

RECORDING REQUESTED BY:

Lennar Mare Island, LLC
690 Walnut Avenue, Suite 100
Vallejo, California 94592

CALSTARS CODING:

Project Code: 201383
Work Phase: 11
PCA Code: 12065

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Brownfields & Environmental Restoration
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Ms. Barbara Cook, Performance Manager

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Black Granular Material in the Investigation Area C3 Triangle Area

Investigation Area C3, Former Mare Island Naval Shipyard
Eastern Early Transfer Parcel
Vallejo, California

This Covenant and Agreement (Covenant) is made by and between Lennar Mare Island, LLC ("Covenantor"), the current owner of property to be restricted herein, situated on the Former Mare Island Naval Shipyard in Vallejo, County of Solano, State of California, and the California Environmental Protection Agency, Department of Toxic Substances Control (Department). Pursuant to California Civil Code Section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in California Health & Safety Code (H&SC) section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree pursuant to Civil Code section 1471 and H&SC Section 25355.5 that the Covenant shall comply with the requirements of California Code of Regulations, Title 22, Section 67391.1 (22 CCR 67391.1).

– STATEMENT OF FACTS

1.01 The Investigation Area (IA) C3 Triangle Area is located between Dry Docks 1 and 2 and the Mare Island Strait, east of Nimitz Avenue. The IA C3 Triangle Area comprises a portion of the area generally known as the Eastern Early Transfer Parcel of Mare Island (EETP) in the County of Solano California. The general location of the area subject to the Restrictions in this Covenant, totaling approximately 5 acres, is depicted in Exhibits A1 and A2. This area is more particularly depicted and described in Exhibits A and B (the Property), attached hereto and incorporated herein by this reference.

1.02 On March 26, 2002 the ownership of the EETP, which included the Property, was transferred from the United States Department of the Navy (Navy) to the City of Vallejo (City) and then immediately on to Covenantor.

1.03 The EETP was previously part of the Navy's Mare Island Naval Shipyard. In April 2002, the Navy and the Department entered into a Federal Facility Site Remediation Agreement (FFSRA). Under the FFSRA for the EETP, the Navy retains its obligations under federal and state laws concerning the remediation of hazardous substances on the Property due to the activities of the Navy.

1.04 The Covenantor, the Department, and the City entered into a Consent Agreement on April 16, 2001 (Consent Agreement), whereby the Covenantor is obligated to perform remedial action, achieve regulatory closure, and comply with operation and maintenance requirements such as the requirements of this Covenant, on the Property. The Consent Agreement is on file with the Department and the Covenantor. The Consent Agreement subdivides the EETP into eight investigation areas. The Property is located in a portion of one of these investigation areas, IA C3. The Final *Feasibility Study/Remedial Action Plan for Black Granular Material in the Investigation Area C3 Triangle Area, Lennar Mare Island, Vallejo, California* was approved by the Department on [REDACTED], 2009.

1.05 The EETP is subject to the terms of a Pre-Decision Covenant to Restrict Use of Property (Pre-Decision Covenant), dated March 26, 2002. The Pre-Decision Covenant is to be released for each investigation area, or portion thereof, that receives regulatory closure pursuant to the Consent Agreement. The Pre-Decision Covenant will be released for IA C3 following the recordation of the IA C3 Land Use Covenant (LUC). This LUC is required to achieve regulatory closure for the Triangle Area in IA C3.

1.06 The Department has the authority pursuant to Comprehensive Environmental Response, Compensation, and Liability Act Section 120.

1.07 The IA C3 Triangle Area consists of the approximately 5-acre portion of IA C3 that is bound by Dry Docks 1 and 2 and extends east of Nimitz Avenue, as depicted in Exhibit A2. The IA C3 Triangle Area consists of a portion of the

area within the EETP that was previously marshland. The dry docks and quay wall were developed between 1872 and 1910, and the IA C3 Triangle Area between these structures was filled with dredge spoils, borrow material from the island's native Panoche formation, and with other materials, including black granular material (BGM). BGM appears to have been used as fill at the IA C3 Triangle Area around building foundation piles, under railroad ballast, and as a leveling course over other fill. BGM is irregularly distributed through the site and has been observed beneath surface paving to 11 feet below ground surface. As detailed in the Final *Feasibility Study/Remedial Action Plan for Black Granular Material in the Investigation Area C3 Triangle Area, Lennar Mare Island, Vallejo, California*, dated [REDACTED], 2009, subsurface soils within the IA C3 Triangle Area contain lead in BGM and BGM-impacted soil at concentrations ranging from 84 to 21,000 milligrams per kilogram. Concentrations of lead exceed the screening levels for unrestricted use in certain soils on the Property but are acceptable under commercial/industrial scenarios, as shown in Exhibit C. As a result of lead being present in BGM and BGM-impacted soils above the screening levels for unrestricted use, the use of the Property is restricted as established in this Covenant.

1.08 BGM has not significantly affected groundwater. Leaching has not been a significant pathway by which BGM in the subsurface has affected groundwater.

1.09 The Engineered Encapsulating Surface prevents exposure to the remaining lead in BGM and BGM-impacted soil at IA C3 Triangle Area. Disturbance of the material below the Engineered Encapsulating Surface is prohibited without approval by the Department.

1.10 The Department has concluded that the lead in BGM and BGM-impacted soil beneath the Engineered Encapsulating Surface does not present an unacceptable risk to human health and the environment provided that the Engineered Encapsulating Surface is maintained.

1.11 No further action is needed with respect to lead in BGM and BGM-impacted soil in the IA C3 Triangle Area, provided the applicable requirements of this Covenant and the other requirements established in this Covenant are satisfied.

– DEFINITIONS

Department. “Department” means the State of California by and through the Department of Toxic Substances Control and includes its successor agencies, if any.

Owner. “Owner” means the Covenantor and shall include the Covenantor’s successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

Occupant. “Occupant” means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

The Property. The “Property” means the area subject to the Restrictions set forth herein, more particularly described and depicted in Exhibits “A” and “B.”

Engineered Encapsulating Surface. "Engineered Encapsulating Surface" means surface consisting of asphaltic concrete paving and structural concrete foundations and floor slabs that encapsulate BGM in the subsurface to eliminate the primary human exposure pathway to BGM and BGM-impacted soil.

Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

Improvements. “Improvements” includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

Lease. “Lease” means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

– GENERAL PROVISIONS

Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, “Restrictions”), subject to which the Property and every portion thereof shall be improved, held, used occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC Section 25355.5 (a)(1)(C), Civil Code Section 1471, and 22 CCR 67391.1; (b) ensures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by, the Department; and (d) is imposed upon the entire Property unless expressly stated, as applicable only to a specific portion thereof.

Binding Upon Owners, Occupants and Lessees. Pursuant to H&SC Section 25355.5 (a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code Section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

Written Notification of the Presence of Hazardous Substances. Prior to the sale, lease, or sublease of the Property, or any portion thereof, the Owner, Occupant, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that

hazardous substances are located on or beneath the Property, as required by H&SC Section 25359.7.

Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases entered into for any portion of the Property on or after the date of recordation of this Covenant.

Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

Costs of Administering the Covenant. The Department will incur costs associated with the administration of this Covenant. Therefore, the Owner shall pay, pursuant to 22 CCR 67391.1(h), the Department's agreed-upon-costs in administering the Covenant

- ENVIRONMENTAL RESTRICTIONS

Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed, or installed for use as a residential habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 18 years.
- (d) A day-care center for children.

Surface Management.

- (a) No activities at the Property that will disturb the material below the Engineered Encapsulating Surface shall be allowed without implementation of a Management Plan and a Health and Safety Plan, to be submitted with written notice at least 30 days prior to planned activities to the Department for review and approval by the Department prior to implementation, except as provided in this Investigation Area C3 Triangle Area BGM LUC and the applicable provisions of the Operation and Maintenance Plan.

(b) The Owner shall provide the Department with written notice at least 14 days prior to any change in use of the Property. If the use of the Property changes in a manner that will increase the risk of exposure to lead, an evaluation of the feasibility of implementing remedial measures that at least reduce such increased exposure risks shall be submitted to and approved by the Department prior to changing the use of the Property. In the event that the Property is to be redeveloped, additional measures for construction worker protection and disposal of contaminated waste will be required pursuant to applicable state and federal law.

Non-Interference with the Structural Foundations and Floor Slabs.

Owner agrees:

(a) Structural foundations and floor slabs shall be integrated into the Engineered Encapsulating Surface.

(b) Uses and development of the Property shall preserve the integrity of the Engineered Encapsulating Surface.

(c) The Engineered Encapsulation Surface shall not be altered without written approval by the Department except as provided in the IA C3 Triangle Area BGM LUC and the applicable provisions of the Operation and Maintenance Plan for the Investigation Area C3 LUC.

(d) To keep a record for a period of 5 years of each of the following: (i) the type, cause, location, and date of any damage to or demolition of the Engineered Encapsulating Surface; (ii) the type and date of repair of such damage or demolition; and (iii) the type, location, and date of any modification or renovation to the Engineered Encapsulating Surface.

(e) Exterior minor electrical lines (i.e., lighting, security, etc.) can be placed within the Engineered Encapsulating Surface but within preexisting utility corridors. The Owner shall keep records for a period of 5 years of; (i) the location of any such installations, (ii) the type, cause, location, and date of any maintenance or repairs to such lines and the surrounding Engineered Encapsulating Surface.

Routine Operation and Maintenance. The Owner may conduct routine operation and maintenance activities and may make minor renovations to the Engineered Encapsulating Surface that are necessary to conduct activities consistent with the designated land use without preparing a Management Plan and Health and Safety Plan.

(a) The following operation and maintenance activities and minor renovations are allowed without advance notification of the Department and without approval of a Management Plan and Health and Safety Plan:

i. Securing security and safety controls and barriers to the encapsulating surface in such a way that preserves the integrity of the encapsulating surface.

ii. Making routine repairs to the Engineered Encapsulating Surface.

(b) The Owner shall keep records for a period of 5 years of the type, location, and date of such activities.

Inspection, Reporting, and Maintenance of the Engineered Encapsulating Surface. The Engineered Encapsulating Surface at the IA C3 Triangle Area shall be inspected at least once each calendar year to evaluate wear and to verify that the use of the Property is in compliance with the provisions of this Covenant. The Owner shall conduct such inspections and shall continue to maintain the Engineered Encapsulating Surface. Results of each such inspection shall be documented in writing and submitted to the Department and the City. The first report shall be submitted to the Department and the City on or before the first anniversary of the date of recordation of this Covenant and shall be submitted to the Department and the City annually thereafter. The report shall describe the inspection of the Property for compliance with this Covenant and state the deficiencies and measures taken and necessary to address these deficiencies. In addition, copies of the inspection reports are to remain onsite, stored by the Owner, available for Department review for a period of 5 years following the date of each inspection.

Access. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant, as deemed necessary by the Department to protect public health or safety or the environment.

Inconsistent Covenant Activities - Notification to the Department. The Owner or Owner's designee shall notify the Department within 3 business days of discovery of any activity that violates or is inconsistent with the provisions of this Covenant. The notification shall include any corrective measures taken or planned to address the violation or inconsistency. The Owner or Owner's designee shall notify the Department within 3 business days of discovery of a previously unknown hazardous substances release to the environment and, in all cases, the Owner shall comply with applicable notification requirements under state and federal law. The notification shall include a description of any interim containment or corrective measures taken or planned.

Implementing Operation and Maintenance Plan. The Owner is responsible for implementing the Operation and Maintenance Plan as outlined in the Operation and Maintenance Agreement between the Covenantor and the Department.

- ENFORCEMENT

Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any restrictions set forth in this Covenant shall be grounds for the Department to obtain injunctive or other equitable relief as provided by law, prohibiting commencement or continuation of any uses or activities restricted by this Covenant, including modification or removal of Improvements constructed or placed upon the Property in violation of this Covenant. Violation of this Covenant shall be grounds for the Department to seek or file enforcement actions as provided by law.

– VARIANCE, TERMINATION, AND TERM

Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC Section 25233. Any approved variance shall be recorded in the Office of the Recorder of Solano County, California by the person or entity granted the variance.

Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234. Any termination or partial termination shall be recorded in the Office of the Recorder of Solano County, California by the person or entity granted the termination.

Term. Unless ended or modified in accordance with the paragraphs above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

– MISCELLANEOUS

No Gift or Dedication Intended. Nothing set forth in this Covenant 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 or anyone else for any purpose whatsoever.

Department References. All references to the Department include successor agencies/departments or any other successor entity.

Recordation. The Covenantor shall record this Covenant, with Exhibits A1, A2, A, B, and C in the County of Solano within 10 days of the Covenantor's receipt of a fully executed original.

Notices. Whenever any person gives or serves any notice (Notice as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested as follows:

To Covenantor:

Lennar Mare Island, LLC
Attention: Mr. Neal Siler, Environmental Manager
690 Walnut Avenue, Suite 100
Vallejo, California 94592

To Department:

Department of Toxic Substances Control
Brownfields & Environmental Restoration Program
Attention: Ms. Barbara Cook, Performance Manager
700 Heinz Avenue, Suite 200
Berkeley, California 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

Partial Invalidity. If any portion of the Restrictions or any other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

Statutory References. All statutory references include successor provisions.

7.10 Counterparts. This Covenant may be executed in counterparts.

IN WITNESS WHEREOF, the Parties execute this Covenant.

COVENANTOR: LENNAR MARE ISLAND, LLC

By: _____
Name: _____
Title: _____
Date: _____

State of California)ss.
County of _____)

On _____, before me _____,
personally appeared _____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Seal

Signature of Notary

THE CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: _____
Name: _____
Title: _____
Date: _____

State of California)ss.
County of _____)

On _____, before me _____,
personally appeared _____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Seal

Signature of Notary