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20121614101



Pages:
0015

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Recorder's Office, Los Angeles County,
California

10/24/12 AT 01:16PM

FEES:	57.00
TAXES:	0.00
OTHER:	0.00
PAID:	<u>57.00</u>



LEADSHEET



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DAR - Counter (Upfront Scan)



THIS FORM IS NOT TO BE DUPLICATED

RECORDING REQUESTED BY:

Gardena Marketplace LLC
11726 San Vicente Boulevard, Suite 235
Los Angeles, CA 90049

10/24/2012



20121614101

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311
Attention: Jose F. Diaz
Project Manager
Brownfields and Environmental
Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTIES

ENVIRONMENTAL RESTRICTION

(Re: County of Los Angeles APNs: 6106-010-015, Lot 2, 1711 West Artesia Boulevard, 6106-010-016, Lot 3, 1741 West Artesia Boulevard, 6106-010-017, Lot 4, 1701 West Artesia Boulevard, 6106-010-018, Lot 5, 1691 West Artesia Boulevard, Gardena, California 90247, Department of Toxics Substances Control's Site Code number: 301261

This Covenant and Agreement ("Covenant") is made by and between Gardena Marketplace, LLC. (the "Covenantor"), the current owner of Properties situated in the City of Gardena, County of Los Angeles, State of California, described in Exhibit "A" and depicted in Exhibit "B," attached, (the "Properties"), 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 Department, collectively referred to as the "Parties,"

hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Properties be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Properties, totaling approximately 169,311 square feet, are more particularly described and depicted in the attached Exhibits "A" and "B". The Properties are located in the area now generally bounded by Western Avenue on the west, a trailer park on the north, Gardena Marketplace Lot 3 on the south, and Gardena Marketplace Lot 2 on the east. The Properties is also generally described as Los Angeles County Assessor's Parcel Numbers: 6106-010-015, -016, -017, and -018.

1.02. Honeywell, International, Inc. remediated the properties under the supervision and authority of the Department. The Properties was remediated pursuant to a Removal Action Workplan (RAW) under the oversight of the Department pursuant to Health and Safety Code, division 20, chapter 6.8. Because hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, including polychlorinated biphenyls (PCBs) remain in the soil in and under the Properties, the RAW provided that this Covenant be recorded against the Properties as part of the site remediation. The Department circulated the RAW, which contains a Human Health Risk Assessment together with a notice of exemption, pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. for public review and comment. The RAW and notice of exemption were approved by the Department on September 11, 2007. Remediation included, among other things, installation and maintenance of a geotextile fabric overlain by clean soil in the planter areas of the Properties.

The operation and maintenance of the cap, which includes building foundations and

pads, asphalt pavement, concrete sidewalks and curbs, planter areas capped with geotextile fabric and clean soil (Cap), is pursuant to the Department approved Cap Management Plan dated November 2008 (CMP).

1.03. As detailed in the final RAW approved by the Department on September 11, 2007, a portion of the surface and subsurface soils within 10 feet of the surface of the Properties contain hazardous substances, as defined in Health and Safety Code section 25316, which include the following contaminants of concern in the ranges set forth below: PCBs from 0.052 milligrams per kilogram (mg/kg) to 160 mg/kg. Based on the Final Risk Assessment the Department concluded that use of the Properties as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable human health risk. The Department further concluded that the Properties, as remediated, and subject to the environmental restrictions in this Covenant, does not present an unacceptable threat to human health or safety or the environment, if limited to commercial or industrial use.

ARTICLE II DEFINITIONS

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

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

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

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

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Properties.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Properties.

ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Properties 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 Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Properties, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Properties unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Properties, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Properties are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Properties.

3.04. Conveyance of Properties. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Properties (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Properties and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's Properties has been assigned a different APN, each such APN that covers the Properties 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.

3.05. Costs of Administering the Covenant. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for himself 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 cost in administering the Covenant. However, Owner shall not be obligated to pay such costs as long as costs for administering this Covenant are paid by Honeywell International Inc. pursuant to Operation and Maintenance Agreement (Docket No. HAS-O&MA 12/13-020).

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Properties shall not be used for any of the following purposes:

- (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, including medical office buildings providing overnight accommodations.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.
- (e) Care or community centers for children or senior citizens.

(f) Well for the purpose of extracting water for any use, including but not limited to domestic, potable, or industrial uses nor shall the Owner or Occupant permit or engage any third party to do such acts.

4.02. Soil Management.

- (a) No activities that will disturb the soil beneath the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed on the Properties without a Soil Management Plan approved by the Department in advance of such activities being conducted.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching, backfilling, or other activity shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building or other activity that could disturb the soil beneath the Cap.
- (d) In cases of emergency subsurface repairs, the owner shall notify the Department within 24 hours and all repairs will be conducted per the approved Soil Management Plan.

4.03. Non-Interference with Cap

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Properties without prior written approval by the Department unless they are in compliance with the Cap Management Plan (CMP).
- (b) All uses and development of the Properties shall preserve the integrity or effectiveness of the Cap.
- (d) The Cap shall not be altered without prior written approval by the Department.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Properties for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05 Access for Implementing Operation and Maintenance. The person or entity responsible for implementing the Cap Management Plan, conducting inspections, and conducting Five-Year reviews shall have reasonable right of entry and access to the Properties for the purpose of conducting the activities described above until the Department determines that such activities are no longer required.

4.06. Inspection and Reporting Requirements. The Owner shall conduct quarterly inspections of the Properties verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by March 5th 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 were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If any violations of this Covenant are identified during the annual inspections or at any other time, the Owner must within **(10 days)** of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within **(10 days)** of its original transmission. However, Owner shall not be obligated to perform inspection and reporting requirements as long as such inspection and reporting requirements are performed by Honeywell International Inc. pursuant to Operation and Maintenance Agreement (Docket No. HAS-O&MA 12/13-020).

ARTICLE V

ENFORCEMENT

5.01. 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 Properties in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the 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, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Properties. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. 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 Properties, or

any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Los Angeles within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. 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: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party 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:

To Owner:

Gardena Marketplace LLC
11726 San Vicente Boulevard, Suite 235
Los Angeles, CA 90049

To Cap Operator:

Honeywell International Inc.
Mr. Benny DeHghi, Remediation Manager
2525 West 190 th Street, M/S 23-1-80
Torrance, CA 90504

and

To Department:

Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311
Attention: Gardena Marketplace Site Project Manager
Brownfields and Environmental Restoration Program

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

7.04. 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.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

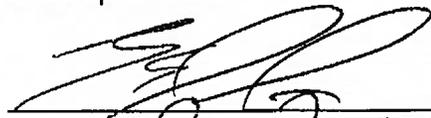
IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Gardena Marketplace LLC

By (signature):

Print Name and Title:

Date:



Edward J. Miller

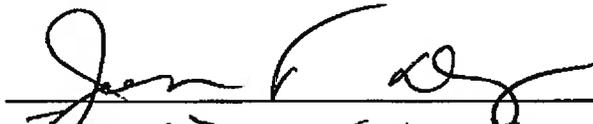
9/25/2012

Department of Toxic Substances Control:

By (signature):

Print Name and Title:

Date:



JOSE F. DIAZ, SENIOR SCIENTIST

OCTOBER 4, 2012

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Los Angeles

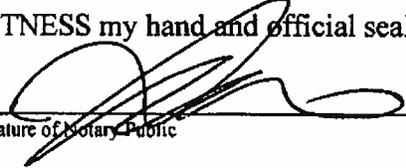
On 10/04/2012 before me, Tae Sung Kim, Notary Public
(Here insert name and title of the officer)

personally appeared Jose Francisco Diaz

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 of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT

Covenant to Restrict Use of
(Title or description of attached document)

Properties Environmental Restriction
(Title or description of attached document continued)

Number of Pages 10 Document Date 10/4/12

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

State of California

County of Los Angeles

On September 25th 2012 before me,

Yelena Osadchaya Notary Public
(space above this line is for name and title of the officer/notary).

personally appeared Edward J. Miller, 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 of Notary Public

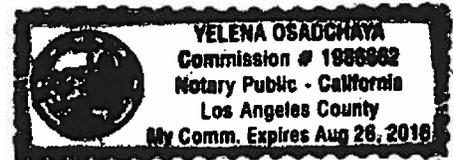


EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Parcel 1:

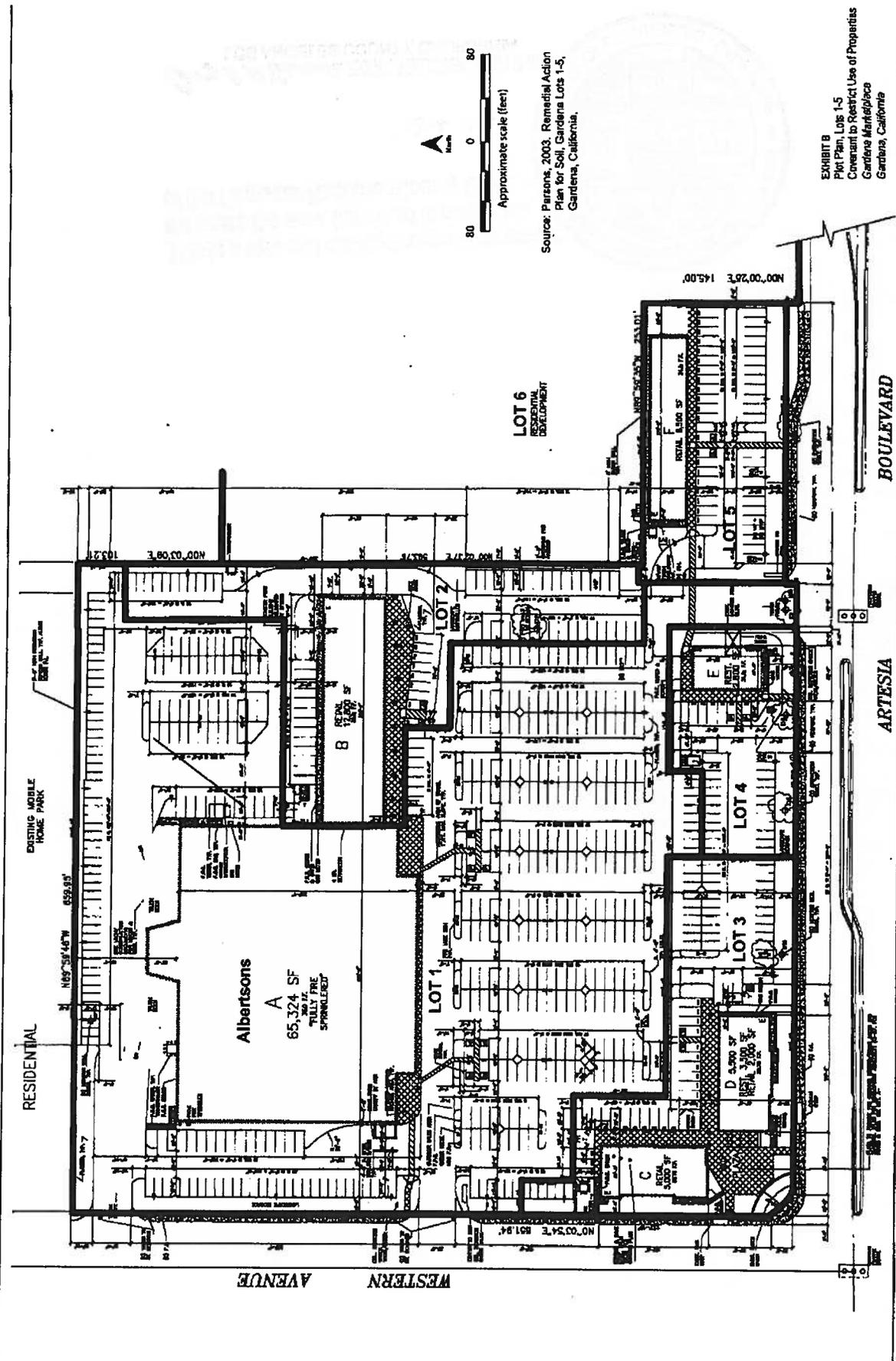
Lots 2, 3, 4 and 5 of Tract No. 52273, in the City of Gardena, County of Los Angeles, State of California, as per map recorded in Book 1246, Pages 98 through 100 inclusive of Maps, in the Office of the County Recorder of said County.

Except one-half of the oil, gas, and other hydrocarbon substances in, under and/or that may be produced from a depth below 500 feet, from the surface of said land, but without any use of or rights in or to any portion of the surface of said land or the subsurface thereof to a depth of 500 feet below the surface thereof as reserved in deeds recorded March 24, 1953, as Document No. 993, in Book 41290, Page 256, Official Records, March 24, 1953, as Document No. 996, in Book 41284, Page 278, of Official Records.

Parcel 2:

Non-exclusive easements for access, ingress and egress, drainage, maintenance, repairs and other purposes, within the Common Area, pursuant to that certain Declaration of Restrictions and Grant of Easements, recorded August 30, 2000, as Instrument No. 00-1364703, Official Records.

Assessor's Parcel Number: 6106-010-015, 6106-010-016, 6106-010-017, and
6106-010-018



Source: Parsons, 2003. Remedial Action Plan for Soil, Gardena Lots 1-5, Gardena, California.

EXHIBIT B
 Plot Plan, Lots 1-5
 Covenant to Restrict Use of Properties
 Gardena Marketplace
 Gardena, California

This is a true and certified copy of the record
if it bears the seal, imprinted in purple ink,
of the Registrar-Recorder/County Clerk

OCT 24 2012

Angela M. Blank REGISTRAR-RECORDER/COUNTY CLERK
LOS ANGELES COUNTY, CALIFORNIA

