

RECORDED AT THE REQUEST OF AND
RETURN TO:

Napa Sanitation District
1515 Soscol Ferry Road
Napa, CA 94558

Exempt from Recording Fees
Per G.C. 27383

Re: A.P.N. 003-182-012

Declaration of Restrictive Covenants Affecting Real Property

THIS Declaration of Restrictive Covenants Affecting Real Property (this "Agreement") is made as of this ____ day of _____ 20 ___, ("Effective Date") by and between Andrew D. Siegal, an individual ("Owner") and the Napa Sanitation District, a California special district ("District") with reference to the following facts.

RECITALS

- A. Owner owns that certain real property located in the County of Napa, California, at 1031 McKinstry Street, commonly known as Napa County Assessor's Parcel Number 003-182-012 and more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").
- B. Owner constructed building improvements on the Property without a permit from District.
- C. Said building improvements were not constructed per District standards.
- D. As of the Effective Date, the Property is permitted for wine tasting and a demonstration kitchen with cooking of a single meal for an audience. The Property is not permitted for restaurant, food service, catering, commercial food preparation, or any other use consisting primarily of the preparation, service or making of foodstuffs available for consumption (collectively, "Food Service Establishment").
- E. The Property contains commercial cooking equipment and could be converted to a Food Service Establishment in the future.
- F. The Napa Sanitation District Code ("District Code") requires that an external grease interceptor be installed for any Food Service Establishment. The Property does not currently have an exterior grease interceptor. In addition, the District's capacity charges and

sewer service charges for Food Service Establishments are higher than the capacity charges and sewer service charges for the current use.

G. In order to resolve the dispute between the parties regarding the unpermitted improvements on the Property and to ensure that Owner does not operate a Food Service Establishment on the Property without first complying with the applicable requirements of the District Code, the parties have agreed to execute and record this Agreement.

AGREEMENT

NOW THEREFORE, Owner and District, for good and valuable consideration agree as follows:

1. Owner shall not operate a Food Service Establishment on the Property unless and until Owner complies with all of the following requirements: (i) Owner notifies District of its intent to operate a Food Service Establishment on the Property, (ii) Owner installs an external grease interceptor and associated plumbing improvements in accordance with District Standards, (iii) Owner pays in full the then-current capacity charges for Food Service Establishments to the District consistent with District's Code; and (iv) Owner agrees to pay the sewer service charges in effect for Food Service Establishments.

2. Owner shall notify all potential buyers and successors in interest to the Property of the requirements set forth in this Agreement.

3. Owner agrees that if Owner fails to comply with the terms of this Agreement, District may take any of the following actions:

(a) Record a lien on the Property equal to the amount of additional capacity fees and sewer service charges owed to the District due to the change in use;

(b) Impose fines or take other enforcement actions in accordance with the District Code;

(c) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief; or

(d) Pursue any other remedy available at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The District may exercise from time to time any rights and remedies available to it under applicable law

or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

4. Owner agrees that the obligations under this Agreement shall be continuing and irrevocable. No modification or waiver of any provision of this Agreement shall be binding upon the District unless such modification or waiver shall be in writing and signed by an authorized officer of the District.

5. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

6. No failure on the part of the District to pursue any remedy under this Agreement shall constitute a waiver on the part of the District of its right to pursue such remedy on the basis of the same or a subsequent breach.

7. If either party is required to utilize the services of an attorney in order to enforce this Agreement, the non-prevailing party will pay any attorney's fees and costs incurred by the prevailing party.

8. Any costs or attorney's fees incurred by the District as prevailing party pursuant to this Agreement shall become a lien and a special assessment against the Property.

9. This Agreement shall run with the Property as both a covenant and an equitable servitude and is binding on Owner's heirs, successors in interest and assigns. It shall be recorded with the Napa County Recorder. Owner hereby subjects its interest in the Property to the covenants and restrictions set forth in this Agreement. The Owner and District hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and the District, regardless of any sale, assignment, conveyance or transfer of the Property or any part thereof or interest therein. Each reference in this Agreement to a specifically named party shall be deemed to mean a reference to the successor of each such party. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to District an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of District. The Parties hereby declare that is their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that they restrict the use of the Property.

10. This Agreement shall remain in effect until the District executes and records an appropriate instrument releasing and discharging the terms of this Agreement.

11. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

12. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or deposited in the U.S. mail, first class and postage prepaid, addressed to the parties at their respective addresses as listed below.

If to Owner: Andrew D. Siegal
 1031 McKinstry Street
 Napa, CA 94559

If to District: Napa Sanitation District
 1515 Soscol Ferry Road
 Napa, CA 94558

Notice shall be deemed duly given upon personal delivery or, if mailed, two days after mailing. The foregoing addresses may be changed by notice given as provided in the Agreement.

13. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

OWNER: Andrew D. Siegal

By: _____
Andrew D. Siegal
Owner

NAPA SANITATION DISTRICT: Napa Sanitation District, a California Special District

By: _____
Timothy B. Healy
General Manager

ATTEST:

By: _____
Cheryl Schuh
Secretary, Board of Directors

SIGNATURES MUST BE NOTARIZED

APPROVED AS TO FORM:

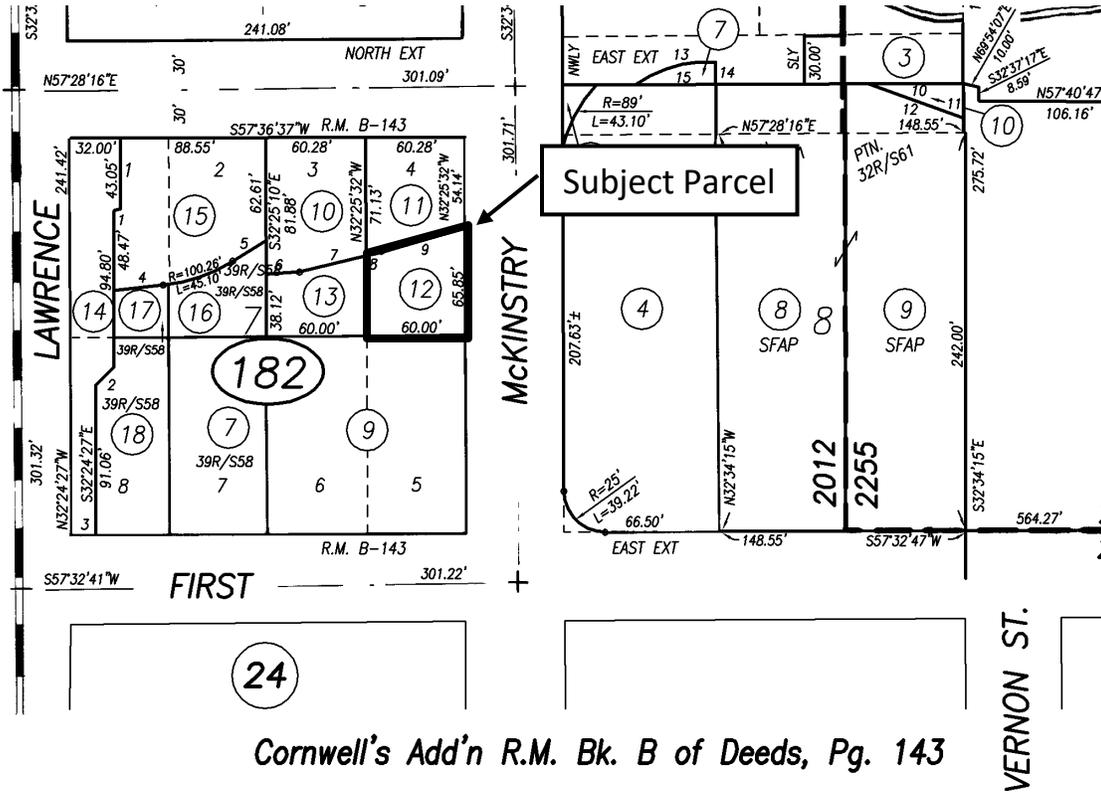
By:

John Bakker
District Legal Counsel

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Exhibit A

The land referred to herein below is situated in the City of Napa, County of Napa, State of California and is described as follows:



Assessor's Map Bk. 3 – Pg. 18 County of Napa, Calif