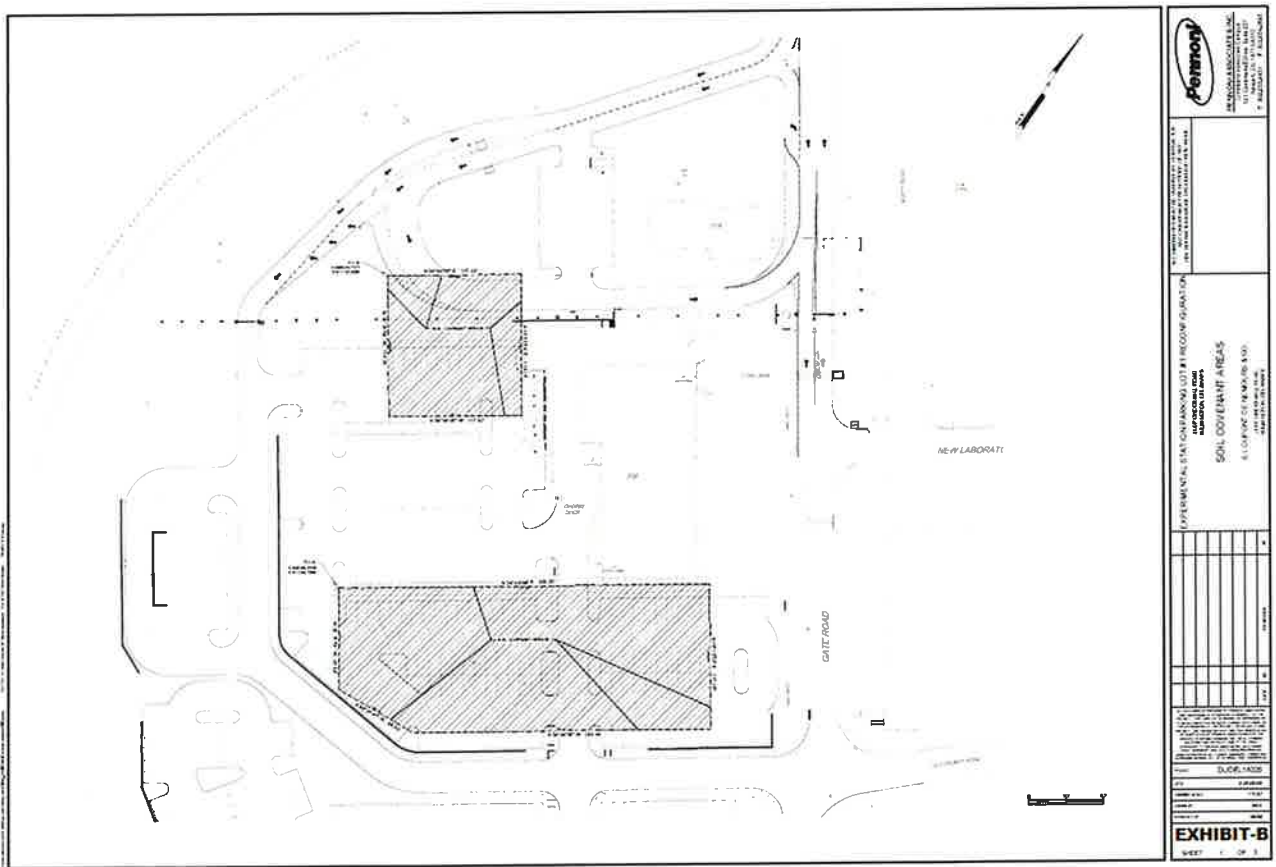




Exhibit B - Sheet 2 of 3

Christiana Executive Campus
121 Continental Drive, Suite 207
Newark, DE 19713
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www.pennoni.com

**EXPERIMENTAL STATION LABORATORY
METES AND BOUNDS DESCRIPTION OF
SOIL COVENANT AREA #1**

BEGINNING at a point along the northeasterly line of the Soil Covenant Area #1, where said point is the northwesterly corner of Soil Covenant Area #1 having DE. S.P.C.S. NAD 83 values N:645419.7107 & E:611133.0065 and from said beginning point the following four (4) courses and distances:

1. North 54 degrees 44 minutes 06 seconds East a distance of 107.02 feet to a point; thence
2. South 35 degrees 15 minutes 54 seconds East a distance of 114.24 feet to a point; thence
3. South 54 degrees 44 minutes 06 seconds West a distance of 107.02 feet to a point; thence
4. North 35 degrees 15 minutes 54 seconds West a distance of 114.24 feet to a point and place of beginning.

Said Soil Covenant Area #1, contained within the described metes and bounds totals 12,225.96 square feet or 0.281 acres of land (more or less).



**EXPERIMENTAL STATION LABORATORY
METES AND BOUNDS DESCRIPTION OF
SOIL COVENANT AREA #2**

BEGINNING at a point along the northeasterly line of the Soil Covenant Area #2, where said point is the northwesterly corner of Soil Covenant Area #2 having DE. S.P.C.S. NAD 83 values N:645189.6106 & E:611244.7996 and from said beginning point the following five (5) courses and distances:

1. North 54 degrees 44 minutes 06 seconds East a distance of 300.00 feet to a point; thence
2. South 35 degrees 15 minutes 54 seconds East a distance of 117.30 feet to a point; thence
3. South 54 degrees 44 minutes 06 seconds West a distance of 240.34 feet to a point; thence
4. South 85 degrees 21 minutes 41 seconds West a distance of 69.33 feet to a point; thence
5. North 35 degrees 15 minutes 54 seconds West a distance of 81.89 feet to a point and place of beginning.

Said Soil Covenant Area #2, contained within the described metes and bounds totals 34,136.40 square feet or 0.784 acres of land (more or less).