

June 29, 2017

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Concord City Council  
City Hall  
41 Green Street  
Concord, NH 03301

Re: Proposed Development  
51 Antrim Street – Map 111G / Block 1 / Lot 63

Dear City Councilors:

This firm represents Tre. Torri, LLC, which is currently under contract to purchase and intends to develop property located within the Industrial District at 51 Antrim Street in Concord, NH (Map 111G / Block 1 / Lot 63) doing business as Equipment East. Specifically, Equipment East seeks to construct a building with an approximately 18,500 sq. ft. footprint (23,200 gross square feet) to house a construction equipment dealership from which it will conduct sales, rentals, and incidental servicing.

The purpose of this letter is to request waiver of provision (c)(6) of the May 18, 2007 Covenants entered into between the current owner of the parcel, Capital Regional Development Council (“CRDC”), and the City of Concord, a copy of which Covenant is attached hereto as Exhibit A. Specifically, this provision prohibits “[a]utomotive and vehicular-related uses including service, repair, and body shops’ fleet/trucking/bust terminals; car washes; and automotive salvage yards” from occurring on the covered parcels. As stated above, the business that Equipment East intends to conduct on this parcel will include incidental servicing of the construction equipment sold and rented by the company, and waiver of this provision is therefore necessary for this development to occur.

We do not believe that waiver of this covenant will in any way adversely impact the surrounding area, or the City of Concord. The subject property and surrounding area, all of which are proximate to the airport, is zoned for industrial uses, and there are no nearby residential lots. As such, the requested relief is not expected to have an adverse impact on surrounding properties. The applicable zoning ordinance makes clear that the Industrial District is “established for the development of manufacturing, research and development facilities, wholesaling,

warehousing, distribution, and offices . . . .” Concord, NH Zoning Ordinance at 28-2-2(b)(16). As such, waiver of the subject covenant, which would permit the proposed development to go forward, would not be contrary to the ordinance, but rather would permit the intended development of this area to proceed, bringing further tax revenues to the City.

Similarly, the requested relief would not be contrary to the public interest, as it would not alter the character of the area, or threaten public health, safety, or welfare. The area is exclusively industrial, and we understand that the City has been actively encouraging development of these parcels. In pursuing its development, Equipment East, along with its engineers at Nobis Engineering, Inc., are committed to maintaining a system which will adequately handle storm water on site to protect the nearby aquifer. Also, Equipment East intends to establish Spill Prevention, Control, and Countermeasures (“SPCC”) to further ensure that the integrity of the aquifer is maintained at all times. Such plans are currently in the developmental stages.

The property is subject to special conditions due to the fact that substantial portions of the land at issue overlays the Aquifer Protection District. While this does present a hardship for the proposed development, Equipment East certainly understands the importance of this district, and is committed to working with the City to ensure that “the quality and quantity of groundwater resources available to be used as [drinking water] in the City of Concord” is protected. Concord, NH Zoning Ordinance at 28-3-6(a). As such, Equipment East will do its part to ensure that the proposed development will not impact the quality of the groundwater at issue by developing an infiltration system that will predominantly direct storm water to the area of the property that is outside of the Aquifer Protection District. An infiltration gallery sited on the northwest portion of the property could infiltrate storm water runoff from a significant portion of the developed area, including the building. In addition, it is proposed that the storage yard located over the Aquifer Protection District would be paved. This proposal provides added protection to the aquifer by directing runoff to catch basins connected to an infiltration system. The catch basins would be equipped with hoods to reduce trash, floatables, oil and sediment from storm water. In the event of a leak or spill, contaminants would be conveyed to a known location for ease of access, assessment and remediation. Further, as stated previously, an SPCC will be in place to ensure that the safety of the aquifer is maintained.

The requested waiver will achieve substantial justice for all involved, as it will permit the proposed development to proceed in accordance with the City's plan for the Industrial District while, at the same time, making sure that the quality and quantity of ground water in the aquifer remain undisturbed. The permitted development will result in further tax revenues for the City of Concord, and embody the growth and development that the Zoning Ordinance envisions for this district.

For all of these reasons, we respectfully request that the City Council grant Tre. Torri, LLC doing business as Equipment East a waiver of provision (c)(6) of the May 18, 2007 Covenants regarding the 51 Antrim Street parcel. We look forward to working together to bring this mutually advantageous development to fruition.

Very truly yours,

TRE. TORRI, LLC  
D/B/A EQUIPMENT EAST

By and through its Attorneys,

DEVINE, MILLIMET & BRANCH,  
PROFFSSIONAL ASSOCIATION

By:   
Suzanne Brunelle, Esq.

Exhibit A

[Covenant]

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B 41  
362-



Doc# 682435  
Book: 2995  
Pages: 1187 - 1191  
Filed & Recorded  
06/15/2007 9:19AM  
KATHI L. GUAY, CPO, REGISTER

MERRIMACK COUNTY REGISTRY OF DEEDS  
RECORDING \$ 26.00  
SURCHARGE \$ 2.80  
POSTAGE \$ 0.41

Return to:

CITY OF CONCORD  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
CITY HALL - 41 GREEN ST  
CONCORD, NH 03301

Book 2995 Page 1187

Covenants

These Covenants are made this 18<sup>th</sup> day of May, 2007, by Capital Regional Development Council, of Box 664, Concord, New Hampshire 03302-0664 (hereinafter referred to as "CRDC").

Recitals:

- A. CRDC is the owner of certain parcels of land on Henniker Street and Antrim Avenue in the City of Concord, New Hampshire, identified as Lots 2, 3, 4, and 5 on the subdivision plan entitled "Overall Subdivision Plan (Sheet S-3)," prepared by Burd Engineering, dated April 22, 2004, Rev. 9/23/04, and recorded as Plan No. 17345 at the Merrimack County Registry of Deeds (hereinafter "CRDC Lots");
- B. CRDC has requested the City to rezone the CRDC Lots from the Office Park Performance (OFFP) District to the Industrial (IN) District; and
- C. As a condition to rezoning, the City has requested, and CRDC is willing to record, covenants on the CRDC Lots that restrict uses that could create a risk of contamination or loss of recharge to the aquifer underlying the lots or could result in less valuable forms development, but that would otherwise be permitted in the Industrial District.

Now, therefore, for consideration paid, CRDC imposes the following covenants and restrictions on the CRDC Lots:

- 1. Definitions. Each reference in these Covenants to the following terms shall be deemed to have the following meanings:
  - A. "Regulated Chemicals and Substances" shall be defined as those listed under 40 CFR 302, 7-1-05 edition, excluding the following substances: ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, potassium permanganate, and propane and other liquefied fuels which exist as gasses at normal atmospheric temperature and pressure.

- B. Bulk Storage shall mean, as to liquids, storage in a container of amounts in excess of 100 gallons.

2. Groundwater Protection

In the event that the City of Concord (the "City") amends its Zoning Ordinance such that the Office Park Performance (OFFP) District designation for the CRDC Lots is changed to an Industrial (IN) District, thereafter the CRDC Lots shall be subject to the following covenants, and the Concord Planning Board, pursuant to its consideration of an application for any proposed development of CRDC Lots under the Board's Site Plan Review Regulations, may review such proposed developments with respect to the City's interest in maintaining and protecting groundwater and the aquifer by application of the following standards:

A. Site Plan Application Requirements

- (1) Site plans and building designs for proposed uses that include the handling of regulated chemicals and substances, as hereinafter defined, shall include facilities for the safe delivery, storage, handling, and usage of regulated chemicals, as well as spill prevention and collection devices to address potential accidents involving the regulated chemicals. Regulated chemicals and substances shall not be discharged into the natural environment or into the municipal sanitary sewer system in violation of Federal, State, or local laws, rules, or regulations. Uses that include the handling of regulated chemicals and substances shall at all times be in compliance with all applicable State and Federal laws, rules, and regulations.
- (2) For any proposed site development, a storm water management plan shall be prepared which shall maximize the recharge of captured runoff into the ground on the site or off-site but in the same aquifer.

B. Performance Standards for Regulated Chemicals and Substances.

For any principal or accessory use allowed by right, special exception, or conditional use permit pursuant to Article 28-2-4(j) or Article 28-2-4(k) of the Concord Zoning Ordinance that includes the bulk on-site collection, handling, manufacture, use, management, storage, processing or recycling of regulated chemicals and substances; or that includes the bulk on-site collection, handling, manufacture, use, storage, processing or recycling of hazardous materials or wastes, both solid and liquid, the following standards shall apply:

- (1) Any storage of these regulated chemicals and substances in containers with a capacity of 5 gallons or more shall be in product-tight containers and stored on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;

- (2) Storage facilities where regulated chemicals and substances are stored shall be secured against unauthorized entry by means of doors or gates that are locked when authorized personnel are not present and shall be inspected on a weekly basis by the facility owner;
- (3) Outdoor storage areas for regulated chemicals and substances shall be protected from exposure to precipitation and shall be located at least fifty (50) feet from surface water or storm drains, at least seventy-five (75) feet from private wells, and outside of the sanitary protective radius of wells used by public water systems;
- (4) Secondary containment shall be provided for outdoor storage of regulated chemicals and substances if an aggregate of two hundred seventy-five (275) gallons or more of regulated chemicals and substances are stored outdoors on any CRDC Lot;
- (5) Containers in which regulated chemicals and substances are stored shall be clearly and visibly labeled and shall be kept closed and sealed when material is not being transferred from one container to another.

C. Prohibited Uses. The following uses are prohibited on the CRDC Lots:

- (1) Bulk storage of fuel for distribution and bulk storage of motor vehicle fuel;
- (2) Outdoor storage of road salt or other deicing chemicals in bulk;
- (3) Siting or operation of a junkyard;
- (4) Siting or operation of a snow dump for storage of snow brought in from off the property;
- (5) Subsurface disposal of non-domestic untreated wastewater;
- (6) Automotive and vehicular-related uses including service, repair, and body shops; fleet/trucking/bus terminals; car washes; and automotive salvage yards;
- (7) Retail sale of gasoline and other petroleum-based fuels;
- (8) Subsurface storage of regulated chemicals and substances, or petroleum and other refined petroleum products;
- (9) Dry cleaning plants or establishments;
- (10) Excavation of earth materials pursuant to Section 28-5-26 of the Concord Zoning Ordinance;
- (11) Materials recycling and processing;

- (12) Commercial painting, wood preserving, and furniture stripping; and
- (13) Operation of a hazardous waste disposal facility, solid waste landfill, or septage lagoon.

3. Restriction on Outdoor Storage of Materials

Outdoor storage shall not be permitted as the principal use of a CRDC lot. For any principal use that may be otherwise allowed on the CRDC lots and that includes the outside storage of materials as an accessory use, the ratio of the area of the lot to be covered or otherwise designated for outside storage to the gross floor area of all buildings on the lot, as measured from the outside wall surfaces, shall be no greater than one and three tenths to one (1.3 to 1).

4. Enforcement Of The Covenant; Amendments.

These covenants shall be enforceable by CRDC, its successors and assigns, and by the City including, without limitation, by obtaining injunctive relief against any threatened violation. These covenants may not be amended without the City's written approval. These covenants constitute covenants in gross as to the rights of CRDC and the City.

5. Construction Of Covenant And Terms.

This covenant is to be construed in accordance with the laws of the State of New Hampshire, is binding upon CRDC and its successors and assigns, including any successor owner of any of the CRDC Lots, and shall run with the land of the subject properties. This Agreement shall be governed by and enforced in accordance with the laws of the State of New Hampshire. Any legal action to enforce or interpret this Agreement shall be instituted in Merrimack County Superior Court.

IN WITNESS WHEREOF, Capital Regional Development Council has executed these covenants as of the date stated above.

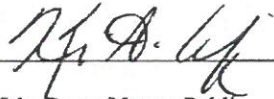
Capital Regional Development Council

By: William C. Cannon  
William C. Cannon, Vice President



STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

This instrument was acknowledged before me on May 18, 2007, by  
William C. Cannon as Vice President of Capital Regional Development Council.



Justice of the Peace/Notary Public  
My Commission expires:

MCRD



MERRIMACK COUNTY RECORDS

 CPO, Register