

Recording Requested By:

DODG CORPORATION

When Recorded, Mail To:

Loretta K. Barsamian, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

5051 Coliseum Way
Oakland, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 18th day of April, 2002 by DODG CORPORATION ("Covenantor") who is the Owner of record of that certain property situated at 5051 Coliseum Way, in the City of Oakland, County of Alameda, State of California, which is more particularly described in EXHIBIT A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "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:

A. The Property and groundwater underlying the Property contains hazardous materials.

B. Contamination of the Property. Soil and shallow groundwater at the Property was contaminated by lead smelting, sulfuric and nitric acid production, coal tar storage and lithopone manufacturing operations previously performed at or near the Property. These operations resulted in contamination of soil and shallow groundwater with inorganic and organic chemicals including antimony, arsenic, barium, cadmium, copper, lead, mercury, zinc and some petroleum hydrocarbons, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. This Covenant incorporates the terms of a Soil Management Plan (attached hereto as EXHIBIT B) applicable to the Property which details specific health, safety and procedural requirements for handling contaminated soils and groundwater during subsurface activities to protect the health and safety of on-site workers, the public and the environment. These measures include, but are not limited to, requirements for development and

implementation of a specific health and safety plan for subsurface activities, provisions to cover and cap all waste materials deposited on the Property, provisions to maintain the current surface conditions until such time that the Property is developed and covered (except for minor landscaped areas) by impervious surfaces and provisions to remove from the site and properly dispose any soils or waste containing metals in excess of soil cleanup standards that are disturbed by such subsurface activities. The requirements of the Soil Management Plan apply only to subsurface construction activities that take place at the Property; there is no restriction under this Covenant on the development or reconstruction of the Property so long as such development or reconstruction is not prohibited in this Covenant or applicable Board Order. With Board approval, future development of the Property may include building foundations or other structures. In addition, a groundwater diversion wall, approximately 350 feet in length, has been installed along the northwest boundary of the Property (as set forth on EXHIBIT D, attached hereto) and a 3-year program (beginning March 29, 2001) of quarterly groundwater monitoring of on-site wells and weep holes in the stormwater channel is being performed to further evaluate metals concentrations, primarily zinc and cadmium, detected in shallow groundwater at and adjacent to the Property.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and shallow groundwater on the Property. Without the mitigation measures which have been performed on the Property, exposure to these contaminants could take place via inhalation and ingestion of particulate dusts and through direct skin contact if subsurface waste residuals or contaminated soil or groundwater is encountered during subsurface construction activities. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Property is currently undeveloped commercial/industrial property and is adjacent to commercial and industrial land uses.

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

F. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the 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 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 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 Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. 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 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 and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by this 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 the Board and the Owners and Occupants of the Property and that the interest of the Owners and Occupants of the Property shall be subject to the Restrictions contained herein.

1.3 Apportionment of Burden Among Multiple Owners. Where ownership of the Property is held by multiple persons, holding by several titles, the burdens imposed by this Covenant shall be apportioned between them proportionate to the value of the property held by each owner, if such value can be ascertained, and if not, then according to their respective interests in point of quantity. (Cal. Civ. Code, § 1467.)

1.4 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Property. 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 attached to or incorporated into any given deed or lease.

1.5 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

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 Property.

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

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

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

- a. Future development of the Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Property;
- c. No hospitals shall be permitted on the Property;
- d. No schools for persons under 21 years of age shall be permitted on the Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Property;
- f. No Owners or Occupants of the Property or any portion thereof shall conduct any subsurface excavation work on the Property, unless a written Health and Safety Plan (as required under the Soil Management Plan) and scope of work for the subsurface activities are expressly approved in writing by the Board. Surficial maintenance activities, such as landscaping, patching or repairs do not require approval by the Board if such activities will not disturb contaminated soils. Any contaminated soils or groundwater brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;
- g. All uses and development of the Property shall be consistent with any applicable Board Order (See EXHIBIT C) or Soil Management Plan (See EXHIBIT B), each of which is hereby incorporated by reference including future amendments thereto. Construction of buildings or other structures at the Property may be undertaken with written approval of the Board. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed (such as the groundwater diversion wall), and any groundwater monitoring system installed on the Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board. Any physical structures, such as the groundwater diversion wall, that are installed on the Property for the purpose of preventing migration of contaminated soil or groundwater shall be maintained and shall not be altered or removed without written approval by the Board.

h. 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.

i. The Owner shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Property pursuant to the requirements of the Board, which could affect the ability of such cap or 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;

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

k. No Owner or Occupant of the Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Property. All use and development of the Property shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant 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 soils and in the ground water under the property, and is subject to a deed restriction dated as of _____, 2002, and recorded on _____, 2002, in the Official Records of Alameda County, California, as Document No. _____, 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 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 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 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 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 (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"

Balgit Singh
Dodg Corporation
4849 E. 12th Street
Oakland, CA 94601

and

Oakland 5051, L.L.C.
C/o Thomas Roberts
1650 Des Peres Road, Suite 303
St. Louis, MO 63131

and

Daniel T. Engle
Thompson Coburn LLP
One US Bank Plaza, Suite 3500
St. Louis, MO 63101

If To: "Board"
Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
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 Alameda within thirty (30) days of the last date of execution.

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

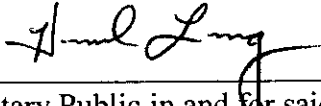
5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

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STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On this 18 day of APRIL, 2002, before me, the undersigned a Notary Public in and for said state, personally appeared Loretta K. Barsamian, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.



Notary Public in and for said
County and State

