



OLD REPUBLIC TITLE COMPANY

475 Sansome Street, Suite 1700 • San Francisco CA • 94111 • (415) 397-0500 • FAX (415) 397-0199

December 19, 2006

Attn: Jennifer Dolin
Mercy Housing California XXXVI
1360 Mission Street, Suite 300
San Francisco, CA 94103

Re: Escrow No.: 0227005707-DP
Property: 16438 -16450 Kent Avenue, San Lorenzo, California 94580

Dear Jennifer

Enclosed, please find the following in connection with the closing of this escrow:

1. Conformed copy of Environmental Covenant

Sincerely,

Ward Taylor for David Phillips
Escrow Officer

0227005707-DP

Recording Requested By:

Mercy Housing California XXXVI
1360 Mission Street, Suite 300
San Francisco, CA 94103

When Recorded, Mail To:

Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

CERTIFIED A TRUE COPY OF THE ORIGINAL
RECORDED IN THE OFFICIAL RECORDS OF
ALAMEDA COUNTY ON 12/19/2006

Under Recorder's Serial No. 06-461100

Old Republic Title Company

BY 

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

16438 and 16450 Kent Avenue

(2.1)

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 15 day of December, 2006, by Mercy Housing California XXXVI, a California limited partnership ("Covenantor") which is the Owner of record of that certain property situated at 16438 and 16450 Kent Avenue, in the unincorporated area of the County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such property hereinafter referred to as the "Burdened 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. Existence of Certain Hazardous Materials. The Burdened Property and ground water underlying same contain certain hazardous materials.
- B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by greenhouse operations conducted most recently by Plants Unlimited, through 2004 and previous greenhouse operations beginning in the 1930s. These operations resulted in contamination of soil and ground water with organic chemicals notably the pesticide dieldrin, which constitute hazardous materials as that term is defined in California Health & Safety Code Section 25260.
- C. Exposure Pathways. The Covenantor has removed the top six inches of soil over the entire Burdened Property and disposed of said removed soil to an acceptable off-site location. Residual pesticides are present in ground water beneath the Burdened Property at levels exceeding the Board's February 2005 Environmental Screening Level, as well as the presence of low levels of residual pesticides remaining in the soil. The residual levels of pesticides in the soil

do not pose a significant threat to human health, but may present a potential threat to ground water, via surface water infiltration and leaching. Without restrictions described herein, exposure to these contaminants could take place via ingestion of or exposure to ground water and residual contaminants in the soil could continue to leach into shallow ground water via surface water infiltration. The risk of public exposure to the contaminants described herein has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property will be used by the Covenantor to construct an 84-unit senior housing development (the "Development"), which will be financed substantially with funds to be provided by the U.S. Department of Housing and Urban Development ("HUD") pursuant to HUD's Section 202, Supportive Housing for the Elderly Program (the "Section 202 Program"). The Development will be adjacent to residential land uses.

E. Disclosure and Testing. 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. Intention of Covenantor. Covenantor desires and intends that in order to satisfy and benefit the Board, and to protect the present and future public health and safety of all residents of the Development and other intended users of the Burdened Property, 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 or which may exist below the surface 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 this Covenant, and, in particular, the provisions as set forth in Article III below, 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 Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors and assigns 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 California Civil Code, and 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.

1.3 Restrictions Binding on Covenantor's Successors, Assigns and Lessees. Covenantor desires that the Restrictions set out herein be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property; however, recordation of this Covenant shall be deemed binding on all successors, assigns and lessees of Covenantor, regardless of whether a copy of this Covenant has been attached to or incorporated into any given deed or lease. Covenantor shall, to the extent practicable, attach to or incorporate by reference this Covenant to any given deed or lease that conveys all or any portion of the Burdened Property.

1.4 Purpose. It is the purpose of this instrument to convey to the Board certain rights that affect real property, which rights 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 contaminated ground water and by reducing the risk of exposure of the soil to surface water infiltration.

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 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 and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

2.5 Impervious Surfaces. "Impervious Surfaces" shall mean all pavement, sidewalks, building and any other surface capable of highly reducing infiltration of surface water to the subsurface soil.

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. All uses and development of the Burdened Property, including but not limited to the Development, shall be consistent with the September 6, 2006, Site Mitigation Plan, as approved by the Board on September 19, 2006, and which is hereby incorporated herein by this reference. All uses and development of the Burdened Property shall preserve the integrity of the planned Impervious Surfaces which is intended to cover more than two-third of the surface area of the Burdened Property, pursuant to the requirements of the Board. Any significant disturbance to the Impervious Surface shall be restored to its original, or equivalent, state within a reasonable time period to prevent surface water infiltration and leaching of contaminants into the ground water beneath the Burdened Property.

b. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well within the boundaries of the Burdened Property for the purpose of extracting ground water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board, which permission shall be at the sole discretion of the Board.

c. The Owner shall notify the Board of any planned redevelopment of the Burdened Property, of improvements or changes to the Development that would decrease the area of the Impervious Surfaces or of any disturbances or repairs to the Impervious Surfaces that could significantly affect their ability to limit infiltration. Notification to the Board shall be made in writing and sent by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.

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

e. 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 use and development of the Burdened Property, including but not limited to the Development, shall preserve the integrity of the intended Impervious Surfaces. The Owner shall be responsible to enforce the foregoing Restrictions against all Occupants.

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 such Restriction(s). Violation of this Covenant shall be grounds for the Board to file, at its option, a civil action against the Owner as provided by law; provided, however, that the Board shall first provide the Secretary of Housing and Urban Development ("HUD") with written notice of such civil action. Covenantor shall retain reasonable cure rights, and any monetary damages awarded to the Board under this paragraph shall be restricted to non-Federal sources.

3.3 Notices in Agreements. After the date of recordation hereof, all Owners, lessees 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 the ground water under the property and low levels of residual pesticides in the soil, and, consequently, is subject to a deed restriction dated as of December ____, 2006, and recorded on December ____, 2006, in the Official Records of Alameda County, California, as Document No. _____, which deed restriction imposes certain covenants, conditions, and restrictions on usage of the property as described therein. This statement is not a declaration that a hazardous condition exists on or under land, so long as the deed restriction is adhered to and obeyed.

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, which variance may be granted at the reasonable discretion of the Board.

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 upon a finding by a third party consultant reasonably acceptable to the Board that residual contamination beneath the Burdened Property has been reduced to levels that would no longer require that the Board impose this Covenant.

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":

Mercy Housing California XXXVI, a California limited partnership
c/o Mercy Housing West
1360 Mission Street, Suite 300
San Francisco, CA 94103

If To: "Board":

Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, California 94612

If To: "HUD":

HUD
San Francisco Multifamily Hub
Asset Management Branch
600 Harrison Street, 3rd Floor
San Francisco, CA 94107

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 invalid 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 ten (10) days of the date of execution.

5.6 References. All references to the California 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 Board to affect the purpose of this instrument and the policy and purpose of the California 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.

IN WITNESS WHEREOF, each of the parties hereto have caused this Covenant to be executed by its duly authorized representative as of the date set forth above.

Covenantor:

MERCY HOUSING CALIFORNIA XXXVI, a California limited partnership,

By: Mercy Housing West, a California nonprofit public benefit corporation
Its General Partner

By: Valerie Agostino
Valerie Agostino, Vice President

Date: December 15, 2006

Agency:

State of California
Regional Water Quality Board
San Francisco Bay Region

By: Bruce W. Wolfe

Title: Executive Officer

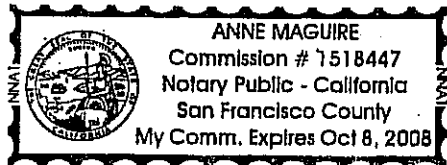
Date: December 15, 2006

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

On December 15th, 2006, before me, ANNE MAGUIRE, a Notary Public, personally appeared Valerie Agostino, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) 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 on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

ANM
Notary Public Signature



STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On December 15th, 2006, before me, ANNE MAGUIRE, a Notary Public, personally appeared BRUCE H. WOLFE, 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 instrument.

WITNESS my hand and official seal.

ANM
Notary Public Signature

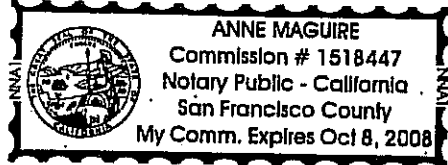


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

[LEGAL DESCRIPTION]

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN AN UNINCORPORATED AREA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot Merger as disclosed by the Certificate of Compliance and Boundary Adjustment, BA 22-05 recorded May 2, 2006, Series 2006-176409, Alameda County Records, being Parcels 1 and 2 described in the Deed to Alameda County Redevelopment Agency recorded September 13, 2002, Series 2002-407976, Alameda County Records, described as follows:

Beginning at the southwest corner of Parcel 1, as said parcel is described in herein above referenced Deed, said point being on the eastern right-of-way of Kent Avenue; thence along said eastern right-of-way, North 00°18'00" East, a distance of 171.90 feet to the northwestern corner of Parcel 2; as said parcel is described in herein above referenced Deed; thence along the northern line of said Parcel 2, South 89°42'00" East, a distance of 160.00 feet to the northeastern corner of said Parcel 2; thence along the eastern line of said Parcel 2, South 00°18'00" West, a distance of 40.00 feet to a point on the northern line of said Parcel 1; thence along the northern line of said Parcel 1, South 89°42'00" East, a distance of 500.20 feet to the northeastern corner of said Parcel 1; thence along the eastern line of said Parcel 1, South 00°18'00" West, a distance of 131.90 feet to the southeast corner of said Parcel 1; thence along the southern line of said Parcel 1, North 89°42'00" West, a distance of 660.20 feet to the Point of Beginning.

APN: 080B-0300-022-01, 080B8-0300-023