

Appendix E: form of the land use covenant (LUC)

Appendix E - Exemplar Land Use Covenant

RECORDING REQUESTED BY:

Bridge Point South Bay II, LLC
Mr. Brian Wilson, Manager
1600 East Franklin Avenue, Suite D
El Segundo, CA 90245

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attention: Branch Chief
Site Mitigation and Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

LAND USE COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTIONS

County of Los Angeles, Assessor's ID Number(s): 7348-020-013
Bridge Point South Bay II, LLC
DTSC Site Code: 401815

This Land Use Covenant to Restrict Use of Property ("Covenant") is made by and between Bridge Point South Bay II, LLC (the "Covenantor"), a California limited liability company, the current owner of the property located in the City of Torrance, County of Los Angeles, 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 because of the presence on the Property of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471 and H&SC section 25355.5, that the use of the Property be restricted as set forth in this Covenant. The Parties further agree that the Covenant shall conform to the requirements of California Code of Regulations, title 22, section 67391.1. The provisions of this Covenant shall be

for the benefit of, and shall be enforceable by, the United States Environmental Protection Agency ("U.S. EPA"), as a third-party beneficiary pursuant to general contract law, including, but not limited to, Civil Code Section 1559.

ARTICLE I
STATEMENT OF FACTS

1.01. Property Location. The Property that is subject to this Covenant is within the boundaries of the Montrose Chemical Superfund site ("Montrose Site"), specifically as part of the Historic Storm Water Pathway Operable Unit 6 (OU6); is located at 20846 Normandie Avenue, Torrance, California; totals approximately 8.9 acres; and is more particularly described in the attached Exhibit A, "Legal Description of Property," and depicted in Exhibit B, "Plot Plan." The Property is located in the area now generally bounded by Torrance Boulevard on the north, commercial establishments on the south, residential properties on the east, and Normandie Avenue on the west, respectively; and is commonly referred to as 20802, 20846, and 20850 South Normandie Avenue, Torrance, California. The Property is also identified as County of Los Angeles, Assessor's ID Number 7348-020-013 which was formerly Los Angeles County Assessor's ID numbers: 7348-020-003, 7348-020-004, 7348-020-007, 7348-020-008, 7348-020-009 and 7348-020-010. A Los Angeles County easement (concrete culvert) is located on the eastern portion of the Property as shown on Exhibit B.

1.02. Hazardous Substances. Hazardous substances, as defined in section 25316, Chapter 6.8, Division 20 of the California Health and Safety Code ("H&SC"); section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 USC §9601 (14); and also in 40 Code of Federal Regulations ("CFR") parts 261.3 and 302.4, remain in soils on portions of the Property. These substances are also hazardous materials as defined in H&SC section 25260. These substances include, in soil: total petroleum hydrocarbons, as gasoline (TPHg); total petroleum hydrocarbons, as diesel (TPHd); polychlorinated biphenyls (PCBs); and organochlorine pesticides (OCPs), including dichlorodiphenyltrichloroethane (DDT). The substances in soil gas include: volatile organic compounds (VOCs), including tetrachloroethylene (PCE), trichloroethene (TCE)

and ethylbenzene; and semi-volatile organic compounds (SVOCs). The eastern side of the Property is also contaminated with high levels of DDT at around 8 to 24 feet below ground surface.

1.03. Remediation of the Property. Soils on this Property were investigated and some soils were removed under the oversight of the U.S. EPA and the Department. Laboratory analytical results from various site investigations between 2005 and 2015 indicated the presence of the hazardous substances listed in Section 1.02 in soils and soil gas on the Property. In 2015-2016, approximately 10,000 cubic yards of soil contaminated primarily with DDT was excavated and removed from the Property, although soils contaminated with DDT still remain on the Property.

In 2018, pursuant to an Administrative Settlement Agreement and Order on Consent for Removal Actions with U.S. EPA ("AOC"), Covenantor conducted additional human health and ecological risk assessment work, based on current and expected future site conditions, and received U.S. EPA's approval on May 2, 2018 with the Department's concurrence. This Data Evaluation and Human Health Risk Assessment ("HHRA") evaluated human health risks through ingestion, dermal contact, and inhalation of dust and soil vapors by future occupational (commercial/industrial) and construction workers. TPHg, TPHd, TPH oil range C23-C35 (TPHo), VOCs, SVOCs, and OCPs, including DDT, were identified as primary chemicals of concern for human health. Based on the HHRA, cancer risks for construction worker and commercial/industrial use did not exceed 10^{-6} or hazard index of one. However, the maximum remaining concentrations of TPHg (510 mg/kg) in soil, DDT (325 mg/kg) in soil, and tetrachloroethylene (1.57 ug/L), trichloroethene (0.49 ug/L) and ethylbenzene (1.43 ug/L) in soil gas, are above the residential screening levels and thus, the Property is not suitable for unrestricted land use.

1.04. Basis for Environmental Restrictions. As a result of the presence of hazardous substances, which are also hazardous materials as defined in H&SC section 25260 at the Property, the U.S. EPA has concluded, with the Department's concurrence, 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. The U.S. EPA with the Department's concurrence, has 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

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

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any. As of January 18, 2019, U.S. EPA is the CERCLA Lead Agency for the Property with the lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

2.03. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the NCP. U.S. EPA or a state agency acting pursuant to a contract or cooperative agreement executed under CERCLA section 104(d)(1), 42 U.S.C. 9604(d)(1), or designated pursuant to a CERCLA Memorandum of Agreement entered into under subpart F of the NCP (40 C.F.R. 300.505) may be designated CERCLA Lead Agency.

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

2.05. Improvements. "Improvements" include, but are not limited to buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

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

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

2.08. 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

3.01. Restrictions to Run 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 H&SC section 25355.5(a) and Civil Code section 1471; (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.

3.02. Binding upon Owners/Occupants. Pursuant to the H&SC, this Covenant binds all Owners and Occupants of the Property. Pursuant to Civil Code section 1471, all successive Owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Department's Specific Written Approval. This Covenant satisfies the requirements for specific written approval from the Department in Health and Safety Code section 25227, so long as the land use of the Property is consistent with: a) the restrictions in this Covenant; and b) the risk management decision in the approved HHRA referenced in Paragraph 1.03 of this Covenant.

3.04. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, assignment, or other transfer of any interest, including a grant of easement, in the Property, or any portion thereof, the Owner, lessor, or sublessor shall give the buyer, lessee, sublessee, or easement holder, written notice of the existence of this Covenant and its Environmental Restrictions. Covenantor shall also provide a copy of this Covenant to all existing Occupants of record within 30 days of recording this Covenant.

3.05. Incorporation into Deeds and Leases. The Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and lease for any portion of the Property.

3.06. Conveyance of Property. The Owner and new Owner shall provide Notice to the Department and U.S. EPA not later than thirty (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 Assessor's Parcel Number(s) noted on page one. If the new Owner's property has been assigned a different Assessor Parcel Number, each such Assessor's Parcel Number that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law or by administrative order.

3.07. Costs of Administering the Covenant to Be Paid by Owner. 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 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 the Covenant, including but not limited to costs of implementation and enforcement.

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.01. 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 permanently occupied human habitation, other than those used for industrial purposes.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

(a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed on the Property without an approved Soil Management Plan by the CERCLA Lead Agency or the

Department. The Soil Management Plan must be approved by the CERCLA Lead Agency if the soils to be disturbed are potentially impacted by DDT. Soils are considered to be potentially impacted by DDT if the soils lie within the area bounded by the red dotted line in Exhibit C, "Pesticide-impacted Area". If the soils to be disturbed are potentially impacted by DDT, the Soil Management Plan must be approved by the Department. All soils on the Property shall be managed in accordance with the approved Soil Management Plan and all applicable provisions of state and federal law,

4.03. Prohibited Activities. The following activities without prior written approval from the CERCLA Lead Agency:

- (a) Drilling for any water, oil, or gas.
- (b) Extraction of Groundwater for any purpose.
- (c) Activity that may interfere with, or otherwise affect the integrity or effectiveness of any activity required for the Property under either this Covenant or applicable federal, state or local law.

4.04. Non-Interference with Response Measures and Activities.

- (a) The Owner and Occupant shall not participate in or allow any activity that would interfere with the operation of any response measure(s) or activities at the Property or Montrose Site-wide without prior written approval from the CERCLA Lead Agency.
- (b) All uses and development of the Property shall preserve the integrity of any onsite or other Montrose Site-wide response activities.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities on the Property 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. Nothing in this instrument shall limit or otherwise affect the Department's right of entry and access, or authority to take response actions, under CERCLA; 40 CFR Part 300; Chapter 6.8, Division 20 of the H&SC; California Civil Code, or other applicable State Law.

4.06. Access for U.S. EPA. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response

actions, under CERCLA; the NCP; or federal law.

4.07. Access for Five Year Reviews. The entity, person or persons responsible for Five Year Reviews shall have reasonable right of entry and access to the Property for the purpose of implementing these activities. Such right of entry and access shall continue until such time as the CERCLA Lead Agency determines that no further Five Year Review activities are required.

4.08. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department and to the U.S. EPA for their approval by January 15th of each year. The annual report shall describe how all requirements outlined in this Covenant have been met. The annual report, filed under penalty of perjury, shall certify that the Property is being used in a manner consistent with this Covenant. The annual report must include the dates, times, and names of those who conducted 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 report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must, within ten (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 enforcement of this Covenant shall be sent to the Department and U.S. EPA within ten (10) days of its original transmission.

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 Property 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.

5.02. Enforcement Rights of U.S. EPA as a Third Party Beneficiary. U.S. EPA, as a third party beneficiary, has the right to enforce the Environmental Restrictions contained herein.

ARTICLE VI

VARIANCE, REMOVAL AND TERM

6.01. Variance Any person may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25223 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No variance may be granted under this paragraph without prior notice to and an opportunity to comment by U.S. EPA.

6.02. Removal. 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 H&SC section 25224 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No termination may be granted under this paragraph without prior notice to and opportunity to comment by U.S. EPA.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, after providing notice to and an opportunity to comment by U.S. EPA, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No Dedication or Taking 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. Further, nothing in this Covenant shall be construed to effect a taking under State or federal law.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Los Angeles within 10 calendar days of the

Covenantor's receipt of a fully executed original. The Covenantor shall also provide copies showing the County Recorder's tracking information of its recording (i.e., document number or book and page number information) to the Department and U.S. EPA within ten (10) days of receiving it from the County Recorder's Office.

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. Courtesy copies will not constitute Notice and are provided merely for the convenience of the recipient.

To Owner: Bridge Point South Bay II, LLC
Mr. Brian Wilson, Manager
1600 East Franklin Avenue, Suite D
El Segundo, CA 90245

And

To Department: Branch Chief
Site Mitigation and Restoration Program
5796 Corporate Avenue
Cypress, California 90630

To the U.S. EPA: Anhtu Nguyen/Current RPM for the Montrose Chemical
Superfund Site
U.S. Environmental Protection Agency
Region IX
Superfund Division (SFD-7-2)
75 Hawthorne Street
San Francisco, CA 94105-3901

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, or the application of it to any person or circumstance, shall remain in full

force and effect as if such portion found invalid had not been included herein.

7.05. Statutory and Regulatory References. All statutory and regulatory references include successor provisions.

7.06. Incorporation of Attached Exhibits. All attached exhibits to this Covenant are incorporated herein by reference.

7.07. California Law. This Covenant shall be governed, performed and interpreted under the laws of the State of California.

7.08. No Delegation. Nothing set forth in this Covenant shall be construed to be a delegation of any authorities of the Department under any statute or regulation.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Bridge Point South Bay II, LLC

By: _____ Date: _____
Brian Wilson, Manager

Department of Toxic Substances Control:

By: _____ Date: _____
_____, Acting Branch Chief^e
Site Mitigation and Restoration Program, Cypress Branch

Exhibit A - Legal Description of Restricted Property

[Legal Description of Property to be inserted here]

Exhibit B - Restricted Property

[Depiction of Property to be inserted here]