

San Francisco County Recorder's Office  
Gregory Joseph Diaz, County Recorder  
DOC - 96-6084611-00

Recording Requested By:

Gabriela Apartments Limited

REQD BY  
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When Recorded, Mail To:

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

COVENANT TO RESTRICT USE OF PROPERTY  
SEVENTH AND NATOMA SITE

COVENANT  
TO RESTRICT USE OF PROPERTY

## SEVENTH AND NATOMA SITE

This Covenant and Agreement ("Covenant") is made on the 27 day of November, 1996, by Gabriela Apartments Limited ("Covenantor"), who is the owner of record of certain property situated in the City and County of San Francisco, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the California Department of Toxic Substances Control ("Department"), with reference to the following facts:

- A. The Property contains hazardous substances.
- B. Description of Facts.
  - B.1 The Property was originally wetlands that were filled during the 1800's by the placement of dune sands and debris. Elevated concentrations of lead, as well as other metals and organic compounds, have been identified in fill materials in this area. Subsurface soil sampling at the Property identified total and soluble lead concentrations in shallow soil samples which exceeded regulatory levels.
  - B.2 The final removal action that has been implemented at the Property, including the covering of contaminated soil with an geomembrane and reinforced concrete foundation, precludes the possibility of direct human contact with contaminated soil and prevents the liberation of fugitive dust. The purpose of this removal action was to eliminate any significant risks to human health or the environment.
- C. Covenantor desires and intends that in order to protect the present and future public health and safety and the environment, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from any hazardous substances remaining on the Property.

ARTICLE I  
GENERAL PROVISIONS

1.1 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land,

and pass with each and every portion of the Property, thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the Health and Safety Code and run with the land pursuant to Section 25355.5. Each and all of the Restrictions are enforceable by the Department.

1.2 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.3 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

## ARTICLE II DEFINITIONS

2.1 Cap. "Cap" shall mean the protective cover used to isolate contaminated soils on the Property from human or environmental exposure. The Cap has been constructed of an 8-1/2 inch reinforced concrete slab lying on top of 2 inches of sand over a 16 mil geomembrane over 4 inches of crushed rock over a geotextile barrier.

2.2 Department. "Department" shall mean the California Environmental Protection Agency, Department of Toxic Substances Control and shall include its successor agencies, if any.

2.3 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.4 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.5 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns who hold title to all or any portion of the Property.

ARTICLE III  
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.1 Restriction on Use. Covenantor promises to restrict the use of the Property as follows:

3.1.1 The use of the Property is restricted to the development, construction, occupancy and maintenance of the multi-family housing units as approved by the Department. No other use shall be allowed without the prior approval of the Department.

3.1.2 The Property shall not be used in such a way that will disturb or interfere with the integrity the Cap.

3.2 Conveyance of Property. The Owner or Owners shall provide a thirty (30) day advance notice to the Department of any sale, lease (except residential tenants), or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reasons of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.3 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.1 shall be grounds for the Department, by reason of the Covenant, to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law.

3.4 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements (except for residential tenants) relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV  
VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant

of the Property or any portion thereof 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.

4.2 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein 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 for any purpose whatsoever.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication 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 official of a government agency 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.

5.3 Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Department. This instrument shall be recorded by the Covenantor in the County of San Francisco within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

GOS4611

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

GABRIELA APARTMENTS LIMITED

*Al Borvice*

Al Borvice  
Gabriela Apartments Limited

*20 NOVEMBER 1996*

Date

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

*Barbara J Cook*

Barbara J. Cook, P.E., Chief  
North Coast Cleanup Operations Branch  
Site Mitigation Program  
Department of Toxic Substances Control

*11/27/96*

Date

GOS4611

STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO )

On this 20TH day of NOVEMBER, in the year 1996, before me \_\_\_\_\_,

personally appeared AL BARBER \_\_\_\_\_,

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/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.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

*[Handwritten signature]*



G084611

STATE OF CALIFORNIA )

COUNTY OF Alameda )

On this 27<sup>th</sup> day of November, in the year

1996, before me MARY ANN HARREL, NOTARY PUBLIC,

personally appeared ~~MARY ANN HARREL, NOTARY PUBLIC~~ <sup>JMH</sup> BARBARA J. CODIC,

~~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~~/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.

WITNESS my hand and official seal.



Signature Mary Ann Harrel

Covenant to Restrict Land Use

Exhibit A

G084611

Legal Description

CITY OF SAN FRANCISCO

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF 7TH STREET AND THE SOUTHEASTERLY LINE OF NATOMA STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF 7TH STREET 75.25 FEET TO A POINT DISTANT THEREON 90 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF HOWARD STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 75 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 0.25 FEET TO A POINT PERPENDICULARLY DISTANT 75 FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF NATOMA STREET; THENCE NORTHEASTERLY PARALLEL WITH SAID SOUTHEASTERLY LINE OF NATOMA STREET 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 5 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 80 FEET TO THE SOUTHEASTERLY LINE OF NATOMA STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF NATOMA STREET 150 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 394.