

RECORDING REQUESTED BY:

Mrs. Mary Hoskins
660 North 5th Street
Brawley, California 92227

CHUCK STOREY

COUNTY CLERK/RECORDER

P PUBLIC

Doc#: **2017021428**

Titles: 1 Pages: 12
Fees NO FEE

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attention: John Scandura
Branch Chief
Brownfields and Environmental
Restoration Program



SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

Document entitled to free recordation under CA Government Code § 27383

LAND USE COVENANT AND AGREEMENT

ENVIRONMENTAL RESTRICTIONS

County of Imperial, Assessor's Parcel Number (APN) 047-342-007

Site Name: Brawley Radiator Shop

Site Code: 401171-SM

This Land Use Covenant and Agreement ("Covenant") is made by and between Mary Hoskins (the "Covenantor"), the current owner of property located at 556 E Street, Brawley, in the County of Imperial, State of California (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 the Department hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5, the use of the Property be restricted as set forth in this Covenant and that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I

STATEMENT OF FACTS

1.1. Property Location. The Property that is subject to this Covenant, totaling

approximately 7,500 square feet, is more particularly described in the attached Exhibit A, "Legal Description", and depicted in Exhibit B, "Plot Map". The Property is located in the area now generally bounded by "E" Street to the north, North 6th Street to the east, and commercial/industrial buildings to the west and south. The Property is also identified by Imperial County Assessor's Parcel Number (APN) 047-342-007. A limited portion of the Property is more particularly identified as the Brawley Radiator Shop, located on the northeastern section of the Property, and the subject of the Department's removal action described below. The remaining area, comprised of an unpaved driveway, parking area, and the Automotive Glass Repair Shop, is not part of the removal action.

1.2. Remediation of Property. This Property has been investigated and remediated under the Department's oversight. The Department approved a Removal Action Workplan in accordance with Health and Safety Code, division 20, chapter 6.8. The response activities conducted at the Property include the removal of 20 cubic yards of arsenic and lead contaminated soil, which were then backfilled with clean imported soil. Though the removal action was completed, hazardous substances, including volatile organic compounds (VOCs), such as tetrachloroethene (PCE) at 8.5 µg/L and trichloroethene (TCE) at 14 µg/L in groundwater, remain on the Property above levels acceptable for unrestricted land use.

Background History: In February 1999, DTSC conducted an inspection of the Brawley Radiator Shop and found numerous violations, including the disposal of hazardous wastewater into the sewer and storage of hazardous waste on-site without prior authorization by DTSC. In 2007, DTSC conducted a Preliminary Endangerment Assessment, which revealed the nature and extent of the chemicals of concern, including arsenic, lead, PCE, and TCE. In 2010, contaminated soils were removed in accordance with the Removal Action Workplan; however, PCE and TCE remain on the Property.

1.3. Basis for Environmental Restrictions. As a result of the presence of hazardous substances, which are also hazardous materials as defined in Health and Safety Code section 25260, at the Property, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as

part of the Department-approved remedy for the Property. The Department has also concluded that the Property, as remediated and when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

ARTICLE II

DEFINITIONS

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

2.2. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, requirements, prohibitions, and terms and conditions as set forth in this Covenant.

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

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

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

2.6. Owner. "Owner" or "Owners" means the Covenantor, and any successor in interest including any heir and assignee, who at any time holds title to all or any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.1. 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 Civil Code section 1471 and Health and Safety Code section 25355.5; (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.

3.2. Binding upon Owners/Occupants. This Covenant: (a) binds all Owners of

the Property, their heirs, successors, and assignees; and (b) the agents, employees, and lessees of the Owners and 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; this Covenant, however, is binding on all Owners and Occupants, and their respective successors and assignees, only during their respective periods of ownership or occupancy except that such Owners or Occupants shall continue to be liable for any violations of, or non-compliance with, the Environmental Restrictions of this Covenant or any acts or omissions during their ownership or occupancy.

3.3. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and lease for any portion of the Property.

3.4. Conveyance of Property. The Owner and new Owner shall provide Notice to the Department not later than 30 calendar days after any conveyance or receipt of any ownership interest in the Property (excluding leases, and mortgages, liens, and other non-possessory encumbrances). The 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 APN noted on page one. If the new Owner's property has been assigned a different APN, each 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 proposed conveyance, except as otherwise provided by law or by administrative order.

3.5. Costs of Administering the Covenant to Be Paid by Owner. The Department has already incurred and will in the future incur costs associated with this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor 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 costs in administering, implementing, and enforcing this Covenant.

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes without prior written approval by the Department:

- (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.
- (c) A public or private school for persons under 18 years of age.
- (d) A day care center for children.

4.2. Soil Management. Soil management activities at the Property are subject to the following requirements in addition to any other applicable Environmental Restrictions:

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed at the Property without a Soil Management Plan pre-approved by the Department in writing.
- (b) Any soil brought to the surface by grading, excavation, trenching, or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.3. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Drilling for any water, oil, or gas without prior written approval by the Department.
- (b) Extraction or removal of groundwater without a Groundwater Management Plan pre-approved by the Department in writing.

4.4. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

4.5. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk

in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspection or at any other time, the Owner must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the Covenant; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 calendar days of its original transmission.

ARTICLE V
ENFORCEMENT

5.1. 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, such as failure to submit (including 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, REMOVAL AND TERM

6.1. Variance from Environmental Restrictions. Any person may apply to the Department for a written variance from any of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2. Removal of Environmental Restrictions. Any person may apply to the Department to remove any of the Environmental Restrictions imposed by this Covenant or terminate the Covenant in its entirety. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3. Term. Unless ended in accordance with paragraph 6.2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.1. 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.

7.2. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Imperial within 10 calendar days of the Covenantor's receipt of a fully executed original.

7.3. 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: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) five calendar days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Mrs. Mary Hoskins
660 North 5th Street
Brawley, California 92227

And

To Department:

Mr. John Scandura, Branch Chief
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

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

7.4. 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.

7.5. Statutory References. All statutory or regulatory references include successor provisions.

7.6. Incorporation of Exhibits. All exhibits and attachments to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Covenantor and the Department hereby execute this Covenant.

Covenantor:

By: Mary Hoskins

Title: Mary Hoskins, Owner

Date: 9/7/17

Department of Toxic Substances Control:

By: [Signature]

Title: John Scandura, Branch Chief

Date: July 31, 2017

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of ORANGE

On 7/31/17 before me,

YOUNG SAM CHOI, Notary Public
(space above this line is for name and title of the officer/notary),

personally appeared John Scandura, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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,

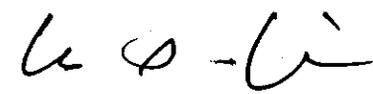
 (seal)
Signature of Notary Public



Exhibit A

LEGAL DESCRIPTION

Lots 29 and 30, Block 71, Townsite of Brawley, in the City of Brawley, County of Imperial, State of California, according to Map No. 920 on file in the office of the County Recorder of San Diego County, a copy of said map being on file in the office of the County Recorder of Imperial County, described as follows:

Beginning at the northwest corner of Lot 30, Block 71, Townsite of Brawley per Official Records Book 1 at page 20 on file in the office of the Imperial County Recorder and the True Point of Beginning; thence East 50.0 feet along the north line of said Lots 30 and 29 to the northeast corner of Lot 29; thence South 150.0 feet along the east line of said Lot 29 to the southeast corner of Lot 29; thence West 50.0 feet along the south line of Lots 29 and 30 to the southwest corner of said Lot 30; thence North 150.00 feet along the west line of said Lot 30 to the northwest corner of Lot 30 and the True Point of Beginning.

Containing 7500 sq. ft. more or less.

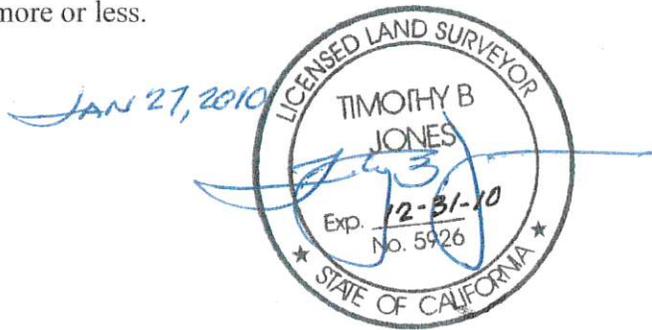
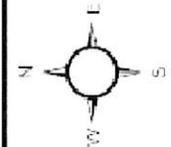


Exhibit B

556 E Street, Brawley, California 92227



Assessor's
Parcel Number
047-342-007

08/21/2014

1" = 188 ft

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Imperial County staff for the most up-to-date information.