

Honorable Mayor and Members  
of the Torrance City Council  
City Hall  
Torrance, California

**Members of the Council:**

**SUBJECT: Fire Department – Approve the land use covenant and environmental restriction on property located at 17405 Crenshaw Boulevard, Torrance, CA. Expenditure: None.**

**RECOMMENDATION**

Recommendation of the Fire Chief that the City Council approve the land use covenant and environmental restriction on property located at 17405 Crenshaw Boulevard, Torrance, CA.

**Funding**

None required.

**BACKGROUND/ ANALYSIS**

The property located at 17405 Crenshaw is a former gasoline station site that required soil clean-up as part of the commercial development. Some contaminated soil remains on the site but will pose no health risk.

The deed restriction allows the land to be used for specific commercial purposes and restricts change in use without further site evaluation and/or clean-up. This allows impacted properties to remain productive and beneficial to the City and yet control development of the site for future use. This strategy has been endorsed by the Los Angeles Regional Water Quality Control Board.

It is requested this item be brought forward for approval. This will allow the development and occupancy of the site to proceed forward.

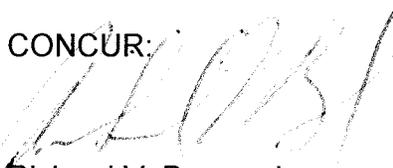
Respectfully submitted,

RICHARD V. BONGARD  
Fire Chief



By Kenneth Lew  
Hazardous Materials  
Specialist

CONCUR:



Richard V. Bongard  
Fire Chief



LeRoy J. Jackson  
City Manager

Attachment A: Covenant and Environmental Restriction on Property: Former Chevron Station No. 9-1078, 17405 Crenshaw Blvd., Torrance, CA.

**Recording Requested By:**

The Makena Great American Crenshaw Company, LLC  
c/o Makena Great American  
26342 Oso Parkway, Suite 201  
Mission Viejo, California 92691

**When Recorded, Mail To:**

City Clerk's Office  
City of Torrance  
3031 Torrance Blvd.  
Torrance, CA 90503

COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY

Former Chevron Station No. 9-1078  
17405 Crenshaw Blvd., Torrance, CA  
Assessor Parcel Number: 4091-008-018

This Covenant and Environmental Restriction on Property ("Covenant") is made as of the \_\_\_\_\_ day of May, 2008 by The Makena Great American Crenshaw Company, LLC, a California limited liability company ("Covenantor") who is the Owner of record of that certain property situated at 17405 Crenshaw Blvd., in the City of Torrance, County of Los Angeles, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the "Subject Property"), for the benefit of the City of Torrance ("City"), with reference to the following facts:

A. Nature of Covenant. This Covenant is an environmental covenant provided for by Civil Code section 1471 and required by the City because portions of the Subject Property is contaminated by hazardous materials as defined in section 25260 of the Health and Safety Code.

B. Contamination of the Subject Property. The soil and groundwater at the Subject Property were contaminated by operations of a retail motor fuel facility formerly conducted by Chevron U.S.A., Inc. ("Chevron") on the Subject Property. The known contamination originally consisted of petroleum hydrocarbons, including benzene, toluene, ethylbenzene and xylenes, which constitute hazardous materials. By means of soil excavation, the known contamination has been removed from the Subject Property by Chevron under the oversight of the California Regional Water Quality Control Board ("Board"). Residual petroleum hydrocarbons are present in the groundwater underlying the Subject Property which are being monitored by Chevron under the oversight of the Board.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in the deep soil in the parking lot of the Subject Property and groundwater at the Subject Property. A soil gas survey was conducted in the areas of the footprint of the current building prior to commencement of construction thereof and no concentrations of concern were detected. Thereafter, based upon the health risk analysis generated for this site, it was determined that commercial development could proceed.

D. Land Uses and Population Potentially Affected. The Subject Property has been redeveloped and will be used for commercial, retail and office purposes and is adjacent to commercial and residential land uses.

E. Disclosure and Sampling. Disclosure of the presence of hazardous materials on the Subject Property has been made to the Board and the City and extensive sampling of the soil gas, soil and groundwater at the Subject Property has been conducted. Groundwater monitoring continues to be conducted by Chevron under the oversight of the Board.

F. Use of Subject Property. Covenantor desires and intends that in order to benefit the City, and to protect the present and future public health and safety, the Subject Property shall be used in such a manner as to avoid potential harm to persons or property that might result from any hazardous materials that might remain present on portions of the Subject 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 Subject Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. These Restrictions are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on portions of the Subject Property of hazardous materials. Each and all of the Restrictions shall run with the land and pass with each and every portion of the Subject Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof for the benefit of the City and all Owners and Occupants. Each and all of the Restrictions (a) are imposed upon the entire Subject Property, unless expressly stated as applicable to a specific portion of the Subject Property, (b) run with the land pursuant to section 1471 of the Civil Code, and (c) are enforceable by the City.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, and possessors of all or any portion of the Subject Property shall become Owners or Occupants as defined herein and shall be deemed by their purchase, leasing, or possession of the Subject Property to be bound by the Restrictions 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 herein established must be adhered to for the benefit of the Board and all Owners and Occupants, and that the interest of all Owners and Occupants of the Subject Property shall be subject to the Restrictions.

1.3 Incorporation into Deeds. Covenantor desires and covenants that the Restrictions shall be incorporated in and attached to each and all grant deeds of all or any portion of the Subject Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant has been attached to or incorporated into any given deed.

1.4 Purpose. It is the purpose of this Covenant to convey to the City real property rights, which will run with the land, to protect human health and the environment by reducing the risk of exposure to residual hazardous materials at the Subject Property.

## ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board, Los Angeles Region and shall include its successor agencies, if any.

2.2 City. "City" shall mean the City of Torrance.

2.3 Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, gradings, re-gradings, and paved areas, constructed or placed upon any portion of the Subject Property.

2.4 Occupant or Occupants. "Occupant" or "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the right to use and/or occupy all or any portion of the Subject Property following the recordation of this Covenant.

2.5 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and Covenantor's successors in interest who hold title to all or any portion of the Subject Property.

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

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

- a. Development and use of the Subject Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Subject Property;
- c. No hospitals shall be permitted on the Subject Property;
- d. No schools for persons under 21 years of age shall be permitted on the Subject Property;
- e. No day care centers for children or day care centers for senior citizens shall be permitted

on the Subject Property;

f. No Owner or Occupant shall conduct or permit any excavation work on the Subject Property, unless expressly permitted in writing by the City. The City may require a Health Risk Assessment and further remediation as a condition of any permit. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by the Owner, Owner's agent, Occupant or Occupant's agent in accordance with all applicable provisions of local, state and federal law;

g. All uses and development of the Subject Property shall be consistent with any applicable Health Risk Assessment, each of which is hereby incorporated herein by reference, and 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 Subject Property pursuant to the requirements of the City, unless otherwise expressly permitted in writing by the City

h. No Owner or Occupant 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; nor shall the Owner or Occupant permit or engage any third party to do such acts;

i. The Owner and Occupant shall notify the Board and City 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 Subject Property pursuant to the requirements of the Board and City, 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. Notifications to the Board and City shall be made by registered mail within ten (10) working days of both the date of discovery of such disturbance and the date of completion of repairs;

j. The Covenantor agrees that the City and any persons acting pursuant to Board orders, shall have reasonable access to the Subject Property for the purposes of inspection, surveillance, maintenance, or monitoring; and

k. No Owner or Occupant shall act in any manner that threatens or is likely to aggravate or contribute to the existing contaminated conditions at the Subject Property.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the Restrictions set forth in Paragraph 3.1 shall be grounds for the City, by the authority of this Covenant, to require that the Owner or Occupant modify or remove, or cause to be modified or removed, any Improvements constructed in violation of that Paragraph. Violation of this Covenant shall also be grounds for the City to file civil actions against the Owner or Occupant as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements and grant

deeds relating to all or any portion of the Subject Property. Any such instrument shall contain the following statement.

The land described herein contains hazardous materials in soils and in the groundwater under the property, and is subject to a Covenant and Environmental Restriction dated as of \_\_\_\_\_, 20\_\_\_\_, and recorded on \_\_\_\_\_, 20\_\_\_\_, in the Official Records of \_\_\_\_\_ County, California, as Document No. \_\_\_\_\_, which Covenant and Environmental 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 Variance. Any Owner or, with the Owner's written consent, any Occupant may apply to the City for a written variance from the provisions of this Covenant, as provided by law.

4.2 Termination. Any Owner or, with the Owner's written consent, any Occupant may apply to the City for a termination of the Restrictions as they apply to all or any portion of the Subject Property, as provided by law.

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 Subject 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 (a) when delivered, if personally delivered to the person being served or an official of a government agency being served, or (b) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested, addressed:

If to: "Covenantor"

Brett G. Blanchard  
The Makena Great American Crenshaw Company, LLC  
26342 Oso Parkway, Suite 201  
Mission Viejo, CA 92691

If to "City":

City of Torrance Fire Department  
Hazardous Materials Division  
Attention: Fire Marshal  
3031 Torrance Blvd.  
Torrance, California 90503

If to: "Board"  
Regional Water Quality Control Board  
Los Angeles Region  
Attention: Executive Officer  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined by a court having jurisdiction 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 Recordation. This instrument shall be executed by the Covenantor. This instrument shall be recorded by the Covenantor in the County of Los Angeles within ten (10) days of the date of execution.

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

5.6 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to preserve and implement the purpose of this instrument and the policies and purposes 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, Covenantor has executed this Covenant as of the date set forth above.

Covenantor: The Makena Great American Crenshaw Company, LLC

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

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

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

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2008 before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_,  
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.

\_\_\_\_\_  
Signature of Notary Public

City of Torrance,  
a Municipal Corporation

\_\_\_\_\_  
Frank Scotto, Mayor

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

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

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

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2008 before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, 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 executed the same in his authorized capacity as Mayor, and that by his signature on  
the instrument the City of Torrance, or the entity upon behalf of which the person acted, executed  
the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The Subject Property referred to herein is reflected on the attached map and described as follows:

LOT 1 OF TRACT NO. 14707, IN THE CITY OF TORRANCE, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 403 PAGES 16 AND 17 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM SAID LAND THE INTEREST IN ONE-HALF OF ALL OIL, GAS, PETROLEUM, ASPHALTUM AND ANY OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AT A DEPTH OF 100 FEET OR MORE BELOW SURFACE OF SAID LAND, WHICH WAS RESERVED IN DEED FROM BERTHA M. GROSS, RECORDED JANUARY 16, 1950 IN BOOK 31972 PAGE 70 OF OFFICIAL RECORDS, WHICH PROVIDES AS SOLLWS:

IT BEING UNDERSTOOD THAT THE GRANTOR HEREIN SHALL HAVE NO RIGHTS OF INGRESS AND EGRESS OVER THE SURFACE OF SAID LAND AND THAT THIS RESERVATION IS MADE WITHOUT RIGHT OF ENTRY.

APN: 4091-008-018