

RECORDING REQUESTED BY:
Showplace Square Loft Company, LLC
300 DeHaro Street, #344
San Francisco, California 94103

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup
Operations Branch



San Francisco Assessor-Recorder
Mabel Teng, Assessor-Recorder
DOC- 2003-H341285-00

Acct 25-NO CHARGE DOCUMENT
Tuesday, JAN 21, 2003 15:42:00
Ttl Pd \$0.00 Nbr-0002053688
REEL I307 IMAGE 1051
oar/TD/1-9

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

**(Re: Assessor's Parcel Block 3956, Lots 9 and 10
DeHaro/Rhode Island Live/Work Site)**

This Covenant and Agreement ("Covenant") is made by and between Showplace Square Loft Company, LLC (the "Covenantor"), the current owner of property situated in San Francisco, County of San Francisco, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), 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 ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property, totaling approximately 23,000 square feet, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference.

The Property consists of one segment of a former railroad right-of-way between the intersections of 17th/DeHaro and 16th/Rhode Island Streets in the City and County of San Francisco, State of California. This property is more specifically described as San Francisco County Assessor's Parcel Block 3956, Lots 9 and 10.

1.02. The City of San Francisco published a preliminary Negative Declaration for the construction of live/work units at this Site on May 7, 1993. The document was amended on July 28, 1993 and adopted on September 23, 1993. The adopted Negative Declaration required 1) all areas of exposed (existing) soil be encapsulated onsite beneath covers (i.e., the proposed building slab or pavement), or beneath two feet of imported, clean dirt fill; 2) disposal of any soil removed from the Site in an appropriate disposal facility; 3) implementation of a health and safety plan; and 4) recordation of a disclosure statement which would be attached to the deed. On April 3, 1996, DTSC entered into a Voluntary Cleanup Agreement to oversee implementation of the site remediation activities required in the City of San Francisco's Negative Declaration, including implementation of a deed restriction.

1.03 The Site has been the subject of several investigations performed by different consultants. Total lead was detected at two feet below the ground surface (bgs) and five feet bgs at concentrations up to 6,300 parts per million (ppm) and 7,800 ppm, respectively. The average total lead levels at the Site at two feet bgs and five feet bgs were 1,450 ppm and 3,144 ppm, respectively. The level of lead found at this Site exceeds California hazardous waste criteria of 1,000 ppm. It also exceeds the U.S. Environmental Protection Agency's (US EPA) Region IX Preliminary Remediation Goal for lead in a residential setting of 400 ppm.

1.04. The Site was capped in two phases. Lot 9 was capped with Rufco 400 SSB, a vapor/moisture barrier made by Raven Industries, which was then covered with a four-inch gravel layer, a 10-mil visqueen vapor barrier, a two-inch sand layer and a ten inch concrete floor slab in March and April 1997. Lot 10 was capped with Rufco 400 SSB and four inches of gravel in July 1999. The remainder of the cap was installed upon construction of the additional live/work lofts.

ARTICLE II
DEFINITIONS

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

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

2.03. 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 Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) 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 H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer,

lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). 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, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Non-Interference with Cap. Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the Department.
- (b) All uses and development of the Capped Property shall preserve the integrity of the Cap.
- (c) The Cap shall not be altered without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.02. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes

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of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas); constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, 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 H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, 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 Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of [name of county] within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. 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:

Mr. Christian Barbe
Showplace Square Loft Company, LLC
300 De Haro Street
San Francisco, California 94103

To Department:

Ms. Barbara J. Cook, P.E., Chief
Northern California - Coastal Cleanup Operations Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

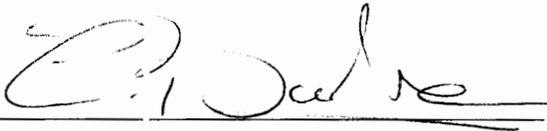
Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is 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.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Showplace Square Loft Company, LLC

By: 

Title: Christian Barbe, Managing Member

Date: January 21 2003

Department of Toxic Substances Control

By: 

Title: Barbara J. Cook, P.E., Branch Chief

Date: 1/21/2003

EXHIBIT A

CITY OF SAN FRANCISCO

LOTS 9 AND 10, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A RESUBDIVISION OF LOT 7, (PORTION OF ASSESSOR'S BLOCK 3956) OF PARCEL MAP, IN BOOK 20, PAGE 125, PORTION OF POTRERO NUEVO BLOCK NO. 165, SAN FRANCISCO, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON AUGUST 3, 1995, IN BOOK 42 OF PARCEL MAPS, AT PAGES 86 TO 87, INCLUSIVE.

EXCEPTING THEREFROM, ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS TO GRANTOR, ITS SUCCESSORS AND ASSIGNS, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF SAID LANDS, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE OF SAID LANDS OR TO INTERFERE WITH THE USE THEREOF BY GRANTEE, ITS SUCCESSORS OR ASSIGNS, PROVIDED, HOWEVER, THAT GRANTOR, ITS SUCCESSORS AND ASSIGNS, WITHOUT PRIOR WRITTEN PERMISSION OF GRANTEE, ITS SUCCESSORS OR ASSIGNS, SHALL NOT CONDUCT ANY MINING ACTIVITIES ABOVE A PLANE FIFTY FEET (50') BELOW THE SURFACE OF THE SAID LANDS, AS RESERVED BY UNION PACIFIC RAILROAD COMPANY, A CORPORATION OF THE STATE OF UTAH, IN DEED RECORDED JUNE 30, 1988, IN BOOK E627, OFFICIAL RECORDS, PAGE 1845.

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STATE OF CALIFORNIA)
COUNTY OF ALAMEDA)

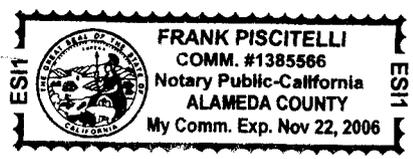
On this 21st day of JANUARY, in the year 2003,

before me FRANK PISCITELLI, personally appeared
BARBARA S. COOK,

personally known to me (or 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/hers/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.

WITNESS my hand and official seal

Signature *Frank Piscitelli*



STATE OF CALIFORNIA)
COUNTY OF ALAMEDA)

On this 21st day of JANUARY, in the year 2003,

before me FRANK PISCITELLI, personally appeared
CHRISTIAN BARBO,

personally known to me (or 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/hers/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.

WITNESS my hand and official seal.

Signature *Frank Piscitelli*

