

ACC# 98-20 LT

Recording Requested By:
Sobrato-Sobrato Investments
a California limited partnership

Chicago Title Insurance Company hereby certifies that the within instrument is true and correct copy of the original instrument recorded in the office of the Recorder of the County of Santa Clara State of California on 10/5/98 Recorder's Serial No. 1742702

When Recorded, Mail To:

Loretta K. Barsamian, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, California 94612

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

1235 Elko Drive
Sunnyvale, California

This Covenant and Agreement to Restrict Use of Property (this "Covenant") is made as of the 29 day of JUNE, 1998 by Sobrato-Sobrato Investments, a California limited partnership ("Covenantor") who is the Owner of record of that certain property situated in the City of Sunnyvale, County of Santa Clara, State of California, which is described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

The Burdened Property and groundwater underlying the property contains hazardous materials.

Description of Facts.

A.1. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by manufacturing and/or product development operations conducted by Lockheed Martin Corporation. These operations resulted in contamination of soil and groundwater with organic chemicals including trichloroethylene (TCE), 1,2-dichloroethylene (1,2-DCE), and Freon 113, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Soil containing volatile organic compounds (VOCs) above 1 part per million was excavated, where practical, and groundwater containing VOCs is extracted and discharged to the sanitary sewer.

A.2. Exposure Pathways. The contaminants addressed in the Covenant are present in groundwater on the Burdened Property. Without the mitigation measures which have been

A.2. Exposure Pathways. The contaminants addressed in the Covenant are present in groundwater on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via gaseous emissions of VOCs into indoor and outdoor air exposure pathways. However, the risk assessment which evaluated the potential receptors and the potentially complete exposure pathways for the Burdened Property concluded that there are no significant health or ecological hazards resulting from contaminant conditions. The purpose of the restrictions on the use of the Burdened Property contained in this Covenant is to eliminate any significant risks to human health and beneficial uses of waters of the State posed by exposure to the remaining hazardous materials.

A.3. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for commercial purposes and is adjacent to industrial/commercial land uses.

B. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

C. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to Section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened 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 are herein established must be adhered to for the benefit of the Board and the future Owners and Occupants of the Burdened Property and that the interest of the future Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been specifically provided to such party.

ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

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

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

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development of the Burdened Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Burdened Property;
- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. All uses and development of the Burdened Property shall be consistent with Board Orders and shall preserve the integrity of any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened

Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.

g. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

h. The Owner shall notify the Board of each of the following: (1) The type, cause, location and data of any disturbance to any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Board, which could affect the ability of remedial measures, remedial equipment, or monitoring system to perform their respective functions; and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.

i. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

j. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property.

3.2 Enforcement. Failure of the Owner to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority 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 Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in the groundwater under the property, and is subject to a deed restriction dated as of JUNE 29, 1998, and recorded on 10/5, 1998, in the Official Records of Santa Clara County, California, as Document No 14431402 which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. 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 Burdened Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

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 Burdened Property or any portion thereof to the general public.

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 official of a government agency being served; or (2) three business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If to "Covenantor":
John Michael Sobrato
Sobrato-Sobrato Investments
10600 North DeAnza Blvd., Suite 200
Cupertino, California 95014-2075

If to "Board":
Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
2101 Webster Street
Oakland, California 94612

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein 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 Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

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

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

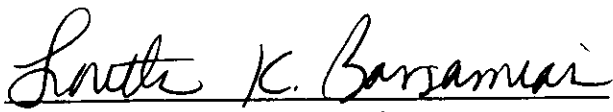
Covenantor: Sobrato-Sobrato Investments,
a California limited partnership

By: 
John M. Sobrato, Trustee under the
Sobrato 1979 Revocable Trust, As Amended

Its: General Partner

Date: 6/29/98

Agency: State of California
Regional Water Quality Board,
San Francisco Bay Region

By: 
Loretta K. Barsamian

Title: Executive Officer

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT


State of California }
 } ss.
County of Santa Clara }

On June 29, 19 98, before me,
PHYLLIS YAMASAKI, a Notary Public in and for said County and
State, personally appeared **JOHN M. SOBRATO**,

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.





NOTARY PUBLIC, STATE OF CALIFORNIA
My Commission Expires: March 14, 2001

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

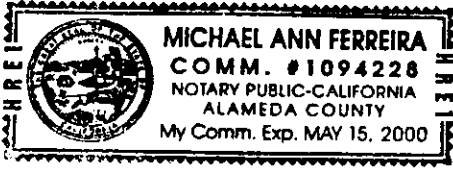
County of Alameda

On September 25, 1998 before me,

Michael Ann Ferreira
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Loretta K. Borzeman
Name(s) of Signer(s)

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.

Michael Ann Ferreira
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

EXHIBIT "A"

1235 Elko Drive, Sunnyvale

LEGAL DESCRIPTION:

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 2, as shown on the Parcel Map filed for record on March 25, 1968 in Book 235 of Maps, at Page 19, Records of Santa Clara County.