

Council Meeting of
April 27, 2010

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

Members of the Council:

SUBJECT: Fire Department – Approve the land use covenant and environmental restriction on property located at 18203 Western Avenue, 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 18203 Western Avenue, Torrance CA.

Funding

None required.

BACKGROUND/ANALYSIS

The property located at 18203 Western Avenue, Torrance CA, 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,



William Racowski
Fire Chief



By Kenneth Lew
Hazardous Materials Specialist

CONCUR:



William Racowski
Fire Chief


LeRoy J. Jackson
City Manager

Attachment A: Covenant and Environmental Restriction on Property:
Former Mobil Station 18203 Western Avenue, Torrance, CA

RECORDING REQUESTED BY:

Torrance R.F., LLC
 c/o Greenberg Glusker Fields
 Claman & Machtinger, LLP
 1900 Avenue of the Stars, 21st Floor
 Los Angeles, CA 90067
 Attn: David E. Cranston, Esq.

WHEN RECORDED MAIL TO:

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

(Space Above For Recorder's Use)

COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY

*This instrument is an environmental restriction
 pursuant to California Civil Code Section 1471*

Former ExxonMobil Station No. 18EDP
 18203 S. Western Avenue, Torrance, CA 90504
 Assessor Parcel Number: 4096-019-043

THIS COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY (this "**Covenant**") is made as of the ___ day of _____, 2010, by Torrance R.F., LLC, a California limited liability company ("**Owner**") which is the Owner of record of that certain property situated at 18203 S. Western Avenue, in the City of Torrance, County of Los Angeles, State of California, 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 by Civil Code section 1471 and required by the City because portions of the Subject Property are contaminated by hazardous materials as defined in Section 25260 of the Health and Safety Code.

B. Owner owns certain real property situated in the City of Torrance, County of Los Angeles, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference. Owner plans to redevelop to the Subject Property and construct a commercial/retail building (the "**Building**") on the Subject Property.

C. The Subject Property was formerly a gasoline service station operated by Exxon Mobil, a New Jersey corporation (“**ExxonMobil**”) or its predecessors-in-interest, from at least 1968 until 1996, and by others from 1996 until sometime before 2005. The soil and groundwater at the Subject Property were contaminated by operations of a retail motor fuel facility formerly conducted by ExxonMobil and successor entities. The known contamination originally consisted of petroleum hydrocarbons including benzene, toluene, ethylbenzene and xylenes, which constitute hazardous materials. By means of soil excavation, the majority of the known contamination has been removed from the Subject Property by ExxonMobil under the oversight of the California Regional Water Quality Control Board (“**Board**”) and Torrance Fire Department (TFD). Petroleum hydrocarbon (“**TPH**”) and volatile organic compound (“**VOC**”) impacted soil and groundwater is currently present at the Subject Property due to past releases of gasoline from the former ExxonMobil gasoline service station.

D. Several subsurface investigations and quarterly groundwater monitoring events have subsequently been conducted by ExxonMobil with regulatory oversight from the California Regional Quality Control Board, Los Angeles Region (the “**Board**”) and TFD. Remediation of the Subject Property, by means of soil vapor extraction system, is currently being conducted by ExxonMobil with oversight from the Board (the “**Remediation**”).

E. The contaminants addressed in this Covenant are present in soil at the Subject Property. A soil gas survey was conducted in the areas of the footprint of the proposed building prior to commencement of construction thereof. Based on the results of the soil gas survey, it is proposed that a vapor barrier be installed beneath the footprint of the proposed building. As an interim mitigation measure until such time the Remediation is completed, Owner, with City’s oversight, will install a Liquid Boot[®] vapor barrier or equivalent (the “**Vapor Barrier**”) beneath the Building. The design and installation of the Vapor Barrier will be inspected and certified by a California licensed professional engineer and approved by City.

F. The Subject Property is currently vacant but will be redeveloped and used for commercial, retail and office purposes. Adjacent uses include commercial and residential land uses.

G. 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.

H. In addition to the installation of the Vapor Barrier, in order to protect present and future public health and safety, Owner desires and intends to further ensure that the Subject Property is used in a manner which avoids potential harm to persons or property which may result from the presence of contaminants on the Subject Property.

I. This Covenant is given to bind Owner and successive Owners of the Subject Property to restrictions on the future use of the Subject Property, which restrictions are for the benefit of the City, for the Board as an intended third-party beneficiary, and to protect the present and future public health and safety.

ARTICLE 1
GENERAL PROVISIONS

1.1 Provisions to run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (“**Restrictions**”), upon and subject to which the Subject Property and every portion thereof shall be held, used, improved, 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 Civil Code section 1471; and (c) are enforceable by the City.

1.2 Deemed Concurrence. All purchasers, lessees, and possessors of all or any portion of the Subject Property shall become Owners and Occupants as defined herein and shall be deemed by their purchase, leasing, or possession of the Subject Property to be irrevocably bound by the Restrictions and to agree for and among themselves, and their heirs, successors, assignees, the agents, employees, licensees, and lessees of such Owners, heirs, successors, and assignees, that the Restrictions herein established must be adhered to for the benefit of the City 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 and Leases. The Restrictions are shall be incorporated in and attached to each and all future purchase agreements, deeds, grant, creation or conveyance of any interest in the Subject Property or portion thereof. 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 lease, purchase agreement or grant 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 2

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 to 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 successor in interest who hold fee title to all or any portion of the Subject Property.

ARTICLE 3
DEVELOPMENT, USE, AND CONVEYANCE OF THE SUBJECT PROPERTY

3.1 Restrictions on Use. Owner shall restrict the use of the Subject Property as follows:

(a) Development and use of the Subject Property shall be restricted to industrial, commercial, and office space;

(b) No Owner or Occupant of the Subject Property or any other party having custody or control of the Subject Property shall build or permit any of the following structures on the Subject Property:

(i) a residence or residences,

(ii) a hospital for humans,

(iii) a school for persons under 21 years of age, and

(iv) a daycare center for children or day care centers for senior citizens.

(c) No Owner or Occupant shall drill, bore, or otherwise construct or install or use any wells or permit others to drill, bore, or otherwise construct or install any wells for the purpose of extracting water from below the surface of the ground of the Subject Property for any use, including but not limited to, domestic, potable, or industrial uses other than for the Remediation. Further, no Owner shall extract, utilize, consume or permit to be extracted any water from below the surface of the ground of the Subject Property other than for the Remediation.

(d) No Owner or Occupant of the Subject Property or any other party having custody or control of the Subject Property by any means shall excavate, grade, dig, drill or bore the soils in, on or under the Subject Property where TPH and VOC impacted soil is present, unless such person obtains prior written consent in each instance from Owner and City. The City may require a health risk assessment and further remediation as a condition of the 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. Concurrently with the recordation of this Covenant, City has approved the plans and construction-period protective measures for the initially planned Improvements (as defined below) to the Subject Property.

(e) No Owner or Occupant of the Subject Property or any other party having custody or control of the Subject Property by any means shall take any action that adversely

affects the integrity of the Vapor Barrier (e.g., cutting through the building slab, installing new underground utilities beneath the slab, making repairs to existing underground utilities beneath the slab, etc.) unless such person obtains prior written consent in each instance from Owner and City.

(f) 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 or Board, unless otherwise expressly permitted in writing by the City or Board.

(g) 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 working days of both the date of discovery of such disturbance and the date of completion of repairs;

(h) Owner 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

(i) 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 Notice in Agreements. Owner shall include in all deeds, leases or licenses of any portion of the Subject Property 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 _____, 2010, and recorded on _____, 2010 in the Official Records of Los Angeles County, California, as Document No. _____. The [sold/leased/licensed] property is subject to a use limitation based on past environmental contamination of a portion of the Property. To protect public health and safety, the property is subject to a Covenant and Environmental Restriction that runs with the land which imposes certain covenants, conditions, and restrictions on the usage of the property described herein. This statement is not a declaration that a hazard exists.”

ARTICLE 4
ENFORCEMENT

4.1 Enforcement. Failure of any Owner or Occupant to comply with any of the Restrictions shall be grounds for City to require the then current Owner or Occupant of the Subject Property to modify or remove any Improvements (as defined herein) constructed or placed upon any portion of the Subject Property in violation of the Restrictions. Violation of this Covenant shall be grounds for City to file any actions as provided by law. As used herein, the term “**Improvements**” shall mean all buildings, roads, driveways and paved parking areas.

4.2

ARTICLE 5
VARIANCE AND TERMINATION

5.1 Variance. Owner, or any other Owner of the Subject Property or any portion thereof, may apply to the Board and City for a written variance from or modification of this Covenant, as provided by law.

5.2 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.

5.3 Term. Unless terminated in accordance with Paragraph 5.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE 6
MISCELLANEOUS

6.1 No Dedication Intended. Nothing herein shall be construed to be a grant or dedication, or offer to grant or dedicate, the Subject Property or any portion thereof to the public for any purposes whatsoever.

6.2 Notices. All notices, demands, requests, consents, approvals, waivers, releases, modifications, terminations or other communications relating to this Covenant shall be in writing and shall be deemed effective (a) when delivered, if personally delivered to the person being served or official of a government agency being served, or (b) three business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To City: City of Torrance Fire Department
 Hazardous Materials Division
 3031 Torrance Boulevard
 Torrance, CA 90503
 Attn: Fire Marshal

With a copy to:

 City Clerk’s Office
 City of Torrance
 3031 Torrance Blvd.

Torrance, CA 90509-2970

To Owner: Torrance R.F., LLC
 c/o Kaji & Associates
 18527 S. Western Avenue #15
 Gardena, CA 90248
 Attn: Mr. Jon Kaji

With a copy to:

Greenberg Glusker Fields Claman & Machtinger LLP
 1900 Avenue of the Stars, 21st Fl.
 Los Angeles, CA 90067
 Attn: David E. Cranston, Esq.

To Board: Regional Water Quality Control Board
 Los Angeles Region
 Attn: Executive Officer
 320 W. 4th Street, Suite 200
 Los Angeles, CA 90013

Any party may change its address by notice to the other parties as provided above.

6.3 Partial Invalidity. If any portion of the Covenant 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.

6.4 Article Headings. Headings at the beginning of each numbered article and section of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

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

6.6 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 his 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.

6.7 Recordation. This instrument shall be executed by Owner. This instrument shall be recorded by the Owner in the County of Los Angeles within ten days of the date of execution.

6.8 Complete Agreement. This Covenant evidences the complete agreement among the City and Owner, and supersedes all prior offers, contracts, agreements and arrangements between the parties concerning the Subject Property. Except as provided in Article 5, this Covenant may not be changed, modified or rescinded except in a writing, that is recorded in the Official Records of Los Angeles County, and which is signed and acknowledged by City and the party owning the portion of the Subject Property as to which such change, modification or

rescission will apply, and any attempt at actual or oral modification shall be void and of no effect.

6.9 Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute but one and the same Covenant.

[Signature Page Follows Immediately]

IN WITNESS WHEREOF, Owner and City have executed this Covenant as of the date set forth above.

“OWNER”

TORRANCE R.F., LLC,
a California limited liability company

By: _____

Name: Jonathan Kaji

Title: Managing Partner

“CITY”

CITY OF TORRANCE
a municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, a Notary Public, personally appeared _____, 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 _____

(Seal)

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, a Notary Public, personally appeared _____, 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 _____

(Seal)

EXHIBIT "A"
LEGAL DESCRIPTION