

CONFIRMED COPY: This document has not been compared with the original.
SANTA CLARA COUNTY CLERK-RECORDER

Recording Requested by
and when Recorded Return to:

Redevelopment Agency
of the City of San Jose
50 W. San Fernando St., Suite 1100
San Jose, California 95113
Attention: General Counsel's Office

Doc#: 15891076
10/01/2001 8:49 AM

RECORDED FOR THE BENEFIT OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
AND IS EXEMPT FROM FEE PER GOVERNMENT CODE SECTIONS 27383 AND 6103

DECLARATION OF COVENANTS AND RESTRICTIONS
AFFECTING REAL PROPERTY

This Declaration of Covenants and Restrictions Affecting Real Property (this "Declaration") is made on September 25, 2001, by GERMANIA VEREIN, a California non-profit corporation, ("OWNER"), owner of that certain real property located at 261 North Second Street, San Jose, California and more particularly described in EXHIBIT A, attached hereto and incorporated herein by this reference, (the "Property").

WHEREAS, pursuant to the Owner Participation Agreement between Owner and the Redevelopment Agency of the City of San Jose, California (the "AGENCY") dated September 25, 2001 (the "Agreement"), AGENCY is providing assistance to Owner in an amount not to exceed Eight Hundred Eighty Thousand Dollars (\$880,000.00) which will be used to rehabilitate and improve the Property.

NOW, THEREFORE, OWNER declares as follows:

I. OWNER covenants and agrees for himself, his successors, his assigns, and all persons claiming under or through them that the following covenants, conditions and restrictions shall remain on the Property in perpetuity and shall not be subject to release:

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall OWNER itself or any person claiming under or through OWNER, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

II. OWNER covenants and agrees for himself, his successors and assigns, and all persons claiming under or through them that for a period of thirty (30) years commencing on the date of recordation of this Declaration that the following covenants and restrictions shall apply:

1. AGENCY FINANCIAL PARTICIPATION COVENANTS.

A. Annual Participation Payments.

Pursuant to Section II 2 C below, OWNER is obligated to use all commercial efforts to lease the restaurant space and to keep it leased throughout the thirty (30) year period of this Declaration. OWNER shall provide AGENCY with a copy of each executed lease within thirty (30) days of its execution. Commencing within thirty (30) days after the end of the first twelve month period of a lease, and then within thirty (30) days after the end of every twelve month period thereafter, OWNER shall provide AGENCY an accounting of the total amount of rent payments received during the preceding twelve months pursuant to the lease. At the time the accounting is provided, OWNER shall remit to the AGENCY in readily available funds the amount equal to the excess over \$50,000 (the "Base Amount") of the rent payments received during the applicable twelve month period. At any time that a lease period is less than twelve months, the OWNER shall provide an accounting to the AGENCY within thirty (30) days after the end of the lease period and remit in readily available funds the amount equal to the excess of rent payments received over an amount calculated by prorating the Base Amount over the applicable rental period.

For example, if the restaurant space is leased for only ten months, OWNER would determine the prorated Base Amount by dividing \$50,000 by 12 and multiplying that amount by 10. [\$50,000 divided by 12 equals 4,167. \$4,167 multiplied by 10 equals \$41,670.] Any rent received during the ten month period in excess of \$41,670 would be remitted to the AGENCY.

B. Participation Payments in Event of a Sale of the Property.

Upon a sale of the Property, at close of escrow, OWNER shall cause the AGENCY to be paid in readily available funds, an amount equal to fifty percent (50%) of the gross sale proceeds capped at the amount identified on the schedule attached as EXHIBIT C.

C. Participation Payments in Event of a Refinancing of the Property.

Upon a refinancing of the Property, at close of escrow, OWNER shall cause the AGENCY to be paid in readily available funds, an amount equal to fifty percent (50%) of the appraised value of the Property (based on the certified MAI appraisal statement utilized by the lending institution to approve the refinancing) capped at the amount identified on the schedule attached as EXHIBIT C.

D. AGENCY Right to Inspection and Audit of Records.

OWNER shall keep full and accurate books and accounts, records, cash receipts, and other pertinent data to verify all of the amounts described in Sections II 1 A, B and C. Such records shall be kept for a period of five (5) years and shall be available for AGENCY inspection during usual business hours upon reasonable advance notice by AGENCY to OWNER.

AGENCY also shall be entitled at AGENCY's expense, to conduct a full independent audit of OWNER's books and accounts, records, cash receipts and other pertinent data.

If any such inspection or audit determines any adjustment is required to the amount remitted by OWNER to AGENCY, such payment (or refund) shall be made within sixty (60) days of the determination.

2. OPERATIONS, MAINTENANCE AND USE COVENANTS.

A. Owner shall make no changes or alterations to the facade or other improvements constructed pursuant to the Agreement ("Agreement Improvements"), other than those authorized by the AGENCY pursuant to the Agreement, except as follows:

(a) OWNER shall secure the prior written approval of AGENCY, its successors and assigns for all drawings or plans for any such changes or alterations to the facade or Agreement Improvements, regardless of whether or not funded in whole or in part with the City of San Jose or AGENCY funds. The approval of AGENCY, its successors and assigns shall not be unreasonably withheld. If the AGENCY fails to respond within 15 working days after submission, then the drawing or plans shall be deemed approved.

(b) OWNER shall be solely responsible for all costs for such changes or alterations and for obtaining all permits required for such improvements by the City of San Jose.

(c) OWNER shall indemnify and hold the AGENCY and the City of San Jose free and harmless from any cost or expense related to any such changes or alterations.

B. The Property and the improvements thereon shall at all times be kept in a neat and clean condition of repair, and shall be maintained in a first-class manner. Such upkeep and maintenance shall include, without limitation, reasonable measures to protect from and promptly remove graffiti or other defacement from the exterior surfaces of the improvements. All painting to exterior surfaces shall be with colors appropriate to maintain the visual, architectural and aesthetic harmony and compatibility of the improvements of the Property.

C. OWNER shall use all commercially reasonable efforts, consistent with first-class rental management practices for similar retail projects in San Jose, California.

(a) to cause the restaurant portion of the building to be continuously leased, subject to reasonable vacancies related to normal and standard retreating business practices; and

(b) if any space becomes vacant, then if the Agency identifies a prospective tenant acceptable to the Agency with creditworthiness acceptable to the Owner, who can demonstrate experience in operating such a business, and who is willing to lease the space at then market rent for a lease term of at least five years, Owner shall so lease the space.

For purposes of this Section, "then market rent" means the going rate for similar space in the San Jose area as determined by mutual agreement of the parties or in the event the parties cannot agree, then as determined by a qualified, licensed real estate appraiser with a minimum of five years experience appraising commercial properties in the San Jose area and who is jointly selected by the parties, or if the parties cannot agree by the President of the local Board of Realtors. In the event an appraisal is required, the cost of same shall be borne by the Owner.

D. OWNER shall not:

(a) Use or permit the use of any objectionable advertising such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the improvements in such manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the improvements (it is understood that OWNER intends to offer live music and recorded background music for the enjoyment of restaurant patrons which is acceptable as long as it does not disturb the peace), and shall keep all mechanical apparatus free of objectionable vibration and noise which may be transmitted beyond the interior of the improvements; or

(b) Cause or permit obnoxious odors to emanate or be dispelled from the improvements; or

(c) Permit undue accumulation of garbage, trash, rubbish or any other refuse in, on or about the Property and such garbage, trash, rubbish or other refuse shall be confined to a special enclosure area to be constructed on the side of the building; or

(d) Create, cause, maintain or permit any nuisance in, on or about the Property; or

(e) Use or allow the Property to be used for any unlawful purpose or for any purpose which violates the terms of any recorded instrument affecting the Property.

E. The Common Area (as hereinafter defined) of the Property and the improvements thereon shall be maintained and operated in a first-class condition, and all Common Area improvements that are repaired or replaced from time to time shall be repaired or replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced. The obligations to maintain and operate the Common Area shall include, but not be limited to, the following:

(a) Paving and Curbs. All paved surfaces, including parking areas, if any, and curbs of the Common Area shall be maintained in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repairing and resurfacing of the parking area, if any, driveway areas and curbs, using surfacing materials of an appearance and quality equal or superior to the original surfacing material.

(b) Sweeping. Papers, debris, filth and refuse shall be removed, and the Common Area shall be washed and swept to the extent necessary to keep the Common Area in a first-class, clean and orderly condition, and all hard surfaces including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members shall be washed down and/or cleaned as required.

(c) Directional Signs and Markers. Appropriate directional signs, markers and lines shall be placed, kept in repair, and replaced and repainted as necessary from time to time.

(d) Lighting. Common Area lighting facilities as may be reasonably necessary, including all lighting necessary or appropriate for Common Area security and exterior lights attached to the improvements which are intended to illuminate the Common Area, but not including street lights or lamp posts adjacent to streets or on park strips between sidewalks and street curbs, shall be operated, kept in repair, cleaned and replaced and/or reballasted as necessary from time to time. Such lighting shall be at least equivalent to the security and exterior lighting provided in similar first-class properties.

(e) Landscaping. Landscaped areas, including landscaping and planters adjacent to exterior walls of buildings shall be cleaned and maintained, automatic sprinkler systems and/or water lines in the Common Area shall be repaired and all weeding, pruning, fertilizing and replacement of shrubs, trees and other landscaping shall be accomplished as necessary.

(f) Utilities. All common storm drains, utility lines, sewers and other utility systems and services located in the Common Area which are necessary

for the operation of the Common Area and the other improvements on the Property shall be maintained, cleaned, and repaired as necessary from time to time.

(g) Obstruction. The Common Area shall be kept free from obstructions including, without limitation, any obstruction caused by the sale or display of merchandise in any exterior area on the Property.

(h) Signs. All signs in the Common Area shall be maintained and repaired.

(i) Sidewalks. All sidewalks shall be cleaned (including washing and/or steam cleaning), maintained and repaired.

(j) Governmental Requirements. All applicable requirements of governmental agencies shall be complied with.

(k) Drainage. All surface and storm lateral drainage systems within the OWNER's Property boundaries shall be maintained.

(l) Sewers. All sanitary sewer lateral connections within the OWNER's Property boundaries shall be maintained.

(m) Walls, Fences and Barriers. No walls, fences or barriers of any sort or kind shall be constructed or erected on or about the Common Area which shall unreasonably prevent or impair the use or exercise of any of the rights of occupants and members of the public, including, without limitation, pedestrians and vehicular traffic between the various portions of the Common Area, without the prior written approval of the AGENCY, its successors or assigns, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that curb stops and other reasonable traffic controls, including, without limitation, traffic lights and stop signs, directional barriers and parking stops, as may be necessary to guide and control the orderly flow of traffic, may be installed so long as access driveways to the parking facilities on the Property, if any, are not closed or blocked and the traffic circulation patterns of the Common Area are not materially changed or affected in any way.

(n) For purposes of this Subsection 2.f., "Common Area" means all public areas (i.e., areas that OWNER allows to be open to the general public or are required to be open to the public) in the interior of any improvements on the Property, and in exterior areas on the Property, and the public sidewalk, curb and gutter between the Property and any adjacent street right-of-way.

F. The Project and its operations therein shall be managed in a prudent and business-like manner and in full compliance with the terms of the Agreement and this Exhibit.

G. All lease agreements shall be submitted to and approved by Agency prior to their execution by any tenant. Such approval shall be given by the Executive Director of the Agency, which approval shall be deemed to have been given unless written disapproval is transmitted by the Executive Director within ten (10) business days of his or her receipt of proposed leases.

H. Owner agrees to make a good faith effort, and to encourage parties with whom Owner contracts with at the Site, to participate in the Agency's voluntary San Jose First Source Employment Program ("First Source Program"). The objectives of the First Source Program are to assist San Jose residents ("Residents") with gaining early access to employment opportunities in San Jose and to assist local businesses that are experiencing difficulty finding qualified workers. Any business which opts to participate in the First Source Program may choose to participate in a variety of activities including: (a) accepting Resident job applicant referrals; (b) making a "best effort" to recruit and employ Residents; (c) directly or indirectly providing training to Residents; (d) contributing to the expansion of child care facilities available to Residents; or (e) any other means of participation that benefits the employer and Residents. Owner further agrees to encourage present and future tenants to utilize the services the First Source Program by contacting the Agency's San Jose First Source Employment Program Coordinator.

3. Owner shall provide meeting room space (minimum capacity 110 persons) available for public use by governmental and community organizations and non-profit corporations (the "Public Use Areas"). Owner shall make the Public Use Areas available for a minimum of ten (10) hours each month. Such use shall be in accordance with such reasonable rules, regulations and security precautions as are adopted by the Owner to provide for the proper operation, safety and comfort of the guests, invitees and personnel of the Owner. Owner's initial reservation procedures, which may be amended from time to time, are attached as **EXHIBIT B**. Owner shall not discriminate in determinations of availability of or scheduling for the use of the Public Use Areas. Owner shall be entitled to charge a minimal amount for use of the meeting rooms reasonably sufficient to cover the costs of necessary security measures, utilities and janitorial services. Owner shall also take reasonable measures to notify governmental and community organizations and non-profit corporations of the availability of the Public Use Areas.

4. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the AGENCY, its successors and assigns, shall be deemed a beneficiary of the agreements and covenants provided hereinabove for and in its own right and also for the purposes of protecting the interests of the community. All such covenants without regard to technical classification or designation shall be binding for the benefit of the AGENCY, its successors and assigns, and such covenants shall run in favor of the AGENCY, its successors and assigns, for the entire period during which such covenants shall be in force and effect. The AGENCY, its successors and assigns, shall have the right, in the event of any breach of any such agreements or covenants, to exercise all the rights and remedies, and to maintain any

actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant (subject, however, to the limitation specified in Section 5 below).

5. The covenants contained in this Declaration of Covenants and Restrictions Affecting Real Property shall run with the land and shall be binding upon OWNER and subsequent owners of the Property during the period of ownership of the Property. Notwithstanding anything set forth in Declaration of Covenants and Restrictions Affecting Real Property to the contrary, the covenants set forth herein shall not be construed as conditions which might result in forfeiture of the title to the Property; and no breach of any covenant set forth herein, and no failure on the part of OWNER or any subsequent owner of the Property to observe or perform any of the covenants set forth herein, shall cause or permit any forfeiture of the title.

6. Invalidation of any one of these covenants, conditions and restrictions by judgment or court order will not affect any of the other provisions, which will remain in full force and effect.

7. All notices and other communications required or permitted to be given under this Declaration of Covenants and Restrictions Affecting Real Property shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To AGENCY: Redevelopment Agency of the City of San Jose
 Attention: Executive Director
 50 West San Fernando Street - 11th Floor
 San Jose, CA 95113

with a copy to: Redevelopment Agency of the City of San Jose
 Attention: General Counsel
 50 West San Fernando Street – 11th Floor
 San Jose, CA 95113

To OWNER: Germania Verein
 Attention: President
 P.O. Box 0622
 San Jose, CA 95106

or to such other address as any party may designate by notice in accordance with this Section.

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit with the United States Postal Service, certified mail, postage prepaid, return receipt requested.

8. Upon the written request from time to time of OWNER and any subsequent owner of the Property, the AGENCY shall provide such entity with an estoppel certificate which shall certify, to the Agency's knowledge, (a) as to the satisfaction of and compliance with the covenants and agreements required hereunder, (b) that there is no default in the performance or observance of any condition, covenant or agreement hereunder, and (c) as to such other matters related to the covenants in this Declaration Covenants and Restrictions Affecting Real Property as such owner may reasonably request from time to time.

9. The AGENCY acknowledges and agrees, for itself and its successors and assigns, that the conditions, covenants and agreements herein shall be binding upon the OWNER and any subsequent owner of the Property only during the period of ownership of the Property by such person or entity.


IN WITNESS WHEREOF, the AGENCY has caused this Declaration of Covenants and Restrictions Affecting Real Property to be executed as of the 25th day of ~~XXXXXXXXXXXX~~, 2001.
September

Approved to form:


Sr. Associate Counsel

AGENCY

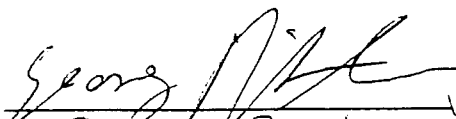
THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

By: 
Susan F. Shick
Executive Director

The OWNER hereby accepts this Declaration of Covenants and Restrictions Affecting Real Property, subject to all of the matters hereinabove set forth.

OWNER

GERMANIA VEREIN, a California
Non-profit corporation

By: 
Name: Georg Breitting
Title: President

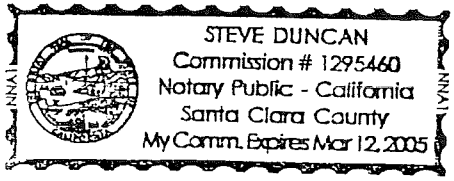
State of California

County of Santa Clara

On Sept 20, 2001, before me, STEVE DUNCAN NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G. JANE DOE, NOTARY PUBLIC

personally appeared Georg Breitling,
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 acknowledges 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.

Steve Duncan
SIGNATURE OF NOTARY

STATE OF CALIFORNIA)
)
) SS
COUNTY OF SANTA CLARA)

On this 27th day of September, 2001, before me,
CELIA M. MILLER, the undersigned Notary Public, personally
appeared SUSAN F. SHICK, EXECUTIVE DIRECTOR/SECRETARY OF THE
REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, personally known to me
to be the person whose name is subscribed to the within instrument and acknowledged
to me that she executed the same in her authorized capacity, and that by her signature,
the entity upon behalf of which she acted executed the instrument.

WITNESS my hand and official seal.

Celia M. Miller
Notary Public, State of California

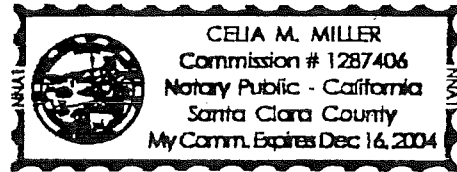


EXHIBIT A

LEGAL DESCRIPTION

City of San Jose

The Northerly 2/3rds, rectangular in shape, of Lot Four (4) in Block Four (4) Range Two (2) North of the base line of the City of San Jose.

Saving and excepting therefrom the Southerly 29 feet thereof, rectangular in shape, conveyed by J.W. Herbert and Eliza Herbert, his wife, to Catherine Montmayeur, by Deed dated July 17, 1912 and recorded July 17, 1912 in Book 387 of Deeds, Page 426, records of Santa Clara County, California.

EXHIBIT B

OWNER'S PUBLIC USE AREA RESERVATION RULES

The following space shall be considered as "The Public Use Areas" as defined in Paragraph 3 in Section H of DECLARATION OF COVENANTS AND RESTRICTIONS AFFECTING REAL PROPERTY:

Ballroom consisting of 1,672 sq.ft. and areas normal to its use. i.e. Entry Hall, Toilet areas and necessary halls between. All areas above the first floor are considered private as well as the Basement areas.

In requesting use of this area, the Owner shall be notified of such desire by telephoning Germania at (408) 275-9308.

The President may also be contacted. At this date it is Georg Breitling whose number is 408 448-5084.

The President normally changes every two years. His name and number will be provided to the Agency in accordance with Paragraph "H" of these Covenants.