

Council Meeting of
April 25, 2006

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

Members of the Council:

SUBJECT: Covenant and Environmental Restriction on City-owned property
located at 2700 Skypark

RECOMMENDATION

Recommendation of the City Manager that the City Council authorize the Mayor to Execute and the City Clerk to Attest to a Covenant and Environmental Restriction for the benefit of the California Regional Water Quality Control Board (Board) for City-owned property located at 2700 Skypark currently Leased to LDC Skypark LLC, and subleased to Lowes HIW, Inc.

FUNDING

There is no funding required for this action.

BACKGROUND/ ANALYSIS

Soil at the subject property was contaminated by Hi-Shear Corporation during manufacturing operations that occurred over 50 years at the property. These operations resulted in contamination of soil and groundwater with organic chemicals, including trichloroethene (TCE) and tetrachloroethene (PCE), which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Remediation implemented has included: (1) soil vapor extraction and (2) treatment by activated carbon and catalytic oxidation. Controls implemented have included: (1) removal of underground storage tanks that stored chlorinated solvents and (2) change in manufacturing operations to eliminate use of chlorinated solvents.

The Lessee, LDC Skypark, LLC, has been working with the Water Board to receive a closure letter making a determination that no further action is required on the site. The Water Board has been involved in the remediation of this property; however, pursuant to recent State legislation, AB 2436; the Regional Board is prohibited from issuing a letter of no further action without recording a Covenant outlining acceptable uses on the site as it relates to the types of contamination found.

The site is currently Leased to LDC Skypark, LLC for "an integrated shopping complex containing retail and related service facilities." The Lease is for 50 years with a sub-lease to Lowes for the development of a retail center with an initial term of

25 years with options that would parallel the term of the Master Lease. The restrictions on the property are as follows:

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

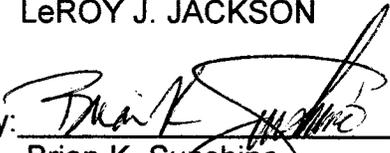
- a. Development of the Burdened Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Burdened Property;
- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age 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 Property or any portions thereof shall conduct any excavation work on the Burdened Property, unless required for construction of site improvements already described in writing to the Board prior to execution of this Covenant or, in the case of other excavation, expressly permitted in writing by the Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or Covenantor's agent in accordance with all applicable provisions of local, state and federal law;
- g. Any excavation conducted on the Burdened Property shall be performed under an appropriate and fully implemented Health and Safety Plan;
- h. 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 herein 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 Board, unless otherwise expressly permitted in writing by the Board;
- i. No Owners or Occupants of the Burdened 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;

- j. The Owner shall notify the Board of each of the following: (1) the type, cause, location and date of any disturbance to any cap, or 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 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;
- k. The Covenantor agrees that the Board, and any persons acting pursuant to Board 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;
- l. 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.

The restrictions for development are in line with the current uses in the general area as well as the adjacent airport. The Covenant will be recorded against the property and changes to the document will require formal action and Water Board concurrence. Staff recommends approval of the Covenant.

Respectfully submitted,

LeROY J. JACKSON

By: 
 Brian K. Sunshine
 Assistant to the City Manager

Concur:


 LeRoy J. Jackson
 City Manager

Attachment:

A) Covenant and Environmental Restriction

Recording Requested By:

City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, California 90503

When Recorded, Mail To:

Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013

**COVENANT AND ENVIRONMENTAL RESTRICTION ON
PROPERTY**

**LDC Skypark Parcel
2700 Skypark Drive
Torrance, California, 90509**

Draft April 11, 2006

This Covenant and Environmental Restriction on Property ("Covenant") is made as of the _____ day of April, 2006 by the City of Torrance ("Covenantor") who is the Owner of Record of that certain property situated at 2700 Skypark Drive in the City of Torrance, County of Los Angeles, State of California, which is more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter referred to as the Burdened Property), for the benefit of the California Regional Water Quality Control Board, Los Angeles Region (Board), with reference to the following facts:

A. Nature of Burdened Property Contamination

The Burdened Property and groundwater underlying it contain hazardous materials.

B. Contamination of the Burdened Property

Soil at the Burdened Property was contaminated by Hi-Shear Corporation during manufacturing operations that occurred over 50 years at the Burdened Property. These operations resulted in contamination of soil and groundwater with organic chemicals, including trichloroethene (TCE) and tetrachloroethene (PCE), which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Remediation implemented has included: (1) soil vapor extraction and (2) treatment by activated carbon and catalytic oxidation. Controls implemented have included: (1) removal of underground storage tanks that stored chlorinated solvents and (2) change in manufacturing operations to eliminate use of chlorinated solvents.

C. Exposure Pathways

The contaminants addressed in this Covenant are present in soil, soil vapor 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 direct contact with contaminated soils, wind dispersal of contaminated soils, soil vapor migration to the surface, and continued migration of contaminants to regional groundwater. Such exposure pathways could result in dermal contact, inhalation, and consumption through domestic water supply wells. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected

The 11-acre Burdened Property will be used for commercial use as a retail store and is adjacent to Hi-Shear Corporation on the east-southeast (industrial use), an office building on the west-northwest and the Torrance Municipal Airport on the south-southwest. The property north-northeast, across the street from the Burdened Property, is used for commercial purposes.

E. Disclosure and Sampling

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

F. Burdened Property Use

Covenantor desires and intends that in order to benefit the Board, 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.

G. Lease of Burdened Property

The Burdened Property is currently leased to LDC Skypark LLC, a California limited liability company (“LDC”) for a period of 50 years, commencing August 1, 2004 and terminating January 31, 2054. As Master Tenant, LDC has, in turn, subleased the Burdened Property to Lowe’s for construction and operation of a Home Improvement Warehouse. The initial term of the sublease is 25 years and runs from May 12, 2006 to May 11, 2031. As Master Tenant, LDC is responsible to the City of Torrance for complying with those conditions of the Covenant that are within the control of LDC. As such, LDC is also a signatory to the Covenant.

ARTICLE 1

GENERAL PROVISIONS

- 1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively called “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 on the land of hazardous materials. 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 Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the 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 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 Board 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 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 Burdened 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 or lease.
- 1.4 Purpose. It is the purpose of this instrument to convey to the Board 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 Board. “Board” shall mean the California Regional Water Quality Control Board, Los Angeles 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 Burdened Property.
- 2.3 Occupants. “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 Burdened Property.
- 2.4 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 Burdened Property.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

- 3.1 Restrictions on Development and Use. 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 Property or any portions thereof shall conduct any excavation work on the Burdened Property, unless required for construction of site improvements already described in writing to the Board prior to execution of this Covenant or, in the case of other excavation, expressly permitted in writing by the Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or Covenantor's agent in accordance with all applicable provisions of local, state and federal law;
- g. Any excavation conducted on the Burdened Property shall be performed under an appropriate and fully implemented Health and Safety Plan;
- h. 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 herein 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 Board, unless otherwise expressly permitted in writing by the Board;
- i. No Owners or Occupants of the Burdened 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;
- j. The Owner shall notify the Board of each of the following: (1) the type, cause, location and date of any disturbance to any cap, or 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 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;

- k. The Covenantor agrees that the Board, and any persons acting pursuant to Board 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;
- l. 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 Enforcement

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 Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove, or cause to have removed, any improvement 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.

3.3 Notices in Agreements

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 Burdened 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 _____, 2006, and recorded on _____, 2006, in the Official Records of Los Angeles County, California, as Document No. _____, 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 Variance

Any Owner or, with the Owner’s consent, any Occupant of the Burdened 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 Burdened 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 Burdened 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 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"

City Manager
City of Torrance
3031 Torrance Boulevard
Torrance, California 90503

If to: "Board"

California Regional Water Quality Control Board
Los Angeles Region
Attention: Executive Officer
320 West 4th Street, Suite 200
Los Angeles, California 90013

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 be included herein.

5.4 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.

5.5 Recordation

This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded in the County of Los Angeles within ten (10) days of execution.

5.6 References

All references to Code sections include successor provisions.

5.7 Construction

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.

Covenantor: City of Torrance

By: _____
Name: _____
Title: Mayor
Date: _____

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III

City Attorney

MASTER TENANT:

LDC SKYPARK LLC,
a California limited liability company

By: _____
Norman R. La Caze, Manager

**California Regional Water Quality Control Board,
Los Angeles Region**

By: _____
Name: Jonathan S. Bishop
Title: Executive Officer
Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The real property is located in the County of Los Angeles, State of California and is more particularly described as follows:

That portion of Parcel 32 of Official Map No. 2 in the City Of Torrance, County of Los Angeles, State Of California, as Recorded in Book 5 pages 44 - 51 in the Office of Said County Recorder, Described as beginning at the Northwesterly corner of said Parcel 32, Thence South 62 Degrees 26 Minutes 06 Seconds East 938.12 along the northerly line of Parcel 32, said northerly line also being the Southerly line of Skypark Drive, Thence leaving the Northerly line of Parcel 32 South 27 degrees 33 Minutes 44 Seconds West 422.25 feet, Thence South 6 Degrees 21 Minutes 11 Seconds East 61.46, Thence South 51 Degrees 21 Minutes 11 Seconds West 106.10 Feet, Thence South 38 Degrees 38 Minutes 49 Seconds West 180.61 Feet to a point on the Southerly line of Parcel 32, Thence along the Southerly line of Parcel 32 North 51 Degrees 21 Minutes 11 Seconds West 162.50 Feet, Thence Continuing along the Southerly line of Parcel 32 North 38 Degrees 38 Minutes 49 Seconds East 65.00 feet, Thence Continuing along the Southerly line of Parcel 32 North 51 Degrees 21 Minutes 11 Seconds West 911.77 Feet to the Westerly Line of Parcel 32, Thence Along the Westerly Line of Parcel 32 North 27 Degrees 33 Minutes 54 Seconds East 401.10 Feet to the Northwesterly corner of Parcel 32.

RESERVING THEREFROM, together with the right to grant and transfer the same, the above-described real property for the following (the "Remediation Easement"):

i) Vehicular and pedestrian entry on and over and access to the foregoing real property, including, without limitation, those area(s) of the foregoing real property upon which currently exist monitoring wells which sample the soil, soil vapor and/or groundwater, by Hi-Shear Corporation, its agents, consultants, attorneys, contractors, engineers, employees and other representatives ("Permittees") for the purpose of conducting any environmental tests or samples of the soil, soil vapor and/or groundwater of the foregoing real property that Hi-Shear Corporation may deem necessary or appropriate for the characterization, analysis, monitoring and/or remediation (collectively, the "Remediation") of the Leased Premises; and

ii) The Remediation of any Hazardous Material Condition (as hereinafter defined) and for the installation, inspection, use, operation, maintenance, repair and removal by Hi-Shear Corporation and its Permittees of any of Hi-Shear

Corporation's "Remediation Equipment" (as hereinafter defined) which currently exists or is later installed on the Property in connection with the Remediation of any Hazardous Material Condition. As used herein, the term "Remediation Equipment" means; (a) any and all existing facilities for Remediation which are now located in, on, under or about the Leased Premises; (b) any new facilities for Remediation that may be installed in, on, under or about the Leased Premises and/or (c) any facilities that may be required by any governmental authority with jurisdiction over any Hazardous Material Condition and/or the Leased Premises to be installed and (d) any replacements and upgrades of the facilities described in (a)-(c) of this sentence. Remediation Equipment shall include, without limitation, monitoring, containment, extraction, treatment and discharge facilities, structures, equipment, devices, pipes, systems or other infrastructure items for Remediation. As used herein, the term "Hazardous Material Condition" means the presence on, in or under the Leased Premises and/or the Remediation Easement Area (including without limitation the soil, soil vapor and/or groundwater of same) of any Hazardous Material at levels of contamination that require Remediation under standards required by applicable Environmental Laws.

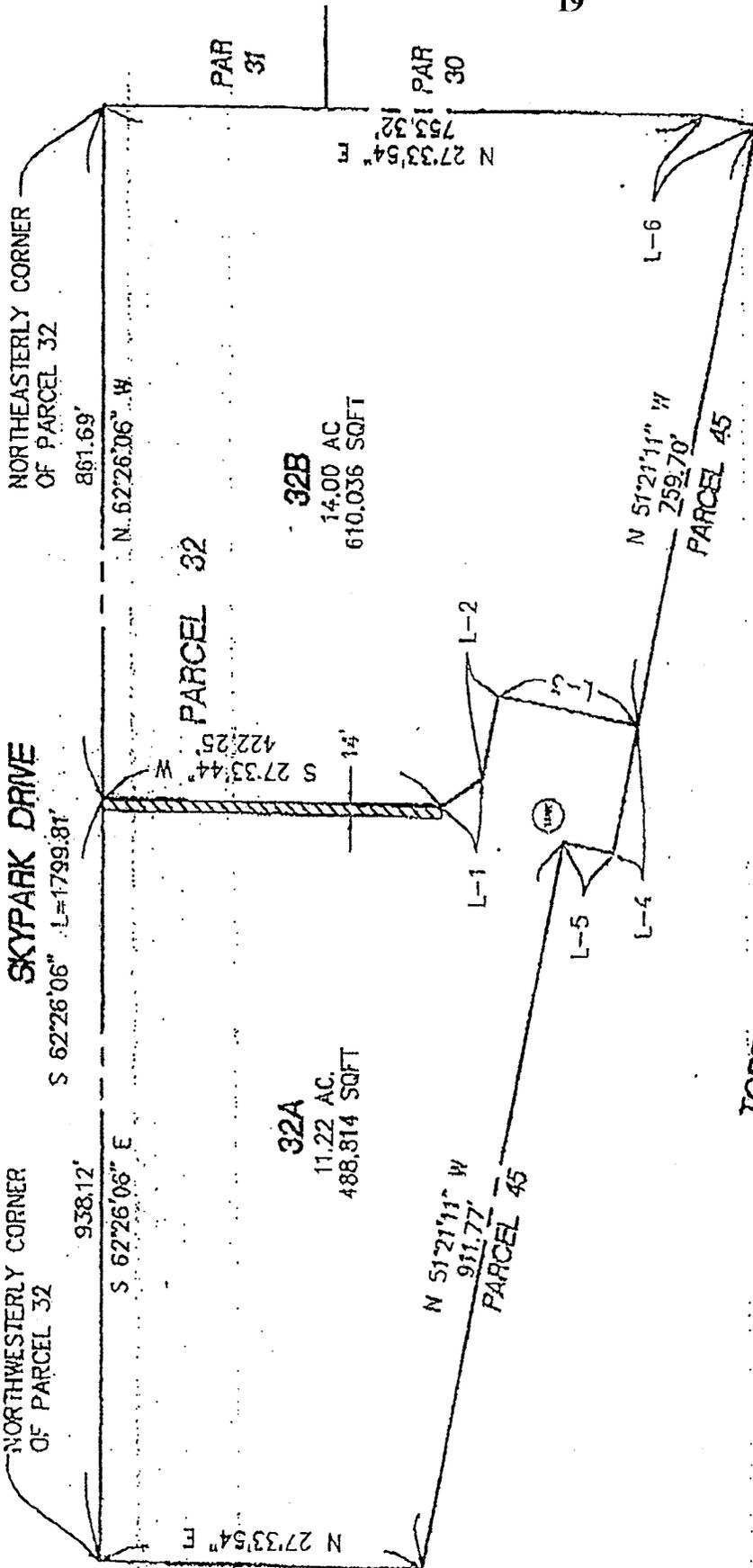
RESERVING THEREFROM, a nonexclusive easement (the "Watermain Easement") over, under, and across a 14' strip of land located along the westernmost boundary of the adjacent premises, more particularly depicted on Exhibit "B" (the "Watermain Easement Area").

TOGETHER WITH a nonexclusive easement and right-of-way (the "Road Easement") for the purposes of access over and across a 28' strip of land located along the westernmost boundary of the Leased Premises, more particularly depicted on Exhibit "B" (the "Road Easement Area").

NORTHEASTERLY CORNER OF PARCEL 32

SKYPARK DRIVE

NORTHWESTERLY CORNER OF PARCEL 32



TORRANCE AIRPORT

LINE	BEARING	DISTANCE
L-1	S 27°33'44" W	422.25'
L-2	N 51°21'11" W	14'
L-3	S 38°38'49" W	180.6'
L-4	N 51°21'11" W	162.50'
L-5	N 38°38'49" E	65.00'
L-6	N 36°38'49" E	65.00'

EXHIBIT B

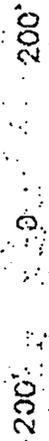
WATER LINE EASEMENT

Bryant Palmer Soto Inc.

DATED: 6-7-04



NORTH



SCALE: 1"=200'

