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**RECORDING REQUESTED BY  
FIDELITY NATIONAL TITLE**

FMNA-MTO 1000164

RECORDING REQUESTED BY:

CH Realty VIII/R San Francisco Pacheco Plaza, L.P.  
3819 Maple Avenue  
Dallas, Texas 75219

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control

700 Heinz Avenue  
Berkeley, California 94710  
Attention: Mark Piros, Unit Chief  
Brownfields and Environmental  
Restoration Program



2018-0038824

Recorded  
Official Records  
County of  
Marin  
RICHARD N. BENSON  
Assessor-Recorder  
County Clerk

08:33AM 09-Nov-2018

REC FEE 71.00  
SB2 HOUSING 75.00  
DA FRAUD FEE 10.00

Page 1 of 20

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**LAND USE COVENANT AND AGREEMENT**

**ENVIRONMENTAL RESTRICTIONS**

County of Marin, Portion of Assessor Parcel Number: 160-190-13  
Pacheco Plaza One Hour Cleaners  
Department Site Code: 202171-11

This Land Use Covenant and Agreement ("Covenant") is made by and between CH Realty VIII/R San Francisco Pacheco Plaza, L.P. (the "Covenantor"), the current owner of property located at 446 Ignacio Boulevard, Novato, in the County of Marin, 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.

See, attached Exhibit A, B and C.

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IDENTITY NATIONAL TITLE  
RESPONSE REQUESTED BY

## ARTICLE I

### STATEMENT OF FACTS

1.1. Property Location. The Property is approximately 8.10 acres in size and is located in the area now generally bounded by Arroyo San Jose creek to the north, residential use to the east, and Ignacio Boulevard to the southwest with residential use beyond. The Property is also identified as County of Marin, Assessor Parcel Number 160-190-13.

The area of the Property that is subject to this Covenant ("Restricted Area"), totaling approximately 0.51 acres in size, is more particularly described in the attached Exhibit A, "Legal Description", and depicted in Exhibit B, Plat Map. The Restricted Area is a limited portion of the Property and Exhibit B shows where the 0.51 acres that comprise the Restricted Area are located on the Property. A Site Diagram is attached as Exhibit C to show where the limited portion of the Property to be restricted is located in relationship to the buildings located at the Property.

1.2. Investigation of Property. This Property has been investigated under the Department's oversight. The Department approved a *Site Characterization Report* in accordance with Health and Safety Code, division 20, chapter 6.8. The investigation activities conducted at the Property include site characterization activities performed to evaluate the concentrations of volatile organic compounds (VOCs) in soil gas, indoor air, and groundwater at the Property. Soil, soil gas, groundwater, and indoor air samples were collected and analyzed for VOCs in accordance with various workplans approved by the Department. Hazardous substances, including tetrachloroethene (PCE) in soil at 7,500 micrograms per kilogram ( $\mu\text{g}/\text{kg}$ ); PCE at 22,000 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), trichloroethene (TCE) at 14,000  $\mu\text{g}/\text{m}^3$ , cis-1,2-dichloroethene at 20,000  $\mu\text{g}/\text{m}^3$ , trans-1,2-dichloroethene at 3,100  $\mu\text{g}/\text{m}^3$ , and vinyl chloride at 430  $\mu\text{g}/\text{m}^3$  in soil gas; and TCE at 2.3  $\mu\text{g}/\text{m}^3$  and 1,2-dichloroethane at 0.33  $\mu\text{g}/\text{m}^3$  in indoor air, remain at the Property above levels acceptable for unrestricted land use.

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 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 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 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 of administering this Covenant, including but not limited to costs of implementation and enforcement.

ARTICLE IV  
RESTRICTIONS AND REQUIREMENTS

4.1. Prohibited Uses. The Restricted Area shall not be used for any of the following purposes without the Department's prior, specific written approval for that land use pursuant to Health and Safety Code section 25227:

- (a) A new use of the Restricted Area, except that the Department's approval is not required for the use, modification or expansion of an existing industrial or manufacturing facility, if, on or before January 1, 1981, the Restricted Area was owned by or held for the beneficial use of that facility or complex.
- (b) Subdivision of the Restricted Area; except for subdivision to divide that portion of the parcel that contains hazardous materials, as defined in Health and Safety Code section 25260(d), from other portions of that parcel.
- (c) Construction or placement of a building or structure on the Restricted Area that is intended for use as any of the following, or the new use of an existing structure for the purpose of serving as any of the following:
  - (i) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
  - (ii) A hospital for humans.
  - (iii) A public or private school for persons under 18 years of age.
  - (iv) A day care center for children.
  - (v) A permanently occupied human habitation, other than those used for industrial purposes.

4.2. Soil Management. Soil management activities at the Restricted Area 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 Restricted Area 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 Restricted Area:

- (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.
- (c) Activity that may alter, interfere with, or otherwise affect the integrity or effectiveness of, or the access to, any investigative, remedial, monitoring, operation or maintenance system (*e.g., cap, vapor extraction system, monitoring system, groundwater extraction system*) or activity required for the Property without prior written approval of the Department.
- (d) Construction of a new building or buildings at the Restricted Area without prior DTSC approval. DTSC approval will be based on an evaluation of the Site conditions at the time a new building or buildings is proposed and may require additional investigation or engineering controls (*e.g. vapor barriers*).

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. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities, if any, shall have reasonable right of entry and access to the Property for the purpose of implementing such operation and maintenance activities until the Department determines that no further operation and maintenance activity is required.

4.6. 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 15<sup>th</sup> 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.

4.7 Five-Year Review. In addition to the annual reviews noted above, after a period of five (5) years from the date of recordation of the Covenant and every five (5) years thereafter, the Owner shall submit a Five-Year Review report documenting its review of the remedy implemented and its evaluation to determine if human health and the environment are being adequately protected by the remedy as implemented. The report shall describe the results of all inspections, sampling analyses, tests and other data generated or received by the Owner and evaluate the adequacy of the implemented remedy in protecting human health and the environment. As a result of any review work performed, the Department may require the Owner to perform additional review work or modify the review work previously performed by the Owner.

#### 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 Marin 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:           Asset Manager  
                          CH Realty VIII/R San Francisco Pacheco Plaza, L.P.  
                          3819 Maple Avenue,  
                          Dallas, Texas 75219

And

To Department: Mark Piros, P.E., Unit Chief  
Brownfields and Environmental Restoration Program  
700 Heinz Avenue,  
Berkeley, California 94710

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: CH REALTY VIII/R SAN FRANCISCO PACHECO PLAZA, L.P.,  
A Delaware limited partnership

By: CH Realty VIII/R San Francisco Pacheco Plaza GP, L.L.C.,  
A Delaware limited liability company,  
its general partner

By: Fund VIII Managers, L.L.C.,  
A Texas limited liability company,  
its manager

By:   
Name: Tiffani A. Heidebrecht  
Title: Vice President

Date: October 3, 2018

Department of Toxic Substances Control:

By: Mark Piros  
Mark Piros, P.E., Unit Chief  
Brownfields and Environmental Restoration Program

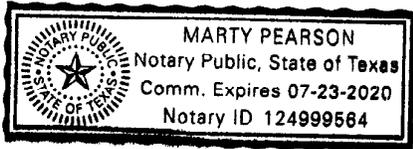
Date: 10/17/2018

STATE OF TEXAS            )  
  )  
COUNTY OF DALLAS        )

The foregoing instrument was acknowledged before me this 3rd day of October, 2018, by Tiffani A. Heidebrecht, as Vice President of Fund VIII Managers, L.L.C., the manager of CH Realty VIII/R San Francisco Pacheco Plaza GP, L.L.C., the general partner of CH Realty VIII/R San Francisco Pacheco Plaza, L.P., a Delaware limited partnership, on behalf of said limited partnership and limited liability companies.

Witness my hand and official seal.

*Marty Pearson*  
\_\_\_\_\_  
Notary Public, State of Texas



My commission expires:  
7/23/2020

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 Alameda

On October 17, 2018 before me,

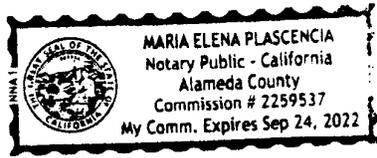
MARIA ELENA PLASCENCIA Notary Public  
(space above this line is for name and title of the officer/notary),

personally appeared Mark Piros, 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] (seal)  
Signature of Notary Public



# EXHIBITS

**EXHIBIT A**

**LEGAL DESCRIPTION**

**EXHIBIT "B-1"**  
**COVENANT TO RESTRICT USE OF PROPERTY - ENVIRONMENTAL RESTRICTION**

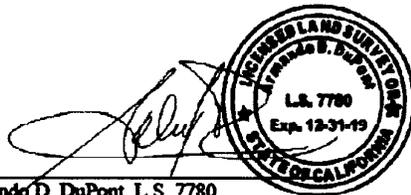
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THAT PORTION OF LAND CONVEYED TO CH REALTY VIII/R SAN FRANCISCO PACHECO PLAZA, L.P., A DELAWARE LIMITED PARTNERSHIP, IN THE CITY OF NOVATO, COUNTY OF MARIN, STATE OF CALIFORNIA, PER GRANT DEED RECORDED DECEMBER 28, 2017 AS INSTRUMENT NO. 2017-0051688 OF OFFICIAL RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID LAND CONVEYED TO CH REALTY VIII/R SAN FRANCISCO PACHECO PLAZA, L.P., A DELAWARE LIMITED PARTNERSHIP; THENCE SOUTH 5°55'02" EAST ALONG THE EASTERLY LINE OF SAID LAND, 130.55 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 86°26'51" WEST, 122.82 FEET; THENCE SOUTH 3°33'09" EAST, 175.92 FEET; THENCE NORTH 86°26'51" EAST, 130.09 FEET TO A POINT ON SAID EASTERLY LINE; THENCE NORTH 5°55'02" WEST ALONG SAID EASTERLY LINE, 176.07 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 22,246 SQUARE FEET, MORE OR LESS.

AS SHOWN ON EXHIBIT "B-2" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.



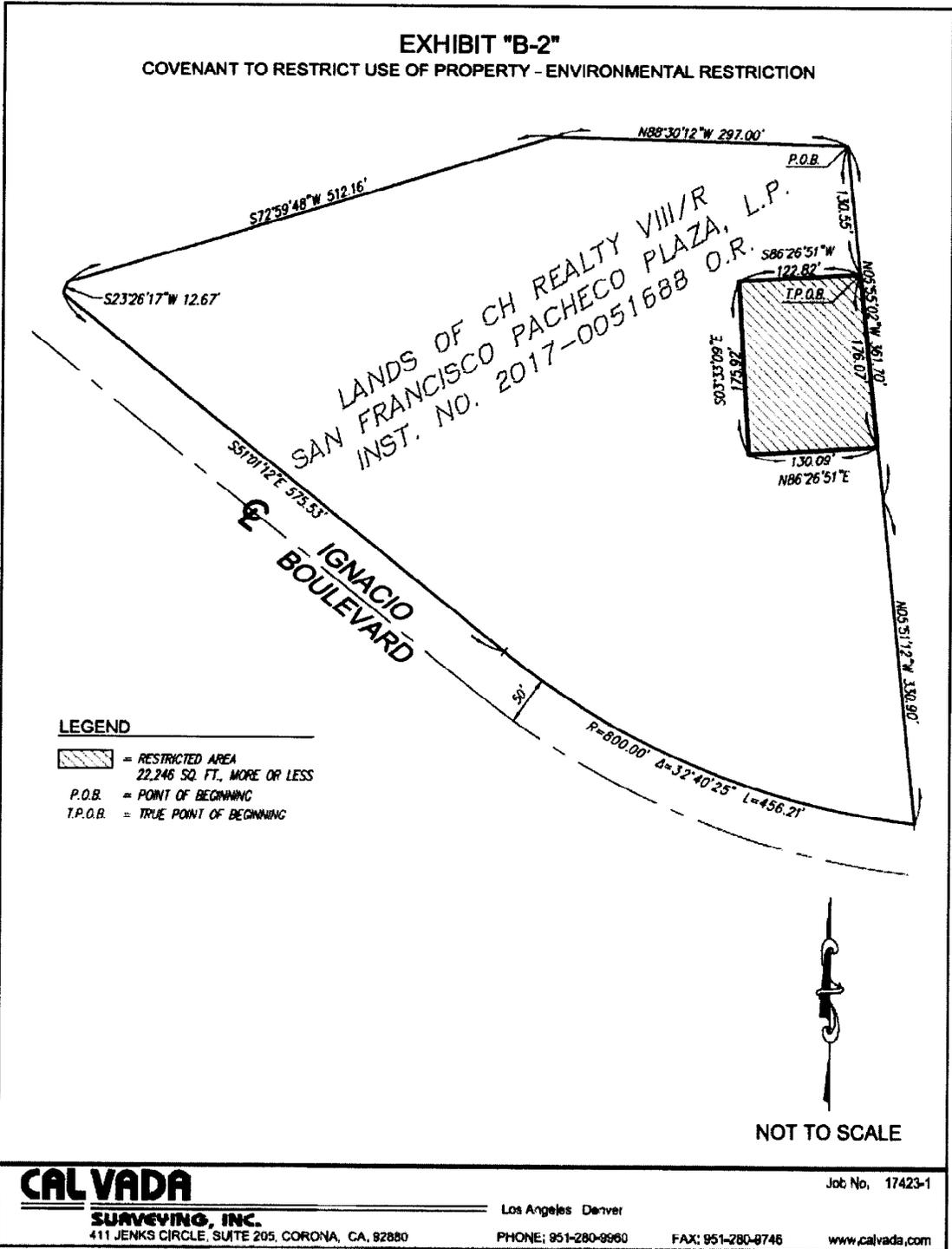
Armando D. DuPont, L.S. 7780  
April 18, 2018

**EXHIBIT B**

**PLAT MAP**

**EXHIBIT "B-2"**

**COVENANT TO RESTRICT USE OF PROPERTY - ENVIRONMENTAL RESTRICTION**



**CALVADA**

**SURVEYING, INC.**  
 411 JENKS CIRCLE, SUITE 205, CORONA, CA, 92880

Los Angeles Denver

PHONE: 951-280-8960

FAX: 951-280-8746

Job No. 17423-1

www.calvada.com

**EXHIBIT C**

**SITE DIAGRAM**

