

DHU F-415

This page is part of your document - DO NOT DISCARD

04 0165819

RECORDED/FILED IN OFFICIAL RECORDS
 RECORDER'S OFFICE
 LOS ANGELES COUNTY
 CALIFORNIA
 JAN 26 2004 AT 8 AM.

TITLE(S) :



FEE

FREE E

D.T.T

CODE 20

CODE 19

CODE 9

RECEIVED
 2004 FEB 24 PM 2:14
 COUNTY OF LOS ANGELES
 CLERK OF SUPERIOR COURT

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM NOT TO BE DUPLICATED

1/26/04

2

RECORDING REQUESTED BY



AND WHEN RECORDED MAIL TO

K. Hovanian at Dominguez Hills, Inc.
2495 Campus Drive
Irvine, Ca 92612

04 165819

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

Covenant and Environmental Restriction on Property

TITLE ORDER NO. _____ ESCROW NO. _____ APN _____

THIS DOCUMENT FILED FOR RECORD
BY L.T.C. AS AN ACCOMODATION ONLY.
IT HAS NOT BEEN EXAMINED AS TO ITS
EFFECT UPON TITLE.

RECEIVED
2001 FEB 24 PM 2:14
COUNTY OF ORANGE
CLERK OF SUPERIOR COURT
RECORDS & ADMINISTRATION

1/26/04

RECEIVED

3

Recording Requested By:

2004 FEB 24 PM 2: 14

K. Hovnanian at Dominguez Hills, Inc.
2495 Campus Drive
Irvine, CA 92612

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
LOS ANGELES REGION

When Recorded, Mail To:

Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013-2343

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

Landscape Buffer – Lot 29, Tract 52103

(Real Property Strip Along Victoria Street From Cedarbluff Way to Birchknoll Drive)

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 1st day of DECEMBER, 2003 by K. Hovnanian at Dominguez Hills, Inc., a California corporation ("Covenantor") who is the Owner of record of that certain property comprising the landscaping strip situated at Victoria Street From Cedarbluff Way to Birchknoll Drive, in the City of Carson, County of Los Angeles, 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 "**Burdened Property**"), for the benefit of the California Regional Water Quality Control Board for the Los Angeles Region (the "**Board**"), with reference to the following facts:

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

B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by former oil and gas field operations conducted by prior owners or lessees, including Union Oil Company of California and/or affiliates. These operations (beginning in the 1920's and continuing until 1996) resulted in contamination of soil beneath this parcel with organic chemicals including TPH-E, TPH-V, benzene, toluene, ethylbenzene and xylenes, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. The area of these contaminants was extensively excavated to (approximately 4500 cubic yards of impacted soil was removed to a depth of 40 feet and back filled with clean soil) remove the chemical, and vapor extraction was conducted over a period of approximately 22 month, but at the conclusion of those activities some concentrations down to a depth of 80 feet remained and due to utility-type facilities in the adjacent public right-of-way further excavation was physically impractical. This residual petroleum hydrocarbon contamination that is present between 40 and

04 165819

80 feet below ground surface was left in place with the concurrence of the Board staff. 4

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via in-place contact, primarily resulting in dermal contact, but also under possible scenarios involving inhalation, or ingestion by humans. 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 Burdened Property is used for a landscape strip and buffer along the right of way for Victoria Street, between Cedarbluff Way and Birchknoll Drive, and is adjacent to residential land uses.

E. Prior Investigation and Disclosure Completed. 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.

F. Future Use To Avoid Harm. 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 within the subsurface of 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 and all owners and occupants. 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 and Lessees 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 as herein established must be adhered to for the benefit of the Board and the owners and occupants of the Burdened Property

and that the interest of the owners and occupants of the Burdened Property shall be subject to the Restrictions contained herein. 5

1.3 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 Burdened 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.

1.4 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 Los Angeles 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 use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor or, upon Covenantor's conveyance of the Burdened Property, to the successors in interest to Covenantor 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 landscaping and irrigation systems intended to serve that installed landscaping, and the use of the Burdened Property is limited to serving as a buffer between public right of way and the boundary wall or fence separating the Burdened Property from the residential community;

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. No Owners or Occupants of the Burdened Property or any portion thereof shall conduct any excavation work on the Burdened Property except for near-surface (i.e., within twelve inches (12") of the surface) installation and maintenance of landscape materials and irrigation systems, unless expressly permitted in writing by the Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or any Owner-successor to Covenantor in accordance with all applicable provisions of local, state and federal law;
- g. All uses and development of the Burdened Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system which might in the future be installed on the Burdened Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing 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 any (future) groundwater monitoring system which might be installed on the Burdened 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, and all Owner-successors to the Covenantor, agree 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.
- k. 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. All

04 165819

use and development of the Burdened Property shall preserve the integrity of any capped areas. 7

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 _____, 2004, and recorded on _____, 2004, in the Official Records of Los Angeles 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 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 (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"
 K. Hovnanian at Dominguez Hills, Inc.
 2495 Campus Drive
 Irvine, CA 92612

If To: "Board"
 Regional Water Quality Control Board
 Los Angeles Region
 Attention: Executive Officer
 320 West 4th Street, Suite 200
 Los Angeles, CA 90013-2343

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 Los Angeles within ten (10) days of the 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.

1/26/04

9

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.
Covenantor: K. Hovnanian at Dominguez Hills, Inc.

By: Nicholas Pappas

Title: President

Date: Nicholas Pappas

Agency:

State of California
Regional Water Quality Board,
Los Angeles Region

By: Teri A. Dolan

Title: Executive Officer

Date: January 16, 2004

04 165819

10

STATE OF CALIFORNIA)
)
COUNTY OF Orange)

On December 8, 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared

Nicholas Pappas and

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 within instrument.

WITNESS my hand and official seal.

Candace Blanchard
Notary Public

[Civil Code §1189]



11

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 20__ before me, the undersigned a Notary Public in and for said state, personally appeared [Covenantor], 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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 20__ before me, the undersigned a Notary Public in and for said state, personally appeared [EXECUTIVE OFFICER], 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

04 165819

1/26/04

EXHIBIT A

12

LEGAL DESCRIPTION OF PROPERTY

Lot 29 of Tract Map No. 52103 in the City of Carson, County of Los Angeles, State of California, filed in Book 1224, pages 17 through 21, inclusive, Records of Los Angeles County.

04 165819